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

APR 2 6 2016

BY REGULAR MAIL AND ELECTRONIC MAIL

Benjamin S. Lippard, Esq.
Vinson & Elkins, LLP
2200 Pennsylvania Avenue, Suite 500 West
Washington, CD 20037-1701

Re: Diamond Alkali Superfund Site, Lower 8.3 Miles of Lower Passaic River, Essex and Hudson Counties, New Jersey
Administrative Settlement Agreement and Order on Consent for Remedial Design
USEPA Region 2 CERCLA Docket No. 02-2016-2021

Dear Mr. Lippard:

By letter dated March 31, 2016, the U.S. Environmental Protection Agency ("EPA") notified potentially responsible parties ("PRPs"), including your client Occidental Chemical Corporation ("OxyChem"), of their potential liability for the lower 8.3 miles of the Lower Passaic River, part of the Diamond Alkali Superfund Site. By this letter, EPA wishes to know whether OCC will consensually perform the remedial design ("RD") for the remedy selected in the Record of Decision ("ROD") for the lower 8.3 miles.

EPA has enclosed herewith a draft Administrative Order on Consent and Settlement Agreement for Remedial Design ("RD AOC") and Statement of Work ("SOW"). EPA seeks commencement of field work for the RD by the end of 2016, and to that end, EPA seeks signature of the RD AOC by August 31, 2016.

EPA acknowledges and takes very seriously the concerns that your clients, OxyChem, Maxus Energy Corporation ("Maxus") and Tierra Solutions, Inc. have expressed. As indicated in EPA's letter dated March 31, 2016, EPA expects to include other major PRPs in the remedial action negotiations, which will address the implementation of and/or payment for EPA's selected remedy and reimbursement of EPA's costs incurred for the Lower Passaic River. In the March 31, 2016 letter, EPA stated the Agency's intent to offer certain PRPs an opportunity for a cash out settlement with respect to this operable unit. When EPA contacts the PRPs that may be eligible for a cash out settlement, we will simultaneously communicate with the remaining non-cash out PRPs and encourage them to meet and discuss a workable approach to sharing responsibility for implementation and funding of the remedy. EPA will convey very clearly, so that there is no room for doubt, that recalcitrance will not be rewarded, and that we will expect any PRP that is not eligible for cash-out to participate appropriately in the remedial action.

Further, while it is an important EPA requirement that OxyChem be the performing party for the RD, should discussions with the other PRPs be productive, EPA is not opposed to amending the RD AOC to add settling parties that are participating as funding parties. We encourage your clients to contact other financially capable PRPs responsible for contaminants of concern for Operable Unit 2 ("OU2") of the Site, to initiate negotiations aimed at funding the remedial design.

Finally, it is EPA's practice to pursue and enlist all viable PRPs in performing and or funding response work. For site-specific reasons, as well as timing, we believe that entering into an RD AOC with OxyChem as the sole performing party is the best way to move forward with the remedial design for OU2. We are not, however, deviating from our practice and remain committed to pursuing all the OU2 PRPs. By way of example, EPA recently concluded enforcement at the Mercury Refining Site in New York. At that site, EPA pursued and reached settlements with 391 parties. While cooperating parties conducted the RD/RA, EPA pursued recalcitrant parties and achieved participation by all viable PRPs.

Please advise EPA within twenty-one (21) days of the date of this letter whether you are willing to enter into the RD AOC in substantially the same form as the enclosed draft. EPA is available to meet with your representatives at your earliest convenience to discuss this matter.

Please send your response to:

Juan Fajardo
Assistant Regional Counsel
New Jersey Superfund Branch
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 2
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with a copy to:

Alice Yeh
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If you have any questions regarding this letter, you may contact Mr. Fajardo via email at fajardo.juan@epa.gov or by phone at (212) 637-3132, or Assistant Regional Counsel Sarah Flanagan at flanagan.sarah@epa.gov or by phone at (212) 637-3136.

We appreciate and look forward to your prompt response to this letter.

Sincerely yours,

Nicoletta DiForte

Nicoletta DiForte
Deputy Director for Enforcement
Emergency and Remedial Response Division

Enclosures: Draft RD AOC and SOW

cc: William H. Hyatt, Jr., Esq., Coordinating Counsel,
Lower Passaic River Cooperating Parties Group
Brian Donohue, USDOJ
Laura Rowley, USDOJ
Mark Barash, Esq., USDOI
Kate Barfield, NOAA
John Dickinson, New Jersey Attorney General's Office