EXHIBIT 4

Visible Emission Monitoring

Date of Inspection (mo/day/yr)	Time of Inspection (a.m./p.m.)	Air cleaning device or fugitive source designation or number	Visible emission observed (yes/no) corrective action taken	Daily operating hours	Inspector initials
10/2/91	0900	Asbestos Warehouse	NO	6/2:30	RJE
10/2/91	0600	Asbestos handling area	NO	6-2:30	RJB
10/2/91	0615	Dust collector vent	NO	6-2:30	RJB
10/2/91	0630	Cathode wash rack	Asbestos stuck on walls/washed walls	6-2:30	RJB
10/2/91	0700	Cathode depositing tank	Asbestos stuck on walls of tank/wash on Friday's	6-2:30	RJB
10/2/91	0715	HAPP Oven/Dryer vent	NO	6-2:30	RJB
10/2/91	0730	Asbestos filter & disposal bin	Asbestos dust on walls & floor/washed daily	6-2:30	RJB

Visible Emission Monitoring

Date of Inspection (mo/day/yr)	Time of Inspection (a.m./p.m.)	Air cleaning device or fugitive source designation or number	Visible emission observed (yes/no) corrective action taken	Daily operating hours	Inspector initials
10/3/91	0900	Asbestos Warehouse	NO	6-2:30	RJB
10/3/91	0610	Asbestos handling area	NO	6-2:30	RJB
10/3/91	0615	Dust collector vent	NO	6-2:30	RJB
10/3/91	0630	Cathode wash rack	asbestos stuck on walls / washed walls	6-2:30	RJB
10/3/91	0700	Cathode depositing tank	asbestos on side of tank / wash on Friday's	6-2:30	RJB
10/3/91	0715	HAPP Oven/Dryer vent	NO	6-2:30	RJB
10/3/91	0800	Asbestos filter & disposal bin	asbestos stuck on walls & pavement	6-2:30	RJB

Visible Emission Monitoring

Date of Inspection (mo/day/yr)	Time of Inspection (a.m./p.m.)	Air cleaning device or fugitive source designation or number	Visible emission observed (yes/no) corrective action taken	Daily operating hours	Inspectors initials
10/4/91	0900	Asbestos Warehouse		6-2:30	RTB
10/4/91	0600	Asbestos handling area	NO	6-2:30	RTB
10/4/91	0615	Dust collector vent	NO	6-2:30	RTB
10/4/91	0630	Cathode wash rack	asbestos stuck on walls/ washed walls	6-2:30	RTB
10/4/91	0700	Cathode depositing tank	asbestos on walls of tank/ wash tanks on Friday	6-2:30	RTB
10/4/91	0715	HAPP Oven/Dryer vent	NO	6-2:30	RTB
10/4/91	0730	Asbestos filter & disposal bin	asbestos on walls & floor.	6-2:30	RTB

Visible Emission Monitoring

Date of Inspection (mo/day/yr)	Time of Inspection (a.m./p.m.)	Air cleaning device or fugitive source designation or number	Visible emission observed (yes/no) corrective action taken	Daily operating hours	Inspector initials
10/7/91	0900	Asbestos Warehouse	NO	6-2:30	RJB
10/7/91	0600	Asbestos handling area	NO	6-2:30	RJB
10/7/91	0615	Dust collector vent	NO	6-2:30	RJB
10/7/91	0630	Cathode wash rack	NO	6-2:30	RJB
10/7/91	0700	Cathode depositing tank	NO	6-2:30	RJB
10/7/91	0715	HAPP Oven/Dryer vent	oven off.	6-2:30	RJB
10/7/91	0730	Asbestos filter & disposal bin	NO	6-2:30	RJB

Visible Emission Monitoring

Date of Inspection (mo/day/yr)	Time of Inspection (a.m./p.m.)	Air cleaning device or fugitive source designation or number	Visible emission observed (yes/no) corrective action taken	Daily operating hours	Inspector initials
10/8/91	0900	Asbestos Warehouse	NO	6-2:30	RJB
10/8/91	0600	Asbestos handling area	NO	6-2:30	RJB
10/8/91	0615	Dust collector vent	NO	6-2:30	RJB
10/8/91	0630	Cathode wash rack	Asbestos stuck on walls/	6-2:30	RJB
10/8/91	0700	Cathode depositing tank	Asbestos on walls of tank/ wash on Friday	6-2:30	RJB
10/8/91	0730	HAPP Oven/Dryer vent	NO	6-2:30	RJB
10/8/91	0800	Asbestos filter & disposal bin	NO	6-2:30	RJB

Visible Emission Monitoring

Date of Inspection (mo/day/yr)	Time of Inspection (a.m./p.m.)	Air cleaning device or fugitive source designation or number	Visible emission observed (yes/no) corrective action taken	Daily operating hours	Inspectors initials
10/9/91	0830	Asbestos Warehouse	NO	6-2:30	RJB
10/9/91	~~N~~ 600	Asbestos handling area	NO	6-2:30	RJB
10/9/91	0615	Dust collector vent	NO	6-2:30	RJB
10/9/91	0630	Cathode wash rack	asbestos stuck on walls / washed walls	6-2:30	RJB
10/9/91	0700	Cathode depositing tank	asbestos on walls of tank / washed tank on Friday	6-2:30	RJB
10/9/91	0730	HAPP Oven/Dryer vent	NO	6-2:30	RJB
10/9/91	0800	Asbestos filter & disposal bin	asbestos on walls & concrete	6-2:30	RJB

Visible Emission Monitoring

Date of Inspection (mo/day/yr)	Time of Inspection (a.m./p.m.)	Air cleaning device or fugitive source designation or number	Visible emission observed (yes/no) corrective action taken	Daily operating hours	Inspectors initials
10/18/91	0900	Asbestos Warehouse	NO	6-2:30	RJB
10/18/91	0600	Asbestos handling area	NO	6-2:30	RJB
10/18/91	0615	Dust collector vent	NO	6-2:30	RJB
10/18/91	0630	Cathode wash rack	Asbestos on walls/wooden walls	6-2:30	RJB
10/18/91	0700	Cathode depositing tank	asbestos on walls of tank/wood on sides	6-2:30	RJB
10/18/91	0730	HAPP Oven/Dryer vent	NO	6-2:30	RJB
10/18/91	0800	Asbestos filter & disposal bin	Asbestos on wall & Concrete	6-2:30	RJB

Visible Emission Monitoring

Date of Inspection (mo/day/yr)	Time of Inspection (a.m./p.m.)	Air cleaning device or fugitive source designation or number	Visible emission observed (yes/no) corrective action taken	Daily operating hours	Inspectors initials
10/14/91	0900	Asbestos Warehouse	NO	6-2:30	RTB
10/14/91	0600	Asbestos handling area	NO	6-2:30	RTB
10/14/91	0615	Dust collector vent	NO	6-2:30	RTB
10/14/91	0630	Cathode wash rack	Asbestos stuck on walls/ washed walls	6-2:30	RTB
10/14/91	0700	Cathode depositing tank	Asbestos on walls of tank/ cleaned on Friday	6-2:30	RTB
10/14/91	0715	HAPP Oven/Dryer vent	Oven off	6-2:30	RTB
10/14/91	0800	Asbestos filter & disposal bin	Asbestos on walls & Concrete	6-2:30	RTB

Visible Emission Monitoring

Date of Inspection (mo/day/yr)	Time of Inspection (a.m./p.m.)	Air cleaning device or fugitive source designation or number	Visible emission observed (yes/no) corrective action taken	Daily operating hours	Inspectors initials
10/15/91	0900	Asbestos Warehouse	NO	6-2:30	RJB
10/15/91	0600	Asbestos handling area	NO	6-2:30	RJB
10/15/91	0615	Dust collector vent	NO	6-2:30	RJB
10/15/91	0630	Cathode wash rack	asbestos stuck on walls/ washed walls	6-2:30	RJB
10/15/91	0700	Cathode depositing tank	asbestos on walls of tank/ wash on Friday	6-2:30	RJB
10/15/91	0715	HAPP Oven/Dryer vent	Oven off	6-2:30	RJB
10/15/91	0800	Asbestos filter & disposal bin	Asbestos on walls/ press/ concrete floor	6-2:30	RJB

Visible Emission Monitoring

Date of Inspection (mo/day/yr)	Time of Inspection (a.m./p.m.)	Air cleaning device or fugitive source designation or number	Visible emission observed (yes/no) corrective action taken	Daily operating hours	Inspectors initials
10/16/91	0900	Asbestos Warehouse	NO	6-2:30	RTB
10/16/91	0600	Asbestos handling area	NO	6-2:30	RTB
10/16/91	0615	Dust collector vent	NO	6-2:30	RTB
10/16/91	0630	Cathode wash rack	asbestos on walls	6-2:30	RTB
10/16/91	0700	Cathode depositing tank	asbestos on walls of tank	6-2:30	RTB
10/16/91	0715	HAPP Oven/Dryer vent	NO	6-2:30	RTB
10/16/91	0800	Asbestos filter & disposal bin	Asbestos on filter press walls + floor	6-2:30	RTB

Visible Emission Monitoring

Date of Inspection (mo/day/yr)	Time of Inspection (a.m./p.m.)	Air cleaning device or fugitive source designation or number	Visible emission observed (yes/no) corrective action taken	Daily operating hours	Inspectors initials
10/17/91	0900	Asbestos Warehouse	NO	6-2:30	RJB
10/17/91	0600	Asbestos handling area	NO	6-2:30	RJB
10/17/91	0615	Dust collector vent	NO	6-2:30	RJB
10/17/91	0630	Cathode wash rack	asbestos on walls / wash walls	6-2:30	RJB
10/17/91	0700	Cathode depositing tank	asbestos on walls of tank / wash on Friday	6-2:30	RJB
10/17/91	0715	HAPP Oven/Dryer vent	NO	6-2:30	RJB
10/17/91	0800	Asbestos filter & disposal bin	asbestos on walls + press	6-2:30	RJB

Visible Emission Monitoring

Date of Inspection (mo/day/yr)	Time of Inspection (a.m./p.m.)	Air cleaning device or fugitive source designation or number	Visible emission observed (yes/no) corrective action taken	Daily operating hours	Inspectors initials
10/18/91	0900	Asbestos Warehouse	NO	6-2:30	RJB
10/18/91	0600	Asbestos handling area	NO	6-2:30	RJB
10/18/91	0615	Dust collector vent	NO	6-2:30	RJB
10/18/91	0630	Cathode wash rack	asbestos on walls/washed walls	6-2:30	RJB
10/18/91	0700	Cathode depositing tank	asbestos on walls of tank/wash on Friday	6-2:30	RJB
10/18/91	0715	HAPP Oven/Dryer vent	NO	6-2:30	RJB
10/18/91	0800	Asbestos filter & disposal bin	asbestos on walls, dumpster & floor	6-2:30	RJB

Visible Emission Monitoring

Date of Inspection (mo/day/yr)	Time of Inspection (a.m./p.m.)	Air cleaning device or fugitive source designation or number	Visible emission observed (yes/no) corrective action taken	Daily operating hours	Inspectors initials
10/21/91	0730	Asbestos Warehouse	NO	6-2:30	RTB
10/21/91	0600	Asbestos handling area	NO	6-2:30	RTB
10/21/91	0615	Dust collector vent	NO	6-2:30	RTB
10/21/91	0630	Cathode wash rack	Asbestos on walls / washed walls	6-2:30	RTB
10/21/91	0700	Cathode depositing tank	NO	6-2:30	RTB
10/21/91	0800	HAPP Oven/Dryer vent	Oven off	6-2:30	RTB
10/21/91	0830	Asbestos filter & disposal bin	Asbestos on walls, filter press & floor	6-2:30	RTB

Visible Emission Monitoring

Date of Inspection (mo/day/yr)	Time of Inspection (a.m./p.m.)	Air cleaning device or fugitive source designation or number	Visible emission observed (yes/no) corrective action taken	Daily operating hours	Inspectors initials
10/22/91	0900	Asbestos Warehouse	NO	6-2:30	RJB
10/22/91	0600	Asbestos handling area	NO	6-2:30	RJB
10/22/91	0615	Dust collector vent	NO	6-2:30	RJB
10/22/91	0630	Cathode wash rack	Asbestos on walls	6-2:30	RJB
10/22/91	0700	Cathode depositing tank	Asbestos on walls of tank & wash on Friday	6-2:30	RJB
10/22/91	0715	HAPP Oven/Dryer vent	oven off	6-2:30	RJB
10/22/91	0800	Asbestos filter & disposal bin	Asbestos on walls, filter press & floor	6-2:30	RJB

Visible Emission Monitoring

Date of Inspection (mo/day/yr)	Time of Inspection (a.m./p.m.)	Air cleaning device or fugitive source designation or number	Visible emission observed (yes/no) corrective action taken	Daily operating hours	Inspectors initials
10/24/91	0900	Asbestos Warehouse	NO	6-2:30	RJB
10/24/91	0600	Asbestos handling area	NO	6-2:30	RJB
10/24/91	0615	Dust collector vent	NO	6-2:30	RJB
10/24/91	0630	Cathode wash rack	asbestos on walls / washed walls	6-2:30	RJB
10/24/91	0700	Cathode depositing tank	asbestos on walls of tank / washed on Fridays	6-2:30	RJB
10/24/91	0730	HAPP Oven/Dryer vent	NO	6-2:30	RJB
10/24/91	0800	Asbestos filter & disposal bin	Asbestos on walls, filter press & Concrete floor	6-2:30	RJB

Visible Emission Monitoring

Date of Inspection (mo/day/yr)	Time of Inspection (a.m./p.m.)	Air cleaning device or fugitive source designation or number	Visible emission observed (yes/no) corrective action taken	Daily operating hours	Inspector initials
10/25/91	0960	Asbestos Warehouse	NO	6-2:30	RJB
10/25/91	0600	Asbestos handling area	NO	6-2:30	RJB
10/25/91	0615	Dust collector vent	NO	6-2:30	RJB
10/25/91	0630	Cathode wash rack	Asbestos on walls	6-2:30	RJB
10/25/91	0700	Cathode depositing tank	asbestos on walls of tank/ wash on Friday	6-2:30	RJB
10/25/91	0715	HAPP Oven/Dryer vent	NO	6-2:30	RJB
10/25/91	0800	Asbestos filter & disposal bin	Asbestos on press + floor	6-2:30	RJB

Visible Emission Monitoring

Date of Inspection (mo/day/yr)	Time of Inspection (a.m./p.m.)	Air cleaning device or fugitive source designation or number	Visible emission observed (yes/no) corrective action taken	Daily operating hours	Inspectors initials
10/28/91	0900	Asbestos Warehouse	NO	6-2:30	RJB
10/28/91	0600	Asbestos handling area	NO	6-2:30	RJB
10/28/91	0615	Dust collector vent	NO	6-2:30	RJB
10/28/91	0630	Cathode wash rack	Asbestos on walls	6-2:30	RJB
10/28/91	0700	Cathode depositing tank	NO	6-2:30	RJB
10/28/91	0715	HAPP Oven/Dryer vent	Oven off	6-2:30	RJB
10/28/91	0800	Asbestos filter & disposal bin	asbestos on floor, walls & concrete floor	6-2:30	RJB

Visible Emission Monitoring

Date of Inspection (mo/day/yr)	Time of Inspection (a.m./p.m.)	Air cleaning device or fugitive source designation or number	Visible emission observed (yes/no) corrective action taken	Daily operating hours	Inspectors initials
10/29/91	0900	Asbestos Warehouse	NO	6-2:30	RJB
10/29/91	0600	Asbestos handling area	NO	6-2:30	RJB
10/29/91	0615	Dust collector vent	NO	6-2:30	RJB
10/29/91	0630	Cathode wash rack	Asbestos on walls/washed walls	6-2:30	RJB
10/29/91	0700	Cathode depositing tank	Asbestos on walls of tanks/wash tanks on Friday	6-2:30	RJB
10/29/91	0730	HAPP Oven/Dryer vent	oven off	6-2:30	RJB
10/29/91	0800	Asbestos filter & disposal bin	Asbestos on walls, filter pipes + concrete floor	6-2:30	RJB

Visible Emission Monitoring

Date of Inspection (mo/day/yr)	Time of Inspection (a.m./p.m.)	Air cleaning device or fugitive source designation or number	Visible emission observed (yes/no) corrective action taken	Daily operating hours	Inspectors initials
10/30/91	0600	Asbestos Warehouse	NO	6-2:30	RJB
10/30/91	0615	Asbestos handling area	NO	6-2:30	RJB
10/30/91	0630	Dust collector vent	NO	6-2:30	RJB
10/30/91	0700	Cathode wash rack	asbestos on walls/ washed walls	6-2:30	RJB
10/30/91	0715	Cathode depositing tank	Asbestos on walls of tanks/ wash on Friday	6-2:30	RJB
10/30/91	0730	HAPP Oven/Dryer vent	NO	6-2:30	RJB
10/30/91	0800	Asbestos filter & disposal bin	Asbestos on filter press/ walls & covered floor	6-2:30	RJB

Visible Emission Monitoring

Date of Inspection (mo/day/yr)	Time of Inspection (a.m./p.m.)	Air cleaning device or fugitive source designation or number	Visible emission observed (yes/no) corrective action taken	Daily operating hours	Inspectors initials
10/31/91	0900	Asbestos Warehouse	NO	6-2:30	RJB
10/31/91	0600	Asbestos handling area	NO	6-2:30	RJB
10/31/91	0615	Dust collector vent	NO	6-2:30	RJB
10/31/91	0630	Cathode wash rack	asbestos on walls/washed walls	6-2:30	RJB
10/31/91	0700	Cathode depositing tank	asbestos on walls of tank/ wash on Friday	6-2:30	RJB
10/31/91	0715	HAPP Oven/Dryer vent	NO	6-2:30	RJB
10/31/91	0800	Asbestos filter & disposal bin	asbestos on walls concrete floor filter press	6-2:30	RJB

Visible Emission Monitoring

Date of Inspection (mo/day/yr)	Time of Inspection (a.m./p.m.)	Air cleaning device or fugitive source designation or number	Visible emission observed (yes/no) corrective action taken	Daily operating hours	Inspectors initials
11/11/91	0900	Asbestos Warehouse	NO	6 ÷ 2:30	RJB
11/11/91	0600	Asbestos handling area	NO	6-2:30	RJB
11/11/91	0615	Dust collector vent	NO	6-2:30	RJB
11/11/91	0630	Cathode wash rack	Asbestos on walls	6-2:30	RJB
11/11/91	0700	Cathode depositing tank	NO	6-2:30	RJB
11/11/91	0715	HAPP Oven/Dryer vent	oven off	6-2:30	RJB
11/11/91	0800	Asbestos filter & disposal bin	Asbestos on filter press, walls & floor	6-2:30	RJB

Visible Emission Monitoring

Date of Inspection (mo/day/yr)	Time of Inspection (a.m./p.m.)	Air cleaning device or fugitive source designation or number	Visible emission observed (yes/no) corrective action taken	Daily operating hours	Inspectors initials
11/13/91	0900	Asbestos Warehouse	NO	6-2:30	RJB
11/13/91	0600	Asbestos handling area	NO	6-2:30	RJB
11/13/91	0615	Dust collector vent	NO	6-2:30	RJB
11/13/91	0630	Cathode wash rack	Asbestos on walls	6-2:30	RJB
11/13/91	0700	Cathode depositing tank	Asbestos on walls of tank/wash on Friday	6-2:30	RJB
11/13/91	0730	HAPP Oven/Dryer vent	NO	6-2:30	RJB
11/13/91	0800	Asbestos filter & disposal bin	Asbestos on filter press/walls + floor	6-2:30	RJB

Visible Emission Monitoring

Date of Inspection (mo/day/yr)	Time of Inspection (a.m./p.m.)	Air cleaning device or fugitive source designation or number	Visible emission observed (yes/no) corrective action taken	Daily operating hours	Inspectors initials
11/15/91	0900	Asbestos Warehouse	NO	6-2:30	RJB
11/15/91	0600	Asbestos handling area	NO	6-2:30	RJB
11/15/91	0615	Dust collector vent	NO	6-2:30	RJB
11/15/91	0630	Cathode wash rack	Asbestos on walls	6-2:30	RJB
11/15/91	0700	Cathode depositing tank	Asbestos on walls of tank/wash on bridge	6-2:30	RJB
11/15/91	0715	HAPP Oven/Dryer vent	NO	6-2:30	RJB
11/15/91	0800	Asbestos filter & disposal bin	Asbestos on concrete pad, filter press + walls	6-2:30	RJB

Visible Emission Monitoring

Date of Inspection (mo/day/yr)	Time of Inspection (a.m./p.m.)	Air cleaning device or fugitive source designation or number	Visible emission observed (yes/no) corrective action taken	Daily operating hours	Inspectors initials
11/18/91	0900	Asbestos Warehouse	NO	6-2:30	RJB
11/18/91	0615	Asbestos handling area	Asbestos on lift.	6-2:30	RJB
11/18/91	0630	Dust collector vent	NO	6-2:30	RJB
11/18/91	0700	Cathode wash rack	Asbestos on walls	6-2:30	RJB
11/18/91	0715	Cathode depositing tank	NO	6-2:30	RJB
11/18/91	0730	HAPP Oven/Dryer vent	oven off	6-2:30	RJB
11/18/91	0800	Asbestos filter & disposal bin	asbestos on pleas, walls & floor	6-2:30	RJB

Visible Emission Monitoring

Date of Inspection (mo/day/yr)	Time of Inspection (a.m./p.m.)	Air cleaning device or fugitive source designation or number	Visible emission observed (yes/no) corrective action taken	Daily operating hours	Inspectors initials
11/19/91	0900	Asbestos Warehouse	NO	6-2:30	RJB
11/19/91	0600	Asbestos handling area	NO	6-2:30	RJB
11/19/91	0615	Dust collector vent	NO	6-2:30	RJB
11/19/91	0630	Cathode wash rack	asbestos on walls	6-2:30	RJB
11/19/91	0700	Cathode depositing tank	asbestos on walls of tank	6-2:30	RJB
11/19/91	0715	HAPP Oven/Dryer vent	NO	6-2:30	RJB
11/19/91	0800	Asbestos filter & disposal bin	asbestos on walls, filter press & floor	6-2:30	RJB

Visible Emission Monitoring

Date of Inspection (mo/day/yr)	Time of Inspection (a.m./p.m.)	Air cleaning device or fugitive source designation or number	Visible emission observed (yes/no) corrective action taken	Daily operating hours	Inspectors initials
11/20/91	0900	Asbestos Warehouse	NO	6-2:30	RJB
11/20/91	0600	Asbestos handling area	NO	6-2:30	RJB
11/20/91	0615	Dust collector vent	NO	6-2:30	RJB
11/20/91	0630	Cathode wash rack	asbestos on walls	6-2:30	RJB
11/20/91	0700	Cathode depositing tank	asbestos on walls of tank	6-2:30	RJB
11/20/91	0715	HAPP Oven/Dryer vent	NO	6-2:30	RJB
11/20/91	0800	Asbestos filter & disposal bin	asbestos on walls, filter press + floor	6-2:30	RJB

Visible Emission Monitoring

Date of Inspection (mo/day/yr)	Time of Inspection (a.m./p.m.)	Air cleaning device or fugitive source designation or number	Visible emission observed (yes/no) corrective action taken	Daily operating hours	Inspectors initials
11/21/91	0900	Asbestos Warehouse	NO	6-2:30	RJB
11/21/91	0600	Asbestos handling area	NO	6-2:30	RJB
11/21/91	0615	Dust collector vent	NO	6-2:30	RJB
11/21/91	0630	Cathode wash rack	Asbestos on walls	6-2:30	RJB
11/21/91	0700	Cathode depositing tank	Asbestos on walls of tank / wash on Friday	6-2:30	RJB
11/21/91	0715	HAPP Oven/Dryer vent	NO	6-2:30	RJB
11/21/91	0800	Asbestos filter & disposal bin	Asbestos on walls, filter press, concrete floor	6-2:30	RJB

Visible Emission Monitoring

Date of Inspection (mo/day/yr)	Time of Inspection (a.m./p.m.)	Air cleaning device or fugitive source designation or number	Visible emission observed (yes/no) corrective action taken	Daily operating hours	Inspectors initials
11/25/91	0900	Asbestos Warehouse	NO	6-2:30	RJB
11/25/91	0600	Asbestos handling area	NO	6-2:30	RJB
11/25/91	0615	Dust collector vent	NO	6-2:30	RJB
11/25/91	0630	Cathode wash rack	Asbestos stuck on walls	6-2:30	RJB
11/25/91	0700	Cathode depositing tank	Asbestos on walls of tank	6-2:30	RJB
11/25/91	0715	HAPP Oven/Dryer vent	Oven off	6-2:30	RJB
11/25/91	0800	Asbestos filter & disposal bin	Asbestos on tarp, filter press & floor	6-2:30	RJB

Visible Emission Monitoring

Date of Inspection (mo/day/yr)	Time of Inspection (a.m./p.m.)	Air cleaning device or fugitive source designation or number	Visible emission observed (yes/no) corrective action taken	Daily operating hours	Inspectors initials
11/26/91	0600	Asbestos Warehouse	NO	6-2:30	RJB
11/26/91	0615	Asbestos handling area	NO	6-2:30	RJB
11/26/91	0620	Dust collector vent	NO	6-2:30	RJB
11/26/91	0630	Cathode wash rack	Asbestos on walls	6-2:30	RJB
11/26/91	0700	Cathode depositing tank	asbestos on walls of tank	6-2:30	RJB
11/26/91	0715	HAPP Oven/Dryer vent	NO	6-2:30	RJE
11/26/91	0730	Asbestos filter & disposal bin	Asbestos on tarp, filter press + floor	6-2:30	RJB

Visible Emission Monitoring

Date of Inspection (mo/day/yr)	Time of Inspection (a.m./p.m.)	Air cleaning device or fugitive source designation or number	Visible emission observed (yes/no) corrective action taken	Daily operating hours	Inspectors initials
12/2/91	0900	Asbestos Warehouse	NO	6-2:30	RJB
12/2/91	0600	Asbestos handling area	NO	6-2:30	RJB
12/2/91	0615	Dust collector vent	NO	6-2:30	RJB
12/2/91	0630	Cathode wash rack	asbestos on walls	6-2:30	RJB
12/2/91	0700	Cathode depositing tank	asbestos on walls of tank	6-2:30	RJB
12/2/91	0715	HAPP Oven/Dryer vent	oven off	6-2:30	RJB
12/2/91	0800	Asbestos filter & disposal bin	asbestos on tarp, filter press & floor	6-2:30	RJB

Visible Emission Monitoring

Date of Inspection (mo/day/yr)	Time of Inspection (a.m./p.m.)	Air cleaning device or fugitive source designation or number	Visible emission observed (yes/no) corrective action taken	Daily operating hours	Inspectors initials
12/3/91	0900	Asbestos Warehouse	NO	6-2:30	RJB
12/3/91	0600	Asbestos handling area	NO	6-2:30	RJB
12/3/91	0615	Dust collector vent	NO	6-2:30	RJB
12/3/91	0630	Cathode wash rack	Asbestos on walls	6-2:30	RJB
12/3/91	0700	Cathode depositing tank	Asbestos on walls & tank	6-2:30	RJB
12/3/91	0715	HAPP Oven/Dryer vent	NO	6-2:30	RJB
12/3/91	0800	Asbestos filter & disposal bin	Asbestos on filter press, tarp + floor	6-2:30	RJB

Visible Emission Monitoring

Date of Inspection (mo/day/yr)	Time of Inspection (a.m./p.m.)	Air cleaning device or fugitive source designation or number	Visible emission observed (yes/no) corrective action taken	Daily operating hours	Inspectors initials
12/4/91	0900	Asbestos Warehouse	NO	6-2:30	RJB
12/4/91	0600	Asbestos handling area	NO	6-2:30	RJB
12/4/91	0615	Dust collector vent	NO	6-2:30	RJB
12/4/91	0630	Cathode wash rack	Asbestos on walls	6-2:30	RJB
12/4/91	0700	Cathode depositing tank	Asbestos on walls of tank	6-2:30	RJB
12/4/91	0715	HAPP Oven/Dryer vent	NO	6-2:30	RJB
12/4/91	0800	Asbestos filter & disposal bin	Asbestos on filter press/ ~~tarp~~, & floor	6-2:30	RJB

Visible Emission Monitoring

Date of Inspection (mo/day/yr)	Time of Inspection (a.m./p.m.)	Air cleaning device or fugitive source designation or number	Visible emission observed (yes/no) corrective action taken	Daily operating hours	Inspectors initials
12/5/91	0900	Asbestos Warehouse	NO	6-2:30	RJB
12/5/91	0600	Asbestos handling area	NO	6-2:30	RJB
12/5/91	0615	Dust collector vent	NO	6-2:30	RJB
12/5/91	0630	Cathode wash rack	asbestos on walls	6-2:30	RJB
12/5/91	0700	Cathode depositing tank	asbestos on walls of tank	6-2:30	RJB
12/5/91	0715	HAPP Oven/Dryer vent	NO	6-2:30	RJB
12/5/91	0800	Asbestos filter & disposal bin	asbestos on tarp/press/ + floor	6-2:30	RJB

Visible Emission Monitoring

Date of Inspection (mo/day/yr)	Time of Inspection (a.m./p.m.)	Air cleaning device or fugitive source designation or number	Visible emission observed (yes/no) corrective action taken	Daily operating hours	Inspectors initials
12/6/91	0900	Asbestos Warehouse	NO	6-2:30	RJB
12/6/91	0600	Asbestos handling area	NO	6-2:30	RJB
12/6/91	0615	Dust collector vent	NO	6-2:30	RJB
12/6/91	0630	Cathode wash rack	Asbestos on walls	6-2:30	RJB
12/6/91	0700	Cathode depositing tank	Asbestos on walls of tank	6-2:30	RJB
12/6/91	0715	HAPP Oven/Dryer vent	NO	6-2:30	RJB
12/6/91	0800	Asbestos filter & disposal bin	asbestos on tarp + floor	6-2:30	RJB

Visible Emission Monitoring

Date of Inspection (mo/day/yr)	Time of Inspection (a.m./p.m.)	Air cleaning device or fugitive source designation or number	Visible emission observed (yes/no) corrective action taken	Daily operating hours	Inspectors initials
12/9/91	10:30	Asbestos Warehouse	NO	6-2:30	AJB
12/9/91	0600	Asbestos handling area	NO	6-2:30	AJB
12/9/91	0615	Dust collector vent	NO	6-2:30	AJB
12/9/91	0630	Cathode wash rack	Asbestos on walls	6-2:30	AJB
12/9/91	0700	Cathode depositing tank	Asbestos on walls of tank	6-2:30	AJB
12/9/91	0715	HAPP Oven/Dryer vent	Oven off	6-2:30	AJB
12/9/91	0800	Asbestos filter & disposal bin	Asbestos on tarp & floor	6-2:30	AJB

Visible Emission Monitoring

Date of Inspection (mo/day/yr)	Time of Inspection (a.m./p.m.)	Air cleaning device or fugitive source designation or number	Visible emission observed (yes/no) corrective action taken	Daily operating hours	Inspectors initials
12/10/91	0900	Asbestos Warehouse	NO	6-2:30	RJB
12/10/91	0600	Asbestos handling area	NO	6-2:30	RJB
12/10/91	0615	Dust collector vent	NO	6-2:30	RJB
12/10/91	0630	Cathode wash rack	Asbestos stuck on walls	6-2:30	RJB
12/10/91	0700	Cathode depositing tank	Asbestos stuck on walls of tank	6-2:30	RJB
12/10/91	0715	HAPP Oven/Dryer vent	NO	6-2:30	RJB
12/10/91	0800	Asbestos filter & disposal bin	Asbestos on tarp & floor	6-2:30	RJB

Visible Emission Monitoring

Date of Inspection (mo/day/yr)	Time of Inspection (a.m./p.m.)	Air cleaning device or fugitive source designation or number	Visible emission observed (yes/no) corrective action taken	Daily operating hours	Inspectors initials
12/11/91	0900	Asbestos Warehouse	NO	6-2:30	RJB
12/11/91	0600	Asbestos handling area	NO	6-2:30	RJB
12/11/91	0615	Dust collector vent	NO	6-2:30	RJB
12/11/91	0630	Cathode wash rack	Asbestos stuck on wall	6-2:30	RJB
12/11/91	0700	Cathode depositing tank	Asbestos stuck on wall of tank	6-2:30	RJB
12/11/91	0715	HAPP Oven/Dryer vent	NO	6-2:30	RJB
12/11/91	0800	Asbestos filter & disposal bin	Asbestos on tarp + floor	6-2:30	RJB

Visible Emission Monitoring

Date of Inspection (mo/day/yr)	Time of Inspection (a.m./p.m.)	Air cleaning device or fugitive source designation or number	Visible emission observed (yes/no) corrective action taken	Daily operating hours	Inspectors initials
12/23/91	0900	Asbestos Warehouse	NO	6-2:30	KJB
12/23/91	0600	Asbestos handling area	asbestos on floor + lift.	6-2:30	KJB
12/23/91	0615	Dust collector vent	NO	6-2:30	KJB
12/23/91	0630	Cathode wash rack	asbestos stuck on wall	6-2:30	KJB
12/23/91	0700	Cathode depositing tank	asbestos on walls of tank	6-2:30	KJB
12/23/91	0715	HAPP Oven/Dryer vent	oven off	6-2:30	KJB
12/23/91	0800	Asbestos filter & disposal bin	asbestos on press + tarp	6-2:30	KJB

Visible Emission Monitoring

Date of Inspection (mo/day/yr)	Time of Inspection (a.m./p.m.)	Air cleaning device or fugitive source designation or number	Visible emission observed (yes/no) corrective action taken	Daily operating hours	Inspectors initials
12/26/91	0600	Asbestos Warehouse	NO	6-2:30	RJB
12/26/91	0615	Asbestos handling area	NO	6-2:30	RJB
12/26/91	0630	Dust collector vent	NO	6-2:30	RJB
12/26/91	0700	Cathode wash rack	Asbestos on walls	6-2:30	RJB
12/26/91	0715	Cathode depositing tank	Asbestos on walls of tank	6-2:30	RJB
12/26/91	0730	HAPP Oven/Dryer vent	Oven off	6-2:30	RJB
12/26/91	0800	Asbestos filter & disposal bin	Asbestos on tarp & Concrete floor	6-2:30	RJB

Visible Emission Monitoring

Date of Inspection (mo/day/yr)	Time of Inspection (a.m./p.m.)	Air cleaning device or fugitive source designation or number	Visible emission observed (yes/no) corrective action taken	Daily operating hours	Inspectors initials
12/27/91	0900	Asbestos Warehouse	NO	6-2:30	AB
12/27/91	0600	Asbestos handling area	NO	6-2:30	AB
12/27/91	0615	Dust collector vent	NO	6-2:30	AB
12/27/91	0630	Cathode wash rack	asbestos stuck on walls	6-2:30	AB
12/27/91	0700	Cathode depositing tank	asbestos stuck on walls of tank	6-2:30	AB
12/27/91	0715	HAPP Oven/Dryer vent	NO	6-2:30	AB
12/27/91	0730	Asbestos filter & disposal bin	asbestos on tarp & floor	6-2:30	AB

Visible Emission Monitoring

Date of Inspection (mo/day/yr)	Time of Inspection (a.m./p.m.)	Air cleaning device or fugitive source designation or number	Visible emission observed (yes/no) corrective action taken	Daily operating hours	Inspectors initials
12/30/91	0900	Asbestos Warehouse	NO	6-2:30	AJB
12/30/91	0600	Asbestos handling area	NO	6-2:30	AJB
12/30/91	0615	Dust collector vent	NO	6-2:30	AJB
12/30/91	0630	Cathode wash rack	Asbestos stuck on walls	6-2:30	AJB
12/30/91	0700	Cathode depositing tank	Asbestos stuck on walls of tank	6-2:30	AJB
12/30/91	0715	HAPP Oven/Dryer vent	oven off	6-2:30	AJB
12/30/91	0800	Asbestos filter & disposal bin	asbestos on tarp & floor.	6-2:30	AJB

Visible Emission Monitoring

Date of Inspection (mo/day/yr)	Time of Inspection (a.m./p.m.)	Air cleaning device or fugitive source designation or number	Visible emission observed (yes/no) corrective action taken	Daily operating hours	Inspectors initials
1/2/92	0900	Asbestos Warehouse	NO	6-2:30	RJB
1/2/92	0600	Asbestos handling area	NO	6-2:30	RJB
1/2/92	0615	Dust collector vent	NO	6-2:30	RJB
1/2/92	0630	Cathode wash rack	asbestos tank on walls	6-2:30	RJB
1/2/92	0700	Cathode depositing tank	asbestos on walls of tank	6-2:30	RJB
1/2/92	0715	HAPP Oven/Dryer vent	NO	6-2:30	RJB
1/2/92	0800	Asbestos filter & disposal bin	asbestos on tarp & floor	6-2:30	RJB

Visible Emission Monitoring

Date of Inspection (mo/day/yr)	Time of Inspection (a.m./p.m.)	Air cleaning device or fugitive source designation or number	Visible emission observed (yes/no) corrective action taken	Daily operating hours	Inspectors initials
1/3/92	0900	Asbestos Warehouse	NO	6-2:30	RJB
1/3/92	0600	Asbestos handling area	NO	6-2:30	RJB
1/3/92	0615	Dust collector vent	NO	6-2:30	RJB
1/3/92	0630	Cathode wash rack	Asbestos check on walls	6-2:30	RJB
1/3/92	0700	Cathode depositing tank	Asbestos on walls	6-2:30	RJB
1/3/92	0730	HAPP Oven/Dryer vent	NO	6-2:30	RJB
1/3/92	0800	Asbestos filter & disposal bin	Asbestos on tarp & concrete floor	6-2:30	RJB
~~1/3/92~~					

Visible Emission Monitoring

Date of Inspection (mo/day/yr)	Time of Inspection (a.m./p.m.)	Air cleaning device or fugitive source designation or number	Visible emission observed (yes/no) corrective action taken	Daily operating hours	Inspectors initials
1/6/92	0700	Asbestos Warehouse	NO	6-2:30	AJB
1/6/92	0600	Asbestos handling area	NO	6-2:30	AJB
1/6/92	0615	Dust collector vent	NO	6-2:30	AJB
1/6/92	0630	Cathode wash rack	asbestos stuck on walls	6-2:30	AJB
1/6/92	0730	Cathode depositing tank	asbestos stuck on walls of tank	6-2:30	AJB
1/6/92	0715	HAPP Oven/Dryer vent	oven off	6-2:30	AJB
1/6/92	0800	Asbestos filter & disposal bin	asbestos on tarp, top of filter press & concrete floor	6-2:30	AJB

Visible Emission Monitoring

Date of Inspection (mo/day/yr)	Time of Inspection (a.m./p.m.)	Air cleaning device or fugitive source designation or number	Visible emission observed (yes/no) corrective action taken	Daily operating hours	Inspectors initials
1/7/92	0700	Asbestos Warehouse	NO	6-2:30	AJB
1/7/92	0600	Asbestos handling area	NO	6-2:30	AJB
1/7/92	0615	Dust collector vent	NO	6-2:30	AJB
1/7/92	0630	Cathode wash rack	asbestos stuck on walls	6-2:30	AJB
1/7/92	0700	Cathode depositing tank	Asbestos on walls of tank	6-2:30	AJB
1/7/92	0715	HAPP Oven/Dryer vent	NO	6-2:30	AJB
1/7/92	0800	Asbestos filter & disposal bin	Asbestos on top, top of glass + floor	6-2:30	AJB

Visible Emission Monitoring

Date of Inspection (mo/day/yr)	Time of Inspection (a.m./p.m.)	Air cleaning device or fugitive source designation or number	Visible emission observed (yes/no) corrective action taken	Daily operating hours	Inspectors initials
1/9/92	0900	Asbestos Warehouse	NO	6-2:30	RJB
1/9/92	0600	Asbestos handling area	NO	6-2:30	RJB
1/9/92	0615	Dust collector vent	NO	6-2:30	RJB
1/9/92	0630	Cathode wash rack	Asbestos on walls	6-2:30	RJB
1/9/92	0700	Cathode depositing tank	Asbestos stuck on walls of tank	6-2:30	RJB
1/9/92	0715	HAPP Oven/Dryer vent	NO	6-2:30	RJB
1/9/92	0800	Asbestos filter & disposal bin	Asbestos on ~~tarp~~ Top of glass & concrete floor	6-2:30	RJB

Visible Emission Monitoring

Date of Inspection (mo/day/yr)	Time of Inspection (a.m./p.m.)	Air cleaning device or fugitive source designation or number	Visible emission observed (yes/no) corrective action taken	Daily operating hours	Inspectors initials
1/10/92	0900	Asbestos Warehouse	NO	6-2:30	AJB
1/10/92	0600	Asbestos handling area	NO	6-2:30	AJB
1/10/92	0615	Dust collector vent	NO	6-2:30	AJB
1/10/92	0630	Cathode wash rack	asbestos on walls	6-2:30	AJB
1/10/92	0700	Cathode depositing tank	asbestos stuck on walls of tank	6-2:30	AJB
1/10/92	0715	HAPP Oven/Dryer vent	NO	6-2:30	AJB
1/10/92	0800	Asbestos filter & disposal bin	asbestos on tarp / on filter, plexi & concrete floor	6-2:30	AJB

Visible Emission Monitoring

Date of Inspection (mo/day/yr)	Time of Inspection (a.m./p.m.)	Air cleaning device or fugitive source designation or number	Visible emission observed (yes/no) corrective action taken	Daily operating hours	Inspector: initials
1/13/92	0 900	Asbestos Warehouse	NO	6-2:30	AB
1/13/92	0600	Asbestos handling area	NO	6-2:30	AB
1/13/92	0615	Dust collector vent	NO	6-2:30	AB
1/13/92	0630	Cathode wash rack	asbestos stuck on walls	6-2:30	AB
1/13/92	0700	Cathode depositing tank	asbestos stuck on walls of tank	6-2:30	AB
1/13/92	0715	HAPP Oven/Dryer vent	oven off	6-2:30	AB
1/13/92	0800	Asbestos filter & disposal bin	asbestos on tarp, walls + concrete floor	6-2:30	AB

Visible Emission Monitoring

Date of Inspection (mo/day/yr)	Time of Inspection (a.m./p.m.)	Air cleaning device or fugitive source designation or number	Visible emission observed (yes/no) corrective action taken	Daily operating hours	Inspectors initials
1/14/92	0900	Asbestos Warehouse	NO	6-2:30	RJB
1/14/92	0600	Asbestos handling area	NO	6-2:30	RJB
1/14/92	0615	Dust collector vent	NO	6-2:30	RJB
1/14/92	0630	Cathode wash rack	Asbestos stuck on walls	6-2:30	RJB
1/14/92	0700	Cathode depositing tank	asbestos on walls of tank	6-2:30	RJB
1/14/92	0715	HAPP Oven/Dryer vent	NO	6-2:30	RJB
1/14/92	0800	Asbestos filter & disposal bin	Asbestos on tarp, floor, & [illegible]	6-2:30	RJB

Visible Emission Monitoring

Date of Inspection (mo/day/yr)	Time of Inspection (a.m./p.m.)	Air cleaning device or fugitive source designation or number	Visible emission observed (yes/no) corrective action taken	Daily operating hours	Inspectors initials
1/15/92	0900	Asbestos Warehouse	NO	6-2:30	RJB
1/15/92	0600	Asbestos handling area	NO	6-2:30	RJB
1/15/92	0615	Dust collector vent	NO	6-2:30	RJB
1/15/92	0630	Cathode wash rack	asbestos stuck on walls	6-2:30	RJB
1/15/92	0700	Cathode depositing tank	asbestos stuck on walls of tank	6-2:30	RJB
1/15/92	0715	HAPP Oven/Dryer vent	NO	6-2:30	RJB
1/15/92	0730	Asbestos filter & disposal bin	asbestos on tarp, area, & floor	6-2:30	RJB

Visible Emission Monitoring

Date of Inspection (mo/day/yr)	Time of Inspection (a.m./p.m.)	Air cleaning device or fugitive source designation or number	Visible emission observed (yes/no) corrective action taken	Daily operating hours	Inspectors initials
1/16/92	0900	Asbestos Warehouse	NO	6-2:30	JB
1/16/92	0600	Asbestos handling area	NO	6-2:30	JB
1/16/92	0615	Dust collector vent	NO	6-2:30	JB
1/16/92	0630	Cathode wash rack	asbestos stuck on walls	6-2:30	JB
1/16/92	0700	Cathode depositing tank	asbestos on walls of tank	6-2:30	JB
1/16/92	0715	HAPP Oven/Dryer vent	NO	6-2:30	JB
1/16/92	0730	Asbestos filter & disposal bin	asbestos on tarp, floor, & press	6-2:30	JB

Visible Emission Monitoring

Date of Inspection (mo/day/yr)	Time of Inspection (a.m./p.m.)	Air cleaning device or fugitive source designation or number	Visible emission observed (yes/no) corrective action taken	Daily operating hours	Inspectors initials
1/20/92	0800	Asbestos Warehouse	NO	6-2:30	RJB
1/20/92	0600	Asbestos handling area	NO	6-2:30	RJB
1/20/92	0615	Dust collector vent	NO	6-2:30	RJB
1/20/92	0630	Cathode wash rack	Asbestos stuck on walls	6-2:30	RJB
1/20/92	0700	Cathode depositing tank	Asbestos stuck on walls of tank	6-2:30	RJB
1/20/92	0715	HAPP Oven/Dryer vent	oven off	6-2:30	RJB
1/20/92	0730	Asbestos filter & disposal bin	Asbestos on tarp / press / & floor	6-2:30	RJB

Visible Emission Monitoring

Date of Inspection (mo/day/yr)	Time of Inspection (a.m./p.m.)	Air cleaning device or fugitive source designation or number	Visible emission observed (yes/no) corrective action taken	Daily operating hours	Inspectors initials
1/21/92	0800	Asbestos Warehouse	NO	6-2:30	RJB
1/21/92	0600	Asbestos handling area	NO	6-2:30	RJB
1/21/92	0615	Dust collector vent	NO	6-2:30	RJB
1/21/92	0630	Cathode wash rack	asbestos stuck on walls	6-2:30	RJB
1/21/92	0700	Cathode depositing tank	asbestos stuck on walls of tank	6-2:30	RJB
1/21/92	0715	HAPP Oven/Dryer vent	NO	6-2:30	RJB
1/21/92	0730	Asbestos filter & disposal bin	asbestos on tarp/floor & press	6-2:30	RJB

Visible Emission Monitoring

Date of Inspection (mo/day/yr)	Time of Inspection (a.m./p.m.)	Air cleaning device or fugitive source designation or number	Visible emission observed (yes/no) corrective action taken	Daily operating hours	Inspectors initials
1/22/92	0800	Asbestos Warehouse	NO	6-2:30	RJB
1/22/92	0600	Asbestos handling area	NO	6-2:30	RJB
1/22/92	0615	Dust collector vent	NO	6-2:30	RJB
1/22/92	0630	Cathode wash rack	Asbestos stuck on walls	6-2:30	RJB
1/22/92	0700	Cathode depositing tank	Asbestos stuck on walls of tank	6-2:30	RJB
1/22/92	0715	HAPP Oven/Dryer vent	NO	6-2:30	RJB
1/22/92	0730	Asbestos filter & disposal bin	Asbestos on press, tarp & floor	6-2:30	RJB

Visible Emission Monitoring

Date of Inspection (mo/day/yr)	Time of Inspection (a.m./p.m.)	Air cleaning device or fugitive source designation or number	Visible emission observed (yes/no) corrective action taken	Daily operating hours	Inspectors initials
1/23/92	0800	Asbestos Warehouse	NO	6-2:30	AJB
1/23/92	0600	Asbestos handling area	NO	6-2:30	AJB
1/23/92	0615	Dust collector vent	NO	6-2:30	AJB
1/23/92	0630	Cathode wash rack	Asbestos stuck on walls	6-2:30	AJB
1/23/92	0700	Cathode depositing tank	Asbestos stuck on walls of tank	6-2:30	AJB
1/23/92	0715	HAPP Oven/Dryer vent	NO	6-2:30	AJB
1/23/92	0730	Asbestos filter & disposal bin	Asbestos on walls, grass, tarp & floor	6-2:30	AJB

Visible Emission Monitoring

Date of Inspection (mo/day/yr)	Time of Inspection (a.m./p.m.)	Air cleaning device or fugitive source designation or number	Visible emission observed (yes/no) corrective action taken	Daily operating hours	Inspector's initials
1/24/92	0800	Asbestos Warehouse	NO	6-2:30	RJB
1/24/92	0600	Asbestos handling area	NO	6-2:30	RJB
1/24/92	0615	Dust collector vent	NO	6-2:30	RJB
1/24/92	0630	Cathode wash rack	Asbestos stuck on walls	6-2:30	RJB
1/24/92	0700	Cathode depositing tank	Asbestos on walls of tank	6-2:30	RJB
1/24/92	0715	HAPP Oven/Dryer vent	NO	6-2:30	RJB
1/24/92	0845	Asbestos filter & disposal bin	Asbestos on tarp, plex wall & floor	6-2:30	RJB

Visible Emission Monitoring

Date of Inspection (mo/day/yr)	Time of Inspection (a.m./p.m.)	Air cleaning device or fugitive source designation or number	Visible emission observed (yes/no) corrective action taken	Daily operating hours	Inspectors initials
1/27/92	0800	Asbestos Warehouse	NO	6-2:30	AJB
1/27/92	0600	Asbestos handling area	NO	6-2:30	AJB
1/27/92	0615	Dust collector vent	NO	6-2:30	AJB
1/27/92	0630	Cathode wash rack	Asbestos stuck on walls	6-2:30	AJB
1/27/92	0700	Cathode depositing tank	Asbestos stuck on walls of tank	6-2:30	AJB
1/27/92	0715	HAPP Oven/Dryer vent	NO	6-2:30	AJB
1/27/92	0730	Asbestos filter & disposal bin	Asbestos on grass/tarp/walls & floor	6-2:30	AJB

Visible Emission Monitoring

Date of Inspection (mo/day/yr)	Time of Inspection (a.m./p.m.)	Air cleaning device or fugitive source designation or number	Visible emission observed (yes/no) corrective action taken	Daily operating hours	Inspectors initials
1/28/92	0830	Asbestos Warehouse	NO	6-2:30	AJB
1/28/92	0600	Asbestos handling area	NO	6-2:30	AJB
1/28/92	0615	Dust collector vent	NO	6-2:30	AJB
1/28/92	0630	Cathode wash rack	Asbestos stuck on walls	6-2:30	AJB
1/28/92	0700	Cathode depositing tank	asbestos stuck on walls of tank	6-2:30	AJB
1/28/92	0715	HAPP Oven/Dryer vent	NO	6-2:30	AJB
1/28/92	0800	Asbestos filter & disposal bin	Asbestos on press/temp/walls & fan	6-2:30	AJB

Visible Emission Monitoring

Date of Inspection (mo/day/yr)	Time of Inspection (a.m./p.m.)	Air cleaning device or fugitive source designation or number	Visible emission observed (yes/no) corrective action taken	Daily operating hours	Inspectors initials
1/29/92	0800	Asbestos Warehouse	NO	6-2:30	RJB
1/29/92	0600	Asbestos handling area	NO	6-2:30	RJB
1/29/92	0615	Dust collector vent	NO	6-2:30	RJB
1/29/92	0630	Cathode wash rack	asbestos stuck on walls	6-2:30	RJB
1/29/92	0700	Cathode depositing tank	asbestos stuck on walls of tank	6-2:30	RJB
1/29/92	0715	HAPP Oven/Dryer vent	NO	6-2:30	RJB
1/29/92	0730	Asbestos filter & disposal bin	asbestos on walls, tags, press & floor	6-2:30	RJB

Visible Emission Monitoring

Date of Inspection (mo/day/yr)	Time of Inspection (a.m./p.m.)	Air cleaning device or fugitive source designation or number	Visible emission observed (yes/no) corrective action taken	Daily operating hours	Inspectors initials
1/30/92	0800	Asbestos Warehouse	NO	6-2:30	JB
1/30/92	0600	Asbestos handling area	NO	6-2:30	JB
1/30/92	0615	Dust collector vent	NO	6-2:30	JB
1/30/92	0630	Cathode wash rack	Asbestos stuck on walls	6-2:30	JB
1/30/92	0700	Cathode depositing tank	Asbestos stuck on walls of tank	6-2:30	JB
1/30/92	0715	HAPP Oven/Dryer vent	NO	6-2:30	JB
1/30/92	0730	Asbestos filter & disposal bin	Asbestos on press, tarp, walls, & floor	6-2:30	JB

Visible Emission Monitoring

Date of Inspection (mo/day/yr)	Time of Inspection (a.m./p.m.)	Air cleaning device or fugitive source designation or number	Visible emission observed (yes/no) corrective action taken	Daily operating hours	Inspectors initials
2/4/92	0900	Asbestos Warehouse	NO	6-2:30	[illegible]
2/4/92	0600	Asbestos handling area	NO	6-2:30	[illegible]
2/4/92	0615	Dust collector vent	NO	6-2:30	[illegible]
2/4/92	0630	Cathode wash rack	Asbestos dust on walls	6-2:30	[illegible]
2/4/92	0700	Cathode depositing tank	Asbestos dust on walls of tank	6-2:30	[illegible]
2/4/92	0715	HAPP Oven/Dryer vent	NO	6-2:30	[illegible]
2/4/92	0800	Asbestos filter & disposal bin	Asbestos on press, floor, walls & trap	6-2:30	[illegible]

Visible Emission Monitoring

Date of Inspection (mo/day/yr)	Time of Inspection (a.m./p.m.)	Air cleaning device or fugitive source designation or number	Visible emission observed (yes/no) corrective action taken	Daily operating hours	Inspectors initials
2/5/92	0800	Asbestos Warehouse	NO	6-2:30	RJB
2/5/92	0600	Asbestos handling area	NO	6-2:30	RJB
2/5/92	0615	Dust collector vent	NO	6-2:30	RJB
2/5/92	0630	Cathode wash rack	Asbestos stuck on walls	6-2:30	RJB
2/5/92	0700	Cathode depositing tank	Asbestos stuck on walls of tank	6-2:30	RJB
2/5/92	0715	HAPP Oven/Dryer vent	NO	6-2:30	RJB
2/5/92	0730	Asbestos filter & disposal bin	Asbestos on tarp, walls, floor, + area	6-2:30	RJB

Visible Emission Monitoring

Date of Inspection (mo/day/yr)	Time of Inspection (a.m./p.m.)	Air cleaning device or fugitive source designation or number	Visible emission observed (yes/no) corrective action taken	Daily operating hours	Inspectors initials
2/6/92	0800	Asbestos Warehouse	NO	6-2:30	RJB
2/6/92	0600	Asbestos handling area	NO	6-2:30	RJB
2/6/92	0615	Dust collector vent	NO	6-2:30	RJB
2/6/92	0630	Cathode wash rack	Asbestos stuck on walls	6-2:30	RJB
2/6/92	0700	Cathode depositing tank	Asbestos stuck on walls of tank	6-2:30	RJB
2/6/92	0715	HAPP Oven/Dryer vent	NO	6-2:30	RJB
2/6/92	0730	Asbestos filter & disposal bin	Asbestos on walls, press, floor, trap	6-2:30	RJB

Visible Emission Monitoring

Date of Inspection (mo/day/yr)	Time of Inspection (a.m./p.m.)	Air cleaning device or fugitive source designation or number	Visible emission observed (yes/no) corrective action taken	Daily operating hours	Inspectors initials
2/7/92	0800	Asbestos Warehouse	NO	6-2:30	RJB
2/7/92	0600	Asbestos handling area	NO	6-2:30	RJB
2/7/92	0615	Dust collector vent	NO	6-2:30	RJB
2/7/92	0630	Cathode wash rack	asbestos stuck on walls	6-2:30	RJB
2/7/92	0645	Cathode depositing tank	asbestos stuck on walls of tank	6-2:30	RJB
2/7/92	0700	HAPP Oven/Dryer vent	NO	6-2:30	RJB
2/7/92	0715	Asbestos filter & disposal bin	Asbestos on pipes, walls, floors, tarps	6-2:30	RJB

Visible Emission Monitoring

Date of Inspection mo/day/yr	Time of Inspection a.m./p.m.	Air cleaning device or fugitive source designation or number	Visible emission observed (yes/no) corrective action taken	Daily operating hours	Inspectors initials
2/10/92	0800	Asbestos Warehouse	NO	6-2:30	RJB
2/10/92	0600	Asbestos handling area	NO	6-2:30	RJB
2/10/92	0615	Dust collector vent	NO	6-2:30	RJB
2/10/92	0630	Cathode wash rack	asbestos stuck on walls	6-2:30	RJB
2/10/92	0700	Cathode depositing tank	asbestos stuck on walls of tank	6-2:30	RJB
2/10/92	0715	HAPP Oven/Dryer vent	oven off	6-2:30	RJB
2/10/92	0730	Asbestos filter & disposal bin	asbestos on walls, tarp, press, + floor	6-2:30	RJB

Visible Emission Monitoring

Date of Inspection (mo/day/yr)	Time of Inspection (a.m./p.m.)	Air cleaning device or fugitive source designation or number	Visible emission observed (yes/no) corrective action taken	Daily operating hours	Inspectors initials
2/11/92	0900	Asbestos Warehouse	NO	6-2:30	AJB
2/11/92	0600	Asbestos handling area	NO	6-2:30	AJB
2/11/92	0615	Dust collector vent	NO	6-2:30	AJB
2/11/92	0630	Cathode wash rack	asbestos stuck on walls	6-2:30	AJB
2/11/92	0645	Cathode depositing tank	asbestos stuck on walls of tank.	6-2:30	AJB
2/11/92	0700	HAPP Oven/Dryer vent	NO	6-2:30	AJB
2/11/92	0715	Asbestos filter & disposal bin	asbestos on walls, floor, top, & floor	6-2:30	AJB

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 6
1445 ROSS AVENUE, SUITE 1200
DALLAS, TX 75202-2733

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

J. Roger Hirl, Pres.
Occidental Chemical Corporation
5005 L B J Freeway
Dallas, Texas 75244

Re: Occidental Chemical plant in Taft/Hahnville, Louisiana

Dear Mr. Hirl:

The United States Environmental Protection Agency (EPA) hereby requests, pursuant to Section 114 of the Clean Air Act, as amended (the Act), 42 U.S.C. § 7414, information from you in relation to Occidental Chemical and it's operations in Taft Louisiana. As you are aware, Occidental is involved in the manufacture of chlorine utilizing asbestos diaphragm technology, and in such activities is subject to the emissions and work practice standards of the National Emissions Standards for Hazardous Air Pollutants (NESHAPs) found at 40 C.F.R. Part 61, Subpart M, promulgated under Section 112 of the Act, 42 U.S.C. § 7412.

In order to determine the applicability and compliance with the aforementioned statutory and regulatory provisions, you are requested, under the authority of Section 114 of the Act, to provide responses to the questions in Attachment A, which also includes instructions and definitions applicable to your compliance with the request and your answers.

Your response is to be sent within fifteen (15) days of receipt of this letter to the following person and address:

A. Stanley Meiburg
Director
Air, Pesticides & Toxics Division (6T)
U.S. Environmental Protection Agency
1445 Ross Avenue
Dallas, Texas 75202-2733

Respondent should be aware that compliance with the Information Request set forth in Attachment A is mandatory. Failure to respond fully and truthfully to the Information Request within fifteen (15) days of receipt of this letter, or adequately to justify such failure to respond, will be considered a violation of Section 114 of the Act, which can result in enforcement action by EPA. Section 113 of the Act, 42 U.S.C. § 7413, permits EPA to

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seek the imposition of penalties of up to $25,000 for each day of non-compliance, for each violation of any requirement or prohibition of Subchapter I of the Act, 42 U.S.C. §§ 7401-7515. Please be further advised that providing false, misleading, or fraudulent statements or representations may subject you to criminal penalties under 18 U.S.C. § 1001, or Section 113(c) of the Act, 42 U.S.C. § 7413(c).

If you have any legal or technical questions relating to this Information Request, you may consult with EPA prior to the time specified above. Please direct legal questions to Mark Forcier of the Office of Regional Counsel at (214) 655-2125; technical questions should be directed to Paul Henderson at (214) 655-7544, or in writing to either at the above address.

Thank you for your cooperation in this matter.

Sincerely yours,

for A. Stanley Meiburg
Director
Air, Pesticides & Toxics Division (6T)

Enclosure

cc: Occidental Chemical Corporation
c/o C T Corporation System
350 N. St. Paul Street
Dallas, Texas 75201

T. H. Morrow
Plant Manager
Occidental Chemical Corporation
P. O. Box 74
Hahnville, Louisiana 70057

B. J. Pritchard
Louisiana Dept. of Environ. Quality

ATTACHMENT A

Occidental Chemical Plant
Taft, Louisiana

FIRST INFORMATION REQUEST

A. INSTRUCTIONS

1. Please provide a separate narrative response to each question and subpart of a question set forth in this Information Request and precede each answer with the number of the question to which it corresponds.

2. Identify the person(s) answering each questions herein on behalf of Respondent, as well as all persons consulted in the preparation of the answer.

3. For each question contained herein, identify all documents consulted, examined, or referred to in the preparation of the answer or that contain information responsive to the question. and provide true and accurate copies of all such documents.

4. For any documents produced in response to this Information Request indicate on each document, or in some other reasonable manner, the number of the question to which it responds.

5. If requested information or documents are not known or are not available to you at the time of your response to this Information Request, but later become known or available to you, you must supplement your response to EPA. Moreover should you find, at any time after the submission of your response that any portion is false, incomplete, or tends to misrepresent the truth, you must provide EPA with a corrected response as soon as possible.

6. The information requested herein must be provided even though the Respondent may contend that it could include confidential information or trade secrets. You may, if you desire, assert a confidentiality claim covering part or all of the information requested, pursuant to 40 C.F.R. 2.203(b) at the time it is submitted to prevent release of that information to the public. If no such claim accompanies the information when it is received by EPA, it may be made available to the public by EPA without further notice to you. You should read 40 C.F.R. Part 2 carefully before asserting a business confidentiality claim, since certain

categories of information are not properly the subject of such a claim.

7. The requirements of this letter are not subject to the Paperwork Reduction Act of 1980, 44 U.S.C. § 3501, et seq.

B. DEFINITIONS

1. The term "you" or "Respondent" shall mean the addressee of this Request, the addressee's officers, directors, managers, employees, contractors, trustees, partners, successors, assigns, attorneys, and agents, if any.

2. The terms "person" or "entity" shall have the same definition as "person" as defined in Section 113 of the Act, 42 U.S.C. § 7413 and shall include any individual, trust, firm, corporation, association, partnership, joint venture or joint stock company, State, municipality, commission, political subdivision of a State, or any interstate body.

3. The term "facility" shall mean and include the property on or about the Occidental Chemical plant in Taft Louisiana, and all parts, improvements, and appurtenances thereto.

4. The terms "identify" or "describe", with respect to a corporation, partnership, business trust or other association or business entity (including a sole proprietorship), mean to set forth its full name, address, legal form (e.g. corporation, partnership, etc.), registered agent, organization, if any, and a brief description of its business.

5. The terms "identify" or "describe", with respect to a natural person, mean to set forth the person's name, present or last known business address and business telephone number, present or last known home address and home telephone number, and present or last known job title, position or business.

6. The terms "identify" or "describe", with respect to a document, mean to provide its customary business description, its date, its number, if any (catalog, index, storage, invoice or purchase order number), the identity of the author, addresser, addressee and recipient, the substance, and the subject matter.

7. The terms "document" and "documents" shall mean any object that records, stores, or presents information, and includes writings of any kind, formal or informal, whether or not wholly or partially in handwriting, including but not

limited to any invoice, manifest, bill of lading, receipt, endorsement, check, bank draft, canceled check, deposit slip, withdrawal slip, correspondence, record book, minutes, memorandum of telephone and other conversations including meetings, agreements, and the like, diary, calendar, desk pad, scrapbook, notebook, bulletin, circular, form, pamphlet, statement, journal, postcard, letter, telegram, telex, report, notice, message, analysis, comparison, graph, chart, inter-office or intra-office communications, photostats or other copies of any documents, microfilm or other film record, any photograph, sound recording on any type of device, any punch card, disc or disc pack; any tape or other type of memory generally associated with computers and data processing together with the programming instructions and other written material necessary to use such punch card, disc, or disc pack, tape or other type of memory and together with printouts of such punch card, disc or disc pack, tape, or other type of memory; and (a) any copy of each document which is not an exact duplicate of a document which is produced, (b) every copy which has any writing, figure, or notation, annotation, or the like on it, (c) drafts, (d) attachments to or enclosures with any document and (e) every document referred to or incorporated into any other document.

8. The terms "and" and "or" shall be construed either disjunctively or conjunctively as necessary to bring within the scope of this Information Request any information which might otherwise be construed to be outside its scope.

9. Words in the masculine shall be construed in the feminine, and vice versa, and words in the singular shall be construed in the plural, and vice versa, where appropriate in the context of a particular question or questions.

10. All terms not defined herein shall have their ordinary meaning, unless such terms are defined in the Clean Air Act, 42 U.S.C. § 7401 et seq., as amended, or 40 C.F.R. Part 61, in which case the statutory or regulatory definitions shall apply to the extent that they are applicable.

C. QUESTIONS

1. Identify and provide the name, address, telephone number, company, and title/position of all contacts other than yourself who will be dealing with this matter.

2. On what dates did Occidental install and begin to operate air cleaning devices to control emissions from its manufacturing operations involving asbestos?

3. Identify and describe all equipment installed at the facility pertaining to air emissions control and all processes and methods used by Occidental to prevent asbestos emissions from its operations at the facility. Identify and provide copies of all communications, documents, estimates, logs, work orders, change orders, inspection reports, plans, and photographs pertaining to all air cleaning devices in operation at the facility during the past 2 years.

4. Describe the methods and frequency of all monitoring at each potential source of asbestos emissions from any part of the manufacturing operations to detect asbestos emissions to the air, including in the area of air cleaning devices and process equipment. Provide copies of all documents related to the monitoring of each potential source of asbestos emissions from any part of the manufacturing facility, and all records kept of all such inspections and monitoring during the last 2 years. Provide the names and job descriptions of all persons who wrote, filled out, signed, approved, or kept records of any such documents.

5. Describe the methods and frequency of the inspection of all air cleaning and emission control devices, including filter bags, for proper operation, changes, malfunctions, upset conditions, bypasses, blowouts, leaks, etc.. Provide copies of all documents related to the inspection of each such device, and copies of all records of such inspections conducted during the last 2 years. Provide the names and job descriptions of all persons who wrote, signed, approved, or kept records of any such documents.

6. Identify and describe any instances where monitoring or inspections at the facility, or the persons conducting such monitoring or inspecting, have indicated that visible emissions of asbestos-containing material were observed, detected, or known to have occurred at the facility during the last 2 years. Provide the names and job descriptions of all persons who observed or detected any such emissions or who wrote, signed, approved, or kept documents relating to any such emissions.

7. Provide copies of all written company policies, training manuals, guidelines, and procedures by which the inspections and monitoring described above are conducted. Provide the names and job descriptions of all persons responsible for, or who have conducted, air emissions monitoring or emissions control inspections at the facility during the last 2 years. Describe the training each of these persons has received in inspections, monitoring, record keeping, safety measures, and work practices.

8. Provide copies of any records or other documents related to the existence, use, release, containment, or conditions of asbestos at the facility not supplied in response to the questions above.

Paul

DRAFT - December 28, 1992

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Vicki A. O'Meara
Acting Assistant Attorney General
Environment and Natural Resources Div.
U.S. Department of Justice
9th & Pennsylvania, N.W.
Washington, D.C. 20530

Attention: John C. Cruden, Chief
Environmental Enforcement Section
Litigation Report - PRE-REFERRAL

Dear Ms. O'Meara:

Enclosed you will find a litigation report requesting civil enforcement action against Occidental Chemical Corporation pursuant to the Clean Air Act for violations of the requirements for handling of asbestos under the National Emission Standards for Hazardous Air Pollutants (NESHAP) regulations and Permit violations at Occidental Chemical's facility in Taft/Hahnville, Louisiana. This is a pre-referral litigation report.

The Region requests authority to conduct pre-referral settlement negotiations with Occidental pursuant to the "Process for Conducting Pre-Referral Settlement Negotiations on Civil Judicial Enforcement Cases", dated April 13, 1988. Upon receipt of comments from your office, as well as the EPA Office of Enforcement, the Region will commence pre-referral settlement negotiations with the prospective defendant consistent with the pre-approved terms.

It is requested that this report be treated as a confidential internal memorandum.

