

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY

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UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No. 2:22-cv-07326
	)	
ALDEN LEEDS, INC. et al.,	)	
	)	
	)	
Defendant.	)	
_____	)	

**DECLARATION OF ALICE YEH**

I, Alice Yeh, hereby make the following declaration pursuant to 28 U.S.C. § 1746:

1. I submit this Declaration in support of the United States’ Response to Occidental Chemical Corporation’s (OCC’s) Motion to Intervene.
  
2. I am an Environmental Engineer at the United States Environmental Protection Agency (EPA), Region 2. I am presently employed as an EPA Remedial Project Manager (Project Manager) in the Passaic/Hackensack/Newark Bay Remediation Branch of Region 2’s Superfund and Emergency Management Division.
  
3. I have been employed by EPA as an Environmental Engineer since June 12, 1994. Prior to working at EPA, I worked as an engineer at Lawler, Matusky and Skelly Engineers from 1990-1992.
  
4. I earned a bachelor’s degree in environmental engineering from the Massachusetts Institute of Technology in 1990 and a Master of Public Policy from Harvard’s Kennedy School of Government in 1994. During my employment with EPA, I have taken numerous courses and

seminars for the purpose of enhancing the skills related to my duties as a Project Manager at EPA.

5. I have worked as a Remedial Project Manager on the Diamond Alkali Superfund Site (Site), focusing on the lower 8.3 miles of the Lower Passaic River, since May 2003. Among other duties, I am responsible for planning and managing the technical activities performed by contractors to advance the cleanup of the lower 8.3 miles, for overseeing the remedial design of the lower 8.3 miles conducted by OCC, through its subsidiary Glenn Springs Holdings, Inc., and for communicating with public stakeholders on the progress of the cleanup of the lower 8.3 miles.

6. In 1984, EPA listed the Site on the EPA Superfund Program's National Priorities List (NPL), established pursuant to Section 105 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (CERCLA), 42 U.S.C. § 9605. The Site is located in or flows through Essex, Hudson, Passaic, and Bergen counties. It runs through multiple environmental justice communities. The Site is currently divided into the following four operable units (OU):

- a. OU1 is the response action(s) to address contamination at the former Diamond Alkali Company manufacturing facility located at 80 Lister Avenue, Newark, New Jersey, and 120 Lister Avenue, an adjacent property purchased by the Diamond Shamrock Chemicals Company (formerly known as Diamond Alkali Company) and used in connection with the 80 Lister Avenue facility;
- b. OU2 is the response action(s) to address contamination of the lower 8.3 miles of the Lower Passaic River Study Area (LPRSA);
- c. OU3 is the response action(s) to address contamination of Newark Bay; and

- d. OU4 is the response action(s) to address contamination of the LPRSA, which is the 17-mile tidal reach of the Lower Passaic River from Newark Bay to Dundee Dam, including the lower 8.3 miles of the river.

7. Since response actions began at the Site, EPA has identified and sent general notice letters to over 100 potentially responsible parties (PRPs) for the Lower Passaic River Study Area under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a).

8. On March 3, 2016, EPA issued a Record of Decision<sup>1</sup> (ROD) selecting a remedy for OU2, the lower 8.3 miles of the Lower Passaic River. In the OU2 ROD, EPA identified many hazardous substances in OU2 sediments, but found that eight contaminants of concern pose the greatest potential risks to human health and the environment: dioxins/furans, PCBs, mercury, DDT (and its breakdown products), PAHs, dieldrin, copper, and lead. Based on EPA's human health and ecological risk assessments, of those eight contaminants of concern, dioxins/furans are responsible for as much as 80% to 90% of the risks, relative to the risks the other contaminants of concern pose. PCBs are responsible for as much as 10% to 20% of the risks. The estimated cost of the remedy for OU2 is \$1.38 billion. The contamination and risk in the upper 9 miles of the LPRSA have been investigated and characterized and, similar to OU2, the primary risk drivers are dioxins/furans and PCBs, with mercury, DDT (and its breakdown products), PAHs, dieldrin, copper, and lead also identified as COCs. EPA selected an interim remedy for OU4 in a ROD issued on September 28, 2021. The estimated cost of the interim remedy is \$441 million.

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<sup>1</sup> The OU2 ROD is available at <https://semspub.epa.gov/work/02/396055.pdf>. The OU4 Interim ROD is available at <https://semspub.epa.gov/work/02/630399.pdf>.

9. On March 31, 2016, EPA notified over 100 parties that they are potentially responsible parties (PRPs) for the lower 8.3 miles of the LPRSA. Exhibit A, March 31, 2016, letter from Nicoletta DiForte, EPA. Most of these parties had previously received general notice letters from EPA related to the LPRSA, but a few were being noticed of their potential liability for the first time. EPA's notice informed the parties that under Section 107(a) of CERCLA, PRPs may be held liable for costs incurred by the government in taking response actions at the Site, and that, as responsible parties, they may also be subject to orders issued by EPA requiring one or more of the noticed parties to perform response work related to OU2. *See* Exhibit A.

10. In its March 31, 2016, notice letter, EPA explained its approach to implementing the OU2 remedy. First, EPA sought to determine if OCC would voluntarily perform the remedial design for OU2 under EPA oversight. Second, after execution of an administrative order on consent and settlement agreement for the OU2 remedial design, EPA would initiate negotiations with OCC and other major PRPs to implement and/or pay for the OU2 remedial action. Finally, EPA would identify parties that might be eligible for a cashout settlement with EPA for OU2.

11. On September 30, 2016, EPA and OCC entered into Administrative Settlement Agreement and Order on Consent for Remedial Design, CERCLA Docket No. 02-2016-2021, pursuant to which OCC is performing, under EPA oversight, the remedial design for the remedy selected in the OU2 ROD.<sup>2</sup>

12. In early 2017, consistent with EPA's enforcement framework, EPA identified a number of PRPs that were not associated with any of the eight contaminants of concern identified for OU2 and entered into "early" cashout settlement negotiations with those parties. In 2018, EPA

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<sup>2</sup> Administrative Settlement Agreement and Order on Consent for Remedial Design, CERCLA Docket No. 02-2016-2021, *available at* <https://semspub.epa.gov/work/02/453915.pdf>

and 15 PRPs entered into a non-de minimis cashout settlement agreement under Section 122(h) of CERCLA resolving those parties' liability to EPA for OU2.<sup>3</sup> Those settling parties collectively paid EPA \$4,209,000, which was placed in EPA's special account for the Site.

13. In letters dated March 2017, *see* Exhibit B, and May 2017,<sup>4</sup> EPA informed all the PRPs that had been noticed in 2016 that the Agency intended to use the services of a third party allocator with the expectation of offering cashout settlements to additional parties. After receiving feedback from various parties including OCC, EPA hosted a meeting in its New York offices on August 28, 2017, which OCC attended and participated in, that provided the PRPs with an opportunity to share their views on EPA's framework for implementation of the OU2 remedy, including EPA's intention to arrange for an allocation among just some of the PRPs. In a September 18, 2017 letter, *see* Exhibit C, EPA notified the parties that after careful consideration, the Agency had concluded that transparency and fairness would be served by having one allocation for all the private party PRPs, not just some of the PRPs as EPA had originally intended. At the August meeting, EPA reiterated its intention to initiate negotiations with OCC and other major PRPs for the implementation and funding of the remedy for OU2.

14. In 2017, through its prime contractor CSRA, later replaced by Eastern Research Group (ERG), EPA retained AlterEcho to perform an allocation for OU2 that would assign non-binding shares of responsibility to the OU2 PRPs (excluding the public entities), and determine relative groupings, or tiers, corresponding to the nature of the PRPs' impact on OU2 and the remedial action for OU2. On October 13, 2017, EPA hosted a meeting at its New York offices to initiate

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<sup>3</sup> Administrative Settlement Agreement under Section 122(h)(1) of CERCLA, 42 U.S.C. § 9622(h)(1), CERCLA Docket No. 02-2017-2023, *available at* <https://semspub.epa.gov/work/02/518131.pdf>.

<sup>4</sup> The May 2017 letter is Attachment E to the Allocation Guide, which is Attachment G to the Final Allocation Recommendation Report. *See* n.5 below for website address.

the allocation by introducing the allocator, AlterEcho, including David Batson and others on the AlterEcho team, to the PRPs and having a discussion about the allocation process. EPA provided parties with an opportunity to participate in person and/or via conference call. OCC attended this meeting via conference call.

15. CSRA/AlterEcho, and later ERG/AlterEcho, developed work plans for the allocation, based on EPA's statement of work, that involved the following major steps. After the allocation began, the work plan was modified several times, but the major steps remained the same. The allocation process is also summarized in the Final Allocation Recommendation Report, December 28, 2020 (Allocation Report), and the Allocation Guide, which is Attachment G thereto.<sup>5</sup>

- a. *Preliminary Work*: CSRA/AlterEcho holds a kick-off meeting with EPA to discuss tasks and expectations for the project, including strategy for conduct of the allocation, a PRP outreach plan, timeline, and schedule
- b. *Public Announcement of Project*: CSRA/AlterEcho participates in an EPA-sponsored meeting with the OU2 private party PRPs to announce and explain the allocation
- c. *Initial Allocation Process and Database Design*: CSRA/AlterEcho prepares a description of the allocation process, including recommendations for: (1) data sources to be considered for the allocation; (2) applicable allocation factors; and (3) methodology for determination of shares. CSRA/AlterEcho designs and develops a searchable database of non-confidential information to contain and

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<sup>5</sup> Final Allocation Recommendation Report and Supporting Documents, <https://semspub.epa.gov/src/collection/02/SC41378>

organize all of the information and data used in the allocation received from EPA and the private party PRPs participating in the allocation referred to as “participating allocation parties”

- d. *Draft and Final Allocation Process/Database Design:* CSRA/AlterEcho meets with participating allocation parties to discuss and obtain comments on the draft design of the allocation process and database. CSRA/AlterEcho completes the design of the allocation process based on input received from EPA and the participating allocation parties. CSRA/AlterEcho, and later ERG/AlterEcho, analyze each allocation party’s contribution of each contaminant of concern to OU2 sediments, as weighted by the relative risk each contaminant of concern poses to human health and the environment, and other relevant equitable factors. (The Allocation Report provides a detailed description of the Allocation Methodology on pages 19-34 and the Allocation Protocol is Attachment H to the Allocation Report.)
- e. *Draft and Final PRP Data Reports:* CSRA/AlterEcho, and later ERG/AlterEcho, develop individual data reports for each private noticed party. The data reports summarize, organize, and analyze information regarding each party’s relation to OU2 and the OU2 contaminants of concern. The participating allocation parties have an opportunity to review and comment on draft data reports for themselves and the other allocation parties. ERG/AlterEcho complete final data reports that incorporate the parties’ comments and that are included in Attachment J to the Allocation Report.