Sincerely yours,

B. J. Wynne
Regional Administrator (6A)

Enclosures

cc: Herbert H. Tate, Jr.
Assistant Administrator for
Enforcement (LE-133)
U. S. Environmental Protection Agency
401 M Street, S.W.
Washington, D.C. 20460

John B. Rasnic
Director, Stationary Source
Compliance Division (EN-341W)
U. S. Environmental Protection Agency
401 M Street, S.W.
Washington, D.C. 20460

Harry Rosenberg
U.S. Attorney
Hale Boggs Federal Building
Room 210
501 Magazine Street
New Orleans, Louisiana 70130
(Advanced copy - no action required at this time)

6C-AA:FORCIER:x2124:msf:12/18/92:OCC-PRN.REF

TURNER	KELLEY	HEPOLA	MEIBURG	COLLINS	ALEXANDER
6C-A	6T-EC	6T-E	6T	6C-A	6C

Date
Signed:_____

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CIVIL LITIGATION REPORT

ENVIRONMENTAL PROTECTION AGENCY, REGION 6

INFORMATION PERTINENT TO
ACTION PURSUANT TO SECTION 113 OF THE CLEAN AIR ACT
FOR VIOLATIONS OF
ASBESTOS NESHAPS REGULATIONS
AND PERMIT VIOLATIONS

Civil Action to be filed in the U.S. District Court
for the Eastern District of Louisiana
in New Orleans

Against

OCCIDENTAL CHEMICAL CORPORATION
for actions at its facility in
Taft/Hahnville, Louisiana

LEGAL

Mark S. Forcier, Esq.
Assistant Regional Counsel
Office of Regional Counsel
U.S. Environmental Protection
Agency, Region 6 (6C-AA)
1445 Ross Avenue
Dallas, Texas 75202-2733
(214) 655-2124

PROGRAM

Paul Henderson
Environmental Engineer
Air, Pesticides & Toxic Div.
U.S. Environmental Protection
Agency, Region 6 (6T-ET)
1445 Ross Avenue
Dallas, Texas 75202-2733
(214) 655-7544

6C-AA:FORCIER:msf:12/18/92:x2124:OCC-PRN.REF

TURNER	ASCENZI	COLLINS	HEPOLA	ALEXANDER	MEIBURG
6C-AA	6T-ET	6C-A	6T-E	6C	6T

Enforcement Confidential

DATA SHEET

OCCIDENTAL CHEMICAL CORPORATION
violations at Taft/Hahnville, Louisiana

1. The Statute and regulations which are the basis for the proposed action are:

The Clean Air Act, 42 U.S.C. §§ 7401 et seq.
40 C.F.R. Part 61, Subpart M

2. Name and location of intended defendant:

Occidental Chemical Corporation
Hwy. 3142 at Hwy. 18
Taft, Louisiana 70057

3. The proposed relief to be sought:

A civil penalty for Occidental's past violaitons of asbestos NESHAPs found at 40 C.F.R. Part 61, Subpart M, and violations of its permit for asbestos operations, and injunctive relief to achieve current compliance.

4. The violations upon which this action is based:

a. Failure to do observations to monitor for the existence of visible emissions in the areas of potential asbestos emissions, or to keep records of such monitoring as required by 40 C.F.R. §§ 61.144(b)(3) and (b)(5) from February 20, 1991 to late May, 1991.

b. Failure to do inspections of air cleaning devices for the existence of conditions indicating malfunctions which could cause asbestos emissions or to keep records of inspections as required by 40 C.F.R. §§ 61.144(b)(4) and (b)(5) from February 20, 1991 to April 9, 1991.

c. Failure to do inspections of air cleaning devices to the extent of discerning the presence of tears, holes, or abrasions on the filter bag and for the presence of dust deposits on the clean side of the bags caused by asbestos emissions as required by 40 C.F.R. § 61.144(b)(4), from September 18, 1991 to November 20, 1991, thereby concealing emissions violations which were occurring during that period within the meaning of 40 C.F.R. § 61.19.

d. Failure to properly use and operate the air cleaning devices, from July 8, 1991 to November 20, 1991, in a manner consistent with good air pollution control practice for minimizing emissions, within the meaning of 40 C.F.R. § 61.12(c), 40 C.F.R. § 61.152(a)(2), Louisiana SIP, Chapter 9, Regulation 905, on Control of Emissions

and Emission Standards, and Permit No. 362C (M-1).

e. Failure to submit 2 quarterly reports of visible emissions cateloged by Occidental inspectors between 10/2/91 and 2/11/92, as required by 40 C.F.R. § 61.144(b)(8).

5. Recent contacts with intended defendants, including dates of inspection, information responses, or receipt of evidence which led to decision to initiate enforcement action:

11/21 and 11/22/91 - EPA inspection of Occidental facility

12/18/91 - Letter from L.E. Hebert of Occidental to Minerva De Leon describing work on asbestos dust collector.

2/12/92 - Letter from James Anderson of Occidental to Minerva De Leon in response to requests for documents.

8/18/92 - EPA issues information request under § 114 CAA

8/21/92 - Call from Mike James of Occidental to Mark Forcier of EPA about information request, requesting extension.

9/22/92 - EPA receives response to information request dated 9/17/92 and letter confirming 15 day extension of time to respond to information request per call.

6. Significant national precedential or factual issues:

None.

8. Other aspects of the case which should be highlighted:

None.

9. Date referral was signed by Regional Administrator:

_____

10. Identity of lead Regional counsel and technical personnel:

LEGAL

Mark S. Forcier
Asst. Regional Counsel
U.S. EPA, Region 6 (6C-AA)
1445 Ross Avenue
Dallas, Texas 75202-2733
(214) 655-2124

TECHNICAL

Paul Henderson
Air, Pesticides & Toxics
U.S. EPA, Region 6 (6T-ET)
1445 Ross Avenue
Dallas, Texas 75202-2733
(214) 655-7544

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I. SYNOPSIS OF CASE

Occidental Chemical Corporation ("Occidental") operates a chemical manufacturing facility in Taft/Hahnville, Louisiana involved in the manufacture of chlorine utilizing asbestos diaphragm technology, which is subject to the emissions and work practice standards of the National Emission Standards for Hazardous Air Pollutants (NESHAP) for asbestos, found at 40 C.F.R. Part 61, Subpart M. This operation utilizes a bag-house type of emissions control device to attempt to eliminate asbestos emissions from the work environment during operations involving handling and use of asbestos.

On November 21 and 22, 1991, EPA inspected the Occidental facility, to determine compliance with NSPS standards, NESHAP regulations, existing permit restrictions, and the Louisiana SIP. Relevant to this action they inspected the portions of the facility involving the handling and use, and therefore potential emissions of asbestos as part of the chlorine manufacturing operation. The inspection revealed that some records required to be kept of observational monitoring in the area of potential asbestos emissions were not available at the facility, that records of inspections of the emission control device for asbestos were incomplete and showed improper use and maintenance of the emission controls equipment, and that those inspection reports that were made showed visible emissions which were not reported to the Administrator as required.

In its response to information requests under Section 114 of the Clean Air Act to follow-up on the inspection, Occidental admitted that they did not have records of the required monitoring for some periods, provided copies of those which they did have, and supplied records of work that had been done on the emission controls equipment. The copies of their inspection reports they provided revealed the visible emissions which were not reported. The violations cited herein are those which EPA feels that it has evidence to support at this time.

II. STATUTORY BASES OF REQUEST

The statutory provisions which are applicable to this case are Sections 112 and 113 of the Clean Air Act, as amended in 1990, (herein "the Act"), 42 U.S.C. §§ 7412 and 7413. Pursuant to Section 112 of the Act, the Administrator of EPA created regulations establishing National Emission Standards for Hazardous Air Pollutants (NESHAPs), including work practice standards to achieve maximum amounts of emission reduction. The NESHAPs for asbestos are found at 40 C.F.R. Part 61, Subpart M. Section 112(q)(1) of the Act, 42 U.S.C. § 7412(q)(1), maintains in full force and effect all regulations promulgated under the Clean Air Act prior to the 1990 amendments, unless such regulations are specifically amended thereafter.

Section 113(a)(3)(C), 42 U.S.C. § 7413(a)(3), allows the Administrator to take action (one form of which is to bring a civil action in accordance with § 113(b)) if the Administrator

finds that any person has violated or is in violation of any requirement (other than a SIP requirement) of Subchapter I, Sections 101 through 193 of the Act, 42 U.S.C. §§ 7401 - 7515. Section 113(b) of the Act, 42 U.S.C. § 7413(b), gives the Administrator authority to file a civil action in the appropriate district court of the United States to enforce these regulations or violations of an approved SIP.

A. Applicable Federal Law

The Clean Air Act, as amended in 1990, 42 U.S.C. §§ 7401 *et seq.*, established a comprehensive scheme for pollution prevention as described in Section 101(b) of the Act, 42 U.S.C. § 7401(b). Throughout the Act, the Administrator of the United States Environmental Protection Agency ("EPA") is required by Congress to establish regulations to accomplish the purposes and requirements of the Act. In Section 112(b)(1) of the Act, 42 U.S.C. § 7412(b)(1), Congress established a list of hazardous air pollutants, including asbestos. Section 112(d) of the Act, 42 U.S.C. § 7412(d) requires the Administrator of EPA to promulgate regulations establishing emission standards for those hazardous air pollutants and work practice standards for achieving the greatest possible reduction in emissions of these pollutants. The Administrator promulgated regulations, known as the National Emission Standards for Hazardous Air Pollutants ("NESHAPs"), which include regulations governing the handling and disposal of asbestos, and the control of asbestos emissions, pursuant to former Section 112(a) of the Act, prior

to its most recent amendment by Pub.L. 101-549, November 15, 1990. Congress provided a "savings" provision for those NESHAP regulations existing prior to the 1990 amendments, at Section 112(q)(1) of the Act, 42 U.S.C. § 7412(q)(1), which continues in full force and effect all provisions not superceded by the 1990 amendments. In addition, pursuant to Section 112(l), 42 U.S.C. § 7412(l), the Administrator can approve State programs for enforcement of emissions standards, including, in this case, the program in the State of Louisiana.

These standards are known as the asbestos NESHAPs, and they are found at 40 C.F.R. Part 61, Subpart M. Revisions to the Asbestos NESHAPs were published in 55 Federal Register 48406 on November 20, 1990, and corrected in the January 16, 1991 Federal Register. The sections applicable to this case are cited in this document as revised through January 16, 1991. Under Section 112, the Administrator is also empowered to delegate to the states his authority under the Act to implement and enforce these emission standards and retains the power to enforce the provisions of any emission standards promulgated under the Act.

Pursuant to Section 113 of the Act, 42 U.S.C. § 7413, the Administrator may seek appropriate enforcement action against any person who violates, or is the owner or operator of a source which violates, any requirement or prohibition of the statutory and regulatory requirements of the Act. Pursuant to

Section 113(a) of the Act,

> [w]henever...the Administrator finds that any person has violated or is in violation of any other requirement or prohibition of [Subchapter I, 42 U.S.C. § 7401-7515] ... including but not limited to any rule... promulgated, issued or approved under [that Subchapter] ...the Administrator may... (C) bring a civil action in accordance with subsection (b) of [Section 113]...

42 U.S.C. § 7413(a)(3) (emphasis added). Pursuant to Section 113(b) of the Act, 42 U.S.C. § 7413(b),

> The Administrator...shall, as appropriate, in the case of any person which is the owner or operator of...a major stationary source, and may, in the case of any other person, commence a civil action for a permanent or temporary injunction, or to assess and recover a civil penalty of not more than $25,000 per day for each violation, or both... in any of the following instances:
>
> > ...(2) Whenever such person has violated, or is in violation of, any requirement or prohibition of [Subchapter I of the Act, 42 U.S.C. §§ 7401-7515] ...including, but not limited to, a requirement or prohibition of any rule...

42 U.S.C. § 7413(b). Each day of violation constitutes a separate violation for the purpose of calculating any such penalty.

B. Jurisdiction and Venue

1. Jurisdiction

Jurisdiction for this action is established under Section 113(b) of the Act, 42 U.S.C. § 7413(b), which authorizes the Administrator to bring a civil action whenever "the Administrator finds that any person has violated, or is in violation of, any other requirement or prohibition of [Subchapter I, Sections 101 through 193 of the Act, 42 U.S.C. § 7401 through 7515]..". Subsection (b) of Section

113, 42 U.S.C. § 7413(b) provides that:

> The Administrator shall, as appropriate,... commence a civil action for a permanent or temporary injunction, or to assess and recover a civil penalty ...
>
> ...Any action under this subsection may be brought in the district court of the United States for the district in which the violation is alleged to have occurred, or is occurring, or in which the defendant resides, or where the defendant's principal place of business is located, and such court shall have jurisdiction to restrain such violation, to require compliance, to assess such civil penalty... and to award any other appropriate relief.

42 U.S.C. § 7413(b) (emphasis added). 28 U.S.C. § 1345 confers original jurisdiction on the district court of the United States for civil actions commenced by the United States.

2. Venue

Proper venue for any action brought under Section 113(b) is "the district in which the violation is alleged to have occurred, or is occurring, or in which the defendant resides, or where the defendant's principal place of business is located..." Venue is also proper for a corporate defendant under 28 U.S.C. § 1391(c) in any jurisdiction in which it is licensed to do business or is engaged in doing business. The violations occurred in the area of Taft/Hahnville, St. Charles Parish, Louisiana, at a Facility which is considered Occidental's place of business for the purposes of this action. Therefore, this case is properly brought in the United States District Court for the Eastern District of Louisiana in New Orleans.

C. Cross-Media Coordination

The inspection conducted by EPA at the Occidental Facility on November 21 and 22, 1991 was a single media inspection and no concurrent EPA enforcement actions in other media related to this facility are being conducted at this time.

III. DESCRIPTION OF DEFENDANT

A. Description of Defendant

Occidental Chemical Corporation ("Occidental") is a New York corporation and a multi-divisional company with corporate division headquarters offices in Dallas, Texas:

Occidental Chemical Corporation
5005 L B J Freeway
18th Floor
Dallas, Texas 75244 (214) 404-3800

The mailing address of the Dallas headquarters office is:

Occidental Chemical Corporation
P.O. Box 809050
Dallas, Texas 75380

Among other things, the division of Occidental based in Dallas operates the chemical manufacturing facility in Taft/Hahnville, Louisiana which is the subject of this action.

B. Agent for Service of Process

The Registered Agent for service of process for Occidental in Louisiana is:

C T Corporation Systems
601 Poydras St.
New Orleans, LA 70130

C. Defendant's Legal Counsel

Occidental's in-house legal counsel is:

Michael A. James
Assistant General Counsel
Occidental Chemical Corporation
5005 L B J Freeway
18th Floor
Dallas, TX 75244 (214) 404-3966

D. Description of Facility

The street address of the facility is:

Occidental Chemical Corporation
Hwy. 3142 at Hwy. 18
Taft, Louisiana 70057

The mailing address of the facility is:

Occidental Chemical Corporation
P.O. Box 74
Hahnville, Louisiana 70094

The chemical manufacturing facility which Occidental operates in Taft/Hahnville, Louisiana is part of the Electrochemicals and Specialty Products Division of Occidental Chemical, and is involved in the manufacture of chlorine utilizing asbestos diaphragm technology.

The chlorine process consists of taking raw sodium chlorine brine, and treating it with sodium carbonate and sodium hydroxide to precipitate out impurities such as calcium carbonate and magnesium hydroxide, which are settled out in clarifiers. The treated brine is than filtered and fed through an electrolytic cell where chlorine gas and hydrogen gas are produced, leaving a weak caustic soda solution. The produced chlorine gas is then cooled, dried, and purified with liquid

chlorine before it is compressed, cooled to a liquid, and stored for sale or use.

As part of the chlorine manufacturing process, the electrodes for the electrolytic cells are coated with a slurry made with asbestos to create a "diaphragm" electrolytic cell through which the brine and chemicals are passed. Dry asbestos is brought to the facility in packages, which are opened and the asbestos is added to a wet solution to create the slurry. The handling of the dry asbestos, as part of the coating process, and the stripping of asbestos from the electrodes in a hardened form as part of the asbestos removal process in the Cell Renewal Unit, creates the potential for asbestos emissions into the air in and from the process areas. The operation is conducted in a partially-enclosed structure, and utilizes a bag-house type of device to attempt to eliminate asbestos emissions from the work environment. The operation and maintenance of this unit is the object of violations cited herein.

E. Identity of Other Potential Defendants

There are no other potential defendants in this case that EPA is aware of at this time.

IV. DESCRIPTION OF VIOLATIONS

A. Nature of Violations

The violations cited at the Occidental facility were:

I. - Failure to do observations to monitor for the existence of visible emissions in the areas of potential asbestos emissions, or to keep records of such monitoring as required by 40 C.F.R. §§ 61.144(b)(3) and (b)(5) from February 20, 1991 to late May, 1991;

II. - Failure to do inspections of air cleaning devices for the existence of conditions indicating malfunctions which could cause asbestos emissions or to keep records of inspections as required by 40 C.F.R. §§ 61.144(b)(4) and (b)(5) from February 20, 1991 to April 9, 1991;

III. - Failure to do inspections of air cleaning devices to the extent opening the device to discern the presence of tears, holes, or abrasions on the filter bag and for the presence of dust deposits on the clean side of the bags caused by asbestos emissions as required by 40 C.F.R. § 61.144(b)(4), from September 18, 1991 to November 20, 1991;

IV. - Failure to properly use and operate the air cleaning devices installed at the facility, from July 8, 1991 to November 20, 1991, in a manner consistent with good air pollution control practice for minimizing emissions, within the meaning of 40 C.F.R. § 61.12(c), 40 C.F.R. § 61.152(a)(2), Louisiana Administrative Code ("LAC"), Chapter 9, Rule 905, on Control of Emissions and Emission Standards, and air Permit No. 362 C (M-1); and

V. - Failure to submit 2 quarterly reports of visible emissions cateloged by Occidental inspectors between 10/2/91 and 2/11/92, as required by 40 C.F.R. § 61.144(b)(8).

40 C.F.R. Part 61 relates to National Emission Standards for Hazardous Air Pollutants (NESHAPS), promulgated under Section 112 of the Clean Air Act, 42 U.S.C. § 7412. Subpart M of Part 61, 40 C.F.R. §§ 61.140 - 61.157, contain emissions and work practice standards relating to asbestos. The regulations included in 40 C.F.R. § 61.144 relate to the NESHAP standards for manufacturing with asbestos. Pursuant to 40 C.F.R. § 61.144(a)(9), Occidental and the chlorine manufacturing process which utilizes asbestos diaphragm technology at their Taft/Hahnville facility are subject to those regulations.

According to 40 C.F.R. § 61.144(b),

> Each owner or operator of any manufacturing operation to which this section applies shall:
>
> ...(3) Monitor each potential source of asbestos emissions from any part of the manufacturing facility, including air cleaning devices, process equipment, and buildings housing material processing and handling equipment, at least once each day during the daylight hours for visible emissions to the outside air during periods of operation. The monitoring shall be by visual observation of at least 15 seconds duration per source of emissions.
>
> ...(5) [The owner or operator shall also] maintain records of the results of visible emission monitoring...

40 C.F.R. §§ 61.144(b)(3) and (b)(5) (emphasis added).

Occidental has admitted in response to information requests under Section 114 of the Act that it failed to keep records of monitoring inspections at their facility during the period from February 1991 through April 1991, therefore indicating that they failed to do visible emissions monitoring of potential emissions sources as required by § 61.144(b) at all during that period.

Also, according to 40 C.F.R. § 61.144(b),

> Each owner or operator of any manufacturing operation to which this section applies shall:
>
> ...(2) Use the methods specified by § 61.152 [relating to air cleaning and filtering devices] to clean emissions from [their] operations containing particulate asbestos material before they escape to or are vented to the outside air.
>
> ...(4) Inspect each air cleaning device at least once each week for proper operation and for changes that would signal the potential for malfunctions, including, to the maximum extent possible... the presence of tears, holes, and abrasions in filter bags and for dust deposits on the clean side of [filter] bags. ...For air cleaning devices that cannot be inspected on a weekly basis... submit to the Administrator ...a written maintenance plan...
>
> ...(5) [The owner or operator shall also] maintain records of the results of ...air cleaning device inspections ...

40 C.F.R. §§ 61.144(b)(2), (b)(4) and (b)(5) (1991) (emphasis added). Occidental has admitted in response to information requests under Section 114 of the Act that it failed to keep records of inspections of air cleaning devices at their facility during the period from February 1991 through April 1991, therefore indicating that they failed to do inspections of their air cleaning devices as required by § 61.144(b) at all during that period.

Region 6 has determined not to cite a separate violation for the record-keeping requirements of 40 C.F.R. § 61.144(b)(5), the requirements of 40 C.F.R. § 61.144(b)(6) to make records available upon request, the requirement of 40 C.F.R. § 61.144(b)(7) to maintain records for at least two years, or the requirement of 40 C.F.R. § 61.144(b)(8) to notify the Administrator of visible emissions detected during inspections,

which correspond to the monitoring violations cited, even though none of he requirements of these regulations had been met during the times when failure to monitor was cited. It could be considered repetitive and unreasonable to cite and assess a separate penalty for a failure to make, keep, furnish, or report the record of an action that was not performed, when the failure to act has been cited.

According to 40 C.F.R. § 61.12(c),

> Each owner or operator of each stationary source shall maintain and operate the source, including associated equipment for air pollution control, in an manner consistent with good air pollution practice for minimizing emissions. Determination of whether acceptable operating and maintenance procedures are being used will be based on information available to the Administrator which may include, but is not limited to, monitoring results, review of operating and maintenance procedures, and inspection of the source.

40 C.F.R. § 61.12(c) (1991) (emphasis added).

Occidental failed to repair its emissions control equipment despite indication in its own inspection reports that the equipment was malfunctioning, overloaded, and in need of repair and maintenance, to the extent that the required inspections were not possible because of the condition of the equipment.

In addition to the requirements of 40 C.F.R. § 61.12(c), and the normal requirements to maintain emission control equipment in the applicable Louisiana regulations, Permit No. 362 C (M-1), issued to the facility in 1990 for the operation of the processes in question, contains special conditions that Occidental control asbestos emissions by compliance with all

provisions of the LAC regulations, 33 L.A.C. Chapter 25, relating to LESHAPS, specifically pertaining to asbestos. Chapter 25, Section 2607 requires that all air cleaning equipment must be properly installed, used, operated, and maintained. Another special condition of the Permit is that Occidental comply with all NESHAP regulations found at 40 C.F.R. § 61.144 related to asbestos manufacturing, which they did not, as shown herein.

According to the inspection report, which was based on the statements of the foreman of the operations to the inspector, the baghouse for asbestos emissions was not serviced for approximately 10 years, and was not maintained, as evidenced by the terrible condition of it observed by the inspector and recorded in the inspection records made by the facility staff. Occidental continued to operate the equipment, despite the malfunctions indicated in the inspection reports, for months without repair or maintenance. By doing so, Occidental can actually cause greater emissions to be released to the outside air through the malfunctioning equipment than would have been released without it.

Under 40 C.F.R. § 61.144(b),

> Each owner or operator of any manufacturing operation to which this section applies shall:
>
> ...(8) Submit quarterly a copy of the visible emission monitoring records to the Administrator if visible emissions occurred during the report period. Quarterly reports shall be postmarked no later than the 30th day following the end of the calendar quarter.

40 C.F.R. § 61.144(b)(8) (1991) (emphasis added). The

inspection reports kept later indicated that Occidental also failed to submit quarterly reports of visible emissions cateloged by Occidental inspectors between 10/2/91 and 2/11/92, as required by 40 C.F.R. § 61.144(b)(8). This time period spans well into two calendar quarters.

B. Date and Manner Violations Identified

On November 21 and 22, 1992, EPA inspectors, in conjunction with LDEQ inspectors, inspected the Occidental facility without notice, specifically the portions of the facility involving the use and potential emissions of asbestos as part of the chlorine manufacturing operation. The inspector noted that a baghouse at the facility may not have been maintained properly, suspecting that asbestos dust was collecting on the outside of the filter bags, indicating a malfunction of some kind. The inspectors requested to see copies of the inspection reports for the baghouse, and visible emissions monitoring records for the areas of operation involving asbestos. Records of observational monitoring required in the area of potential asbestos emissions by 40 C.F.R. § 61.144 were not available at the facility, indicating also that the observations to monitor for the possibility of visible emissions of asbestos in the areas where asbestos emissions could potentially occur had not been done as required by 40 C.F.R. § 61.144(b)(3).

In response to information requests sent them under Section 114 of the Act to follow-up on the inspection, Occidental provided

copies of records of monitoring beginning in and done after May of 1991. The requirements for monitoring and record-keeping, however, were promulgated November 20, 1990, 55 Fed. Reg. 48419, and allowed 90 days in which to begin the required monitoring - until February 20, 1991. Occidental admitted in their response to EPA's request that they did not have records of the required monitoring for the period between February 20, 1991 and late May, 1991. Occidental also produced inspection reports made after that time which showed notation of visible emissions of asbestos throughout the work areas, which were not reported to the Administrator according to the requirements of § 61.144(b)(8).

Other observations were made by the inspectors at the facility but no other violations have been documented sufficiently to cite them in an enforcement action at this time.

C. Dates and Duration of Violations

The violations noted above are considered to have occurred at the Occidental Taft/Hahnville facility at various times between February 20, 1991, the effective date of the regulations which require that Occidental begin monitoring and record-keeping, and maintaining of its emission control equipment, and the end of November, 1991, when the inspection of the facility occurred.

Each of the violations cited herein is considered to be a past

violation which occurred during the period cited, based on the information already in the possession of EPA, and not considered to be continuing to the present. However, no comprehensive verification of compliance has been done since the November 1991 inspection of the facility, and the violations cited may continue past the times cited herein, and Occidental may not currently be in compliance with the requirements cited. This would have no effect on establishing liability, but the penalty described herein has been calculated on the basis of each violation being assessed as a past violation. (See Section VII on the Penalty.) If a subsequent inspection or new information reveals that the violations continued for a longer period, the penalty calculation can be adjusted prior to trial to reflect a longer period and corresponding larger penalty amount.

D. Environmental Consequences

The health effects of asbestos exposure are well known, and are listed below for informational purposes. There has been no evidence produced yet in this case that there was any actual exposure or health effect. However, it can be inferred that there has been an increase in the risk of exposure or environmental or health effects as a result of operations of Occidental at the facility which increased (or failed to control) the release of asbestos emissions into the air from the processes at the plant. The purpose of the regulations violated in this case is to make possible a determination that

there is no risk of exposure from visible emissions of asbestos, by determining by observation whether there were visible emissions, and the reporting, under 40 C.F.R. § 61.144(b)(8), any visible emissions.

Asbestos - Health Effects

The following health effects information, excerpted from the "1988 NESHAPs Asbestos Demolition and Renovation Inspection Workshop", prepared by Alliance Technologies Corporation, illustrates the seriousness of exposure to particulate asbestos. Asbestos is a known environmental carcinogen and inhalation of asbestos fibers may increase the risk of serious irreversible disease. Inhaled asbestos fibers have been responsible for:

Asbestosis: A noncancerous respiratory disease, asbestosis is characterized by scarring of the lung tissue. There is a 20 to 30 year latency period associated with the onset of this disease. Symptoms include shortness of breath and rales (a dry crackling sound in the lungs during inhalation). Alone, asbestosis is not usually fatal.

Lung Cancer: Lung cancer may occur independent of asbestosis. Studies have shown the risk of lung cancer directly increases with cumulative exposure to asbestos. Also, there is a 20 to 30 year latency period from time of exposure to detection of the disease. Symptoms include a cough or change in cough habit and/or persistent chest pain. Lung cancer is often fatal.

Mesothelioma: A rare cancer, mesothelioma involves the thin

membrane lining of the chest and abdomen. Mesothelioma has been observed almost exclusively when there has been a history of exposure to asbestos. It has been noted that the earlier one begins inhaling asbestos, the higher the likelihood of developing mesothelioma in later life. Thus, there is concern over exposure of children to asbestos. The average latency period for this disease is 15 to 20 years. Symptoms include shortness in breath, pain in walls of chest, and abdominal pain. Mesothelioma is always fatal.

Other Cancers: It is suspected that exposure to asbestos fibers may cause malignant tumors or cancer of the esophagus, larynx, mouth, stomach, colon, and kidney. Scientists theorize that inhaled asbestos fibers are absorbed into the blood stream and carried to these parts of the body.

Safe Levels: Researchers report that there **does not appear to be a safe level** of exposure to asbestos. A consensus has not been reached concerning the causal relationship between malignant or non-malignant respiratory diseases and the following exposure parameters: fiber size, fiber type, fiber concentration, or duration of exposure. It has been estimated by Dr. Irving Selikoff of Mt. Sinai Hospital that, by the end of the century, an American will die of asbestos-related disease every hour.

Synergistic Effects: The combined effects of cigarette smoking and asbestos exposure have been shown to cause a much higher incidence of lung cancer than either of the two individually.

1. Actual Impact

There is no current data which indicates any actual immediate or imminently deleterious environmental or health effects as a result of the inadequately conducted asbestos operations or improperly maintained asbestos emissions control equipment at the Occidental facility. However, it is EPA's position that the operation of these items in violation of regulations created an additional risk of harm to human health by facilitating emissions and thus potential exposures, even though such risk has not currently been quantified. As stated above, there is no known safe level of asbestos exposure.

E. Pending Regulatory Changes

None are anticipated at this time.

V. ENFORCEMENT HISTORY OF DEFENDANT AND PRE-REFERRAL NEGOTIATIONS

A. Recent Contacts with Defendant by EPA:

- November 21 and 22, 1991 - EPA conducted an unannounced inspection of Occidental facility looking for NESHAP, NSPS, and SIP compliance or violations.

- December 18, 1991 - Letter from L.E. Hebert of Occidental to Minerva De Leon describing work on asbestos dust collector.

- December 20, 1991 - Letter from John Newton of LDEQ to T.H. Morrow of Occidental stating that LDEQ had found no violations during its November 21, 1991 annual air quality compliance determination inspection of the Occidental facility.

- February 12, 1992 - Letter from James Anderson of Occidental to Minerva De Leon in response to requests for documents during inspection.

- August 18, 1992 - EPA issues information request under § 114 of the Clean Air Act.

- August 21, 1992 - Call from Mike James of Occidental to Mark Forcier of EPA about information request, request for extension.

- September 22, 1992 - EPA receives response to information request dated 9/17/92, and a letter is sent by Mark Forcier confirming the 15 day extension of time to respond to information request granted as a result of Mike James' call.

B. Pre-Referral Negotiations

Pre-referral negotiations will be held once Occidental has received a Notice of Violation and can respond to EPA's assertions, and pre-filing negotiations will be held in line with Executive Order 12778 of October 23, 1991, once this PRN litigation report is approved by DOJ and the EPA Office of Enforcement.

C. Contacts with Defendant by State, Local Agencies and Citizens, and Actions Taken

EPA is not aware of any such contacts or actions taken which relate to this case.

D. Prior Enforcement History of Defendants

EPA is unaware of any previous enforcement actions by EPA or the Louisiana Department of Environmental Quality against Occidental that would be relevant to this action.

VI. PENALTIES

A. Civil Penalty Authority

Pursuant to Section 113(b) of the Act,

> The Administrator...shall, as appropriate, ...commence a civil action for a permanent or temporary injunction, or to assess and recover a civil penalty of not more than $25,000

per day for each violation, or both...

42 U.S.C. § 7413(b). The statutory maximum amount, based on assumptions of duration of violations, ~~would be Four Million, Five Hundred Thousand dollars ($4,500,000)~~. This encompasses 5 violations, multiplied by approximately 90 days of violation each, times the $25,000 daily statutory limit per day for each violation, as established in Section 113(b) of the Clean Air Act, 42 U.S.C. § 7413(b).

B. Penalty Analysis/Calculations

The proposed penalty amount sought to be assessed for the actions of Occidental, calculated based on procedures established in the October 25, 1990, Clean Air Act Stationary Source Civil Penalty Policy, ~~is Ninety Two Thousand dollars ($ 92,000)~~. The calculated penalty is broken down as follows:

~~The gravity portion of the penalty for each count is based, first, on the importance of the type of violations to the regulatory scheme. As described on page 13 of the Policy, violations for failure to monitor are assessed as $15,000 per violation. For two counts of failure to monitor, the total amount for importance to the regulatory scheme would be $30,000. The second part of the gravity factor considered applicable is the length of violation. As described on page 12 of the Policy, a duration of violation of 2-3 months would increase the amount of the penalty $8,000 for each violation of that length. For the two counts cited, the total amount~~

~~assessed for the length of violation would be $16,000.~~

The last factor required to be considered as part of the gravity component of the penalty is the 'size of violator'.[1] According to pages 14 and 15 of the Penalty Policy, a violator with a net worth of over $100 million dollars, such as Occidental Chemical Corporation (based on Dun & Bradstreet reports), would be assessed an additional amount equal to either ~~$70,000~~, or "50% of the preliminary deterrence amount"[2] of the penalty, whichever is less. In this case, ~~if the 'size of violator' element were equal to the total of the remainder of the elements which make up the gravity component ($46,000), then it would be 50 percent of the total preliminary deterrence amount of the penalty ($92,000), which is also the total gravity component, since no other factors were considered applicable in this case~~.

The total penalty, therefore, is calculated to be:

~~$ 30,000~~	~~-~~	~~Importance to scheme~~
~~16,000~~	~~-~~	~~Duration~~
~~+ 46,000~~	~~-~~	~~Size of Violator~~
~~$ 92,000~~	~~-~~	~~Total~~

[1] Whether the 'size of violator' should properly be considered as a factor in the 'gravity' of the penalty, or whether a penalty can properly be increased based on who the violator is, will not be discussed here. The propriety of these mandates of the current Policy may, however, be questioned.

[2] The Preliminary Deterrence Amount is the described on page 4 of the Penalty Policy as the total of the gravity component and the economic benefit component. In this case, the economic benefit component was less than the $5,000, and was therefore was considered nominal and not included as a separate factor in the penalty calculation. See page 7 of the Policy.

Other adjustment factors, such as ability to pay and degree of willfulness or negligence were not considered applicable. Litigation risk was not considered in the above calculation and will have to be assessed in order to determine a "bottom line" penalty for negotiation and settlement purposes at a future date.

VII. OTHER ISSUES

A. Issues of National or Precedential Significance

There are no known issues of national or precedential significance which relate to this case.

B. Bankruptcy Petitions

To date, no bankruptcy petitions have been filed by defendant, and none are anticipated.

VIII. SIGNIFICANCE OF REFERRAL

A. Primary Justification For Referral

Although there has been no evidence produced yet in this case that there was any actual exposure or environmental or health effect from Occidental's failure to monitor for asbestos emissions, it is likely that there was an increase in the risk of exposure or environmental or health effects as a result of operations of Occidental at the facility. The purpose of the regulations violated in this case is to make possible a determination that there is no risk of exposure from visible emissions of asbestos, by observing whether there were visible

emissions, and the reporting, under 40 C.F.R. § 61.144(b)(8), any observed emissions. Unless these specific regulations are complied with EPA cannot perform the function entrusted to it under the statute.

B. Threats To The Regulatory Structure

Beyond the direct threat to human health and the environment, emphasis must be given to the enforcement policies underlying the Act. Even if the danger to human health or the environment were insignificant in this case, which it is not, the violations of the requirements cited herein may have serious implications, where their continuation may tend to undermine the statutory and regulatory purposes or procedures established by Congress and the Agency for implementing the Air Enforcement program embodied in the amended Clean Air Act. It is the policy of the agency, as expressed in the body of its Clean Air Act Stationary Source Civil Penalty Policy, that these types of violations receive significant penalties as a deterrent to entities, who would ignore their responsibility to the law and the public interest. In this action the Agency asks for penalties which, in part, are to remedy the damage of past actions, or inactions, of Occidental and its owners and operators to the regulatory process, and, in part, to serve as a deterrent to Occidental and others from future violations.

C. Program Strategy

The referral of this case for civil action (or in the

alternative an agreement to pursue an administrative action) is consistent with the March 31, 1988 "Revised Asbestos NESHAP Strategy" issued by EPA's Office of Air Quality Planning & Standards. This strategy is intended to induce an increased rate of asbestos related enforcement action in the Regions and delegated agencies.

D. Agency Priority

Occidental is a significant violator ? *** as defined in the Strategic Targeting and Reporting System (STARS) and is thus subject to the EPA memorandum titled "Guidance on Federally-Reported Violations for Stationary Air Sources", dated April 11, 1986, as well as "Timely and Appropriate" measures guidance, dated February 7, 1992. EPA policy places high priority on bringing significant violators of the asbestos NESHAP standards into compliance with injunctive relief, combined with the deterrent measures of payment of civil penalties. **As a significant violator**,? *** Occidental is subject to the Timely and Appropriate Guidelines of the Strategic Targeting and Reporting System (STARS).

E. Program Initiatives Outside of Stated Strategy

None.

F. Relation of Referral to Previous or Concurrent Cases or Actions

EPA is investigating possible violations of Clean Air Act regulations at the Occidental Chemical Corporation facility in

Deer Park, Texas. It is not known at this time whether an enforcement action will be taken against Occidental for actions at that facility or whether such enforcement will have any relation to this action. If the other action were pursued, EPA could seek to negotiate some type of joint settlement arrangement with Occidental. There is, however, no information upon which to make such a determination at this time.

IX. LITIGATION STRATEGY

A. Need for Injunctive Relief

It should not be necessary to pursue injunctive relief to achieve compliance with the requirements of 40 C.F.R. Part 61, Subpart M. It appears that the inspection and record-keeping violations which were cited against Occidental occurred only for a period of time. Occidental has produced records to support a conclusion that it is in current compliance with these regulations.

B. Settlement Potential/Plan for Settlement

According to Executive Order 12778 of October 23, 1991, EPA is required to have settlement discussions with each potential defendant prior to the filing of an action. EPA anticipates that Occidental will be willing to negotiate with EPA on the factual and legal issues of this case prior to litigation, and settlement prior to filing is expected. EPA has obtained information through information requests under Section 114 of the Act and will obtain additional information through meetings

with Occidental prior to filing, rather than to rely on discovery after filing. Failing settlement prior to filing, Occidental will likely continue to negotiate toward settlement after filing due to the costs of litigation.

C. Need for Interrogatories and Request for Admissions

Any discovery through interrogatories should be simple and straight forward since the facts of the violations cited can be established without them, based on inspections and admissions of Occidental prior to filing. Requests for admissions can likely establish many elements; and such requests, along with stipulations, may be sufficient to put forth a prima facie case.

D. Potential for Summary Judgement

Potential for summary judgment for liability against Occidental is good since there appear to be no genuine issues of material fact to be resolved in relation to the violations shown below, unless additional information is produced by Occidental. The assessment of penalties could present an issue of fact about the reasonableness of the penalty and the application of penalty guidance in calculation. If the United States filed a Motion for Summary Judgement, however, it would include a request for the court to assess a penalty in line with the Stationary Source Penalty Policy.

E. Need for Preliminary Injunction

No irreparable harm will occur if there is no immediate action, therefore a preliminary injunction is not necessary.

F. Identity of Potential Witnesses

1. Government's Case

The following individuals are expected to be available to testify on behalf of the United States:

a. Ms. Minerva De Leon,
Environmental Scientist
EPA Air Inspector
Facilities Compliance Section (6E-HC)
U.S. EPA, Region 6
10625 Fallstone Rd.
Houston, TX 77099 (713) 983-2149

Ms. De Leon is the EPA inspector who conducted the inspection of the Occidental Facility. She should be able to testify about her observations and actions at the facility and the content of the inspection report.

b. Ms. Ann T. Brannon
Environmental Scientist
Air Inspector
LDEQ, Southwest Region
(504) 838-5361

Ann Brannon is one of the inspectors who attended the Facility on November 21 and 22, 1991, and should be able to testify as to her observations at the facility, as well as to corroborate the observations of the EPA inspector at the facility, and the statements made to the inspectors by the Occidental personnel at the facility.

c. Mr. Gary J. Northington
Environmental Scientist
Air Inspector
LDEQ, Southwest Region
(504) 838-5361

Gary Northington is one of the inspectors who attended the Facility on November 21 and 22, 1991, and should be able to testify as to his observations at the facility, as well as to corroborate the observations of the EPA inspector, and the statements made to the inspectors by the Occidental personnel at the facility.

d. Mr. Paul Henderson
Environmental Engineer
Air Enforcement Section (6T-EC)
U.S. Environmental Protection Agency
Region 6 - Dallas
(214) 655-7544

Paul Henderson should be able to testify as to his evaluation of the contents of the Air Inspection Report, his evaluation of the evidence obtained by EPA through § 114 requests, and his application of the Clean Air Act Stationary Source Civil Penalty Policy to the facts to arrive at the penalty sought to be assessed by EPA (other than the statutory maximum penalty).

2. Defendant's Case

The identity and possible content of the testimony of witnesses for Occidental are unknown at this time. It is anticipated that the following plant personnel might be able to testify about conditions, policies, and procedures at the facility, as well as the events on the day of the EPA/LDEQ inspection.

T. H. Morrow
- Plant Manager of the Occidental Taft facility. (504) 783-7200

James A. Anderson
- Environmental Supervisor of the Occidental facility who was present at the November 21-22, 1992 inspection of the facility. (504) 783-7384

Leslie Hebert, Jr.
- Environmental Engineer at the Occidental facility who was present at the November 21-22, 1992 inspection of the facility. (504) 783-7384

G. **Elements of Prima Facie Case** and Evidence

Pursuant to Section 113(a)(3) of the Act,

> [w]henever...the Administrator finds that any person has violated or is in violation of any other requirement or prohibition of [Subchapter I, 42 U.S.C. § 7401-7515] ... including but not limited to any rule... promulgated, issued

> or approved under [that Subchapter] ...the Administrator may... (C) bring a civil action in accordance with subsection (b) of [Section 113]...

42 U.S.C. § 7413(a)(3) (emphasis added). Pursuant to Section 113(b) of the Clean Air Act, the Administrator

> shall, as appropriate, in the case of any person who is the owner or operator of an affected source, a major emitting source, or a major stationary source[3], and may, in the case of any other person, commence a civil action for a permanent or temporary injunction, or to assess and recover a civil penalty of not more than $25,000 per day for each violation, or both, in any of the following instances:
>
> ...(2) Whenever such person has violated, or is in violation of, any requirement or prohibition of [Subchapter I of the Act, 42 U.S.C. §§ 7401-7515] ...including, but not limited to, a requirement or prohibition of any rule, order, waiver, or permit...
>
> ...Notice of commencement of the action must be given to the appropriate state air pollution control agency [in this case, the Louisiana Dept. of Environmental Quality].

42 U.S.C. § 7413(b) (emphasis added). The elements which must be proven in order to establish a prima facie case against Occidental under § 113(b), are:

1. **That Occidental is a "person" within the meaning of Sections 113(a) and (b), 42 U.S.C. § 7413(a)-(b):**

   a. **Occidental Chemical Corporation is a corporation.** EPA can present a statement from the Secretary of State showing that Occidental is a corporation organized under the laws of the State of New York and registered to do business in Louisiana.

   b. **As a corporation, Defendant is therefore, by**

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[3] The Occidental facility is listed as a "major stationary source" by the Air Facility System (AFS) of the Aerometric Information Retrieval System (AIRS), a national computer database for air pollution enforcement information maintained by EPA.

definition, a "person" as that term is defined in Section 302(e) of the Act, 42 U.S.C. § 7602(e).

2. **That Occidental is the 'owner or operator' of the facility at which the violations were discovered.**

"Owner or operator" means any person who owns, leases, operates, controls, or supervises a stationary source. 42 U.S.C. § 112(a)(9). Defendant will likely admit this. If not, EPA can present documents from a title search and admissions of Occidental in correspondence with EPA which prove that at all times relevant to this Complaint, Defendant has been the "owner" and "operator" of the Occidental Chemical Corporation facility in Taft/Hahnville Louisiana, a stationary source, within the meaning of Section 113 of the Act, 42 U.S.C. § 7413, and 40 C.F.R. Part 61.

3. **That the Occidental Facility is subject to the regulations cited: <u>Asbestos NESHAPs</u> - 40 C.F.R. Part 61, Subpart M, and similar LAC (LESHAP) Regulations:**

   a. **Pursuant to Section 112 of the Clean Air Act, 42 U.S.C. § 7412, the Administrator promulgated regulations** and emission standards known as the National Emission Standards for Hazardous Air Pollutants (NESHAPs) which govern the control of emissions and the handling and disposal of hazardous materials, including asbestos (asbestos NESHAPs), **found at 40 C.F.R. Part 61, Subpart**

M. Defendant is precluded from challenge the validity or authority of any of the regulations promulgated under the Act by Section 307(b)(1) of the Act 42 U.S.C. § 7607(b)(1) limiting the time and court of any such challenge, or by the Administrative Procedures Act, 5 U.S.C. §§ 552 et seq..

b. **Within Subpart M, 40 C.F.R. § 61.140 provides that 40 C.F.R. Part 61, relating to asbestos NESHAPs, applies to those sources specified in 40 C.F.R. §§ 61.142 through 61.151, 61.154, and 61.155.**

c. **40 C.F.R. § 61.144 describes standards applicable to "manufacturing operations using commercial asbestos."**

EPA must show that a portion of Defendant's Facility is a "manufacturing operation using commercial asbestos" within the meaning of 40 C.F.R. § 61.144.

(1) **'Manufacturing' is "the combining of commercial asbestos[4]...with any other material(s)...and the processing of this combination into a product. Chlorine production is considered a part of manufacturing." 40 C.F.R. § 61.141.**

Defendant will likely admit this, but if they do not, EPA must can show that the operations of the facility consist in part of 'manufacturing' within the

---

[4] "Commercial asbestos" is defined at 40 C.F.R. § 61.141 as "any material containing asbestos that is extracted from ore and has value because of its asbestos content." In this case, the commercial asbestos is the asbestos in the slurry applied to the electrodes of the electrolytic cell, and has value in the process because of its asbestos content.

definition of 40 C.F.R. § 61.141 A portion of Defendant's facility is for production of chlorine utilizing asbestos diaphragm technology.

(2) **Chlorine utilizing asbestos diaphragm technology is defined as an asbestos 'manufacturing operation' under 40 C.F.R. § 61.144(a)(9).**

Occidental has admitted in response to information requests that operations which occur at the Occidental facility include production of chlorine utilizing asbestos diaphragm technology which is classified as an asbestos 'manufacturing' operation within the meaning of 40 C.F.R. §§ 61.144, but it could also be shown by expert testimony describing the type of operations conducted at the facility in the past.

d. **Defendant is thus the owner and operator of a "manufacturing operation using commercial asbestos" within the meaning of 40 C.F.R. § 61.144.;**

e. **Under Section 112(c)(2) and 40 C.F.R. § 61.05(c), "[n]inety [90] days after the effective date of any standard, no owner or operator shall operate any existing source subject to that standard in violation of the standard [without waiver or exemption]".**

(1) **Under 40 C.F.R. § 61.02, the 'effective date' of 40 C.F.R. Part 61 "is the date of promulgation in the FEDERAL REGISTER of any applicable standard** or other regulation..." The date of promulgation of 40 C.F.R. § 61.144(b) was November 20, 1990. Ninety

(90) days after that date is February 18, 1991, which is the end of the 90 day grace period for compliance, and the date by which compliance is expected.

(2) **At various times, Defendant did not monitor for visible emissions, did not inspect emission controls equipment, did not keep records of such monitoring or inspection, and did not operate and maintain its emissions control equipment, as shown below.**

f. Therefore, under 40 C.F.R. § 61.140, **40 C.F.R. Part 61, Subpart M, relating to asbestos NESHAPs, applies to Defendant and to the facility operations.**

4. **Occidental was in violation of the requirements of the applicable regulations (rules) within the meaning of Section 113(b) of the Act, 42 U.S.C. § 7413(b):**

a. <u>Count I</u> - **Occidental did not comply with 40 C.F.R. §§ 61.144(b)(3) and 61.144(b)(5)** from February 20, 1991 through late May 1991.

(1) **40 C.F.R. § 61.144(b) requires "each owner or operator of any manufacturing operations to which this section applies" to**

<u>Monitor each potential source of asbestos emissions from any part of the manufacturing facility</u>, including air cleaning devices, process equipment, and buildings housing material processing and handling equipment, <u>at least once each day</u> during the daylight hours for visible emissions to the outside air during periods of operation. The monitoring shall be by visual observation of at least 15 seconds duration per source of emissions.

...(5) [The owner or operator shall also] maintain records of the results of visible emission monitoring...

(2) **Defendant failed to monitor for visible emissions at their facility** as required by 40 C.F.R. § 61.144(b)(3) during the period from February 20, 1991 through late May 1991.

(3) **Defendant failed to keep records of monitoring for visible emissions at their facility** as required by 40 C.F.R. § 61.144(b)(5) during that period.

Occidental has admitted in response to information requests under Section 114 of the Act that it failed to keep records of monitoring inspections at their facility during the period from February 1991 through April 1991, therefore indicating that they failed to do visible emissions monitoring of potential emissions sources as required by § 61.144(b) at all during that period.

(4) Therefore, at the time of the inspection of the Facility, **Defendant had not complied with the provisions of 40 C.F.R. § 61.144(b)** as shown above and was "in violation of, any requirement or prohibition of [Subchapter I of the Act]" within the meaning of Section 113(b)(1) of the Act, 42 U.S.C. § 7413(b)(2).

b. Count II - **Occidental did not comply with 40 C.F.R. §§ 61.144(b)(4) and (b)(5)** during the period from February 20,

1991 through April 9, 1991.

(1) **40 C.F.R. § 61.144(b) requires "each owner or operator of any manufacturing operations to which this section applies" to**

> ...(2) Use the methods specified by § 61.152 [relating to air cleaning and filtering devices] to clean emissions from [their] operations containing particulate asbestos material before they escape to or are vented to the outside air.
>
> ...(4) Inspect each air cleaning device at least once each week for proper operation and for changes that would signal the potential for malfunctions, including, to the maximum extent possible... the presence of tears, holes, and abrasions in filter bags and for dust deposits on the clean side of [filter] bags. ...For air cleaning devices that cannot be inspected on a weekly basis... submit to the Administrator ...a written maintenance plan...
>
> ...(5) [The owner or operator shall also] maintain records of the results of ...air cleaning device inspections ...

(2) **Defendant failed to inspect each air cleaning device at least once each week for proper operation and for changes that would signal the potential for malfunctions** , as required by 40 C.F.R. § 61.144(b)(3), during the period from February 20, 1991 through April 9, 1991.

(3) **Defendant also failed to keep records of inspections of each air cleaning devices at its facility** as required by 40 C.F.R. § 61.144(b)(5) during that period, as shown above and was thus "in violation of, any requirement or prohibition of [Subchapter I of the Act]" within the meaning of Section 113(b)(1) of the Act, 42 U.S.C. § 7413(b)(2).

c. Count III - **Occidental violated 40 C.F.R. §§ 61.19 and 61.144(b)(2) and (b)(4)** during the period from September 18, 1991 to November 20, 1991.

(1) **40 C.F.R. § 61.144(b) requires "each owner or operator of any manufacturing operations..." to**

> ...(2) Use the methods specified by § 61.152 [relating to air cleaning and filtering devices] to clean emissions from [their] operations containing particulate asbestos material before they escape to or are vented to the outside air.
>
> ...(4) Inspect each air cleaning device at least once each week for proper operation and for changes that would signal the potential for malfunctions, including, to the maximum extent possible without dismantling other than opening the device, the presence of tears, holes, and abrasions in filter bags and for dust deposits on the clean side of [filter] bags. ...For air cleaning devices that cannot be inspected on a weekly basis... submit to the Administrator ...a written maintenance plan...

(2) **Defendant failed to inspect the air cleaning device to the extent of opening the device to determine the presence of tears, holes, and abrasions in the filter bags, despite the presence of indications of malfunction**, as required by 40 C.F.R. §§ 61.144(b)(2) and (b)(4), during the time from September 18, 1991 to November 20, 1991.

Response to information requests under Section 114 of the Act produced inspection records which indicate that Occidental failed to open the baghouse to determine the condition of the bags, because of the malfunctioning unmaintained condition of that baghouse. The inspection records state that the door couldn't be opened to inspect because there was so much asbestos

accumulated that it would have all fallen out of the structure, which would have constituted an emission to the air and a violation. Keeping the equipment closed during inspections prevented recording of the actual nature of the malfunction of the equipment, and the fact that it was no longer performing its intended function during that period.

(3) **40 C.F.R. §§ 61.19 mandates that**

> No owner or operator shall ...use any ...machine, equipment, [or] process, the use of which conceals an emission which would otherwise constitute a violation of an applicable standard.

Occidental failed to address the improper operation of the baghouse, continuing to operate it when it was obviously malfunctioning, and therefore not performing the function for which it was installed. Occidental thereby, not only concealed the fact that the baghouse was no longer functioning properly, but concealed the fact that asbestos emissions were occurring a levels which were dangerous, whether detectable by unaided observation or not. The inspector stated that there was dust on what was supposed to be the "clean side" of the filter bags, within the meaning of § 61.144(b), and tests run in 1990 on the exhaust from the dust collector indicated the presence of significantly elevated levels of asbestos fibers in the exhausted air (over 6 fibers/cu. cm. rather than the OSHA level of 0.2 fibers/cu. cm.). No maintenance was done after

this test and before the inspection, and the operation of the equipment continued during that period, indicating that the asbestos emissions continued during the period cited.

(4) **Defendant thus violated 40 C.F.R. §§ 61.19 and 61.144(b)**, and Defendant's facility is "in violation of, any requirement or prohibition of [Subchapter I of the Act]" within the meaning of Section 113(b)(1) of the Act, 42 U.S.C. § 7413(b)(2).

d. Count IV - **Occidental did not properly use and operate the air cleaning devices, designed to eliminate asbestos dust from the air, or use them in a manner consistent with good air pollution control practice for minimizing emissions,** within the meaning of in 40 C.F.R. §§ 61.12(c) and 61.152(a)(2), LAC Chapter 9, Regulation 905, and Permit No. 362C (M-1).

Pursuant to 40 C.F.R. § 61.152(a)(2), "the owner or operator who uses air cleaning as specified in ...§ 61.144(b)(2) ...shall: Properly install, use, operate, and maintain all air cleaning equipment authorized by [§ 61.152}." Also, according to 40 C.F.R. § 61.12(c),

> Each owner or operator of each stationary source shall maintain and operate the source, including associated equipment for air pollution control, in an manner consistent with good air pollution practice for minimizing emissions. Determination of whether acceptable operating and maintenance procedures are being used will be based on information available to the Administrator which may include, but is not limited to, monitoring results, review of operating and maintenance procedures, and inspection of the source.

40 C.F.R. § 61.12(c) (1991) (emphasis added).

(1) **40 C.F.R. § 61.144(b) requires "each owner or operator of any manufacturing operations..." to**

> ...(2) Use the methods specified by § 61.152 [relating to air cleaning and filtering devices] to clean emissions from [their] operations containing particulate asbestos material before they escape to or are vented to the outside air.

(2) **Occidental installed emission control equipment but did not properly use, operate, and maintain its air cleaning equipment** within the meaning of 40 C.F.R. § 61.152(a)(2). Occidental failed to repair its emissions control equipment despite indication in its own inspection reports that the equipment was malfunctioning, overloaded, and in need of repair and maintenance, to the extent that the required inspections were not possible because of the condition of the equipment. The inspector who made the required reports during this period knew, and stated in the reports that the equipment was malfunctioning, and Defendant knew that emissions of asbestos beyond acceptable levels were being expelled to the outside air during that period. As stated above, tests run in 1990 on the exhaust from the dust collector indicated the presence of significantly elevated levels of asbestos fibers in the exhausted air (over 6 fibers/cu. cm. rather than the OSHA level of 0.2 fibers/cu. cm.), and inspector testimony and reports based on admissions indicate

that no maintenance had been done on the equipment between the period before the tests and the EPA/LDEQ inspection.

(3) **Occidental did not properly maintain and operate the source, including associated equipment for air pollution control, in an manner consistent with good air pollution practice for minimizing emissions** within the meaning of 40 C.F.R. § 61.12(c). According to the inspection report, which was based on the statements of the foreman of the operations to the inspector, the baghouse for asbestos emissions was not serviced for approximately 10 years, and was not maintained, as evidenced by its terrible condition, observed by EPA and LDEQ inspectors, and as recorded in the inspection records made by the facility staff inspectors.

(4) In addition to the requirements of 40 C.F.R. § 61.12(c), **the facility is subject to the requirements of the applicable Louisiana regulations to maintain emission control equipment, which mirror the requirements of 40 C.F.R. Part 61.**

(5) Finally, **Permit No. 362 C (M-1)**, issued to the facility in 1990 for the operation of the processes in question, **contains special conditions that Occidental control asbestos emissions by compliance with all provisions of the LAC regulations, 33 L.A.C. Chapter 25, relating to LESHAPS, specifically**

pertaining to asbestos. Chapter 25, Section 2607 requires that all air cleaning equipment must be properly installed, used, operated, and maintained. Another special condition of the Permit issued to Occidental in 1990 is that Occidental comply with all NESHAP regulations found at 40 C.F.R. § 61.144 related to asbestos manufacturing, which they did not, as shown herein, from at least July 8, 1991 to November 20, 1991.

(6) **Defendant thus violated 40 C.F.R. §§ 61.12(c) and 61.152(a)**, and Defendant's facility is "in violation of, any requirement or prohibition of [Subchapter I of the Act]" within the meaning of Section 113(b)(1) of the Act, 42 U.S.C. § 7413(b)(2).

e. **Count V - Occidental did not make quarterly reports to the Administrator of visible emissions cateloged by its inspectors,** within the meaning of in 40 C.F.R. § 61.144(b)(8).

Under 40 C.F.R. § 61.144(b),

> Each owner or operator of any manufacturing operation to which this section applies shall:
>
> ...(8) Submit quarterly a copy of the visible emission monitoring records to the Administrator if visible emissions occurred during the report period. Quarterly reports shall be postmarked no later than the 30th day following the end of the calendar quarter.

40 C.F.R. § 61.144(b)(8) (1991) (emphasis added).

(1) **Defendant's facility had "visible emissions"[5] within the meaning of 40 C.F.R. § 61.144(b)(8)** and as defined in § 61.141 to be "any emissions which are visibly detectable without the aid of instruments, coming from ...any asbestos milling, manuafcturing, or fabricating operation."

Occidental inspection reports described "asbestos on [the] walls ...[the] floor ...[the] tank ...[the] concrete", etc, and generally on all exposed surfaces of the work area nearly every day for the period from October 2, 1991 through February 11, 1992. It is EPA's determination that the mere fact that the asbestos was on these open surfaces, exposed to the air, without any precautions to contain it, is physical evidence that there were "visible emissions" within the meaning of regulations and case law cited herein. This can be established by the inspectors reports. In addition, it is reasonable for EPA to take the position, and present expert testimony to the effect that, despite the fact that EPA inspectors did not visibly observe particles of asbestos being blown from these

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[5] If 'visible emissions' are narrowly defined as particles of asbestos blowing from a source or surface into the air during the inspection, then it could be said that no "'visible emissions" were observed at the time of the inspection, as indicated by "no" written under the category "visible emissions observed" on the Occidental inspection forms. However, "visible emissions" were observed and cateloged within the meaning of case law in that the mere fact that asbestos was observed on the open surfaces, exposed to the outside air, without precaution to contain it, is considered to be a "visible emission" y within the meaning of the regulations. U.S. v. Hugo Key & Son, Inc., 731 F.Supp. 1135 (D.R.I. 1989), 30 Envt. Rep. 1697, 20 ELR 21146.

surfaces into the ambient air at the time of the inspection, it is impossible under the conditions at the faciliyt for there not to have been blown emissions during the time that Defendant failed to maintain its emissions control equipment out of compliance, despite the fact that no ambient emissions were specifically observed. They need only be "observable", not observed. This would be circumstantial evidence, offered to show that it is more likely than not that there were ambient emissions from the facility non-compliance with the maintenance requirements, as well as other "visible emissions" in the form of the asbestos material reported as exposed to the air.

(2) **Defendant failed to report those emissions within the meaning of 40 C.F.R. § 61.144(b)(8).**

Responses to information requests under § 114 confirmed what EPA knew, that Occidental failed to submit quarterly reports of visible emissions cateloged by Occidental inspectors between 10/2/91 and 2/11/92, as required by 40 C.F.R. § 61.144(b)(8). This time period spans well into two calendar quarters.

(3) **Defendant thereby violated 40 C.F.R. § 61.144(b)(8),** and Defendant's facility is thus "in violation of, any requirement or prohibition of [Subchapter I of the Act]" within the meaning of Section 113(b)(1) of the Act, 42 U.S.C. § 7413(b)(2).

H. Anticipated Defenses and Government Response

EPA does not anticipate that Occidental will produce evidence in defense of the record-keeping violations alleged herein. Unless they were to subsequently "find" the records and produce them to show that the required monitoring had been done, EPA is unaware of any defense that Occidental could have to liability for the cited violations. Occidental has admitted in its response to EPA information requests under Section 114 of the Act that they did not have records of the required monitoring for the period between February 20, 1991, the date by which they were to have begun the required monitoring and record-keeping, and late May 1991. Occidental also has admitted that it did not service the baghouse for approximately 10 years, and the inspections by both our and their inspectors indicates conditions of continuing malfunction and subsequent emissions.

The requirement to "monitor each potential source of asbestos emissions" under 40 C.F.R. § 61.144(b)(3) is a requirement to do observations daily during daylight hours for visible emissions of asbestos in the area of potential sources of such emissions. The requirement to "inspect each air cleaning device ...for proper operation" under 40 C.F.R. § 61.144(b)(4), is a requirement to inspect such devices for changes other than visible emissions that would signal a potential malfunction, including tears, holes, or abrasions in the filter bag, or dust deposits on the clean side (outside) of the filter bag.

Occidental will likely argue EPA's application and interpretation of the regulations in question as a matter of law, and attempt to show that the regulations do not intend violations to be cited as described herein. If so, EPA must put forth its interpretation and rely on its reasonableness in light of the specific purposes of the regulations, and allow the court to determine whether EPA's interpretation accomplished the goals of the statute and regulations, without being unduly burdensome on the Defendant.

Occidental may assert that the violation of 40 C.F.R. § 61.144(b)(3) for failure to "monitor each potential source of asbestos emissions from any part of the manufacturing facility, including air cleaning equipment..." encompasses the violation for failure to "inspect each air cleaning device ...for proper operation ..." under 40 C.F.R. § 61.144(b)(4), since "air cleaning equipment" is, arguably, a "potential source of emissions", and that there should, therefore, not be a separate penalty assessed for both violations. They may similarly assert that the failure to inspect and the failure to make a determination on the causes of the known malfunctions in the baghouse in Counts II and III and repetitive, or that the requirement to maintain the baghouse is the underlying violation in both Counts III and IV, and therefore, they should not be cited as two separate counts.

EPA's position is that each of these requirements can be cited

or violated without a citation or violation of the other, are required on a different schedule, are different requirements designed to detect different conditions, with different record-keeping requirements, and are, therefore, independent violations for which separate penalties should be assessed, as shown below. EPA's position on any similarity between Counts II and III, or Counts III and IV is similar - that the requirements and different, that the purpose to be achieved is different, and that they are correctly separate counts.

As to the penalty assessment, Occidental may produce evidence as to the existence of mitigating factors which would bear on the reduction of a potential penalty, were the court in the position to assess one. What evidence they could produce to mitigate the assessed penalty is not known at this time, although ability to pay is not anticipated to be a factor. In light of the fact that Occidental did no maintenance on the baghouse for 10 years, it is unlikely that they can show that the regulations place an undue burden on them to comply.

I. Resource Commitments

At this time, Region 6 believes that this case will be settled short of litigation and, if so, will not require significant resources. Should these violations be pursued to litigation as structured herein, minimal resources should not be required to present the background factual support necessary to establish all of the elements of EPA's cases, again, unless Occidental

produces evidence not previously provided to EPA. Most, if not all of the elements necessary to prove the violations are admitted. A dispute over the amount of the penalty assessed for the violations cited could require some commitment of resources in production of witnesses for proof at trial.

J. New Evidence

Relevant new evidence and information will be forwarded to DOJ and EPA Headquarters as it becomes available.

INDEX OF EXHIBITS

EXHIBIT	DATE
1 - Dun & Bradstreet Reports	February, 1992
2 - Penalty Analysis/Calculations	December, 1992
3 - Inspection Reports	November, 1991
4 - Inspection Evaluation	_____***_____, ____
5 - Asbestos NESHAPS, 40 C.F.R. Part 61 . .	November 20, 1991
6 - NOV Issued by EPA	_____, 1992

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 6
1445 ROSS AVENUE, SUITE 1200
DALLAS, TX 75202-2733

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DEC 3 1 1992

Vicki A. O'Meara
Acting Assistant Attorney General
Environment and Natural Resources Div.
U.S. Department of Justice
9th & Pennsylvania, N.W.
Washington, D.C. 20530

Attention: John C. Cruden, Chief
Environmental Enforcement Section
Litigation Report - PRE-REFERRAL

Dear Ms. O'Meara:

Enclosed you will find a litigation report requesting civil enforcement action against Occidental Chemical Corporation pursuant to the Clean Air Act for violations of the requirements for handling of asbestos under the National Emission Standards for Hazardous Air Pollutants (NESHAP) regulations and Permit violations at Occidental Chemical's facility in Taft/Hahnville, Louisiana. This is a pre-referral litigation report.

The Region requests authority to conduct pre-referral settlement negotiations with Occidental pursuant to the "Process for Conducting Pre-Referral Settlement Negotiations on Civil Judicial Enforcement Cases", dated April 13, 1988. Upon receipt of comments from your office, as well as the EPA Office of Enforcement, the Region will commence pre-referral settlement negotiations with the prospective defendant consistent with the pre-approved terms.

It is requested that this report be treated as a confidential internal memorandum.

Sincerely yours,

B. J. Wynne
Regional Administrator (6A)

Enclosures

Printed on Recycled Paper

cc: Herbert H. Tate, Jr.
Assistant Administrator for
Enforcement (LE-133)
U. S. Environmental Protection Agency
401 M Street, S.W.
Washington, D.C. 20460

John B. Rasnic
Director, Stationary Source
Compliance Division (EN-341W)
U. S. Environmental Protection Agency
401 M Street, S.W.
Washington, D.C. 20460

Harry Rosenberg
U.S. Attorney
Hale Boggs Federal Building
Room 210
501 Magazine Street
New Orleans, Louisiana 70130
(Advanced copy - no action required at this time)

Date Signed: DEC 3 1 1992

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CIVIL LITIGATION REPORT

ENVIRONMENTAL PROTECTION AGENCY, REGION 6

INFORMATION PERTINENT TO
ACTION PURSUANT TO SECTION 113 OF THE CLEAN AIR ACT
FOR VIOLATIONS OF
ASBESTOS NESHAPS REGULATIONS
AND PERMIT VIOLATIONS

Civil Action to be filed in the U.S. District Court
for the Eastern District of Louisiana
in New Orleans

Against

OCCIDENTAL CHEMICAL CORPORATION
for actions at its facility in
Taft/Hahnville, Louisiana

LEGAL

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PROGRAM

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DATA SHEET

OCCIDENTAL CHEMICAL CORPORATION
violations at Taft/Hahnville, Louisiana

1. The Statute and regulations which are the basis for the proposed action are:

   The Clean Air Act, 42 U.S.C. §§ 7401 et seq.
   40 C.F.R. Part 61, Subpart M

2. Name and location of intended defendant:

   Occidental Chemical Corporation
   Hwy. 3142 at Hwy. 18
   Taft, Louisiana 70057

3. The proposed relief to be sought:

   A civil penalty for Occidental's past violations of asbestos NESHAPs found at 40 C.F.R. Part 61, Subpart M, and violations of its permit for asbestos operations, and injunctive relief to achieve current compliance.

4. The violations upon which this action is based:

   a. Failure to do observations to monitor for the existence of visible emissions in the areas of potential asbestos emissions, or to keep records of such monitoring as required by 40 C.F.R. §§ 61.144(b)(3), (b)(5), and (b)(7) from February 20, 1991 to April 5, 1991.

   b. Failure to do inspections of air cleaning devices for the existence of conditions indicating malfunctions which could cause asbestos emissions or to keep records of inspections as required by 40 C.F.R. §§ 61.144(b)(4), (b)(5), and (b)(7) from February 20, 1991 to April 9, 1991.

   c. Failure to do inspections of air cleaning devices to the extent of discerning the presence of tears, holes, or abrasions on the filter bag and for the presence of dust deposits on the clean side of the bags caused by asbestos emissions as required by 40 C.F.R. § 61.144(b)(4), from September 18, 1991 to November 20, 1991, thereby concealing emissions violations which were occurring during that period within the meaning of 40 C.F.R. § 61.19.

   d. Failure to properly use and operate the air cleaning devices, from July 8, 1991 to November 20, 1991, in a manner consistent with good air pollution control practice for minimizing emissions, within the meaning of 40 C.F.R. § 61.12(c), 40 C.F.R. § 61.152(a)(2), Louisiana

Admin. Code, Chapter 9, Regulation 905, on Control of Emissions and Emission Standards, and Air Permit No. 362 C (M-1).

e. Failure to submit 2 quarterly reports of visible emissions cataloged by Occidental inspectors between 10/2/91 and 2/11/92, as required by 40 C.F.R. § 61.144(b)(8).

5. Recent contacts with intended defendants, including dates of inspection, information responses, or receipt of evidence which led to decision to initiate enforcement action:

11/21 and 11/22/91 - EPA inspection of Occidental facility

12/18/91 - Letter from L.E. Hebert of Occidental to Minerva De Leon describing work on asbestos dust collector.

2/12/92 - Letter from James Anderson of Occidental to Minerva De Leon in response to requests for documents.

8/18/92 - EPA issues information request under § 114 CAA

8/21/92 - Call from Mike James of Occidental to Mark Forcier of EPA about information request, requesting extension.

9/22/92 - EPA receives response to information request dated 9/17/92 and letter confirming 15 day extension of time to respond to information request per call.

6. Significant national precedential or factual issues:

None.

8. Other aspects of the case which should be highlighted:

None.

9. Date referral was signed by Regional Administrator:
DEC 3 1 1992

10. Identity of lead Regional counsel and technical personnel:

LEGAL

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I. SYNOPSIS OF CASE

Occidental Chemical Corporation ("Occidental") operates a chemical manufacturing facility in Taft/Hahnville, Louisiana involved in the manufacture of chlorine utilizing asbestos diaphragm technology, which is subject to the emissions and work practice standards of the National Emission Standards for Hazardous Air Pollutants (NESHAP) for asbestos, found at 40 C.F.R. Part 61, Subpart M. This operation utilizes a bag-house type of emissions control device to attempt to eliminate asbestos emissions from the work environment during operations involving handling and use of asbestos.

On November 21 and 22, 1991, EPA inspected the Occidental facility, to determine compliance with NSPS standards, NESHAP regulations, existing permit restrictions, and the Louisiana SIP. Relevant to this action they inspected the portions of the facility involving the handling and use, and therefore potential emissions of asbestos as part of the chlorine manufacturing operation. The inspection revealed that some records required to be kept of observational monitoring in the area of potential asbestos emissions were not available at the facility, that records of inspections of the emission control device for asbestos were incomplete and showed improper use and maintenance of the emission controls equipment, and that those inspection reports that were made showed visible emissions which were not reported to the Administrator as required.

In its response to information requests under Section 114 of the Clean Air Act to follow-up on the inspection, Occidental admitted that they did not have records of the required monitoring for some periods, provided copies of those which they did have, and supplied records of work that had been done on the emission controls equipment. The copies of their inspection reports they provided revealed the visible emissions which were not reported. The violations cited herein are those which EPA feels that it has evidence to support at this time.

II. STATUTORY BASES OF REQUEST

The statutory provisions which are applicable to this case are Sections 112 and 113 of the Clean Air Act, as amended in 1990, (herein "the Act"), 42 U.S.C. §§ 7412 and 7413. Pursuant to Section 112 of the Act, the Administrator of EPA created regulations establishing National Emission Standards for Hazardous Air Pollutants (NESHAPs), including work practice standards to achieve maximum amounts of emission reduction. The NESHAPs for asbestos are found at 40 C.F.R. Part 61, Subpart M. Section 112(q)(1) of the Act, 42 U.S.C. § 7412(q)(1), maintains in full force and effect all regulations promulgated under the Clean Air Act prior to the 1990 amendments, unless such regulations are specifically amended thereafter.

Section 113(a)(3)(C), 42 U.S.C. § 7413(a)(3), allows the Administrator to take action (one form of which is to bring a civil action in accordance with § 113(b)) if the Administrator

finds that any person has violated or is in violation of any requirement (other than a SIP requirement) of Subchapter I, Sections 101 through 193 of the Act, 42 U.S.C. §§ 7401 - 7515. Section 113(b) of the Act, 42 U.S.C. § 7413(b), gives the Administrator authority to file a civil action in the appropriate district court of the United States to enforce these regulations or violations of an approved SIP.

A. Applicable Federal Law

The Clean Air Act, as amended in 1990, 42 U.S.C. §§ 7401 *et seq.*, established a comprehensive scheme for pollution prevention as described in Section 101(b) of the Act, 42 U.S.C. § 7401(b). Throughout the Act, the Administrator of the United States Environmental Protection Agency ("EPA") is required by Congress to establish regulations to accomplish the purposes and requirements of the Act. In Section 112(b)(1) of the Act, 42 U.S.C. § 7412(b)(1), Congress established a list of hazardous air pollutants, including asbestos. Section 112(d) of the Act, 42 U.S.C. § 7412(d) requires the Administrator of EPA to promulgate regulations establishing emission standards for those hazardous air pollutants and work practice standards for achieving the greatest possible reduction in emissions of these pollutants. The Administrator promulgated regulations, known as the National Emission Standards for Hazardous Air Pollutants ("NESHAPs"), which include regulations governing the handling and disposal of asbestos, and the control of asbestos emissions, pursuant to former Section 112(a) of the Act, prior

to its most recent amendment by Pub.L. 101-549, November 15, 1990. Congress provided a "savings" provision for those NESHAP regulations existing prior to the 1990 amendments, at Section 112(q)(1) of the Act, 42 U.S.C. § 7412(q)(1), which continues in full force and effect all provisions not superceded by the 1990 amendments. In addition, pursuant to Section 112(l), 42 U.S.C. § 7412(l), the Administrator can approve State programs for enforcement of emissions standards, including, in this case, the program in the State of Louisiana.

These standards are known as the asbestos NESHAPs, and they are found at 40 C.F.R. Part 61, Subpart M. Revisions to the Asbestos NESHAPs were published in 55 Fed. Reg. 48406 (1990), and corrected in the January 16, 1991 Federal Register. The sections applicable to this case are cited in this document as revised through January 16, 1991. Under Section 112, the Administrator is also empowered to delegate to the states his authority under the Act to implement and enforce these emission standards and retains the power to enforce the provisions of any emission standards promulgated under the Act.

Pursuant to Section 113 of the Act, 42 U.S.C. § 7413, the Administrator may seek appropriate enforcement action against any person who violates, or is the owner or operator of a source which violates, any requirement or prohibition of the statutory and regulatory requirements of the Act. Pursuant to Section 113(a) of the Act,

> [w]henever...the Administrator finds that any person has violated or is in violation of any other requirement or prohibition of [Subchapter I, 42 U.S.C. § 7401-7515] ... including but not limited to any rule... promulgated, issued or approved under [that Subchapter] ...the Administrator may... (C) bring a civil action in accordance with subsection (b) of [Section 113]...

42 U.S.C. § 7413(a)(3) (emphasis added). Pursuant to Section 113(b) of the Act, 42 U.S.C. § 7413(b),

> The Administrator...shall, as appropriate, in the case of any person which is the owner or operator of...a major stationary source, and may, in the case of any other person, commence a civil action for a permanent or temporary injunction, or to assess and recover a civil penalty of not more than $25,000 per day for each violation, or both... in any of the following instances:
>
> > ...(2) Whenever such person has violated, or is in violation of, any requirement or prohibition of [Subchapter I of the Act, 42 U.S.C. §§ 7401-7515] ...including, but not limited to, a requirement or prohibition of any rule...

42 U.S.C. § 7413(b). Each day of violation constitutes a separate violation for the purpose of calculating any such penalty.

B. Jurisdiction and Venue

1. Jurisdiction

Jurisdiction for this action is established under Section 113(b) of the Act, 42 U.S.C. § 7413(b), which authorizes the Administrator to bring a civil action whenever "the Administrator finds that any person has violated, or is in violation of, any other requirement or prohibition of [Subchapter I, Sections 101 through 193 of the Act, 42 U.S.C. § 7401 through 7515]..". Subsection (b) of Section 113, 42 U.S.C. § 7413(b) provides that:

> The Administrator shall, as appropriate,... commence a civil action for a permanent or temporary injunction, or to assess and recover a civil penalty ...
>
> ...Any action under this subsection may be brought in the district court of the United States for the district in which the violation is alleged to have occurred, or is occurring, or in which the defendant resides, or where the defendant's principal place of business is located, and such court shall have jurisdiction to restrain such violation, to require compliance, to assess such civil penalty... and to award any other appropriate relief.

42 U.S.C. § 7413(b) (emphasis added). 28 U.S.C. § 1345 confers original jurisdiction on the district court of the United States for civil actions commenced by the United States.

2. Venue

Proper venue for any action brought under Section 113(b) is "the district in which the violation is alleged to have occurred, or is occurring, or in which the defendant resides, or where the defendant's principal place of business is located..." Venue is also proper for a corporate defendant under 28 U.S.C. § 1391(c) in any jurisdiction in which it is licensed to do business or is engaged in doing business. The violations occurred in the area of Taft/Hahnville, St. Charles Parish, Louisiana, at a Facility which is considered Occidental's place of business for the purposes of this action. Therefore, this case is properly brought in the United States District Court for the Eastern District of Louisiana in New Orleans.

C. Cross-Media Coordination

The inspection conducted by EPA at the Occidental Facility on November 21 and 22, 1991 was a single media inspection and no concurrent EPA enforcement actions in other media related to this facility are being conducted at this time.

III. DESCRIPTION OF DEFENDANT

A. Description of Defendant

Occidental Chemical Corporation ("Occidental") is a New York corporation and a multi-divisional company with corporate division headquarters offices in Dallas, Texas:

Occidental Chemical Corporation
5005 L B J Freeway
18th Floor
Dallas, Texas 75244 (214) 404-3800

The mailing address of the Dallas headquarters office is:

Occidental Chemical Corporation
P.O. Box 809050
Dallas, Texas 75380

Among other things, the division of Occidental based in Dallas operates the chemical manufacturing facility in Taft/Hahnville, Louisiana which is the subject of this action.

B. Agent for Service of Process

The Registered Agent for service of process for Occidental in Louisiana is:

C T Corporation Systems
601 Poydras St.
New Orleans, LA 70130

C. Defendant's Legal Counsel

Occidental's in-house legal counsel is:

Michael A. James
Assistant General Counsel
Occidental Chemical Corporation
5005 L B J Freeway
18th Floor
Dallas, TX 75244 (214) 404-3966

D. Description of Facility

The street address of the facility is:

Occidental Chemical Corporation
Hwy. 3142 at Hwy. 18
Taft, Louisiana 70057

The mailing address of the facility is:

Occidental Chemical Corporation
P.O. Box 74
Hahnville, Louisiana 70094

The chemical manufacturing facility which Occidental operates in Taft/Hahnville, Louisiana is part of the Electrochemicals and Specialty Products Division of Occidental Chemical, and is involved in the manufacture of chlorine utilizing asbestos diaphragm technology.

The chlorine process consists of taking raw sodium chlorine brine, and treating it with sodium carbonate and sodium hydroxide to precipitate out impurities such as calcium carbonate and magnesium hydroxide, which are settled out in clarifiers. The treated brine is then filtered and fed through an electrolytic cell where chlorine gas and hydrogen gas are produced, leaving a weak caustic soda solution. The produced chlorine gas is then cooled, dried, and purified with liquid

chlorine before it is compressed, cooled to a liquid, and stored for sale or use.

As part of the chlorine manufacturing process, the electrodes for the electrolytic cells are coated with a slurry made with asbestos to create a "diaphragm" electrolytic cell through which the brine and chemicals are passed. Dry asbestos is brought to the facility in packages, which are opened and the asbestos is added to a wet solution to create the slurry. The handling of the dry asbestos, as part of the coating process, and the stripping of asbestos from the electrodes in a hardened form as part of the asbestos removal process in the Cell Renewal Unit, create the potential for asbestos emissions into the air in and from the process areas. The operation is conducted in a partially-enclosed structure, and utilizes a bag-house type of device to attempt to eliminate asbestos emissions from the work environment. The operation and maintenance of this unit are the objects of the violations cited herein.

E. Identity of Other Potential Defendants

There are no other potential defendants in this case that EPA is aware of at this time.

IV. DESCRIPTION OF VIOLATIONS

A. Nature of Violations

The violations cited at the Occidental facility were:

I. - Failure to do observations to monitor for the existence of visible emissions in the areas of potential asbestos emissions, or to keep records of such monitoring as required by 40 C.F.R. §§ 61.144(b)(3), (b)(5), and (b)(7) from February 20, 1991 to April 5, 1991;

II. - Failure to do inspections of air cleaning devices for the existence of conditions indicating malfunctions which could cause asbestos emissions or to keep records of inspections as required by 40 C.F.R. §§ 61.144(b)(4), (b)(5), and (b)(7) from February 20, 1991 to April 9, 1991;

III. - Failure to do inspections of air cleaning devices to the extent of opening the device to discern the presence of tears, holes, or abrasions on the filter bag and the presence of dust deposits on the clean side of the bags caused by asbestos emissions, as required by 40 C.F.R. § 61.144(b)(4), from September 18, 1991 to November 20, 1991;

IV. - Failure to properly use and operate the air cleaning devices installed at the facility, from July 8, 1991 to November 20, 1991, in a manner consistent with good air pollution control practice for minimizing emissions, within the meaning of 40 C.F.R. § 61.12(c), 40 C.F.R. § 61.152(a)(2), Louisiana Administrative Code ("LAC"), Chapter 9, Rule 905, on Control of Emissions and Emission Standards, and Air Permit No. 362 C (M-1); and

V. - Failure to submit 2 quarterly reports of visible emissions cataloged by Occidental inspectors between 10/2/91 and 2/11/92, as required by 40 C.F.R. § 61.144(b)(8).

40 C.F.R. Part 61 relates to National Emission Standards for Hazardous Air Pollutants (NESHAPS), promulgated under Section 112 of the Clean Air Act, 42 U.S.C. § 7412. Subpart M of Part 61, 40 C.F.R. §§ 61.140 - 61.157, contain emissions and work practice standards relating to asbestos. The regulations included in 40 C.F.R. § 61.144 relate to the NESHAP standards for manufacturing with asbestos. Pursuant to 40 C.F.R. § 61.144(a)(9), Occidental and the chlorine manufacturing process which utilizes asbestos diaphragm technology at their Taft/Hahnville facility are subject to those regulations.

According to 40 C.F.R. § 61.144(b),

> Each owner or operator of any manufacturing operation to which this section applies shall:
>
> ...(3) Monitor each potential source of asbestos emissions from any part of the manufacturing facility, including air cleaning devices, process equipment, and buildings housing material processing and handling equipment, at least once each day during the daylight hours for visible emissions to the outside air during periods of operation. The monitoring shall be by visual observation of at least 15 seconds duration per source of emissions.
>
> ...(5) [The owner or operator shall also] maintain records of the results of visible emission monitoring...
>
> ...(7) Retain a copy of all monitoring and inspection records for at least 2 years.

40 C.F.R. §§ 61.144(b)(3), (b)(5), and (b)(7) (emphasis added). Occidental has failed to produce records of monitoring inspections at their facility during the period from February 20, 1991 through April 5, 1991 in response to information requests under Section 114 of the Act, thereby indicating that they failed to do visible emissions monitoring of potential

emissions sources as required by § 61.144(b) at all during that period. And, even if they had done the required inspections and made the required records, they did not keep them for the required period of time or make them available to EPA on request pursuant to the regulations.

Also, according to 40 C.F.R. § 61.144(b),

> Each owner or operator of any manufacturing operation to which this section applies shall:
>
> ...(2) Use the methods specified by § 61.152 [relating to air cleaning and filtering devices] to clean emissions from [their] operations containing particulate asbestos material before they escape to or are vented to the outside air.
>
> ...(4) Inspect each air cleaning device at least once each week for proper operation and for changes that would signal the potential for malfunctions, including, to the maximum extent possible... the presence of tears, holes, and abrasions in filter bags and for dust deposits on the clean side of [filter] bags. ...For air cleaning devices that cannot be inspected on a weekly basis... submit to the Administrator ...a written maintenance plan...
>
> ...(5) [The owner or operator shall also] maintain records of the results of ...air cleaning device inspections ...
>
> ...(7) Retain a copy of all monitoring and inspection records for at least 2 years.

40 C.F.R. §§ 61.144(b)(2), (b)(4), (b)(5), and (b)(7) (1991) (emphasis added). Occidental has admitted in response to information requests under Section 114 of the Act that it failed to keep records of inspections of air cleaning devices at its facility during the period from February 1991 through April 1991, therefore indicating that it failed to do inspections of its air cleaning devices as required by § 61.144(b) at all during that period. Again, even if they had done the required inspections and made the required records,

they did not keep them for the required period of time or make them available to EPA on request pursuant to the regulations.

Region 6 has determined not to cite a separate violation for failure to keep records pursuant to 40 C.F.R. § 61.144(b)(5), failure to make records available upon request pursuant to 40 C.F.R. § 61.144(b)(6), failure to maintain records for at least two years pursuant to 40 C.F.R. § 61.144(b)(7), and failure to notify the Administrator of visible emissions detected during inspections pursuant to 40 C.F.R. § 61.144(b)(8). This is despite the fact that none of these requirements was met during the time when Occidental failed to monitor. It could be considered repetitive and duplicitous to cite and assess a separate penalty for a failure to make, keep, furnish, or report the record of an action that was not performed, when the failure to act has been cited. They are, however, cited in the alternative during those times when monitoring or inspections were done.

According to 40 C.F.R. § 61.12(c),

> Each owner or operator of each stationary source shall maintain and operate the source, including associated equipment for air pollution control, in an manner consistent with good air pollution practice for minimizing emissions. Determination of whether acceptable operating and maintenance procedures are being used will be based on information available to the Administrator which may include, but is not limited to, monitoring results, review of operating and maintenance procedures, and inspection of the source.

40 C.F.R. § 61.12(c) (1991) (emphasis added).

Occidental failed to repair its emissions control equipment, despite indication in its own inspection reports that the

equipment was malfunctioning, overloaded, and in need of repair and maintenance, to the extent that the required inspections were not possible because of the condition of the equipment.

In addition to the requirements of 40 C.F.R. § 61.12(c), and the normal requirements to maintain emission control equipment in the applicable Louisiana regulations, Air Permit No. 362 C (M-1), issued to the facility in 1990 for the operation of the processes in question, contains special conditions that require Occidental to control asbestos emissions by compliance with all provisions of the LAC regulations, 33 L.A.C. Chapter 25, relating to LESHAPS, specifically pertaining to asbestos. Chapter 25, Section 2607 requires that all air cleaning equipment must be properly installed, used, operated, and maintained. Another special condition of the Permit is that Occidental comply with all NESHAP regulations found at 40 C.F.R. § 61.144 related to asbestos manufacturing, which they did not, as shown herein.

According to the inspection report, which was based on the statements of the foreman of the operations to the inspector, the baghouse for asbestos emissions was not serviced for approximately 10 years, and was not maintained, as evidenced by the terrible condition of it observed by the inspector and recorded in the inspection records made by the facility staff. Occidental continued to operate the equipment, despite the malfunctions indicated in the inspection reports, for many

months without repair or maintenance. By doing so, Occidental can actually cause greater emissions to be released to the outside air through the malfunctioning equipment than would have been released without it.

Under 40 C.F.R. § 61.144(b),

> Each owner or operator of any manufacturing operation to which this section applies shall:
>
> ...(8) Submit quarterly a copy of the visible emission monitoring records to the Administrator if visible emissions occurred during the report period. Quarterly reports shall be postmarked no later than the 30th day following the end of the calendar quarter.

40 C.F.R. § 61.144(b)(8) (1991) (emphasis added). The inspection reports kept later indicated that Occidental also failed to submit quarterly reports of visible emissions cataloged by Occidental inspectors between 10/2/91 and 2/11/92, as required by 40 C.F.R. § 61.144(b)(8). This time period spans well into two calendar quarters. There will likely be an issue of law to be determined - specifically the definition of "visible emissions" within the meaning of 40 C.F.R. § 61.144 (b)(8), since Occidental recorded the visible emissions, but stated at the same time that none occurred, based on their understanding of the definition. If this action were to go to litigation, this issue would likely be raised, and the court would have to decide, as a matter of law, whether Occidental's interpretation of the definition is correct. (See discussion in Section X(G) on Prima Facie Case and Evidence).

B. Date and Manner Violations Identified

On November 21 and 22, 1991, EPA inspectors, in conjunction

with LDEQ inspectors, inspected the Occidental facility without notice. Specifically, they investigated portions of the facility involving the use and potential emissions of asbestos as part of the chlorine manufacturing operation. The inspectors noted that a baghouse at the facility may not have been maintained properly, suspecting that asbestos dust was collecting on the outside of the filter bags, indicating a malfunction of some kind. The inspectors requested to see copies of the inspection reports for the baghouse, and visible emissions monitoring records for the areas of operation involving asbestos. Records of observational monitoring, required in the area of potential asbestos emissions by 40 C.F.R. § 61.144, were not available at the facility. This indicated also that the observations to monitor for the possibility of visible emissions of asbestos in the areas where asbestos emissions could potentially occur, had not been done as required by 40 C.F.R. § 61.144(b)(3).

In response to information requests sent them under Section 114 of the Act to follow-up on the inspection, Occidental provided copies of records of monitoring beginning in and done after April 5, 1991. The requirements for monitoring and record-keeping, however, were promulgated November 20, 1990, 55 Fed. Reg. 48419, and allowed 90 days in which to begin the required monitoring - until February 20, 1991. Occidental admitted in their response to EPA's request that they did not have records of the required monitoring for the period between February 20,

1991 and April 5, 1991. Occidental also produced inspection reports made after that time which showed notation of visible emissions of asbestos throughout the work areas, which were not reported to the Administrator according to the requirements of § 61.144(b)(8).

Other observations were made by the inspectors at the facility, but no other violations have been documented sufficiently to cite them in an enforcement action at this time.

C. Dates and Duration of Violations

The violations noted above are considered to have occurred at the Occidental Taft/Hahnville facility at various times between February 20, 1991 (the effective date of the regulations which require that Occidental begin monitoring, record-keeping and maintaining of its emission control equipment) and the end of November, 1991, when the inspection of the facility occurred.

Each of the violations cited herein is considered to be a past violation which occurred during the period cited, based on the information already in the possession of EPA, and not considered to be continuing to the present. However, no comprehensive verification of compliance has been done since the November 1991 inspection of the facility, and the violations cited may continue past the times cited herein. Thus, Occidental may not currently be in compliance with the requirements cited. This would have no effect on establishing

liability, but the penalty described herein has been calculated on the basis of each violation being assessed as a past violation. (See Section VI on the Penalty.) If a subsequent inspection or new information reveals that the violations continued for a longer period, the penalty calculation can be adjusted prior to trial to reflect a longer period and corresponding larger penalty amount.

D. Environmental Consequences

The health effects of asbestos exposure are well known, and are listed below for informational purposes. There has been no evidence produced yet in this case that there was any actual exposure or health effect. However, it can be inferred that there has been an increase in the risk of exposure or environmental or health effects as a result of operations of Occidental at the facility which increased (or failed to control) the release of asbestos emissions into the air from the processes at the plant.

Asbestos - Health Effects

The following health effects information, excerpted from the "1988 NESHAPs Asbestos Demolition and Renovation Inspection Workshop", prepared by Alliance Technologies Corporation, illustrates the seriousness of exposure to particulate asbestos. Asbestos is a known environmental carcinogen and inhalation of asbestos fibers may increase the risk of serious irreversible disease. Inhaled asbestos fibers have been responsible for:

Asbestosis: A noncancerous respiratory disease, asbestosis is characterized by scarring of the lung tissue. There is a 20 to 30 year latency period associated with the onset of this disease. Symptoms include shortness of breath and rales (a dry crackling sound in the lungs during inhalation). Alone, asbestosis is not usually fatal.

Lung Cancer: Lung cancer may occur independent of asbestosis. Studies have shown the risk of lung cancer directly increases with cumulative exposure to asbestos. Also, there is a 20 to 30 year latency period from time of exposure to detection of the disease. Symptoms include a cough or change in cough habit and/or persistent chest pain. Lung cancer is often fatal.

Mesothelioma: A rare cancer, mesothelioma involves the thin membrane lining of the chest and abdomen. Mesothelioma has been observed almost exclusively when there has been a history of exposure to asbestos. It has been noted that the earlier one begins inhaling asbestos, the higher the likelihood of developing mesothelioma in later life. Thus, there is concern over exposure of children to asbestos. The average latency period for this disease is 15 to 20 years. Symptoms include shortness in breath, pain in walls of chest, and abdominal pain. Mesothelioma is always fatal.

Other Cancers: It is suspected that exposure to asbestos fibers may cause malignant tumors or cancer of the esophagus, larynx, mouth, stomach, colon, and kidney. Scientists theorize that inhaled asbestos fibers are absorbed into the blood stream and carried to these parts of the body.

Safe Levels: Researchers report that there **does not appear to be a safe level** of exposure to asbestos. A consensus has not been reached concerning the causal relationship between malignant or non-malignant respiratory diseases and the following exposure parameters: fiber size, fiber type, fiber concentration, or duration of exposure. It has been estimated by Dr. Irving Selikoff of Mt. Sinai Hospital that, by the end of the century, an American will die of asbestos-related disease every hour.

Synergistic Effects: The combined effects of cigarette smoking and asbestos exposure have been shown to cause a much higher incidence of lung cancer than either of the two individually.

1. Actual Impact

There is no current data which indicates any actual immediate or imminently deleterious environmental or health effects as a result of the inadequately conducted asbestos operations or improperly maintained asbestos emissions control equipment at the Occidental facility. However, it is EPA's position that the operation of these items in violation of regulations created an additional risk of harm to human health by facilitating emissions and thus potential exposures, even though such risk has not currently been quantified. As stated above, there is no known safe level of asbestos exposure.

E. Pending Regulatory Changes

None are anticipated at this time.

V. ENFORCEMENT HISTORY OF DEFENDANT AND PRE-REFERRAL NEGOTIATIONS

A. Recent Contacts with Defendant by EPA:

- November 21 and 22, 1991 - EPA conducted an unannounced inspection of Occidental facility looking for NESHAP, NSPS, and LAC/SIP compliance or violations.

- December 18, 1991 - Letter from L.E. Hebert of Occidental to Minerva De Leon describing work on asbestos dust collector.

- December 20, 1991 - Letter from John Newton of LDEQ to T.H. Morrow of Occidental stating that LDEQ had found no violations during its November 21, 1991 annual air quality compliance determination inspection of the Occidental facility.

- February 12, 1992 - Letter from James Anderson of Occidental to Minerva De Leon in response to requests for documents during inspection.

- August 18, 1992 - EPA issues information request to Occidental under § 114 of the Clean Air Act.

- August 21, 1992 - Call from Mike James of Occidental to Mark Forcier of EPA about information request, request for extension.

- September 22, 1992 - EPA receives response to information request dated 9/17/92, and a letter is sent by Mark Forcier confirming the 15 day extension of time to respond to information request granted as a result of Mike James' call.

B. Pre-Referral Negotiations

Pre-referral negotiations will be held once Occidental has received a Notice of Violation and can respond to EPA's assertions, and pre-filing negotiations will be held in line with Executive Order 12778 of October 23, 1991, once this PRN litigation report is approved by DOJ and the EPA Office of Enforcement.

C. Contacts with Defendant by State, Local Agencies and Citizens, and Actions Taken

EPA is not aware of any such contacts or actions taken which relate to this case.

D. Prior Enforcement History of Defendants

EPA is unaware of any previous enforcement actions by EPA or the Louisiana Department of Environmental Quality against Occidental that would be relevant to this action.

VI. PENALTIES

A. Civil Penalty Authority

Pursuant to Section 113(b) of the Act,

> The Administrator...shall, as appropriate, ...commence a civil action for a permanent or temporary injunction, or to assess and recover a civil penalty of not more than $25,000 per day for each violation, or both...

42 U.S.C. § 7413(b). The statutory maximum amount, based on assumptions of duration of violations, would be:

Twenty One Million, Seven Hundred and Fifty Thousand dollars ($21,750,000). This includes 5 violations, encompassing approximately 870 days of violation total[1], times the $25,000 daily statutory limit per day for each violation, as established in Section 113(b) of the Clean Air Act, 42 U.S.C. § 7413(b).

B. Penalty Analysis/Calculations

The proposed penalty amount sought to be assessed for the actions of Occidental, calculated based on procedures

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[1] The days of violation for each Count were:
Count I - February 20, 1991 to April 5, 1991 - 44 days;
Count II - February 20, 1991 to April 9, 1991 - 48 days;
Count III - September 18, 1991 to November 20, 1991 - 63 days;
Count IV - July 8, 1991 to November 20, 1991 - 135 days;
Count V - 1st report - Jan. 31, 1992 to Dec. 31, 1992 - 335 days;
and 2nd report - March 31, 1992 to Dec. 31, 1992 - 245 days.

established in the October 25, 1990 Clean Air Act Stationary Source Civil Penalty Policy, is **Two Hundred and Twenty Six Thousand dollars ($ 226,000)**. The gravity portion of the penalty for each count is based, first, on the importance of the type of violations to the regulatory scheme. As described on page 13 of the Policy, violations for failure to monitor/ inspect or keep records are assessed as $15,000 per violation. For the three counts of failure to monitor/inspect or keep records, the total amount for importance to the regulatory scheme would be $45,000. The violation for improper operation of control equipment is assessed as $15,000 per violation. The violations for failure to report visible emissions are assessed as $15,000 per violation, or a total of $30,000. Thus, the total portion of the gravity component for importance to the regulatory scheme is $90,000.

The second part of the gravity factor considered applicable is the length of violation. For calculation of the statutory maximum penalty this is counted on a daily basis, beginning on the day compliance was specified in the regulations. For the purposes of the Penalty Policy, however, the duration of violation is calculated on a basis of months (or any part thereof), as described in a chart. According to page 12 of the Policy, the length of time of violation for Counts I, II, and III would be in the 2-3 month category, and would increase the amount of the penalty $8,000 for each of these violations, or a total of $24,000. The length of time of violation for Count IV

would be in the 4-6 month category, and would increase the amount of the penalty $12,000 for that violation. The length of time for each violation for Count V would be in the 7-12 month category, and would increase the amount of the penalty $15,000 for each violation, or a total of $30,000. Thus, the total portion of the gravity component for length of time of violation is $66,000.

The last factor required to be considered as part of the gravity component of the penalty is the 'size of violator'. According to pages 14 and 15 of the Penalty Policy, a violator with a net worth of just under $100 million dollars, such as Occidental Chemical Corporation (based on Dun & Bradstreet reports included in Exhibits), would be assessed an additional amount equal to either $70,000, or "50% of the preliminary deterrence amount"[2] of the penalty, whichever is less. In this case, $70,000 is less than the total of the other elements of the preliminary deterrence amount and would, therefore, be less than 50 percent of the total preliminary deterrence amount of the penalty, which is also the total gravity component ($196,000), since no other factors were considered applicable in this case. Therefore, $70,000 is the appropriate amount to be assessed for the size of violator component.

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[2] The Preliminary Deterrence Amount is the described on page 4 of the Penalty Policy as the total of the gravity component and the economic benefit component. In this case, the economic benefit component was less than the $5,000, and was therefore was considered nominal and not included as a separate factor in the penalty calculation. See page 7 of the Policy.

The calculated penalty is broken down as follows:

Count	Importance to the regulatory scheme	+	length of time of violation	=	
Count I	$ 15,000		$ 8,000		$ 23,000
Count II	15,000		8,000		23,000
Count III	15,000		8,000		23,000
Count IV	15,000		12,000		27,000
Count V (2)	30,000		30,000		60,000
	$ 90,000	+	66,000	=	$156,000
			Size of Violator	+	70,000
			Total		$226,000

Other adjustment factors, such as ability to pay and degree of willfulness or negligence were not considered applicable. Litigation risk was not considered in the above calculation and may have to be assessed in order to determine a "bottom line" penalty for negotiation and settlement purposes at a future date.

VII. OTHER ISSUES

A. Issues of National or Precedential Significance

There are no issues of national or precedential significance which relate to this case at this time.

B. Bankruptcy Petitions

To date, no bankruptcy petitions have been filed by defendant, and none are anticipated.

VIII. SIGNIFICANCE OF REFERRAL

A. Primary Justification For Referral

Although there has been no evidence produced yet that there was any actual exposure or environmental or health effect from Occidental's failure to monitor for asbestos emissions, it is certain that there was an increase in the risk of exposure or environmental or health effects as a result of operations of Occidental at the facility. The purpose of the regulations violated in this case is to make possible a determination that there is no risk of exposure from visible emissions of asbestos, by observing whether there were visible emissions, and the reporting, under 40 C.F.R. § 61.144(b)(8), any observed emissions. Unless these regulations are complied with, EPA cannot fully perform the function entrusted to it under the statute.

B. Threats To The Regulatory Structure

Beyond the direct threat to human health and the environment, emphasis must be given to the enforcement policies underlying the Act. Even if the danger to human health or the environment were insignificant in this case, which it is not, the violations of the requirements cited herein may have serious implications, where their continuation may tend to undermine the statutory and regulatory purposes or procedures established by Congress and the Agency for implementing the Air Enforcement program embodied in the amended Clean Air Act. It is the policy of the agency, as expressed in the body of its Clean Air

Act Stationary Source Civil Penalty Policy, that these types of violations receive significant penalties as a deterrent to entities, who would ignore their responsibility to the law and the public interest. In this action the Agency asks for penalties which, in part, are to remedy the damage of past actions, or inactions, of Occidental and its owners and operators to the regulatory process, and, in part, to serve as a deterrent to Occidental and others from future violations.

C. Program Strategy

The presentation of the litigation report related to this case for potential civil action is consistent with the March 31, 1988 "Revised Asbestos NESHAP Strategy" issued by EPA's Office of Air Quality Planning & Standards. This strategy is intended to induce an increased rate of asbestos related enforcement action in the Regions and delegated agencies.

D. Agency Priority

As a potential asbestos NESHAP violator, Occidental is a "significant violator" as defined in the February 7, 1992 EPA guidance document on "Timely and Appropriate Enforcement Response to Significant Air Pollution Violators". EPA policy places high priority on bringing significant violators of the asbestos NESHAP standards into compliance with injunctive relief, combined with the deterrent measures of payment of civil penalties. As a significant violator, Occidental is subject to the timely and appropriate guidelines for internal

processing and filing described in the February 7, 1992 "Timely and Appropriate" guidance, and is thus subject to the priorities described therein.

E. Program Initiatives Outside of Stated Strategy

None.

F. Relation of Referral to Previous or Concurrent Cases or Actions

EPA is investigating possible violations of Clean Air Act regulations at the Occidental Chemical Corporation facility in Deer Park, Texas. It is not known at this time whether an enforcement action will be taken against Occidental for actions at that facility or whether such enforcement will have any relation to this action. If the other action were pursued, EPA could seek to negotiate some type of joint settlement arrangement with Occidental. There is, however, no information upon which to make such a determination at this time.

IX. LITIGATION STRATEGY

A. Need for Injunctive Relief

The litigation team does not known at this time whether it will be necessary to pursue injunctive relief to achieve compliance by Occidental with the requirements of 40 C.F.R. Part 61, Subpart M. It appears from Occidental's response to EPA's information request that the inspection and record-keeping violations which were cited against Occidental occurred only for a period of time and Occidental was currently keeping the

required records at the time they responded. As to the inspections and emission controls maintenance violations, they should be remedied by Occidental repairing and properly operating the emission control equipment (baghouse). Occidental has produced records of work on the baghouse, but there is no current evidence to support a conclusion that Occidental is in current compliance with those regulations. Finally, as to the violations for failure to quarterly report recorded visible emissions, it has not been determined what remedy EPA would expect to constitute current compliance. EPA may simply require that the reports, which should have been made within 30 days of the end of the calendar quarter, be made late, and that future reports be made timely based on the correct (EPA's) interpretation of what constitutes "visible emissions" within the meaning of 40 C.F.R. § 61.144(b)(8), and Part 61 in general, as a matter of law.

B. Settlement Potential/Plan for Settlement

According to Executive Order 12778 of October 23, 1991, the United States is required to have settlement discussions with each potential defendant prior to the filing of an action. EPA anticipates that Occidental will be willing to negotiate with EPA on the factual and legal issues of this case prior to litigation, and settlement prior to filing is expected. EPA has obtained information through information requests under Section 114 of the Act and will obtain additional information through meetings with Occidental prior to filing, rather than

to rely on discovery after filing. Failing settlement prior to filing, Occidental will likely continue to negotiate toward settlement after filing due to the costs of litigation.

C. Need for Interrogatories and Request for Admissions

Any discovery through interrogatories should be simple and straight forward and, in most cases, the facts of the violations cited can be established without them, based on inspections, documents supplied in response to information requests, and admissions of Occidental prior to filing. Requests for admissions can likely establish many elements, and such requests, along with stipulations, may be sufficient to put forth a *prima facie* case for liability.

D. Potential for Summary Judgement

Potential for summary judgment for liability against Occidental is good since there appear to be no genuine issues of material fact to be resolved in relation to the violations shown below, unless additional information is produced by Occidental. The assessment of penalties could present an issue of fact about the reasonableness of the penalty and the application of penalty guidance in calculation. If the United States filed a Motion for Summary Judgement, however, it would include a request for the court to assess a penalty based on the Clean Air Act Stationary Source Penalty Policy.

E. Need for Preliminary Injunction

No irreparable harm will occur if there is no immediate action, therefore a preliminary injunction is not necessary.

F. Identity of Potential Witnesses

1. Government's Case

The following individuals are expected to be available to testify on behalf of the United States:

a. Ms. Minerva De Leon,
Environmental Scientist
EPA Air Inspector
Facilities Compliance Section (6E-HC)
U.S. EPA, Region 6
10625 Fallstone Rd.
Houston, TX 77099 (713) 983-2149

Ms. De Leon is the EPA inspector who conducted the inspection of the Occidental Facility. She should be able to testify about her observations and actions at the facility and the content of the inspection report.

b. Ms. Ann T. Brannon
Environmental Scientist
Air Inspector
LDEQ, Southwest Region (504) 838-5361

Ann Brannon is one of the inspectors who visited the facility on November 21 and 22, 1991, and should be able to testify as to her observations at the facility, as well as to corroborate the observations of the EPA inspector at the facility, and the statements made to the inspectors by the Occidental personnel at the facility.

c. Mr. Gary J. Northington
Environmental Scientist
Air Inspector
LDEQ, Southwest Region (504) 838-5361

Gary Northington is one of the inspectors who visited the facility on November 21 and 22, 1991, and should be able to testify as to his observations at the facility, as well as to corroborate the observations of the EPA inspector, and the statements made to the inspectors by the Occidental personnel at the facility.

d. Mr. Paul Henderson
Environmental Engineer
Air Enforcement Section (6T-EC)
U.S. Environmental Protection Agency
Region 6 - Dallas (214) 655-7544

Paul Henderson should be able to testify as to his evaluation of the contents of the Air Inspection Report, his evaluation of the evidence obtained by EPA through § 114 requests, and his application of the Clean Air Act Stationary Source Civil Penalty Policy to the facts to arrive at the penalty sought to be assessed by EPA (other than the statutory maximum penalty).

2. Defendant's Case

The identity and possible content of the testimony of witnesses for Occidental are unknown at this time. It is anticipated that the following plant personnel might be able to testify about conditions, policies, and procedures at the facility, as well as the events on the day of the EPA/LDEQ inspection.

T. H. Morrow
- Plant Manager of the Occidental Taft facility. (504) 783-7200

James A. Anderson
- Environmental Supervisor of the Occidental facility who was present at the November 21-22, 1992 inspection of the facility. (504) 783-7384

Leslie Hebert, Jr.
- Environmental Engineer at the Occidental facility who was present at the November 21-22, 1992 inspection of the facility. (504) 783-7384

Unnamed facility personnel who conducted monitoring and inspections at the facility, but are identified in the documents only by their initials. The names of these persons will have to be discovered by additional information requests or in discovery before trial.

G. **Elements of Prima Facie Case** and Evidence

Pursuant to Section 113(a)(3) of the Act,

> [w]henever...the Administrator finds that any person has violated or is in violation of any other requirement or prohibition of [Subchapter I, 42 U.S.C. § 7401-7515] ... including but not limited to any rule... promulgated, issued or approved under [that Subchapter] ...the Administrator may... (C) bring a civil action in accordance with subsection (b) of [Section 113]...

42 U.S.C. § 7413(a)(3) (emphasis added). Pursuant to Section 113(b) of the Clean Air Act, the Administrator

> shall, as appropriate, in the case of any person who is the owner or operator of an affected source, a major emitting source, or a major stationary source[3], and may, in the case of any other person, commence a civil action for a permanent or temporary injunction, or to assess and recover a civil penalty of not more than $25,000 per day for each violation, or both, in any of the following instances:
>
> ...(2) Whenever such person has violated, or is in violation of, any requirement or prohibition of [Subchapter I of the Act, 42 U.S.C. §§ 7401-7515] ...including, but not limited to, a requirement or prohibition of any rule, order, waiver, or permit...
>
> ...Notice of commencement of the action must be given to the appropriate state air pollution control agency [in this case, the Louisiana Dept. of Environmental Quality].

42 U.S.C. § 7413(b) (emphasis added). The elements which must be proven in order to establish a *prima facie* case against Occidental under § 113(b), are:

1. **That Occidental is a "person" within the meaning of Sections 113(a) and (b), 42 U.S.C. § 7413(a)-(b):**

   a. **Occidental Chemical Corporation is a corporation.** EPA can present a statement from the Secretary of State showing that Occidental is a corporation organized under the laws of the State of New York and registered to do

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[3] The Occidental facility is listed as a "major stationary source" by the Air Facility System (AFS) of the Aerometric Information Retrieval System (AIRS), a national computer database for air pollution enforcement information maintained by EPA.

business in Louisiana.

b. **As a corporation, Defendant is therefore, by definition, a "person" as that term is defined in Section 302(e) of the Act, 42 U.S.C. § 7602(e).**

2. **That Occidental is the 'owner or operator' of the facility at which the violations were discovered.**

"Owner or operator" means any person who owns, leases, operates, controls, or supervises a stationary source. 42 U.S.C. § 112(a)(9). Defendant will likely admit this. If not, EPA can present documents from a title search and admissions of Occidental in correspondence with EPA which prove that at all times relevant to this Complaint, Defendant has been the "owner" and "operator" of the Occidental Chemical Corporation facility in Taft/Hahnville Louisiana, a stationary source, within the meaning of Section 113 of the Act, 42 U.S.C. § 7413, and 40 C.F.R. Part 61.

3. **That the Occidental Facility is subject to the regulations cited: <u>Asbestos NESHAPs</u> - 40 C.F.R. Part 61, Subpart M, and similar LAC (LESHAP) Regulations:**

a. **Pursuant to Section 112 of the Clean Air Act, 42 U.S.C. § 7412, the Administrator promulgated regulations** and emission standards known as the National Emission Standards for Hazardous Air Pollutants (NESHAPs) which govern the control of emissions and the handling and

disposal of hazardous materials, including asbestos (asbestos NESHAPs), **found at 40 C.F.R. Part 61, Subpart M.** Defendant is precluded from challenging the validity or authority of any of the regulations promulgated under the Act by Section 307(b)(1) of the Act 42 U.S.C. § 7607(b)(1) limiting the time and court of any such challenge, and by the Administrative Procedures Act, 5 U.S.C. §§ 552 *et seq.*.

b. **Within Subpart M, 40 C.F.R. § 61.140 provides that 40 C.F.R. Part 61, relating to asbestos NESHAPs, applies to those sources specified in 40 C.F.R. §§ 61.142 through 61.151, 61.154, and 61.155.**

c. **40 C.F.R. § 61.144 describes standards applicable to "manufacturing operations using commercial asbestos."**

EPA must show that a portion of Defendant's Facility is a "manufacturing operation using commercial asbestos" within the meaning of 40 C.F.R. § 61.144.

(1) **'Manufacturing' is "the combining of commercial asbestos[4]...with any other material(s)...and the processing of this combination into a product. Chlorine production is considered a part of manufacturing." 40 C.F.R. § 61.141.**

Defendant will likely admit this, but if they do not,

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[4] "Commercial asbestos" is defined at 40 C.F.R. § 61.141 as "any material containing asbestos that is extracted from ore and has value because of its asbestos content." In this case, the commercial asbestos is the asbestos in the slurry applied to the electrodes of the electrolytic cell, and has value in the process because of its asbestos content.

EPA must can show that the operations of the facility consist in part of 'manufacturing' within the definition of 40 C.F.R. § 61.141 A portion of Defendant's facility is for production of chlorine utilizing asbestos diaphragm technology.

(2) **Chlorine utilizing asbestos diaphragm technology is defined as an asbestos 'manufacturing operation' under 40 C.F.R. § 61.144(a)(9).**

Occidental has admitted in response to information requests that operations which occur at the Occidental facility include production of chlorine utilizing asbestos diaphragm technology which is classified as an asbestos 'manufacturing' operation within the meaning of 40 C.F.R. §§ 61.144, but it could also be shown by expert testimony describing the type of operations conducted at the facility in the past.

d. **Defendant is thus the owner and operator of a "manufacturing operation using commercial asbestos" within the meaning of 40 C.F.R. § 61.144.;**

e. **Under Section 112(c)(2) and 40 C.F.R. § 61.05(c), "[n]inety [90] days after the effective date of any standard, no owner or operator shall operate any existing source subject to that standard in violation of the standard [without waiver or exemption]".**

(1) **Under 40 C.F.R. § 61.02, the 'effective date' of 40 C.F.R. Part 61 "is the date of promulgation in the FEDERAL REGISTER of any applicable standard** or other

regulation..." The date of promulgation of 40 C.F.R. § 61.144(b) was November 20, 1990. Ninety (90) days after that date is February 18, 1991, which is the end of the 90 day grace period for compliance, and the date by which compliance is expected.

(2) **At various times, Defendant did not monitor for visible emissions, did not inspect emission controls equipment, did not keep records of such monitoring or inspection, and did not operate and maintain its emissions control equipment, as shown below.**

f. Therefore, under 40 C.F.R. § 61.140, **40 C.F.R. Part 61, Subpart M, relating to asbestos NESHAPs, applies to Defendant and to the facility operations.**

4. **Occidental was in violation of the requirements of the applicable regulations (rules) within the meaning of Section 113(b) of the Act, 42 U.S.C. § 7413(b):**

a. <u>Count I</u> - **Occidental was in violation of 40 C.F.R. §§ 61.144(b)(3), (b)(5), or (b)(7)** from February 20, 1991 through April 5, 1991.

(1) **40 C.F.R. § 61.144(b) requires "each owner or operator of any manufacturing operations to which this section applies" to**

<u>Monitor each potential source of asbestos emissions from any part of the manufacturing facility</u>, including air cleaning devices, process equipment, and buildings housing material processing and handling equipment, <u>at least once each day</u> during the daylight hours for visible emissions to the outside air during periods of

operation. The monitoring shall be by visual observation of at least 15 seconds duration per source of emissions.

...(5) [The owner or operator shall also] maintain records of the results of visible emission monitoring...[and]

...(7) Retain a copy of all monitoring and inspection records for at least 2 years.

40 C.F.R. § 61.144(b)(5), (b)(7) (1991) (emphasis added).

(2) **Defendant failed to monitor for visible emissions at its facility** as required by 40 C.F.R. § 61.144(b)(3) during the period from February 20, 1991 through April 5, 1991.

(3) **Defendant failed to keep records of monitoring for visible emissions at its facility** as required by 40 C.F.R. § 61.144(b)(5) during that period.

Occidental has admitted in response to information requests under Section 114 of the Act that it failed to keep records of monitoring inspections at its facility during the period from February 1991 through April 1991, therefore indicating that it failed to do visible emissions monitoring of potential emissions sources as required by § 61.144(b) at all during that period.

(4) Therefore, at the time of the inspection of the Facility, **Defendant had not complied with the provisions of 40 C.F.R. § 61.144(b)** as shown above and was therefore "in violation of, any requirement or prohibition of [Subchapter I of the Act]" within the meaning of Section 113(b)(2) of the Act, 42 U.S.C. § 7413(b)(2).

b. Count II - **Occidental did not comply with 40 C.F.R. §§ 61.144(b)(4), (b)(5), or (b)(7)** during the period from February 20, 1991 through April 9, 1991.

(1) **40 C.F.R. § 61.144(b) requires "each owner or operator of any manufacturing operations to which this section applies" to**

> ...(2) Use the methods specified by § 61.152 [relating to air cleaning and filtering devices] to clean emissions from [their] operations containing particulate asbestos material before they escape to or are vented to the outside air.
>
> ...(4) Inspect each air cleaning device at least once each week for proper operation and for changes that would signal the potential for malfunctions, including, to the maximum extent possible... the presence of tears, holes, and abrasions in filter bags and for dust deposits on the clean side of [filter] bags. ...For air cleaning devices that cannot be inspected on a weekly basis... submit to the Administrator ...a written maintenance plan...
>
> ...(5) [The owner or operator shall also] maintain records of the results of ...air cleaning device inspections ...[and]
>
> ...(7) Retain a copy of all monitoring and inspection records for at least 2 years.

40 C.F.R. §§ 61.144(b)(2), (b)(4), (b)(5), and (b)(7) (1991) (emphasis added).

(2) **Defendant failed to inspect each air cleaning device at least once each week for proper operation and for changes that would signal the potential for malfunctions** , as required by 40 C.F.R. § 61.144(b)(3), during the period from February 20, 1991 through April 9, 1991.

(3) **Defendant also failed to keep records of inspections of each air cleaning devices at its facility** as

required by 40 C.F.R. § 61.144(b)(5) and (b)(7) during that period, as shown above and was thus "in violation of, any requirement or prohibition of [Subchapter I of the Act]" within the meaning of Section 113(b)(2) of the Act, 42 U.S.C. § 7413(b)(2).

c. **Count III - Occidental violated 40 C.F.R. §§ 61.19 and 61.144(b)(2) and (b)(4)** during the period from September 18, 1991 to November 20, 1991.

(1) **40 C.F.R. § 61.144(b) requires "each owner or operator of any manufacturing operations..." to**

> ...(2) Use the methods specified by § 61.152 [relating to air cleaning and filtering devices] to clean emissions from [their] operations containing particulate asbestos material before they escape to or are vented to the outside air.
>
> ...(4) Inspect each air cleaning device at least once each week for proper operation and for changes that would signal the potential for malfunctions, including, to the maximum extent possible without dismantling other than opening the device, the presence of tears, holes, and abrasions in filter bags and for dust deposits on the clean side of [filter] bags. ...For air cleaning devices that cannot be inspected on a weekly basis... submit to the Administrator ...a written maintenance plan...

40 C.F.R. §§ 61.144(b)(2) and (b)(4) (1991) (emphasis added).

(2) **Defendant failed to inspect the air cleaning device to the extent of opening the device to determine the presence of tears, holes, and abrasions in the filter bags, despite the presence of indications of malfunction**, as required by 40 C.F.R. §§

61.144(b)(2) and (b)(4), during the time from September 18, 1991 to November 20, 1991.

Response to information requests under Section 114 of the Act produced inspection records which indicate that Occidental failed to open the baghouse to determine the condition of the bags, because of the malfunctioning and unmaintained condition of that baghouse. The inspection records state that the door couldn't be opened to inspect because there was so much asbestos accumulated that it would have all fallen out of the structure, which would have constituted an emission to the air and a violation. Keeping the equipment closed during inspections prevented recording of the actual nature of the malfunction of the equipment, and the fact that it was no longer performing its intended function during that period.

(3) **Defendant failed to submit to the Administrator a written maintenance plan on the basis that the equipment could not be inspected on a weekly basis** within the meaning of § 61.144(b)(7).

(4) **40 C.F.R. §§ 61.19 mandates that**

> No owner or operator shall ...use any ...machine, equipment, [or] process, the use of which conceals an emission which would otherwise constitute a violation of an applicable standard.

Occidental failed to address the improper operation of the baghouse, continuing to operate it when it was obviously malfunctioning, and therefore not performing the function for which it was installed. Occidental

thereby, not only concealed the fact that the baghouse was no longer functioning properly, but concealed the fact that asbestos emissions were occurring a levels which were dangerous, whether detectable by unaided observation or not. The inspector stated that there was dust on what was supposed to be the "clean side" of the filter bags, within the meaning of § 61.144(b), and tests run in 1990 on the exhaust from the dust collector indicated the presence of significantly elevated levels of asbestos fibers in the exhausted air (over 6 fibers/cu. cm. rather than the OSHA level of 0.2 fibers/cu. cm.). No maintenance was done after this test and before the inspection, and the operation of the equipment continued during that period, indicating that the asbestos emissions continued during the period cited.

(5) **Defendant thus violated 40 C.F.R. §§ 61.19 and 61.144(b)**, and Defendant's facility is "in violation of, any requirement or prohibition of [Subchapter I of the Act]" within the meaning of Section 113(b)(2) of the Act, 42 U.S.C. § 7413(b)(2).

d. <u>Count IV</u> - **Occidental did not properly use and operate the air cleaning devices, designed to eliminate asbestos dust from the air, or use them in a manner consistent with good air pollution control practice for minimizing emissions,** within the meaning of in 40

C.F.R. §§ 61.12(c) and 61.152(a)(2), LAC Chapter 9, Regulation 905, and Air Permit No. 362 C (M-1).

Pursuant to 40 C.F.R. § 61.152(a)(2), "the owner or operator who uses air cleaning as specified in ...§ 61.144(b)(2) ...shall: Properly install, use, operate, and maintain all air cleaning equipment authorized by [§ 61.152}." Also, according to the regulations,

> Each owner or operator of each stationary source shall maintain and operate the source, including associated equipment for air pollution control, in an manner consistent with good air pollution practice for minimizing emissions. Determination of whether acceptable operating and maintenance procedures are being used will be based on information available to the Administrator which may include, but is not limited to, monitoring results, review of operating and maintenance procedures, and inspection of the source.

40 C.F.R. § 61.12(c) (1991) (emphasis added).

(1) **40 C.F.R. § 61.144(b) requires "each owner or operator of any manufacturing operations..." to**

> ...(2) Use the methods specified by § 61.152 [relating to air cleaning and filtering devices] to clean emissions from [their] operations containing particulate asbestos material before they escape to or are vented to the outside air.

(2) **Occidental installed emission control equipment but did not properly use, operate, and maintain its air cleaning equipment** within the meaning of 40 C.F.R. § 61.152(a)(2). Occidental failed to repair its emissions control equipment despite indication in its own inspection reports that the equipment was malfunctioning, overloaded, and in need of repair and maintenance, to the extent that the required inspections were not possible because of the

condition of the equipment. The inspector who made the required reports during this period knew, and stated in the reports, that the equipment was malfunctioning, and Defendant knew that emissions of asbestos beyond acceptable levels were being expelled to the outside air during that period. As stated above, tests run in 1990 on the exhaust from the dust collector indicated the presence of significantly elevated levels of asbestos fibers in the exhausted air (over 6 fibers/cu. cm. rather than the OSHA level of 0.2 fibers/cu. cm.), and inspector testimony and reports based on admissions indicate that no maintenance had been done on the equipment between the period before the tests and the EPA/LDEQ inspection.

(3) **Occidental did not properly maintain and operate the source, including associated equipment for air pollution control, in an manner consistent with good air pollution practice for minimizing emissions** within the meaning of 40 C.F.R. § 61.12(c). According to the inspection report, which was based on the statements of the foreman of the operations to the inspector, the baghouse for asbestos emissions was not serviced for approximately 10 years, and was not maintained, as evidenced by its terrible condition, observed by EPA and LDEQ inspectors, and as recorded in the inspection

records made by the facility staff inspectors.

(4) In addition to the requirements of 40 C.F.R. § 61.12(c), **the facility is subject to the requirements of the applicable Louisiana regulations to maintain emission control equipment, which mirror the requirements of 40 C.F.R. Part 61.**

(5) Finally, **Permit No. 362 C (M-1)**, issued to the facility in 1990 for the operation of the processes in question, **contains special conditions that Occidental control asbestos emissions by compliance with all provisions of the LAC regulations, 33 L.A.C. Chapter 25, relating to LESHAPS, specifically pertaining to asbestos. Chapter 25, Section 2607 requires that all air cleaning equipment must be properly installed, used, operated, and maintained.** Another special condition of the Permit issued to Occidental in 1990 is that Occidental comply with all NESHAP regulations found at 40 C.F.R. § 61.144 related to asbestos manufacturing, which they did not, as shown herein, from at least July 8, 1991 to November 20, 1991.

(6) **Defendant thus violated 40 C.F.R. §§ 61.12(c) and 61.152(a)**, and Defendant's facility is "in violation of, any requirement or prohibition of [Subchapter I of the Act]" within the meaning of Section 113(b)(2) of the Act, 42 U.S.C. § 7413(b)(2).

e. **Count V - Occidental did not make quarterly reports to the Administrator of visible emissions cataloged by its inspectors,** within the meaning of in 40 C.F.R. § 61.144(b)(8).

Under 40 C.F.R. § 61.144(b),

> Each owner or operator of any manufacturing operation to which this section applies shall:
>
> ...(8) Submit quarterly a copy of the visible emission monitoring records to the Administrator if visible emissions occurred during the report period. Quarterly reports shall be postmarked no later than the 30th day following the end of the calendar quarter.

40 C.F.R. § 61.144(b)(8) (1991) (emphasis added).

(1) **Defendant's facility had "visible emissions"[5] within the meaning of 40 C.F.R. § 61.144(b)(8)** and as defined in § 61.141 to be "any emissions which are visibly detectable without the aid of instruments, coming from ...any asbestos milling, manufacturing, or fabricating operation."

Occidental inspection reports described "asbestos on [the] walls ...[the] floor ...[the] tank ...[the] concrete", etc, and generally on all exposed surfaces of the work

---

[5] If 'visible emissions' are narrowly defined as particles of asbestos blowing from a source or surface into the air during the inspection, then it could be said that no "'visible emissions" were observed at the time of the inspection, as indicated by "no" written under the category "visible emissions observed" on the Occidental inspection forms. However, "visible emissions" were observed and cataloged within the meaning of case law in that the mere fact that asbestos was observed on the open surfaces, exposed to the outside air, without precaution to contain it, is considered to be a "visible emission" y within the meaning of the regulations. U.S. v. Hugo Key & Son, Inc., 731 F.Supp. 1135 (D.R.I. 1989), 30 Envt. Rep. 1697, 20 ELR 21146.

area nearly every day for the period from October 2, 1991 through February 11, 1992. It is EPA's determination that the mere fact that the asbestos was on these open surfaces, exposed to the air, without any precautions to contain it, is physical evidence that there were "visible emissions", within the meaning of regulations and case law cited herein. This can be established by the inspectors reports. In addition, it is reasonable for EPA to take the position, and present expert testimony to the effect that, despite the fact that EPA inspectors did not visibly observe particles of asbestos being blown from these surfaces into the ambient air at the time of the inspection, it is impossible under the conditions at the facility for there not to have been blown emissions during the time that Defendant failed to maintain its emissions control equipment. This would be true despite the fact that no ambient emissions were specifically observed. They need only be "observable", not observed. This would be circumstantial evidence, offered to show that it is more likely than not that there were ambient emissions from the facility non-compliance with the maintenance requirements, as well as other "visible emissions" in the form of the asbestos material reported as exposed to the air.

(2) **Defendant failed to report those emissions within the meaning of 40 C.F.R. § 61.144(b)(8).**

Responses to information requests under § 114 confirmed

what EPA knew, that Occidental failed to submit quarterly reports of visible emissions cataloged by Occidental inspectors between 10/2/91 and 2/11/92, as required by 40 C.F.R. § 61.144(b)(8). This time period spans well into two calendar quarters.

(3) **Defendant thereby violated 40 C.F.R. § 61.144(b)(8),** and Defendant's facility is thus "in violation of, any requirement or prohibition of [Subchapter I of the Act]" within the meaning of Section 113(b)(2) of the Act, 42 U.S.C. § 7413(b)(2).

H. Anticipated Defenses and Government Response

EPA does not anticipate that Occidental will produce evidence in defense of the record-keeping violations alleged herein. Unless they were to subsequently "find" the records and produce them to show that the required monitoring had been done, EPA is unaware of any defense that Occidental could have to liability for the cited violations. Occidental has admitted in its response to EPA information requests under Section 114 of the Act that they did not have records of the required monitoring for the period between February 20, 1991, the date by which they were to have begun the required monitoring and record-keeping, and April 5, 1991. Occidental also has admitted that it did not service the baghouse for approximately 10 years, and the inspections by both our and its inspectors indicates conditions of continuing malfunction and subsequent emissions.

The requirement to "monitor each potential source of asbestos emissions" under 40 C.F.R. § 61.144(b)(3) is a requirement to do observations daily during daylight hours for visible emissions of asbestos in the area of potential sources of such emissions. The requirement to "inspect each air cleaning device ...for proper operation" under 40 C.F.R. § 61.144(b)(4), is a requirement to inspect such devices for changes other than visible emissions that would signal a potential malfunction, including tears, holes, or abrasions in the filter bag, or dust deposits on the clean side (outside) of the filter bag.

Occidental will likely argue EPA's application and interpretation of the regulations in question is incorrect as a matter of law, and attempt to show that the regulations do not intend violations to be cited as described herein. If so, EPA must put forth its interpretation and rely on it, in light of the specific purposes of the regulations.

Occidental may assert that the violation of 40 C.F.R. § 61.144(b)(3) for failure to "monitor each potential source of asbestos emissions from any part of the manufacturing facility, including air cleaning equipment..." encompasses the violation for failure to "inspect each air cleaning device ...for proper operation ..." under 40 C.F.R. § 61.144(b)(4), since "air cleaning equipment" is, arguably, a "potential source of emissions", and that there should, therefore, not be a separate penalty assessed for both violations. They may similarly

assert that the failure to inspect and the failure to make a determination on the causes of the known malfunctions in the baghouse in Counts II and III are repetitive. Furthermore, Occidental may argue that the requirement to maintain the baghouse is the underlying violation in both Counts III and IV and, therefore, these violations should not be cited as two separate counts.

EPA's position is that each of these requirements can be cited or violated without a citation or violation of the other. They are required to be performed on a different schedule; and they are different requirements, designed to detect different conditions, with different record-keeping requirements. They are, therefore, independent violations for which separate penalties should be assessed, as shown below. EPA's position on any argument based on the similarity between Counts II and III, or Counts III and IV, is based on similar reasoning - that the requirements are different and that the purpose to be achieved is different. Therefore, they are, indeed, separate violations and are correctly cited as separate counts.

As to the penalty assessment, Occidental may produce evidence as to the existence of mitigating factors which would bear on the reduction of a potential penalty, were the court in the position to assess one. What evidence they could produce to mitigate the assessed penalty is not known at this time, although ability to pay is not anticipated to be a factor. In

light of the fact that Occidental did no maintenance on the baghouse for 10 years, it is unlikely that they can show that the regulations place an undue burden on them to comply.

I. Resource Commitments

At this time, Region 6 believes that this case will be settled short of litigation and, if so, will not require significant resources. Should these violations be pursued to litigation as structured herein, minimal resources should not be required to present the background factual support necessary to establish all of the elements of EPA's cases, again, unless Occidental produces evidence not previously provided to EPA. Most, if not all of the elements necessary to prove the violations are admitted. A dispute over the amount of the penalty assessed for the violations cited could require some commitment of resources in production of witnesses for proof at trial.

J. New Evidence

Relevant new evidence and information will be forwarded to DOJ and EPA Headquarters as it becomes available.

INDEX OF EXHIBITS

EXHIBIT	DATE
1 - Dun & Bradstreet Reports	February, 1992
2 - Inspection Report	November, 1991
3 - Air Quality/Emission Test Report	November, 1991
4 - Asbestos NESHAPS, 40 C.F.R. Part 61 . .	November 20, 1991

Dun & Bradstreet, Inc.

This report has been prepared for:

BE SURE NAME, BUSINESS AND ADDRESS MATCH YOUR FILE.

CONTINUOUS SERVICE

SUBSCRIBER: [redacted]

EXHIBIT 1

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FULL REVISION

DUNS: 06-727-1981
OCCIDENTAL CHEMICAL CORPORATION
(SUBSIDIARY OF OXY C H CORPORATION, DALLAS, TX)

BOX 809050
DALLAS TX 75380
5005 LBJ FRWY (OCCIDENTAL TOWERS)
AND BRANCH(ES) OR DIVISION(S)
DALLAS TX 75244
TEL: 214 404-3800

DATE PRINTED
NOV 22 1991

MFG INDUSTRIAL & SPECIALTY CHEMICALS, PLASTICS & AGRICULTURAL FERTILIZERS & ANIMAL FEED PRODUCTS

SIC NOS.
28 12 28 69 28 19
28 74 28 21 20 48

SUMMARY

RATING	--
STARTED	1973
PAYMENTS	SEE BELOW
SALES F	$3,690,650,000
WORTH F	$99,241,000
EMPLOYS	9,200(350 HERE)
HISTORY	CLEAR
TREND	UP

CHIEF EXECUTIVE: RAY R IRANI, CHB

PAYMENTS (Amounts may be rounded to nearest figure in prescribed ranges)

REPORTED	PAYING RECORD	HIGH CREDIT	NOW OWES	PAST DUE	SELLING TERMS	LAST SALE WITHIN
11/91	Ppt	15000	2500	1000	N30	1 Mo
	Ppt	10000	2500	2500	N30	1 Mo
	Ppt	10000	-0-	-0-		1 Mo
	Ppt	5000	-0-	-0-	N30	1 Mo
	Ppt	5000	1000	-0-	N30	1 Mo
	Ppt	2500	-0-	-0-	N30	2-3 Mos
	Ppt	2500	1000	50	N30	1 Mo
	Ppt	2500	750	-0-		1 Mo
	Ppt	1000	-0-	-0-	N30	6-12 Mos
	Ppt	1000	500	-0-		1 Mo
	Ppt	1000	-0-	-0-	N30	1 Mo
	Ppt	1000	250	-0-	N30	4-5 Mos
	Ppt	1000	1000	-0-		1 Mo
	Ppt	750	-0-	-0-	N30	1 Mo
	Ppt	500	-0-	-0-	N30	6-12 Mos
	Ppt	500	-0-	-0-		4-5 Mos
	Ppt	500	100	-0-	N30	1 Mo
	Ppt	250	-0-	-0-	N30	6-12 Mos
	Ppt	250	250	-0-		1 Mo
	Ppt	250	-0-	-0-	N30	4-5 Mos
	Ppt	250	250	-0-		2-3 Mos
	Ppt	250	250	-0-	N30	
	Ppt	250	-0-	-0-	N30	1 Mo
	Ppt	100	-0-	-0-		4-5 Mos
	Ppt	100	-0-	-0-		1 Mo
	Ppt	100	100	-0-		2-3 Mos
	Ppt	50	50	-0-	1 10 N30	1 Mo
	Ppt	50	-0-	-0-		4-5 Mos
	Ppt	50	-0-	-0-		6-12 Mos
	Ppt-Slow 15	10000	2500	-0-	N30	1 Mo
	Ppt-Slow 30	20000	20000	5000	N30	1 Mo
	Ppt-Slow 30	5000	2500	2500	N30	1 Mo
	Ppt-Slow 30	2500	1000	250	N30	1 Mo
	Ppt-Slow 30	2500	1000	500	N30	1 Mo
	Ppt-Slow 30	2500	-0-	-0-	N30	2-3 Mos
	Ppt-Slow 30	1000	250	250	N30	1 Mo
	Ppt-Slow 30	750	500	-0-		1 Mo
	Ppt-Slow 30	250	-0-	-0-	N30	6-12 Mos
	Ppt-Slow 30	100	-0-	-0-	1/2 10 N30	4-5 Mos
	Ppt-Slow 60	5000	5000	2500	N30	1 Mo
	Ppt-Slow 90	20000	250	100	N30	1 Mo
	Slow 5	35000				1 Mo
	Slow 5	250	-0-	-0-		2-3 Mos
	Slow 10	250000				1 Mo

SEE REVERSE SIDE FOR GLOSSARY OF TERMS (CONTINUED)

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PAYMENTS (Cont'd)

	Slow 10	1000	-0-	-0-		4-5 Mos
	Slow 15	2500	1000	1000		1 Mo
	Slow 20	55000				1 Mo
	Slow 20	7500	500	500	N30	2-3 Mos
	Slow 30	5000	5000	-0-		1 Mo
	Slow 30	250	-0-	-0-	N30	2-3 Mos
	Slow 30	50	-0-	-0-		4-5 Mos
	Slow 45	20000	15000	7500	N30	1 Mo
	Slow 60	2500	-0-	-0-	N30	6-12 Mos
10/91	Disc	50	-0-	-0-		6-12 Mos
	Ppt	100000	7500	-0-	N30	1 Mo
	Ppt	70000	35000	-0-	N10	1 Mo
	Ppt	50000	20000	-0-	N30	1 Mo
	Ppt	40000	-0-	-0-		6-12 Mos
	Ppt	25000	5000	-0-	N30	1 Mo
	Ppt	20000	250		1 10 N30	
	Ppt	7500	-0-	-0-		2-3 Mos
	Ppt	7500	5000	-0-		1 Mo
	Ppt	5000	2500	-0-	N30	1 Mo
	Ppt	2500	1000	-0-	N30	1 Mo
	Ppt	2500	-0-	-0-	N30	6-12 Mos
	Ppt	750	-0-	-0-		6-12 Mos
	Ppt	500	-0-	-0-	N30	6-12 Mos
	Ppt	100	100	-0-		1 Mo
	Ppt-Slow 30	55000	55000	20000		1 Mo
	Ppt-Slow 30	10000	-0-	-0-	N30	6-12 Mos
	Ppt-Slow 30	100	-0-	-0-		6-12 Mos
	Ppt-Slow 45	100000	30000	15000		1 Mo
	Ppt-Slow 90	750	-0-	-0-	N30	6-12 Mos
	Slow 30	500	-0-	-0-	N30	2-3 Mos
	Slow 30	100	-0-	-0-	N30	2-3 Mos
	Slow 60	10000	-0-	-0-	N7	1 Mo
	Slow 60	250			N30	6-12 Mos
	Slow 70	1000	1000	1000		1 Mo
	Slow 80	5000	-0-	-0-	N30	1 Mo
	Slow 90	20000	15000	7500		1 Mo

* Payment experiences reflect how bills are met in relation to the terms granted. In some instances payment beyond terms can be the result of disputes over merchandise, skipped invoices etc.