- f. *Draft and Final Allocation Recommendation Report*: The Allocation Report designates shares of responsibility among the private party PRPs, as appropriate based on the allocation analysis and includes a recommendation on the possible grouping of the OU2 PRPs into tiers of similar levels of responsibility. ERG/AlterEcho used a custom software program they created specifically for the allocation to calculate shares. (A spreadsheet summarizing the outputs and operations of the allocation computations is included as Attachment K to the Allocation Report.)

16. The Passaic Valley Sewerage Commission (PVSC) and the four municipalities (the CSO Municipalities) that received the March 31, 2016 notice of liability were not invited to participate in the allocation, and were not assigned shares of responsibility, though the allocation does incorporate an analysis of the PVSC system because it was relevant to the shares of many of the allocation parties.

17. The allocation began in the fall of 2017. The majority of the invited PRPs agreed to participate in the allocation, but OCC and nine other parties did not participate. Both EPA and AlterEcho had encouraged all private noticed parties to participate. EPA and AlterEcho explained to the parties that the goal of the allocation was a final report that would assign shares of responsibility to all the private party OU2 PRPs so it was in each party's best interest to participate in the process.

18. On October 19, 2017, EPA met with OCC to address some questions and concerns OCC had about the allocation and underscore EPA's view that allocation and negotiation – not litigation – is the best approach to resolving liability for OU2. After the meeting, EPA provided a detailed, written response to address OCC's questions and again encouraged OCC to participate



“actively and fully” in the allocation, but OCC still declined to participate. Exhibit D, November 28, 2017, letter from Eric Wilson. Instead of participating in the allocation, in the summer of 2018, OCC filed the complaint in *Occidental Chemical Corporation v. 21st Century Fox America, et al.*, Civil Action No. 18-11273.

19. At the beginning of the allocation, EPA provided CSRA/AlterEcho with approximately 130,000 pages of factual documentation about the noticed private parties. This included documents from EPA’s files provided by parties in response to EPA information requests or independently obtained by EPA over four decades of investigation and enforcement at the Site, as well as factual material the State of New Jersey made publicly available following the settlement of its lawsuit concerning the Site.<sup>6</sup> Over the years, OCC and parties affiliated with OCC submitted to EPA documents with information pertaining to about 80% of the PRPs. The information EPA provided to CSRA/AlterEcho included this documentation as it had been maintained in EPA’s files for the Site.

20. Throughout the allocation, the participating allocation parties submitted factual documents as well as position briefs and responsive briefs, expert reports, and attachments thereto, for CSRA/AlterEcho, and later ERG/AlterEcho, to review and consider in conducting the allocation. At various points in the allocation process, EPA, in response to requests by the parties, agreed to increase the number of pages the participating allocation parties could submit and CSRA/AlterEcho, and later ERG/AlterEcho, could review.

21. CSRA/AlterEcho, and later ERG/AlterEcho, conducted the allocation as an alternative dispute resolution (ADR) process pursuant to the provisions of the ADR Act of 1996, 5 U.S.C.

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<sup>6</sup> These documents included information regarding many of the defendants in *New Jersey Dep’t Env’tl. Prot. v. Occidental Chem. Corp.*, Civil Action No. L-9868-05 (N.J. Super. Ct. Law Div.), available at <https://www.nj.gov/dep/passaicdocs/#>.

Section 571, et seq., and relevant state authorities. The participating allocation parties had numerous opportunities to provide input, by submitting factual information, position briefs, responsive briefs, and expert reports, as discussed above, and comments on various documents to CSRA/AlterEcho and later ERG/AlterEcho.

22. EPA worked with CSRA/AlterEcho, ERG/AlterEcho, and the participating allocation parties throughout the allocation to make changes to the allocation process to accommodate various developments. In addition to increasing page limits as discussed above and developing a second early cashout opportunity as discussed below in Paragraph 23, EPA addressed confidentiality concerns raised by the parties after OCC initiated litigation and provided additional time for the process due to the Covid-19 pandemic.

23. After the allocation began, at the request of the participating allocation parties, EPA agreed to consider whether a small number of PRPs might be eligible for a potential second iteration of the early cashout settlement before the completion of the allocation. To that end, EPA allowed participating allocation parties to submit information to AlterEcho to support their early cashout requests. EPA asked AlterEcho to perform a detailed evaluation of the information provided by these self-nominated parties to determine whether they met the early cashout criteria, i.e., no association with the release or disposal of any of the eight contaminants of concern into the LPRSA. EPA entered into a second non-de minimis cashout settlement agreement under Section 122(h) of CERCLA with six parties/seven facilities (one party resolving its alleged liability for two facilities), which became final on April 16, 2021. This

settlement was based on EPA's review of AlterEcho's evaluation. Under that settlement, the six parties paid EPA a total of \$1,964,200.<sup>7</sup>

24. AlterEcho issued the Allocation Report at the end of December 2020. EPA and the Department of Justice (DOJ) reviewed the Allocation Report and determined that many parties should be eligible for cashout settlements for the facilities evaluated in the allocation, while others should be responsible for funding and/or implementing the remedy.

25. EPA and each participating allocation party have agreed that the Allocation Report can be made public. Thus, at the time of lodging of the proposed consent decree, EPA made the Allocation Report and all of the supporting factual documentation available on its public website. *See* n.5. This material totals almost 700,000 pages. Documents are Bates numbered with the prefix "PAS", if received from EPA and "PAP" if received from a participating allocation party. Downloading some of this material can be time-consuming due to the volume and size of the documentation. OCC informed EPA that, for some of the supporting documents, it took some time for the material to download, but OCC was able to download all of the supporting material before the public comment period on the proposed consent decree began.

26. EPA frequently receives and responds to Freedom of Information Act (FOIA) requests seeking information related to the Site, including in particular OU2 and OU4 of the Site. Requestors are not required to identify the party for which they are seeking the information, but EPA is aware that attorneys representing OCC have submitted 18 FOIA requests since 2017. In addition, EPA has responded to numerous FOIA requests from many parties related to the Site over the years and has released more than 23,000 Site-related documents, over 400,000 pages,

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<sup>7</sup> Administrative Settlement Agreement under Section 122(h)(1) of CERCLA, 42 U.S.C. § 9622(h)(1), CERCLA Docket No. 02-2020-2013, *available at* <https://semspub.epa.gov/work/02/591178.pdf>.

since 2013 when EPA began posting FOIA documents to a publicly available website called FOIAonline, <https://foiaonline.gov/>. Prior to the advent of FOIAonline in 2013, EPA received and responded to hundreds of other FOIA requests pertaining to the Site.

27. Additionally, EPA has made more than 1,500 Site-related documents, including information on background, modeling, data, and fact sheets, available to the public in the digital library on the website <http://www.ourpassaic.org/>, which was established by EPA over 15 years ago.

Executed on:

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Alice Yeh  
Remedial Project Manager  
US Environmental Protection Agency, Region 2

# EXHIBIT A



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**

**REGION II**

**290 BROADWAY**

**NEW YORK, NEW YORK 10007-1866**

**MAR 31 2016**

**BY CERTIFIED MAIL,**  
**RETURN RECEIPT REQUESTED & ELECTRONIC MAIL**

To: See Attachment 1 - List of Addressees

Re: Diamond Alkali Superfund Site, Lower 8.3 Miles of Lower Passaic River,  
Essex and Hudson Counties, New Jersey

Notice of Potential Liability under 42 U.S.C. § 9607(a)

Commencement of Negotiations for Remedial Design

As you know, the U.S. Environmental Protection Agency ("EPA") is charged with responding to the release or threatened release of hazardous substances, pollutants and contaminants into the environment and with enforcement responsibilities under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. §§ 9601-9675 (also known as the "Superfund" law). More information about CERCLA, including a copy of the Superfund law, may be found at [www.epa.gov/superfund](http://www.epa.gov/superfund).

EPA has documented the release and threatened release of hazardous substances, pollutants and contaminants into the lower 8.3 miles of the Lower Passaic River, which is part of the Diamond Alkali Superfund Site (the "Site"), located in Essex and Hudson Counties, New Jersey. In response to the release and threatened release of hazardous substances into the environment at the Lower Passaic River Study Area, EPA has spent public funds and anticipates spending additional public funds.

In 1983, sampling at and in the vicinity of 80 Lister Avenue and in the Passaic River revealed high levels of dioxin. In 1984 after investigations by the state of New Jersey and the EPA, the Site was listed on the EPA Superfund program's National Priorities List ("NPL") established pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605. Dioxin, pesticides and other hazardous substances were found in the soil and groundwater at 80-120 Lister Avenue; and dioxin, polychlorinated biphenyls ("PCBs"), mercury, metals and pesticides were found in sediment in the Lower Passaic River.

In 1994, Occidental Chemicals Corporation ("OCC") signed an administrative order on consent with EPA to investigate a six-mile stretch of the Lower Passaic River, with the work performed

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by Tierra Solutions, Inc. (“Tierra”) on OCC’s behalf. This investigation found contaminants that originated from the Diamond Alkali facility, in particular, 2,3,7,8-TCDD and pesticides, throughout the six miles, as well as other contaminants not necessarily linked to Diamond Alkali’s operations, and showed that contaminated sediments moved into and out of the six-mile stretch, leading to the conclusion that a more comprehensive study was required. In 2002, EPA expanded the scope of the investigation to include the entire 17-mile Lower Passaic River.

Subsequently, EPA identified other potentially responsible parties (“PRPs”) for the Lower Passaic River besides OCC. A number of companies that owned or operated facilities from which hazardous substances were potentially discharged to the river formed the Cooperating Parties Group (“CPG”). In 2004, EPA signed a settlement agreement with the CPG in which the group agreed to pay for EPA to perform the RI/FS for 17-mile Lower Passaic River Study Area (“LPRSA”). The settlement agreement was amended in 2005 and 2007, adding more parties, for a total of over 70 parties.

Also in 2004, EPA and OCC signed an agreement in which OCC agreed to conduct a separate RI/FS of the Newark Bay Study Area (Newark Bay and portions of the Hackensack River, Arthur Kill and Kill van Kull), investigating the extent of contamination under EPA oversight. As with the 1994 agreement, Tierra is performing the work on OCC’s behalf. Finally, also in 2004, EPA formed a partnership with the U.S. Army Corps of Engineers, New Jersey Department of Transportation, U.S. Fish and Wildlife Service, National Oceanic and Atmospheric Administration and NJDEP to conduct a joint study of the LPRSA. The goal of the partnership was, to the extent possible, to integrate the RI/FS being performed under the Superfund program with a Feasibility Study under the Water Resources Development Act.

From 2004 to 2007, EPA investigated contamination in sediment and water of the Lower Passaic River, and investigated the major tributaries, combined sewer overflows and stormwater outfalls to the river. In 2007, the CPG entered into a new agreement with EPA in which the group agreed to take over the performance of the 17-mile LPRSA RI/FS from EPA under EPA oversight. During the course of the 17-mile study, EPA concluded that since the lower 8.3 miles of the river contain the bulk of the contaminated sediment which is the source of most of the risk associated with the Lower Passaic River, addressing this portion of the river first would better support the overall protection of human health and the environment than would awaiting the outcome of the 17-mile RI/FS to make a decision for the entire Lower Passaic River. EPA undertook a targeted RI and focused feasibility study (“FFS”) of the lower 8.3 miles. Sampling results from the RI/FFS demonstrate the presence of hazardous substances in sediments of the lower 8.3 miles of the Lower Passaic River including polychlorinated dibenzo-*p*-dioxins and furans (dioxins and furans), PCBs, polycyclic aromatic hydrocarbons, dichlorodiphenyl-trichloroethane (“DDT”) and its breakdown products and other pesticides, mercury, lead and other metals. The contamination present in sediments throughout the lower 8.3 miles presents an unacceptable human health and ecological risk.

EPA issued the Record of Decision selecting a remedy for the lower 8.3 miles of the Lower Passaic River on March 4, 2016. The selected remedy includes the following elements: 1) an engineered cap will be constructed over the river bottom of the lower 8.3 miles; 2) before the cap is placed, the river will be dredged bank-to-bank (approximately 3.5 million cubic yards) so the cap can be placed without increasing flooding and to allow for continued commercial use of the federally authorized navigation channel in the 1.7 miles of the river closest to Newark Bay;

3) dredged materials will be barged or pumped to a sediment processing facility in the vicinity of the Lower Passaic River/Newark Bay shoreline for dewatering, and dewatered materials will be transported to permitted treatment facilities and landfills in the United States or Canada for disposal; 4) mudflats dredged during implementation of the remedy will be covered with an engineered cap consisting of one foot of sand and one foot of mudflat reconstruction substrate; 5) institutional controls will be implemented to protect the engineered cap, and New Jersey's existing prohibitions on fish and crab consumption will remain in place and will be enhanced with additional community outreach; 6) long-term monitoring and maintenance of the engineered cap will be required to ensure its stability and integrity; and 7) long-term monitoring of fish, crab and sediment will be performed to determine when interim remediation milestones, remediation goals and remedial action objectives are reached. The estimated cost of the cleanup project is \$1.38 billion. Additional information about the Site, including the lower 8.3 miles of the Lower Passaic River, such as the RI/FFS reports and appendices, the Proposed Plan and the Record of Decision, can be found on EPA Region 2's website at <http://www.ourPassaic.org>

The documents that form the basis for EPA's selected remedy are contained in the administrative record, which is maintained at EPA's offices in New York City, and at the following administrative record repositories located near the Site:

Newark Public Library  
5 Washington Street  
Newark, New Jersey

Elizabeth Public Library  
11 South Broad Street  
Elizabeth, New Jersey

You may inspect copies of the administrative record during regular business hours at EPA's offices in New York City or at the local administrative record repositories identified above. The administrative record files can also be accessed online at:  
<https://semspub.epa.gov/src/collection/02/AR63167>

#### **NOTICE OF POTENTIAL LIABILITY**

Under Section 107(a) of CERCLA, responsible parties may be held liable for costs incurred by EPA (including interest) in taking response actions at and around sites where hazardous substances have been released, including investigative, planning, removal, remedial, and enforcement actions. Responsible parties also may be subject to orders requiring them to take response actions themselves. Responsible parties under CERCLA include current owners or operators of a facility, past owners or operators of a facility at the time of disposal of hazardous substances, and persons who arranged for the treatment or disposal of hazardous substances which came to be located at a facility. EPA has previously notified over 100 parties of their potential liability under CERCLA for the Lower Passaic River Study Area, which includes the lower 8.3 miles. By this letter, we notify all the parties on the attached list of potential liability for the lower 8.3 miles.



## **FRAMEWORK FOR REMEDIAL DESIGN/REMEDIAL ACTION IMPLEMENTATION AND SETTLEMENT**

### **REMEDIAL DESIGN ADMINISTRATIVE ORDER NEGOTIATIONS**

EPA seeks to determine whether OCC will voluntarily perform the remedial design ("RD") for the remedy selected in the ROD. EPA intends to send a separate letter to OCC, enclosing a draft Administrative Order on Consent and Settlement Agreement for Remedial Design ("RD AOC"). EPA wishes to secure a commitment to perform the RD so as to ensure commencement of RD field work by the end of 2016. To that end, EPA will seek signature of an RD AOC by or before August 31, 2016.

This notice is not being given in accordance with the "special notice" procedures of Section 122(e) of CERCLA, 42 U.S.C. § 9622(e). EPA has decided not to use the special notice procedures as EPA does not believe that those procedures would facilitate an agreement or expedite remedial action at the Site.

### **REMEDIAL ACTION CONSENT DECREE NEGOTIATIONS**

After execution of the RD AOC, EPA plans to begin negotiation of a remedial action consent decree, under which OCC and the other major PRPs will implement and/or pay for EPA's selected remedy for the lower 8.3 miles of the Lower Passaic River and reimburse EPA's costs incurred for the Lower Passaic River. In the meantime, we encourage the major PRPs to meet and discuss a workable approach to sharing responsibility for implementation and funding of the remedy.

### **OPPORTUNITY FOR CASH-OUT SETTLEMENT**

Based on the information EPA has reviewed, the Agency believes that some of the parties that have been identified as PRPs under CERCLA, and some parties not yet named as PRPs, may be eligible for a cash out settlement with EPA for the lower 8.3 miles of the Lower Passaic River. Typically such a settlement would include: (1) a premium; (2) a covenant not to sue, which is a promise that EPA will not bring any future legal action against the settling party for the specific matters addressed in the settlement (i.e. concerning the lower 8.3 miles); and (3) protection from contribution claims, which provides a settling party with protection from being sued in a contribution action by other responsible parties for the specific matters addressed in the settlement. EPA intends to provide separate notice of the opportunity to discuss a cash out settlement at a later date.

Some or all of the costs associated with this notice may be covered by current or past insurance policies issued to you. Most insurance policies will require that you timely notify your carrier(s) of a claim against you. To evaluate whether you should notify your insurance carrier(s) of this demand, you may wish to review current and past policies, beginning with the date of your first contact with the Diamond Alkali Site, including the Lower Passaic River Study Area, up to the present. Coverage depends on many factors, such as the language of the particular policy and state law.

Finally, EPA has developed a fact sheet about the Small Business Regulatory Enforcement Fairness Act and information on resources for small businesses, which is available on the

Agency's website at <http://www.epa.gov/compliance/small-business-resources-information-sheet>.

If you have any questions regarding this letter, you may contact Juan Fajardo via email at [fajardo.juan@epa.gov](mailto:fajardo.juan@epa.gov) or by phone at (212) 637-3132, or Sarah Flanagan at [flanagan.sarah@epa.gov](mailto: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 Di Forte  
Deputy Director for Enforcement  
Emergency and Remedial Response Division

Attachment 1 - List of Addressees

cc: Brian Donohue, Esq., USDOJ  
Mark Barash, Esq., USDOJ  
Kate Barfield, Esq., NOAA  
John Dickinson, Esq., New Jersey Attorney General's Office