* Each experience shown represents a separate account reported by a supplier. Updated trade experiences replace those previously reported.

FINANCE

A CONSULTING SERVICE IS AVAILABLE TO ASSIST YOU IN REVIEWING THIS ACCOUNT FURTHER. PLEASE CALL (800) 223 - 0141 TO SPEAK WITH A DUNS ACCOUNT CONSULTANT.

11/20/91

	Fiscal Dec 31 1988	Fiscal Consolidated Dec 31 1989	Fiscal Consolidated Dec 31 1990
Curr Assets	809,924,000	976,233,000	1,082,415,000
Curr Liabs	835,646,000	707,299,000	781,390,000
Current Ratio	.969	1.38	1.38
Working Capital	(25,722,000)	268,934,000	301,025,000
Other Assets	2,075,401,000	2,490,746,000	2,319,403,000
Long Term Liab	1,556,257,000	1,973,127,000	2,521,187,000
Worth	493,421,000	786,553,000	99,241,000
Sales		3,655,598,000	3,690,650,000
Net Income (loss)		244,791,000	(678,661,000)

Fiscal Consolidated statement dated DEC 31 1990:

Cash	$ 53,992,000	Accts Pay	$ 384,652,000
Accts Rec	609,845,000	Accruals	363,739,000
Inventory	384,017,000	Taxes	31,503,000
Mktble Securities	9,204,000	L.T. Liab-(1yr)	1,496,000
Prepaid	25,357,000		
Curr Assets	1,082,415,000	Curr Liabs	781,390,000

(CONTINUED)

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FINANCE (Cont'd)

Fixt & Equip	1,787,486,000	Due Related Companies	1,450,173,000
Investments-Other	300,994,000	Long Term Debt	143,211,000
Goodwill	5,419,000	L.T. Liab-Other	927,803,000
Long Term Receivables	116,471,000	COMMON STOCK	5,000
Other Assets	114,452,000	ADDIT. PD.-IN CAP	485,421,000
		RETAINED EARNINGS	(389,764,000)
		TRANSLATION ADJUSTMENT	8,998,000
Total Assets	3,407,237,000	Total	3,407,237,000

From JAN 01 1990 to DEC 31 1990 sales $3,690,650,000; cost of goods sold $3,042,622,000. Gross profit $648,028,000; operating expenses $267,659,000. Operating income $380,369,000; other income $21,837,000; other expenses $1,122,457,000; net income before taxes $(720,251,000). (net loss) $(678,661,000). Credit on taxes $41,590,000. Retained earnings at start $297,341,000. Net loss (678,661,000); dividends (8,444,000); retained earnings at end (389,764,000).

Prepared from statement(s) by Accountant: Arthur Andersen & Co.
ACCOUNTANTS OPINION: "A review of the accountant's opinion indicates the financial statements meet generally accepted accounting principles and that the audit contains no qualifications".

--O--

Item worth shown in summary section was computed after deduction of intangibles, goodwill, totaling $5,419,000. Accounts receivable shown net less $11,280,000 allowance. Fixed assets shown net less $1,361,293,000 depreciation.

BASIS OF PRESENTATION: The Dec 31 1988 figures were obtained from outside quarters.

----------STATEMENT ITEMS EXPLAINED----------.

INVESTMENTS-OTHER: Consists of investments in and advances to affiliates.
LONG TERM DEBT: Consists primarily of bonds and capital lease obligations at various interest rates.
OTHER EXPENSE: Consists of restructuring charges as part of a restructuring program announced during the fourth quarter of 1990. The charges include a $620 million charge for anticipated environmental costs relating to a number of sites including Love Canal and a $300 million charge for estimated loss and write-downs to more closely reflect the market value of the company's agricultural products group as well as certain other assets.
NET WORTH RECONCILIATION: The net worth decreased due primarily to the loss reported for 1990 as a result of the charges associated with the restructuring and a slight decrease in the translation adjustment.
On NOV 15 1991 Dick Sevier, Asst Treas, for top parent, referred to the above figures.
Management has not provided iterim figures more recent than the Dec 31 1990 fiscal figures.

----------ANALYST'S COMMENTS----------.

Trend is up based on an increase in the operating income in 1990.
During the fourth quarter of 1990 the top parent, Occidental Petroleum Corporation announced a major restructuring program which involved concentrating on the oil and natural gas and chemical businesses. As part of that restructuring, the company recorded charges of $920 million for anticipated environmental costs and $300 million in charges associated with the estimated losses and write-downs of the company's agricultural business as well as certain other porperties.
The charges associated with the restructuring reduced the tangible net worth during 1990, and total debt including the amount owing related companies was heavy in relation to the equity capital as of Dec 31 1990. However, as part of the operating group under the control of Occidental Petroleum Corporation, subject will participate in transactions characteristic of group administration and operation with other members of the group. As such, excess or deficiency of funds will be upstreamed or downstreamed from the top parent company on a regular basis. These intercompany transfer of funds, combined with internal flow of funds, has been sufficient to meet trade obligations in a satisfactory manner through Nov 1991.

(CONTINUED)

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* * * JUDGMENT(S) * * *

DOCKET NO.: 4860-91
JDGMT AWARD: $2,239
JDGMT TYPE: Judgment
AGAINST: OCCIDENTIAL CHEMICAL CORPORATION NIAGARA FALLS, NY
IN FAVOR OF: CARMEN S HOUGH
WHERE FILED: ERIE COUNTY SUPREME COURT, BUFFALO, NY
STATUS: Unsatisfied
DATE STATUS ATTAINED: 05/15/1991
DATE ENTERED: 05/15/1991
RECEIVED BY D&B: 05/22/1991

* * * SUIT(S) * * *

DOCKET NO.: 05668-89
PLAINTIFF: KOWALSKI, EDWARD & PATRICIA
DEFENDANT: OCCIDENTAL CHEMICAL CORPORATION
WHERE FILED: ERIE COUNTY SUPREME COURT, BUFFALO, NY
STATUS: Pending
DATE STATUS ATTAINED: 09/05/1991
DATE FILED: 09/05/1991
RECEIVED BY D&B: 09/10/1991

* * * UCC FILING(S) * * *

FILING NO: 91054162
TYPE: Termination
SEC. PARTY: YALE FINANCIAL SERVICES INC, FLEMINGTON, NJ
DEBTOR: OCCIDENTAL CHEMICAL CORP, DEER PARK, TX
DATE FILED: 06/12/1991
RECEIVED BY D&B: 07/17/1991
ORIG. UCC FILED: 03/25/1991
ORIG. FILING NO: 91054162
FILED WITH: SECRETARY OF STATE/UCC DIVISION, TX

COLLATERAL: Specified Industrial equipment/machinery and proceeds - Specified Equipment and proceeds
FILING NO: 91054162
TYPE: Original
SEC. PARTY: BRIGGS-WEAVER, INC, DALLAS, TX
ASSIGNEE: YALE FINANCIAL SERVICES, INC, FLEMINGTON, NJ
DEBTOR: OCCIDENTAL CHEMICAL CORPORATION DEER PARK, TX
DATE FILED: 03/25/1991
RECEIVED BY D&B: 04/22/1991
FILED WITH: SECRETARY OF STATE/UCC DIVISION, TX

COLLATERAL: Specified Industrial equipment/machinery and proceeds - Specified Equipment and proceeds
FILING NO: 91054160
TYPE: Original
SEC. PARTY: BRIGGS-WEAVER, INC, DALLAS, TX
ASSIGNEE: YALE FINANCIAL SERVICES, INC, FLEMINGTON, NJ
DEBTOR: OCCIDENTAL CHEMICAL CORPORATION DEER PARK, TX
DATE FILED: 03/25/1991
RECEIVED BY D&B: 04/22/1991
FILED WITH: SECRETARY OF STATE/UCC DIVISION, TX

COLLATERAL: Specified Computer equipment and proceeds - Specified Equipment and proceeds
FILING NO: 90133126
TYPE: Original
SEC. PARTY: AMERICAN AIRLINES INC, DFW AIRPORT, TX
DEBTOR: OCCIDENTAL CHEMICAL CORP/OKY WORLD TRAVEL, NIAGARA FALLS, NY
DATE FILED: 06/21/1990
RECEIVED BY D&B: 08/02/1990
FILED WITH: SECRETARY OF STATE/UCC DIVISION, NY

COLLATERAL: Leased Equipment and proceeds
FILING NO: 91187329
TYPE: Original
DATE FILED: 09/26/1991
RECEIVED BY D&B: 10/28/1991

(CONTINUED)

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FILINGS
(Cont'd)

SEC. PARTY: AMERICAN FINANCE GROUP, BOSTON, MA
DEBTOR: OCCIDENTAL CHEMICAL CORPORATION DALLAS, TX
FILED WITH: SECRETARY OF STATE/UCC DIVISION, TX

COLLATERAL: Leased Equipment and proceeds - Leased Construction equipment/machinery and proceeds
FILING NO: B 91-34204 FS
DATE FILED: 09/16/1991
TYPE: Original
RECEIVED BY D&B: 10/25/1991
SEC. PARTY: AMERICAN FINANCE GROUP, BOSTON, MA
FILED WITH: SECRETARY OF STATE/UCC DIVISION, AL
DEBTOR: OCCIDENTAL CHEMICAL CORPORATION DALLAS, TX

COLLATERAL: Leased Construction equipment/machinery and proceeds - Leased Equipment and proceeds
FILING NO: 91161120
DATE FILED: 08/19/1991
TYPE: Original
RECEIVED BY D&B: 09/18/1991
SEC. PARTY: AMERICAN FINANCE GROUP, BOSTON, MA
FILED WITH: SECRETARY OF STATE/UCC DIVISION, TX
DEBTOR: OCCIDENTAL CHEMICAL CORP

FILING NO: 9150133816
TYPE: Assignment
DATE FILED: 08/16/1991
SEC. PARTY: AMERICAN FINANCE GROUP, BOSTON, MA
RECEIVED BY D&B: 09/27/1991
ORIG. UCC FILED: 01/28/1991
ASSIGNEE: CAPITAL ASSOCIATES INTERNATIONAL INC, DENVER, CO
ORIG. FILING NO: 91015050
FILED WITH: SECRETARY OF STATE/UCC DIVISION, TX
DEBTOR: OCCIDENTAL CHEMICAL CORP, DALLAS, TX

COLLATERAL: Leased Industrial equipment/machinery and proceeds
FILING NO: 91015050
DATE FILED: 01/28/1991
TYPE: Original
RECEIVED BY D&B: 03/04/1991
SEC. PARTY: AMERICAN FINANCE GROUP, BOSTON, MA
FILED WITH: SECRETARY OF STATE/UCC DIVISION, TX
DEBTOR: OCCIDENTAL CHEMICAL CORP

COLLATERAL: Leased Equipment including proceeds and products - Leased Vehicles including proceeds and products
FILING NO: 91127512
DATE FILED: 07/05/1991
TYPE: Original
RECEIVED BY D&B: 07/25/1991
SEC. PARTY: DAVENPORT FINANCIAL CORP, DARIEN, CT
FILED WITH: SECRETARY OF STATE/UCC DIVISION, TX
ASSIGNEE: FINANCIAL CORP, THE, SCHILLER PARK, IL
DEBTOR: OCCIDENTAL CHEMICAL CORP, TAFT, LA

COLLATERAL: Leased Equipment and proceeds - Leased Industrial equipment/machinery and proceeds
FILING NO: 91114394
DATE FILED: 06/12/1991
TYPE: Original
RECEIVED BY D&B: 07/03/1991
SEC. PARTY: YALE FINANCIAL SERVICES INC, FLEMINGTON, NJ
FILED WITH: SECRETARY OF STATE/UCC DIVISION, TX
DEBTOR: OCCIDENTAL CHEMICAL CORP, DEER PARK, TX

FILING NO: 90233324
TYPE: Assignment
DATE FILED: 03/21/1991
SEC. PARTY: AMERICAN FINANCE GROUP, BOSTON, TX
RECEIVED BY D&B: 05/06/1991
ORIG. UCC FILED: 11/05/1990
ASSIGNEE: CAPITAL ASSOCIATES INTERNATIONAL INC, DENVER, CO
ORIG. FILING NO: 90233324
FILED WITH: SECRETARY OF STATE/UCC DIVISION, TX
DEBTOR: OCCIDENTAL CHEMICAL CORP, DALLAS, TX

(CONTINUED)

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FILINGS
(Cont'd)

COLLATERAL: Leased Industrial equipment/machinery and proceeds
FILING NO: 90233324
TYPE: Original
SEC. PARTY: AMERICAN FINANCE GROUP, BOSTON, MA
DEBTOR: OCCIDENTAL CHEMICAL CORPORATION
DATE FILED: 11/05/1990
RECEIVED BY D&B: 11/29/1990
FILED WITH: SECRETARY OF STATE/UCC DIVISION, TX

COLLATERAL: Leased Transportation equipment and proceeds
FILING NO: AB0097576
TYPE: Original
SEC. PARTY: LIQUID CARBONIC CARBON DIOXIDE CORP, WESTLAKE, OH
DEBTOR: OCCIDENTAL CHEMICAL CORP, CINCINATI, OH
DATE FILED: 06/08/1990
RECEIVED BY D&B: 07/30/1990
FILED WITH: SECRETARY OF STATE/UCC DIVISION, OH

COLLATERAL: Leased Industrial equipment/machinery and proceeds
FILING NO: 101358880
TYPE: Original
SEC. PARTY: YALE FINANCIAL SERVCES INC, FLEMINGTON, NJ
DEBTOR: OCCIDENTAL CHEMICAL CORPORATION SALISBURY, MD
DATE FILED: 05/15/1990
RECEIVED BY D&B: 06/04/1990
FILED WITH: SECRETARY OF STATE/DEPARTMENT OF ASSESSMENT AND TAXATION/UCC DIVISION MD

COLLATERAL: Leased Equipment and proceeds
FILING NO: 0658171
TYPE: Original
SEC. PARTY: AMERICAN FINANCE GROUP, BOSTON, MA
DEBTOR: OCCIDENTAL CHEMICAL CORP
DATE FILED: 03/12/1990
RECEIVED BY D&B: 04/09/1990
FILED WITH: SECRETARY OF STATE/UCC DIVISION, NC

COLLATERAL: Leased Equipment and proceeds
FILING NO: 9009173
TYPE: Original
SEC. PARTY: AMERICAN FINANCE GROUP, BOSTON, MA
DEBTOR: OCCIDENTAL CHEMICAL CORP, DALLAS, TX
DATE FILED: 03/12/1990
RECEIVED BY D&B: 04/13/1990
FILED WITH: SECRETARY OF STATE/UCC DIVISION, AL

COLLATERAL: Leased Equipment and proceeds
FILING NO: 9000000039174
TYPE: Original
SEC. PARTY: AMERICAN FINANCE GROUP, BOSTON, MA
DEBTOR: OCCIDENTAL CHEMICAL CORP, DALLAS, TX
DATE FILED: 02/22/1990
RECEIVED BY D&B: 03/21/1990
FILED WITH: SECRETARY OF STATE/UCC DIVISION, TX

COLLATERAL: Specified Machinery - Specified Equipment
FILING NO: 109363
TYPE: Original
SEC. PARTY: AMERITRUST CO NA, CLEVELAND, OH
DEBTOR: OCCIDENTAL CHEMICAL CORP
DATE FILED: 07/30/1991
RECEIVED BY D&B: 08/13/1991
FILED WITH: SECRETARY OF STATE/UCC DIVISION, DE

COLLATERAL: Specified Machinery - Specified Equipment
FILING NO: 109364
TYPE: Original
SEC. PARTY: AMERITRUST CO NA, CLEVELAND, OH
DEBTOR: OCCIDENTAL CHEMICAL CORP, DALLAS, TX
DATE FILED: 07/30/1991
RECEIVED BY D&B: 08/13/1991
FILED WITH: SECRETARY OF STATE/UCC DIVISION, DE

COLLATERAL: Specified Construction equipment/machinery
FILING NO: 91 151753
TYPE: Original
SEC. PARTY: EMPIRE NATIONAL LEASING INC,
DATE FILED: 07/17/1991
RECEIVED BY D&B: 08/07/1991
FILED WITH: SECRETARY OF

(CONTINUED)

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FILINGS
(Cont'd)

BUFFALO, NY
ASSIGNEE: M AND TO BANK, AMHERST, NY
DEBTOR: OCCIDENTAL CHEMICAL CORP, N TOMAWANDA, NY
STATE/UCC DIVISION, NY

COLLATERAL: Specified Equipment
FILING NO: 91132796
TYPE: Original
SEC. PARTY: SAF-T-GREEN OF HOUSTON, INC, DEER PARK, TX
AMERIQUIP FINANCE CORP, WEST SACRAMENTO, CA
DEBTOR: OCCIDENTAL CHEMICAL CORP, DEER PARK, TX
DATE FILED: 07/08/1991
RECEIVED BY D&B: 08/08/1991
FILED WITH: SECRETARY OF STATE/UCC DIVISION, TX

COLLATERAL: Specified Computer equipment
FILING NO: 91060716
TYPE: Partial release
SEC. PARTY: RANDOLPH COMPUTER CORP, GREENWICH, CT
DEBTOR: OCCIDENTAL CHEMICAL, LOS ANGELES, CA
DATE FILED: 03/26/1991
RECEIVED BY D&B: 04/11/1991
ORIG. UCC FILED: 09/08/1987
ORIG. FILING NO: 87276075
FILED WITH: SECRETARY OF STATE/UCC DIVISION, NY

There are additional UCC's in D&B's file on this company available by contacting 1-800-DNB-DIAL.

The public record items contained in this report may have been paid, terminated, vacated or released prior to the date this report was printed.

HISTORY
11/20/91

RAY R IRANI, CHB-CEO+
RONALD B CASRIEL, V PRES & TREAS
RAGHAVAN RAJAJI, SR V PRES FINANCE & PLANNING-CFO
J ROGER HIRL, PRES-COO+
MICHAEL J RUDICK, V PRES-GC+
DIRECTOR(S): The officers identified by (+)

BUSINESS TYPE: Corporation - Profit
DATE INCORPORATED: 11/06/1909
STATE OF INCORP: New York

AUTH SHARES-COMMON: 3,000
PAR VALUE-COMMON: $5.0000

BACKGROUND/OWNERSHIP: Originally incorporated as Hooker Electrochemical Corp. 1958 name changed to Hooker Chemical Corp. 1974 name changed to Hooker Chemical & Plastic Corp. 1982 name changed to Occidental Chemical Corporation.

Business started 1903 by Hooker Electrochemical Corp. Present control succeeded 1973. Relocated Jul 1 1987 from Darien, CT. 100% of capital stock is owned by the parent company.

MANAGEMENT BACKGROUND:.

IRANI born 1935. 1961-1973 Diamond Shamrock. 1973-1983 Olin Chemical Corp. Active here since 1983.

HIRL born 1931. 1960-1983 Olin Chemical Corp. Active here since 1983.

CASRIEL born 1932. Graduated 1956 San Francisco State College, BA Degree. 1956-1972 Ernst & Ernst, CPA's. 1972 to present Occidental Petroleum Corporation, Los Angeles, CA. Active here since 1983.

RUDICK born 1938. 1960 The Citadel, AB. 1967 Syracuse University, JD. 1961-64 US Army. 1976-80 Hooker Chemicals. 1976 to present here.

RAJAJI born 1946. 1966-1971 Sampath Kimaran & Co in India. 1972 Virginia Polytechnical Institute, MBA. 1973-1976 Corning Glass. Active here since 1977.

ADDITIONAL EXECUTIVE OFFICERS: A W LOPEZ, ex v pres-arigcultural products; CHARLES E STEWART, ex v pres-electrochemicals & specialty chemicals; FRANK H ROMANELLI, ex v pres-international; CHARLES F HAZZARD, ex v pres-administration; J

(CONTINUED)

THIS REPORT, FURNISHED PURSUANT TO CONTRACT FOR THE EXCLUSIVE USE OF THE SUBSCRIBER AS ONE FACTOR TO CONSIDER IN CONNECTION WITH CREDIT INSURANCE, MARKETING OR OTHER BUSINESS DECISIONS, CONTAINS INFORMATION COMPILED FROM SOURCES WHICH DUN & BRADSTREET, INC. DOES NOT CONTROL AND WHOSE INFORMATION, UNLESS OTHERWISE INDICATED IN THE REPORT, HAS NOT BEEN VERIFIED. IN FURNISHING THIS REPORT, DUN & BRADSTREET, INC. IN NO WAY ASSUMES ANY PART OF THE USER'S BUSINESS RISK, DOES NOT GUARANTEE THE ACCURACY, COMPLETENESS, OR TIMELINESS OF THE INFORMATION PROVIDED, AND SHALL NOT BE LIABLE FOR ANY LOSS OR INJURY WHATEVER RESULTING FROM CONTINGENCIES BEYOND ITS CONTROL OR FROM NEGLIGENCE. 9R2-10 (780128)

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HISTORY
(Cont'd) HURST, ex v pres-operations; STEPHEN W SCHAEFER, ex v pres-polymers & plastics.

AFFILIATES: Through stock ownership by Occidental Petroleum Corporation and the other intermediate parents, there are numerous affiliates located worldwide which are involved in the manufacture of chemicals and petroleum products. Intercompany relations: Loans, advances and merchandise transactions settled on a convenience basis.

OPERATION
11/20/91 Subsidiary of Oxy C H Corporation, Dallas, TX started 1981 which operates as a holding company. Parent company owns 100% of capital stock. Parent company has no other subsidiaries. Intercompany relations: Loans and advances settled on a convenience basis.

As noted this company is a subsidiary of Oxy C H Corporation, DUNS #14-766-7307, and reference is made to that report for background information on the parent company and its management.

Oxy C H Corporation is in turn a wholly owned indirect subsidiary of Occidental Petroleum Corporation, Los Angeles, CA, DUNS #00-690-8354, started 1920 and active primarily in exploration, production and wholesale of petroleum and natural gas.

Financial information of the direct parent and the other companies that are above it and the top parent, Occidental Petroleum Corporation, are withheld. The top parent company, Occidental Petroleum Corporation has submitted figures dated Dec 31 1990 as follows: Sales $21,694,000,000; Net Loss ($1,695,000,000); Current Assets $4,451,000,000; Total Assets $19,743,000,000; Current Liabilities $4,314,000,000; Long Term Liabilities $11,317,000,000 and Tangible Net Worth $4,112,000,000.

Intercompany relations: Top parent company will act as cash manager for subject with funds upstreamed and downstreamed as required as well as providing financing support in the form of loans and advances.

This company is engaged in the production and marketing of chemical products (principally industrial chemicals, specialty chemicals and plastics) and agricultural products, principally fertilizers and animal feed supplements.

Industrial chemicals consist of chlor-alkali chemicals, including chlorine, caustic soda, potassium chemicals, ethylene dichloride, vinyl chloride monomer and chlorinated solvents and paraffins, sodium chlorate, ethylene and propylene, inorganic phosphates and industrial grade phosphoric acid and soda products, including sodium silicate and chrome chemicals. Specialty chemicals consist of organic and inorganic chemical intermediates, derived principally from fluorine, chlorine, phosphorus and sulfur. Plastics products consist of polyvinyl chloride ("PVC") resins, compounds, film and sheet products and thermosetting (phenolic) resins and molding compounds. Based upon production volumes, the company is the largest merchant marketer of chlorine and caustic soda as well as of PVC resin in the United States. Based upon such volumes, the company is also the world's largest producer of potassium hydroxide and the largest and second largest producer of chrome chemicals and silicates, respectively, in the United States.

Agricultural products business consists principally of the processing and sale of phosphate rock, fertilizers including superphosphates, fertilizer raw materials and animal feed supplements. Based upon production volumes, the company is the second largest domestic phosphate fertilizer producer.

Terms are net 30 days. Has 10,000 accounts. Sells to industrial organic concerns and chemical distributors. Territory : Nationwide (78%) and International (22%). Nonseasonal.

EMPLOYEES: 9,200 including officers. 350 employed here.

FACILITIES: Leases 133,000 sq. ft. in 24 story steel and glass building. Premises are on the top 6 floors.

LOCATION: Suburban business section on well traveled street.

BRANCHES: Subject maintains numerous manufacturing facilities throughout the United States.

SUBSIDIARIES: The company has several direct and indirect subsidiaries located throughout the United States which manufacture chemicals. Intercompany relations: Merchandise exchanges and advances with no set repayment schedule.

11-22(3Z3 /323) 00000 147667307 071678678 NH
ANALYST: L. Bragdon

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This report has been prepared for:

BE SURE NAME, BUSINESS AND ADDRESS MATCH YOUR FILE.

ANSWERING INQUIRY

SUBSCRIBER: [redacted]
M

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CONSOLIDATED REPORT

DUNS: 14-766-7307
OXY C H CORPORATION
(SUBSIDIARY OF OXY CHEMICAL CORPORATION, DALLAS, TX)

BOX 809050
DALLAS TX 75380
5005 LBJ FRWY (OCCIDENTAL TOWER)
AND BRANCH(ES) OR DIVISION(S)
DALLAS TX 75244
TEL: 214 404-3800

DATE PRINTED
JAN 30 1992

MFG CHEMICALS, PLASTICS, FERTILIZERS & METAL FINISHING CHEMICALS

SIC NOS.
28 69 30 89 28 65
28 74 28 99

SUMMARY

RATING	--
STARTED	1981
PAYMENTS	SEE BELOW
EMPLOYS	9,200(625 HERE)
HISTORY	CLEAR

CHIEF EXECUTIVE: J ROGER HIRL, PRES

PAYMENTS (Amounts may be rounded to nearest figure in prescribed ranges)

REPORTED	PAYING RECORD	HIGH CREDIT	NOW OWES	PAST DUE	SELLING TERMS	LAST SALE WITHIN
01/92	Slow 15	2500	-0-	-0-		4-5 Mos

* Payment experiences reflect how bills are met in relation to the terms granted. In some instances payment beyond terms can be the result of disputes over merchandise, skipped invoices etc.

* Each experience shown represents a separate account reported by a supplier. Updated trade experiences replace those previously reported.

UPDATE
09/26/91 On Sep 26 1991 it was indicated business continues to operate as previously stated.

FINANCE
09/06/91 On AUG 06 1991 Maria Leskovsek, sr accountant, declined financial information. Trend of operations is undetermined. Subject has no trade obligations. Extent of leverage is undetermined.

HISTORY
11/20/91

J ROGER HIRL, PRES+
J HURST, SR V PRES
RONALD B CASRIEL, V PRES & TREAS
MICHAEL J RUDICK, V PRES & SEC+
RONALD J SCHUH, V PRES
RAGHAVEN RAJAJI, V PRES FINANCE+
JOHN J DORGAN, V PRES
THOMAS R JOHNSTON, V PRES
MICHAEL A HAMMER, V PRES & ASST SEC
RAYMOND GILL, SR V PRES & GEN COUNSEL

DIRECTOR(S): The officers identified by (+)

BUSINESS TYPE: Corporation - Profit
DATE INCORPORATED: 08/20/1981
STATE OF INCORP: California

AUTH SHARES-COMMON: 25,000
PAR VALUE-COMMON: $1.0000

Business started 1981 by the parent as a holding company. Relocated Jul 1987 from Los Angeles, CA. 100% of capital stock is owned by the parent company.

J ROGER HIRL born 1931. Active here since 1983. 1960-83 Olin Chemical Corp, Dallas, TX, latterly as senior vice president, resigned orderly. 1983 to present also with the top parent, Occidental Petroleum Corporation, Los Angeles, CA, currently as executive vice president.

RAGHAVEN RAJAJI born 1946. 1972-73 attended college. 1973 received MBA degree, Virginia Polytechnical Institute, Blacksburg, VA. 1966-71 Sampath Kimaran & Co in India. 1973-77 Corning Glass, Dallas, TX. 1977 to present with subject.

J HURST born 1939. Graduated from Dickinson College, Carlisle, PA, in 1961. 1962-69 employed by Allied Chemical Company, Baton Rouge, LA as supervisor, caustic/chlorine. 1969-78 employed by Vulcan Materials Company, Geismar, LA as

SEE REVERSE SIDE FOR GLOSSARY OF TERMS (CONTINUED)

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HISTORY
(Cont'd) assistant plant manager. 1978 to present with subject, currently as executive vice president operations.

JOHN J DORGAN born 1923. 1948-72 Continental Oil Co, Costa Mesa, CA, treasurer; 1972 vice president and treasurer; resigned orderly. 1975-present Occidental Petroleum Corporation, Los Angeles, CA, executive vice president finance and chief financial officer.

RONALD B CASRIEL born 1932. 1956 received BA degree from San Francisco State College, San Francisco, CA. 1956-72 Ernst & Ernst, CPA's, Los Angeles, CA. 1972 to present Occidental Petroleum Corporation, Los Angeles, CA.

THOMAS R JOHNSTON born 1937. Graduated from the University of British Columbia, Canada. 1965 to present with parent and affiliates.

MICHAEL J RUDICK born 1938. Received AB in Politial Science from The Citadel, Charleston, SC, in 1960. Received LLB from Syracuse University, Syracuse, NY, in 1967. 1967-70 associate with Phillips, Lytle, Hitchcock, Blaine & Huber, Buffalo, NY. 1970-71 assistant district attorney, Buffalo, NY. 1971-73 attorney and advisor, U S Department of HUD, Buffalo, NY. 1973-76 corporate counsel and assistant secretary, Marine Midland Banks, Buffalo, NY. 1976 to present with parent and affiliates.

MICHAEL A HAMMER born 1955. Graduated from the University of San Diego, San Diego, CA, with a BBA degree and Columbia University, New York, NY, with an MBA degree. 1982 joined the parent company. Vice president of the parent company since Sep 1987; director since Nov 1988; secretary since Feb 1988; 1985-Feb 1988, assistant secretary. 1984-85 employee of Cities Service Oil and Gas Corporation (now OXY USA Inc). Is the grandson of the late Dr Armand Hammer, former Chairman of the Board and Chief Executive Officer of the parent company. 1989 to present also active here.

RONALD J SCHUH born 1941. 1965 received BSCHE from the University of Wisconson, Madison, WI, and received MBA from the University of Dayton, Dayton, OH, in 1974. 1965-74 purchasing manager with Ashland Oil, Dublin, OH. 1974-77 director of purchasing for Beatrice Chemical Company, Wilmington, MA. 1977-84 purchasing manager for International Paper Company, New York, NY. 1984 to present with subject.

RAYMOND GILL born 1928. 1965 to present with parent.

RELATED CONCERNS: The top parent, Occidental Petroleum Corporation, through Occidental Petroleum Investment Co, controls over 400 subsidiaries. The principal units are wholly-owned.

Sister subsidiaries include H C P C International Inc, Dallas, TX. No financial information available.

Intercompany relations: Consist of loans, advances, merchandise transactions, no stated terms, with clean-ups made as management feels appropriate. There have been specific guarantees issued on the part of the parent for its subsidiaries, but no general guarantees or endorsements reported.

A list of these subsidiaries is on file at the Long Beach, CA office of Dun & Bradstreet.

OPERATION
11/20/91 Subsidiary of Oxy Chemical Corporation, Dallas, TX started 1972 which operates as a holding company. Parent company has 50+ other subsidiaries.

As noted this company is a subsidiary of Oxy Chemical Corporation, Duns #14-766-7240, and reference is made to that report for background information on the parent company and its management. Financial information on the parent was declined.

Oxy Chemical Corporation, is in turn, a subsidiary of Occidental Chemical Holding Corporation, Dallas, TX, Duns #14-437-4907. Financial statement dated Dec 31 1990 reflected equity of $2,964,567,000.

The ultimate parent company is Occidental Petroleum Corporation, Los Angeles, CA, Duns #00-690-8354. Financial statement dated Dec 31 1990 reflected equity of $4,112,000,000 and sales of $21,694,000,000.

All operations are conducted through a subsidiary which produces a wide variety of chemicals, plastics, fertilizers, and metal finishing chemicals.

Terms are normally net 30 days. Has 10,000 accounts. Sells to commercial and industrial concerns. Territory : United States.
Nonseasonal.

EMPLOYEES: 9,200 including officers. 625 employed here.

FACILITIES: Leases 255,000 sq. ft. in 24 story marble building in good condition. Premises neat. Premises shared with related companies. Subject occupies floors 14 through 24.

(CONTINUED)

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OPERATN
(Cont'd)

LOCATION: Suburban business section on well traveled highway.

SUBSIDIARIES: Occidental Chemical Corporation, Dallas, TX is a wholly owned subsidiary. Acquired 1973. This subsidiary operates as a manufacturer of chemicals, plastics, fertilizers and metal finishing chemicals. Financial information was declined.

1) Interore Corporation, Dallas, TX. No financial information available.
2) Chemical Tolling Co, Dallas, TX. No financial information available.

OXY VCM Corporation, Dallas, TX. No financial information available.

Intercompany relations consist of: Common management, shared premises and merchandise transactions, cleared as management deems necessary.

There are no loans, advances, guarantees or endorsements reported.

01-30(3Z3 /323) 00000 147667240 071678678 H
S E M d r w

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This report has been prepared for:

BE SURE NAME, BUSINESS AND ADDRESS MATCH YOUR FILE.

ANSWERING INQUIRY

SUBSCRIBER: [redacted]
M

THIS REPORT MAY NOT BE REPRODUCED IN WHOLE OR IN PART IN ANY MANNER WHATEVER

FULL REVISION

DUNS: 14-766-7240
OXY CHEMICAL CORPORATION
(SUBSIDIARY OF OCCIDENTAL CHEMICAL HOLDING CORPORATION, DALLAS, TX)

BOX 809050
DALLAS TX 75380
5005 LBJ FRWY (OCCIDENTAL TOWER)
AND BRANCH(ES) OR DIVISION(S)
DALLAS TX 75244
TEL: 214 404-3800

DATE PRINTED
JAN 30 1992

MFG ORGANIC CHEMICALS, PLASTIC MATERIALS, INORGANIC CHEMICALS, NITROGENOUS & PHOSPHATIC FERTILIZERS

SIC NOS.
28 69 30 89 28 65
28 73 28 74 28 99

SUMMARY

RATING	--
STARTED	1972
PAYMENTS	SEE BELOW
EMPLOYS	9,200(625 HERE)
HISTORY	CLEAR

CHIEF EXECUTIVE: J ROGER HIRL, CHB

PAYMENTS (Amounts may be rounded to nearest figure in prescribed ranges)

PAYMENTS REPORTED	PAYING RECORD	HIGH CREDIT	NOW OWES	PAST DUE	SELLING TERMS	LAST SALE WITHIN
01/92	Ppt	2500	-0-	-0-	N30	6-12 Mos
	Ppt	1000	-0-		N30	4-5 Mos
12/91	Ppt	250	-0-	-0-	N30	2-3 Mos
	Ppt	50	-0-	-0-	N30	6-12 Mos
	Slow 15	700000	250000			1 Mo
/91	Ppt	45000	10000	-0-	N30	1 Mo
	Ppt	5000	5000	-0-	N30	1 Mo
	Ppt	2500	-0-	-0-	N30	6-12 Mos
	Ppt	750	-0-			6-12 Mos
	Slow 15	25000	-0-	-0-		6-12 Mos
	(011)	7500	2500	750	N30	1 Mo
	(012)	50	-0-	-0-		6-12 Mos
10/91	Disc	250	-0-	-0-		2-3 Mos
	Ppt	80000	-0-	-0-	N30	6-12 Mos
	Ppt	45000	-0-	-0-		2-3 Mos
	Ppt	7500	-0-	-0-		2-3 Mos
	Ppt	2500	100	-0-	N15	1 Mo
	(018)	1000	250	-0-	N30	1 Mo
09/91	Ppt	200000	90000	-0-		1 Mo
	Ppt-Slow 60	15000	2500	100	1/2 10 N30	1 Mo
	Ppt-Slow 90	2500	-0-	-0-	N30	6-12 Mos
	Slow 70	250			N30	
	(023)	100000	50	50		1 Mo
08/91	Ppt-Slow 60	7500	-0-	-0-	N30	1 Mo
	Slow 30	1000	-0-	-0-		6-12 Mos
07/91	Ppt	500	500	-0-	N30	1 Mo
	Slow 10	1000	750	750	N30	2-3 Mos
	Slow 10	1000	1000	1000	N30	2-3 Mos
	Slow 10		-0-	-0-	N30	6-12 Mos
	Slow 40	50	-0-	-0-	N30	6-12 Mos
	(031)	750	750	-0-		
06/91	Ppt-Slow 30	2000000	2000000	900000	N30	1 Mo
	(033)	750	750	-0-		
05/91	Slow 60-90	250	250	250	N30	
04/91	Ppt	25000				6-12 Mos
	Ppt	100	-0-	-0-		6-12 Mos
	Ppt	50	-0-	-0-	N15	4-5 Mos
	Ppt-Slow 30	10000	-0-	-0-		6-12 Mos
`3/91	Ppt	50	-0-	-0-	N30	6-12 Mos

* Payment experiences reflect how bills are met in relation to the terms granted. In some instances payment beyond terms can be the result of disputes over merchandise, skipped invoices etc.

* Each experience shown represents a separate account reported by a supplier. Updated trade experiences replace those previously reported.

SEE REVERSE SIDE FOR GLOSSARY OF TERMS (CONTINUED)

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FINANCE
08/26/91 On AUG 23 1991 Maria Leskovsek, senior accountant, declined financial information

TREND: Trend of operations is undetermined.
LIQUIDITY: Reported trade payments for the 12 months ended Jul 1991 have fluctuated between the upper and median industry quartiles. No explanation was provided for any reported slowness.
FINANCING: All financing is done through parent company. Subject maintains no borrowing accounts independent of the parent. Extent of leverage is undetermined.

PUBLIC FILINGS
The following data is for information purposes only and is not the official record. Certified copies can only be obtained from the official source.

If it is indicated that there are defendants other than the report subject, the lawsuit may be an action to clear title to property and does not necessarily imply a claim for money against the subject.

---

* * * SUIT(S) * * *

FILING NO.: 91L317
SUIT AMOUNT: IN EXCESS OF $15,000
PLAINTIFF: DOROTHY STOUT
DEFENDANT: OXY CHEMICAL CORPORATION, LISLE, IL
and OTHERS
WHERE FILED: LAKE COUNTY CIRCUIT COURT, WAUKEGAN, IL
STATUS: Pending
DATE STATUS ATTAINED: 02/19/1991
DATE FILED: 02/19/1991
RECEIVED BY D&B: 03/12/1991

FILING NO.: 91L318
SUIT AMOUNT: IN EXCESS OF $15,000
PLAINTIFF: AMELIA SANCHEZ
DEFENDANT: OXY CHEMICAL CORPORATION, LISLE, IL
and OTHERS
WHERE FILED: LAKE COUNTY CIRCUIT COURT, WAUKEGAN, IL
STATUS: Pending
DATE STATUS ATTAINED: 02/19/1991
DATE FILED: 02/19/1991
RECEIVED BY D&B: 03/12/1991

FILING NO.: 91L319
SUIT AMOUNT: IN EXCESS OF $15,000
PLAINTIFF: BONNIE NORRIS
DEFENDANT: OXY CHEMICAL CORPORATION, LISLE, IL
and OTHERS
WHERE FILED: LAKE COUNTY CIRCUIT COURT, WAUKEGAN, IL
STATUS: Pending
DATE STATUS ATTAINED: 02/19/1991
DATE FILED: 02/19/1991
RECEIVED BY D&B: 03/12/1991

FILING NO.: 911320
SUIT AMOUNT: IN EXCESS OF $15,000
PLAINTIFF: ELEANOR POGOSE
DEFENDANT: OXY CHEMICAL CORPORATION, LISLE, IL
and OTHERS
WHERE FILED: LAKE COUNTY CIRCUIT COURT, WAUKEGAN, IL
STATUS: Pending
DATE STATUS ATTAINED: 02/19/1991
DATE FILED: 02/19/1991
RECEIVED BY D&B: 03/12/1991

FILING NO.: 911321
SUIT AMOUNT: IN EXCESS OF $15,000
PLAINTIFF: PAUL HARRIS
DEFENDANT: OXY CHEMICAL CORPORATION, LISLE, IL
and OTHERS
WHERE FILED: LAKE COUNTY CIRCUIT COURT,
STATUS: Pending
DATE STATUS ATTAINED: 02/19/1991
DATE FILED: 02/19/1991
RECEIVED BY D&B: 03/12/1991

(CONTINUED)

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FILINGS
(Cont'd)

WAUKEGAN, IL

FILING NO.: 91L322
SUIT AMOUNT: IN EXCESS OF $15,000
PLAINTIFF: ROBERTA LEE
DEFENDANT: OXY CHEMICAL CORPORATION, LISLE, IL
and OTHERS
WHERE FILED: LAKE COUNTY CIRCUIT COURT, WAUKEGAN, IL
STATUS: Pending
DATE STATUS ATTAINED: 02/19/1991
DATE FILED: 02/19/1991
RECEIVED BY D&B: 03/12/1991

* * * UCC FILING(S) * * *

COLLATERAL: Leased Equipment including proceeds and products
FILING NO: 88062007
TYPE: Original
SEC. PARTY: FIRST SECURITY BANK, SALT LAKE CITY, UT
DEBTOR: OXY CHEMICAL CORPORATION
DATE FILED: 03/10/1988
FILED WITH: OFFICE OF THE LT GOVERNOR/DEPARTMENT OF COMMERCE/UCC DIVISION, UT

COLLATERAL: Leased Industrial equipment/machinery and proceeds - Leased Equipment and proceeds
FILING NO: 91210350
TYPE: Original
SEC. PARTY: BRIGGS-WEAVER INC, DALLAS, TX
ASSIGNEE: YALE FINANCIAL SERVICES INC, FLEMINGTON, NJ
DEBTOR: OCCIDENTAL CHEIMCIAL CORP, DEER PARK, TX
DATE FILED: 10/30/1991
RECEIVED BY D&B: 11/27/1991
FILED WITH: SECRETARY OF STATE/UCC DIVISION, TX

COLLATERAL: Leased Industrial equipment/machinery and proceeds
FILING NO: 90035456
TYPE: Original
SEC. PARTY: YALE FINANCIAL SERVICES INC, FLEMINGTON, NJ
DEBTOR: OXY CHEMICAL CORPORATION, DEER PARK, TX
DATE FILED: 02/16/1990
RECEIVED BY D&B: 03/09/1990
FILED WITH: SECRETARY OF STATE/UCC DIVISION, TX

COLLATERAL: Specified Equipment and proceeds
FILING NO: 873640044
TYPE: Original
SEC. PARTY: CONNECTICUT BANK & TRUST CO, HARTFORD, CT
ASSIGNEE: BANKERS LIFE COMPANY, DES MOINES, IA
DEBTOR: OXY CHEMICAL CORPORATION
DATE FILED: 12/30/1987
FILED WITH: SECRETARY OF STATE/UCC DIVISION, WA

COLLATERAL: Leased Equipment
FILING NO: 047610
TYPE: Original
SEC. PARTY: STEINER FINANCIAL CORPORATION, PITTSBURGH, PA
DEBTOR: OXY CHEMICAL CORPORATION
DATE FILED: 02/23/1988
FILED WITH: SECRETARY OF STATE/UCC DIVISION, NY

COLLATERAL: Leased Equipment
FILING NO: 1870209854
TYPE: Original
SEC. PARTY: GATX LEASING CORP, SAN FRANCISCO, CA
DEBTOR: OXY CHEMICAL CORPORATION
DATE FILED: 12/30/1987
FILED WITH: SECRETARY OF STATE/UCC DIVISION, FL

COLLATERAL: Leased Computer equipment
FILING NO: 87209067
TYPE: Original
SEC. PARTY: LEASING DYNAMICS INC, CLEVELAND OH
DATE FILED: 08/10/1987
FILED WITH: Secretary of State, TX

(CONTINUED)

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FILINGS (Cont'd)

DEBTOR: OXY CHEMICAL CORPORATION

COLLATERAL: Leased Computer equipment
FILING NO: 87209068
TYPE: Original
SEC. PARTY: LEASING DYNAMICS INC, CLEVELAND OH
DATE FILED: 08/10/1987
FILED WITH: Secretary of State, TX

DEBTOR: OXY CHEMICAL CORPORATION

FILING NO: 00983569
TYPE: Continuation
SEC. PARTY: EQUITABLE LIFE LSG CORP, OAKLAND, CA
DEBTOR: OCCIDENTAL CHEMICAL PROPERTIES CORP, DARIEN, CT
DATE FILED: 08/27/1990
RECEIVED BY D&B: 10/23/1990
ORIG. UCC FILED: 01/28/1986
ORIG. FILING NO: X0023247
FILED WITH: SECRETARY OF STATE/UCC DIVISION, OH

The public record items contained in this report may have been paid, terminated, vacated or released prior to the date this report was printed.

HISTORY
08/26/91

J ROGER HIRL, CHB & PRES+
RAGHAVEN RAJAJI, V PRES FINANCE & CHIEF FINANCIAL OFFICER
RONALD B CASRIEL, V PRES & TREAS
MICHAEL A HAMMER, V PRES & ASST SEC
DIRECTOR(S): The officers identified by (+)

BUSINESS TYPE: Corporation - Profit
DATE INCORPORATED: 12/27/1972
STATE OF INCORP: California

AUTH SHARES-COMMON: 25,000
PAR VALUE-COMMON: $1.0000

Business started 1972 by the parent. 100% of capital stock is owned by parent.

J ROGER HIRL born 1931. 1960-83 Olin Chemical Corp, Los Angeles, CA. 1983-present active here. He is the executive vice president of Occidental Petroleum Corporation, Los Angeles, CA.

RONALD B CASRIEL born 1932. 1956 received BA degree from San Francisco State College, San Francisco, CA. 1956-72 Ernst & Ernst, CPAs, San Francisco, CA. 1972-present Occidental Petroleum Corporation, Los Angeles, CA.

RAGHAVEN RAJAJI born 1946. 1971-73 attended college. 1973 received MBA degree, Virginia Polytechnical Institute, Blacksburg, VA. 1966-71 Sampath Kimaran & Co in India. 1973-77 Corning Glass, Ithaca, NY. 1977-present active here.

MICHAEL A HAMMER born 1955. Graduated from the University of San Diego, San Diego, CA, with BBA and Columbia University, New York, NY, with MBA in 1982. 1982 joined Occidental Petroleum Company, Los Angeles, CA.. Vice president of affiliate since Sep 1987; director since Nov 1988; secretary since Feb 1988; 1985-Feb 1988, assistant secretary; 1984-85, employee of Cities Service Oil and Gas Corporation (now OXY USA Inc). Is the grandson of the late Dr Armand Hammer, former Chairman of the Board and Chief Executive Officer.

AFFILIATES: The top parent, Occidental Petroleum Corporation, through Occidental Petroleum Investment Co, controls over 400 subsidiaries. Most subsidiaries are wholly owned. Intercompany relations: Consist of loans and advances, merchandise transactions, cleared as management deems necessary. There are no formal guarantees or endorsements in effect.

A list of these affiliates is on file at the Long Beach, CA office of Dun & Bradstreet.

OPERATION
08/26/91

Subsidiary of Occidental Chemical Holding Corporation, Dallas, TX started 1972 which operates as a holding company. Parent company owns 100% of capital stock. Parent company has 15+ other subsidiaries. Intercompany relations: Consist of common

(CONTINUED)

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OPERATN
(Cont'd) management and facilities. No formal guarantees or endorsements exist.

As noted, this company is a subsidiary of Occidental Chemical Holding Corporation, DUNS number 144374907, and reference is made to that report for background information on the parent company and its management. The parent company has submitted the following consolidated figures dated December 31, 1990: Current Assets $1,493,792,000; Current Liabilities $1,104,805,000; Total Assets $5,811,532,000; Total Equity $2,964,567,000; Total Sales $5,040,196,000 and Net Income $(372,409,000).

Occidental Chemical Holding Corporation, is in turn, a wholly-owned subsidiary of Occidental Petroleum Investment Co (Inc), Los Angeles, CA.

The ultimate parent is Occidental Petroleum Corporation, Los Angeles, CA, Duns #00-690-8354.

Operations here are to engage in the business of holding and managing investments in the form of capital stock holdings in other corporations and other forms of investment in the industrial and agricultural industries.

Through its subsidiaries manufactures organic chemicals, plastic materials, inorganic chemicals, nitrogenous and phosphatic fertilizers and metal finishing chemicals.

Terms are normally net 30 days. Has 10,000 accounts. Sells to industrial and commercial concerns. Territory : United States.

EMPLOYEES: 9,200 including officers. 625 employed here.

FACILITIES: Leases 255,000 sq. ft. in 24 story marble building in good condition. Premises neat. Shares premises on floors 14 through 24 with parent company.

LOCATION: Suburban business section on main highway.

SUBSIDIARIES: Subject has 30+ subsidiaries throughout the United States. The majority of which are wholly owned. Most of the operations are through Oxy C H Corporation, Dallas, TX.

1. Oxy C H Corporation, Dallas, TX, is wholly owned, started 1981. Manufacturer of chemicals, plastics and fertilizers. Financial information declined. Intercompany relations consist of shared premises and merchandise transactions. There are no loans, advances, guarantees, endorsements, or other intercompany relations. The primary operating subsidiary of Oxy C H Corporation is Occidental Chemical Corporation, Dallas, TX. Founded 1909 and operates as described above. Financial statement declined.

01-30(391 /391) 00000 144374907 071071071 H
S E M

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EXHIBIT 2

LA 121 CO# 53 WR

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 6
HOUSTON BRANCH
10625 FALLSTONE RD.
HOUSTON, TEXAS 77099

RECEIVED 2

MEMORANDUM

DATE: 1/17/92

SUBJECT: AIR COMPLIANCE MONITORING

✓ NSPS - Subpart(s) Db

✓ NESHAP (ASBESTOS)

____ P.S.D. - Permit No. _____

____ Case Development

✓ S.I.P.

RECEIVED
JAN 23 1992
6E-SC

FROM: Mineura De León (Inspector)
Houston (Branch)

TO: James E. Stiebing, Chief
Surveillance Branch (6E-S)

THRU: Diana G. Ayers, Chief
Houston Branch (6E-H)

Diana G. Ayers

THRU: Richard Gigger, Chief
Compliance Monitoring Section (6E-HC)

Reviewed by: Jim Hall 1-17-92

An Air Inspection was carried out on Nov 21-22 1991 (dates) at the following location:

NAME: Occidental Chemical Corporation

AQCR: _____ Address: P.O Box 74 Hahnville LA 70057

CDS NO. C84-00007
2520-00007

The inspection is described in detail in the enclosed Air Inspection Checklist. Apparent violations found at this plant included the following:

(see checklist page)

NESHAP Subpart M Section 61.144 Cl Manuf.
And LAC Chapter 33 2507 + LAC 905

* due to Multimedia + Holidays report is late

(see next page)

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 6
HOUSTON BRANCH
10625 FALLSTONE RD.
HOUSTON, TEXAS 77099

AIR INSPECTION REPORT

Inspection Date: November 21-22, 1991

Company Name	Occidental Chemical Corporation
Type of Industry	Chemical Industry (Electrochemical industry)
Mailing Address	P.O. Box 74, Hahnville, Louisiana, 70057
Location	Louisiana Highway 3142 at Junction 18, Taft, St. Charles Parish, Louisiana

Company Personnel	Name	Title	Phone
Responsible for Facility	T.H. Morrow	Plant Manager	504-783-7200
Responsible for Environmental	James A. Anderson	Env. Sup.	504-783-7384
	Leslie Hebert,Jr.	Env.Eng.	504-783-7384
EPA Personnel	Minerva De Leon	Env. Scientist	983 -2149

DEQ State Inspectors

Gary Northington	Env. Scientist	504-838-5361
Anne Brannon	Env. Scientist	504-838-5361

On ~~December~~ NOVEMBER 21-22 16-20, 1991, an unannounced Air inspection was conducted at the Occidental Chemical Company, located in Taft Louisiana. The purpose of the inspection was to determine compliance with the Louisiana Department of Environmental Quality S.I.P., Permit Provisions and Exemptions, New Source Performance Standards, and the National Emission Standards for Hazardous Air Pollutants.

Occidental's Taft Facility is located at the corner of Highways 3142 and 18, in Taft, Louisiana. The products produced at this facility include chlorine, sodium hydroxide, sodium chlorate, and sulfur monochloride. The following list of attachments corresponds to the process descriptions.

Attachment	No.1 Brine Electrolysis
Attachment	No.2 Chlorine & Vent Gas Neutralization
Attachment	No.3 Caustic Soda Process
Attachment	No.4 Hydrogen Recovery
Attachment	No.5 Sulfur Monochloride
Attachment	No.6 Sodium Chlorate
Attachment	No.7 Cell Renewal-HAPP Process
Attachment	No.8 Cell Renewal-PMX Process
Attachment	No.9 Groundwater Remediation

OCCIDENTAL PROCESS DESCRIPTION

Chlorine and Caustic Soda

Chlorine and caustic soda is produced by the electrolysis of brine (a mixture of sodium chloride and water) in a diaphragm type electrolytic cell.

Sodium chloride brine is a solution mined at facilities in Napoleonville, Louisiana and transported via pipeline to the Taft Plant where it is stored in a lined impoundment. The raw brine is treated with chemicals (sodium carbonate [Na_2Co_3] and sodium hydroxide [NaOH] to precipitate unwanted impurities (calcium carcarbonate [$CaCO_3$], and magnesium hydroxide [$Mg(OH)_2$]) which are settled out in clarifiers. The treated brine is then filtered and stored. The purified sodium chloride brine is then fed to the electrolytic cell where chlorine gas, hydrogen gas, and a weak caustic soda (cell liquor) solution is produced.

The chlorine gas coming from the cells is hot and wet (water vapor). The chlorine gas is cooled in direct contact and indirect contact coolers, dried by direct contact with sulfuric acid in drying towers, purified by scrubbing with liquid chlorine in the purification column, compressed to 100 pounds per square inch by centrifugal compressors, liquified by refrigeration equipment, and stored as a liquid product.

Vent gas from the chlorine process is bubbled into tanks containing caustic soda solution to produce a sodium chloride solution which is recycled to the brine process or discharged to the plant effluent system.

The hydrogen gas from the cells is cooled by direct contact with brine, compressed to 10 pounds per square inch by turbines and burned in boilers as a supplementary fuel.

The weak caustic soda (cell liquor) solution form the electrolytic cells is saturated with salt. The 50 percent commercial grade caustic soda (NaOH) solution is obtained by evaporating water form the cell liquor in triple effect evaporators. The 50 percent NaOH solution is cooled to precipitate salt and centrifuged to separate the salt from this solution. The salt is recycled to the brine process for further electrolysis. The caustic soda is then stored in product storage tanks.

Chemistry

Brine Purification

$$CaCl_2 + Na_2CO_3 \rightarrow CaCO_3 + 2NaCl$$
$$MgCl_2 + 2NaOH \rightarrow Mg(OH)_2 + 2NaCl$$

Electrolysis of brine

$$2NACL + 2H_2O + \text{electricity} \rightarrow Cl_2 + H_2 + 2NaOH$$

Vent Gas Neutralization

$$Cl_2 + 2NaOH \rightarrow NaOCl + NaCl + H_2O$$
$$NaOCl + \text{heat} + \text{catalyst} \rightarrow NaCl + 1/2\ O_2$$

Sulfur Monochloride Process

Sulfur monochloride is produced by reacting sulfur and chlorine. Sulfur is added batchwise into a reactor containing a heel of sulfur monochloride. Chlorine is then sprayed into the reactor to form sulfur monochloride. When chlorination is completed, the sulfur monochloride is transferred into product storage.

Chemistry

$$S_4 + 2Cl_2 \rightarrow 2S_2Cl_2$$

Sodium Chlorate Process

Sodium chlorate solution is produced by the electrolysis of brine (a mixture of sodium chloride and water) in an electrolytic cell. Purified sodium chloride brine is saturated in a salt dissolver. The saturated brine is then fed into a recycling cell liquor stream where chlorine and sodium dichromate is added. This recycle stream is fed to the chlorate cell where the sodium chloride is electrolyzed to produce sodium chlorate. After electrolysis, a portion of the recycling cell liquor stream (product liquor) is

withdrawn and sent to the resaturator where it becomes saturated with sodium chloride. The saturated product liquor is then placed in a treater tank for removal of sodium hypochlorite (hypo) by thermal decay. The liquor is then pH adjusted and treated with urea to remove residual hypo. Final pH and water adjustments are made by adding dilute caustic soda and water as necessary. The product is then filtered to remove chrome and other impurities and sent to the product storage tank.

The hydrogen rich cell gas, is scrubbed with dilute caustic to remove chlorine, compressed and sent to the boilers for use as supplementary fuel.

Chemistry

$6NaCl + 6H_2O + \text{electricity} \rightarrow 3CL_2 + 6NaOH + 3H_2$
$3\ Cl_2 + 6NaOH \rightarrow 3NaCl + 3H_2 + 3NaOCl$
$3NaOCl \rightarrow NaClO_3 + 2NaCl$

Cell Renewal Unit

Cathodes from the electrolytic cells used in the chloro-alkali units 1&2 are stripped and recoated to form diaphragms are of two types: an asbestos plus polymer separator (HAPP), and a Poyramix (PMX separator. The HAPP diaphragm is produced by coating the cathode with a mixture of asbestos fiber and polymer, then fused by heat in the HAPP Oven/Dryer. The fused HAPP cathode is then utilized in the assembly of a diaphragm electrolytic cell.
PMX is a fibrous material composed of polytetraflouroethylene (PTFE) and ceramic zirconium oxide. Preparing the PMX diaphragm similar to the HAPP diaphragm, however the fused PMX diaphragm is hydrophobic and must be treated with a surfactant, the cathode is placed in the PMX Drying oven where it is dried to bond the surfactant to the PMX diaphragm. The PMX cathode is then used in the assembly of an electrolytic cell

Groundwater Treatment Unit

In 1989 Occidental was given an exemption to install and operate an 18 gpm steam stripper to remove organic compounds from contaminated ground water. The exemption was approved under LAC 33 III 505. B and requires a daily log be kept on site showing daily hours of operation and stripper feed rates. The treatment system consists of a decanter, stripper feed tank, primary and secondary condensers, storage tanks, and a steam stripper.

Compliance with Applicable SIP, NSPS, AND NESHAP REGULATIONS

Below is a listing of applicable regulations and compliance status as determined by the inspector at the time of inspection. I.C. denotes In Compliance. N.I.C. denotes Not In Compliance, U.D. denotes Undetermined.

Compliance with Applicable DEQ Regulations

Chapter 9- General Regulations on Control of Emissions and Emission Standards

905. N.I.C. - Control Facilities to be installed when Feasible. When facilities have been installed on a property, they shall be used and diligently maintained in proper working order whenever emissions are being made which can be controlled by the facilities, even though the ambient air quality standards are not exceeded. The facility had installed a baghouse to capture asbestos emissions and had not been maintained in 10 years according to the operations technician and foreman(see attachment A and discussion under Permit 362). There were no maintenance records.

907. Emissions resulting in undesirable levels not allowed I.C. The state files contain no reports of nuisances caused by the facility. Note however that the facility is located in an sparsely populated area.

919. Emissions Inventory- Filing of Emissions Data. I.C. The last EIQ was submitted in March of 1991, the facility will be submitting another this year (see attachment B).

Compliance with New Source Performance Standards & NESHAP.

The facility is subject to NSPS Subparts A, NSPS-Db, LESHAP Subpart F AND NESHAP Subpart M. The following is a listing of applicable permits which are required to comply with these standards:

Permit	Special Provision No.	NSPS&NESHAPS Subpart(s)
506	5 (#3 BOILER)	40 CFR 60,Db
362-C(M-1)	3	40 CFR 763, APP.A LAC 33,& NESHAP,M
2043	(but has many special provisions on CEM for Cl)	
558	HAPP Oven dryer	LESHAP & NESHAP

Permit and Construction History

Hooker Chemical Corporation established a chloro-alkali facility in Taft, Louisiana in 1966. In 1974 they expanded to include another chloro-alkali facility. Occidental Petroleum purchased these facilities in 1967; a name change followed in 1982 (Occidental Chemical). Additional expansions followed in 1987, 1989, 1990, and 1991. Note facilities existing prior to June 16, 1969 are grandfathered sources.

Permits presently in Effect

Permit No.	Date Issued	Applicable Program UNITS INVOLVED	Special Cond.
58	April 22, 1971 System 1 System 2	SIP, Chloro-alkali Expansion 1976 Expansion 1985	Previously GF
439	April 8,1975	Sip, Sulfur Monochloride	
558	2/10/1976	LESHAP,NESHAP, Cathode baking Oven	

Permit No.	Date issued	Units & Appl.Prog	Special Cond.
506 (M-2)	4/10/1989	SIP, NSPS, Steam Boilers	(Attach.C)
362C (M-1)	2/16/1990	SIP, LESHAP, Chloro-alkali	(Attach.D)
2043	1/1/ 1991	SIP, Sodium Chlorate	(Attach.E)

Permit compliance with special provisions

1. Permit 361 (M-1)

Specific Conditions (SP)
SP 1. I.C.- A packing scrubber that operates at 99% efficiency to remove chlorine from cell gas is installed . Sodium Hydroxide was being used as the scrubbing agent **(see attachment K sodium cell gas scrubber).**
SP 2,3,4,& 5 I.C.-The facility has an on line continuous monitor for chlorine performing analysis of the vent gas and has installed a spray column scrubber. The facility is keeping records as required by the conditions of this permit.

2. Permit-362 C (M-1)

SP 1. N.I.C. This special condition requires that the permittee shall control asbestos emissions by complying with all provisions of LAC 33:III. Chapter 25, Emission Standards for Hazardous Air Pollutants. Chapter 25, Section 2607 D requires that all air cleaning equipment authorized by this section must be properly installed, used operated and maintained. An asbestos baghouse had not been serviced in 10 years or maintained according to the Occidental foreman and plant manager. The baghouse was inspected and it was noted by the inspector that the baghouse was 3/4 full of asbestos and that the bags had a layer of asbestos dust about two inches thick (see drawing and photos Attachment F).

SP 2. N.I.C. This special condition requires the facility to comply with NESHAPS Subpart M, Section 61.144 Standards for Manufacturing. **(See NESHAP SECTION 61.144).**

SP 3 UNDETERMINED Please note that the Asbestos dust collector Vent was tested on June 29,1990 even though no maintenance work had ever been conducted. Tests results and procedures provided are questionable (see 40 CFR 763, Appendix A). Test runs demonstrate up to 6.044 fibers per cubic centimeter (OSHA PEL REQ.IS 0.2F/CC PER 8 HOUR EXPOSURE LEVEL)?? (SEE REPORT ATTACHED as attachment N)

3. Permit-506 (M-2)
SP 1- I.C. This special provision requires that the facility install a continuous flue gas oxygen monitor. A monitor is installed see attachment G for boiler information.
SP 5- I.C. Boiler three must comply with NSPS REQUIREMENTS 40 CFR SUBPART 60, Db. (see NSPS section Db.)

4. Permit 2043
SP 1-9 all conditions are being met see attachment K and L other parameters and conditions of this permit were verified out in the field.

Subpart A- General Provisions

60.7 (a) (1) -I.C. Occidental furnished DEQ the dates of proposed construction and the need to add another steam boiler under Permit 506 on December 11, 1986. A permit application and emissions inventory questionnaire were submitted May 11, 1987 requesting modification of permit 506 to allow the addition of another boiler. Variances to construct and operate the boiler pending review were approved on May 13, and May 25, 1987. An operating permit was issued on August 17,1987.

60.8 (a). I.C. per DEQ/EPA review. Test results have been conducted. The boilers (1 & 2) for Permit 506 were operating in 1974. Boiler No.3 was installed in 1987. There is a Nox Performance test in the DEQ files which was performed on January 11, 12, & 13, 1988. The other boilers were grandfathered sources (see Attachment G on the boilers.)

60.13 Monitoring requirements. I.C. There are is a CEMs at this facility (required by permit 2043 provisions see attachment E).

60.18 I.C. General control Device Requirement The flares associated with this AIRS or CDS number belong to another Occidental Chemical Corporation called the Taft Ammonia Terminal which is part of Occidental's Agricultural group under separate management. The ammonia terminal employs 13 people with production personnel operating year round on two 12-hour shifts per day. The Permit 1213T was issued in 1979 and is exempt from these requirements. The facility has an emergency flare, and a purge flare. The flares have auto ignition systems with propane fueled pilots (see attachment H - state report on flares).

Subpart Db- Standard for Industrial Commercial -Institutional Steam Generating Units, Title 40, CFR, Part 60, 60.40b

60.40b (a)-The boiler was issued the operating permit in 1989 and has a heat input capacity from fuels combusted in the steam generating unit of greater than 29 MW (100 million Btu/hr).

60.44b (a)-I.C. Standard for Nitrogen Oxides
The daily records provided demonstrated that the nitrogen oxide emissions for high heat release rate while firing natural gas to be less than 0.20 lb/MMBTU. Actual rates were .083 lbs/MMbtu **(see attachment I** Boiler emission data).

60.48 (b), (g), (2)- I.C. The facility is monitoring the steam generating unit operating conditions as required by this section **(see attachment M)** and predicting nitrogen oxides emission rates as specified in a plan submitted pursuant to 60.49b(c)

60.49b (a) I.C. The facility submitted notification to DEQ of the date of initial start-up as provided in 60.7 including the design heat input capacity, and the annual capacity factor that the facility expected to operate the boiler.

Subpart Kb - Standard for VOC Storage Vessels for Which Construction, Reconstruction, or Modification Commenced after July 23, 1984

The company has provided a listing of 117 tanks and the process areas listed in attachment J. Most of the tanks are either too small or have only inorganic products which would not be applicable to NSPS Kb. The other older (20 years) tanks that may have fuel oil are exempt from Subpart K. The only natural gas tank that is 4000 gallons listed on attachment J does not belong to the natural gas company and it is a pressurized tank.

60.116b(a) N.A. The company has initiated recording procedures as required by this paragraph even though they are not required to, since they are exempt form these regulations.

National Emission Standards for Hazardous Air Pollutants - 40 CFR 61 Subpart M - National Emission Standard for Asbestos
61.144 (a),(9) N.I.C. Standard for Manufacturing -The manufacture of chlorine utilizing asbestos diaphragm technology
61.144 (b), (3) N.I.C. The facility had not monitored the potential source of asbestos emissions from the baghouse (including air cleaning devices) at least once each day during daylight hours for visible emissions to the outside air during normal operations (there were no maintenance records or operating logs available to demonstrate this)

61.144 (b), (4) N.I.C. The facility is required to inspect each air cleaning device at least once each week for proper operation and for malfunctions, including for dust deposits. The asbestos baghouse had never been inspected in 10 years because the facility stated that they were unaware on how to change the bags without having emissions of asbestos. The inspector requested to see a letter submitted to the administrator or maintenance plan to include at a minimum the requirements of this section when an air cleaning device cannot be inspected on a weekly basis no maintenance plan had ever been submitted.
61.144 (b),(5), (6), (7), & (8) N.I.C - No records were maintained including date or times of inspection, presence or absence of visible emissions, condition of fabric filters, or presence of dust deposits. There were no records furnished or retained for a two year period or submitted on a quarterly basis.

Inspection Summary

Facility personnel were eager and proficient at providing the requested information. The facility was found to be in compliance with most applicable regulations and permit requirements except for NESHAP Subpart M, Asbestos, Section 61.144, LAC, Chapter 33, Rule 2507 and LAC RULE 905 because they failed to maintain records as required of NESHAP chlorine manufactures and to maintain and conduct inspections on an air-cleaning device (Baghouse).

The facility recently submitted a report concerning their most recent maintenance activities at the asbestos dust collector.

Attachments

1) Process flow diagrams for units at the facility (1-9).

A) Asbestos Baghouse Maintenance (Recent correspondence)
B) EIQ
C) Permit provisions 506
D) Permit provisions 362
E) Permit Provisions 2043
F) Photos and Drawing of Asbestos Baghouse
G) Boiler Records
H) Report on Flares
I) Boiler Emissions
J) Tank Listing
K) Sodium Chlorates
L) Chlorine emissions (2043)
M) Steam Emissions Report required by NSPS
N) Asbestos Emission Test report

OxyChem®

Attachment A to Inspection Report

December 18, 1991

Minerva De Leon
U.S. Environmental Protection Agency
10625 Fallstone Rd.
Houston, Texas 77099

Dear Ms. De Leon:

RE: SIP/NESHAP INSPECTION OF NOV. 21-22, 1991

Enclosed is a copy of the completed work order which describes the work which was done on the asbestos dust collector. Also included are copies of photos showing the collector interior and the enclosure and work practices which were used by the contractor which did the work.

Should you have any questions or need additional information, please contact us.