## ATTACHMENT 1

**Parties that Previously Received Notice Letters**

<b>Company</b>	<b>Contact Information</b>	<b>Facility</b>
<p>A.E. Staley Manufacturing Co., Inc. 2200 E. Eldorado Street Decatur, IL 62521-1578</p> <p>Now Tate &amp; Lyle Ingredients Americas LLC</p>	<p>John R. Holsinger, Esq. Two University Plaza, Suite 300 Hackensack, NJ 07601 201-487-9000 (T) <a href="mailto:johnh@jrholsinger.com">johnh@jrholsinger.com</a></p> <p>Heidi R. Balsley, Esquire Corporate Counsel 2200 E. Eldorado Street Decatur, IL 62521 <a href="mailto:Heidi.Balsley@tateandlyle.com">Heidi.Balsley@tateandlyle.com</a></p>	<p>320 Schuyler Avenue and 100 Third Avenue Kearny, NJ</p>
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<p>Pfizer Inc. 235 E. 42<sup>nd</sup> St. New York, NY 10017</p>	<p>Michael McThomas, Esq. Michael P. McThomas PLLC One Lee Hill Road Andover, NJ 07821 973-691-4711(T) 973-985-3740(M) mpm@mmctlaw.com</p>	<p>230 Brighton Road Clifton, NJ</p>
<p>PMC, Inc. 12243 Branford Street Sun Valley, CA 91352</p>	<p>Phillip Kamins, President &amp; CEO PMC Global, Inc. 12243 Branford St Sun Valley, CA 91352 818-896-1101(T)</p>	<p>Kleer Kast 450 Schuyler Avenue Kearny, NJ</p>
<p>Power Test of New Jersey, Inc. 125 Jericho Turnpike Jericho, NY 11753  now Leemilt's Petroleum, Inc., successor to Power Test of NJ, Inc.</p>	<p>Christine Fitter, Asst Secretary Leemilt's Petroleum, Inc. 125 Jericho Turnpike, Suite 103 Jericho, NY 11753 <a href="mailto:cfitter@gettyrealty.com">cfitter@gettyrealty.com</a>  Nicole Moshang, Esq. Manko, Gold Katcher &amp; Fox LLP 401 City Avenue, Ste. 500 Bala Cynwyd, PA 19004 484-430-2324 (T) <a href="mailto:nmoshang@mgkflaw.com">nmoshang@mgkflaw.com</a></p>	<p>Getty Newark Terminal 86 Doremus Ave. Newark, NJ</p>
<p>PPG Industries, Inc. One PPG Place Pittsburgh, PA 15272</p>	<p>Peter T. Stinson, Esq. Dickie McCamey &amp; Chilcote P.C. Two PPG Place, Suite 400 Pittsburgh, PA 15222-5402 412-392-5432(T) <a href="mailto:pstinson@dmclaw.com">pstinson@dmclaw.com</a></p>	<p>29 Riverside Ave. Newark, NJ</p>

<p>PSE&amp;G Corp. P.O. Box 570 Newark, NJ 07101</p>	<p>John F. Doherty, Esq. Associate General Litigation Counsel PSE&amp;G Services Corporation 80 Park Plaza, T5D Post Office Box 570 Newark, NJ 07102 973-430-6478(T) <a href="mailto:John.doherty@pseg.com">John.doherty@pseg.com</a></p> <p>Kevin R. Gardner, Esq. Connell Foley 85 Livingston Avenue Roseland, NJ 07068 973-535-0500(T) <a href="mailto:kgardner@connellfoley.com">kgardner@connellfoley.com</a></p>	<p>155 Raymond Blvd. Newark, NJ &amp; 4<sup>th</sup> St. Harrison, NJ</p>
<p>Purdue Pharma Technologies, Inc. One Stamford Forum Stamford, CT 06901</p>	<p>James (Jay) Stewart, Esq. Lowenstein Sandler PC 65 Livingston Avenue Roseland, NJ 07068 973-597-2522(T) <a href="mailto:jstewart@lowenstein.com">jstewart@lowenstein.com</a></p>	<p>Napp Technologies 199 Main St. Lodi, NJ</p>
<p>Quality Distribution, Inc. 150 East Pennsylvania Avenue Suite 450 Downingtown, PA 19335</p> <p>Quality Carriers, Inc.</p>	<p>Bonni Kaufman, Esq. Holland &amp; Knight, LLP 2099 Pennsylvania Avenue, N.W. Suite 100 Washington, DC 20006 202-419-2547 Telecopier: 202-955-5564 <a href="mailto:Bonni.kaufman@hkllaw.com">Bonni.kaufman@hkllaw.com</a></p>	<p>Chemical Leaman Tank Lines 80 Doremus Avenue Newark, NJ</p>
<p>Reilly Industries, Inc. 1510 Market Square Center 151 North Delaware St. Indianapolis, IN 46204</p> <p>now Vertellus Specialties Inc.</p>	<p>Thomas Mesevage, Esq. Corporate Counsel, Environmental Vertellus Specialties Inc. 900 Lanidex Plaza, Suite 250 Parsippany, NJ 07054-2739 973-515-8611(T) 973-945-7069(M) <a href="mailto:tmesevage@vertellus.com">tmesevage@vertellus.com</a></p> <p>Glenn Harris, Esq. Ballard Spahr Andrews &amp; Ingersoll Plaza 1000, Suite 500 Main Street Voorhees, NJ 08043 856-761-3400(T) <a href="mailto:harrisg@ballardspahr.com">harrisg@ballardspahr.com</a></p>	<p>191 Doremus Ave. Newark, NJ</p>



<p>Roman Asphalt Corporation 14 Ogden Street Newark, NJ 07104</p>	<p>Michael La Morgese, President Roman Asphalt Corporation 14 Ogden St Newark, NJ 07104 973-482-1113(T)</p>	<p>14 Ogden Street Newark</p>
<p>Royce Associates 366 N. Broadway, Ste. 400 Jericho, NJ 11753</p>	<p>A.J.Royce, President Royce Associates, ALP 35 Carlton Ave East Rutherford, NJ 07073 201-438-5200(T)</p> <p>Ronald Bluestein, Esq. Flamm Walton 794 Penllyn Pike Blue Bell, PA 19422 267-419-1500 (T) rbluestein@flammlaw.com</p>	<p>Royce Chemical Company 17 Carlton Avenue East Rutherford, NJ</p>
<p>RSR Corp. 2777 Stemmons Freeway, Suite 1800 Dallas, TX 75207</p> <p>now Revere Smelting and Refining Corporation</p>	<p>Jane C. Luxton, Esq. Christopher Clare, Esq. Clark Hill PLC 601 Pennsylvania Avenue NW North Building, Suite 1000 Washington, DC 20004 202-572-8674(T) 703-598-3275(M) <a href="mailto:jluxton@clarkhill.com">jluxton@clarkhill.com</a> <a href="mailto:cclare@clarkhill.com">cclare@clarkhill.com</a></p>	<p>Revere Smelting &amp; Refining 387 Avenue P Newark, NJ</p>
<p>RTC Properties, Inc. 79 Fifth Avenue New York, NY 10003</p>	<p>Michael L. Rodburg, Esq. Lowenstein Sandler, PC 65 Livingston Avenue Roseland, NJ 07068 973-597-2466(T) mrodburg@lowenstein.com</p>	<p>AT&amp;T/Western Electric 100 Central Ave. Kearny, NJ</p>
<p>S&amp;A Realty Corp. 55 Passaic Avenue Kearny, NJ 07032</p>	<p>Jeffrey Pollock, Esq. Fox Rothschild P.O. Box 5231 Princeton, NJ 08543 609-896-7660(T) jmpollock@foxrothschild.com</p>	<p>American Modern Metals 44 Passaic Ave. (a/k/a 25 Belgrove Drive) Kearny, NJ</p>
<p>Safety Kleen EnviroSystems Co. 1301 Gervais St. Columbia, SC 29201</p> <p>McKesson Corporation for itself and for Safety-Kleen EnviroSystems, Inc.</p>	<p>John Edgcomb, Esq. Law Offices of John Edgcomb 115 Sansome St., Suite 805 San Francisco, CA 94104 415-399-1555(T) jedgcomb@edgcomb-law.com</p>	<p>600 Doremus Ave. Newark, NJ</p>

<p>Schiffenhaus Packaging Corp. c/o Rock-Tenn Company 504 Thrasher Street Norcross, GA 30071</p>	<p>Camille V. Otero, Esq. Gibbons, PC One Gateway Center Newark, NJ 07102-5310 <a href="mailto:cotero@gibbonslaw.com">cotero@gibbonslaw.com</a></p>	<p>204 Academy Street 49 Fourth Street 2013 McCarter Highway Newark, NJ</p>
<p>Sequa Corporation 200 Park Avenue New York, NY 10166</p>	<p>Brian L. Buniva, Esq. Senior Counsel &amp; Senior Director Environment, Health &amp; Safety Sequa Corporation 707 E. Main Street, Suite 1450 Richmond, VA 23219 845-230-7374 (Direct) 804-873-0610 (Mobile) <a href="mailto:Brian_Buniva@sequa.com">Brian_Buniva@sequa.com</a></p> <p>Gary P. Gengel, Esq. Kegan A. Brown, Esq. Latham &amp; Watkins, LLP 885 Third Avenue New York, NY 10022-4834</p>	<p>Sun Chemical Corporation 185 Foundry Street Newark, NJ (prior to 1987)</p>
<p>Seton Company, Inc. 1000 Madison Avenue Norristown, PA 19403\  now Seton Tanning</p>	<p>Lawrence E. Bradford, Esq. Cole Schotz, PC PO Box 800 25 Main Street Hackensack, NJ 07601-7015 201-525-6205(T) <a href="mailto:lbradford@coleschotz.com">lbradford@coleschotz.com</a></p>	<p>Seton Leather Company 849 Broadway Newark, NY 07104</p>
<p>SpectraServ, Inc. 75 Jacobus Avenue Kearny, NJ 07032</p>	<p>Diana Buongiorno, Esq. Chiesa Shahinian &amp; Giantomassi, PC One Boland Dr West Orange, NJ 07052 973-530-2075(T) <a href="mailto:dbuongiorno@csglaw.com">dbuongiorno@csglaw.com</a></p>	<p>75 Jacobus Ave. Kearny, NJ</p>
<p>STWB, Inc. c/o Bayer Corporation 100 Bayer Road Pittsburgh, PA 15205</p>	<p>Timothy I. Duffy, Esq. Coughlin Duffy LLP Post Office Box 1917 350 Mount Kemble Avenue Morristown, NJ 07962-1917 973-631-6002(T) <a href="mailto:tduffy@coughlinduffy.com">tduffy@coughlinduffy.com</a> <a href="mailto:lhall@coughlinduffy.com">lhall@coughlinduffy.com</a> (Assistant)</p>	<p>Lehn &amp; Fink Products Corp. 192-194 Bloomfield Avenue Bloomfield, NJ 07003</p> <p>Thomasett Colors/Sterling 120 Lister Ave. Newark, NJ</p>

<p>Sun Chemical Corporation 35 Waterview Boulevard Parsippany, NJ 07054-1285</p>	<p>Warren W. Faure, Esq. EH&amp;S Counsel Sun Chemical Corporation 35 Waterview Boulevard Parsippany, NJ 07054 973-404-6590(T) <a href="mailto:Warren.faure@sunchemical.com">Warren.faure@sunchemical.com</a></p> <p>Ted Wolff, Esq. Manatt, Phelps &amp; Phillips, LLP 7 Times Square New York, NY 10036 <a href="mailto:twolff@manatt.com">twolff@manatt.com</a></p>	<p>Sun Chemical Corporation 185 Foundry Street Newark, NJ (1987 to present)</p>
<p>Teval Corporation 99 Cherry Hill Road, Suite 105 Parsippany, NJ 07054</p>	<p>Lee D. Henig-Elona, Esq. Gordon &amp; Rees 18 Columbia Turnpike, Suite 220 Florham Park, NJ 07932 973-549-2520(T direct) 973-549-2500(T office) <a href="mailto:lhenig-elona@gordonrees.com">lhenig-elona@gordonrees.com</a></p>	<p>Guyon Pipe 900-1000 South 4<sup>th</sup> Street Harrison, NJ</p>
<p>Teva Pharmaceuticals USA, Inc. 1090 Horsham Road North Wales, PA 19454</p>	<p>Gail Port, Esq. Proskauer Rose LLP 11 Times Square New York, NY 10036-8299 212-969-3243(T) <a href="mailto:gport@proskauer.com">gport@proskauer.com</a></p>	<p>Biocraft Laboratories 12 Industrial Park Waldwick, NJ</p>
<p>Textron, Inc. 40 Westminster Street Providence, RI 02903</p>	<p>Jamie Schiff, Esq. Textron, Inc. 40 Westminster Street Providence, RI 02903 401-457-2422 (T) <a href="mailto:jschiff@textron.com">jschiff@textron.com</a></p>	<p>Spencer Kellogg Division 400 Doremus Avenue</p>
<p>The Andrew Jergens Co. 2535 Spring Grove Ave. Cincinnati, OH 45214  now KAO U.S.A Inc.</p>	<p>Richard T. La Jeunesse, Esq. Graydon Head &amp; Ritchey LLP 1900 Fifth Third Center 511 Walnut Street Cincinnati, OH 45202 513-629-2702(T) <a href="mailto:rlajeunesse@graydon.com">rlajeunesse@graydon.com</a></p>	<p>1 Franklin Ave. Belleville, NJ</p>

<p>The BOC Group, Inc. 575 Mountain Avenue Murray Hill, NJ 07974</p> <p>now Linde LLC on behalf of The BOC Group, Inc.</p>	<p>James (Jay) Stewart, Esq. Lowenstein Sandler PC 65 Livingston Avenue Roseland, NJ 07068 973-597-2522(T) <a href="mailto:jstewart@lowenstein.com">jstewart@lowenstein.com</a></p> <p>Mike Resh, Esq. The BOC Group, Inc. 575 Mountain Avenue, Murray Hill, NJ 07974 <a href="mailto:Mike.resh@hoc.com">Mike.resh@hoc.com</a></p>	<p>681 Main Street Belleville, NJ</p>
<p>The Hartz Mountain Corporation 400 Plaza Drive Secaucus, NJ 07094</p> <p>The Hartz Consumer Group, Inc. on behalf of The Hartz Mountain Corporation</p>	<p>Curtis L. Michael, Esq. VP and Assistant General Counsel The Hartz Consumer Group, Inc. 400 Plaza Drive PO Box 1515 Secaucus, NJ 07096-1515 201-272-5306 (T) <a href="mailto:curt.michael@hartzmountain.com">curt.michael@hartzmountain.com</a></p>	<p>600/700 South 4<sup>th</sup> Street Harrison, NJ</p>
<p>The Newark Group, Inc. 20 Jackson Drive Cranford, NJ 07016</p>	<p>David M. Meezan, Esq. Kazmarek Mowrey Cloud Laseter LLP 1230 Peachtree Street N.E. Suite 3600 Atlanta, GA 30309 404-969-0733 <a href="mailto:dmeezan@kmcllaw.com">dmeezan@kmcllaw.com</a></p>	<p>The Newark Boxboard Co. 17 Blanchard Street Newark, NJ</p>
<p>The Sherwin Williams Co. 101 Prospect Ave., N.W. Cleveland, OH 44115</p>	<p>Donald McConnell, Esq. The Sherwin Williams Co. 101 Prospect Ave, NW Cleveland, OH 44115 216-566-3741(T) 216-515-4400(F) <a href="mailto:don.j.mcconnell@sherwin.com">don.j.mcconnell@sherwin.com</a></p> <p>Herbert (Bart) Bennett, Esq. Sokol, Behot &amp; Fiorenzo 229 Nassau Street Princeton, NJ 08542-4601 609-279-0900(T) <a href="mailto:hbbennett@sbflawfirm.com">hbbennett@sbflawfirm.com</a></p>	<p>60 Lister Ave. Newark, NJ</p>
<p>The Stanley Works 1000 Stanley Drive New Britain, CT 06053</p> <p>now Stanley Black &amp; Decker, Inc.</p>	<p>Andrew Kolesar, Esq. Thompson Hine LLP 312 Walnut Street, 14<sup>th</sup> Floor Cincinnati, OH 45202 513-352-6545(T) <a href="mailto:andrew.kolesar@thompsonhine.com">andrew.kolesar@thompsonhine.com</a></p>	<p>Stanley Tools 140 Chapel St. Newark, NJ</p>

<p>Three County Volkswagen 701 Riverside Ave. Lyndhurst, NJ 07071</p>	<p>Miriam Villani, Esq. Sahn Ward &amp; Baker PLLC 333 Earle Ovington Blvd, Suite 601 Uniondale, NY 11553 516-228-1300(T) mvillani@swcblaw.com</p>	<p>701 Riverside Ave. Lyndhurst, NJ</p>
<p>Tiffany &amp; Co. 727 Fifth Avenue New York, NY 10022</p>	<p>John Klock, Esq. Gibbons, PC One Gateway Center Newark, NJ 07102-5310 973-596-4757 (T) jklock@gibbonslaw.com</p>	<p>820 Highland Avenue Newark, NJ</p>
<p>Unilever Bestfoods International Plaza Sylvan Avenue Englewood Cliffs, NJ 07632</p> <p>Conopco, Inc., d/b/a Unilever (as successpr to CPC/Bestfoods, former parent of the Penick Corporation</p>	<p>Andrew Shakalis, Esq. Associate General Counsel – Environmental &amp; Safety Unilever 700 Sylvan Avenue Englewood Cliffs, NJ 07632 201-894-2763 (T) 201-894-2727 (F) Andrew.shakalis@unilever.com</p>	<p>Penick Corporation 540 New York Avenue Lyndhurst, NJ</p>
<p>Viacom Inc. 11 Stanwix St. Pittsburgh, PA 15222</p> <p>Now CBS Corporation</p>	<p>Jeffrey B. Groy, Esq. VP, Sr. Counsel/ Environmental CBS Corporation 333 West Wacker Drive, 27th Floor Chicago, IL 60606 312-288-3851(T) 312-288-3801(F) Jeff.Groy@cbs.com</p>	<p>Westinghouse Electric 95 Orange St. Newark, NJ</p>

<p>Vulcan Materials Co. 1200 Urban Center Drive Birmingham, AL 35242</p> <p>Now Legacy Vulcan Corp.</p>	<p>Eva Fromm O'Brien, Esq. Fulbright &amp; Jaworski Fulbright Tower 1301 McKinney Suite 5100 Houston, TX 77010-3095 713-651-5321 (T) 713-651-5246 (F) <a href="mailto:eobrien@fulbright.com">eobrien@fulbright.com</a></p> <p>John M. Floyd, Esq. Senior Attorney Vulcan Materials Company 1200 Urban Center Drive Birmingham, AL 35242 205-298-3745 (Direct) 205-492-4219 (Cell) 205-298-2960 (F) <a href="mailto:floydj@vmcmail.com">floydj@vmcmail.com</a></p>	<p>600 Doremus Ave. Newark, NJ</p>
<p>Wiggins Plastics Inc. 186 Kingsland Road Clifton, NJ 07014</p>	<p>Glenn Tucker, Esq. Sheryl Reba, Esq. <a href="mailto:sreba@greenbergdauber.com">sreba@greenbergdauber.com</a> Greenberg Dauber One Gateway Center, Suite 600 Newark, NJ 07102 973-643-3700(T) 973-643-1218(F) <a href="mailto:gtucker@greenbergdauber.com">gtucker@greenbergdauber.com</a></p>	<p>180 Kingsland Road Clifton, NJ</p>
<p>Wyeth 5 Giralda Farms Madison, NJ 07940</p>	<p>Ronald J. Schott, Esq. Corporate Counsel Pfizer 5 Giralda Farms Madison, NJ 07940 973-660-6641(T) 973-660-7176(F) <a href="mailto:ronald.schott@pfizer.com">ronald.schott@pfizer.com</a></p> <p>Seth Kerschner, Esq. White &amp; Case LLP 1155 Avenue of the Americas New York, NY 10036-2787 212-819-8630(T) 212-354-8113(F) <a href="mailto:Seth.kerschner@whitecase.com">Seth.kerschner@whitecase.com</a></p>	<p>Shulton Inc. and American Cyanamid Co. 697 Route 46 Clifton, NJ</p>