Sincerely,

OCCIDENTAL CHEMICAL CORPORATION

L. E. Hebert

L. E. Hebert
Sr. Environmental Engineer

LEH:lg
Enclosure

cc: File

Occidental Chemical Corporation
Basic Chemicals Group
P.O. Box 74, Hahnville, Louisiana 70057
504/783-7200

need approval, prioritized by JK & approval
DW

WORK REQUEST

PRINT CLEARLY

	EXP CD	SUB EXP	COST CTR	WK ORDER	EQUIP AREA	EQUIP	DATE WRITTEN (M M D D Y Y)	CHANGE	APP BY			PREP TIME	EXECUTION		
24721			20	78610	20	440	5 06 91	A	AT	4	3	P		52	CR

(4)

SHORT JOB DESCRIPTION

Refurbish [illegible] 1 [illegible] 1 [illegible]

Told to need planning & approval DW

JOB ESTIMATE				JOB ESTIMATE				EQUIP. REQ.
Crft. Code	HOURS	# M	CRAFT	Crft. Code	HOURS	# M	CRAFT	MANLIFT
22			ELECTRICIAN/INST.	31			INSULATOR	STEVEDORE
23			FLD. MECH.	32			CARPENTER	BOOM TRUCK
27	2	3	PAINTER	33			SCAFFOLDING	X CRANE
28	3	3	WLD - FTR				EQUIPMENT REQUIRED	TOTAL EST. HR. 70 / TOTAL EST. MEN 6
30			YARD					

ORIGINATOR — FILL SHADED AREAS ABOVE AND SECTION BELOW

Take a Safety Pause

Work Requested By: Rene Hebert

For Details Contact: Rene Hebert

Describe Job (As Detailed As You Know How)

1. Replace manifold
2. Extend walkway
3. Hinge small door
4. Sandblast + paint
5. Replace all sock filters

} asbestos dust collector

App. By

Labor 3,960.00

Material 1,000.00

Other

Total $4,960.00

Special Instructions By Originator

* FORMAN TO WALK OUT JOB with VINNY before STARTING WORK.

Take a Safety Pause

MUST BE SIGNED SAFE TO PROCEED AT JOB SITE	Ready & Safe to Proceed: Ralph Beane	TIME IN: 7:17 9/23/91 A.M.	SAFETY PRECAUTIONS: GOGGLES
MUST BE SIGNED COMPLETE & SATISFACTORY AT JOB SITE	Job Complete & Satisfactory	TIME OUT: A.M. P.M.	FULL FACE SHIELD
MUST BE SIGNED SAFE TO PROCEED AT JOB SITE	Ready & Safe to Proceed: [illegible]	TIME IN: 7:95 9-25-91 A.M. P.M.	GAS MASK (FULL-FACE)
MUST BE SIGNED COMPLETE & SATISFACTORY AT JOB SITE	Job Complete & Satisfactory	TIME OUT: A.M. P.M.	RUBBER BOOTS
MUST BE SIGNED SAFE TO PROCEED AT JOB SITE	Ready & Safe to Proceed: Ralph Beane	TIME IN: 7:35 9/25/91 A.M. P.M.	ACID SUIT
MUST BE SIGNED COMPLETE & SATISFACTORY AT JOB SITE	Job Complete & Satisfactory	TIME OUT: A.M. P.M.	ACID HOOD
MUST BE SIGNED SAFE TO PROCEED AT JOB SITE	Ready & Safe to Proceed: Rene Hebert	TIME IN: 10:00 11-26-91 A.M. P.M.	AIR PAK
MUST BE SIGNED COMPLETE & SATISFACTORY AT JOB SITE	Job Complete & Satisfactory: Rene Hebert	TIME OUT: 11-26-91 A.M. P.M.	SAFETY BELT
			CHLORATES CLOTHING
			IMPAIRMENT PERMIT
			HIGH VOLTAGE WORK PERMIT
			LOCK OUT REQUIRED
			HOT WORK PERMIT
			CONFINED SPACE PERMIT
			LINE BREAKING PERMIT
			OTHER Dust mask

BASIC INDUSTRIES INC.

ASBESTOS REMOVAL DAILY JOB LOG

JOB NAME: Oxy Chem

DATE: 11-(26-27)-91

LOCATION: Taft

JOB NUMBER: 7890

AREA:

CHARGE #: 78

WEATHER CONDITIONS:

WIND DIRECTION: North

TEMPERATURE: 61

OF WORKERS IN ENCLOSURE: 2

OF PERSONAL SAMPLES: 1

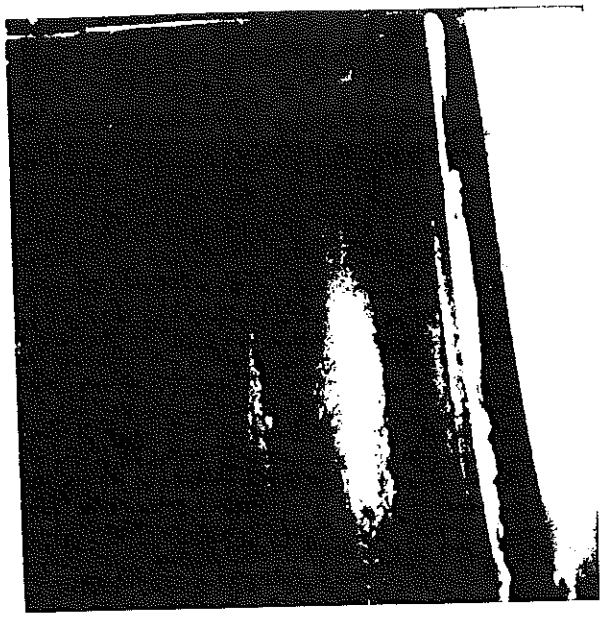
OF AREA SAMPLES: 0

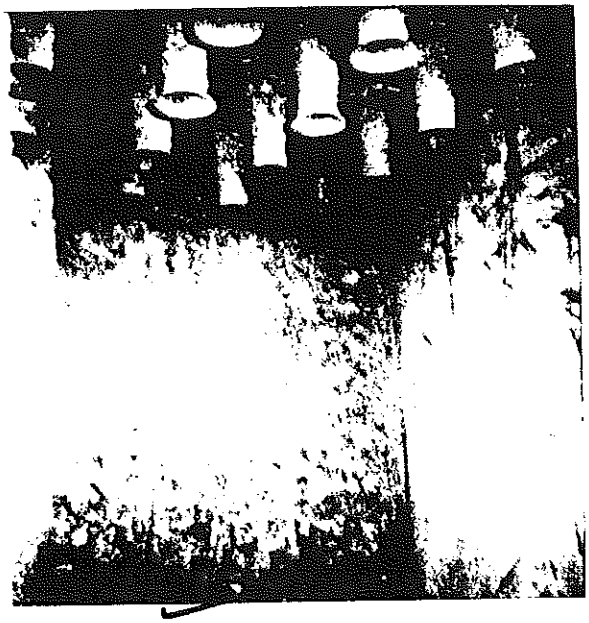
PROGRESS: Area was set up and ready for removal decon was in proper working order, after completing the enclosure we gathered material needed. we suited out, taped up and had all proper eq. 'papr' respirator, rubber boots, and tyvex suits. We then begin removing the sock filters, one by one took all 35 socks out and applied new ones. After all was out and replaced we then put them back in the housing. After all filters was in place. we vacuumed the housing and the door out. then vacuumed the enclosure walls and flooring also. removal + cleanup complete. 'We tore it down'

PROBLEMS: Tommy Reynolds and Dennis May had problems with the papr's the respirators that ~~cn~~ came from the shop was defective and no proper replacement parts were available on the job site.

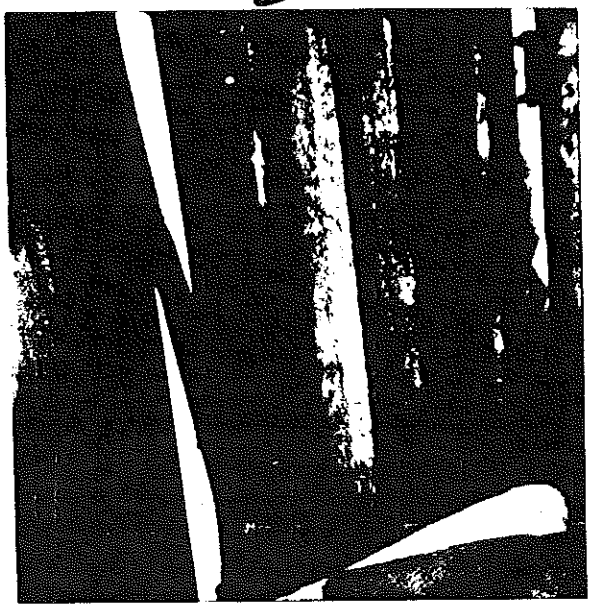
FOREMAN: T. Reynolds

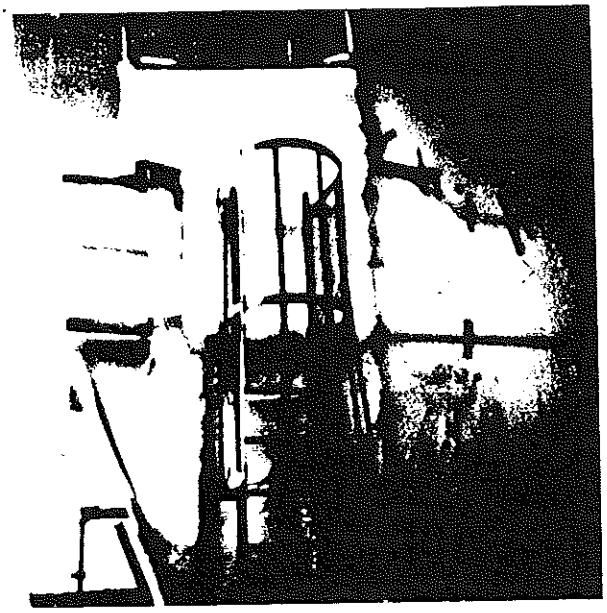
FORM 5.0 - 8/90
IPC PRINTING

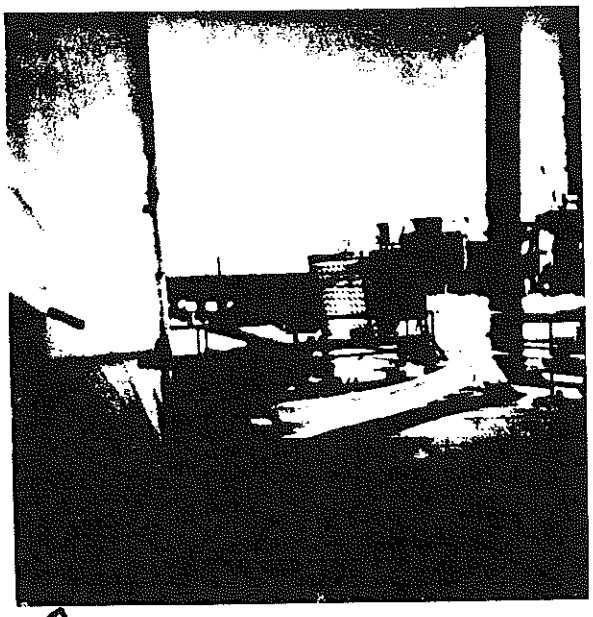




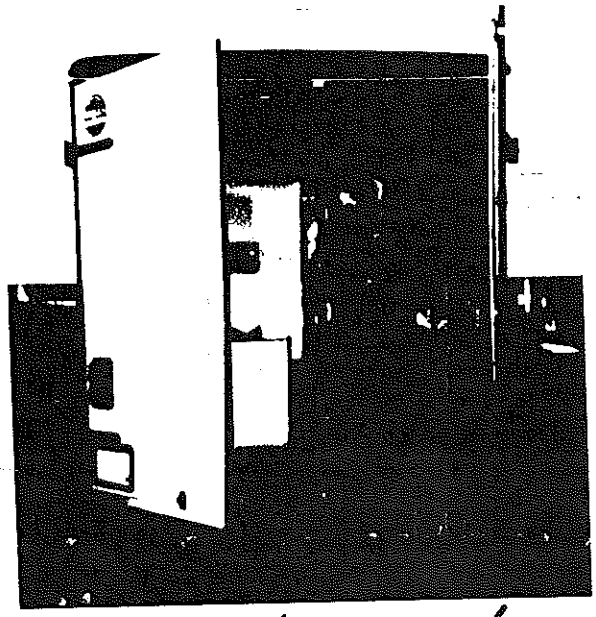
COLLECTOR
INTERIOR

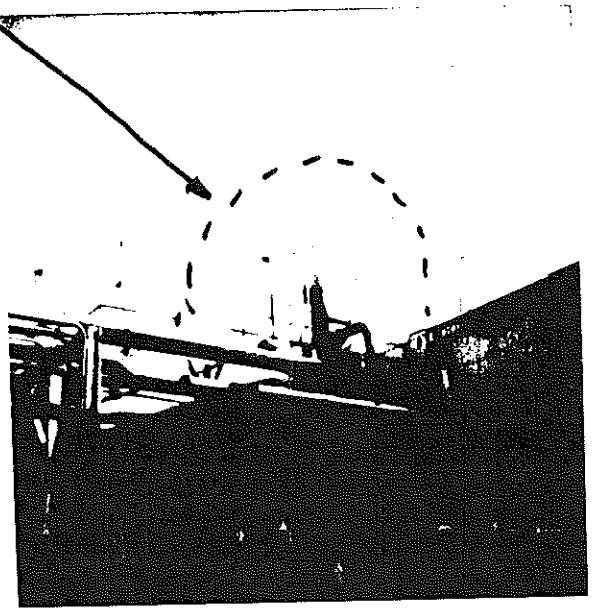






ENCLOSURE





WORKERS' CHANGE/
DECONTAMINATION
TRAILER.

ATTACHMENT NO. D.

SPECIFIC CONDITIONS
362 c (M-1)
OCCIDENTAL CHEMICAL CORPORATION
HAHNVILE, ST. CHARLES PARISH, LOUISIANA

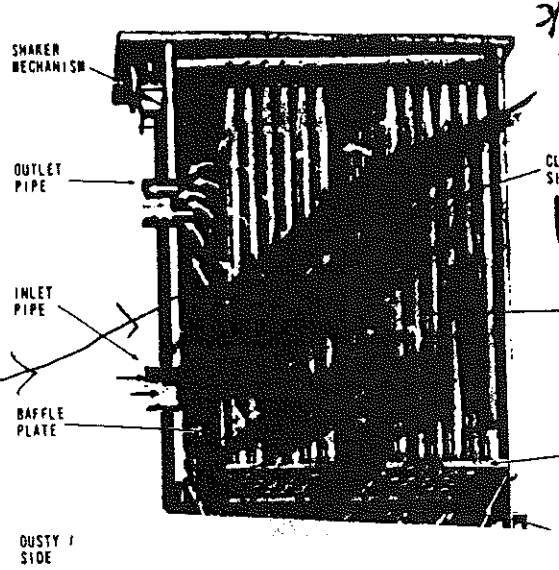
1. Permittee shall control asbestos emissions by complying with all provisions of LAC 33:III. Chapter 25, Emissions Standards for Hazardous Air Pollutants.

2. Permittee shall comply with all future provision of CFR part 61 National Emission Standards for Hazardous Air Pollutant, Subpart M-National Emission Standard for Asbestos, when promulgated

3. Permittee shall within 90 days of permit issuance perform an emission test for asbestos on Asbestos Dust Collector Vent, emission source 8-73, and report results to the Air Quality Division. Sampling and analysis are to be performed in accordance with LAC 33:III.6001 through III.6009 for isokinetic sampling and 40 CFR 763, Subpart E, Appendix A for Transmission Electron Microscopic Analysis for Asbestos. In addition, within 180 days of permit issuance, the permittee shall do a BACT search, advise this department of the results of this search, and provide a compliance schedule for implementing identified BACT if not currently used for asbestos control.

4. Permittee shall monitor chlorine emissions from the Low Pressure Chlorine Vent Scrubber, emission source 7-73, with an on line chlorine analyzer set to alarm at a concentration of 5 ppm. Records of this monitoring shall be made available to Air Quality Division Personnel upon request.

ATTACHMENT F



ASBESTOS DUST

ASBESTOS CAKED on about 2 inches Bags

Figure 64. Typical simple baghouse with mechanical shaking (Wheelabrator Corporation, Mishawaka, Indiana).

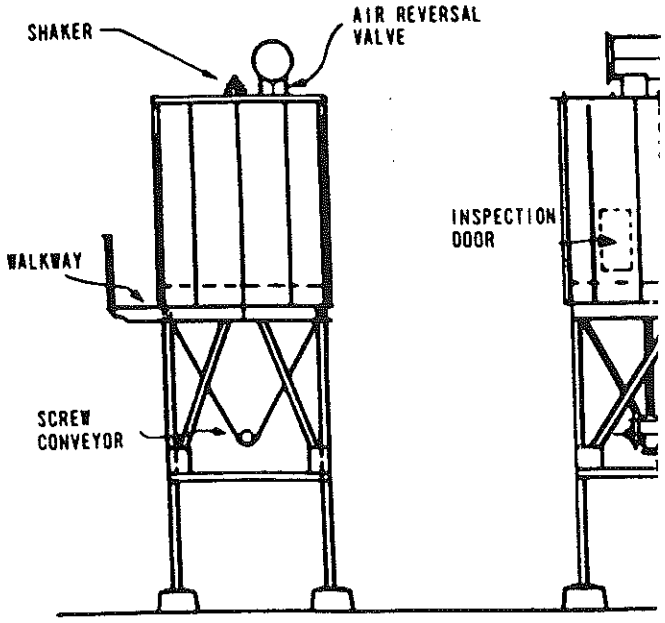


EXHIBIT
3

C-BRMD.3/3907083R.2
06/28/90

ENVIRONMENTAL SCIENCE & ENGINEERING, INC.
2644 S. SHERWOOD FOREST BOULEVARD
BATON ROUGE, LOUISIANA 70816

CONFIRMATION OF INFORMATION
EMISSION TEST REPORT

FOR

OCCIDENTAL CHEMICAL CORPORATION
P.O. Box 74
Hahnville, Louisiana 70057

ASBESTOS DUST EMISSION TESTING

MAY 23-24, 1990

I certify that I have personally examined and am familiar with the information contained herein, and based on my inquiries of the individuals immediately responsible for obtaining the information, I believe the submitted information is true, accurate and complete.

Steven J. Schwartz
Senior Associate Engineer

4/26/90

Kenton S. Pope
Associate Scientist

1.0 INTRODUCTION

Environmental Science & Engineering, Inc. (ESE) was contracted by Occidental Chemical Corporation to perform emission testing of their asbestos dust collector (Source I.D. No. 8-73) vent at the facility in Taft, Louisiana. The vent source is permitted under Louisiana State Air Permit No. 362C (M-1) for the stack gas air rate to be within 1950 ft^3/min at a operating schedule of 2 hours per day, 7 days per week and 52 weeks a year. All sampling was performed as per LAC 33:III.6069 (Method 17) as a variation of LAC 33:III.6015 (Method 5) as allowed when particulate generation is not a function of time.

Asbestos emissions from the dust collector vent were collected with two (2) 0.45 MCE filters in a series to determine percent break through in accordance with 40 CFR 763 Support E, Appendix A. Sampling traverses were determined using the "Vollaro" procedure. Velocity traverses were taken before and after each sampling to verify a constant flow velocity. Sampling was performed on May 23 and 24, 1990 by the ESE testing team of Kevin Rodriguez and Victor Methvien. Victor Methvien performed the sampling for the stack gas velocity and volumetric flow rate determination. Kevin Rodriguez performed the asbestos sampling and particulate sampling. Three (3) sixty minute sampling were performed. Ms. Cheryl Matherne and Mr. Ed. Mauterer of Occidental Chemical Corporation coordinated the testing activities and provided data for insertion into this report.

A pretest conference was held on May 21, 1990 to discuss sampling strategy and test methodology. The meeting was attended by Mr. James Magee of the Louisiana Department of Environmental Quality; Mr. Kevin Jackson of Jacobs Engineering Group, Inc.; and Messrs. Bharat Contractor, Victor Methvien and Kevin Rodriguez of ESE. It was agreed that three (3) one hour test runs would be performed in six (6) thirty minutes runs.

The batch process would be loaded with approximately 200 pounds of material fed to the mixing tank through the glove box for each thirty minute batch. A standard type "S" pitot tube would be used for the velocity determination with measurements taken before and after each thirty minute particulate test. Because of the nature of this batch process and short sampling intervals, it was agreed that isokinetic sampling could not be achieved because a large volume of sample was necessary for adequate detection of asbestos during the TEM analysis.

2.0 SUMMARY OF TEST RESULTS

Table 2-1 presents the total particulate concentrations determined from the gravimetric analysis of the probe wash solutions and the MCE filters. The average particulate matter contained within the probe wash solutions was found to be 0.208 mg/m^3. The average particulate matter collected on the MCE filters was found to be 0.492 mg/m^3. The combined average particulate concentration for the probe wash and MCE filters was determined to be 0.700 mg/m^3. Based on an average volumetric flow rate of 769.4 ft^3/min and two hours of operation per day, the particulate emission rate was found to be 1.47 lbs/year of operation (365 days).

Also presented in Table 2-1 are the asbestos emissions determined from the laboratory analysis of the MCE filters. As the table shows, an average concentration of asbestos was found to be 1.95×10^6 mg/L. This number is an estimate of mass based emissions by fiber weight on the MCE filters. Based on an average volumetric flow rate of 769.4 ft^3/min and two hours of operation per day, the total asbestos fiber emission rate was found to be 4.103×10^3 lbs/year of operation (365 days).

The total asbestos structures (fibers) per cubic centimeter of air for Runs 1, 2, and 3 were found to be 2.773, 2.581 and 6.044 respectively.

The three bulk samples analyzed for the presence of asbestos confirmed that all three bulk samples were 95-99 percent chrysotile asbestos. Run 3 was found to contain trace amounts of Calcite. This material is of little concern but does possibly explain the faint dusting of material that was found on the extension cowls of the TEM cassettes.

Table 2-1. Summary of Particulate and Asbestos Emission Rates: Occidental Chemical Corporation, Hahnville, Louisiana, May 23-24, 1990.

Test Run No.	Probe Wash[1] Particulates (mg/m^3)	MCE Filter[2] Particulates (mg/m^3)	MCE Filter[3] Asbestos (mg/L)	Asbestos[4] Emission Rate (Structures/cc)
1	0.294	0.177	2.27×10^{-6}	2.773
2	0.061	0.615	2.63×10^{-6}	2.581
3	0.269	0.685	9.41×10^{-7}	6.044
AVG.	0.208	0.492	1.95×10^{-6}	3.799

ource: ESE, Inc., 1990

[1] Total Particulates in Probe Wash Solutions, Less Blank (Blank = 0.04 mg)
[2] Total Particulates on MCE Filter
[3] Total Asbestos by Mass Basis
[4] Total Asbestos Fibers per Cubic Centimeter of Air

Table 2-2 gives the stack gas physical data for the three (3) one hour tests performed. An average velocity was found to be 23.267 ft/s. An average volumetric flow rate (corrected to standard conditions) was found to be 769.4 SCF/min.

Section 3.0 contains the testing procedures. Section 4.0 gives a block diagram and description of the process. Quality Assurance and Quality Control are discussed in Section 5.0. Complete field data, sample calculations, laboratory results, equipment calibration worksheets and a list of the persons who participated on this project are contained in the appendices.

Table 2-2. Stack Gas Physical Data: Occidental Chemical Corporation, Hahnville, Louisiana, May 23-24, 1990.

Run No.	Stack Gas Velocity (ft/s)	Volumetric Flow Rate (SCF/min)[1]	Stack Gas Pressure Drop (in. $H_2O)^{0.5}$	Volume of Gas Sampled (ft^3)
1	21.573	722.0	0.3224	11.995
2	28.178	923.0	0.4166	11.489
3	20.050	663.3	0.2979	14.428
AVG.	23.267	769.4	0.3456	12.637

Source: ESE, Inc., 1990

[1]Corrected to Standard Conditions (528 R, 29.92 in. Hg)

From: Janet Adams, 6EN-AT, Region 6 EPA, 1445 Ross Avenue, Dallas TX 75220

Note to file on Jun 7, 2017

Rec. 209073 Ai/Ai/EN Occidental Chemical, Hahnville, LA 70057

During review of document dated Dec 31, 1992

Concerning:

Tab 4

I did not find any pages behind Tab 4.

Nor did any documents with in the record jacket appear to be the document listed on p. 52, Index of Exhibits.

Attachment I

Air Cleaning Device Inspection Checklist

1. Air cleaning device designation number 8-73 (Dust Collector)
2. Date of inspection 4-9-91
3. Time of inspection 7:40 A.M.
4. Is air cleaning device operating properly (yes/no) Yes
5. Tears, holes, or abrasions in fabric filter (yes/no) NOT Able to check w/o # 67587
6. Dust on clean side of fabric filters (yes/no) NO
7. Other signs of malfunctions or potential malfunctions (yes/no) NO
8. Describe other malfunctions or signs of potential malfunctions. NOT Able to open Door
9. Describe corrective action(s) taken. Work order written # 67587
10. Date and time corrective action taken 4-16-91 - Corrected
11. Inspected by

(Print/Type Name)	(Title)	(Signature)	(Date)
LARRY TABER	Tech	Larry J. Taber	4-9-91
Billy Cressionie	C. Tech	Billy Cressionie	4-9-91

Air Cleaning Device Inspection Checklist

1. Air cleaning device designation number 8-73 (Dust Collector)
2. Date of inspection 4-18-91
3. Time of inspection 07:00
4. Is air cleaning device operating properly (yes/no) yes
5. Tears, holes, or abrasions in fabric filter (yes/no) NO
6. Dust on clean side of fabric filters (yes/no) NO
7. Other signs of malfunctions or potential malfunctions (yes/no) NO
8. Describe other malfunctions or signs of potential malfunctions. _____
9. Describe corrective action(s) taken. _____
10. Date and time corrective action taken _____
11. Inspected by

(Print/Type Name)	(Title)	(Signature)	(Date)
Gerald Ongeron	Tech.		4-18-91
Billy Cressionie	C/T	Billy Cressionie	4-18-91

Air Cleaning Device Inspection Checklist

1. Air cleaning device designation number 8-73 (Dust Collector)
2. Date of inspection 4/25/91
3. Time of inspection 0700
4. Is air cleaning device operating properly (yes/no) yes
5. Tears, holes, or abrasions in fabric filter (yes/no) NO
6. Dust on clean side of fabric filters (yes/no) NO
7. Other signs of malfunctions or potential malfunctions (yes/no) _____
8. Describe other malfunctions or signs of potential malfunctions. _____
9. Describe corrective action(s) taken. _____
10. Date and time corrective action taken _____
11. Inspected by

(Print/Type Name)	(Title)	(Signature)	(Date)
RALPH BECNEL	Tech	Ralph J Beanel	4/25/91

Air Cleaning Device Inspection Checklist

1. Air cleaning device designation number 8-73 (Dust Collector)
2. Date of inspection 5/2/91
3. Time of inspection 0700
4. Is air cleaning device operating properly (yes/no) Yes
5. Tears, holes, or abrasions in fabric filter (yes/no) NO
6. Dust on clean side of fabric filters (yes/no) NO
7. Other signs of malfunctions or potential malfunctions (yes/no) _____
8. Describe other malfunctions or signs of potential malfunctions. _____
9. Describe corrective action(s) taken. _____
10. Date and time corrective action taken _____
11. Inspected by

(Print/Type Name)	(Title)	(Signature)	(Date)
RALPH BENDEL	Tech.	Ralph J Bendel	5/2/91

SHUT DOWN

Air Cleaning Device Inspection Checklist

Did NOT USE

1. Air cleaning device designation number 8-73 (Dust Collector)
2. Date of inspection 5/9/91
3. Time of inspection _____
4. Is air cleaning device operating properly (yes/no) _____
5. Tears, holes, or abrasions in fabric filter (yes/no) _____
6. Dust on clean side of fabric filters (yes/no) _____
7. Other signs of malfunctions or potential malfunctions (yes/no) _____
8. Describe other malfunctions or signs of potential malfunctions. _____
9. Describe corrective action(s) taken. _____
10. Date and time corrective action taken _____
11. Inspected by

(Print/Type Name)	(Title)	(Signature)	5/ (Date)
(Print/Type Name)	(Title)	(Signature)	(Date)

Air Cleaning Device Inspection Checklist

1. Air cleaning device designation number 8-73 (Dust Collector)
2. Date of inspection 5/17/91
3. Time of inspection 1300
4. Is air cleaning device operating properly (yes/no) yes
5. Tears, holes, or abrasions in fabric filter (yes/no) NO
6. Dust on clean side of fabric filters (yes/no) NO
7. Other signs of malfunctions or potential malfunctions (yes/no) _____
8. Describe other malfunctions or signs of potential malfunctions. _____
9. Describe corrective action(s) taken. _____
10. Date and time corrective action taken _____
11. Inspected by:

RALPH BECNEL	Tech.	Ralph J Bennel	5/17/91
(Print/Type Name)	(Title)	(Signature)	(Date)
(Print/Type Name)	(Title)	(Signature)	(Date)

Air Cleaning Device Inspection Checklist

1. Air cleaning device designation number 8-73 (Dust Collector)
2. Date of inspection 5/20/91
3. Time of inspection 0700
4. Is air cleaning device operating properly (yes/no) YES
5. Tears, holes, or abrasions in fabric filter (yes/no) NO
6. Dust on clean side of fabric filters (yes/no) NO
7. Other signs of malfunctions or potential malfunctions (yes/no) NO
8. Describe other malfunctions or signs of potential malfunctions. NONE
9. Describe corrective action(s) taken.
10. Date and time corrective action taken.
11. Inspected by:

(Print/Type Name)	(Title)	(Signature)	(Date)
RALPH BECNEL	TECH.	Ralph Bennel	5/20/91

Air Cleaning Device Inspection Checklist

1. Air cleaning device designation number 8-73 (Dust Collector)
2. Date of inspection 5/30/91
3. Time of inspection 1200
4. Is air cleaning device operating properly (yes/no) YES
5. Tears, holes, or abrasions in fabric filter (yes/no) NO
6. Dust on clean side of fabric filters (yes/no) NO
7. Other signs of malfunctions or potential malfunctions (yes/no) NO
8. Describe other malfunctions or signs of potential malfunctions. NONE
9. Describe corrective action(s) taken.
10. Date and time corrective action taken
11. Inspected by:

(Print/Type Name)	(Title)	(Signature)	(Date)
RALPH J BECKEL	TECH.	Ralph Beckel	5/30/91

Air Cleaning Device Inspection Checklist

1. Air cleaning device designation number 8-73 (Dust Collector)
2. Date of inspection 6/12/91
3. Time of inspection 1330
4. Is air cleaning device operating properly (yes/no) NO
5. Tears, holes, or abrasions in fabric filter (yes/no) NO
6. Dust on clean side of fabric filters (yes/no) NO
7. Other signs of malfunctions or potential malfunctions (yes/no) NO
8. Describe other malfunctions or signs of potential malfunctions. Dust collector not operating properly. Not pulsating properly.
9. Describe corrective action(s) taken. Talked to chief Tech. Observed and said will write order.
10. Date and time corrective action taken
11. Inspected by

(Print/Type Name)	(Title)	(Signature)	(Date)
RALPH BECNEL	Tech.	Ralph Bennel	6/12/91

Air Cleaning Device Inspection Checklist

1. Air cleaning device designation number 8-73 (Dust Collector)
2. Date of inspection 6/20/91
3. Time of inspection 0900
4. Is air cleaning device operating properly (yes/no) YES
5. Tears, holes, or abrasions in fabric filter (yes/no) NO
6. Dust on clean side of fabric filters (yes/no) NO
7. Other signs of malfunctions or potential malfunctions (yes/no) NO
8. Describe other malfunctions or signs of potential malfunctions. _____
9. Describe corrective action(s) taken. _____
10. Date and time corrective action taken _____
11. Inspected by

(Print/Type Name)	(Title)	(Signature)	(Date)
RALPH BECNEL	Tech	Ralph L. Becnel	6/20/91

Air Cleaning Device Inspection Checklist

1. Air cleaning device designation number 8-73 (Dust Collector)
2. Date of inspection 6/26/91
3. Time of inspection 8:30 A.M.
4. Is air cleaning device operating properly (yes/no) YES
5. Tears, holes, or abrasions in fabric filter (yes/no) NO
6. Dust on clean side of fabric filters (yes/no) NO
7. Other signs of malfunctions or potential malfunctions (yes/no) YES
8. Describe other malfunctions or signs of potential malfunctions. Rusted bolts need to be changed & dust collector needs to be blasted & painted
9. Describe corrective action(s) taken.
10. Date and time corrective action taken
11. Inspected by

(Print/Type Name)	(Title)	(Signature)	(Date)
RALPH BECNEL	Tech	Ralph Becnel	6/26/91

Air Cleaning Device Inspection Checklist

1. Air cleaning device designation number 8-73 (Dust Collector)
2. Date of inspection 7/8/91
3. Time of inspection 0900
4. Is air cleaning device operating properly (yes/no) yes
5. Tears, holes, or abrasions in fabric filter (yes/no) NO
6. Dust on clean side of fabric filters (yes/no) yes
7. Other signs of malfunctions or potential malfunctions (yes/no) yes
8. Describe other malfunctions or signs of potential malfunctions.

UNIT IS RUSTING - & CORRODING -

9. Describe corrective action(s) taken. WORK order IN TO BLAST PAINT + Refurbish UNIT - ALSO TO PUT ACCESS Ladder + Hinge door for inspection
10. Date and time corrective action taken NOT yet corrected
11. Inspected by

(Print/Type Name)	(Title)	(Signature)	(Date)
Rene Hebert	chief Tech	René Hebert	7/8/91

Air Cleaning Device Inspection Checklist

1. Air cleaning device designation number 8-73 (Dust Collector)
2. Date of inspection 7/17/91
3. Time of inspection 0900
4. Is air cleaning device operating properly (yes/no) yes
5. Tears, holes, or abrasions in fabric filter (yes/no) NO
6. Dust on clean side of fabric filters (yes/no) yes
7. Other signs of malfunctions or potential malfunctions (yes/no) yes
8. Describe other malfunctions or signs of potential malfunctions. Unit is rusting & corroding.
9. Describe corrective action(s) taken. Work order in to clean & paint unit.
10. Date and time corrective action taken NOT yet corrected
11. Inspected by

(Print/Type Name)	(Title)	(Signature)	(Date)
RALPH BECNEL	Tech.	Ralph J Becnel	7/17/91

Air Cleaning Device Inspection Checklist

1. Air cleaning device designation number 8-73 (Dust Collector)
2. Date of inspection 7/24/91
3. Time of inspection 0930
4. Is air cleaning device operating properly (yes/no) yes
5. Tears, holes, or abrasions in fabric filter (yes/no) NO
6. Dust on clean side of fabric filters (yes/no) yes
7. Other signs of malfunctions or potential malfunctions (yes/no) yes
8. Describe other malfunctions or signs of potential malfunctions. unit is rusting & corroding
9. Describe corrective action(s) taken. work order written to blast & paint unit.
10. Date and time corrective action taken not yet corrected
11. Inspected by

(Print/Type Name)	(Title)	(Signature)	(Date)
RALPH J. BECNEL	Tech	Ralph J. Becnel	7/24/91

Air Cleaning Device Inspection Checklist

1. Air cleaning device designation number 8-73 (Dust Collector)
2. Date of inspection 8/1/91
3. Time of inspection 0745
4. Is air cleaning device operating properly (yes/no) yes
5. Tears, holes, or abrasions in fabric filter (yes/no) NO
6. Dust on clean side of fabric filters (yes/no) yes
7. Other signs of malfunctions or potential malfunctions (yes/no) yes
8. Describe other malfunctions or signs of potential malfunctions. unit is rusting & corroding.
9. Describe corrective action(s) taken. work order written to blast & paint unit.
10. Date and time corrective action taken not yet corrected
11. Inspected by

(Print/Type Name)	(Title)	(Signature)	(Date)
RALPH J. BECKEC	Tech	Ralph J. Becker	8/1/91

Air Cleaning Device Inspection Checklist

1. Air cleaning device designation number 8-73 (Dust Collector)
2. Date of inspection 8/7/91
3. Time of inspection 0930
4. Is air cleaning device operating properly (yes/no) yes
5. Tears, holes, or abrasions in fabric filter (yes/no) no
6. Dust on clean side of fabric filters (yes/no) yes
7. Other signs of malfunctions or potential malfunctions (yes/no) yes
8. Describe other malfunctions or signs of potential malfunctions. unit is rusting & corroding
9. Describe corrective action(s) taken. [illegible] to clean & paint unit
10. Date and time corrective action taken not yet corrected
11. Inspected by

(Print/Type Name)	(Title)	(Signature)	(Date)
[illegible]	[illegible]	[illegible]	8/7/91

Air Cleaning Device Inspection Checklist

1. Air cleaning device designation number 8-73 (Dust Collector)

2. Date of inspection [illegible]

3. Time of inspection [illegible]

4. Is air cleaning device operating properly (yes/no) [illegible]

5. Tears, holes, or abrasions in fabric filter (yes/no) [illegible]

6. Dust on clean side of fabric filters (yes/no) [illegible]

7. Other signs of malfunctions or potential malfunctions (yes/no) [illegible]

8. Describe other malfunctions or signs of potential malfunctions. [illegible]

9. Describe corrective action(s) taken. [illegible]

10. Date and time corrective action taken [illegible]

11. Inspected by

(Print/Type Name)	(Title)	(Signature)	(Date)
[illegible]	[illegible]	[illegible]	[illegible]

(Print/Type Name)	(Title)	(Signature)	(Date)

Air Cleaning Device Inspection Checklist

1. Air cleaning device designation number 8-73 (Dust Collector)
2. Date of inspection 8/21/91
3. Time of inspection 0900
4. Is air cleaning device operating properly (yes/no) yes
5. Tears, holes, or abrasions in fabric filter (yes/no) NO
6. Dust on clean side of fabric filters (yes/no) yes
7. Other signs of malfunctions or potential malfunctions (yes/no) yes
8. Describe other malfunctions or signs of potential malfunctions. unit is rusting & corroding
9. Describe corrective action(s) taken. work order written to blast & paint unit.
10. Date and time corrective action taken not yet corrected.
11. Inspected by

(Print/Type Name)	(Title)	(Signature)	(Date)
RALPH BECNEC	Tech.	Ralph J. Benec	8/21/91

Air Cleaning Device Inspection Checklist

1. Air cleaning device designation number 8-73 (Dust Collector)
2. Date of inspection 8/28/91
3. Time of inspection 1000
4. Is air cleaning device operating properly (yes/no) yes
5. Tears, holes, or abrasions in fabric filter (yes/no) NO
6. Dust on clean side of fabric filters (yes/no) yes
7. Other signs of malfunctions or potential malfunctions (yes/no) yes
8. Describe other malfunctions or signs of potential malfunctions. unit is rusting & corroding.
9. Describe corrective action(s) taken. work order written to blast & paint unit
10. Date and time corrective action taken not yet corrected
11. Inspected by:

(Print/Type Name)	(Title)	(Signature)	(Date)
RALPH J. BECKEL	Tech.	Ralph J Beckel	8/28/91

Air Cleaning Device Inspection Checklist

1. Air cleaning device designation number 8-73 (Dust Collector)
2. Date of inspection 9/4/91
3. Time of inspection 0900
4. Is air cleaning device operating properly (yes/no) yes
5. Tears, holes, or abrasions in fabric filter (yes/no) NO
6. Dust on clean side of fabric filters (yes/no) Yes
7. Other signs of malfunctions or potential malfunctions (yes/no) Yes
8. Describe other malfunctions or signs of potential malfunctions. Unit is rusting & corroding,
9. Describe corrective action(s) taken. w/o written to blast & paint unit
10. Date and time corrective action taken Not get done
11. Inspected by

(Print/Type Name)	(Title)	(Signature)	(Date)
RALPH J. BECNEL	Tech.	Ralph J. Becnel	9/4/91

Air Cleaning Device Inspection Checklist

1. Air cleaning device designation number 8-73 (Dust Collector)
2. Date of inspection 9/10/91
3. Time of inspection 0900
4. Is air cleaning device operating properly (yes/no) yes
5. Tears, holes, or abrasions in fabric filter (yes/no) NO
6. Dust on clean side of fabric filters (yes/no) NO
7. Other signs of malfunctions or potential malfunctions (yes/no) yes
8. Describe other malfunctions or signs of potential malfunctions. unit is rusting & corroding!
9. Describe corrective action(s) taken. W/O written to blast & paint unit.
10. Date and time corrective action taken Not yet done
11. Inspected by

(Print/Type Name)	(Title)	(Signature)	(Date)
RALPH J. BECNEL	Tech.	Ralph J. Becnel	9/10/91

(Print/Type Name) (Title) (Signature) (Date)

Air Cleaning Device Inspection Checklist

1. Air cleaning device designation number 8-73 (Dust Collector)
2. Date of inspection 9/18/91
3. Time of inspection 0930
4. Is air cleaning device operating properly (yes/no) yes
5. Tears, holes, or abrasions in fabric filter (yes/no) cannot open door
6. Dust on clean side of fabric filters (yes/no) cannot open door
7. Other signs of malfunctions or potential malfunctions (yes/no) yes
8. Describe other malfunctions or signs of potential malfunctions. unit is corroding badly - needs to be blasted & painted. When door is opened, asbestos falls out.
9. Describe corrective action(s) taken. W/O written to correct problem.
10. Date and time corrective action taken not yet done
11. Inspected by:

(Print/Type Name)	(Title)	(Signature)	(Date)
RALPH J. BECNEL	Tech	Ralph J. Becnel	9/18/91

Air Cleaning Device Inspection Checklist

1. Air cleaning device designation number 8-73 (Dust Collector)
2. Date of inspection 9/25/91
3. Time of inspection 0915
4. Is air cleaning device operating properly (yes/no) yes
5. Tears, holes, or abrasions in fabric filter (yes/no) cannot open door
6. Dust on clean side of fabric filters (yes/no) cannot open door
7. Other signs of malfunctions or potential malfunctions (yes/no) yes
8. Describe other malfunctions or signs of potential malfunctions. unit is corroding badly - needs to be blasted & painted; when door is opened, asbestos falls out.
9. Describe corrective action(s) taken. W/O written to refurbish unit.
10. Date and time corrective action taken not yet done
11. Inspected by:

(Print/Type Name)	(Title)	(Signature)	(Date)
RALPH BECNEL	Tech	Ralph J. Bennel	9/25/91

Air Cleaning Device Inspection Checklist

1. Air cleaning device designation number 8-73 (Dust Collector)
2. Date of inspection 10/2/91
3. Time of inspection 0 800
4. Is air cleaning device operating properly (yes/no) NO - air turned off.
5. Tears, holes, or abrasions in fabric filter (yes/no) Cannot open door
6. Dust on clean side of fabric filters (yes/no) Cannot open door
7. Other signs of malfunctions or potential malfunctions (yes/no) yes
8. Describe other malfunctions or signs of potential malfunctions. unit is corroding badly - needs to be blasted & painted; when door is opened, asbestos falls out.
9. Describe corrective action(s) taken. w/o written to refurbish unit
10. Date and time corrective action taken not yet done
11. Inspected by:

(Print/Type Name)	(Title)	(Signature)	(Date)
RALPH J. BECNEC	Tech	Ralph J. Becnec	10/2/91

(Print/Type Name) (Title) (Signature) (Date)

Air Cleaning Device Inspection Checklist

1. Air cleaning device designation number 8-73 (Dust Collector)
2. Date of inspection 10/9/91
3. Time of inspection 0830
4. Is air cleaning device operating properly (yes/no) yes
5. Tears, holes, or abrasions in fabric filter (yes/no) cannot open door
6. Dust on clean side of fabric filters (yes/no) cannot open door
7. Other signs of malfunctions or potential malfunctions (yes/no) yes
8. Describe other malfunctions or signs of potential malfunctions. Unit is corroding badly - needs to be blasted & painted; when door is opened, asbestos falls out
9. Describe corrective action(s) taken. W/O written to refurbish unit
10. Date and time corrective action taken not yet taken
11. Inspected by

(Print/Type Name)	(Title)	(Signature)	(Date)
RALPH J. BECNEL	Tech.	Ralph J. Becnel	10/9/91

Air Cleaning Device Inspection Checklist

1. Air cleaning device designation number 8-73 (Dust Collector)
2. Date of inspection 10/16/91
3. Time of inspection 0900
4. Is air cleaning device operating properly (yes/no) yes
5. Tears, holes, or abrasions in fabric filter (yes/no) Cannot open door
6. Dust on clean side of fabric filters (yes/no) Cannot open door
7. Other signs of malfunctions or potential malfunctions (yes/no) yes
8. Describe other malfunctions or signs of potential malfunctions. unit is corroding badly
9. Describe corrective action(s) taken. W/O written to refurbish unit; blast & paint
10. Date and time corrective action taken not yet done
11. Inspected by

(Print/Type Name)	(Title)	(Signature)	(Date)
LALIH J. BECNEL	Tech.	Ralph J. Becnel	10/16/91

Air Cleaning Device Inspection Checklist

1. Air cleaning device designation number 8-73 (Dust Collector)

2. Date of inspection 10/22/91

3. Time of inspection 0900

4. Is air cleaning device operating properly (yes/no) yes

5. Tears, holes, or abrasions in fabric filter (yes/no) cannot open door/asbestos falls o

6. Dust on clean side of fabric filters (yes/no) cannot open door/asbestos falls ou

7. Other signs of malfunctions or potential malfunctions (yes/no) yes

8. Describe other malfunctions or signs of potential malfunctions. unit is corroding badly & needs to be refurbished

9. Describe corrective action(s) taken. W/O written to refurbish unit/blast & paint also

10. Date and time corrective action taken not yet taken

11. Inspected by:

(Print/Type Name)	(Title)	(Signature)	(Date)
RALPH J. BECKEL	Tech	Ralph J. Beckel	10/22/91

Air Cleaning Device Inspection Checklist

1. Air cleaning device designation number 8-73 (Dust Collector)
2. Date of inspection 10/30/91
3. Time of inspection 0930
4. Is air cleaning device operating properly (yes/no) yes
5. Tears, holes, or abrasions in fabric filter (yes/no) Cannot open door/asbestos falls o
6. Dust on clean side of fabric filters (yes/no) Cannot open door/asbestos falls
7. Other signs of malfunctions or potential malfunctions (yes/no) yes
8. Describe other malfunctions or signs of potential malfunctions. unit is corroding badly & needs to be refurbished
9. Describe corrective action(s) taken. W/O written to refurbish unit/blast & paint
10. Date and time corrective action taken not yet taken
11. Inspected by

(Print/Type Name)	(Title)	(Signature)	(Date)
RALPH J. BESNEL	Tech	Ralph J. Besnel	10/30/91

Air Cleaning Device Inspection Checklist

1. Air cleaning device designation number 8-73 (Dust Collector)
2. Date of inspection 11/13/91
3. Time of inspection 10:00 A.M.
4. Is air cleaning device operating properly (yes/no) yes
5. Tears, holes, or abrasions in fabric filter (yes/no) cannot open door / asbestos falls out
6. Dust on clean side of fabric filters (yes/no) cannot open door / asbestos falls out
7. Other signs of malfunctions or potential malfunctions (yes/no) yes
8. Describe other malfunctions or signs of potential malfunctions. unit is corroding badly & needs to be refurbished
9. Describe corrective action(s) taken. w/o written to refurbish unit & blast & paint.
10. Date and time corrective action taken not yet taken
11. Inspected by:

(Print/Type Name)	(Title)	(Signature)	(Date)
RALPH J. BEWEL	TECH.	Ralph J. Bewel	11/13/91

Air Cleaning Device Inspection Checklist

1. Air cleaning device designation number 8-73 (Dust Collector)
2. Date of inspection 11/28/91
3. Time of inspection 0900
4. Is air cleaning device operating properly (yes/no) yes
5. Tears, holes, or abrasions in fabric filter (yes/no) cannot open door - asbestos falls o
6. Dust on clean side of fabric filters (yes/no) Cannot open door - asbestos falls o
7. Other signs of malfunctions or potential malfunctions (yes/no) yes
8. Describe other malfunctions or signs of potential malfunctions. unit is corroding badly - needs to be sealed & painted
9. Describe corrective action(s) taken. W/O written to refurbish unit.
10. Date and time corrective action taken not yet done
11. Inspected by

(Print/Type Name)	(Title)	(Signature)	(Date)
RALPH J. BECKEL	Tech	Ralph J. Beckel	11/20/91

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA
NEW ORLEANS DIVISION

UNITED STATES OF AMERICA, Plaintiff, v. OCCIDENTAL CHEMICAL CORPORATION, a New York corporation Defendant	)	CIVIL ACTION NO. **DRAFT**

COMPLAINT

Plaintiff, the United States of America, by the authority of the Attorney General of the United States, and at the request of the United States Environmental Protection Agency ("EPA") brings this action and alleges as follows:

PRELIMINARY STATEMENT OF CASE

1. This is a civil action for civil penalties under Section 113(b) of the Clean Air Act, as amended (hereinafter "the Act"), 42 U.S.C. § 7413(b), brought by the United States of America, against OCCIDENTAL CHEMICAL CORPORATION ("Occidental" or "Defendant"), for violations by Defendant of regulations promulgated under Section 112 of the Act, 42 U.S.C. § 7412.

JURISDICTION AND VENUE

2. This Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331, 1345, and 1355, and under Section 113(b) of the Act, 42 U.S.C. § 7413(b), as "the district court of the United States for the district in which the violation is

alleged to have occurred", and the district in which the Defendant conducts its business.

3. Venue is proper in the Eastern District of Louisiana pursuant to 28 U.S.C. § 1391(b) and 42 U.S.C. § 7413(b), as the district in which the violations occurred and the district in which the Defendant corporation resides or has its principal place of business.

DEFENDANT

4. Defendant OCCIDENTAL CHEMICAL CORPORATION ("Occidental"), is a corporation chartered under the laws of the state of New York and is registered with the office of the Secretary of State of Louisiana to do business in Louisiana. The business of Defendant relevant to this proceeding is conducted at the Occidental Chemical Corporation facility located at Highway 3142 and Highway 18 in Taft, Louisiana, 70057 (the "Taft Facility"). The mailing address of the Taft Facility is P.O. Box 74, Hahnville, Louisiana, 70094.

GENERAL ALLEGATIONS

5. Defendant owns and operates a chemical manufacturing facility located in Taft, Louisiana, which produces bulk chlorine for industrial uses.

6. As part of the chlorine manufacturing process at the facility, Defendant utilizes asbestos "diaphragm" electrolytic cell technology. Raw sodium chlorine brine is treated with sodium carbonate and sodium hydroxide to precipitate out impurities, which are settled out in clarifiers. The treated

brine is then filtered and fed through an electrolytic cell where chlorine gas and hydrogen gas are produced. The electrodes of the electrolytic cells are coated with a slurry made with asbestos to create a "diaphragm" electrolytic cell through which the brine and chemicals are passed. Dry asbestos is brought to the facility in packages, and the dry asbestos is added to a wet solution to create the slurry. The handling of the dry asbestos, as part of the coating process, and the stripping of asbestos from the electrodes as part of the asbestos removal process in the Cell Renewal Unit, create the potential for asbestos emissions to the air. The operation utilizes a "baghouse" type of device to eliminate asbestos emissions from the process areas.

7. Pursuant to 40 C.F.R. Part 61, Subpart M, Defendant is required to control asbestos emissions and observe work practice standards for handling of asbestos in its operations. The control of asbestos emissions and the operation and maintenance of the baghouse are the objects of the violations cited herein.

8. On November 21 and 22, 1991, inspectors from the EPA and the Louisiana Department of Environmental Quality conducted an unannounced single-media inspection of Defendant's facility. At that time, EPA inspectors identified conditions which were deemed to be violations of the Act, as described herein.

9. In exit interviews after each of these inspections, Defendant was given notice of the conditions and actions noted by EPA at the facility which were considered to be violations of the

Act.

10. On August 18, 1992 and on September 16, 1993, EPA requested information from Defendant, under the authority of Section 114 of the Act, 42 U.S.C. § 7414, concerning violations discovered during the November 1991 inspection. The information supplied by Defendant in response to the requests, and information acquired at the time of the inspection, form the basis of this action.

STATUTORY AND REGULATORY BACKGROUND

11. The Clean Air Act, as amended in 1990, 42 U.S.C. § 7401 et seq. (herein "the Act") established a comprehensive scheme for preventing air pollution as described in Section 101 of the Act, 42 U.S.C. § 7401.

12. Section 112(b) of the Act, 42 U.S.C. § 7412(b), contains a list of hazardous air pollutants, and requires the EPA Administrator to promulgate regulations establishing emission standards for sources of these hazardous air pollutants to achieve the maximum emission reductions for each such pollutant. These emission standards are known as the National Emissions Standards for Hazardous Air Pollutants ("NESHAPs") and are promulgated at 40 C.F.R. Part 61. The Administrator of EPA promulgated emission standards under Section 112 of the Act, 42 U.S.C. § 7412, for asbestos (the "asbestos NESHAPs") which govern the handling and disposal of asbestos and the control of asbestos emissions. Revisions to the asbestos NESHAPs relevant to this action were published in 55 Fed. Reg. 48419 (November 20, 1990), and in 55 Fed. Reg. 1669 (January 16, 1991). The asbestos

NESHAPs are codified at 40 C.F.R. Part 61, Subpart M.

13. Under Section 112(q) of the Act, 42 U.S.C. § 7412(q), any regulation which was originally promulgated or amended prior to the amendment of the Act in 1990 (including the asbestos NESHAPs regulations relevant to this case), continues in full force and effect after the 1990 amendment of the Act.

14. 40 C.F.R. § 61.140 provides that 40 C.F.R. Part 61, Subpart M, relating to asbestos NESHAPs, applies to those sources specified in 40 C.F.R. §§ 61.142 through 61.151, 61.154, and 61.155.

15. 40 C.F.R. § 61.144 sets forth standards applicable to "manufacturing operations using commercial asbestos". Section 61.144(a)(9) states that the standards found in § 61.144 are applicable to "[t]he manufacture of chlorine utilizing asbestos diaphragm technology". Chlorine production is considered a part of manufacturing under 40 C.F.R. § 61.141.

16. At the Taft Facility, Defendant manufactures (produces) chlorine utilizing asbestos diaphragm technology. Therefore, the regulations found at 40 C.F.R. Part 61, Subpart M, § 61.01 et seq., which are rules promulgated under Section 112 of the Act, 42 U.S.C. § 7412, are applicable to Defendant's operations at the Taft Facility.

17. Pursuant to Section 113(a)(3) of the Act:

> [w]henever...the Administrator finds that any person has violated or is in violation of any [non-SIP] requirement or prohibition of [Subchapter I, 42 U.S.C. § 7401-7515]... including but not limited to any rule...promulgated, issued or approved under [Subchapter I]...the Administrator may- ...(C) bring a civil action in accordance with subsection (b) of [Section 113 of the Act]...

42 U.S.C. § 7413(a)(3) (emphasis added).

18. Pursuant to Section 113(b) of the Act, the Administrator is authorized to seek appropriate enforcement action against:

> any person that is the owner or operator of an affected source,...or a major stationary source, and may, in the case of any other person, commence a civil action for a permanent or temporary injunction, or to assess and recover a civil penalty of not more than $25,000 per day for each violation, or both in any of the following instances...
>
> > (2) Whenever such person has violated, or is in violation of, any other requirement or prohibition of [Subchapter I of the Act, 42 U.S.C. §§ 7401-7515] ...including, but not limited to, a requirement or prohibition of any rule [promulgated under the Act]...

42 U.S.C. § 7413(b).

19. As a corporation, Defendant is a "person" as that term is defined in Section 302(e) of the Act, 42 U.S.C. § 7602(e), and within the meaning of Section 113(b) of the Act, 42 U.S.C. § 7413(b).

20. At all times relevant to this Complaint, Defendant has been the "owner or operator" of the Taft Facility within the meaning of 42 U.S.C. § 7413 and 40 C.F.R. Part 61.

21. Defendant's Taft Facility is a "...facility, or installation which emits or may emit any air pollutant". The Taft Facility is, therefore, a "stationary source" within the meaning of 42 U.S.C. § 7412(a)(3).

22. Defendant is an "owner or operator" of a stationary source, as defined in 42 U.S.C. § 7412(a)(9).

23. Defendant's Taft Facility is considered a "major stationary source" as that term is defined in Section 302(j) of the Act, 42 U.S.C. § 7602(j), and within the meaning of Section

113(b) of the Act, 42 U.S.C. § 7413(b).

24. Defendant is an "owner or operator of...a major stationary source", as used in Section 113(b) of the Act, 42 U.S.C. § 7413(b).

CLAIMS FOR RELIEF

COUNT I - FAILURE TO MONITOR FOR VISIBLE EMISSIONS OF ASBESTOS OR TO KEEP RECORDS OF SUCH MONITORING pursuant to 40 C.F.R. §§ 61.144(b)(3), (b)(5), and (b)(7).

25. Paragraphs 1 through 24 are realleged and incorporated by reference as if set forth in full in Count I.

26. According to 40 C.F.R. § 61.144(b),

> Each owner or operator of any of the manufacturing operation to which this section applies shall:
>
> ...(3) Monitor each potential source of asbestos emissions from any part of the manufacturing facility, including air cleaning devices, process equipment, and buildings housing material processing and handling equipment, at least once each day during the daylight hours for visible emissions to the outside air during periods of operation. The monitoring shall be by visual observation of at least 15 seconds duration per source of emissions.
>
> ...(5) [and shall] [m]aintain records of the results of visible emission monitoring...
>
> ...(7) [and shall] retain a copy of all monitoring and inspection records for at least 2 years.

40 C.F.R. §§ 61.144(b)(3), (b)(5), and (b)(7) (emphasis added).

27. Defendant did not monitor each potential source of asbestos emissions for visible emissions during periods of operation from February 18, 1991 to April 5, 1991, in violation of 40 C.F.R. §§ 61.144(b)(3).

28. Defendant did not maintain records of the results of visible emission monitoring of each potential source of asbestos emissions from February 18, 1991 to April 5, 1991, in

violation of 40 C.F.R. §§ 61.144(b)(5).

29. Defendant did not retain a copy of the required monitoring records for at least 2 years in violation of 40 C.F.R. §§ 61.144(b)(7).

30. Defendant thereby violated the standards contained in 40 C.F.R. Part 61, Subpart M, rules promulgated under Section 112 of the Act, 42 U.S.C. § 7412, and is therefore subject to penalties, injunctive relief, or both, under Section 113 of the Act, 42 U.S.C. § 7413.

COUNT II - FAILURE TO INSPECT AIR CLEANING DEVICES FOR PROPER OPERATION AND FOR CHANGES THAT SIGNAL THE POTENTIAL FOR MALFUNCTIONS OR TO KEEP RECORDS OF INSPECTIONS pursuant to 40 C.F.R. §§ 61.144(b)(4), (b)(5), and (b)(7).

31. Paragraphs 1 through 24 are realleged and incorporated by reference as if set forth in full in Count II.

32. According to 40 C.F.R. §§ 61.144(b),

> Each owner or operator of any manufacturing operation to which this section applies shall:
>
> ...(2) Use the methods specified by § 61.152 [relating to air cleaning and filtering devices] to clean emissions from [its] operations containing particulate asbestos material before they escape to or are vented to the outside air. [and]
>
> ...(4) Inspect each air cleaning device at least once each week for proper operation and for changes that signal the potential for malfunctions, including, to the maximum extent possible without dismantling other than opening the device,...the presence of tears, holes, and abrasions in filter bags and for dust deposits on the clean side of [filter] bags. For air cleaning devices that cannot be inspected on a weekly basis...submit to the Administrator...a written maintenance plan [for the air cleaning devices].
>
> ...(5) [The owner or operator shall also m]aintain records of the results of...air cleaning device inspections...

...(7) [and shall] retain a copy of all monitoring and inspection records for at least 2 years.

40 C.F.R. §§ 61.144(b)(2), (b)(4), (b)(5), and (b)(7) (1991) (emphasis added).

33. Defendant did not inspect each air cleaning device at least once each week for proper operation and for changes that would signal the potential for malfunctions from February 18, 1991 to April 9, 1991 in violation of 40 C.F.R. § 61.144(b)(4).

34. Defendant did not maintain records of the results of air cleaning device inspections for the period from February 18, 1991 to April 9, 1991, in violation of 40 C.F.R. § 61.144(b)(5).

35. Defendant did not retain a copy of the records for the required inspections for at least 2 years in violation of 40 C.F.R. § 61.144(b)(7).

36. Defendant thereby violated the standards contained in 40 C.F.R. Part 61, Subpart M, rules promulgated under Section 112 of the Act, 42 U.S.C. § 7412, and is therefore subject to penalties, injunctive relief, or both, under Section 113 of the Act, 42 U.S.C. § 7413.

<u>COUNT III</u> - FAILURE TO PROPERLY INSPECT AIR CLEANING DEVICES TO THE EXTENT REQUIRED pursuant to 40 C.F.R. § 61.144 (b)(4);

37. Paragraphs 1 through 24 are realleged and incorporated by reference as if set forth in full in Count III.

38. According to 40 C.F.R. § 61.144(b),

<u>Each owner or operator</u> of any manufacturing operation to which this section applies <u>shall</u>:

...(2) Use the methods specified by § 61.152 [relating to

air cleaning and filtering devices] to clean emissions from [its] operations containing particulate asbestos material before they escape to or are vented to the outside air.

...(4) Inspect each air cleaning device at least once each week for proper operation and for changes that would signal the potential for malfunctions, including, to the maximum extent possible without dismantling other than opening the device, the presence of tears, holes, and abrasions in filter bags and for dust deposits on the clean side of [filter] bags. [or]...For air cleaning devices that cannot be inspected on a weekly basis...submit to the Administrator ...a written maintenance plan...

40 C.F.R. §§ 61.144(b)(2) and (b)(4) (1991) (emphasis added).

39. Defendant failed to inspect the air cleaning device (the baghouse) to the extent of opening the device to determine the presence of tears, holes, and abrasions in the filter bags, despite the presence of continuing indications of malfunction, as required by 40 C.F.R. §§ 61.144(b)(2) and (b)(4), during the time from September 18, 1991 to November 20, 1991.

40. Defendant thereby violated the standards contained in 40 C.F.R. Part 61, Subpart M, rules promulgated under Section 112 of the Act, 42 U.S.C. § 7412, and is therefore subject to penalties, injunctive relief, or both, under Section 113 of the Act, 42 U.S.C. § 7413.

COUNT IV - FAILURE TO PROPERLY OPERATE AIR CLEANING DEVICES IN A MANNER CONSISTENT WITH GOOD AIR POLLUTION CONTROL PRACTICE FOR MINIMIZING EMISSIONS, within the meaning of 40 C.F.R. § 61.12(c), 40 C.F.R. § 61.152(a)(2), Louisiana Administrative Code ("LAC"), Chapter 9, Rule 905, on Control of Emissions and Emission Standards, and Air Permit No. 362 C (M-1).

41. Paragraphs 1 through 24 are realleged and incorporated by reference as if set forth in full in Count IV.

42. Pursuant to 40 C.F.R. § 61.12(c),

Each owner or operator of each stationary source shall

> maintain and operate the source, including associated equipment for air pollution control, in a manner consistent with good air pollution practice for minimizing emissions. Determination of whether acceptable operating and maintenance procedures are being used will be based on information available to the Administrator which may include, but is not limited to, monitoring results, review of operating and maintenance procedures, and inspection of the source.

40 C.F.R. § 61.12(c) (1991) (emphasis added).

43. Defendant uses a filter-type air cleaning device (baghouse) at the Taft Facility designed to clean emissions from its operations, as described in 40 C.F.R. §§ 61.144(b)(2) and 61.152(a).

44. Pursuant to 40 C.F.R. § 61.152(a)(2), "the owner or operator who uses air cleaning as specified in...§ 61.144(b)(2)...shall: Properly install, use, operate, and maintain all air-cleaning equipment authorized by [§ 61.152]."

45. Defendant did not repair or maintain its baghouse air cleaning device for a substantial period of time, including, in particular, the period from July 8, 1991 to November 20, 1991, despite indications of improper operation and deterioration.

46. Defendant did not properly inspect or empty accumulated asbestos which was overflowing from its baghouse air cleaning device for a substantial period of time, including, in particular, the period from July 8, 1991 to November 20, 1991, despite indications of improper operation and deterioration.

47. Defendant therefore did not maintain and operate the Taft Facility, including the facility's associated air pollution control equipment, in a manner consistent with good air pollution practice for minimizing emissions within the meaning of

40 C.F.R. §§ 61.12(c), 61.144(b), and 61.152(a), for a substantial period of time, including, in particular, the period from July 8, 1991 to November 20, 1991.

48. Defendant thereby violated the standards contained in 40 C.F.R. Part 61, Subpart M, rules promulgated under Section 112 of the Act, 42 U.S.C. § 7412, and is therefore subject to penalties, injunctive relief, or both, under Section 113 of the Act, 42 U.S.C. § 7413.

49. Permit No. 362 C (M-1), issued to the facility in 1990 for operation of the processes including the asbestos manufacturing relevant to this action, contains special conditions requiring Defendant to control asbestos emissions by compliance with all provisions of the Louisiana Administrative Code regulations.

50. 33 L.A.C. Chapter 25, Section 2607 requires that all air cleaning equipment must be properly installed, used, operated, and maintained.

51. Defendant did not properly install, use, operate, and maintain, its air cleaning equipment, as shown above.

52. Another special condition of the Permit issued to Occidental in 1990 is that Occidental comply with all NESHAP regulations found at 40 C.F.R. § 61.144 related to asbestos manufacturing.

53. Defendant did not comply with all NESHAP regulations found at 40 C.F.R. § 61.144, as shown above.

54. Defendant thereby violated the terms of its Permit No. 362 C (M-1) for use of asbestos in manufacturing.

COUNT V - FAILURE TO SUBMIT QUARTERLY REPORTS OF VISIBLE EMISSIONS DOCUMENTED DURING REQUIRED INSPECTIONS pursuant to 40 C.F.R. § 61.144(b)(8);

55. Paragraphs 1 through 24 are realleged and incorporated by reference as if set forth in full in Count V.

56. Under 40 C.F.R. § 61.144(b),

> Each owner or operator of any manufacturing operation to which this section applies shall:
>
> ...(8) Submit quarterly a copy of the visible emission monitoring records to the Administrator if visible emissions occurred during the report period. Quarterly reports shall be postmarked by the 30th day following the end of the calendar quarter.

40 C.F.R. § 61.144(b)(8) (1991) (emphasis added).

57. "Visible emissions" is defined in 40 C.F.R. § 61.141 as being "any emissions which are visually detectable without the aid of instruments, coming from [regulated asbestos-containing material] or asbestos-containing waste material, or from any asbestos...manufacturing...operation".

58. Visible emissions occurred at the Taft Facility for a substantial period of time, including, in particular, during the period from October 2, 1991 through February 11, 1992. This period of time encompasses parts of two (2) calendar quarters.

59. Defendant did not submit to the Administrator copies of the visible emission monitoring records for either of the two (2) calendar quarters for which such monitoring records show that visible emissions occurred, as required by 40 C.F.R. § 61.144(b)(8).

60. Defendant thereby violated the standards contained

in 40 C.F.R. Part 61, Subpart M, rules promulgated under Section 112 of the Act, 42 U.S.C. § 7412, and is therefore subject to penalties, injunctive relief, or both, under Section 113 of the Act, 42 U.S.C. § 7413.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, the United States of America, respectfully requests that this Court:

A. Order Defendant to Pay a civil penalty pursuant to Section 113(b) of the Act, 42 U.S.C. § 7413(b), of up to Twenty-Five Thousand Dollars ($25,000) per day for each violation of the Act or the regulations promulgated under the Act;

B. Award Plaintiff its expenses of this action and costs of litigation, including attorneys fees and expert witness fees, pursuant to Section 113(b) of the Act 42 U.S.C. § 7413(b); and

C. Award Plaintiff such further relief as the Court may deem appropriate.

Respectfully Submitted,

LOIS J. SCHIFFER
Acting Assistant Attorney General
Environment and Natural Resources Division
United States Department of Justice

DAVID FISHEL
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United States Department of Justice
Environmental Enforcement Section

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ROBERT J. BOITMANN
UNITED STATES ATTORNEY

By: _____

Assistant United States Attorney
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Assistant Regional Counsel
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Pan

DATA SHEET

OCCIDENTAL CHEMICAL CORPORATION
violations at Taft/Hahnville, Louisiana

1. The Statute and regulations which are the basis for the proposed action are:

   The Clean Air Act, 42 U.S.C. §§ 7401 et seq.
   40 C.F.R. Part 61, Subpart M

2. Name and location of intended defendant:

   Occidental Chemical Corporation
   Hwy. 3142 at Hwy. 18
   Taft, Louisiana 70057

3. The proposed relief to be sought:

   A civil penalty for Occidental's past failures to comply with asbestos NESHAPs found at 40 C.F.R. Part 61, Subpart M.

4. The violations upon which this action is based:

   a. Failure to do observations to monitor for the existence of visible emissions in the areas of potential asbestos emissions, or to keep records of such monitoring as required by 40 C.F.R. §§ 61.144(b)(3) and (b)(5) from February 20, 1991 to late May, 1991.

   b. Failure to do inspections of air cleaning devices for the existence of conditions indicating malfunctions which could cause asbestos emissions or to keep records of inspections as required by 40 C.F.R. §§ 61.144(b)(4) and (b)(5) from February 20, 1991 to April 9, 1991.

   c. Failure to do inspections of air cleaning devices to the extent of discerning the presence of tears, holes, or abrasions on the filter bag and for the presence of dust deposits on the clean side of the bags caused by asbestos emissions as required by 40 C.F.R. § 61.144(b)(4), from September 18, 1991 to November 20, 1991.

   d. Failure to properly use and operate the air cleaning devices, from July 8, 1991 to November 20, 1991, in a manner consistent with good air pollution control practice for minimizing emissions, within the meaning of 40 C.F.R. § 61.12(c), 40 C.F.R. § 61.152(a)(2), Louisiana SIP, Chapter 9, Regulation 905, on Control of Emissions and Emission Standards, and Permit No. 362C (M-1).