**New Recipients of Notice Letters**

Palin Enterprises	Mr. Michael Palin Palin Enterprises 235 Park Avenue South, #8 New York, NY 10003-1045	American Modern Metals 44 Passaic Ave. (a/k/a 25 Belgrove Drive) Kearny, NJ
Passaic Valley Sewerage Commission	Gregory A. Tramontozzi, Esq Executive Director Passaic Valley Sewerage Commissioners 600 Wilson Avenue Newark, NJ 07105  Michael Witt, Esq. Chasan Leyner & Lamparello, PC 300 Harmon Meadow Blvd. Secaucus, NJ 07094 201-801-6093 mwitt@chasan.com	
City of Newark	Honorable Ras J. Baraka, Mayor City of Newark City Hall 920 Broad Street, Suite 200 Newark, New Jersey 07102  City of Newark Department of Law Room 316, City Hall 920 Broad Street Newark, NJ 07102	
Borough of East Newark	Honorable Joseph R. Smith, Mayor Borough of East Newark 34 Sherman Avenue East Newark NJ 07029	
Town of Harrison	Honorable James A. Fife, Mayor Town of Harrison 318 Harrison Avenue Harrison, New Jersey 07029  Mr. Paul J. Zarbetski, Esq. Town of Harrison 318 Harrison Avenue Harrison, New Jersey 07029	
Town of Kearny	Honorable Alberto G. Santos, Mayor Town of Kearny 402 Kearny Avenue Kearny, NJ 07032	

# EXHIBIT B





**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**

REGION II

290 BROADWAY

NEW YORK, NEW YORK 10007-1866

**MAR 30 2017**

BY CERTIFIED MAIL,  
RETURN RECEIPT REQUESTED & ELECTRONIC MAIL

To: See List of Addressees – Attachment A

Re: Diamond Alkali Superfund Site, Lower 8.3 Miles of Lower Passaic River,  
Essex and Hudson Counties, New Jersey

Notice regarding Next Steps Including Initial Cash Out Settlement

The United States Environmental Protection Agency (“EPA”) has documented the release and threatened release of hazardous substances, pollutants and contaminants at the Diamond Alkali Site (“Site”) in Essex, Bergen, Hudson and Passaic Counties, New Jersey. The Site includes the former Diamond Alkali facility at 80-120 Lister Avenue, Newark, New Jersey, the Lower Passaic River Study Area (“LPRSA”), the Newark Bay Study Area, and the areal extent of contamination.

The Site was placed on the National Priorities List (“NPL”) in 1984. In 1987, EPA issued a Record of Decision for Operable Unit 1 (“OU1”), the former Diamond Alkali facility at 80-120 Lister Avenue, Newark, New Jersey. On March 3, 2016, EPA issued a ROD for Operable Unit 2 (“OU2”), the lower 8.3 miles of the Lower Passaic River. Currently, remedial investigation/feasibility studies are being conducted for the 17-mile LPRSA and the Newark Bay Study Area.

The OU2 ROD was issued by EPA to address human health and environmental risks posed by contaminated sediments found in the lower 8.3 miles of the Lower Passaic River, an area from the river’s confluence with Newark Bay to River Mile 8.3 near the border between the City of Newark and Belleville Township, New Jersey. The OU2 ROD calls for, among other things, the construction of an engineered cap bank to bank over the river bottom of the lower 8.3 miles of the river, dredging of the river bottom prior to placement of the cap, and implementation of institutional controls designed to protect the engineered cap.

On March 31, 2016, EPA notified each Addressee that it may be a potentially responsible party under Section 107(a) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (“CERCLA”), 42 U.S.C. § 9607(a), with respect to OU2 for the Site. That letter also notified the recipients that EPA intended to: a) negotiate a settlement with Occidental Chemical Corporation (“OCC”) for OCC’s performance of the remedial design for the remedy selected in the OU2 ROD; b) negotiate a remedial action consent decree under which OCC and other major parties will implement and pay for the remedy selected in the OU2 ROD; and c) identify parties that may be eligible for a cash out settlement with EPA for the lower 8.3 miles of the Lower Passaic River.

On September 30, 2016, EPA and OCC entered into Administrative Settlement Agreement and Order on Consent for Remedial Design, CERCLA Docket No. 02-2016-2021, for OCC’s performance of the remedial design selected in the OU2 ROD, under EPA oversight.

## NEXT STEPS

As of the date of this letter, EPA is notifying 20 parties that EPA has identified them as candidates for early cash out settlements. The 20 parties are listed in the enclosure to this letter. EPA has identified for immediate settlement those parties that are not associated with a disposal or release of any of the contaminants of concern (“COCs”) for OU2, as identified in the OU2 ROD.

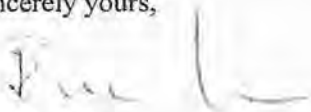
Parties that are responsible for the release or discharge of dioxins, furans, or polychlorinated biphenyls (“PCBs”) into the Lower Passaic River should participate in implementing or funding the remedy selected for the lower 8.3 miles of the Lower Passaic River. EPA will provide notice to those parties shortly, as well as an opportunity to meet with EPA to discuss their status.

For parties that are not one of the 20 early cash out parties and are also not associated with the release of dioxins, furans, or PCBs into the Lower Passaic River, a cash out settlement might be appropriate. This determination requires additional complex settlement analysis. EPA expects to use the services of a third party allocator before extending cash out settlement offers to any such party. In a subsequent letter, EPA will identify the parties that should be part of the allocation process. There will be a future opportunity for OU2 PRPs to offer input on the factors that they think should be considered in the allocation process, and to provide feedback on the overall design of the allocation process.

If you have any questions regarding this letter, you may contact Juan Fajardo via email at [fajardo.juan@epa.gov](mailto:fajardo.juan@epa.gov) or by phone at (212) 637-3132.

We look forward to working with you.

Sincerely yours,



Eric J. Wilson  
Deputy Director for Enforcement and Homeland Security  
Emergency and Remedial Response Division

Enclosure: List of Early Cash Out Parties

cc: Brian Donohue, Esq., USDOJ  
Mark Barash, Esq., USDOJ  
Kate Barfield, Esq., NOAA  
John Dickinson, Esq., New Jersey Attorney General’s Office

**Attachment A - List of Addressees****Diamond Alkali Superfund Site****Lower 8.3 Miles - Passaic River****Notice of Next Steps**

Company	Contact Information	Facility
<p>A.E. Staley Manufacturing Co., Inc. 2200 E. Eldorado Street Decatur, IL 62521-1578</p> <p>Now Tate &amp; Lyle Ingredients Americas LLC</p>	<p>John R. Holsinger, Esq. Two University Plaza, Suite 300 Hackensack, NJ 07601 201-487-9000 (T) <a href="mailto:johnh@jrholdersinger.com">johnh@jrholdersinger.com</a></p> <p>Heidi R. Balsley, Esquire Corporate Counsel A.E. Staley Manufacturing Co., Inc. 2200 E. Eldorado Street Decatur, IL 62521 <a href="mailto:Heidi.Balsley@tateandlyle.com">Heidi.Balsley@tateandlyle.com</a></p>	<p>320 Schuyler Avenue and 100 Third Avenue Kearny, NJ</p>
<p>Alcan Corporation Two Alliance Center 3560 Lenox Rd Atlanta, GA 30326</p> <p>Now Novelis Corp.</p>	<p>John Tillman, Esq. North American Regional Counsel Novelis Corporation Two Alliance Center 3560 Lenox Rd Atlanta, GA 30326 404-760-4049 (T) <a href="mailto:John.tillman@novelis.com">John.tillman@novelis.com</a></p>	<p>Jacobus Ave. Kearny, NJ</p>
<p>Alden Leeds Inc. 55 Jacobus Ave. Kearny, NJ 07032</p>	<p>Mark Epstein, President Alden Leeds Inc. 55 Jacobus Ave. Kearny, NJ 07032</p> <p>Joseph Fiorenzo, Esq. Sills Cummis &amp; Gross The Legal Center One Riverfront Plaza Newark, NJ 07102 973-643-7000 (T) <a href="mailto:jfiorenzo@sillscummis.com">jfiorenzo@sillscummis.com</a></p>	<p>2145 McCarter Highway Newark, NJ</p> <p>55 Jacobus Avenue Kearny, NJ</p>
<p>Alliance Chemical, Inc. Linden Avenue Ridgefield, NJ 07657</p>	<p>Fredi Pearlmutter, Esq. Lindabury, McCormick, Estabrook &amp; Cooper, P.C. 53 Cardinal Drive Box 2369 Westfield, NJ 07091 908-233-6800 (T) <a href="mailto:fpearlmutter@lindabury.com">fpearlmutter@lindabury.com</a></p>	<p>33 Avenue P Newark, NJ</p>

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<p>Pfizer Inc. 235 E. 42<sup>nd</sup> St. New York, NY 10017</p>	<p>Seth Kerschner, Esq. White &amp; Case LLP 1155 Avenue of the Americas New York, NY 10036-2787 212-819-8630(T) 212-354-8113(F) <a href="mailto:Seth.kerschner@whitecase.com">Seth.kerschner@whitecase.com</a></p>	<p>230 Brighton Road Clifton, NJ</p>
<p>PMC, Inc. 12243 Branford Street Sun Valley, CA 91352</p>	<p>Phillip Kamins, President &amp; CEO PMC Global, Inc. 12243 Branford St Sun Valley, CA 91352 818-896-1101(T)</p>	<p>Kleer Kast 450 Schuyler Avenue Kearny, NJ</p>
<p>Power Test of New Jersey, Inc. 125 Jericho Turnpike Jericho, NY 11753  now Leemilt's Petroleum, Inc., successor to Power Test of NJ, Inc.</p>	<p>Christine Fitter, Asst Secretary Leemilt's Petroleum, Inc. 125 Jericho Turnpike, Suite 103 Jericho, NY 11753 <a href="mailto:cfitter@gettyrealty.com">cfitter@gettyrealty.com</a>  Nicole Moshang, Esq. Manko, Gold Katcher &amp; Fox LLP 401 City Avenue, Ste. 500 Bala Cynwyd, PA 19004 484-430-2324 (T) <a href="mailto:nmoshang@mgkflaw.com">nmoshang@mgkflaw.com</a></p>	<p>Getty Newark Terminal 86 Doremus Ave. Newark, NJ</p>
<p>PPG Industries, Inc. One PPG Place Pittsburgh, PA 15272</p>	<p>Gary P. Gengel, Esq. Latham &amp; Watkins, LLP 885 Third Avenue New York, NY 10022-4834 <a href="mailto:gary.gengel@lw.com">gary.gengel@lw.com</a></p>	<p>29 Riverside Ave. Newark, NJ</p>