5. Recent contacts with intended defendants, including dates of inspection, information responses, or receipt of evidence which led to decision to initiate enforcement action:

11/21 and 11/22/91 - EPA inspection of Occidental facility

12/18/91 - Letter from L.E. Hebert of Occidental to Minerva De Leon describing work on asbestos dust collector.

2/12/92 - Letter from James Anderson of Occidental to Minerva De Leon in response to requests for documents during inspection.

8/18/92 - EPA issues information response under § 114

8/21/92 - Call from Mike James of Occidental to Mark Forcier of EPA about information request, request for extension.

9/22/92 - EPA receives response to information request dated 9/17/92.

9/22/92 - Letter from Mark Forcier confirming 15 day extension of time to respond to information request per call.

6. Significant national precedential or factual issues:

None. ***

8. Other aspects of the case which should be highlighted:

***

9. Date referral was signed by Regional Administrator:

_____

10. Identity of lead Regional counsel and technical personnel:

LEGAL

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TECHNICAL

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Penalty Calculation
Statutory maximum Amount

I. – 2/20/91 – ~~5/20/91~~ 4/5/91	44 days	~~90 days~~ × $25,000		$ 1,100,000 ~~2,250,000~~
II. – 2/20/91 – 4/9/91	48 days	~~7 wks~~ × $25,000		1,200,000 ~~175,000~~
III. – 9/18/91 – 11/20/91	63 days	~~9 wks~~ × $25,000		1,575,000 ~~225,000~~
IV. – 7/8/91 – 11/20/91	135	~~136 days~~ × $25,000		3,375,000 ~~3,400,000~~
V. – 10/2/91 – 2/11/92	7-1/2 mos.	~~2 days~~ × $25,000		6,125,000 ~~6,875,000~~ ~~50,000~~ ~~9,125,000~~ 8,375,000
335 ~~365~~ (rep. I.) due Jan. 31	245 ~~275~~ (rep. II) due April 30			$ 6,100,000 ~~23,250,000~~ 21,750,000

870 ~~930~~ × 25,000 $ ~~23,250,000~~

Occidental Chemical
Taft, La.

61.144 (b)(3) – Failure to monitor each potential source of asbestos emissions

61.144 (b)(4) – Failure to inspect each air-cleaning device at least once per week

~~61.144 (b)(5) – Failure to maintain records of visible emissions monitoring and equipment inspection.~~

61.144 (b)(4) – Failure to do inspections of air cleaning devices to discern the presence of tears, holes or abrasions on the filter bag, and for the presence of dust deposits on clean side of bags

61.152 (a)(1) – Failure to properly use and operate the air cleaning devices in a manner consistent with good air pollution control practice for minimizing emissions.

Add:

61.144(b)(8) Failure to submit quarterly reports of visible emissions of asbestos which occurred during the quarters from 10/1/91 to 12/31/91 & 1/1/92 to 3/31/91 based on inspections showing V.E. from 10/2/91 through 2/11/92.

Occidental Chemical
Taft, La

Penalty Calculations

1. Failure to monitor each potential source of asbestos emissions — $ 15,000

2. Failure to inspect each air cleaning device at least once each week — 15,000

3. Failure to do inspections of each air cleaning device to discern presence of tears, hole, or abrasions on the filter bag and for dust deposits on clean side of bag — 15,000

4. Failure to properly use and operate the air cleaning devices in a manner consistent with good air pollution control practice for minimizing emissions. — 15,000

Failure to submit quarterly reports for visible emissions of asbestos 2 x 15,000 — 30,000

2. Length of time of violations

2 - 3 months	1 x $8,000	8,000
2 - 3 months	1 x 8,000	8,000
2 - 3 months	1 x 8,000	8,000
4 - 6 months	1 x 12,000	12,000
7-12	2 x 15,00	30,000

3. Size of Violator — 70,000

Total Gravity Component ~~$ 176,000~~ $ 226,000

A. Economic Benefit – none

B. Gravity component

1. Importance to regulatory scheme	$ ~~60,000~~ 90,000
2. Length of time of violations	~~36,000~~ 66,000
3. Size of violator	70,000
Total Gravity Component	~~$ 166,000~~ $ 226,000

Occidental Chemical
Taft, La.

61.144 (b)(3) – Failure to monitor each potential source of asbestos emissions

61.144 (b)(4) – Failure to inspect each air-cleaning device at least once per week

~~61.144 (b)(5) – Failure to maintain records of visible emissions monitoring and equipment inspection.~~

61.144 (b)(4) – Failure to do inspections of air cleaning devices to discern the presence of tears, holes or abrasions on the filter bag, and for the presence of dust deposits on clean side of bags

61.152 (a)(1) – Failure to properly use and operate the air cleaning devices in a manner consistent with good air pollution control practice for minimizing emissions.

Occidental Chemical
Taft, La

Penalty Calculations

1. Failure to monitor each potential source of asbestos emissions — $ 15,000

2. Failure to inspect each air cleaning device at least once each week — 15,000

3. Failure to do inspections of each air cleaning device to discern presence of tears, hole, or abrasions on the filter bag and for dust deposits on clean side of bag — 15,000

4. Failure to properly use and operate the air cleaning devices in a manner consistent with good air pollution control practice for minimizing emissions. — 15,000

2. Length of time of violations

2 - 3 months	1 X $8,000	8,000
2 - 3 months	1 X 8,000	8,000
2 - 3 months	1 X 8,000	8,000
4 - 6 months	1 X 12,000	12,000

3. Size of Violator — 70,000

Total Gravity Component — $ 166,000

A. Economic Benefit – none

B. Gravity component

1. Importance to regulatory scheme	$ 60,000
2. Length of time of violations	36,000
3. Size of violator	70,000
Total Gravity Component	$ 166,000

REGION 6 ENFORCEMENT SCREENING WORKSHEET[1] Prepared _____

Dates of Evaluation: _____, _____, 1/29/92 Case Contact(s): Paul Henderson

Date Worksheet Sent To Other Media _____ _____

1. Facility Information
   Name of Violator: Occidental Chemical Type of Business: Chemical Industry
   Address: Taft, Louisiana
   EPA ID #(s): _____

2. Violation Information
   Media: air

Violation Summary	Repeat or Recurring Yes	Repeat or Recurring No	Violation Classification
(1) 61.144 (b)(3) Failure to monitor each potential source of asbestos emissions		✓	
(2) 61.144 (b)(4) Failure to inspect each air cleaning device at least once per week		✓	
(3) 61.144 (b)(5) Failure to maintain records of visible emissions monitoring and equipment inspections		✓	
(4) 61.144 (b)(6) Failure to make available at the affected facility, all records required under this section		✓	
(5) 61.144 (b)(7) Failure to retain a copy of all monitoring records and inspection records for at least 2 years		✓	

Prior Cases in This Media? Yes ____ No ✓
Comments:

Known Violations in Other Media
(1)

(2)

(3)

3. Environmental Releases/Risk Reduction Potential? Yes ____ No ✓
   Comments:

[1] This is a pre-decisional document protected by the deliberative process and attorney work product privileges (and may also be a privileged attorney-client communication). Conclusions or recommendations are intended solely as preliminary information for government personnel. This worksheet contains tentative conclusions and staff-level recommendations and does not create any rights, substantive or procedural, or defenses, as they are not binding on the Agency or the Department of Justice.

THIS WORKSHEET AND THE REVIEW PAGES ARE TO BE RETAINED IN THE CASE FILES.

occidental
OXY chemical corporation
Taft, La.

61.154 (a)(2) Properly install, use, operate, and maintain all air-cleaning equipment authorized by this section.

61.144 (b)(1) Discharge no visible emissions to the outside air from these operations or from any building or structure in which they are conducted or from any other fugitive sources; or

61.144 (b)(2) use the methods specified by ~~61.154~~ 61.152 to clear emissions from these operations containing containing particulate asbestos material before they escape to, or are vented to, the outside air.

61.144 (b)(3) monitor each potential source of asbestos emissions from any part of the manufacturing facility, including air cleaning devices, process equipment, and buildings housing material processing and handling equipment, at least once each day during daylight hours for visible emissions to the outside air during periods of operation. The monitoring shall be by visual observation of at least 15 seconds duration per source of emissions.

61.144 (b)(4) Inspect each air cleaning device at least once each week for proper operation and for changes that signal the potential for malfunctions, including, to the maximum extent possible without dismantling other than opening the device, the presence of tears, holes, and abrasions in filter bags and for

dust deposits on the clean side of bags.

61.144 (b)(5) maintain records of the results of visible emission monitoring and air cleaning device inspections. ~~using~~ ~~of~~

61.144 (b)(6) Furnish upon request, and make available at the affected facility during normal business hours for inspection by the Administrator, all records required under this section.

61.144 (b)(7) Retain a copy of all monitoring and inspection records for at least 2 years.

61.144 (b)(8) Submit quarterly a copy of the visible emission monitoring records to the Administrator if visible emissions occurred during the report period. Quarterly reports shall be postmarked by the 30th day following the end of the calendar quarter.

Occidental Chemical
Taft, Louisiana

Economic Benefit

Since the economic benefit is less than $5,000, it is not likely to have substantial financial impact on the violator.

Gravity Component

61.144 (b)(3)		$15,000
61.144 (b)(4)		15,000
61.144 (b)(5)		15,000
		36,000
Length of time of violations	3 X ~~$5,000~~ $12,000	~~15,000~~
Size of violator		70,000

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 6
1445 ROSS AVENUE, SUITE 1200
DALLAS, TX 75202-2733

SEP 3 1992

Michael A. James
Assistant General Counsel
Occidental Chemical Corporation
Occidental Tower, 5005 LBJ Freeway
P.O. Box 809050
Dallas, Texas 75380-9050

Re: Request For Extension of Response Period For 114 Letter

Dear Mr. James:

We have received your request for a 15-day extension to the initial 15-day response period provided in our request for information letter. We have reviewed this request, keeping in mind the emergency situation caused by Hurricane Andrew.

This is your authority to extend the response period an additional 15 days beyond the time period stipulated in the 114 Letter.

If you have any questions, or need additional information, please contact Paul Henderson of my staff at (214) 655-7544.

Sincerely yours,

A. Stanley Meiburg
Director
Air, Pesticides & Toxics Division (6T)

cc: T. H. Morrow
Occidental Chemical Corporation

B.J. Pritchard
LDEQ

Printed on Recycled Paper

114 Response

OxyChem®

September 17, 1992

A. Stanley Meiburg, Director
Air, Pesticides & Toxics Division (6T)
U.S. Environmental Protection Agency
1445 Ross Avenue
Dallas, Texas 75202-2733

SEP 22 1992
6T-EC

Dear Mr. Meiburg:

RE: Section 114 of the Clean Air Act
Occidental Chemical plant in Taft/Hahnville, Louisiana

In response to your letter dated Aug 18, 1992 (received on August 20, 1992) to J. Roger Hirl, Pres. Occidental Chemical Corporation requesting information on Occidental's chemical plant at Taft, Louisiana, Occidental Chemical Corporation is providing the requested information. The narrative responses to the listed questions are provided in the enclosed two documents. You will note, that we have not responded to question number eight pursuant to an oral agreement between Mr. Mark Forcier of the Office of Regional Counsel US EPA and Mr. Michael A. James, Assistant General Counsel for Occidental Chemical Corporation on August 21, 1992. Although an H-CONFIDENTIAL mark is included on several of the Exhibits from prior legal reviews, no confidentiality claim is being made for any of the submitted responses.

If you have any questions, please contact me at (504) 783-7200.

Sincerely
Occidental Chemical Corporation

T. H. Morrow
Plant Manager
Taft Plant

Box of enclosures at A.R. desk.

Enclosure

SEP 29 92

Occidental Chemical Corporation
OXY Basic Chemicals Group
P.O. Box 74, Hahnville, Louisiana 70057
504/783-7200

QUESTION-1

Identify and provide the name, address, telephone number, company, and title/position of all contacts other than yourself who will be dealing with this matter.

NARRATIVE ANSWER

A list of other contacts are provided in Table 1.

Table 1. Contacts

Name/Phone	Company/Address	Title/Position
Mr. Michael James (214-404-3966)	Occidental Chemical Corp. P.O. Box 809050 Dallas, TX 75380	Assistant General Counsel
Mr. T. H. Morrow (504-783-7212)	Occidental Chemical Corp. P.O. Box 74 Hahnville, LA 70057	Plant Manager Taft Plant
Mr. T. Vasko (504-783-7209)	Occidental Chemical Corp. P.O. Box 74 Hahnville, LA 70057	Assistant Plant Manager Taft Plant
Mr. J. Vance (504-783-7293)	Occidental Chemical Corp. P.O. Box 74 Hahnville, LA 70057	Department Head Complex II Taft Plant
Mr. James A. Anderson (504-783-7384)	Occidental Chemical Corp. P.O. Box 74 Hahnville, LA. 70057	Environmental Supervisor Taft Plant

QUESTION 2

On what dates did Occidental install and begin to operate air cleaning devices to control emissions from its manufacturing operations involving asbestos?

NARRATIVE ANSWER

An application[1] for operation of the asbestos handling facilities (including the asbestos dust collector, an air cleaning device) was submitted to EPA on April 5, 1974 under the Hooker Chemicals & Plastic Corporation name. Approval[2] pursuant to 40 CFR 61.07 was received on June 12, 1974. In addition, an application[3] for approval to construct and operate this facility was submitted to the LA DEQ on March 12, 1974 which was approved (Permit No. 362)[3] on September 4, 1974.

An application[4] to construct and operate the HAPP Oven Facility was submitted to the US EPA on September 18, 1975 which was approved[4] on January 5, 1976. In addition, an application[5] for approval to construct and operate this facility was submitted to the LA DEQ on November 13, 1975 which was approved on February 10,

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1 Exhibit 1
2 Exhibit 2
3 Exhibit 3
4 Exhibit 4
5 Exhibit 5

1976 (Permit No. 558)[1]. An application[2] to modify this permit was submitted to the LA DEQ on February 28, 1991. An exemption[3] was granted by the LA DEQ for this facility on June 14, 1991.

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1 Exhibit 5
2 Exhibit 6
3 Exhibit 7

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Exhibits

1 Application to EPA for approval to operate the new asbesto handling facility.

2 Approval from EPA to construct and operate the new Chlor-Alkali plant including the asbestos handling facilities.

3 Application to LA DEQ for approval to operate the new Chlor-Alkali facility (includes asbestos handling facility and LA DEQ approval (Permit No. 362).

4. Application to EPA for approval to construct and operate the HAPP Oven/Dryer and EPA approval.

5. Application to LA DEQ for approval to construct and operat the HAPP Oven/Dryer and LA DEQ approval.

6 Application to LA DEQ to modify the HAPP oven/Dryer permit to construct and operate the PMX Drying Oven and HAPP Oven/Dryer.

7 Exemption from LA DEQ approving the HAPP/PMX facilities.

QUESTION 3

Identify and describe all equipment installed at the facility pertaining to air emissions control and all process and methods used by Occidental to prevent asbestos emissions from its operations at the facility. Identify and provide copies of all communications, documents, estimates, logs, work orders, change orders, inspection reports, plans, and photographs pertaining to all air cleaning devices in operation at the facility during the past 2 years.

NARRATIVE ANSWER

A layout of plant facilities is presented in Figure 1.

Asbestos Receiving and Storage

Asbestos is purchased from Zambezi Resources LTD[1] which is received in containerized shipments. All bags of asbestos are palletized and covered with shrink-wrap to prevent damage and emissions during shipment and storage.

The palletized and wrapped bags of asbestos are removed from the container and stored in a dedicated warehouse (building B-9)[2]. When needed, a pallet of asbestos is transported via forklift to the asbestos handling area of the Central Cell Renewal Facility in Plant II (Cell Renewal building)[2]. The warehouse is sealed to prevent emissions to the

1 Exhibit 1
2 Figure 2

environment. The warehouse is kept locked at all times to control access to only authorized personnel. Authorized personnel entering the warehouse must wear HEPA rated air respirators. Any spillage which is encountered would be immediately cleaned up using the HEPA style vacuum cleaner to avoid air borne emissions. The waste asbestos from the vacuuming of spilled material would be disposed of in accordance with 40 CFR 61.150.

Daily inspections[1] for visible emissions from this area are conducted and documented in accordance with 40 CFR 61.144(b)(3), (5) and (7). Copies of the completed daily inspections of the Asbestos Warehouse for visible emission for the period of August 20, 1990 through August 20, 1992 are presented in Exhibit 3.

Dry Asbestos Handling

Dravo drawing[2] number BKC 2506 114-6 rev. 3 shows the flow diagram of the asbestos handling at the centralized diaphragm depositing area (Renewal Cell building)[3]. The dry asbestos is handled in a separate room within the centralized diaphragm depositing area. Entry into the dry asbestos handling area is restricted to authorized personnel only. Access points are provided with warning signs that meet the OSHA requirements of 29 CFR 1910.1001(j)(2). The bags of asbestos are stored on pallets in the asbestos handling area. Pallets of bagged asbestos are raised to the upper level by an installed bag lift. The bags are then placed within the asbestos handling station, a glove box[3] meeting the OSHA requirements of Appendix G to 29 CFR 1926.58 where they are split open, the asbestos is

1 Exhibit 2
2 Figure 2
3 Figure 1

weighed and then dumped into the slurry tank through a chute. Copies of photographs of the glove box/slurry tank are presented as Figure 4. The asbestos handling station is equipped with a suction blower which maintain a negative pressure on the asbestos handling station while drawing air through a bag filter (Mikro-Pulsaire)[1] for removal of asbestos fibers from the air prior to discharge to the atmosphere. The bag filter which meets the air cleaning requirements of 40 CFR 61.152(a)(1), contains 25 polyeste filter bags[1] which are each eight feet long, providing 236 sq. ft. of filter area.

Weekly inspections in accordance with 40 CFR 61.144(b)(4) & (5) of th bag filter are conducted and documented[2]. Copies of the completed weekly inspections for the period of August 20, 1990 through August 20, 1992 are presented in Exhibit 6. A copy of the photograph taken during the Novembe 21-22, 1991 NESHAP inspection of the clean-side of the dust collector is presented as Figure 5. Daily inspections for visible emissions from this area as well as the discharge vent for the dust collector are conducted in accordance with 40 CFR 61.144(b)(3), (5) and (7) and documented[2]. Copies of the completed daily inspections for visible emissions from the dust collector vent for the period of August 20, 1990 through August 20, 1992 are presented in Exhibit 3. In addition, monthly preventative maintenance inspections of the dust collector are conducted[3]. Copies of the completec monthly preventative maintenance inspections of the dust collector system for the period of August 20, 1990 through August 20, 1992 are also presented in Exhibit 7 along with summaries of all preventative maintenanc work performed on the asbestos dust collector for 1990, 1991 and 1992 year

1 Exhibit 5
2 Exhibit 2
3 Exhibit 7

to-date. During these various inspections, items were identified which could have conceivably resulted in a visible emission if they had not been corrected. Therefore, work request number 78610[1] was written to refurbish the dust collector. The job was planned, necessary material fabricated or purchased, and the corrective actions implemented on November 25 & 26, 1991. The asbestos fibers which collect on the bags are discharged via momentary surges of high pressure air into the bag house hopper. From the bag house hopper, the asbestos is recycled via a chute to the asbestos slurry tank for reuse. Copies of all documents pertaining to the air cleaning device which are associated with an EPA/LA DEQ NESHAP/SIP inspection on November 21 & 22, 1991 are presented in Exhibit 9.

The dry asbestos handling station is equipped with a chute for deposition of empty bags and other debris directly into a plastic waste bag. When full, these bags are sealed and labeled in accordance with 40 CFR 61.150(a)(1)(iv) and placed in the asbestos bin for disposal in a permitted off-site landfill. Operating technicians working in the area wear a half-mask respirator equipped with HEPA filter cartridges, gloves and a disposable worksuit. Danger signs meeting the OSHA requirements of 29 CFR 1910.1001(j)(2) are placed at the doors to the asbestos handling area. A HEPA vacuum filter is available for clean-ups of spilled material. The asbestos handling room has a contained HVAC system, one louvered air inlet and a roof mounted turbine exhaust vent. All openings are protected with fiberglass filter elements.

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1 Exhibit 8

Slurry Preparation/Diaphragm Deposition

In the asbestos slurry tank[1] the asbestos fibers are slurried in a recycled weak cell liquor solution (NaOH, NaCl and H2O). Complete mixing of the asbestos and recycled cell liquor solution in the asbestos slurry tank is obtained by an agitator. When completely mixed, the batch of asbestos slurry is transferred by pipeline to the asbestos mix tank where the proper amount of polymer is added prior to use. A cathode is placed into a cathode lifting sling and lowered into the cathode depositing tank. Asbestos slurry is then transferred by pipeline from the asbestos mix tank into the cathode depositing tank until the cathode is completely submerged in asbestos slurry. Vacuum is then applied to the cathode which deposits asbestos on the cathode screen. When the specified coverage of asbestos o the cathode screen is attained, the cathode is slowly raised out of the slurry. All excess asbestos slurry is brushed off the cathode back into the tank. When the deposited asbestos cathode is adequately dewatered by the vacuum, the cathode is transferred to the HAPP Oven facility for baking.

Daily inspections[2] of the cathode depositing tank for visible emissions are conducted in accordance with 40 CFR 61.144(b)(3), (5) and (7 and documented. Copies of the completed daily inspections for visible emissions from the cathode depositing tank for the period of August 20, 1990 through August 20, 1992 are presented in Exhibit 3.

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1 Figure 2
2 Exhibit 2

Baking and Assembly

In the late 1970's, the plant converted to a fused asbestos plus polymer diaphragm (HAPP) in its chlorine manufacturing operations. This necessitated the installation[1] of HAPP Oven/Dryer for baking the deposited diaphragms. Depending upon the type of cathode, two to four HAPP deposited diaphragms are placed in the oven for baking. The actual operation of the oven is automatically programmed so that during baking the moisture is slowly evaporated and then the polymer fused to the asbestos fibers, producing a non-friable asbestos diaphragm on the cathode. Daily inspections[2] for visible emissions from the HAPP Oven Dryer vent are conducted in accordance with 40 CFR 61.144(b)(3), (5) and (7) and documented. Copies of the completed daily inspections of the HAPP Oven/Dryer vent for visible emissions for the period of August 20, 1990 through August 20, 1992 are presented in Exhibit 3. At the HAPP building, the baked cathode is then utilized to assemble an electrolytic cell[3] for placement in the chlor-alkali electrolytic circuit.

Waste Asbestos Recovery

Periodically the asbestos diaphragms on cathodes in service must be renewed to maintain process safety and efficiency. The cell in service is removed from the circuit and disassembled. The cathode is then placed into a dedicated washroom where the asbestos is removed from the screen by washing with a high pressure water stream. While washing cathodes, the

1 Refer to Question 2 for permitting information
2 Exhibit 2
3 Exhibit 10

technician wears half-mask respirator equipped with HEPA filter cartridges (or a supplied air hood), disposable suit, rubber boots and rubber gloves. The wet asbestos is collected in the contaminated water sump which is located outside the washroom. The walls, ceiling and floor of the room is kept washed down to prevent accumulation of wet asbestos on the surfaces. Daily inspections[1] for visible emissions from the washroom area are conducted in accordance with 40 CFR 61.144(b)(3), (5) and (7) and documented. Copies of the completed daily inspections for visible emissions from the washroom area for the period of August 20, 1990 through August 20, 1992 are presented in Exhibit 3. In accordance with requirements of 40 CFR 61.145(b), annual notification[2] is provided to the Louisiana Department of Environmental Quality, Air Quality Division for the disposal of waste asbestos generated during these renewal operations.

Drawing 6-11[3] shows the flow diagram for the asbestos filtration system utilized for the recovery of waste asbestos. The contaminated water sump is provided with two agitators to keep the asbestos solids from settling. It is covered to contain splashing and prevent emissions of asbestos to the atmosphere. A vertical pump transfers the waste asbestos slurry to the asbestos slurry hold tank which is provided with an agitator to prevent settling of the asbestos slurry. The asbestos slurry is fed by an air powered double-diaphragm pump to the primary asbestos filter press (Shriver Model 48 semi-automatic plate-and-frame). The asbestos fibers are retained on sheets of polypropylene filter cloth covering the face of the recessed filter plates. The waste asbestos cake accumulates until the

1 Exhibit 2
2 Exhibit 11
3 Figure 3

maximum operating pressure is reached. At this point the filter press is cycled off-line. The filter press is air blown to dewater the cake. Once dewatered, the press is opened and the dewatered cake is dropped into a waste dumpster located below the filter press. The filter press is then closed and is ready to process another batch of waste asbestos slurry. Except for during the dump cycle, the dumpster is kept covered with a tarpaulin to prevent drying of the cake thus avoiding any air emissions. Daily inspections[1] for visible emissions from this filtration area and dumpster are conducted in accordance with 40 CFR 61.144(b)(3), (5) and (7) and documented. Copies of the completed daily inspections for visible emissions from the filtration area for the period of August 20, 1990 through August 20, 1992 are presented in Exhibit 3. The dumpster is also provided with warning signs which meet the requirements of 40 CFR 61.150(a)(1)(iv).

The filtrate from the primary asbestos filter flows by gravity to the NPDES permitted water discharge system. When the asbestos dumpster is full of asbestos waste, the plastic liner in the dumpster is closed and sealed. The liner is then labeled in accordance with 40 CFR 61.150(a)(1)(iv), and 40 CFR 61.150(a)(1)(v).

The dumpster is removed by BFI, a commercial permitted disposer for asbestos waste. All vehicles used to transport the waste asbestos are marked with signs that conforms with 40 CFR 61.149(d)(1)(i) ,(ii), and (iii). All shipments of asbestos containing waste are manifested[2] on both the Louisiana Asbestos Disposal Verification Form, (ADVF)[2] which conforms to the requirements of 40 CFR 61.150(d) and BFI's Non-Hazardous Special

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1 Exhibit 2
2 Exhibit 12

Waste & Asbestos Manifest[1]. Copies of the completed Louisiana ADVF's for the period of August 20, 1990 through August 20, 1992 are presented in Exhibit 13. Copies of corresponding BFI's Non-Hazardous Special Waste & Asbestos Manifests for the period of August 20, 1990 though August 20, 1992 are also presented in Exhibit 13.

1 Exhibit 12

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Exhibits

1 Asbestos Purchase Requisition.

2 MEMO - Asbestos NESHAP Revisions, February 7, 1991.

3 Daily Inspection Record for Visible Emissions Monitoring.

4 AFE - Asbestos Glove Box.

5 Mikro-Pulsaire, Asbestos Dust Collector.

6 Weekly Inspection Records.

7 Procedure 397 - Asbestos Dust Collector PM - Monthly, Completed Procedure Checklists and Taft Maintenance System summaries for 1990, 1991, and 1992.

8 Documentation on Work Request No. 78610 to refurbish the asbestos dust collector.

9 Copy of Documents pertaining to air cleaning device from November 21-22, 1991 NESHAP/SIP EPA/LA DEQ Inspection.

10 Asbestos diaphragm cell diagram.

11 Annual Asbestos Notification.

12 Asbestos manifest procedure and forms.

13 Asbestos manifest for 2 year period of 8/20/90 through 8/20/92

Figures.

1 Plant facilities layout.

2 Dravo drawing number BKC 2506 114-6 rev. 6 of Cell Renewal Facilities, Cathode Depositing and Asbestos Handling.

3 DWG 6-1 : Flow Diagram, Asbestos Filtration.

4 Copy of Photographs of Glove-Box/Slurry tank.

5 Copy of Photograph of Asbestos dust Collector clean-side.

QUESTION 4

Describe the methods and frequency of all monitoring at each potential source of asbestos emissions from any part of the manufacturing operations to detect asbestos emissions to the air, including in the area of air cleaning devices and process equipment. Provide copies of all documents related to the monitoring of each potential source of asbestos emissions from any part of the manufacturing facility, and all records kept of all such inspections and monitoring during the last 2 years. Provide the names and job descriptions of all persons who wrote, filled out, signed, approved, or kept records of any such documents.

NARRATIVE ANSWER

In accordance with the standards for manufacturing contained in 40 CFR 61.144, the following seven manufacturing operations are considered as potential sources of asbestos emissions:

Asbestos Warehouse

Asbestos Handling Area

Dust Collector Vent

Cathode Wash Rack

Cathode Depositing Tank

HAPP Oven/Dryer Vent

Asbestos Filter and Disposal Bin

Each of the seven manufacturing operations is monitored on a working day by visual observation for a minimum of fifteen seconds during daylight hours to detect visible emissions other than condensed, uncombined water vapor in accordance with a memo [1] issued on February 7, 1991. The results of the daily visible emission monitoring are recorded in accordance with the format specified in 40 CFR 61.144(b)(5) Figure 1. Copies of these inspections for the period of April 5, 1991 through August 20, 1992 are presented in Exhibit 2 of Question 3. The visible emissions monitoring for the dust collector vent was being performed on a weekly basis for the period August 20, 1990 through November 6, 1990, 1991 in accordance with a memo[2] issued on October 27, 1987. Copies of these records are presented in Exhibit 6 for Question 3. The weekly inspection records for the period of November 7, 1990 through April 8, 1991 have not been located although a query of the inspecting technicians by their supervisor indicates that the weekly inspections of the asbestos dust collector were performed during this period.[3] Affidavits from those individuals who where responsible for or conducted these weekly inspections are provided in Exhibit 4.

To avoid air emissions, handling of dry asbestos is minimized to those steps that are necessary to convert the dry asbestos to a wetted form. These handling operations are conducted in the dry

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1 Refer to Exhibit 2 for Question 3
2 Exhibit 1
3 Exhibit 2

asbestos handling area, which is a separate room isolated from all other areas. Emissions are controlled by using an air cleaning device, bag house type dust collector, to remove particulate asbestos generated during the weighing, dumping and mixing of asbestos fibers in the glove box/slurry tank process equipment before the air is discharged to the atmosphere. Weekly inspections of the dust collector vent were conducted in accordance with a memo[1] issued on October 27, 1987. The inspection procedures were revised to conform to the format specified in 40 CFR 61.144(b)(5) Figure 2 and distributed in a memo[2] issued on February 7, 1991. Copies of the weekly inspection records for the period of August 20, 1990 through August 20, 1992 are present in Exhibit 6 of Question 3.

Personnel and area monitoring for asbestos within the cell renewal areas is conducted. The monitoring results[3] demonstrate that airborne asbestos levels in and around the cell renewal areas are very low and well below both OSHA and ACGIH limits.

Names and job descriptions of all persons who wrote, filled out, signed, approved, or kept records of any such documents are listed below.

---

1 Exhibit 1
2 Refer to Exhibit 2 of Question 3
3 Exhibit 3

Name	Job Description
James A. Anderson	Environmental Supervisor
Ralph Becnel	Cell Renewal Technician
Duane Campbell	Safety Engineer
Billy Cressionie	Cell Renewal Technician & Chief Tech
Gary DeJean	Safety Technician
Mel Fauchaux	Cell Renewal Technician
Rene Hebert	Chief Tech
Clyde Hill	Chief Tech
Gerald Orgeron	Cell Renewal Technician
Larry Tabor	Cell Renewal Technician
A. J. Vedros	Cell Renewal Foreman

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Exhibits

1 Memo - Quarterly Inspection of Asbestos Dust Collector

2 Letter to Minerva DeLeon (EPA) from James A. Anderson (OxyChem) on SIP/NESHAP Inspection of Nov. 21-22, 1991

3 Asbestos Fiber Monitoring - 1990, 1991, and 1992

4 Affidavits

QUESTION 5

Describe the methods and frequency of the inspection of all air cleaning and emission control devices, including filter bags, for proper operation, changes, malfunctions, upsets conditions, bypasses, blowouts, leaks, etc.. Provide copies of all documents related to the inspection of each such device, and copies of all records of such inspections conducted during the last 2 years. Provide the names and job descriptions of all persons who wrote, signed, approved, or kept records of any such documents.

NARRATIVE ANSWER

To avoid air emissions, handling of dry asbestos is minimized to those steps that are necessary to convert the dry asbestos to a wetted form. These handling operations are conducted in the dry asbestos handling area, which is a separate room isolated from all other areas. Emissions are controlled by using an air cleaning device, bag house type dust collector, to remove particulate asbestos generated during the weighing, dumping and mixing of asbestos fibers in the glove box/slurry tank process equipment before the air is discharged to the atmosphere. This is the only operation where OxyChem has elected to utilize an air cleaning device to clean emissions containing particulate asbestos before they are vented to the outside air. Prior to February 15, 1992,

weekly inspections of the dust collector vent were conducted in accordance to a memo[1] issued on October 27, 1987. This inspection consisted of the following items:

1 An inspection of the air system to insure that adequate air supply was available to operate the self cleaning cycle of the asbestos dust collector. In addition, any air leaks were identified which could eventually result in malfunction of the air cleaning device.

2 The operation of each solenoid valve for cycling of the reverse pulse timer was conducted to insure that the self cleaning cycle was operating properly. Failure to cycle or continuous flow of air were indication of operating problems that needed maintenance attention.

3 The asbestos dust collector is equipped with a differential pressure gauge across the inlet (dirty) side and outlet (clean side). The pressure drop was checked since loss of differential indicated bag failure while increasing differential indicated that the bags were getting dirty and the self cleaning cycles were not performing as designed.

4 During the blower start up operation and during the asbestos dumping operation, a visual observation was performed of the blower discharge vent for visible emissions. Observation of visible emissions indicated failure of the dust collector requiring immediate corrective actions.

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1 Refer to Exhibit 1 of Question 4

5 Any conditions that were identified that required a work order be written to request repairs were identified on the weekly inspection form.

Copies of these weekly inspection record are provided in Exhibit 6 for Question 3. During this period, the asbestos dust collector operated properly requiring no changes, and with no indications of malfunctions, upset conditions, blowouts, leaks etc. As installed, there are no provisions in the system design to allow bypassing of the dust collector.

The inspection procedures were revised[1] to conform to the format specified in 40 CFR 61.144(b)(5) Figures 1 and 2 on February 7, 1991. The revised inspection procedures included a working day visual observation of the asbestos handling area and dust collector vent for a minimum of fifteen seconds during daylight hours to detect visible emissions other than condensed, uncombined water vapor. Copies of the Visual Emission Monitoring record are provided in Exhibit 3 for Question 3. During this period, the daily visual emission monitoring for the asbestos dust collector verifies that no visible emissions to the outside air had occurred. The revised procedure also changed the weekly inspection record to address the checklist items contained in 40 CFR 61.144(b)(4) and the record format contained in 40 CFR 61.144(b)(5). Copies of the weekly Air Cleaning Device Inspection Checklist records for the period of April 9, 1991 through August 20, 1992 are presented in

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1 Exhibit 3
2 Attachment 1

Exhibit 6 for Question 3. During this period, the following items were identified which required corrective action:

On 4/9/91[1], the bolts were rusted preventing internal inspection of the filter bags for the presence of tears, holes, and abrasions. This was corrected via work request number 67587[2] and inspections resumed on 4/18/91[1].

On 6/12/91[1], it was observed that the cyclic self cleaning system was not operating (pulsing) properly. This was corrected via work order number 71027[3] and proper operation restored as shown by the Air Cleaning Device Inspection Checklist record[1] for 6/20/91.

The need to replace rusted bolts, sand blast, and paint the dust collector was identified on the Air Cleaning Device Inspection Checklist record[1] of 6/26/91. This was corrected via work order number 78610[4].

The request to change access ladder and to hinge the clean side inspection door was made on the Air Cleaning Device Inspection Checklist record[1] of 7/8/91. These items were corrected via work order number 78610[4].

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1 Refer to Exhibit 6 for Question 3
2 Exhibit 1
3 Refer to Exhibit 7 for Question 3
4 Refer to Exhibit 8 for Question 3

During the inspection on 9/18/91[1], excess accumulation of asbestos was noted on the dirty side and clean side of the asbestos duct collector which indicated a malfunction of the asbestos dust collector. These items were corrected via work order number 78610[2] on November 26 and 27, 1991. During this period, the working day visual observation[3] of the dust collector vent shows that no visible emissions were released to the outside air.

On 12/13/91[1], a broken tubing on the clean-side of the dust collector was identified as well as failure of the differential pressure gauge. These items were corrected via work order number 02921[4].

Monthly preventative maintenance inspections of the dust collector are conducted in accordance with the maintenance procedure checklist PROC-397[4]. This checklist is completed on a cyclic work order by maintenance personnel. Copies of the completed PROC-397 preventative maintenance procedure checklist are presented in Exhibit 7 for Question 3 along with Taft Maintenance System summaries for 1990, 1991, and 1992. The following items were identified as problems needing corrective action:

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1 Refer to Exhibit 6 for Question 3
2 Refer to Exhibit 8 for Question 3
3 Refer to Exhibit 3 for Question 3
4 Refer to Exhibit 7 for Question 3

On 8/22/91[1], holes were identified in the inlet manifold (duct) to the dust collector. Temporary repairs were made and the manifold replaced on work order number 78610[2].

On 8/30/91[1], a slight noise was identified emanating from the blower motor, indicating a potential future bearing failure. This was identified again on 2/7/92. The motor was replaced on work order number 08967[1].

On 5/28/92[1], the mechanic listed that the blower housing was in bad condition in need of repair. Temporary repairs have been completed on work order number 15865[1]. Since the blower is on the clean-side, this did not result in an emissions.

Periodic planned general inspections[3] are conducted of the cell renewal facilities. These inspections are to consider the following categories:

1. General physical conditions such as electrical fixtures, machine guarding, exits, hand tools, etc.
2. Fire prevention and control such as detection/alarm systems, portable extinguishers, fire containment, hose outlets, etc.
3. Environmental health including labelling/storage of chemicals, ventilation, presence of fumes, personal

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1 Refer to Exhibit 7 for Question 3
2 Refer to Exhibit 8 for Question 3
3 Exhibit 1
4 Exhibit 2

protective equipment, external environmental protection, etc.

Copies of planned inspections reports for 1991 and 1992 are presented in Exhibit 2. During these inspections, the only items identified which provide a potential for emissions were the presence of cobwebs in the asbestos storage building on 1/31/91[1] and 1/31/92[1] and in the asbestos handling area on 4/22/92[1]. These items were promptly corrected as shown in the Action Completion Date column[1] of the Inspection report.

Names and job descriptions of all persons who wrote, filled out, signed, approved, or kept records of any such documents are listed below.

Name	Job Description
James A. Anderson	Environmental Supervisor
Ralph Becnel	Cell Renewal Technician
Jimmy Boudroux	Maintenance Mechanic
Duane Campbell	Safety Engineer
Billy Cressionie	Cell Renewal Technician & Chief Tech
Gary DeJean	Safety Technician
Mel Fauchaux	Cell Renewal Technician
Rene Hebert	Chief Tech
Clyde Hill	Chief Tech (deceased)
John Kehm	Department Head (retired)
Larry Landry	Production Manager

1 Exhibit 2

Name	Job Description
Donnie May	Asbestos Worker, Basic Industries Inc.
Gerald Orgeron	Cell Renewal Technician
T. Reynolds	Foreman, Basic Industries Inc.
Larry Tabor	Cell Renewal Technician
Jim Vance	Department Head
A. J. Vedros	Cell Renewal Foreman
Donnie White	Cell Renewal Technician
Willie Wiggins	Maintenance Technician, Harmony Corporation

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Narrative Answer - - - - - - - - - - - - - - 3

Exhibits

1 Planned General Inspection

2 Planned General Inspection reports for 1991 and 1992

QUESTION 6

Identify and describe any instances where monitoring or inspections at the facility, or the persons conducting such monitoring or inspecting, have indicated that visible emissions of asbestos-containing material were observed, detected, or known to have occurred at the facility during the last 2 years. Provide the names and job descriptions of all persons who observed or detected any such emissions or who wrote, signed, approved, or kept documents relating to any such emissions.

NARRATIVE ANSWER

No instances were encountered where visible emissions of asbestos-containing material to the outside air were observed, detected, or known to have occurred during the period of August 20, 1990 to August 20, 1992. A number of visual monitoring reports indicate the presence of asbestos in circumstances which could have conceivably resulted in a visible emission if they had not been corrected.

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QUESTION 7

Provide copies of all written company policies, training manuals, guidelines, and procedures by which the inspections and monitoring above are conducted. Provide the names and job descriptions of all persons responsible for, or who have conducted, air emissions monitoring or emissions control inspections at the facility during the last 2 years. Describe the training each of these persons has received in inspections, monitoring, record keeping, safety measures, and work practices.

NARRATIVE ANSWER

The inspection and monitoring described in previous questions were conducted using the following written guidelines.

1. Memo[1] dated February 7, 1991 lists the requirements, forms, and regulations for the daily visual emissions monitoring and weekly inspection of the asbestos dust collector.
2. Prior to February 7, 1991, a memo[2] dated October 27, 1987 lists the guidelines and forms for the weekly inspection of the asbestos dust collector.
3. The planned general inspections are conducted following

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1 Refer to Exhibit 2 for Question 3
2 Refer to Exhibit 1 for Question 4

Part 2[1] of the Supervisors Guide to Planned Inspections. This is one of the OXY Action Modules in the company's Safety Management Program.

Employees who work in the cell renewal area where the potential for exposure to or emission of asbestos exists, are provided with annual training. This training is conducted by either Mr. Warren Coleman Jr. (Training Representative) or Mr. Duane Campbell (Safety Engineer). An outline of the contents and introduction for the annual training presentation is presented in Exhibit 1. A quiz[2] is given to each trainee at the conclusion of the training session. The cell renewal technicians attending the annual asbestos training in 1990 and 1991 are shown in Exhibit 3.

Inexperienced technicians receive on-the-job (OJT) training from experienced technicians or their supervisor. This OJT is utilized to instruct technicians in procedures to conduct and document the Visual Emission Monitoring and the Weekly Inspection of the Asbestos Dust Collector. OJT is also utilized to update and refresh technicians understanding of safety, workplace and environmental practices.

The names and job descriptions of all persons responsible for, or who have conducted, air emissions monitoring or emissions control inspections at the facility during the past 2 years are presented in Table 1.

---

1 Refer to Exhibit 1 for Question 5
2 Exhibit 2

Table 1. Responsible Personnel

Name	Job Description
Ralph Becnel	Cell Renewal Technician
Billy Cressionie	Cell Renewal Technician & Chief Tech
Mel Fauchaux	Cell Renewal Technician
Rene Hebert	Chief Tech
Clyde Hill	Chief Tech (deceased)
Gerald Orgeron	Cell Renewal Technician
Larry Tabor	Cell Renewal Technician
A. J. Vedros	Cell Renewal Foreman
Donnie White	Cell Renewal Technician

The training that each of the Occidental Chemical Corporation employee has received in inspections, monitoring, record keeping, safety measures and work practices is summarized in Table 2.

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Exhibits

1 Annual Asbestos Training Documentation Outline and Introduction.

2 Asbestos Safety Quiz.

3 Annual Asbestos Training Documentation for technicians conducted in 1990 and 1991.

U.S. Environmental Protection Agency
Office of Enforcement
Air Enforcement Division

4/1

Date: 4/1/93 No. of Pages w/ cover 3

To: Mark Forcier

Office: ORC R6

Phone: 214.655.2124

Fax:

MF — Rick says this should be even worse — toxicity needs to be factored in on some of the other counts — that will bump up this penalty. See Rick. Jim

From: Jerry MacLaughlin Phone: 202-260-6957

Comments:

Oxy - Count/Penalty analysis. Send a letter back to me + Molly Hall at DOJ incorporating these changes and I'll draft up an approval letter from Kathie Stein — Jerry

Analysis of Violations and Penalty in Occidental Chemical Corporation

A complaint in this action would be based on the following seven counts and the penalty relies on the correct "break-out" of the separate violations contained within the Asbestos NESHAP.

Total Penalty - **$325,000** - based on 7 counts lasting up to five years in length.

Specific Penalties:

Toxicity of Pollutant - **$15,000** - Toxicity is assessed for Asbestos NESHAP violations that are not Demolition-Renovation cases.

Size of Violator - **$70,000** - Based on Dun & Bradstreet report.

Count I - §61.12(c)/§61.152(a)(1)(i)/§61.152(a)(2)/Louisiana Air Permit No. 362 C (M-1) - Operate emission control equipment properly.

Length of Time ("Length") - **$55,000** - 5 years - §152(a)(2) is the same as the pre-1990 Asbestos NESHAP §154(a)(2) and therefore this requirement has been applicable to the facility since the facility started up. Therefore Length of Violation should go back from the date of the inspection, 11/21/91, for five years.

Importance to Regulatory Scheme ("Importance") - **$15,000** - "Failure to operate and maintain control equipment" - According to statements made to the inspector during the inspection, respondent had installed the baghouse and than not maintained it for 10 years.

Count II - §61.144(b)(1)/§61.144(b)(2) - Either emit no visible emissions ("VEs") or follow certain procedures to control VEs.

Length - **$15,000** - 9 months - 2/20/91-11/26/91 - This assumes that all procedures were followed correctly following inspection on 11/20/91 and subsequent asbestos removal by respondent on 11/26/91. Therefore penalty is assessed from applicable date of the regulation, 2/20/91 until the date that the control equipment was serviced.

Importance - **$15,000** - "Failure to operate and maintain

control equipment" - Proper procedures were not being followed.

Count III - §61.144(b)(3) - Monitor daily for VEs from equipment.

Length - $15,000 - 7.5 months - 2/20/91-10/8/91 - Daily monitoring did not begin until Oct. 8, 1991 except for one day of monitoring in April. Based on info submitted by respondent.

Importance - $15,000 - "Failure to Monitor"

Count IV - §61.144(b)(4) - Inspect control equipment for proper operation.

Length - $15,000 - 9 months - 2/20/91-11/21/91 - Based on info submitted by respondent.

Importance - $15,000 - "Failure to Monitor"

Count V - §61.144(b)(5)/§61.144(b)(7) - Maintain records (for 2 years) of the results of VE monitoring and control equipment inspections.

Length - $15,000 - 7.5 months - 2/20/91-10/8/91 - Information provided by respondent in response to a §114 letter did not include complete records of VE monitoring and control equipment inspections.

Importance - $15,000 - "Failure to Record"

Count VI - §61.144(b)(6) - Upon request, furnish records of the results of VE monitoring and control equipment inspections.

Length - $5,000 - one day - 11/21/91 - Respondent could not provide records on the day of the inspection.

Importance - $15,000 - "Failure to Respond"

Count VII - §61.144(b)(8) - Submit quarterly reports if VE monitoring indicates VEs are occurring.

Length - $15,000 - 9 months - 2/20/91-11/21/91 - Reports provided by the respondent indicate that VEs were occuring. The control equipment could not have been operating properly given the total failure by respondent to maintain the equipment.

Importance - $15,000 - "Failure to Report"

Paul

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 6
1445 ROSS AVENUE, SUITE 1200
DALLAS, TEXAS 75202-2733

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April 6, 1993

Jerry MacLaughlin
Counsel, Air Enforcement Division
Office of Enforcement (LE-134A)
U. S. Environmental Protection Agency
401 M Street, S.W.
Washington, D.C. 20460

Re: Penalty calculation for **Occidental Chemical Corporation**

Dear Jerry:

I received your letter (fax) of April 1st and the following is in response to it, and our telephone conversation that same day with Tom Ripp of SSCD.

First, your memo on the penalties begins with the recitation that the "...complaint in this action would be based on the following seven counts..." Your description of the penalties is based on a strict application of the penalty policy. The penalty policy is only meaningful in administrative actions and in pre-referral negotiations. As I stated in our conversation, if a Complaint is filed in the District Court in this action, the requirements of the penalty policy will be irrelevant. If you wish to characterize the counts for the purpose of strict compliance with the penalty policy in determining a penalty for presentation and negotiations purposes, it should be described that way in the preamble to the penalty calculation. It should not be indicated that the counts are described the way they are because that is how they will be plead. Region 6 is in agreement that the counts would be plead as described in the draft Complaint, not individually as they are outlined in your penalty calculation. (See attached excerpts from a memo to the file on this issue.)

As an aside, the Penalty Policy requires that certain amounts be assessed for Importance to the Regulatory Scheme, in addition to any other assessment. Policy @ 12-14. Despite any personal feelings I may have about that element of the policy[1], it is

---

[1] I personally disagree with adding a separate amount for Importance to the Regulatory Scheme because (1) the base amount assessed for the violation itself should include the relative Importance to the Regulatory Scheme for that count (otherwise

required to be included in the penalty assessment as you have indicated. Other than the above, the only real issue to be raised on your recalculation of the penalty relates to Count I.

Count I is described as being assessed over 5 years. The fact that the requirements have been in effect in some form for those 5 years doesn't mean we can assess a penalty for that time without evidence. It is our contention that an assumption that the violation occurred continuously for 5 years is unfounded and insupportable, even by circumstantial evidence. The inspection report states that the baghouse "had not been maintained in 10 years according to the operations technician and foreman." Report @ 5. This is a quote from the inspector's report, not a quote from the persons making the statements. It is a paraphrased statement out of context which could turn out in testimony to refer to the fact that the baghouse was rusty and in need of paint (which is true but irrelevant here), that it had not had the sock bags changed in 10 years (which may also have been true but is not an unreasonably time for bags not to be replaced), that the machinery had not been lubricated in 10 years (which, even if it were true, would indicate nothing without other facts), or any one of a number of things, any one of which could be true and not be circumstantial evidence of the violation. If these persons were to testify, they could contend any or all of these things, or something completely different, and we could not refute the testimony. The definition of "maintenance" is inexorably tied to their assertion.

We know that the bag house was not being maintained at the time of the inspection; thus, the violation. We have evidence through inspection records that the condition observed at the time of the inspection had continued since June 8th (5½ months). In order to make <u>any</u> assumptions about how the baghouse had been maintained over the long term, even a year, we would have to know facts which we don't know. (1) How often does the baghouse require "servicing" or "maintenance", and what do they mean in this context? (2) Is there evidence prior to the records and inspection that there were <u>conditions</u> which indicated that maintenance was not adequate or that the equipment was not functioning properly? (3) Is the interval for servicing dependant on how much asbestos dust is collected in the baghouse, and, if so, how fast does asbestos accumulate in the bag house? We have no evidence of any of these things. In addition, we would be required to make assumptions about other factors which we have no evidence of: the amount of asbestos collected will vary based on the relative sloppiness or cleanliness of the

---

what <u>is</u> included), and (2) just about every possible violation is included for a separate assessment for Importance to the Regulatory Scheme, which tends to dilute the purpose of assessing it as a separate amount, which is to characterize <u>some</u> violations, by their nature, as more detrimental to the integrity of the regulatory structure than others.

handling of the asbestos in the work area (and in the glove boxes); the amount collected by the baghouse will also depend on much and how often asbestos is processed in the work area, as well as whether the system only accumulates airborne asbestos or draws it directly from the process. We don't even know how the bag house has been operated over the last 5 years.

In addition to the above, the diagram included with the inspection report describes a baghouse which is designed to vibrate the accumulated asbestos from the bags down onto a conveyor which draws it away from the bags for accumulation. Report Attachment F. This would avoid direct maintenance of the bags unless they are damaged or wear out. We have no evidence that either condition existed. (The fact that they were replaced just after the inspection in November 1991, which was contracted in June 1991, is a subsequent remedial measure which should be inadmissible. Report Attachment A, p. 2.)

The bottom line is that unless we have some evidence of the amount of asbestos in the baghouse at the time in question, <u>and</u> the rate of accumulation of asbestos, <u>and</u> evidence that some amount of accumulation is <u>per se</u> failure to maintain, <u>or</u> a requirement of specific periodic "maintenance" on this baghouse, <u>and</u> direct evidence that it was not done at some time in the past other than that documented, we can't make any projections of the time over which the baghouse was not properly maintained without making unfounded assumptions. Lack of maintenance records which would not have been required to be kept also indicates little in this regard.

All we know is (1) that the baghouse was not being properly maintained at the time of the inspection, and (2) that there is evidence in the inspection reports kept by Occidental that the condition which was observed at the time of the inspection had been in existence since approximately July 8th. Anything further would have to be presented, if at all, by favorable testimony obtained from a hostile witness (fishing expedition), or by opinion testimony of an expert witness, based on additional evidence that we don't have and may or may not be able to obtain. I couldn't present 5 years as the time of violation to a court, or to the Defendant in negotiations, in good faith, and I don't think the penalty calculation should reflect it. A time of violation from June 8th to November 21st is supported by the evidence. As stated in the attached memo, there is no reason to go out on a limb as to liability to pad the penalty in this way. It will be high enough that a reduction for litigation risk will be required in approval of a settlement anyway.

The difference between your calculation of the penalty based on 5 years and the penalty with the 4-6 month time of violation for Count I would be $43,000 (55,000 - 12,000 = 43,000), making the final penalty $282,000, based on the 7 counts described in your calculation, consistent with the Penalty Policy. The rest of the calculation you presented appears to be reasonable and in accord

with the Policy.

Please call me with any questions at (214) 655-2124.

Sincerely,

Mark Forcier
Assistant Regional Counsel (6C-AA)

cc: Paul Henderson, (6T-ET)
Molly Hall, DOJ

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 6
1445 ROSS AVENUE SUITE 1200
DALLAS, TEXAS 75202-2733

March 31, 1993

Memorandum (paraphrased from original)

SUBJECT: Structure of the Complaint for **Occidental Chemical** site in Taft/Hahnville, La.

FROM: Mark S. Forcier
Assistant Regional Counsel (6C-AA)

THRU: James L. Turner
Associate Regional Counsel for
Air, Toxics & Pesticides Enforcement (6C-AA)

TO: The File

We sent up a PRN for Occidental on 12/31/92. Along with it I sent a draft Complaint. As reported in my weekly activity report of 3/31/93, I talked to Jerry MacLaughlin about the structure of the draft Complaint which was sent up with the PRN. He is reviewing the case for PRN approval.

Jerry told me that, as a matter of policy (mostly the Penalty Policy), counts which cite failure to monitor, failure to record monitoring, or failure to produce records kept of monitoring, etc., must be plead as separate counts. In the draft Complaint they are included in a single count, plead in the alternative. As I understand it, Jerry's contention is that if a party fails to monitor, it must also be cited with violations of all subsequent actions required after monitoring, including failure to keep records of the monitoring, failure to produce records kept of monitoring at the time of the inspection, failure to keep the records for 2 years, failure to notify of anything that could have been discovered by the monitoring, etc. His contention is that it is not fair to those parties who did comply with the bulk of the requirements (e.g. did monitor, did record, and did produce records at inspection, although the records may have been partially missing or incomplete), if we only cite a single violation, and assess the corresponding single penalty for simple failure to monitor at all.

I disagree. I have discussed this issue at length with Rick Bartley and he also disagrees with Jerry on this point. There are several reasons. First, it is an inconsistent argument. The reasoning that each subsection is a separate violation and, therefore, has to be cited as a separate count fails if the only reason the additional subsections are being cited is because of

the violation of the first. They do not stand on their own but would be cited as necessary pendant violations of failure to monitor under Jerry's scheme.

Second, to plead failure to keep records of monitoring which was not done presupposes an element which has been plead and proved not to exist. In order for records to be made and kept, there must be something to make records of. If there is nothing to make records of we are susceptible to a plea of impossibility to perform on the additional counts.

Third, Defendant could easily present testimonial evidence that it did, in fact, monitor, and that the records were made, but that they were lost or accidently destroyed, and that they should be excused, then, not only from failure to monitor, but also failure to make the records, <u>and</u> failure to keep the records and present them because of impossibility or accident. If these violations are plead as separate counts, they can be knocked out separately on various facts, most of which we cannot counter, other than to say that no records were made available to us, therefore we <u>assume</u> that all of the violations occurred.

Fourth, there are other factors in the penalty policy to take into account whether a party complied with most of a requirement or none of it. It isn't necessary to add precarious counts in order to adjust the penalty to take the real facts of the case into account.

Jerry acknowledged that pleading all of these subparts separately could make the Complaint susceptible to amendment during or after trial. It should not be the goal of an attorney to structure a Complaint which is susceptible to being picked apart, destroying the credibility of his entire case, when he can structure one which is bulletproof, and based on facts. Pleading the monitoring, recordkeeping, and presentation requirements in the alternative in a single count, as done in the draft Complaint, prevents the Defendant from pleading around any one of them individually and assures a finding of liability if any one of them is proven to have been violated.

The only motivation I can see for all subparts be separately plead (and lets not kid ourselves about what we speak when we discuss the structure of the penalty policy), is that we have the potential to amass a larger statutory maximum penalty. This is useless for several reasons. First, the penalty policy is irrelevant in the District Court. Second, the statutory maximum, in most cases, is a very high number which, except under egregious and unusual circumstances, we have no hope of achieving, particularly in settlement. To cripple pleading for liability to artificially pad a penalty number which is already too high to be meaningful is not just unproductive, but is destructive.

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February 1, 1993

Molly Hall
Environmental Enforcement Section
Environment and Natural Resources Div.
U.S. Department of Justice
P.O. Box 7611
Ben Franklin Station
Washington, D.C. 20044

Re: Draft Consent Decree for **Occidental Chemical Corporation**

Dear Molly:

Enclosed is a copy of a draft of a Consent Decree projected to be used in settlement of the action against Occidental Chemical Corporation for asbestos NESHAP violations at their Taft/ Hahnville, Louisiana facility.

I don't anticipate, at this time, that injunctive relief will be necessary. Thus the Consent Decree, and the Complaint I am preparing, refer only to payment of penalties for past violations. I will prepare a draft Consent Decree which allows for injunctive relief, and will sent it as soon as it is complete, as well as a copy of the Complaint.

If you want a copy of the computer file for any of these documents, they can be transferred at any time. Please call me with any questions at (214) 655-2124.

Sincerely,

/S/

Mark Forcier
Assistant Regional Counsel (6C-AA)

cc: ~~Peter Goerdel, (6T-EC)~~ Paul Henderson
Jerry MacLaughlin, OE

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 6
1445 ROSS AVENUE, SUITE 1200
DALLAS, TEXAS 75202-2733

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February 3, 1993

Jerry MacLaughlin
Counsel, Air Enforcement Division
Office of Enforcement (LE-134A)
U. S. Environmental Protection Agency
401 M Street, S.W.
Washington, D.C. 20460

Re: Documents for **American Chrome & Chemical, CalMat of New Mexico, Industrial Asphalt**, and **Occidental Chemical**

Dear Jerry:

In our conversation yesterday you requested the following documents related to the above noted cases:

- Draft Compliant against American Chrome
- Copy of proposal for settlement by American Chrome
- Draft of Region 6 response/counter offer to American Chrome
- Penalty calculations for CalMat and Industrial
- Letter confirming meeting with CalMat and Industrial containing terms of an offer made by them for a combined settlement
- Draft Complaint against Occidental Chemical
- Draft Consent Decree for Occidental Chemical

In addition to the above, in our conversation on January 27th, you requested documents from Occidental Chemical's response to EPA's 114 letter, and a copy of a letter from Occidental to Minerva De Leon dated 2/12/92. They are also included. As to the 114 response material:

- The inspection record dated 4/5/91 is the first in a continuing series of monitoring records, indicating that Occidental failed to monitor, or to keep records of monitoring of, each potential source of asbestos emissions for visible emissions during periods of operation from February 20, 1991, the date the regulation is effective, to April 5, 1991, in violation of 40 C.F.R. §§ 61.144(b)(3). (Count I)

- The inspection record dated 4/5/91 is also the first in a continuing series of inspection records, indicating that Occidental failed to inspect, or to keep records of inspections of, each air cleaning device at least once each week for proper operation and for changes that would signal the potential for malfunctions from February 20, 1991. the effective date, to April 5, 1991, in violation of 40 C.F.R. §§ 61.144(b)(4). (Count II)

- The inspection records dated 9/18/91 through 11/20/91 are part of the records supplied to Minerva in the 2/12/92 letter you requested a copy of, indicating that Occidental failed to inspect the air cleaning device (bag-house) to the extent of opening the device to determine the presence of tears, holes, and abrasions in the filter bags, despite the presence of continuing indications of malfunction, as required by 40 C.F.R. §§ 61.144(b)(2) and (b)(4), during the time from September 18, 1991 to November 20, 1991. The inspector notes that the device could not have been opened without spilling the contents. (Count III)

- The inspection records dated 10/2/91 through 2/11/92 are part of the continuing series of inspection records, indicating that Occidental had and documented visible emissions to the outside air at its facility for a long period, including in particular between those dates, which extends into two (2) calendar quarters, and did not submit to the Administrator copies of the visible emission monitoring records which show that the visible emissions occurred during the quarters cited, as required by 40 C.F.R. § 61.144(b)(8). (Count V)

- The cumulative inspection records of the baghouse, and the admission by plant personnel that the device had not been maintained in 10 years, supports Count IV, failure to maintain and operate the source, including the associated air pollution control equipment, in an manner consistent with good air pollution practice for minimizing emissions within the meaning of 40 C.F.R. §§ 61.12(c), 61.144(b), and 61.152(a), for a long period, including and in particular from July 8, 1991 to November 20, 1991.

I hope you will be able to notify us soon of OE's approval to pursue pre-referral negotiations in each of the above named cases. If there are any questions, or additional information necessary, please call me at (214) 655-2124.

Sincerely,

Mark Forcier

Mark Forcier
Assistant Regional Counsel (6C-AA)

cc: (partial)

Raymond Magyar, (6T-EC)
Pete Goerdel (6T-EC)
Paul Henderson (6T-ET)

DRAFT - February 2, 1993

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA
NEW ORLEANS DIVISION

UNITED STATES OF AMERICA, Plaintiff, v. OCCIDENTAL CHEMICAL CORPORATION, a New York corporation Defendant	)	CIVIL ACTION NO. _____

COMPLAINT

Plaintiff, the United States of America, by and through the Attorney General of the United States, and on behalf of the United States Environmental Protection Agency ("EPA") brings this action and alleges as follows:

NATURE OF THE ACTION

1. This is a civil action for civil penalties under Section 113(b) of the Clean Air Act, as amended (herein "the Act"), 42 U.S.C. § 7413(b), brought by the United States of America, against OCCIDENTAL CHEMICAL CORPORATION ("Occidental" or "Defendant"), for violations by Defendant of regulations promulgated under Section 112 of the Act, 42 U.S.C. § 7412.

JURISDICTION, VENUE, AND NOTICE

2. This Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331, 1345, and 1355, and under Section 113(b) of the Act, 42 U.S.C. § 7413(b), as "the district court of the United States for the district in which the violation is alleged to have occurred", and the district in which the Defendant conducts its business.

3. Venue is proper in the Eastern District of Louisiana pursuant to 28 U.S.C. § 1391(b) and 42 U.S.C. § 7413(b), as the district in which the violations occurred and the district in which the Defendant corporation resides or has its principal place of business.

THE DEFENDANT

4. Defendant OCCIDENTAL CHEMICAL CORPORATION ("Occidental"), is a corporation chartered under the laws of the state of New York and is registered with the office of the Secretary of State of Louisiana to do business in Louisiana. The business of Defendant relevant to this proceeding is conducted at the Occidental Chemical Corporation facility at Hwy. 3142 and Hwy. 18 in Taft, Louisiana, 70057 (the "facility"). The mailing address of the facility is P.O. Box 74, Hahnville, Louisiana, 70094.

5. At all times relevant to this Complaint, Defendant has been the "owner" and "operator" of the facility within the meaning of 42 U.S.C. § 7413 and 40 C.F.R. Part 61.

6. As a corporation, Defendant is therefore a "person"

as that term is defined in Section 302(e) of the Act, 42 U.S.C. § 7602(e), and within the meaning of Section 113(b) of the Act, 42 U.S.C. § 7413(b).

7. Defendant's facility is considered a "major stationary source" as that term is defined in Section 302(j) of the Act, 42 U.S.C. § 7602(j), and within the meaning of Section 113(b) of the Act, 42 U.S.C. § 7413(b).

8. Defendant used and improperly managed a hazardous substance, in violation of federal regulations, and in such a way as to allow unacceptable emission of that hazardous substance to the air, as shown herein.

STATUTORY AND REGULATORY BACKGROUND

9. The Clean Air Act, as amended in 1990, 42 U.S.C. § 7401 et seq. (herein "the Act") established a comprehensive scheme for pollution prevention as described in Section 101 of the Act, 42 U.S.C. § 7401.

10. Section 112(b) of the Act, 42 U.S.C. § 7412(b), contains a list of hazardous air pollutants, and requires the Administrator to prescribe an emissions standard to achieve maximum emission reductions for each such pollutant. These emission standards are known as the National Emissions Standards for Hazardous Air Pollutants ("NESHAPs") and are promulgated at 40 C.F.R. Part 61. The 'asbestos NESHAPs' govern the handling and disposal of asbestos and the control of asbestos emissions. Revisions to the asbestos NESHAPs relevant here were published in 55 Fed. Reg. 48419 (November 20, 1990), and in 55 Fed. Reg. 1669

(January 16, 1991). and have been codified at 40 C.F.R. Part 61, Subpart M, as corrected.

11. Under Section 112(q) of the Act, 42 U.S.C. § 7412(q), any regulation which was originally promulgated or amended prior to the amendment of the Act in 1990 (including the asbestos NESHAP regulations relevant to this case), continues in full force and effect after the 1990 amendment of the Act.

12. Pursuant to Section 113(a)(3) of the Act,

> [w]henever...the Administrator finds that any person has violated or is in violation of any [non-SIP] requirement or prohibition of [Subchapter I, 42 U.S.C. § 7401-7515] ... including but not limited to any rule... promulgated, issued or approved under [that Subchapter] ...the Administrator may... (C) bring a civil action in accordance with subsection (b) of [Section 113]...

42 U.S.C. § 7413(a)(3) (emphasis added).

13. Pursuant to Section 113(b) of the Act, the Administrator is authorized to seek appropriate enforcement action against

> any person who is the owner or operator of an affected source, ...or a major stationary source, and may, in the case of any other person, commence a civil action for a permanent or temporary injunction, or to assess and recover a civil penalty...
>
> > (2) Whenever such person has violated, or is in violation of, any requirement or prohibition of [Subchapter I of the Act, 42 U.S.C. §§ 7401-7515] ...including, but not limited to, a requirement or prohibition of any rule [promulgated under the Act]...

42 U.S.C. § 7413(b).

14. Also pursuant to Section 113(b) of the Act, 42 U.S.C. § 7413(b), any person who violates any requirement of the Act as above may be liable to the United States for injunctive relief, or a civil penalty of not more than $25,000 per day, or

both, for each violation.

FACTUAL BACKGROUND

15. Defendant owns and operates a chemical manufacturing business, and the appurtenant property in Taft, Louisiana, which produces bulk chlorine for industrial uses. The chlorine compounds themselves are not at issue in this case.

16. As part of the chlorine manufacturing process at the facility, Defendant utilizes asbestos "diaphragm" electrolytic cell technology. Raw sodium chlorine brine is treated with sodium carbonate and sodium hydroxide to precipitate out impurities, which are settled out in clarifiers. The treated brine is then filtered and fed through an electrolytic cell where chlorine gas and hydrogen gas are produced. The electrodes of the electrolytic cells are coated with a slurry made with asbestos to create a "diaphragm" electrolytic cell through which the brine and chemicals are passed. Dry asbestos is brought to the facility in packages, and the dry asbestos is added to a wet solution to create the slurry. The handling of the dry asbestos, as part of the coating process, and the stripping of asbestos from the electrodes as part of the asbestos removal process in the Cell Renewal Unit, create the potential for asbestos emissions to the air. The operation utilizes a bag-house type of device to eliminate asbestos emissions from the process areas.

17. Defendant is required pursuant to 40 C.F.R. Part 61, Subpart M, to control asbestos emissions and observe work practice standards for handling of asbestos in its operations.

The control of asbestos emissions and the operation and maintenance of the bag-house are the objects of the violations cited herein.

ENFORCEMENT HISTORY

18. EPA conducted an unannounced single-media inspection of Defendant's facility on November 21 and 22, 1991. At that time, EPA inspectors identified conditions which were deemed to be violations of the Act, as described herein.

19. In exit interviews after each of these inspections, Defendant was given notice of the conditions and actions noted by EPA at the facility which were considered to be violations of the Act.

20. On August 18, 1992, EPA requested information from Defendant under the authority of Section 114 of the Act, 42 U.S.C. § 7414, related to the violations found during the November 1991 inspection. The information supplied by Defendant in response to requests, and the information acquired at the time of the inspection, form the basis of this action.

APPLICABILITY OF REGULATIONS

21. 40 C.F.R. § 61.140 provides that 40 C.F.R. Part 61, Subpart M, relating to asbestos NESHAPs, applies to those sources specified in 40 C.F.R. §§ 61.142 through 61.151, 61.154. and 61.155.

22. 40 C.F.R. § 61.144 describes standards applicable to "manufacturing operations using commercial asbestos". Section

61.144(a)(9) states that the standards found in § 61.144 are applicable to "the manufacture of chlorine utilizing asbestos diaphragm technology". Also, "chlorine production is considered a part of manufacturing" in relation to asbestos under 40 C.F.R. § 61.141.