<p>PSE&amp;G Corp. P.O. Box 570 Newark, NJ 07101</p>	<p>John F. Doherty, Esq. Associate General Litigation Counsel PSE&amp;G Services Corporation 80 Park Plaza, T5D Post Office Box 570 Newark, NJ 07102 973-430-6478(T) <a href="mailto:John.doherty@pseg.com">John.doherty@pseg.com</a></p> <p>Kevin R. Gardner, Esq. Connell Foley 85 Livingston Avenue Roseland, NJ 07068 973-535-0500(T) <a href="mailto:kgardner@connellfoley.com">kgardner@connellfoley.com</a></p>	<p>155 Raymond Blvd. Newark, NJ &amp; 4<sup>th</sup> St. Harrison, NJ</p>
<p>Purdue Pharma Technologies, Inc. One Stamford Forum Stamford, CT 06901</p>	<p>James (Jay) Stewart, Esq. Lowenstein Sandler PC 65 Livingston Avenue Roseland, NJ 07068 973-597-2522(T) <a href="mailto:jstewart@lowenstein.com">jstewart@lowenstein.com</a></p>	<p>Napp Technologies 199 Main St. Lodi, NJ</p>
<p>Quality Distribution, Inc. 150 East Pennsylvania Avenue Suite 450 Downingtown, PA 19335</p> <p>Quality Carriers, Inc.</p>	<p>Bonni Kaufman, Esq. Holland &amp; Knight, LLP 800 17<sup>th</sup> Street N.W. Suite 1100 Washington, DC 20006 202-419-2547 <a href="mailto:Bonni.kaufman@hklaw.com">Bonni.kaufman@hklaw.com</a></p>	<p>Chemical Leaman Tank Lines 80 Doremus Avenue Newark, NJ</p>
<p>Roman Asphalt Corporation 14 Ogden Street Newark, NJ 07104</p>	<p>Michael La Morgese, President Roman Asphalt Corporation 14 Ogden St Newark, NJ 07104 973-482-1113(T) <a href="mailto:Roman@romanasphalt.com">Roman@romanasphalt.com</a></p>	<p>14 Ogden Street Newark, NJ</p>
<p>Royce Associates 366 N. Broadway, Ste. 400 Jericho, NJ 11753</p>	<p>A.J.Royce, President Royce Associates, ALP 35 Carlton Ave East Rutherford, NJ 07073 201-438-5200(T)</p> <p>Ronald Bluestein, Esq. Flamm Walton 794 Penllyn Pike Blue Bell, PA 19422 267-419-1500 (T) <a href="mailto:rbluestein@flammlaw.com">rbluestein@flammlaw.com</a></p>	<p>Royce Chemical Company 17 Carlton Avenue East Rutherford, NJ</p>

<p>RSR Corp. 2777 Stemmons Freeway, Suite 1800 Dallas, TX 75207</p> <p>now Revere Smelting and Refining Corporation</p>	<p>Jane C. Luxton, Esq. Christopher Clare, Esq. Clark Hill PLC 601 Pennsylvania Avenue NW North Building, Suite 1000 Washington, DC 20004 202-572-8674(T) 703-598-3275(M) <a href="mailto:jluxton@clarkhill.com">jluxton@clarkhill.com</a> <a href="mailto:cclare@clarkhill.com">cclare@clarkhill.com</a></p>	<p>Revere Smelting &amp; Refining 387 Avenue P Newark, NJ</p>
<p>RTC Properties, Inc. 79 Fifth Avenue New York, NY 10003</p>	<p>Michael L. Rodburg, Esq. Lowenstein Sandler, PC 65 Livingston Avenue Roseland, NJ 07068 973-597-2466(T) <a href="mailto:mrodburg@lowenstein.com">mrodburg@lowenstein.com</a></p>	<p>AT&amp;T/Western Electric 100 Central Ave. Kearny, NJ</p>
<p>S&amp;A Realty Corp. 55 Passaic Avenue Kearny, NJ 07032</p>	<p>Jeffrey Pollock, Esq. Fox Rothschild P.O. Box 5231 Princeton, NJ 08543 609-896-7660(T) <a href="mailto:jmpollock@foxrothschild.com">jmpollock@foxrothschild.com</a></p>	<p>American Modern Metals 44 Passaic Ave. (a/k/a 25 Belgrove Drive) Kearny, NJ</p>
<p>Safety Kleen Envirosystems Co. 1301 Gervais St. Columbia, SC 29201</p> <p>McKesson Corporation for itself and for Safety-Kleen Envirosystems, Inc.</p>	<p>John Edgcomb, Esq. Edgcomb Law Group, LLP One Post Street, Suite 2100 San Francisco, California 94104-5225 415-399-1555 (T) <a href="mailto:jedgcomb@edgcomb-law.com">jedgcomb@edgcomb-law.com</a></p>	<p>600 Doremus Ave. Newark, NJ</p>
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<p>STWB, Inc. c/o Bayer Corporation 100 Bayer Road Pittsburgh, PA 15205</p>	<p>Timothy I. Duffy, Esq. Coughlin Duffy LLP Post Office Box 1917 350 Mount Kemble Avenue Morristown, NJ 07962-1917 973-631-6002(T) <a href="mailto:tduffy@coughlinduffy.com">tduffy@coughlinduffy.com</a> <a href="mailto:lhall@coughlinduffy.com">lhall@coughlinduffy.com</a> (Assistant)</p>	<p>Lehn &amp; Fink Products Corp. 192-194 Bloomfield Avenue Bloomfield, NJ 07003</p> <p>Thomasett Colors/Sterling 120 Lister Ave. Newark, NJ</p>

<p>Sun Chemical Corporation 35 Waterview Boulevard Parsippany, NJ 07054-1285</p>	<p>Warren W. Faure, Esq. EH&amp;S Counsel Sun Chemical Corporation 35 Waterview Boulevard Parsippany, NJ 07054 973-404-6590(T) <a href="mailto:Warren.faure@sunchemical.com">Warren.faure@sunchemical.com</a></p> <p>Ted Wolff, Esq. Manatt, Phelps &amp; Phillips, LLP 7 Times Square New York, NY 10036 <a href="mailto:twolff@manatt.com">twolff@manatt.com</a></p>	<p>Sun Chemical Corporation 185 Foundry Street Newark, NJ (1987 to present)</p>
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<p>Textron, Inc. 40 Westminster Street Providence, RI 02903</p>	<p>Jamie Schiff, Esq. Textron, Inc. 40 Westminster Street Providence, RI 02903 401-457-2422 (T) <a href="mailto:jschiff@textron.com">jschiff@textron.com</a></p>	<p>Spencer Kellogg Division 400 Doremus Avenue Newark, NJ</p>
<p>The Andrew Jergens Co. 2535 Spring Grove Ave. Cincinnati, OH 45214  now KAO U.S.A Inc.</p>	<p>Richard T. La Jeunesse, Esq. Graydon Head &amp; Ritchey LLP 1900 Fifth Third Center 511 Walnut Street Cincinnati, OH 45202 513-629-2702(T) <a href="mailto:rlajeunesse@graydon.com">rlajeunesse@graydon.com</a></p>	<p>1 Franklin Ave. Belleville, NJ</p>

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<p>The Sherwin Williams Co. 101 Prospect Ave., N.W. Cleveland, OH 44115</p>	<p>Donald McConnell, Esq. The Sherwin Williams Co. 101 Prospect Ave, NW Cleveland, OH 44115 216-566-3741(T) 216-515-4400(F) <a href="mailto:don.j.mcconnell@sherwin.com">don.j.mcconnell@sherwin.com</a></p> <p>Herbert (Bart) Bennett, Esq. Sokol, Behot &amp; Fiorenza 229 Nassau Street Princeton, NJ 08542-4601 609-279-0900(T) <a href="mailto:hbbennett@sbflawfirm.com">hbbennett@sbflawfirm.com</a></p>	<p>60 Lister Ave. Newark, NJ</p>
<p>The Stanley Works 1000 Stanley Drive New Britain, CT 06053</p> <p>now Stanley Black &amp; Decker, Inc.</p>	<p>Andrew Kolesar, Esq. Thompson Hine LLP 312 Walnut Street, 14<sup>th</sup> Floor Cincinnati, OH 45202 513-352-6545(T) <a href="mailto:andrew.kolesar@thompsonhine.com">andrew.kolesar@thompsonhine.com</a></p>	<p>Stanley Tools 140 Chapel St. Newark, NJ</p>

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<p>Unilever Bestfoods International Plaza Sylvan Avenue Englewood Cliffs, NJ 07632</p> <p>Conopco, Inc., d/b/a Unilever (as successpr to CPC/Bestfoods, former parent of the Penick Corporation</p>	<p>Joshua Frank, Esq. Baker Botts 1299 Pennsylvania Ave., N.W. Washington, DC 20004-2400 202-639-7710 (T) <a href="mailto:Joshua.frank@bakerbotts.com">Joshua.frank@bakerbotts.com</a></p> <p>Andrew Shakalis, Esq. Associate General Counsel – Environmental &amp; Safety Unilever 700 Sylvan Avenue Englewood Cliffs, NJ 07632 201-894-2763 (T) 201-894-2727 (F) <a href="mailto:Andrew.shakalis@unilever.com">Andrew.shakalis@unilever.com</a></p>	<p>Penick Corporation 540 New York Avenue Lyndhurst, NJ</p>
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Passaic Valley Sewerage Commission	<p>Gregory A. Tramontozzi, Esq. Executive Director Passaic Valley Sewerage Commissioners 600 Wilson Avenue Newark, NJ 07105</p> <p>Michael Witt, Esq. Chasan Leyner &amp; Lamparello, PC 300 Harmon Meadow Blvd. Secaucus, NJ 07094 201-801-6093 mwitt@chasan.com</p>	
City of Newark	<p>Angela Foster, Esq. First Assistant Corporation Counsel City of Newark Department of Law Room 316, City Hall 920 Broad Street Newark, NJ 07102 973-733-3880 <a href="mailto:fostera@ci.newark.nj.us">fostera@ci.newark.nj.us</a></p>	
Borough of East Newark	<p>Honorable Joseph R. Smith, Mayor Borough of East Newark 34 Sherman Avenue East Newark NJ 07029</p>	
Town of Harrison	<p>Honorable James A. Fife, Mayor Town of Harrison 318 Harrison Avenue Harrison, New Jersey 07029</p> <p>Mr. Paul J. Zarbetski, Esq. Town of Harrison 318 Harrison Avenue Harrison, New Jersey 07029</p>	
Town of Kearny	<p>Honorable Alberto G. Santos, Mayor Town of Kearny 402 Kearny Avenue Kearny, NJ 07032</p>	