23. Defendant's facility manufactures (produces) chlorine utilizing asbestos diaphragm technology. Therefore, the regulations found at 40 C.F.R. Part 61, Subpart M, § 61.01 et seq., are applicable to Defendant's facility and the operations described herein.

24. Defendant's facility is a "...facility, or installation which emits of may emit any air pollutant proposed or promulgated under [40 C.F.R. Part 61]" as defined in 40 C.F.R. § 61.02, and is therefore a 'stationary source' within the meaning of 42 U.S.C. § 7412(a)(9).

25. Defendant owns, leases, operates, controls, or supervises a stationary source, and is thus the "owner or operator of a stationary source", as defined in 42 U.S.C. § 7412(a)(9), which is a "manufacturing" operation, as defined by 40 C.F.R. § 61.141 and 61.144(a)(9). The regulations found in 40 C.F.R. Part 61, Subpart M, relating to asbestos NESHAPs, therefore apply to Defendant.

CLAIMS FOR RELIEF

COUNT I - FAILURE TO MONITOR FOR VISIBLE EMISSIONS OF ASBESTOS AND TO KEEP RECORDS OF SUCH MONITORING pursuant to 40 C.F.R. §§ 61.144(b)(3), (b)(5), and (b)(7).

26. Paragraphs 1 through 28 are realleged and incorporated by reference as if set forth in full in Count I.

27. According to 40 C.F.R. § 61.144(b),

> Each owner or operator of any manufacturing operation to which this section applies shall:
>
> ...(3) Monitor each potential source of asbestos emissions from any part of the manufacturing facility, including air cleaning devices, process equipment, and buildings housing material processing and handling equipment, at least once each day during the daylight hours for visible emissions to the outside air during periods of operation. The monitoring shall be by visual observation of at least 15 seconds duration per source of emissions.
>
> ...(5) [and shall] maintain records of the results of visible emission monitoring... [and]
>
> ...(7) Retain a copy of all monitoring and inspection records for at least 2 years.

40 C.F.R. §§ 61.144(b)(3), (b)(5), and (b)(7) (emphasis added).

28. Defendant did not monitor each potential source of asbestos emissions for visible emissions during periods of operation from February 20, 1991 to April 5, 1991, in violation of 40 C.F.R. §§ 61.144(b)(3).

29. Defendant did not maintain records of the results of visible emission monitoring of each potential source of asbestos emissions from February 20, 1991 to April 5, 1991, in violation of 40 C.F.R. §§ 61.144(b)(5).

30. Defendant did not retain a copy of the records of the required monitoring for at least 2 years in violation of 40 C.F.R. §§ 61.144(b)(7).

31. Defendant thereby violated the standards contained in 40 C.F.R. Part 61, Subpart M, rules promulgated under Section 112 of the Act, 42 U.S.C. § 7412, and is therefore subject to penalties, injunctive relief, or both, under Section 113 of the Act, 42 U.S.C. § 7413.

COUNT II - FAILURE TO INSPECT AIR CLEANING DEVICES FOR CONDITIONS INDICATING MALFUNCTIONS AND TO KEEP RECORDS OF INSPECTIONS pu[illegible]nt t[illegible] 40 C.F.[illegible]. §§ 61.144(b)(4), (b)(5), and (b)(7).

32. Paragraphs 1 through 34 are realleged and incorporated by reference as if set forth in full in Count II.

33. According to 40 C.F.R. §§ 61.144(b),

> Each owner or operator of any manufacturing operation to which this section applies shall:
>
> ...(2) Use the methods specified by § 61.152 [relating to air cleaning and filtering devices] to clean emissions from operations containing particulate asbestos material before they escape to or are vented to the outside air. [and]
>
> ...(4) Inspect each air cleaning device at least once each week for proper operation and for changes that would signal the potential for malfunctions, including, to the maximum extent possible... the presence of tears, holes, and abrasions in filter bags and for dust deposits on the clean side of [filter] bags. ...For air cleaning devices that cannot be inspected on a weekly basis... submit to the Administrator ...a written maintenance plan...
>
> ...(5) [The owner or operator shall also] maintain records of the results of ...air cleaning device inspections ...
>
> ...(7) Retain a copy of all monitoring and inspection records for at least 2 years.

40 C.F.R. §§ 61.144(b)(2), (b)(4), (b)(5), and (b)(7) (1991) (emphasis added)

34. Defendant did not inspect each air cleaning device at least once each week for proper operation and for changes that

would signal the potential for malfunctions from February 20, 1991 to April 9, 1991 in violation of 40 C.F.R. §§ 61.144(b)(4).

35. Defendant did not maintain records of the results inspections of ita air cleaning devices from February 20, 1991 to April 5, 1991, in violation of 40 C.F.R. §§ 61.144(b)(5).

36. Defendant did not retain a copy of the records for the required inspections for at least 2 years in violation of 40 C.F.R. §§ 61.144(b)(7).

37. Defendant thereby violated the standards contained in 40 C.F.R. Part 61, Subpart M, rules promulgated under Section 112 of the Act, 42 U.S.C. § 7412, and is therefore subject to penalties, injunctive relief, or both, under Section 113 of the Act, 42 U.S.C. § 7413.

COUNT III - FAILURE TO INSPECT AIR CLEANING DEVICES TO THE EXTENT OF OPENING THE DEVICE TO DISCERN THE PRESENCE OF TEARS, HOLES, OR ABRASIONS ON THE FILTER BAG AND THE PRESENCE OF DUST DEPOSITS ON THE CLEAN SIDE OF THE BAGS CAUSED BY ASBESTOS EMISSIONS pursuant to 40 C.F.R. § 61.144 (b)(4);

38. Paragraphs 1 through 40 are realleged and incorporated by reference as if set forth in full in Count III

39. According to 40 C.F.R. §§ 61.144(b),

> Each owner or operator of any manufacturing operation to which this section applies shall:
>
> ...(2) Use the methods specified by § 61.152 [relating to air cleaning and filtering devices] to clean emissions from [their] operations containing particulate asbestos material before they escape to or are vented to the outside air.
>
> ...(4) Inspect each air cleaning device at least once each week for proper operation and for changes that would signal the potential for malfunctions, including, to the maximum extent possible without dismantling other than opening the device, the presence of tears, holes, and abrasions in

> filter bags and for dust deposits on the clean side of [filter] bags. [or]...For air cleaning devices that cannot be inspected on a weekly basis... submit to the Administrator ...a written maintenance plan...

40 C.F.R. §§ 61.144(b)(2) and (b)(4) (1991) (emphasis added).

40. Defendant failed to inspect the air cleaning device (bag-house) to the extent of opening the device to determine the presence of tears, holes, and abrasions in the filter bags, despite the presence of continuing indications of malfunction, as required by 40 C.F.R. §§ 61.144(b)(2) and (b)(4), during the time from September 18, 1991 to November 20, 1991.

41. Defendant thereby violated the standards contained in 40 C.F.R. Part 61, Subpart M, rules promulgated under Section 112 of the Act, 42 U.S.C. § 7412, and is therefore subject to penalties, injunctive relief, or both, under Section 113 of the Act, 42 U.S.C. § 7413.

42. 40 C.F.R. § 61.19 mandates that

> No owner or operator shall ...use any ...machine, equipment, [or] process, the use of which conceals an emission which would otherwise constitute a violation of an applicable standard.

40 C.F.R. § 61.19 (1991).

43. Defendant failed to address the improper operation of the baghouse over an extended period, continuing to operate it when it was reported to be, and obviously was, malfunctioning. Defendant thereby, not only concealed the fact that the baghouse was no longer functioning properly, and concealed the fact that asbestos emissions were occurring a levels which were dangerous, but that the emissions to the air in the work environment were greater and more widely dispursed due to the improper operation

of the equipment than they would have been without the equipment in place, or without it operating at all.

44. The fact that the baghouse was no longer functioning properly, and that asbestos emissions were occurring a levels which were above allowable limits, and that the emissions were greater and more widely dispursed due to the improper operation of the equipment than they would have been without the equipment in place, or without it operating at all, are all conditions which would otherwise constitute a violation of an applicable standard, within the meaning of 40 C.F.R. § 61.19.

45. Defendant thereby violated the standards contained in 40 C.F.R. Part 61, Subpart M, rules promulgated under Section 112 of the Act, 42 U.S.C. § 7412, and is therefore subject to penalties, injunctive relief, or both, under Section 113 of the Act, 42 U.S.C. § 7413.

<u>COUNT IV</u> - FAILURE TO PROPERLY OPERATE AIR CLEANING DEVICES IN A MANNER CONSISTENT WITH GOOD AIR POLLUTION CONTROL PRACTICE FOR MINIMIZING EMISSIONS, within the meaning of 40 C.F.R. § 61.12(c), 40 C.F.R. § 61.152(a)(2), Louisiana Administrative Code ("LAC"), Chapter 9, Rule 905, on Control of Emissions and Emission Standards, and Air Permit No. 362 C (M-1).

46. Paragraphs 1 through *** are realleged and incorporated by reference as if set forth in full in Count IV.

47. Pursuant to 40 C.F.R. § 61.144(b),

> Each owner or operator of any of the manufacturing operations to which this section applies shall either:
>
> (1) Discharge no visible emissions to the outside air from these operations or from any building or structure in which they are conducted or from any other fugitive source; <u>or</u>

> (2) Use methods specified by § 61.152 to clean emissions from [manufacturing] operations before they escape or are vented to the outside air."

40 C.F.R. §§ 61.144(b)(1) and (b)(2).

48. Defendant had visible emissions of asbestos containing material in their asbestos utilizing operations areas.

49. Pursuant to 40 C.F.R. § 61.144(b), therefore, Defendant was required to install emissions control equipment to clean emissions from those operations before they escaped to the outside air.

50. Defendant installed a filter-type air cleaning device (baghouse), the method specified by § 61.152 to clean emissions from its operations as described in 40 C.F.R. § 61.152(a).

51. Pursuant to 40 C.F.R. § 61.152(a)(2), "the owner or operator who uses air cleaning as specified in ...§ 61.144(b)(2) ...shall: Properly install, use, operate, and maintain all air cleaning equipment authorized by [§ 61.152}."

52. Also, according to 40 C.F.R. § 61.12(c),

> <u>Each owner or operator</u> of each stationary source <u>shall maintain and operate</u> the source, including associated <u>equipment for air pollution control</u>, <u>in an manner consistent with good air pollution practice for minimizing emissions</u>. Determination of whether acceptable operating and maintenance procedures are being used will be based on information available to the Administrator which may include, but is not limited to, monitoring results, review of operating and maintenance procedures, and inspection of the source.

40 C.F.R. § 61.12(c) (1991) (emphasis added).

53. Defendant did not repair or maintain its air cleaning equipment for a long period, including and in particular from July 8, 1991 to November 20, 1991.

54. Defendant did not properly inspect or empty accumulated asbestos which was overflowing from its air cleaning equipment for a long period, including and in particular from July 8, 1991 to November 20, 1991.

55. Defendant caused or allowed emissions of asbestos considerably above acceptable limits from, and because of the malfunction of, its air cleaning equipment for a long period, including and in particular from July 8, 1991 to November 20, 1991.

56. Defendant therefore did not maintain and operate the source, including the associated air pollution control equipment, in an manner consistent with good air pollution practice for minimizing emissions within the meaning of 40 C.F.R. §§ 61.12(c), 61.144(b), and 61.152(a), for a long period, including and in particular from July 8, 1991 to November 20, 1991.

57. Defendant thereby violated the standards contained in 40 C.F.R. Part 61, Subpart M, rules promulgated under Section 112 of the Act, 42 U.S.C. § 7412, and is therefore subject to penalties, injunctive relief, or both, under Section 113 of the Act, 42 U.S.C. § 7413.

58. Permit No. 362 C (M-1), issued to the facility in 1990 for the operation of the processes including asbestos relevant to this action, contains special conditions that Defendant control asbestos emissions by compliance with all provisions of the Louisiana Administrative Code regulations.

59. 33 L.A.C. Chapter 25, Section 2607 requires that

all air cleaning equipment must be properly installed, used, operated, and maintained, which they were not, as shown above.

60. Defendant did not properly install, use, operate, and maintain, its air cleaning equipment, as shown above.

61. Another special condition of the Permit issued to Occidental in 1990 is that Occidental comply with all NESHAP regulations found at 40 C.F.R. § 61.144 related to asbestos manufacturing.

62. Defendant did not comply with all NESHAP regulations found at 40 C.F.R. § 61.144, as shown above.

63. Defendant thereby violated the terms of its Permit No. 362 C (M-1) for use of asbestos in manufacturing.

COUNT V - FAILURE TO SUBMIT QUARTERLY REPORTS OF VISIBLE EMISSIONS DOCUMENTED DURING REQUIRED INSPECTIONS pursuant to 40 C.F.R. § 61.144(b)(8)

64. Paragraphs 1 through *** are realleged and incorporated by reference as if set forth in full in Count II.

65. Under 40 C.F.R. § 61.144(b),

> Each owner or operator of any manufacturing operation to which this section applies shall:
>
> ...(8) Submit quarterly a copy of the visible emission monitoring records to the Administrator if visible emissions occurred during the report period. Quarterly reports shall be postmarked no later than the 30th day following the end of the calendar quarter.

40 C.F.R. § 61.144(b)(8) (1991) (emphasis added).

66. "Visible emissions" are defined in 40 C.F.R. § 61.141 as being "any emissions which are visually detectable without the aid of instruments, coming from [regulated asbestos-containing material] or asbestos containing waste material...";

"visible emissions" are also defined as friable asbestos-containing material on the ground, exposed to the outside air, without precaution to contain it. U.S. v. Hugo Key & Son, Inc., 731 F.Supp. 1135 (D.R.I. 1989), 30 Envt. Rep. 1697, 20 ELR 21146.

67. Defendant had and documented visible emissions to the outside air at its facility for a long period, including in particular between October 2, 1991, and February 11, 1992, which extends into two (2) calendar quarters.

68. Defendant did not submit to the Administrator copies of the visible emission monitoring records which show that the visible emissions occurred during the quarters cited, as required by 40 C.F.R. § 61.144(b)(8).

69. Defendant thereby violated the standards contained in 40 C.F.R. Part 61, Subpart M, rules promulgated under Section 112 of the Act, 42 U.S.C. § 7412, and is therefore subject to penalties, injunctive relief, or both, under Section 113 of the Act, 42 U.S.C. § 7413.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, the United States of America, respectfully requests that this Court:

A. Order Defendant to Pay a civil penalty pursuant to Section 113(b) of the Act, 42 U.S.C. § 7413(b), of up to Twenty Five Thousand Dollars ($25,000) per day for each violation of the Act or the regulations promulgated under the Act;

B. Award Plaintiff its expenses of this action and costs of litigation, including attorney's fees and expert witness fees, pursuant to Section 113(b) of the Act 42 U.S.C. § 7413(b); and

C. Award Plaintiff such further relief as the Court may deem appropriate.

Molly Hall
Trial Attorney
Environment and Nat. Resources Div.
U.S. Department of Justice
P.O. Box 7611
Ben Franklin Station
Washington D.C. 20044
(202) 514-2756

Harry Rosenberg
U. S. Attorney

by: _____
Asst. United States Attorney
Eastern District of Louisiana
Hale Boggs Federal Building
Room 210
501 Magazine Street
New Orleans, LA 70130
(504) 589-2921

OF COUNSEL:
Mark S. Forcier
Assistant Regional Counsel
EPA, Region 6 (6C-AA)
1445 Ross Avenue
Dallas, Texas 75202
(214) 655-2124

DRAFT - February 1, 1993

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA
NEW ORLEANS DIVISION

UNITED STATES OF AMERICA, Plaintiff, v. OCCIDENTAL CHEMICAL CORPORATION, a New York corporation Defendant	)	CIVIL ACTION NO. _____

CONSENT DECREE

Plaintiff, the United States of America ("United States"), on behalf of the Administrator of the United States Environmental Protection Agency ("EPA"), has filed a Complaint for the assessment of civil penalties against Occidental Chemical Corporation ("Occidental" or "Defendant") for alleged violations of the Clean Air Act, 42 U.S.C. § 7401 et seq. (the "Act"), seeking that the imposition of civil penalties pursuant to the authority of Section 113 of the Act, 42 U.S.C. § 7413. More specifically, the alleged violations are as follows:

EPA has alleged that Defendant and its facility are subject to the National Emissions Standards for Hazardous Air Pollutants

(NESHAPs) for asbestos promulgated under Section 112(b) of the prior version of the Act, 42 U.S.C. § 7412(b), maintained in full force and effect by Section 112(q) of the amended Act of 1990, § 7412(q), and were in violation of those regulations, codified at 40 C.F.R. Part 61, Subpart M.

The United States and Defendant, by their respective attorneys, consent to the entry of this Consent Decree (the "Decree") without trial or adjudication of any issue, and hereby stipulate to the Court that in order to resolve the issues stated in the Complaint, this Consent Decree should be entered.

NOW, THEREFORE, it is hereby ORDERED, ADJUDGED, and DECREED:

I. JURISDICTION AND VENUE

1. This Court has jurisdiction over the subject matter of this action and over the parties pursuant to Section 113(b) of the Act, 42 U.S.C. § 7413(b) and 28 U.S.C. § 1331 and 1335. Venue is proper in this judicial district pursuant to Section 113(b) of the Act, 42 U.S.C. § 7413(b), and 28 U.S.C. §§ 1391(b) 1391(c), and 1395. The Complaint states a claim upon which relief may be granted under Section 113 of the Act, 42 U.S.C. § 7413.

II. DEFENDANT

a. Defendant OCCIDENTAL CHEMICAL CORPORATION ("Occidental"), is a corporation chartered under the laws of the state of New York, and is registered with the office of the

Secretary of State of Louisiana to do business in Louisiana. The business of Defendant relevant to this proceeding is conducted at the Occidental Chemical Corporation facility at Hwy. 3142 and Hwy. 18 in Taft, Louisiana, 70057 (the "facility"). The mailing address of the facility is P.O. Box 74, Hahnville, Louisiana, 70094.

III. BINDING EFFECT

2. The provisions of this Decree shall apply to and be binding upon Defendant, its present and future officers, directors, partners, employees, agents, successors, and assigns, and all persons, firms, entities and corporations participating with them and upon the United States. Until such time as this Decree is terminated pursuant to the terms and conditions contained in Section XIII hereof, Defendant shall give notice in writing of the existence of this Decree to any new partner or successor in interest prior to any change in ownership or any transfer of right to operate the facility. A copy of this notification shall be simultaneously provided to EPA, Region 6 and the U.S. Department of Justice at the addresses specified in Section VIII hereof.

IV. CIVIL PENALTY

3. Defendant shall pay a civil penalty of _____ dollars ($ 0,000) to the United States. This payment shall be in full satisfaction of Plaintiff's claims against Defendant for

all violations alleged in the Complaint in this action, up to the date of filing of such Complaint. Such payment may not be treated as deductible for federal tax purposes.

4. Payment shall be made by a money order, cashier's check or certified check, for the full amount of the penalty and any applicable interest, payable to "Treasurer of the United States", mailed within thirty (30) days from the date this Decree is entered by the Court to the U. S. Attorney, Eastern District of Louisiana, Hale Boggs Federal Building, Room 210, 501 Magazine Street, New Orleans, LA 70130. The case number, assigned to the Complaint in this case when filed, should be clearly typed on the check to ensure proper credit. Defendant shall send simultaneous notices of such payments including copies of the money order, cashier's check, or certified check to EPA and the U.S. Department of Justice at the addresses indicated in Section VIII of this Decree.

5. Upon entry of this Decree, the United States shall be considered a judgment creditor for purposes of post-judgment collection and enforcement of this Decree, in accordance with Rule 69 of the Federal Rules of Civil Procedure, any other applicable federal authority.

V. FUNDING

6. Performance of the terms of this Decree by Defendant is not conditioned on the receipt of any Federal or State grant funds. In addition, Defendant' performance is not excused by the

failure to obtain or by the shortfall of any Federal or State grant funds, or by the processing of any applications for the same.

VI. IMPEDIMENTS TO PERFORMANCE

7. Unanticipated or increased costs or expenses associated with the implementation of this Decree, or changed financial circumstances of Defendant, shall not serve as a basis for changes in this Decree or extensions of time under this Decree.

VII. NON-WAIVER PROVISIONS

8. This Decree is not and shall not be interpreted to be a permit or a modification of any existing permit, nor shall it relieve Defendant of its obligation to obtain a permit and comply with the requirements of any permit.

9. This Decree in no way affects or relieves Defendant of responsibility to comply with any Federal, State, or local law or regulation. Defendant shall remain solely responsible for compliance with the terms of the Act, this Decree, and any applicable regulation or permit. Compliance with this Decree shall be no defense to any action commenced pursuant to said laws, regulations, or permits.

10. The United States does not, by its consent to the entry of this Decree, warrant or assert that Defendant' complete compliance with this Decree will result in compliance with the provisions of the Clean Air Act, 42 U.S.C. § 7401 et seq., or any

regulations promulgated or permits issued thereunder. Compliance with any requirement of this Decree shall not, by itself, constitute compliance with any other requirement.

11. Nothing contained in this Decree shall be construed to prevent or limit the United States' rights, except as expressly specified herein, including without limitation, the right to obtain penalties or injunctive relief under the Act or other federal statutes or regulations.

12. This Decree does not limit or affect the rights of Defendant or of the United States as against any third parties, nor does it limit the rights of any entity, not a party to this Decree, against Defendant.

VIII. NOTIFICATIONS

13. Unless otherwise specified herein, notifications required by this Decree shall be made in writing to each of the following:

As to EPA:

Chief
Air, Pesticides and Toxics Enforcement
Section (6C-AA)
U.S. Environmental Protection Agency
1445 Ross Avenue
Dallas, Texas 75202-2733

Director
Air, Pesticides and Toxics Division (6T)
U.S. Environmental Protection Agency
1445 Ross Avenue
Dallas, Texas 75202-2733

As to the Department of Justice:

Assistant Attorney General

Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Ben Franklin Station
Washington, D.C. 20044
Attn: DOJ No. DJ-91- _____

As to the United States Attorney:

United States Attorney
Eastern District of Louisiana
Hale Boggs Federal Building
Room 210
501 Magazine Street
New Orleans, LA 70130

IX. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

14. This Decree shall be lodged with the Court for a period of not less than thirty (30) days for public notice and comment in accordance with 28 C.F.R. § 50.7. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Decree disclose facts or considerations which indicate that the Decree is inappropriate, improper, or inadequate.

X. SIGNATORIES

15. The undersigned representative of Defendant, and the Assistant Attorney General for the Environment and Natural Resources Division of the Department of Justice, hereby certify that he or she is fully authorized to enter into the terms and conditions of this Decree and to execute and legally bind the represented Party to the terms of this Decree.

16. The Parties submit this Decree to this Court, that it

may be approved and entered, subject to the public notice requirements of 28 C.F.R. § 50.7. Defendant consents to the entry of this Decree without further notice.

XI. RETENTION OF JURISDICTION

17. This Court shall retain jurisdiction to enforce the terms and conditions of this Decree and to resolve disputes arising hereunder until proper termination of this Decree.

XII. MODIFICATION OF DECREE

18. Except as provided for herein, there shall be no modification of this Decree without written approval of all of the Parties to this Decree and this Court.

XIII. EFFECTIVE DATE AND TERMINATION OF DECREE

19. This Decree shall take effect upon entry by this Court and, unless extended by this Court, or objected to by the United States, shall terminate sixty (60) days after Defendant files a certificate with the Court, with copies to DOJ and EPA as specified in Section VIII hereof, stating that Defendant has fully complied with the terms and conditions of this Decree. This certificate must contain the certification statement set forth below and be signed by a responsible corporate officer:

> "I certify that the information contained in or accompanying this document is true, accurate, and complete. As to the identified portion(s) of this document for which I cannot personally verify their truth or accuracy, I certify as the company official

having supervisory responsibility for the person(s) who, acting under my direct instructions, made the verification, that this information is true, accurate, and complete."

XIV. COSTS OF ACTION

20. Each Party shall bear its own costs and attorney's fees in this action. Should Defendant subsequently be determined to have failed to comply with the terms and conditions of this Decree, then Defendant shall be liable to the United States for any costs and attorney's fees incurred by the United States in any actions against Defendant for noncompliance with the agreements contained in this Decree.

FOR PLAINTIFF:

_____
Date

_____
Vicki A. O'Meara
Acting Assistant Attorney General
Environment and Natural Resources Division
U.S. Department of Justice

_____
Date

_____
Molly Hall
Trial Attorney
Environmental Enforcement Section
Environment and Nat. Resources Div.
U.S. Department of Justice
P.O. Box 7611, Ben Franklin Station
Washington D.C. 20044
(202) 514-2756

Harry Rosenberg
U. S. Attorney

_____ by: _____
Date

Asst. United States Attorney
Eastern District of Louisiana
Hale Boggs Federal Building
Room 210
501 Magazine Street
New Orleans, LA 70130
(504) 589-2921

_____ _____
Date

Scott Fulton
Acting Assistant Administrator for Enforcement
U.S. Environmental Protection Agency
401 M Street S.W.
Washington, D.C. 20460

_____ _____
Date

Joe D. Winkle
Acting Regional Administrator
U.S. Environmental Protection Agency
Region 6 (6A)
1445 Ross Avenue
Dallas, Texas 75202-2733

FOR DEFENDANT OCCIDENTAL CHEMICAL CORPORATION:

_____ _____
Date Title:

This Consent Decree entered in accordance with the foregoing this _____ day of _____, 1992.

_____
UNITED STATES DISTRICT JUDGE

ATTEST:

BY: _____
Deputy Clerk

Paul Henderson

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 6
1445 ROSS AVENUE, SUITE 1200
DALLAS, TEXAS 75202-2733

JAN 12 1993

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

J. Roger Hirl, Pres.
Occidental Chemical Corporation
5005 L B J Freeway
Dallas, Texas 75244

Re: Occidental Chemical plant in Taft/Hahnville, Louisiana

Dear Mr. Hirl:

The following Finding of Violation letter is issued pursuant to the Clean Air Act, as amended, 42 U.S.C. 7401 et seq. ("the Act") and Executive Order 12778.

On the basis of information available to me, and as authorized by the Administrator of the United States Environmental Protection Agency (EPA), I find that Occidental Chemical Corporation ("Occidental"), a New York corporation, has violated regulations promulgated under the Act, found at 40 C.F.R. Part 61, Subpart M, as specified herein, at the Occidental chemical manufacturing facility at Taft/ Hahnville, Louisiana (the "facility").

Pursuant to Section 112 of the Act, 42 U.S.C. § 7412, the Administrator of EPA promulgated regulations, found at 40 C.F.R. Part 61, relating to National Emission Standards for Hazardous Air Pollutants (NESHAPs), and at Subpart M of Part 61, relating to asbestos, which are enforceable by EPA under Section 113 of the Act, 42 U.S.C. § 7413. These regulations, by their terms, are applicable to "manufacturing operations using commercial asbestos ... [including] the manufacture of chlorine utilizing asbestos diaphragm technology", as described in 40 C.F.R. § 61.144(a). The Occidental facility is such a manufacturing operation.

EPA inspected the facility on November 21 and 22, 1991 and requested information from Occidental under Section 114(a) of the Act, 42 U.S.C. § 7414(a), on August 18, 1992. Based on its inspection and on information provided and independently obtained, EPA concludes that the statutes and regulations cited herein are applicable to the Occidental facility, and that violations of those statutes and regulations have occurred as specified below:

a. Failure to do observations to monitor for the existence of visible emissions in the areas of potential asbestos emissions, and to keep records of such monitoring, as required by 40 C.F.R. §§ 61.144(b)(3), (b)(5), and (b)(7), from February 20, 1991 to April 5, 1991.

b. Failure to do inspections of air cleaning devices for the existence of conditions indicating malfunctions which could cause asbestos emissions and to keep records of such inspections as required by 40 C.F.R. §§ 61.144(b)(4), (b)(5), and (b)(7) from February 20, 1991 to April 9, 1991.

c. Failure to do inspections of an air cleaning (emission control) device to the extent of discerning the presence of tears, holes, or abrasions on the filter bag and for the presence of dust deposits on the clean side of the bags caused by asbestos emissions as required by 40 C.F.R. § 61.144(b)(4), from September 18, 1991 to November 20, 1991, thereby concealing emissions violations which were occurring during that period within the meaning of 40 C.F.R. § 61.19.

d. Failure to properly use and operate air cleaning (emission control) devices, from July 8, 1991 to November 20, 1991, in a manner consistent with good air pollution control practice for minimizing emissions, within the meaning of 40 C.F.R. § 61.12(c), 40 C.F.R. § 61.152(a)(2), Louisiana Administrative Code, Chapter 9, Regulation 905, on Control of Emissions and Emission Standards, and Air Permit No. 362 C (M-1).

e. Failure to submit 2 quarterly reports of visible emissions cataloged by Occidental inspectors between 10/2/91 and 2/11/92, as required by 40 C.F.R. § 61.144(b)(8).

Section 113 of the Act provides that

> whenever, on the basis of any information available to the Administrator, the Administrator finds that any person has violated, or is in violation of, any requirement or prohibition [other than those in Sections 113(a)(1) or (2)] of [Subchapter I of the Act, 42 U.S.C. §§ 7401-7515] ... including, but not limited to, a requirement or prohibition of any rule...promulgated...under those provisions or titles, ...the Administrator may -
>
> (A) issue an administrative penalty order in accordance with subsection (d) of [Section 113], [or]
>
> (B) issue an order requiring such person to comply with such requirement or prohibition, [or]

(C) bring a civil action in accordance with subsection (b) of [Section 113] or Section 7605 of [Title 42]... for a permanent or temporary injunction or to assess and recover a civil penalties of not more than $25,000 per day for each violation, or both...

42 U.S.C. §§ 7413(a)(3) and 7413(b). By violation of the above asbestos NESHAPs regulations, Occidental is "in violation of, any requirement or prohibition of [Subchapter I of the Act]" within the meaning of Section 113 (b)(2) of the Act, 42 U.S.C. § 7413(b)(2).

In addition, for any person who knowingly violates any requirement or prohibition of any order under subsection (a) of Section 113 or requirement or prohibition of Section 112 of the Act, 42 U.S.C. § 7412, (relating to NESHAPs), including any requirement of any rule promulgated under that Section or Title, Section 113(c) of the Act, 42 U.S.C. § 7413(c), provides for criminal penalties or imprisonment, or both. Furthermore, under Section 306(a) of the Act, 42 U.S.C. § 7606(a), the regulations promulgated at 40 C.F.R. Part 15, and Executive Order 11738, facilities to be utilized in federal contracts, grants, and loans must be in full compliance with the Act and all regulations promulgated under it. Violation of the Act may result in the subject facility being declared ineligible for participation in federal contracts, grants, or loans.

Section 113(e)(2) of the Act, 42 U.S.C. § 7413(e)(2), allows a court to assess a penalty for each day of violation. For the purposes of determining the number of days of violation, where EPA or an air pollution control agency has notified the violator, and the plaintiff makes a prima facie showing that the conduct or events giving rise to the violation are likely to have continued or recurred past the date of notice, the days of violation shall be presumed to include the date of such notice, and each and every day thereafter, until the violator establishes that continuous compliance has been achieved, except to the extent that the violator can prove by a preponderance of the evidence that there were intervening days during which no violation occurred or that the violation was not continuing in nature.

You may, upon request, confer with EPA to present evidence bearing on the finding of violation, on the nature of violation, and on any efforts you may have taken, or proposes to take, to achieve compliance. You have the right to be represented by counsel at any conference with EPA. Any request for such a conference must be made within fifteen (15) days of receipt of this letter, in writing, to:

Mark S. Forcier
Assistant Regional Counsel
Air, Pesticides, & Toxics
Enforcement Section (6C-AA)
U. S. Environmental Protection Agency
1445 Ross Avenue
Dallas, Texas 75202

If you have any technical questions regarding the violations cited herein, you may call Paul Henderson of my staff at the above address at (214) 655-7544. Legal or other inquiries concerning this letter may be made to Mark Forcier in the Office of Regional Counsel at (214) 655-2124.

Sincerely,

A. Stanley Meiburg
Director
Air, Pesticides, & Toxics Division
Region 6
U. S. Environmental Protection Agency

cc: Occidental Chemical Corporation
c/o C T Corporation Systems
601 Poydras St.
New Orleans, LA 70130

Michael A. James
Assistant General Counsel
Occidental Chemical Corporation
5005 L B J Freeway, 18th floor
Dallas, Texas 75244

T. H. Morrow
Plant Manager
Occidental Chemical Corporation
P. O. Box 74
Hahnville, Louisiana 70057

B. J. Pritchard
Louisiana Dept. of Environ. Quality

Report

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

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AIR PESTICIDES & TOXICS
DIVISION

MEMORANDUM

SUBJECT: Request to Conduct Pre-Referral Negotiations with Occidental Chemical Corporation for Clean Air Act Violations

FROM: Kathie A. Stein Elliott J. Gilberg for
Enforcement Counsel
Air Enforcement Division

TO: George Alexander
Regional Counsel
Region VI

This memorandum is in response to your initial request of December 31, 1992, and your office's subsequent request of April 27, 1993, for authority to conduct pre-referral negotiations with Occidental Chemical Corporation for violations of the Clean Air Act. My office has reviewed the summary litigation referral package and we concur with the Region's assessment of the facts and applicable law in this case. However, as already discussed by the litigation team on this case, the specific violations to be alleged and the calculation of the Initial Minimum Settlement Amount required alteration. The analysis of the additional supportable violations and the recalculation of the Initial Minimum Settlement Amount that all members of the litigation team agreed to is attached. We concur in an Initial Minimum Settlement amount of $285,000 and authorize pre-referral negotiations for the violations noted on the attachment.

Jerry MacLaughlin of my staff has been assigned to this case and will be available for consultation in the course of pre-referral negotiations. Jerry may be contacted at 202-260-6957 if you have any questions.

Attachment

cc: Mark Forcier
Assistant Regional Counsel
Region VI

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93 MAY 11 PM 3:55
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ENFORCEMENT BRANCH (6T-E)

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Stan Meiburg, Director
Air Division
Region VI

John B. Rasnic, Director
Stationary Source Compliance Division

John Cruden, Chief
Environmental Enforcement Section
Department of Justice

Analysis of Violations and Penalty in Occidental Chemical Corporation

A complaint in this action would be based on the following seven counts and the penalty relies on the correct "break-out" of the separate violations contained within the Asbestos NESHAP.

Total Penalty - **$285,000** - based on 7 counts.

Specific Penalties:

Toxicity of Pollutant - **$15,000** - Toxicity is assessed for Asbestos NESHAP violations that are not Demolition-Renovation cases.

Size of Violator - **$70,000** - Based on Dun & Bradstreet report.

Count I - §61.12(c)/§61.152(a)(1)(i)/§61.152(a)(2)/Louisiana Air Permit No. 362 C (M-1) - Operate emission control equipment properly.

Length of Time ("Length") - **$15,000** - 7.5 months - 4/9/91-11/26/91 - §152(a)(2) is the same as the pre-1990 Asbestos NESHAP §154(a)(2) and therefore this requirement has been applicable to the facility since the facility started up. Therefore Length of Violation could go back from the date of the inspection, 11/21/91, for five years. However, the litigation team agrees that the evidence is strongest for the cited length of time of violation.

Importance to Regulatory Scheme ("Importance") - **$15,000** - "Failure to operate and maintain control equipment" - According to statements made to the inspector during the inspection, respondent had installed the baghouse and than not maintained it for 10 years.

Count II - §61.144(b)(1)/§61.144(b)(2) - Either emit no visible emissions ("VEs") or follow certain procedures to control VEs.

Length - **$15,000** - 9 months - 2/20/91-11/26/91 - This assumes that all procedures were followed correctly following inspection on 11/20/91 and subsequent asbestos removal by respondent on 11/26/91. Therefore penalty is assessed from applicable date of the regulation, 2/20/91 until the date that the control equipment was serviced.

Importance - **$15,000** - "Failure to operate and maintain

control equipment" - Proper procedures were not being followed.

Count III - §61.144(b)(3) - Monitor daily for VEs from equipment.

Length - **$15,000** - 7.5 months - 2/20/91-10/8/91 - Daily monitoring did not begin until Oct. 8, 1991 except for one day of monitoring in April. Based on info submitted by respondent.

Importance - **$15,000** - "Failure to Monitor"

Count IV - §61.144(b)(4) - Inspect control equipment for proper operation.

Length - **$15,000** - 9 months - 2/20/91-11/21/91 - Based on info submitted by respondent.

Importance - **$15,000** - "Failure to Monitor"

Count V - §61.144(b)(5)/§61.144(b)(7) - Maintain records (for 2 years) of the results of VE monitoring and control equipment inspections.

Length - **$15,000** - 7.5 months - 2/20/91-10/8/91 - Information provided by respondent in response to a §114 letter did not include complete records of VE monitoring and control equipment inspections.

Importance - **$15,000** - "Failure to Record"

Count VI - §61.144(b)(6) - Upon request, furnish records of the results of VE monitoring and control equipment inspections.

Length - **$5,000** - one day - 11/21/91 - Respondent could not provide records on the day of the inspection.

Importance - **$15,000** - "Failure to Respond"

Count VII - §61.144(b)(8) - Submit quarterly reports if VE monitoring indicates VEs are occurring.

Length - **$15,000** - 9 months - 2/20/91-11/21/91 - Reports provided by the respondent indicate that VEs were occuring. The control equipment could not have been operating properly given the total failure by respondent to maintain the equipment.

Importance - **$15,000** - "Failure to Report"

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 6
1445 ROSS AVENUE, SUITE 1200
DALLAS, TX 75202-2733

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MAR 28 1994

Lois J. Schiffer
Acting Assistant Attorney General
Environment and Natural Resources Division
U.S. Department of Justice
1425 New York Avenue, N.W.
Washington, D.C. 20005

Attention: John C. Cruden, Chief
Environmental Enforcement Section
Civil Litigation Report

Dear Ms. Schiffer:

Enclosed you will find a litigation report requesting civil enforcement action against Occidental Chemical Corporation ("Occidental") pursuant to the Clean Air Act for violations of the requirements for handling of asbestos under the National Emission Standards for Hazardous Air Pollutants (NESHAP) regulations and Permit violations at Occidental's facility in Taft/Hahnville, Louisiana. This is a civil litigation report.

A pre-referral litigation report concerning Occidental was sent to your office on December 31, 1992. Since that time, the Department of Justice determined that it would not authorize EPA Region 6 to conduct pre-referral settlement negotiations with Occidental. Therefore, the pre-referral litigation report has been revised as a civil litigation report which is enclosed herein. Mr. David Fishel of the Environmental Enforcement Section is the trial attorney assigned to this case.

It is requested that this report be treated as a confidential internal memorandum.

Sincerely,

Jane N. Saginaw (6A)
Regional Administrator

Enclosures

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cc: Steven A. Herman
Assistant Administrator for
Enforcement (LE-133)
U. S. Environmental Protection Agency
401 M Street, S.W.
Washington, D.C. 20460

John B. Rasnic
Director, Stationary Source
Compliance Division (EN-341W)
U. S. Environmental Protection Agency
401 M Street, S.W.
Washington, D.C. 20460

Harry Rosenberg
U.S. Attorney
Hale Boggs Federal Building
Room 210
501 Magazine Street
New Orleans, Louisiana 70130
(Advanced copy - no action required at this time)

Enforcement Confidential

DATA SHEET

OCCIDENTAL CHEMICAL CORPORATION
violations at Taft/Hahnville, Louisiana

1. The Statute and regulations which are the basis for the proposed action are:

   The Clean Air Act, 42 U.S.C. §§ 7401 et seq.
   40 C.F.R. Part 61, Subpart M

2. Name and location of intended defendant:

   Occidental Chemical Corporation
   Highway 3142 at Highway 18
   Taft, Louisiana 70057

3. The proposed relief to be sought:

   A civil penalty for Occidental's past violations of asbestos NESHAPs found at 40 C.F.R. Part 61, Subpart M, and violations of its permit for asbestos operations.

4. The violations upon which this action is based:

   a. Failure to monitor for visible emissions in the areas of potential asbestos emissions, or to keep records of such monitoring as required by 40 C.F.R. §§ 61.144(b)(3), (b)(5), and (b)(7) from February 18, 1991 to April 5, 1991.

   b. Failure to inspect an air cleaning device for the existence of conditions indicating malfunctions which could cause asbestos emissions or to keep records of inspections as required by 40 C.F.R. §§ 61.144(b)(4), (b)(5), and (b)(7) from February 18, 1991 to April 9, 1991.

   c. Failure to inspect an air cleaning device to the extent of discerning the presence of tears, holes, or abrasions on the filter bag and for the presence of dust deposits on the clean side of the bags caused by asbestos emissions as required by 40 C.F.R. § 61.144(b)(4), from September 18, 1991 to November 20, 1991.

   d. Failure to properly use and operate the air cleaning devices, from July 8, 1991 to November 20, 1991, in a manner consistent with good air pollution control practice for minimizing emissions, within the meaning of 40 C.F.R. § 61.12(c), 40 C.F.R. § 61.152(a)(2), Louisiana Admin. Code, Chapter 9, Regulation 905, on Control of

Emissions and Emission Standards, and Air Permit No. 362 C (M-1).

e. Failure to submit 2 quarterly reports of visible emissions cataloged by Occidental employees for 10/2/91 through 2/11/92, as required by 40 C.F.R. § 61.144(b)(8).

5. Recent contacts with intended defendants, including dates of inspection, information responses, or receipt of evidence which led to decision to initiate enforcement action:

11/21 and 11/22/91 - EPA inspection of Occidental facility

12/18/91 - Letter from L.E. Hebert of Occidental to Minerva De Leon describing work on asbestos dust collector.

2/12/92 - Letter from James Anderson of Occidental to Minerva De Leon in response to requests for documents.

8/18/92 - EPA issues information request under § 114 CAA

8/21/92 - Call from Mike James of Occidental to Mark Forcier of EPA about information request, requesting extension.

9/22/92 - EPA receives response to information request dated 9/17/92 and letter confirming 15 day extension of time to respond to information request per call.

12/31/92 - EPA submits a pre-referral litigation report to the United States Department of Justice seeking pre-referral negotiations authority.

1/12/93 - EPA issues a Finding of Violation letter to Occidental.

1/29/93 - EPA receives request for a conference from the Occidental Chemical Plant Manager in response to EPA's Finding of Violation of letter.

9/03/93 - EPA receives a second request for a conference from the Occidental Chemical Plant Manager in response to EPA's Finding of Violation letter.

9/16/93 - EPA sends to Occidental a second request for information pursuant to Section 114 of the Clean Air Act.

10/05/93 - Occidental responds to EPA's information request dated September 16, 1993.

6. Significant national precedential or factual issues:

None.

7. Other aspects of the case which should be highlighted:

None.

9. Date referral was signed by Regional Administrator:

March 28, 1994

10. Identity of lead Regional counsel and technical personnel:

LEGAL

Pat Y. Spillman, Jr.
Asst. Regional Counsel
U.S. EPA, Region 6 (6C-AA)
1445 Ross Avenue
Dallas, Texas 75202-2733
(214) 655-8044

TECHNICAL

Paul Henderson
Air, Pesticides & Toxics Branch
U.S. EPA, Region 6 (6T-ET)
1445 Ross Avenue
Dallas, Texas 75202-2733
(214) 655-7544

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EXHIBIT

1. Dun & Bradstreet Report dated February 1992.

2. Inspection Report dated November 21 and 22, 1991.

3. Air Quality/Emission Test Report dated June 1990.

4. Visible Emissions Monitoring reports for October 2, 1991 through February 11, 1992.

5. Air cleaning device inspection reports (April 9, 1991 to November 20, 1991).

6. Draft Complaint.

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Date
Signed: MAR 28 1994

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CIVIL LITIGATION REPORT

ENVIRONMENTAL PROTECTION AGENCY, REGION 6

INFORMATION PERTINENT TO
ACTION PURSUANT TO SECTION 113 OF THE CLEAN AIR ACT
FOR VIOLATIONS OF
ASBESTOS NESHAPS REGULATIONS
AND PERMIT VIOLATIONS

Civil Action to be filed in the U.S. District Court
for the Eastern District of Louisiana
in New Orleans

Against

OCCIDENTAL CHEMICAL CORPORATION
for actions at its facility in
Taft/Hahnville, Louisiana

LEGAL

Pat Y. Spillman, Jr.
Assistant Regional Counsel
Office of Regional Counsel
U.S. EPA, Region 6 (6C-AA)
1445 Ross Avenue
Dallas, Texas 75202-2733
(214) 655-8044

PROGRAM

Paul Henderson
Environmental Engineer
Air, Pesticides & Toxic Div.
U.S. EPA, Region 6 (6T-ET)
1445 Ross Avenue
Dallas, Texas 75202-2733
(214) 655-7544

I. SYNOPSIS OF CASE

Occidental Chemical Corporation ("Occidental") operates a chemical manufacturing facility in Taft/Hahnville, Louisiana (the "Occidental Facility") involved in the manufacture of chlorine utilizing asbestos diaphragm technology, which is subject to the emissions and work practice standards of the National Emission Standards for Hazardous Air Pollutants for asbestos, codified at 40 C.F.R. Part 61, Subpart M ("Asbestos NESHAPs"). This operation utilizes a "bag house" type of emissions control device for the purpose of eliminating asbestos emissions from the work environment during operations involving handling and use of asbestos.

On November 21 and 22, 1991, inspectors with EPA and the Louisiana Department of Environmental Quality (LDEQ) conducted a joint inspection of the Occidental Facility, to determine compliance with NSPS standards, NESHAP regulations, existing permit restrictions, and the Louisiana State Implementation Plan. Relevant to this action, the inspectors inspected the portions of the facility, involving the handling and use of asbestos in the manufacture of chlorine, which are potential sources of asbestos emissions. The inspection revealed that records required to be kept of observational monitoring in the area of potential asbestos emissions were not available at the facility. The inspection also revealed that records of inspections of the emission control device for asbestos were not available at the facility.

On August 18, 1992, EPA issued an Information Request to Occidental pursuant to section 114 of the Clean Air Act. In its response, Occidental stated that it had not located weekly inspection records for the period of November 7, 1990 through April 8, 1991. Occidental provided copies of the weekly inspection records it did have, and supplied records of work that had been done on the emission controls equipment. Copies of the inspection reports provided by Occidental revealed the visible emissions which were not reported. Occidental also provided daily visible emissions monitoring reports for two calendar quarters. The violations cited herein are those for which EPA believes it has adequate evidence to support at this time.

II. STATUTORY BASES OF REQUEST

A. Applicable Federal Law

The statutory provisions applicable to this case are Sections 112 and 113 of the Clean Air Act, as amended in 1990, (hereinafter "the Act"), 42 U.S.C. §§ 7412 and 7413. Pursuant to Section 112 of the Act, the Administrator of EPA promulgated regulations establishing National Emission Standards for Hazardous Air Pollutants (NESHAPs), including work practice standards to achieve maximum amounts of emissions reduction.

Section 113(a)(3)(C) of the Act, 42 U.S.C. § 7413(a)(3), allows the Administrator to take action (one form of which is to bring a civil action in accordance with section 113(b)) if the Administrator finds that any person has violated or is in

violation of any requirement (other than a State Implementation Plan (SIP) requirement) of Subchapter I, Sections 101 through 193 of the Act, 42 U.S.C. §§ 7401 - 7515. Section 113(b) of the Act, 42 U.S.C. § 7413(b), gives the Administrator authority to file a civil action in the appropriate district court of the United States to enforce these regulations or violations of an approved SIP.

The Clean Air Act, as amended in 1990, 42 U.S.C. §§ 7401 et seq., established a comprehensive scheme for pollution prevention as described in Section 101(b) of the Act, 42 U.S.C. § 7401(b). Throughout the Act, the Administrator of EPA is required by Congress to establish regulations to accomplish the purposes and requirements of the Act. In Section 112(b)(1) of the Act, 42 U.S.C. § 7412(b)(1), Congress established a list of hazardous air pollutants, including asbestos. Section 112(d) of the Act, 42 U.S.C. § 7412(d), requires the Administrator of EPA to promulgate regulations establishing emission standards for those hazardous air pollutants and work practice standards to achieve the greatest possible reduction in emissions of these pollutants. The Administrator promulgated the asbestos NESHAPs which include regulations governing the handling and disposal of asbestos, and the control of asbestos emissions, pursuant to former Section 112(a) of the Act, prior to the Clean Air Act Amendments of 1990. In amending the Act, Congress provided a "savings" provision for those NESHAP regulations existing prior to the 1990 amendments, at section

112(q)(1) of the Act, 42 U.S.C. § 7412(q)(1), which continues in full force and effect all provisions not superceded by the 1990 amendments.

Pursuant to section 112(l) of the Act, 42 U.S.C. § 7412(l), the Administrator can approve State programs for enforcement of emissions standards, including, in this case, the program in the State of Louisiana. Under section 112 of the Act, the Administrator is also empowered to delegate authority to the states under the Act to implement and enforce these emission standards and retains the power to enforce the provisions of any emission standards promulgated under the Act. Pursuant to section 113 of the Act, 42 U.S.C. § 7413, the Administrator may seek appropriate enforcement action against any person who violates, or who is the owner or operator of a source which violates, any requirement or prohibition of the statutory and regulatory requirements of the Act. Pursuant to section 113(a) of the Act:

> Whenever...the Administrator finds that <u>any person</u> has violated or is <u>in violation of any other requirement or prohibition</u> of [Subchapter I, 42 U.S.C. § 7401-7515]... including but not limited to any rule...promulgated, issued or approved under [that Subchapter]...the Administrator may...(C) bring a civil action in accordance with subsection (b) of [section 113]...

42 U.S.C. § 7413(a)(3) (emphasis added). Pursuant to section 113(b) of the Act, 42 U.S.C. § 7413(b),

> The Administrator...shall, as appropriate, in the case of any person which is the owner or operator of...a major stationary source, and may, in the case of any other person, commence a civil action for a permanent or temporary

injunction, or to assess and recover a civil penalty of not more than $25,000 per day for each violation, or both...in any of the following instances:

> ...(2) Whenever such person has violated, or is in violation of, any requirement or prohibition of [Subchapter I of the Act, 42 U.S.C. §§ 7401-7515] ...including, but not limited to, a requirement or prohibition of any rule...

42 U.S.C. § 7413(b). Each day of violation constitutes a separate violation for the purpose of calculating any such penalty.

B. Jurisdiction and Venue

1. Jurisdiction

Jurisdiction for this action is established under section 113(b) of the Act, 42 U.S.C. § 7413(b), which authorizes the Administrator to bring a civil action whenever "the Administrator finds that any person has violated, or is in violation of, any other requirement or prohibition of [Subchapter I, sections 101 through 193 of the Act, 42 U.S.C. § 7401 through 7515]..." Subsection (b) of section 113, 42 U.S.C. § 7413(b) provides that:

> The Administrator shall, as appropriate,...commence a civil action for a permanent or temporary injunction, or to assess and recover a civil penalty...Any action under this subsection may be brought in the district court of the United States for the district in which the violation is alleged to have occurred, or is occurring, or in which the defendant resides, or where the defendant's principal place of business is located, and such court shall have jurisdiction to restrain such violation, to require compliance, to assess such civil penalty...and to award any other appropriate relief. 42 U.S.C. § 7413(b) (emphasis added).

28 U.S.C. § 1345 confers original jurisdiction on the district courts of the United States for civil actions commenced by the

United States.

2. Venue

Proper venue for any action brought under section 113(b) of the Act is "the district in which the violation is alleged to have occurred, or is occurring, or in which the defendant resides, or where the defendant's principal place of business is located..." 42 U.S.C. § 7413(b)(2). Venue is also proper for a corporate defendant under 28 U.S.C. § 1391(c) in any jurisdiction in which it is licensed to do business or is engaged in doing business. The violations occurred in the area of Taft/Hahnville, St. Charles Parish, Louisiana, at a facility which is considered Occidental's place of business for the purposes of this action. Therefore, venue is proper in the United States District Court for the Eastern District of Louisiana in New Orleans.

C. Cross-Media Coordination

The inspection conducted by EPA at the Occidental Facility on November 21 and 22, 1991 was a single media inspection. No concurrent EPA enforcement actions in other media related to this facility are being conducted at this time.

III. DESCRIPTION OF DEFENDANT

A. Description of Defendant

Occidental Chemical Corporation ("Occidental") is a New York corporation with corporate division headquarters offices at the following address in Dallas, Texas:

Occidental Chemical Corporation

5005 LBJ Freeway
18th Floor
Dallas, Texas 75244
(214) 404-3800

The mailing address of the Dallas headquarters office is:

Occidental Chemical Corporation
P.O. Box 809050
Dallas, Texas 75380

Among other things, the division of Occidental based in Dallas operates the chemical manufacturing facility in Taft/Hahnville, Louisiana which is the subject of this action.

B. Agent for Service of Process

The Registered Agent for service of process for Occidental in Louisiana is:

C T Corporation Systems
601 Poydras Street
New Orleans, Louisiana 70130

C. Defendant's Legal Counsel

Occidental's in-house legal counsel is:

Michael A. James
Assistant General Counsel
Occidental Chemical Corporation
5005 LBJ Freeway
18th Floor
Dallas, TX 75244
(214) 404-3966

D. Description of Facility

The street address of the facility is:

Occidental Chemical Corporation
Highway 3142 at Highway 18
Taft, Louisiana 70057

The mailing address of the facility is:

Occidental Chemical Corporation
P.O. Box 74

Hahnville, Louisiana 70094

The chemical manufacturing facility which Occidental operates in Taft/Hahnville, Louisiana is part of the Electrochemicals and Specialty Products Division of Occidental Chemical, and is involved in the manufacture of chlorine utilizing asbestos diaphragm technology.

The chlorine process consists of taking raw sodium chlorine brine, and treating it with sodium carbonate and sodium hydroxide to precipitate out impurities such as calcium carbonate and magnesium hydroxide, which are settled out in clarifiers. The treated brine is then filtered and fed through an electrolytic cell where chlorine gas and hydrogen gas are produced, leaving a weak caustic soda solution. The produced chlorine gas is then cooled, dried, and purified with liquid chlorine before it is compressed, cooled to a liquid, and stored for sale or use.

As part of the chlorine manufacturing process, the electrodes for the electrolytic cells are coated with a slurry made with asbestos to create a "diaphragm" electrolytic cell through which the brine and chemicals are passed. Dry asbestos is brought to the facility in packages, which are opened and the asbestos is added to a wet solution to create the slurry. The handling of the dry asbestos, as part of the coating process, and the stripping of asbestos from the electrodes in a hardened form as part of the asbestos removal process in the Cell

Renewal Unit, create the potential for asbestos emissions into the air in and from the process areas. The operation is conducted in a partially-enclosed structure, and utilizes a bag-house type air cleaning device to attempt to eliminate asbestos emissions from the work environment. The operation and maintenance of this unit are the objects of the violations cited herein.

E. Identity of Other Potential Defendants

There are no other potential defendants in this case that EPA is aware of at this time.

IV. DESCRIPTION OF VIOLATIONS

A. Nature of Violations

Five violations are cited for the Occidental Facility:

I. - Failure to monitor each potential source of asbestos emissions from any part of the manufacturing facility, including air cleaning devices, process equipment, and buildings housing material processing and handling equipment, at least once each day during daylight hours for visible emissions to the outside air during periods of operation, or to maintain records of such monitoring as required by 40 C.F.R. §§ 61.144(b)(3), (b)(5), and (b)(7) from February 18, 1991 to April 5, 1991;

II. - Failure to inspect the air cleaning device at least once each week for proper operation and for changes that signal the potential for malfunctions which could cause asbestos emissions or to keep records of inspections as required by 40 C.F.R. §§

61.144(b)(4), (b)(5), and (b)(7) from February 18, 1991 to April 9, 1991;

III. - Failure to inspect the air cleaning device to the extent of opening the device to discern the presence of tears, holes, or abrasions in filter bags and for dust deposits on the clean side of bags, as required by 40 C.F.R. § 61.144(b)(4), from September 18, 1991 to November 20, 1991;

IV. - Failure to properly use and operate the air cleaning devices installed at the facility, from July 8, 1991 to November 20, 1991, in a manner consistent with good air pollution control practice for minimizing emissions, within the meaning of 40 C.F.R. § 61.12(c), 40 C.F.R. § 61.152(a)(2), Louisiana Administrative Code ("LAC"), Chapter 9, Rule 905, on Control of Emissions and Emission Standards, and Air Permit No. 362 C (M-1); and

V. - Failure to submit 2 quarterly reports of visible emissions documented by Occidental employees for the period from October 2, 1991 through February 11, 1992, during which time visible emissions were observed, as required by 40 C.F.R. § 61.144(b)(8).

The National Emission Standards for Hazardous Air Pollutants are promulgated at 40 C.F.R. Part 61. Subpart M of Part 61, 40 C.F.R. §§ 61.140 - 61.157, contains emissions and work practice standards for asbestos. The regulations in 40 C.F.R. § 61.144 relate to the NESHAP standards for manufacturing operations using commercial asbestos. Pursuant to 40 C.F.R. §

61.144(a)(9), the chlorine manufacturing process utilizing asbestos diaphragm technology at the Occidental Facility is subject to those regulations.

According to 40 C.F.R. § 61.144(b),

> Each owner or operator of any manufacturing operation to which this section applies shall:
>
> ...(3) Monitor each potential source of asbestos emissions from any part of the manufacturing facility, including air cleaning devices, process equipment, and buildings housing material processing and handling equipment, at least once each day during the daylight hours for visible emissions to the outside air during periods of operation. The monitoring shall be by visual observation of at least 15 seconds duration per source of emissions.
>
> ...(5) [The owner or operator shall also] maintain records of the results of visible emission monitoring...
>
> ...(7) Retain a copy of all monitoring and inspection records for at least 2 years.

40 C.F.R. §§ 61.144(b)(3), (b)(5), and (b)(7) (emphasis added). Occidental failed to produce records of monitoring inspections at their facility for the period from February 18, 1991 through April 5, 1991 in response to information requests under Section 114 of the Act, indicating that the company failed to monitor for visible emissions for each potential emissions source as required by § 61.144(b) during that period. Even if the required monitoring had been conducted, and the monitoring records had been maintained, Occidental did not keep those records for the required period of time or make them available to EPA on request as required under 40 C.F.R. § 61.144(b).

Also, according to 40 C.F.R. § 61.144(b),

> Each owner or operator of any manufacturing operation to which this section applies shall:
>
> ...(2) Use the methods specified by § 61.152 [relating to

air cleaning and filtering devices] to clean emissions from [its] operations containing particulate asbestos material before they escape to or are vented to the outside air.

...(4) Inspect each air cleaning device at least once each week for proper operation and for changes that would signal the potential for malfunctions, including, to the maximum extent possible...the presence of tears, holes, and abrasions in filter bags and for dust deposits on the clean side of [filter] bags...For air cleaning devices that cannot be inspected on a weekly basis...submit to the Administrator ...a written maintenance plan...

...(5) [The owner or operator shall also] maintain records of the results of...air cleaning device inspections...

...(7) Retain a copy of all monitoring and inspection records for at least 2 years.

40 C.F.R. §§ 61.144(b)(2), (b)(4), (b)(5), and (b)(7) (1991) (emphasis added). Occidental stated in response to an information request under Section 114 of the Act that it does not have records of inspections for the air cleaning device at its facility for the period from February 18, 1991 to April 9, 1991, indicating that it failed to inspect the air cleaning devices as required by 40 C.F.R. § 61.144(b) during that period. Again, even if the inspections had been conducted, and the inspection records had been maintained, Occidental did not keep those record for the required period of time or make them available to EPA on request as required under 40 C.F.R. § 61.144(b).

According to 40 C.F.R. § 61.12(c),

> Each owner or operator of each stationary source shall maintain and operate the source, including associated equipment for air pollution control, in a manner consistent with good air pollution practice for minimizing emissions. Determination of whether acceptable operating and maintenance procedures are being used will be based on information available to the Administrator which may include, but is not limited to, monitoring results, review of operating and maintenance procedures, and inspection of

the source.

40 C.F.R. § 61.12(c) (1991) (emphasis added).

Occidental failed to repair its emissions control equipment, despite indication in its own inspection reports that the equipment was malfunctioning, overloaded, and badly in need of repair and maintenance. The failure to make these repairs apparently led Occidental to forego the required inspections due to its inability to open the baghouse door, which was corroded, or an apprehension about opening the door and releasing asbestos fibers into the air.

In addition to the requirements of 40 C.F.R. § 61.12(c), and the normal requirements to maintain emission control equipment in the applicable Louisiana regulations, Air Permit No. 362 C (M-1), issued to Occidental in 1990 by the State of Louisiana for the operation of the processes in question, contains special conditions that require Occidental to control asbestos emissions by compliance with all provisions of the LAC regulations, 33 L.A.C. Chapter 25, relating to LESHAPS, specifically pertaining to asbestos. Chapter 25, Section 2607 requires that all air cleaning equipment must be properly installed, used, operated, and maintained. Another special condition of the Louisiana Permit is that Occidental comply with all NESHAP regulations found at 40 C.F.R. § 61.144 related to asbestos manufacturing, which it failed to do, as shown herein.

According to the inspection report, which notes statements of an Occidental Facility foreman to the EPA inspector, the baghouse for asbestos emissions had not been serviced for approximately 10 years at the time of the inspection. The inspector also observed that the baghouse had not been maintained, as evidenced by its deteriorated condition. The deteriorating condition of the air cleaning device is recorded in the inspection records made by Occidental employees. Occidental continued to operate the equipment for many months without repair or maintenance, despite the malfunctions indicated in the inspection reports.

Under 40 C.F.R. § 61.144(b),

> Each owner or operator of any manufacturing operation to which this section applies shall:
>
> ...(8) Submit quarterly a copy of the visible emission monitoring records to the Administrator if visible emissions occurred during the report period. Quarterly reports shall be postmarked no later than the 30th day following the end of the calendar quarter.

40 C.F.R. § 61.144(b)(8) (1991) (emphasis added). The inspection reports prepared by Occidental employees indicate the presence of visible emissions in one or more of the seven areas of the Occidental Facility which are potential sources of asbestos emissions for the entire period from October 2, 1991 through February 11, 1992. This time period spans two calendar quarters.

B. Date and Manner Violations Identified

On November 21 and 22, 1991, EPA inspectors, in conjunction

with LDEQ inspectors, conducted an unannounced inspection of the Occidental Facility. The inspectors investigated portions of the facility involving use and potential emissions of asbestos as part of the chlorine manufacturing operation. Of particular interest was the baghouse. The baghouse is an air cleaning device which draws air from asbestos work areas inside the plant. The air is passed through filters (called "bags") suspended inside the baghouse which, when the baghouse is functioning properly, filter out the asbestos in the air stream before the air is exhausted to the atmosphere. The EPA inspector accompanied an Occidental employee up to the baghouse. The employee opened the door slightly. The EPA inspector observed asbestos falling out of the baghouse when it was opened. In observing the inside of the baghouse, the EPA inspector observed asbestos on the outside (the "clean" side) of the bags, and further observed that the inside of the baghouse was choked full of asbestos. These conditions indicated a malfunction of the baghouse device.

The inspectors requested to see copies of the inspection reports for the baghouse, and visible emissions monitoring records for the areas of operation involving asbestos. Records of observational monitoring required under 40 C.F.R. § 61.144 for areas of potential asbestos emissions, were not available at the facility. In response to an information request sent to Occidental to follow up on the inspection, Occidental provided copies of records of monitoring beginning on April 5, 1991.

The requirements for monitoring and recordkeeping were promulgated on November 20, 1990, 55 Fed. Reg. 48419, and allowed 90 days in which to begin the required monitoring - until February 18, 1991. Occidental stated in its response to EPA's request that they did not have records of the required monitoring for the period between February 18, 1991 and April 5, 1991. Occidental also produced inspection reports made after that time which document visible emissions of asbestos. These observations of visible emissions were not reported to the Administrator according to the requirements of 40 C.F.R. § 61.144(b)(8).

Other observations were made by Agency inspectors during the November 21 and 22 inspection of the Occidental Facility. However, no other violations were documented so as to warrant further enforcement action at this time.

C. Dates and Duration of Violations

The violations noted above are considered to have occurred at the Occidental Taft/Hahnville facility at various times between February 18, 1991 and late November 1991 when the facility was inspected. As for Count V, the violations occurred during two calendar quarters from October 1991 to February 1992. In response to the two CAA section 114 information requests, Occidental submitted daily visible emissions records for April 5, 1991 through August 27, 1992 (1st information request) and for September 17, 1992 through September 21, 1993 (second

request).[1] Also in response to the information requests, Occidental submitted inspection reports for the air cleaning device for April 9, 1991 through August 20, 1992 (1st request) and for September 15, 1992 through September 15, 1993 (2nd request).

Based on review of Occidental's responses to the information requests, it appears that no visible emissions have been noted since February 11, 1992. It also appears, as far as can be determined from the inspection reports, that the air cleaning device has been operating properly since approximately February 1992. Based on the information currently known by the Agency, EPA believes the Occidental Facility is in operating in compliance with 40 C.F.R. § 61.144(b) and there is no basis for injunctive relief at this time. Should new information indicate that Occidental is not in compliance, EPA will immediately inform the Department of Justice of this development.

D. Environmental Consequences

The health effects of asbestos exposure are well known, and are listed below for informational purposes. There has been no evidence produced yet in this case that there was any actual exposure or health effect. However, it can be inferred that

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[1]There is gap in the monitoring reports from August 28 through September 16, 1992. This is due to the fact that the second information request asked for the past year's report, the cut-off for which was after the date of the last monitoring report from the first information request. The same explanation applies for the air cleaning device inspection reports.

there has been an increase in the risk of exposure or environmental or health effects as a result of operations of Occidental at the facility which increased (or failed to control) the release of asbestos emissions into the air from the processes at the plant.

Asbestos - Health Effects

The following health effects information, excerpted from the "1988 NESHAPs Asbestos Demolition and Renovation Inspection Workshop", prepared by Alliance Technologies Corporation, illustrates the seriousness of exposure to particulate asbestos. Asbestos is a known environmental carcinogen and inhalation of asbestos fibers may increase the risk of serious irreversible disease. Inhaled asbestos fibers have been responsible for:

Asbestosis: A noncancerous respiratory disease, asbestosis is characterized by scarring of the lung tissue. There is a 20 to 30 year latency period associated with the onset of this disease. Symptoms include shortness of breath and rales (a dry crackling sound in the lungs during inhalation). Alone, asbestosis is not usually fatal.

Lung Cancer: Lung cancer may occur independent of asbestosis. Studies have shown the risk of lung cancer directly increases with cumulative exposure to asbestos. Also, there is a 20 to 30 year latency period from time of exposure to detection of the disease. Symptoms include a cough or change in cough habit and/or persistent chest pain. Lung cancer is often fatal.

Mesothelioma: A rare cancer, mesothelioma involves the thin

membrane lining of the chest and abdomen. Mesothelioma has been observed almost exclusively when there has been a history of exposure to asbestos. It has been noted that the earlier one begins inhaling asbestos, the higher the likelihood of developing mesothelioma in later life. Thus, there is concern over exposure of children to asbestos. The average latency period for this disease is 15 to 20 years. Symptoms include shortness in breath, pain in walls of chest, and abdominal pain. Mesothelioma is always fatal.

Other Cancers: It is suspected that exposure to asbestos fibers may cause malignant tumors or cancer of the esophagus, larynx, mouth, stomach, colon, and kidney. Scientists theorize that inhaled asbestos fibers are absorbed into the blood stream and carried to these parts of the body.

Safe Levels: Researchers report that there does not appear to be a safe level of exposure to asbestos. A consensus has not been reached concerning the causal relationship between malignant or non-malignant respiratory diseases and the following exposure parameters: fiber size, fiber type, fiber concentration, or duration of exposure. It has been estimated by Dr. Irving Selikoff of Mt. Sinai Hospital that, by the end of the century, an American will die of asbestos-related disease every hour.

Synergistic Effects: The combined effects of cigarette smoking and asbestos exposure have been shown to cause a much higher incidence of lung cancer than either of the two individually.

1. Actual Impact

There is no current data which indicates any actual immediate or imminently deleterious environmental or health effects as a result of the inadequately conducted asbestos operations or improperly maintained asbestos emissions control equipment at the Occidental facility. However, it is EPA's position that the operation of these items in violation of regulations created an additional risk of harm to human health by facilitating emissions and thus potential exposures, even though such risk has not currently been quantified. As stated above, there is no known safe level of asbestos exposure.

E. Pending Regulatory Changes

None are anticipated at this time.

F. Structuring of Proposed Counts

In referring this case, the Region takes the position that civil penalties should not be assessed for each separate violation of 40 C.F.R. § 61.144(b) incident to Occidental's failure to conduct visible emissions monitoring and to conduct air cleaning device inspections. These separate violations are: failure to maintain records pursuant to 40 C.F.R. § 61.144(b)(5); failure to make records available upon request pursuant to 40 C.F.R. § 61.144(b)(6); and failure to maintain records for at least two years pursuant to 40 C.F.R. § 61.144(b)(7). Arguably, failure to comply with each separate provision of 40 C.F.R. § 61.144(b) constitutes a separate violation for which penalties could be assessed. However, the

failure to maintain the records, make them available upon request, and to retain copies is a logical outcome of the failure to conduct the required monitoring or inspections from which these records are generated. To assess penalties for requirements which could not have been complied with because the records did not exist increases the amount of penalties, arguably without deterrent effect. Therefore, the separate provisions of 40 C.F.R. § 61.144(b) attendant to Counts I and II are pled herein in the alternative. The Litigation Team may, as litigation progresses, determine that it is easier to prove the violation for failing to maintain the required records rather than to prove that the inspections were never conducted. Proving the latter would require proving a negative which could be countered by affidavits of Occidental employees stating that such inspections were conducted. Such affidavits have been provided by Occidental. See Exhibit 7. Notwithstanding its choice of which recordkeeping requirement to enforce, the Region recommends that penalties be assessed for only one violation for each of the cited recordkeeping violations.

V. ENFORCEMENT HISTORY OF DEFENDANT AND PRE-REFERRAL NEGOTIATIONS

A. Recent Contacts with Defendant by EPA:

- November 21 and 22, 1991 - EPA conducted an unannounced inspection of the Occidental facility looking for NESHAP, NSPS, and LAC/SIP compliance or violations.

- December 18, 1991 - Letter from L.E. Hebert of Occidental to Minerva De Leon describing work on asbestos dust collector.

- December 20, 1991 - Letter from John Newton of LDEQ to T.H. Morrow of Occidental stating that LDEQ had found no violations

during its November 21, 1991 annual air quality compliance determination inspection of the Occidental facility.

- February 12, 1992 - Letter from James Anderson of Occidental to Minerva De Leon in response to requests for documents during inspection.

- August 18, 1992 - EPA issues an information request to Occidental under Section 114 of the Clean Air Act.

- August 21, 1992 - Call from Mike James of Occidental to Mark Forcier of EPA about information request, request for extension.

- September 22, 1992 - EPA receives response to information request dated 9/17/92, and a letter is sent by Mark Forcier confirming the 15 day extension of time to respond to information request granted as a result of Mike James' call.

- December 31, 1992 - EPA sends Pre-referral Litigation Report to the Department of Justice requesting pre-referral negotiations authority.

- January 12, 1993 - EPA issues a Finding of Violation letter to Occidental listing the alleged violation and offering Occidental the opportunity to request a conference with the Agency

- January 29, 1993 - Occidental sends a letter to EPA requesting a conference concerning the Findings of Violation.

- September 3, 1993 - Occidental seconds a second letter requesting a conference concerning the Findings of Violation.

- September 16, 1993 - EPA issues a second information request to Occidental under Section 114 of the Clean Air Act.

- October 5, 1993 - Occidental replies to EPA's second information request.

- October 20, 1993 - Jeb Sanford, Assistant Chief, Environmental Enforcement Section, U.S. Department of Justice, sends a letter to Jim Collins denying pre-referral negotiations authority to EPA.

- January 19, 1994 - Call from Pat Spillman, ORC Attorney, to Mike James, Occidental counsel, informing him of his assignment to the case and that contact with Occidental would be forthcoming from EPA and the Department of Justice.

B. Request for Pre-Referral Negotiations Authority

A Pre-referral Litigation Report was sent to the Department of

Justice and to the Office of Enforcement and the Stationary Source Compliance Division at EPA Headquarters on December 31, 1992. In that Report, EPA sought pre-referral negotiations authority pursuant to the "Process for Conducting Pre-Referral Settlement Negotiations on Civil Judicial Enforcement Cases", dated April 13, 1988. Shortly thereafter, on January 12, 1993, EPA issued a Finding of Violation letter to Occidental. The letter informed Occidental that, based on the inspection of the Occidental Facility and independently obtained information, EPA concluded that Occidental violated Clean Air Act statutes and regulations. Occidental responded in writing to the Finding of Violation Letter on January 29, 1993 requesting a meeting with the Agency. On September 3, 1993, Occidental sent to EPA a second request for a conference. On October 20, 1993, the Department of Justice denied pre-referral negotiations authority to EPA. Therefore, this matter is being officially referred to the Department of Justice with the recommendation that a Complaint be filed against Occidental.[2]

C. Contacts with Defendant by State, Local Agencies and Citizens, and Actions Taken

EPA is not aware of any such contacts or actions taken which relate to this case.

D. Prior Enforcement History of Defendants

EPA is unaware of any previous enforcement actions by EPA or

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[2]A draft Complaint is provided in Exhibit 6.

the Louisiana Department of Environmental Quality against Occidental that would be relevant to this action.

VI. PENALTIES

A. Civil Penalty Authority

Pursuant to Section 113(b) of the Act,

> The Administrator...shall, as appropriate,...commence a civil action for a permanent or temporary injunction, or to assess and recover a civil penalty of not more than $25,000 per day for each violation, or both...

42 U.S.C. § 7413(b). The statutory maximum amount, based on EPA's assumptions of the duration of violations[3], would be: **Twenty-Three Million Four Hundred Twenty-Five Thousand Dollars ($23,425,000.00).** This includes 5 violations encompassing, altogether, approximately 937 days of violation[4], multiplied by the $25,000 daily statutory limit per day for each violation, as established in Section 113(b) of the Clean Air Act, 42 U.S.C. § 7413(b).

B. Penalty Analysis/Calculations

The proposed penalty sought to be assessed against Occidental were calculated based on procedures established in the October

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[3]EPA has determined that the cut-off date for penalty calculation purposes should be January 12, 1993, the date EPA issued its Findings of Violation letter to Occidental.

[4] The days of violation for each Count were:
Count I - February 18, 1991 to April 5, 1991 - 46 days;
Count II - February 18, 1991 to April 9, 1991 - 50 days;
Count III - April 9 to April 13, 1991 and September 18, 1991 to November 20, 1991 and on December 6, 1991 - total of 71 days;
Count IV - July 8, 1991 to November 20, 1991 - 136 days;
Count V - 1st report - Jan. 31, 1992 to Jan. 12, 1993 - 347 days; and 2nd report - March 31, 1992 to Jan. 12, 1993 - 287 days.

25, 1990 Clean Air Act Stationary Source Civil Penalty Policy, is Two Hundred Twenty-Six Thousand Dollars ($226,000) (see below). The gravity portion of the penalty for each count is based, first, on the importance of the type of violations to the regulatory scheme. As described on page 13 of the Penalty Policy, violations for failure to monitor/inspect or to keep records are assessed at $15,000 per violation. For the three counts of failure to monitor/inspect or keep records, the total amount for importance to the regulatory scheme would be $45,000. The violation for improper operation of control equipment is assessed at $15,000 per violation. The violations for failure to report visible emissions are assessed at $15,000 per violation, or a total of $30,000. Thus, the total portion of the gravity component for importance to the regulatory scheme is $90,000.

The second part of the gravity factor considered applicable is the length of violation. In calculating the statutory maximum penalty, this is counted on a daily basis, beginning on the day compliance was specified in the regulations. For the purposes of the Penalty Policy, however, the duration of violation is calculated on a basis of months (or any part thereof), as described in a chart. According to page 12 of the Penalty Policy, the length of time of violation for Counts I, II, and III would be in the 2-3 month category, and would increase the amount of the penalty $8,000 for each of these violations, or a total of $24,000. The length of time of violation for Count IV

would be in the 4-6 month category and would increase the amount of the penalty $12,000 for that violation. For Count V, there are two separate reporting violations. Both of these violations are in the 7-12 month category and would increase the amount of the penalty by $15,000 each, for a total of $30,000 for these violations. Thus, the total portion of the gravity component for length of time of violation is $66,000.

The last factor required to be considered as part of the gravity component of the penalty is the "size of violator". Under the Penalty Policy (at pages 14 and 15), a violator with a net worth of just under $100 million dollars, such as Occidental Chemical Corporation (based on a Dun & Bradstreet report provided in Exhibit 1), would be assessed an additional $70,000. According to the Penalty Policy, the Litigation Team may reduce the size of the violator figure to 50% of the preliminary deterrence amount where the size of the violator figure represents over 50% of the total preliminary deterrence amount.[5] In this case, $70,000 is less than half of the total preliminary deterrence amount ($161,000). Therefore, $70,000 is the appropriate amount to be assessed for the size of violator component under the Penalty Policy.

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[5] The Preliminary Deterrence Amount is the amount described on page 4 of the Penalty Policy as the total of the gravity component and the economic benefit component. In this case, the economic benefit component was less than $5,000, and was, therefore, considered nominal and not included as a separate factor in the penalty calculation. See page 7 of the Policy.

The calculated penalty is broken down as follows:

Count	Importance to the regulatory scheme	+	length of time of violation	=	
Count I	$ 15,000		$ 8,000		$ 23,000
Count II	15,000		8,000		23,000
Count III	15,000		8,000		23,000
Count IV	15,000		12,000		27,000
Count V (2)	30,000		30,000		60,000
	$ 90,000	+	$ 66,000	=	$156,000
			Size of Violator		+ $ 70,000
			Total		$ 226,000

Other adjustment factors, such as ability to pay and degree of willfulness or negligence were not considered applicable. Litigation risk was not considered in the above calculation and may have to be assessed in order to determine a "bottom line" penalty for negotiation and settlement purposes at a future date.

VII. OTHER ISSUES

A. Issues of National or Precedential Significance

There are no issues of national or precedential significance

B. Bankruptcy Petitions

To date, no bankruptcy petitions have been filed by defendant, and none are anticipated.

VIII. SIGNIFICANCE OF REFERRAL

A. Primary Justification For Referral

Although there has been no evidence produced yet that there was any actual exposure or environmental or health effect from Occidental's failure to monitor for asbestos emissions, it is

likely that there was an increase in the risk of exposure or environmental or health effects as a result of operations at the Occidental facility. The purpose of the regulations violated in this case is to make possible a determination that there is no risk of exposure from visible emissions of asbestos, by requiring observation for and reporting of visible emissions and by requiring the regular inspection of air cleaning devices. Unless these regulations are complied with, EPA cannot fully perform the function entrusted to it under the statute.

B. Threats To The Regulatory Structure

Beyond the direct threat to human health and the environment, emphasis must be given to the enforcement policies underlying the Act. The violations cited in this referral may have serious implications for the Air Enforcement program when their continuation undermines the statutory and regulatory purposes and procedures established by Congress and the Agency for implementing the program embodied in the amended Clean Air Act. It is Agency policy, as expressed in the Clean Air Act Stationary Source Civil Penalty Policy, that the types of violations cited in this referral receive significant penalties as a deterrent to facility owners who ignore their responsibilities under the law. In this action, the Agency is seeking payment of penalties to remedy to serve as a deterrent to Occidental and others from future violations.

This case involves an important issue which could have profound

ramifications for enforcement of asbestos emissions standards. There is some dispute concerning what constitutes a "visible emissions" under 40 C.F.R. § 61.141 and what facts are required to prove their occurrence.[6] If the Agency and the Department of Justice are to take the position that "visible emissions" can only be proven by observations of asbestos particles suspended or moving through the air, EPA could be severely limited in its ability to prove the existence of visible emissions. Inspectors would be required to observe emissions as they are occurring resulting in the possibility that visible emissions would be discovered only in surprise inspections or in situations where facilities may not have had sufficient time to shut down operations or take other short-term measures to terminate asbestos emissions. The Region 6 Air Enforcement Program has expressed concern about this potential limitation upon EPA's ability to find visible emissions of asbestos. The Regional Program has urged the Office of Regional Counsel to pursue a count against Occidental for failure to report visible emissions. The Litigation Team also urges the Department to pursue this count.

C. Program Strategy

The presentation of this Civil Litigation Report for this case for potential civil action is consistent with the March 31, 1988 "Revised Asbestos NESHAP Strategy" issued by EPA's Office of Air Quality Planning & Standards. This strategy is intended

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[6]Please see discussion in Section IX.H herein.

to induce an increased rate of asbestos related enforcement action in the Regions and delegated agencies.

D. Agency Priority

As a potential asbestos NESHAP violator, Occidental is a "significant violator" as defined in the February 7, 1992 EPA guidance document on "Timely and Appropriate Enforcement Response to Significant Air Pollution Violators". EPA policy places high priority on bringing significant violators of the asbestos NESHAP standards into compliance with injunctive relief combined with the deterrent measures of payment of civil penalties. As a significant violator, Occidental is subject to the timely and appropriate guidelines for internal processing and filing described in the February 7, 1992 "Timely and Appropriate" guidance, and is thus subject to the priorities described therein.

E. Program Initiatives Outside of Stated Strategy

None.

F. Relation of Referral to Previous or Concurrent Cases or Actions

EPA is investigating possible violations of Clean Air Act regulations at the Occidental Chemical Corporation facility in Deer Park, Texas. It is not known at this time whether an enforcement action will be taken against Occidental for actions at that facility or whether such enforcement will have any relation to this action. If any other action is pursued concerning the Occidental Facility, EPA and the Department of

Justice may opt to negotiate some type of joint settlement arrangement with Occidental. There is, however, no information upon which to make such a determination at this time. EPA will inform the Department of Justice if enforcement action is planned against Occidental for potential violations at other Occidental facilities.

IX. LITIGATION STRATEGY

A. Need for Injunctive Relief

Based on the information known to EPA at this time, it appears that no injunctive relief against Occidental is necessary. Occidental's responses to EPA's information request indicate that the record-keeping violations set forth in this referral occurred only for a limited period and are not ongoing at this time. As for the inspections and emission controls maintenance violations, they should, in all likelihood, be remedied by Occidental's repair and proper operation of the emission control equipment (baghouse). Occidental has submitted records to EPA concerning repair work on the baghouse. There is no indication of improper operation of the baghouse occurring at this time. Finally, as to the violations for failing to file quarterly reports of recorded visible emissions, it has not been determined what remedy EPA would expect to constitute current compliance. EPA could, perhaps, require that the reports, which should have been made within 30 days of the end of the calendar quarter, be submitted late (for whatever good that would do), and require that future reports be made timely based on the EPA's interpretation of what constitutes "visible

emissions" within the meaning of 40 C.F.R. § 61.144(b)(8), and Part 61 in general.

B. Settlement Potential/Plan for Settlement

According to Executive Order 12778 of October 23, 1991, the United States is required to have settlement discussions with each potential defendant prior to the filing of an action. EPA anticipates that Occidental will be willing to negotiate with EPA on the factual and legal issues of this case prior to litigation, and settlement prior to filing is expected. To date, Occidental has twice requested conferences with EPA to discuss the Findings of Violation and, presumably, to initiate settlement discussions, though no meeting has been held as of yet. EPA has obtained information through information requests under Section 114 of the Act and may obtain additional information through meetings with Occidental prior to filing, rather than rely on discovery after filing. Failing settlement prior to filing, Occidental will likely continue to negotiate toward settlement after filing due to the costs of litigation.

The Region 6 attorney and the Department of Justice trial attorney have discussed the need for expedited contact with Occidental. Occidental has indicated its willingness to discuss this matter with government representatives. It is expected that a face-to-face meeting with Occidental representative will be held shortly after this referral is received by the Department of Justice and prior to the filing of any complaint.

C. Need for Interrogatories and Request for Admissions

Discovery through interrogatories should be straightforward. In most cases, the factual elements of the violations cited can be established without them, based on the inspection, documents supplied in response to information requests, and admissions of Occidental prior to filing. Requests for admissions can likely establish many elements, and such requests, along with stipulations, may be sufficient to establish a *prima facie* case for liability.

D. Potential for Summary Judgment

The potential for summary judgment on liability for Counts I - IV is good since there appear to be no genuine issues of material fact to be resolved in relation to those violations. The potential for summary judgment on Count V is not good due to the disputable burden of proof requirements to establish the occurrence of "visible emissions" as interpreted in 40 C.F.R. § 61.144(b)(8) and in Part 61 in general. Difficulties with respect to proving Count V are discussed below. The assessment of penalties could present an issue of fact about the reasonableness of the penalty and the application of penalty guidance in calculation. If the United States files a Motion for Summary Judgment; however, it would include a request for the court to assess a civil penalty based on the Clean Air Act Stationary Source Penalty Policy.

E. Need for Preliminary Injunction

No irreparable harm will occur if there is no immediate action;

therefore, a preliminary injunction is not necessary.

F. Identity of Potential Witnesses

1. Government's Case

The following individuals are expected to be available to testify on behalf of the United States:

a. Ms. Minerva De Leon,
Environmental Scientist
Facilities Compliance Section (6E-HC)
U.S. EPA, Region 6
10625 Fallstone Rd.
Houston, TX 77099 (713) 983-2149

Ms. De Leon is the EPA inspector who conducted the inspection of the Occidental Facility. She should be able to testify about her observations and actions at the facility and the content of the inspection report.

b. Ms. Ann T. Brannon
Environmental Scientist
Air Inspector
LDEQ, Southwest Region (504) 838-5361

Ann Brannon is one of the inspectors who visited the facility on November 21 and 22, 1991, and should be able to testify as to her observations at the facility, as well as to corroborate the observations of the EPA inspector at the facility, and the statements made to the inspectors by the Occidental personnel at the facility.

c. Mr. Gary J. Northington
Environmental Scientist
Air Inspector
LDEQ, Southwest Region (504) 838-5361

Gary Northington is one of the inspectors who visited the facility on November 21 and 22, 1991, and should be able to testify as to his observations at the facility, as well as to corroborate the observations of the EPA inspector, and the statements made to the inspectors by the Occidental personnel at the facility.

d. Mr. Paul Henderson
Environmental Engineer
Air Enforcement Section (6T-EC)
U.S. Environmental Protection Agency
Region 6 - Dallas (214) 655-7544

Paul Henderson should be able to testify as to his

evaluation of the contents of the Air Inspection Report, his evaluation of the evidence obtained by EPA through § 114 requests, and his application of the Clean Air Act Stationary Source Civil Penalty Policy to the facts to arrive at the penalty sought to be assessed by EPA (other than the statutory maximum penalty).

e. Mr. Kevin Rodriguez
Environmental Science & Engineering, Inc.
2644 S. Sherwood Forest Boulevard
Baton Rouge, Louisiana 70816

Mr. Rodriguez performed the asbestos sampling and particulate sampling conducted by ESE, Inc. on May 23-24, 1990 at Occidental's Taft, Louisiana facility. He should be able to testify about the findings of the test and what the findings mean in terms of level of emissions from the baghouse exhaust vent. Other representatives of ESE, Inc. (Mr. Steven J. Schwartz and Kenton S. Pope) could potentially be called as witnesses due to their supervision or involvement in preparation of the ESE, Inc. report.

2. Defendant's Case

The identity and possible content of the testimony of witnesses for Occidental are unknown at this time. It is anticipated that the following plant personnel might be able to testify about conditions, policies, and procedures at the facility, as well as the events on the day of the EPA/LDEQ inspection.

a. T. H. Morrow
Plant Manager of the Occidental Taft facility in 1992.
(504) 783-7200

b. John O. Foster
Current Plant Manager of the Occidental Taft facility.(504) 783-7200

c. James A. Anderson
Environmental Supervisor of the Occidental facility who was present at the November 21-22, 1992 inspection of the facility. (504) 783-7384

d. Leslie Hebert, Jr.
Environmental Engineer at the Occidental facility who was present at the November 21-22, 1992 inspection of

the facility. (504) 783-7384

e. Ralph J. Becnel
Occidental technician who conducted most of the inspections of the baghouse which noted deteriorating conditions and who stated that the baghouse was full of asbestos. (504) 783-7384

Other witnesses include as yet unnamed facility personnel who conducted monitoring and inspections at the facility. These individuals are identified in the documents only by their initials. The names of these persons will have to be discovered by additional information requests or in discovery before trial.

G. Elements of Prima Facie Case and Evidence

Pursuant to Section 113(a)(3) of the Act,

> [w]henever...the Administrator finds that any person has violated or is in violation of any other requirement or prohibition of [Subchapter I, 42 U.S.C. § 7401-7515]... including but not limited to any rule...promulgated, issued or approved under [that Subchapter]...the Administrator may...(C) bring a civil action in accordance with subsection (b) of [Section 113]...

42 U.S.C. § 7413(a)(3) (emphasis added). Pursuant to Section 113(b) of the Clean Air Act, the Administrator

> shall, as appropriate, in the case of any person who is the owner or operator of an affected source, a major emitting source, or a major stationary source[7], and may, in the case of any other person, commence a civil action for a permanent or temporary injunction, or to assess and recover a civil penalty of not more than $25,000 per day for each violation, or both, in any of the following instances:
>
> ...(2) Whenever such person has violated, or is in violation of, any requirement or prohibition of [Subchapter I of the Act, 42 U.S.C. §§ 7401-7515] ...including, but not limited

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[7] The Occidental Facility is listed as a "major stationary source" by the Air Facility System (AFS) of the Aerometric Information Retrieval System (AIRS), a national computer database for air pollution enforcement information maintained by EPA.

> to, a requirement or prohibition of any rule, order, waiver, or permit...
>
> ...Notice of commencement of the action must be given to the appropriate state air pollution control agency [in this case, the Louisiana Dept. of Environmental Quality].

42 U.S.C. § 7413(b) (emphasis added). The elements which must be proven in order to establish a prima facie case against Occidental under section 113(b) of the Act, are:

1. That Occidental is a "person" within the meaning of Sections 113(a) and (b), 42 U.S.C. § 7413(a)-(b):

   a. Occidental Chemical Corporation is a corporation. EPA can present a statement from the Secretary of State showing that Occidental is a corporation organized under the laws of the State of New York and registered to do business in Louisiana.

   b. As a corporation, Defendant is therefore, by definition, a "person" as that term is defined in Section 302(e) of the Act, 42 U.S.C. § 7602(e).

2. That Occidental is the "owner or operator" of the facility at which the violations were discovered.
   "Owner or operator" means any person who owns, leases, operates, controls, or supervises a stationary source. 42 U.S.C. § 112(a)(9). Occidental will likely admit this. If not, EPA can present documents from a title search and admissions of Occidental in correspondence with EPA which prove that at all times relevant to this Complaint, Defendant has been the "owner or operator" of the Occidental Chemical Corporation facility in Taft/Hahnville

Louisiana, a stationary source, within the meaning of Section 113 of the Act, 42 U.S.C. § 7413, and 40 C.F.R. Part 61.

3. That the Occidental Facility is subject to the Asbestos NESHAPs, 40 C.F.R. Part 61, Subpart M, and similar LAC (LESHAP) Regulations:

a. Pursuant to Section 112 of the Clean Air Act, 42 U.S.C. § 7412, the Administrator promulgated the NESHAPs which govern the control of emissions and the handling and disposal of hazardous materials, including asbestos. NESHAPs for asbestos are promulgated at 40 C.F.R. Part 61, Subpart M. Defendant is precluded from challenging the validity or authority of any of the regulations promulgated under the Act by Section 307(b)(2) of the Act 42 U.S.C. § 7607(b)(2) prohibiting review of standards promulgated by the EPA Administrator in civil or criminal proceedings for enforcement, and by the Administrative Procedures Act, 5 U.S.C. §§ 552 et seq.

b. Within Subpart M, 40 C.F.R. § 61.140 provides that 40 C.F.R. Part 61, relating to asbestos NESHAPs, applies to those sources specified in 40 C.F.R. §§ 61.142 through 61.151, 61.154, and 61.155.

c. 40 C.F.R. § 61.144 describes standards applicable to "manufacturing operations using commercial asbestos." EPA must show that a portion of Defendant's Facility is a "manufacturing operation using commercial asbestos"

within the meaning of 40 C.F.R. § 61.144.

(1) "Manufacturing" is "the combining of commercial asbestos[8]...with any other material(s)...and the processing of this combination into a product. Chlorine production is considered a part of manufacturing." 40 C.F.R. § 61.141.
Defendant will likely admit that it is engaged in manufacturing operations using commercial asbestos. EPA can show that the operations of the facility consist in part of "manufacturing" within the definition of 40 C.F.R. § 61.141. EPA can also show that a portion of Defendant's facility is for production of chlorine utilizing asbestos diaphragm technology.

(2) Chlorine utilizing asbestos diaphragm technology is defined as an asbestos "manufacturing operation." under 40 C.F.R. § 61.144(a)(9).
Occidental has admitted in response to information requests that operations which occur at the Occidental facility include production of chlorine utilizing asbestos diaphragm technology which is classified as an asbestos "manufacturing" operation within the meaning of 40 C.F.R. §§ 61.144. This

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[8] "Commercial asbestos" is defined at 40 C.F.R. § 61.141 as "any material containing asbestos that is extracted from ore and has value because of its asbestos content." In this case, the commercial asbestos is the asbestos in the slurry applied to the electrodes of the electrolytic cell, and has value in the process because of its asbestos content.

element could also be shown by expert testimony describing the type of operations conducted at the facility in the past.

d. Defendant is thus the owner and operator of a "manufacturing operation using commercial asbestos" within the meaning of 40 C.F.R. § 61.144.;

e. Under Section 112(c)(2) and 40 C.F.R. § 61.05(c), "[n]inety [90] days after the effective date of any standard, no owner or operator shall operate any existing source subject to that standard in violation of the standard [without waiver or exemption]".

(1) Under 40 C.F.R. § 61.02, the "effective date" of 40 C.F.R. Part 61 "is the date of promulgation in the Federal Register of any applicable standard or other regulation..." The date of promulgation of 40 C.F.R. § 61.144(b) was November 20, 1990. Ninety (90) days after that date is February 18, 1991. Therefore February 18, 1991 is the date on which the Occidental was to be in compliance with the standards of 40 C.F.R. § 61.144(b).

(2) At various times, Defendant did not monitor for visible emissions, did not inspect emissions control equipment, did not inspect emissions control equipment to the extent required, did not keep and submit records of such monitoring or inspection, and did not operate and maintain its emissions control equipment as required under 40 C.F.R. § 61.144(b)

and 40 C.F.R. § 61.12(c), as shown below.

f. Therefore, under 40 C.F.R. § 61.140, 40 C.F.R. Part 61, Subpart M, relating to asbestos NESHAPs, applies to Defendant and to operations at the Occidental Facility.

4. Occidental was in violation of the requirements of the applicable regulations (rules) within the meaning of Section 113(b) of the Act, 42 U.S.C. § 7413(b):

a. **Count I** - Occidental was in violation of 40 C.F.R. §§ 61.144(b)(3), (b)(5), or (b)(7) during the forty-six (46) day period from February 18, 1991 through April 4, 1991.

(1) 40 C.F.R. § 61.144(b) requires "each owner or operator of any manufacturing operations to which this section applies" to:

> ...(3) Monitor each potential source of asbestos emissions from any part of the manufacturing facility, including air cleaning devices, process equipment, and buildings housing material processing and handling equipment, at least once each day during the daylight hours for visible emissions to the outside air during periods of operation. The monitoring shall be by visual observation of at least 15 seconds duration per source of emissions.
>
> ...(5) [The owner or operator shall also] maintain records of the results of visible emission monitoring...[and]
>
> ...(7) Retain a copy of all monitoring and inspection records for at least 2 years.
>
> 40 C.F.R. § 61.144(b)(5), (b)(7) (1991) (emphasis added).

(2) Defendant failed to monitor for visible emissions at its facility as required by 40 C.F.R. § 61.144(b)(3)

during the period from February 18, 1991 through April 4, 1991.

(3) Defendant failed to keep records of monitoring for visible emissions at its facility as required by 40 C.F.R. § 61.144(b)(5) during that period. Occidental stated in response to information requests under Section 114 of the Act that it did not keep records of monitoring inspections at its facility during the period from November 7, 1990 through April 4, 1991, indicating that it failed to monitor for visible emissions as required by § 61.144(b) from February 18, 1991 through April 4, 1991.

(4) At the time of the inspection of the Facility, Defendant had not complied with the provisions of 40 C.F.R. § 61.144(b) as shown above. Therefore, Defendant was "in violation of, any requirement or prohibition of [Subchapter I of the Act]" within the meaning of Section 113(b)(2) of the Act, 42 U.S.C. § 7413(b)(2).

b. Count II - Occidental did not comply with 40 C.F.R. §§ 61.144(b)(4), (b)(5), or (b)(7) during the fifty (50) day period from February 18, 1991 through April 8, 1991.

(1) 40 C.F.R. § 61.144(b) requires "each owner or operator of any manufacturing operations to which this section applies" to

...(2) Use the methods specified by § 61.152

[relating to air cleaning and filtering devices] to clean emissions from [its] operations containing particulate asbestos material before they escape to or are vented to the outside air.

...(4) Inspect each air cleaning device at least once each week for proper operation and for changes that would signal the potential for malfunctions, including, to the maximum extent possible...the presence of tears, holes, and abrasions in filter bags and for dust deposits on the clean side of [filter] bags...For air cleaning devices that cannot be inspected on a weekly basis...submit to the Administrator...a written maintenance plan...

...(5) [The owner or operator shall also] maintain records of the results of...air cleaning device inspections...[and]

...(7) Retain a copy of all monitoring and inspection records for at least 2 years.

40 C.F.R. §§ 61.144(b)(2), (b)(4), (b)(5), and (b)(7) (1991) (emphasis added).

(2) Defendant failed to inspect each air cleaning device at least once each week for proper operation and for changes that signal the potential for malfunctions as required by 40 C.F.R. § 61.144(b)(4), during the period from February 18, 1991 through April 8, 1991.

(3) Defendant failed to keep records of the air cleaning device inspections at its facility as required by 40 C.F.R. § 61.144(b)(5) during that period.

(4) At the time of the inspection of the Facility, Defendant had not complied with the provisions of 40 C.F.R. § 61.144(b) as shown above. Therefore, Defendant was "in violation of, any requirement or prohibition of [Subchapter I of the Act]" within the meaning of Section 113(b)(2) of the Act, 42 U.S.C. §

7413(b)(2).

c. **Count III** - Occidental violated 40 C.F.R. §§ 61.19 and 61.144(b)(2) and (b)(4) during the period from September 18, 1991 to November 20, 1991.

(1) 40 C.F.R. § 61.144(b) requires "each owner or operator of any manufacturing operations..." to

> ...(2) Use the methods specified by § 61.152 [relating to air cleaning and filtering devices] to clean emissions from [their] operations containing particulate asbestos material before they escape to or are vented to the outside air.
>
> ...(4) Inspect each air cleaning device at least once each week for proper operation and for changes that would signal the potential for malfunctions, including, to the maximum extent possible without dismantling other than opening the device, the presence of tears, holes, and abrasions in filter bags and for dust deposits on the clean side of [filter] bags...For air cleaning devices that cannot be inspected on a weekly basis...submit to the Administrator...a written maintenance plan...

40 C.F.R. §§ 61.144(b)(2) and (b)(4) (1991) (emphasis added).

(2) Defendant failed to inspect the air cleaning device to the extent of opening the device to determine the presence of tears, holes, and abrasions in the filter bags, despite the presence of indications of malfunction, as required by 40 C.F.R. §§ 61.144(b)(2) and (b)(4), during the period from September 18, 1991 to November 20, 1991. Response to information requests under Section 114 of the Act produced inspection records which indicate that Occidental failed to open the baghouse

to determine the condition of the bags, because of the malfunctioning and unmaintained condition of that baghouse.[9] The inspection records state that the door could not (or would not) be opened to inspect because there was so much asbestos accumulated inside the bag house that some would have fallen out of the device. Keeping the equipment closed during inspections prevented recording of the actual nature of the malfunction of the equipment, and the fact that it was no longer performing its intended function during that period.

(3) Defendant failed to submit to the Administrator a written maintenance plan on the basis that the equipment could not be inspected on a weekly basis within the meaning of 40 C.F.R. § 61.144(b)(7).

(4) Defendant thus violated 40 C.F.R. § 61.144(b)(4), and Defendant's facility is "in violation of, any requirement or prohibition of [Subchapter I of the Act]" within the meaning of Section 113(b)(2) of the Act, 42 U.S.C. § 7413(b)(2).

d. **Count IV** - Occidental did not properly use and operate the air cleaning device, designed to eliminate asbestos dust from the air, or use it in a manner consistent with good air pollution control practice for minimizing emissions, within the meaning of in 40 C.F.R. §§

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[9] See baghouse inspection reports in Exhibit 5.

61.12(c) and 61.152(a)(2), LAC Chapter 9, Regulation 905, and Air Permit No. 362 C (M-1).

Pursuant to 40 C.F.R. § 61.152(a)(2), "the owner or operator who uses air cleaning as specified in...§ 61.144(b)(2)...shall: Properly install, use, operate, and maintain all air-cleaning equipment authorized by [§ 61.152]." Also, according to the regulations,

> Each owner or operator of each stationary source shall maintain and operate the source, including associated equipment for air pollution control, in a manner consistent with good air pollution practice for minimizing emissions. Determination of whether acceptable operating and maintenance procedures are being used will be based on information available to the Administrator which may include, but is not limited to, monitoring results, review of operating and maintenance procedures, and inspection of the source.

40 C.F.R. § 61.12(c) (1991) (emphasis added).

(1) 40 C.F.R. § 61.144(b) requires "each owner or operator of any manufacturing operations..." to

> ...(2) Use the methods specified by § 61.152 [relating to air cleaning and filtering devices] to clean emissions from [their] operations containing particulate asbestos material before they escape to or are vented to the outside air.

(2) Occidental installed emission control equipment but did not properly use, operate, and maintain its air cleaning equipment within the meaning of 40 C.F.R. § 61.152(a)(2). Occidental failed to repair its emissions control equipment despite indication in its own inspection reports that the equipment was malfunctioning, overloaded, and in need of repair and maintenance, to the extent that the required inspections were not possible because of the

condition of the equipment. The inspector who made the required reports during this period knew, and stated in the reports, that the equipment was malfunctioning. See Exhibit 5. As stated above, emissions tests conducted in 1990 on the exhaust from the dust collector indicate the presence of asbestos fibers in the exhausted air (over 6 fibers/cu. cm. rather than the OSHA level of 0.2 fibers/cu. cm.). See Exhibit 3.

(3) Occidental, an owner or operator of a stationary source, did not properly maintain and operate that source, including associated equipment for air pollution control, in a manner consistent with good air pollution practice for minimizing emissions within the meaning of 40 C.F.R. § 61.12(c). According to the inspection report, noting the statements of an Occidental foreman to the inspector, the baghouse for asbestos emissions had not been serviced for approximately 10 years, and was not maintained, as evidenced by its deteriorated condition, observed by the EPA inspector, and as recorded in the inspection records made by Occidental employees.

(4) In addition to the requirements of 40 C.F.R. § 61.12(c), the facility is subject to the requirements of the applicable Louisiana regulations to maintain emission control equipment, which mirror

the requirements of 40 C.F.R. Part 61.

(5) Finally, Permit No. 362 C (M-1), issued to the facility in 1990 for the operation of the processes in question, contains special conditions that Occidental control asbestos emissions by compliance with all provisions of the LAC regulations, 33 L.A.C. Chapter 25, relating to LESHAPS, specifically pertaining to asbestos. Chapter 25, Section 2607 requires that all air cleaning equipment must be properly installed, used, operated, and maintained. Another special condition of the Permit issued to Occidental in 1990 is that Occidental comply with all NESHAP regulations found at 40 C.F.R. § 61.144 related to asbestos manufacturing, which they did not, as shown herein, from at least July 8, 1991 to November 20, 1991.

(6) Defendant thus violated 40 C.F.R. §§ 61.12(c) and 61.152(a), and Defendant's facility is "in violation of any requirement or prohibition of [Subchapter I of the Act]" within the meaning of Section 113(b)(2) of the Act, 42 U.S.C. § 7413(b)(2).

e. **Count V** - Occidental did not submit quarterly reports to the Administrator of visible emissions documented by its inspectors, within the meaning of 40 C.F.R. § 61.144(b)(8).

Under 40 C.F.R. § 61.144(b),

Each owner or operator of any manufacturing operation

to which this section applies shall:

> ...(8) Submit quarterly a copy of the visible emission monitoring records to the Administrator if visible emissions occurred during the report period. Quarterly reports shall be postmarked no later than the 30th day following the end of the calendar quarter.

40 C.F.R. § 61.144(b)(8) (1991) (emphasis added).

(1) Defendant's facility had "visible emissions" within the meaning of 40 C.F.R. § 61.144(b)(8). The term "visible emissions" is defined in 40 C.F.R. § 61.141 as:

> "any emissions which are visibly detectable without the aid of instruments, coming from ...any asbestos milling, manufacturing, or fabricating operation."

Monitoring reports prepared by Occidental employees who monitored seven potential sources of asbestos emissions at the Occidental Facility document observations of visible emissions of asbestos on interior and exterior surfaces for the period from October 2, 1991 through February 11, 1992. The monitoring reports indicate that the observations were made without the aid of instruments.

(2) Defendant failed to report the visible emissions as required under 40 C.F.R. § 61.144(b)(8).

EPA has received no reports from Occidental concerning visible emissions of asbestos occurring at the Taft facility. Responses to information requests under section 114 of the Act confirm that Occidental failed to submit quarterly reports of visible emissions observed by Occidental inspectors

for the entire period from 10/2/91 through 2/11/92. This time period encompasses parts of two calendar quarters.

(3) Defendant thereby violated 40 C.F.R. § 61.144(b)(8), and Defendant's facility is thus "in violation of, any requirement or prohibition of [Subchapter I of the Act]" within the meaning of Section 113(b)(2) of the Act, 42 U.S.C. § 7413(b)(2).

H. Anticipated Defenses and Government Response

1. Counts I and II

EPA does not anticipate that Occidental will produce evidence in defense of the record-keeping violations alleged herein. Unless Occidental was to subsequently "find" the records and produce them to show that the required monitoring had been done, EPA is unaware of any defense that Occidental could have to liability for the cited record-keeping violations. To date, Occidental has submitted numerous daily and weekly monitoring reports in response to EPA information requests. It would certainly have been in Occidental's self-interest to have submitted the missing reports to the Agency by now if they indeed exist.

Occidental has, however, submitted to EPA the sworn affidavits of six (6) Occidental employees who were assigned, at various times during the period from November 20, 1990 through April 8, 1991, to conduct weekly inspections of the asbestos dust collector (baghouse). It is reasonable to expect that Occidental will vigorously argue that the inspections were

conducted (supported by inspector testimony) and that no visible emissions of asbestos occurred during the periods of their inspections. Although this is no defense for the failure to maintain and furnish the inspection records, the affidavits, together with the lack of any other periods in which Occidental failed to conduct inspections, could carry weight before the Court.

Counts III and IV

Occidental may attempt to argue that the requirement to maintain the baghouse is the underlying violation in both Counts III and IV and, therefore, these violations should not be cited as two separate counts. This argument carries little weight. Pursuant to 40 C.F.R. § 61.144(b)(4), Occidental was required to inspect the air cleaning device at least once each week. It failed to do so to the full extent required (at least opening the device). Week after week of baghouse inspection reports indicate that the air cleaning device was deteriorating and badly in need of repair. It would be difficult for Occidental to argue that even if the baghouse door was opened and the air cleaning device inspected, that Occidental would have altered its operation and maintenance practices for the baghouse. Indeed, it appears that inspections in which the baghouse door was opened were conducted during the time that the unit was deteriorating.[10] The failure to conduct full

[10]Curiously, on several inspection reports, the Occidental employee states the baghouse is operating properly while noting that the unit is corroding badly, that asbestos falls out when the door is opened, and that dust is observed on the clean side

baghouse inspections in this case is separate and apart from the proper operation of the baghouse. After its own employees inspector reported the deteriorating condition of the baghouse and dust on the clean side of filters, Occidental should have ceased its operation until such time that the bag house could be operated properly.

Count V

Occidental's strongest potential defense involves the allegations set forth in Count V, more specifically, the issue of "visible emissions" under the Asbestos NESHAPs. Occidental can hardly deny that its inspector observed and documented asbestos in various areas of the Occidental Facility. These observations were made over the course of three months. See Exhibit 4. However, Occidental could make an argument that these were not observations of "visible emissions" as contemplated in the Asbestos NESHAPS and, therefore, it was not required to submit copies of monitoring records to the Agency under 40 C.F.R. § 61.144(b)(8).

Occidental might establish a potential defense on two bases. First is that if the monitoring reports are proof that visible emissions occurred, they were not visible emissions to the outside air. The term "outside air" is defined at 40 C.F.R. §

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of filters.

61.141 as "the air outside buildings and structures...".[11] Seven sources of potential asbestos emissions are listed in the monitoring reports.[12] Of these seven, according to the inspector, five are indoor sources (the dust collector vent and the asbestos disposal bin are located outside the plant structure). Several months of monitoring reports state there was "asbestos stuck on walls", "asbestos on walls of tank", and asbestos "on floor" in the areas by the cathode wash rack and cathode depositing tank. See Exhibit 5. These two areas are inside the plant building. It is uncertain at this time whether these observations could substantiate the presence of emissions to the air outside the building. Occidental could argue that these indoor observations cannot substantiate emissions to the outside air because the observational setting (i.e. location and sight line of the observer) would not allow for such a determination. Occidental would further claim the monitoring reports only document conditions inside the facility and are not required to be reported under 40 C.F.R. § 61.144(b)(8). Thus, the argument goes, the monitoring reports are not proof of any emissions to the outside air and copies of these reports were not required to be submitted to the Agency

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[11]See U.S. v. Midwest Suspension and Brake, 824 F. Supp. 713, 729 (E.D. Mich. 1993) ("Of course, under the asbestos NESHAP all such visible emission must occur in the outside air.")

[12]In its visible emission checklist, Occidental lists the following potential asbestos emission sources: Asbestos warehouse, Asbestos handling area, dust collector vent, cathode wash rack, cathode depositing tank, HAPP oven/dryer vent, Asbestos filter and disposal bin. Each of these areas was monitored by Occidental for visible emissions.

under 40 C.F.R. § 61.144(b)(8).

The government can overcome this "indoor emissions" argument because asbestos was observed on exterior surfaces of the asbestos disposal bin area, which, according to the EPA inspector is located outside the plant building. The visible emissions monitoring reports document observations of asbestos "on tarp", "on press", and "on concrete" at the asbestos disposal bin. The observations of asbestos at the disposal bin coincide, strangely enough, almost precisely with the days on which asbestos was observed at areas inside the plant structure (October 2, 1991 through February 11, 1992). See Exhibit 5. The United States can show that asbestos was observed outside the plant structure and was exposed to the outside air. The employees' written reports should overcome Occidental's claim that all observations of exposed asbestos were inside the plant building.

The asbestos dust emission testing conducted by Environmental Science & Engineering, Inc. on May 23-24, 1990 may support, in part, a finding of a visible emission to the outside air. See Exhibit 3. The report indicates the presence of asbestos fibers in the exhaust from the dust collector (baghouse) vent. Three samples confirmed that all samples were 95-99% chrysotile asbestos. The baghouse, according to statements by an Occidental employee, had not been maintained for ten years prior to the inspection in November 1991. The sampling

results, together with the total lack of maintenance and the deteriorating condition of the baghouse over a substantial period of time, may, in part, carry the burden of proving that operation of the baghouse after the test date resulted in visible emissions of asbestos to the outside air.

The "indoor emission" argument aside, Occidental could potentially raise a defense to Count V by arguing that the recorded observations by its employees are not proof of any "visible emissions" at all. Occidental could raise such a defense on the basis of the definition of "visible emissions", and on the basis of existing case law. Starting with the definitional argument, the term "visible emissions" means:

> "any emissions, which are visually detectable without the aid of instruments, coming from [regulated asbestos-containing material] or asbestos-containing waste material, or from any asbestos...manufacturing operation."

40 C.F.R. § 61.141.

Occidental could take the position that the emission itself must be observed - that is, the definition requires a visual observation of an emission stream as it is occurring.[13] No first-hand visual observation was made of any dust plume or similar emission by EPA or LDEQ inspectors. The monitoring reports prepared by Occidental employees also do not seem to

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[13]This argument appears to have some support in EPA's rulemaking. In promulgating its "no visible emissions" policy, EPA stated that "[t]he promulgated standard prohibits visible emissions which contain asbestos...The existence of particulate asbestos material in a gas stream vented to the atmosphere can be determined by collecting a sample on a filter and analyzing it by microscopy techniques." 38 Fed. Reg. 8821 (April 6, 1973) (emphasis supplied).

indicate first-hand observations of plumes. Occidental would argue that what the employees observed and documented was merely the presence of asbestos on the surfaces of certain areas of the facility, and not an emission while it was occurring.

It can be argued that the asbestos observed by Occidental employees satisfies the definition of "visible emissions". The definition requires that the emission be "visually detectable", not visually detected while occurring. Arguably, the definition does not require that one observe the emission stream in the air. On the other hand, the fact that the required monitoring need only be conducted for 15 seconds and that monitoring focuses on emissions to the outside air, implies that observations can be limited to movement of asbestos to, or in, the air outside of buildings and structures. Notwithstanding the absence of any observation of asbestos in the air, it can be argued that the asbestos observed on surfaces is part of the emission - not the airborne emission stream - but the end-point of the emission stream as it appears once it has fallen to the ground or other exposed surface. Under this line of reasoning, asbestos on an exterior surface could constitute a "visible emission".

It can also be argued that Occidental was required to submit the monitoring reports notwithstanding the company's interpretation of the regulations, because its employees

documented observations in the "Visible Emissions Observed" column of the monitoring reports. See Exhibit 4. The reports do indicate, on their face, that visible emissions were observed by an Occidental employee for more than three months. These observations were recorded in a format identical to that in Figure 1 of 40 C.F.R. § 61.144. Therefore, for purposes of 40 C.F.R. § 61.144(b)(8), the visible emissions "occurred" and Occidental was required to report them to EPA.[14]

Occidental would counter that any reports to be submitted on a quarterly basis under § 61.144(b)(8) are those generated pursuant to § 61.144(b)(3) which are for visible emissions to the outside air. Ergo, only observations of visible emissions outside of the plant building are contemplated for the quarterly submission required under § 61.144(b)(8).

Turning to the case law, the first decision discussing "visible emissions" under the asbestos NESHAP is U.S. v. Hugo Key and Son, Inc., 731 F. Supp. 1135 (D.R.I. 1989) (Hugo). In Hugo, on

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[14]Note that under 40 C.F.R. § 61.144(b)(3), the facility must monitor for "visible emissions to the outside air". (emphasis supplied). Under 40 C.F.R. § 61.144(b)(8), the facility is required to submit quarterly reports "if visible emissions occurred". Arguably, the regulations require quarterly reporting of any visible emissions, not just emissions to the outside air. See 54 Fed. Reg. 919 (Jan. 10, 1989). This contention is arguably supported by § 61.144(b)(5) which requires maintenance of records indicating the "[p]resence or absence of visible emissions" - again no mention of "outside air". In addition, the separate definitions for the terms "visible emissions" and "outside air" imply that visible emissions other than those to the outside air have relevance with respect to reporting requirements under 40 C.F.R. § 61.144.

a motion for summary judgment, the United States claimed that the defendant violated the "no visible emission" standard in 40 C.F.R. § 61.152(b) when it lifted, by backhoe, a boiler covered with asbestos-containing insulation and dragged it across the ground dropping asbestos on the ground. It was undisputed in the case that asbestos was stripped off the boilers and fell onto the ground. Sampling of the insulation material confirmed that it was friable asbestos. Id. at 1139. The Court made a finding of fact that the dragging of the boiler across the ground resulted in chunks of dried asbestos being "strewn onto the ground and emitted into the air." Hugo at 1139 (emphasis added); See Midwest I at 1271.

In granting summary judgment for the government, the Court found that a visible emission of asbestos occurred during the operations described above. Because Hugo was decided on a summary judgment motion, rather than after a full trial, a full discussion of the evidentiary requirements for establishing the occurrence of a visible emission is not available. There is little discussion of the basis of the Court's decision other than the specific findings discussed above. The Court appears to have relied on several factors including Hugo's failure to take steps to contain the asbestos or to prevent releases of asbestos into the air. The Court may also have considered the stripping off of the asbestos from the tank and its falling to the ground as constituting the emission. See Id. at 1143.

The Court did not specifically hold, in Hugo, that one can infer a visible emission solely from the presence of asbestos observed on the ground. Although one can infer that asbestos laying on the ground was, at some point, emitted into the air, the Hugo decision does not hold that this inference, alone, carries the burden of proving the existence of a visible emission. Although the mere existence of asbestos laying on the ground may not, alone, be proof of a visible emission, the government might be able to use the Hugo decision to support its case for the existence of a visible emission at the asbestos disposal area. The government could use the inference of a visible emission from asbestos on exterior surfaces of the asbestos disposal area, the recorded observations of that asbestos, and admissions obtained through discovery concerning the presence of asbestos and Occidental's disposal practices, to establish the existence of a visible emission to the outside air.

It is conceivable that a finding of visible emissions could be made with respect to the baghouse dust collector. With the development of expert analysis and further factual development, the government may be able to make the case that Occidental's operation of the baghouse in its overloaded and deteriorated condition (with asbestos fibers observed on the clean side of the filter bags and falling out of the baghouse when the door was opened) caused visible emissions to the outside air during the time that device was operated. In other words, due to the

above-cited conditions, it is more likely than not that operating the baghouse under such conditions would have resulted in visible emissions of asbestos to the outside air from the dust collector vent. The difficulty with this claim, however, is that such an emission may not have been observed, and, therefore, no quarterly report would have had to be filed under 40 C.F.R. § 61.144(b)(8).

Occidental may attempt to rely on the decision of the U.S. District Court for the Eastern District of Michigan in U.S. v. Midwest Suspension and Brake, 824 F. Supp. 713 (E.D. Mich. 1993) (Midwest II) to show that the United States cannot meet the burden of proof to establish the occurrence of visible emissions. Midwest was in the business of rehabilitating automobile brake shoes, operations which generated asbestos-containing waste material. Government inspectors inspected the Midwest facility and witnessed plumes of dust created during Midwest's disposal of asbestos waste at the facility and at a landfill. Sampling confirmed the presence of asbestos in the dust.

In a 1992 decision, the Court denied the government's summary judgment motion on the issue of "visible emissions". U.S. v. Midwest Suspension and Brake, 803 F. Supp. 1267 (E.D. Mich. 1992) (Midwest I). The government argued that there was no material issue of fact on the "visible emissions" definition because the government observed a plume of dust from asbestos

disposal operations and sampling of the dust confirmed the presence of asbestos. The Court, however, cited EPA's own 1975 rulemaking amending the asbestos NESHAPs which states that emissions coming from some operations involving asbestos do not necessarily contain asbestos even though an emission stream is visible. 40 Fed. Reg. 48925 (1975), cited in Midwest I at 1271. The Court indicated in its decision that under the definition of "visible emissions", the particulate asbestos material itself must be observed. The Court stated that for the government to meet its burden, it must show that the asbestos must be "visually observed in the stream of emission without the aid of instruments." Midwest I at 1271.

In Midwest II, the Court reversed itself on this point in light of evidence introduced by the government indicating that the fine asbestos particulate could not be seen by the naked eye. Midwest II at 728. The Court indicated that to meet the burden of proof on the issue of "visible emissions", what the government must prove by a preponderance of the evidence is that an emission, which was detectable without the aid of instruments, occurred and that the emission contained asbestos. Id. at 729. The Court then indicated that the government had met its burden of proving visible emissions through expert testimony concerning the inability to see asbestos particulate matter with the naked eye, inspector observations of dust plumes, and sampling data indicating the presence of chrysotile asbestos in the dust material. Id.

Using the Midwest II "test", the United States can show that Occidental employees monitoring for visible emissions actually reported seeing asbestos. These observations were documented in monitoring reports and were made without the aid of instruments. The observations have credibility because they were made by Occidental employees who work directly with asbestos, and who (one would think) are knowledgeable as to what asbestos looks like. However, the government does not have sampling data to substantiate the presence of asbestos in areas where visible emissions were noted by the Occidental employee, although the observations should confirm the presence of asbestos.

In Midwest II, each occurrence of visible emissions was supported by a separate observation of a dust plume by a government inspector. At this time, no person has been identified who actually observed baghouse emissions or a dust plume at the Occidental Facility, although further discovery may identify such an individual. Notwithstanding the lack of first-hand observations of plumes, the Region is of the position that a first-hand observation is not necessary to establish the occurrence of a visible emission under the facts at the Occidental Facility given the recorded observations of the Occidental employee. Occidental may seek to exploit this distinction between Midwest II and the situation at its facility. Although the Court did not explicitly state that a first-hand observation of a plume was necessary to prove the

occurrence of a visible emission, substantial weight was given to the fact that the government inspector observed the plume first-hand and that the plume itself constituted an emission. See Midwest II at 719 and 729-30; ("[T]his Court finds...that the rust colored plume...was a visible emission under the Asbestos NESHAP...").

Assessment of Civil Penalty

As for the penalty assessment, Occidental may produce evidence as to the existence of mitigating factors which would bear on the reduction of a potential penalty, were the Court in the position to assess one. What evidence Occidental could produce to mitigate the proposed penalty is not known at this time, although ability to pay is not anticipated to be a factor. In light of the fact that Occidental did no maintenance on the baghouse for 10 years, it is unlikely that it can show that the regulations place an undue burden on the company to comply.

I. Resource Commitments

At this time, Region 6 believes that this case will be settled short of litigation and, if so, will not require significant resources. Should these violations be pursued to litigation as structured herein, a modest commitment of resources should be required to present the background factual support necessary to establish the elements of EPA's case, again, unless Occidental produces evidence not previously provided to EPA. Admissions and answers to interrogatories can be obtained in discovery. A dispute over the amount of the penalty assessed for the

for the violations cited could require some commitment of resources in production of witnesses for proof at trial.

J. New Evidence

Relevant new evidence and information will be forwarded to DOJ and EPA Headquarters as it becomes available.

EN-LAD 390

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

MAY - 9 1994

OFFICE OF ENFORCEMENT

MEMORANDUM

SUBJECT: OE Review of Direct Referral for Clean Air Act Action Against Occidental Chemical Corporation

FROM: Kathie A. Stein
Enforcement Counsel
Air Enforcement Division

TO: Jane N. Saginaw
Regional Administrator
Region VI

I have received a copy of the Region VI litigation report package referring the above-referenced case to the Department of Justice for civil action, and my staff has reviewed this matter with the Stationary Source Compliance Division. This memorandum is to notify you that we have identified no significant legal or policy issues which we believe require resolution before the United States files this case. My office is providing specific comments on certain aspects of the referral to your Office of Regional Counsel and the Department of Justice in a separate memorandum.

The Office of Enforcement and Compliance Assurance attorney assigned to this case is Charles Garlow, 202-260-1088.

cc: Walter L. Sutton, Jr.
Acting Regional Counsel
Region VI

A. Stanley Meiburg, Director
Air, Pesticides and Toxics Division
Region VI

John Rasnic, Director
Stationary Source Compliance Division

John Cruden, Chief
Environmental Enforcement Section
Department of Justice

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

MAY - 9 1994

OFFICE OF ENFORCEMENT

MEMORANDUM

SUBJECT: Clean Air Act Enforcement Action Against Occidental Chemical Corporation

FROM: Kathie A. Stein Kathie A. Stein
Enforcement Counsel
Air Enforcement Division

TO: Walter L. Sutton, Jr.
Acting Regional Counsel
Region VI

As stated in the accompanying memorandum to the Regional Administrator, my staff has concluded that no significant legal issues prevent the Occidental referral from being filed. We take the opportunity here to discuss the issue of penalty.

We do not concur in the $226,000 minimum settlement amount that you recommend. The violations of the proper use and operation of the air cleaning devices persisted for a longer period of time than indicated in the Region's penalty calculation. The penalty calculation stated that these violations persisted for 4 - 6 months, while the litigation report on pages 13 - 15 states that the foreman admitted that the baghouse controlling emissions from this asbestos manufacturing portion of the facility "had not been serviced for approximately 10 years at the time of the inspection" [emphasis in the original]. "Failure to make these repairs apparently led Occidental to forego the required inspections due to its inability to open the baghouse door, which was corroded, or an apprehension about opening the door and releasing asbestos fibers into the air". Apparently, conditions in the baghouse were so bad that even on the clean side of the bag, the part inside the door, asbestos could be emitted out the door if it were opened slightly, as happened when the EPA inspector saw the baghouse "choked full of asbestos". These violations are serious, warranting an assessment for the entire maximum 60 months or five years specified in the penalty policy, which results in a $55,000 length of violation assessment, as opposed to the $12,000 the Region recommended. The statute of limitations does not prohibit EPA from recovering penalties for violations earlier than five years prior to filing, as the statute is tolled until EPA discovered or should have discovered these violations.

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Similarly, we wonder if 10 years, as opposed to 4 - 6 months, of failure to maintain the baghouse should be considered to be of de minimus economic benefit to the defendant, as suggested.

Lastly, we disagree with the suggestion on page 33 of the litigation report that, should we prevail on a motion for summary judgment, as appears likely, we should ask the court to assess a penalty based on the penalty policy. On the contrary, we should ask the court to start by imposing the statutory maximum penalty and then apply the appropriate statutory penalty assessment criteria to determine whether penalty mitigation is justified, as stated by the court in US v. Midwest Suspension and Brake, 824 F. Supp. 713 (E.D. Mich. 1993) and US v. A.A. Mactal Construction Co., 22 Env. L. R. 21200 (D. Kan., March 31, 1992).

cc: A. Stanley Meiburg, Director
Air, Pesticides and Toxics Division
Region VI

John Rasnic, Director
Stationary Source Compliance Division

John Cruden, Chief
Environmental Enforcement Section
Department of Justice

Pat Y. Spillman, Jr., Associate Regional Counsel
Office of Regional Counsel
Region VI

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

JUL 31 12 30 PM '96

UNITED STATES OF AMERICA, Plaintiff,	)	
OCCIDENTAL CHEMICAL CORPORATION, Defendant.	)	CIVIL ACTION NO. 96-0618

JOINT STIPULATION AND ORDER OF DISMISSAL

WHEREAS, the United States commenced this action by filing a Complaint with this Court on February 16, 1996;

WHEREAS, the United States alleged certain violations of the Clean Air Act ("CAA"), 42 U.S.C. § 7401 et seq., and the National Emission Standards for Hazardous Air Pollutants codified at 40 C.F.R. Part 61, Subpart M, by Occidental Chemical Corporation ("Occidental");

WHEREAS, the United States and Occidental agree that it is in the public interest to resolve this matter without further litigation,

The United States and Occidental, by and through their undersigned counsel, stipulate and agree that:

1. Occidental shall pay to the United States a civil penalty in the amount of $112,837.50, in settlement of the United States' claims for civil penalties for violations of the National Emission Standards for Hazardous Air Pollutants codified at 40 C.F.R. Part 61, Subpart M, at Occidental's plant in Taft, Louisiana, prior to September 30, 1993, as alleged in the Complaint.

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2. Payment of the civil penalty shall be made within thirty (30) days of the date this Joint Stipulation and Order of Dismissal is entered by delivering a cashier's or certified check or money order in the correct amount to the United Sates Attorney for the Eastern District of Louisiana at the following address:

Hale Boggs Federal Building
Room 210
501 Magazine Street
New Orleans, Louisiana 70130

Payment shall be accompanied by a transmittal letter which shall include the caption, civil action number, and judicial district of this action, and shall reference DOJ # 90-5-1-1-4170. Copies of the certified check or money order and the transmittal letter shall be provided to Pat Y. Spillman, Jr., Legal Branch (6EN-LA), U.S. Environmental Protection Agency, Region 6, 1445 Ross Avenue, Dallas, texas, 75202-2733 and to John Gregory, Environmental Enforcement Section, Environment & Natural Resources Division, U.S. Department of Justice, P.O. Box 7611, Washington, D.C. 20044-7611.

3. Amounts paid pursuant to this Joint Stipulation and Order of Dismissal are not deductible for federal tax purposes.

4. In the event that the civil penalty is not paid on or before the due date, Occidental shall pay a stipulated penalty of two thousand dollars ($2,000) per day for each day after the due date on which the civil penalty is not paid in full.

5. This Joint Stipulation and Order of Dismissal is limited to the civil claims under the CAA alleged in the

Complaint and which occurred prior to September 30, 1993 and does not apply to any other claim, civil or criminal, which the United States may have against Occidental.

6. Nothing in this Joint Stipulation and Order of Dismissal shall be construed to release Occidental or its officers, agents, servants, employees, successors, or assigns from their obligation to comply with any applicable Federal, State, or local law regulation, or permit. Nothing contained herein shall be construed to prevent or limit the United States' rights to obtain penalties or injunctive relief under the CAA or other Federal statutes or regulations for other alleged violations.

7. Execution of this Joint Stipulation and payment of the civil penalty and any stipulated penalties accrued do not constitute an admission of any fact or liability of Occidental.

8. The Court shall retain jurisdiction for the purpose of interpreting and for enforcing this Joint Stipulation and Order of Dismissal. In the event all or any portion of the civil penalties referred to in Paragraph 1 above is not paid in accordance with the provisions of this Joint Stipulation and Order of Dismissal, the United States may move to reinstate its Complaint. Occidental shall be liable for attorneys' fees and costs incurred by the United States in collecting any amounts due under this Joint Stipulation and Order of Dismissal. Upon entry of this Joint Stipulation and Order of Dismissal, the United States shall be deemed a judgment creditor for purposes of

collection of the civil penalty and enforcement of this Joint Stipulation and Order of Dismissal in accordance with Rule 69 of the Federal Rules of Civil Procedure and other applicable federal authority. Interest shall accrue upon any past due balance from the date the payment is due at the statutory rate prescribed in 28 U.S.C. § 1961 in effect on the day this Joint Stipulation and Order of Dismissal is entered. The accrual of interest shall be in addition to, and not in place of, the stipulated penalties provided for in Paragraph 4 of this Joint Stipulation and Order of Dismissal.

9. There are no separate agreements or understandings with respect to this matter which have not been set forth in this Joint Stipulation and Order of Dismissal.

10. Each party shall bear its own costs and attorney's fees in this action.

11. The undersigned representatives of Occidental and the Chief of the Environmental Enforcement Section certify that they are fully authorized to enter into the terms and conditions of this Joint Stipulation and Order of Dismissal and to legally bind each party to this document.

12. Occidental consents to the entry of this Joint Stipulation and Order of Dismissal without further notice.

As stipulated and agreed to by the parties, IT IS SO ORDERED AND ENTERED this 31ST day of JULY, 1996.

United States District Judge
Eastern District of Louisiana

APPROVED:

For Defendant Occidental Chemical Corporation:

DATED: 6/19, 1996

Michael James/RB

MICHAEL JAMES
Assistant General Counsel
Occidental Chemical Corp.
P.O. Box 809050
Dallas, Texas 75380

DATED: 6/19, 1996

Robert Brager

ROBERT BRAGER
Beveridge & Diamond, P.C.
1350 I Street N.W.
Suite 700
Washington, D.C. 20005

Counsel for Occidental Chemical Corp.

For the United States:

DATED: _____, 1996

BRUCE S. GELBER, Principal Deputy Chief
Environmental Enforcement Section
Environment & Natural Resources Div.
United States Department of Justice
P.O. Box 7611
Washington, D.C. 20044-7611

DATED: July 30, 1996

JOHN S. GREGORY, Trial Attorney
Environmental Enforcement Section
Environment & Natural Resources Div.
United States Department of Justice
P.O. Box 7611
Washington, D.C. 20044-7611

For the United States Environmental Protection Agency:

DATED: 7/12/96, 1996

JANE N. SAGINAW (6A)
Regional Administrator
U.S. EPA, Region 6
1445 Ross Avenue
Dallas, Texas 75202-2733

DATED: July 11, 1996

SAMUEL COLEMAN, P.E. (6EN)
Director
Compliance Assurance and
Enforcement Division
U.S. EPA, Region 6
1445 Ross Avenue
Dallas, Texas 75202-2733

DATED: July 10, 1996

PAT Y. SPILLMAN, JR. (6EN-LA)
Enforcement Counsel
U.S. EPA, Region 6
1445 Ross Avenue
Dallas, Texas 75202-2733

OxyChem®
OXY
OCCIDENTAL CHEMICAL CORPORATION
Occidental Tower
P.O. Box 809050, Dallas, Texas 75380-9050

LEGAL DEPARTMENT
FAX NUMBER: (214) 404-3647

FAX TRANSMITTAL SHEET

TO: Pat Spillman, Asst. Regional Counsel — Phone: 665-8044, Fax No.: 665-7446

COMPANY/ LOCATION: U.S. EPA Region 6

FROM: Mike James — Phone: (214) 404-3966

DATE: May 7, 1996

__4____ PAGES (including cover page)

REFERENCE: Occidental Chemical Corporation
Taft Plant Enforcement Matter

MESSAGE:

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CONFIDENTIALITY NOTICE:

THIS MESSAGE AND ANY ATTACHMENT IS INTENDED ONLY FOR THE INDIVIDUAL OR ENTITY NAMED BELOW AND MAY CONTAIN INFORMATION THAT IS PRIVILEGED, CONFIDENTIAL AND EXEMPT FROM DISCLOSURE UNDER APPLICABLE LAW. IF THE READER OF THIS MESSAGE IS NOT THE INTENDED RECIPIENT, YOU ARE HEREBY NOTIFIED THAT ANY DISCLOSURE, DISSEMINATION FOR COPYING OF THIS COMMUNICATION IS STRICTLY PROHIBITED. IF YOU HAVE RECEIVED THIS COMMUNICATION IN ERROR, PLEASE IMMEDIATELY NOTIFY US AT THE NUMBER LISTED BELOW.

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Michael A. James
Assistant General Counsel

May 6, 1996

Via Facsimile

John S. Gregory
Trial Attorney
U.S. Department of Justice
Environmental and Natural Resources Division
Environmental Enforcement Section
P.O. Box 7611 Ben Franklin Station
Washington, D.C. 20044

Pat Spillman
Assistant Regional Counsel
U.S. Environmental Protection Agency
Region 6
First Interstate Bank Tower, Suite 1200
1445 Ross Avenue, 12th Floor
Dallas, TX 75202-2733

RE: Occidental Chemical Corporation
Taft Plant Enforcement Matter

Dear John and Pat:

In anticipation of our meeting next week to discuss settlement of the above-referenced matter, I am enclosing a brief summary of the Supplemental Environmental Project ("SEP") that I mentioned in my letter to you of February 16, 1996. I thought it would be preferable to you to have a preview of our proposed SEP, rather than introducing it to you for the first time at our meeting.

As was the case with the settlement by Region 6 of the administrative enforcement action with LaRoche Chemicals, OxyChem's proposed SEP involves a Clean Air Act program other than NESHAP, specifically, the reduction of usage and emissions of chlorofluorocarbons ("CFCs") regulated under Title VI of the Act and 40 CFR Part 82. Our proposed SEP would be in furtherance of our company policy to dispense with the use of CFCs in our large, industrial refrigeration systems so soon as it is technically and economically feasible to do so. I want to emphasize that the five refrigeration units to be

Occidental Chemical Corporation
Corporate Office
Occidental Tower, 5005 LBJ Freeway
P.O. Box 809050, Dallas, TX 75380-9050
214/404-3966; FAX 214/404 3647

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replaced by this project could continue to operate within the Part 82 maintenance/leak repair strictures for the foreseeable future without replacement.

Rob Brager and I look forward to discussing this and other issues with you.

Sincerely,

Mike James

Michael A. James

MAJ/pn

cc: Rob Brager, Beveridge & Diamond
Bob Moore, Taft Plant, OCC

SUPPLEMENTAL ENVIRONMENTAL PROJECT: TAFT PLANT

In connection with settlement of an enforcement action initiated by the Environmental Protection Agency, now joined by the Department of Justice, OxyChem offers for the government's consideration as a Supplemental Environmental Project the CFC-usage elimination project described below. This project would be implemented in furtherance of OxyChem's policy of eliminating CFC refrigerant use wherever technologically and economically feasible.

Project Description

The Taft Plant is prepared to implement a major project to replace five large industrial water chillers, along with associated electrical upgrades, controls, foundations, piping and pumps. This project would have two chief purposes: First, it will allow replacement of the present refrigerant (CFC-11, an ozone-depleting substance) with HFC-134A, which is not an ozone depleter subject to regulatory controls and production phase-out. Second, it will upgrade the dependability of systems that have increasingly required repair due to wear and tear. This project could be initiated in 1996 and completed in mid-1997 (approximately 52 weeks for total implementation).

Regulatory Context

The refrigeration equipment involved in this project is industrial process equipment subject to the "Refrigerant Recycling Rule" first adopted by EPA on May 14, 1993, and amended on August 8, 1995. These rules generally require repair of certain CFC refrigerant leaks, and, if leak rates cannot be controlled to specified levels, require the retrofit or replacement of the leaking refrigeration system within up to two years. The rules allow continued emissions of CFCs through leak losses, so long as the annual leak rate does not exceed 35% of the system refrigerant charge. The system replacement requirement does not take effect unless and until a complex process of leak repair and remeasurement has demonstrated that emissions cannot be controlled consistent with the rule.

The Taft Plant's five chillers have a total refrigerant charge of 7600 pounds of R-11 and are not at risk, near term, of required replacement. Leaks of CFC refrigerant are inherent in older equipment, however, and replacement of the chillers would stop the emissions of CFCs beginning with the mid-1997 timeframe. Without the replacement, the rules would allow the leak of just short of 35% of each system's CFC charge, without mandating repair, each year. In theory, at least, the entire 7600 lb. could be emitted over a three-year period without any regulatory constraints. Replacement with equipment using an HFC refrigerant would be a proactive, environmentally protective move not required by the rules.

Costs and Conclusion

Estimated cost of the project is $3.1MM. The entire cost of this voluntary project probably does not quality for SEP treatment, but a significant portion should. Total phaseout of CFC use and avoidance of emissions can be assigned an environmentally protective value, and OxyChem nominates approximately 1/3 the total cost of the chiller replacement project, or $1.0MM, as that value.