**Proposed Cash Out Parties**  
**Lower 8.3 Miles of the Lower Passaic River**  
**Diamond Alkali Superfund Site**

1. Alcan Corporation - now Novelis Corp.
2. Alden Leeds Inc.
3. Belleville Industrial Center
4. DiLorenzo Properties Company
5. EM Sergeant Pulp & Chemical Co.
6. Fiske Brothers Refining Co.
7. Flexon Industries Corp.
8. Harrison Supply Company
9. Mallinckrodt, Inc.
10. Palin Enterprises
11. Pfizer Inc.
12. Roman Asphalt Corporation
13. RTC Properties, Inc.
14. S&A Realty Corp.
15. Teva Pharmaceuticals USA, Inc.
16. The Andrew Jergens Co. - now KAO U.S.A Inc.
17. The BOC Group, Inc. - now Linde LLC on behalf of The BOC Group, Inc.
18. Three County Volkswagen
19. Wiggins Plastics Inc.
20. Wyeth



# EXHIBIT C



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 2  
290 BROADWAY  
NEW YORK, NY 10007-1866

SEP 18 2017

**BY EMAIL AND CERTIFIED MAIL  
RETURN RECEIPT REQUESTED**

To: See List of Addressees - Attachment A

Re: Allocation for Operable Unit 2 Remedial Action  
Diamond Alkali Superfund Site, Essex and Hudson Counties, New Jersey

Dear Sir/Madam:

On August 28, 2017, the U.S. Environmental Protection Agency ("EPA") hosted a meeting at its New York City offices to provide you with an opportunity to share your views on the Agency's proposed settlement framework for implementation of the remedy selected for the lower 8.3 miles of the Passaic River, which is Operable Unit 2 ("OU2") of the Diamond Alkali Superfund Site (the "Site"). I want to once again thank all of the parties that participated in the meeting. Your participation has helped both EPA and the other parties better understand the issues and concerns regarding the framework.

After careful consideration, the Agency has concluded that the allocation process should include all of the potentially responsible parties ("PRPs") for OU2 (apart from the Passaic Valley Sewerage Commission ("PVSC"), the four municipal PRPs referred to below, and the PRPs that settle pursuant to the "early" cash-out settlement that EPA offered in March 2017), and should not be limited to the "middle tier" parties. Transparency and fairness are concepts that EPA has consistently stated are of importance to the Agency in this matter and, after considering your comments and concerns, we think those concepts are best served by having one allocation for all of these parties.

Numerous parties at the August 28, 2017 meeting expressed concern regarding the financial burden that would be placed on PRPs that are not responsible for the release of dioxins, furans and/or polychlorinated biphenyls ("PCBs") into the Lower Passaic River if those parties are not given the opportunity to settle with the United States for their OU2 liability, as opposed to having to implement the remedial action for OU2. EPA appreciates those concerns. As we have stated, we anticipate that with the help of the allocation process, EPA will be able to offer cash-out settlements to a number of the parties.

Similarly, EPA's expectation that the private PRPs responsible for the release of dioxins, furans and/or PCBs will perform the OU2 remedial action has not changed. It is therefore our goal that, in addition to supporting potential additional cash-out settlements, the allocation will lead to a consent decree in which those parties agree to perform the OU2 remedial action under EPA oversight.

To perform the allocation, EPA has retained AlterEcho and its senior allocation specialist, Mr. David Batson, Esq., through the Agency's prime contract with CSRA. EPA and AlterEcho invite you to attend a meeting to introduce the allocation process. Among other things, the allocation will provide opportunities for participating parties to comment on factors that should be part of the allocation and to contribute relevant information about themselves and other parties for use in the allocation. This meeting will be held on October 13, 2017 at 9:00 A.M. on the 27<sup>th</sup> floor of EPA's offices, which are located at 290 Broadway, New York, NY 10007.

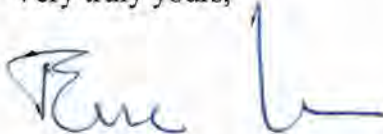
Mr. Batson has requested that each party designate a primary contact for future communications on the allocation and that the primary contact attend the October 13<sup>th</sup> meeting in person. EPA has established a conference line for others wishing to participate. The call-in number is 866-299-3188, and the conference code is 212-637-3136. Please respond to EPA by October 5, 2017 with the following information: 1) name of and party represented by the primary contact attending the meeting; 2) names of other representatives planning to call in for each such party. Your response should be directed to Alice Yeh, Remedial Project Manager, Emergency and Remedial Response Division at [yeh.alice@EPA.gov](mailto:yeh.alice@EPA.gov) or U.S. EPA Region 2, 290 Broadway - 19<sup>th</sup> Floor, New York, NY 10007.

After the allocator assigns shares to the parties, EPA will make a decision as to which parties should receive cash-out settlement offers, the dollar amount of each offer, and how the money raised by the cash-out settlements will be applied towards OU2 costs.

During the August 28, 2017 meeting, several parties raised questions concerning EPA's enforcement approach for PVSC and the municipalities to which EPA issued notices of potential liability (the City of Newark, Borough of East Newark, Town of Harrison and Town of Kearny). EPA has initiated discussions with PVSC and the municipalities about substantial contributions that, collectively, they might make to the OU2 remedy. At this time, we do not believe it would be helpful to include them in the allocation.

If you have any questions regarding this matter, please contact Assistant Regional Counsel Juan Fajardo at 212-637-3132 or [fajardo.juan@epa.gov](mailto:fajardo.juan@epa.gov).

Very truly yours,



Eric J. Wilson  
Deputy Director for Enforcement and Homeland Security  
Emergency and Remedial Response Division

cc: Brian Donohue, Esq., USDOJ  
Mark Barash, Esq., USDOJ  
Kate Barfield, Esq., NOAA  
John Dickinson, Esq., New Jersey Attorney General's Office

**Attachment A – List of Addressees****Diamond Alkali Superfund Site****Lower 8.3 Miles - Passaic River**

<b>Company</b>	<b>Contact Information</b>	<b>Facility</b>
<p>A.E. Staley Manufacturing Co., Inc. 2200 E. Eldorado Street Decatur, IL 62521-1578</p> <p>Now Tate &amp; Lyle Ingredients Americas LLC</p>	<p>John R. Holsinger, Esq. Two University Plaza, Suite 300 Hackensack, NJ 07601 201-487-9000 (T) <a href="mailto:johnh@jrholsinger.com">johnh@jrholsinger.com</a></p> <p>Heidi R. Balsley, Esquire Corporate Counsel A.E. Staley Manufacturing Co., Inc. 2200 E. Eldorado Street Decatur, IL 62521 <a href="mailto:Heidi.Balsley@tateandlyle.com">Heidi.Balsley@tateandlyle.com</a></p>	<p>320 Schuyler Avenue and 100 Third Avenue Kearny, NJ</p>
<p>Alden Leeds Inc. 55 Jacobus Ave. Kearny, NJ 07032</p>	<p>Mark Epstein, President Alden Leeds Inc. 55 Jacobus Ave. Kearny, NJ 07032</p> <p>Joseph Fiorenzo, Esq. Sills Cummis &amp; Gross The Legal Center One Riverfront Plaza Newark, NJ 07102 973-643-7000 (T) <a href="mailto:jfiorenzo@sillscummis.com">jfiorenzo@sillscummis.com</a></p>	<p>2145 McCarter Highway Newark, NJ</p> <p>55 Jacobus Avenue Kearny, NJ</p>
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# EXHIBIT D



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**  
REGION 2  
290 BROADWAY  
NEW YORK, NY 10007-1866

November 28, 2017

**CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**

Ms. Marcia E. Backus  
Senior Vice President and General Counsel  
Occidental Petroleum Corporation  
5 Greenway Plaza, Suite 110  
Houston, Texas 77046

Re: Allocation Process for Operable Unit 2 of the Diamond Alkali Superfund Site  
Essex and Hudson Counties, New Jersey

Dear Ms. Backus:

On behalf of the U.S. Environmental Protection Agency, Region 2 (EPA or the Agency), I would like to thank you and your team for coming to our offices on Thursday, October 19, 2017, to discuss the allocation for Operable Unit 2 (OU2) of the Diamond Alkali Superfund Site (Site). Given the frank discussion that took place, we now have a better understanding of concerns raised by Occidental Chemical Corporation (OCC) regarding the proposed allocation. We are also pleased that we were able to resolve certain misunderstandings concerning EPA's enforcement framework for OU2 of the Site.

Our recent meeting was very productive and addressed many of the issues raised in your October 12, 2017 letter (Letter). This letter further responds to your Letter and addresses issues that were not discussed at our meeting.

Transparency Regarding EPA's Enforcement Approach and Timely Notification of the Proposed Allocation for OU2

With regard to EPA's communications with the responsible parties about the proposed enforcement approach, we note that as early as March 30, 2016, shortly after the Record of Decision for OU2 was signed, EPA informed the OU2 potentially responsible parties (PRPs) of the Agency's enforcement strategy for OU2 including that the Agency believed that some parties should perform the work while others should contribute to funding the work through cash-out settlements with the Agency. The Agency provided greater specificity in its "Next Steps" letter of March 30, 2017 in which we notified the parties of EPA's intention "to use the services of a third party allocator." We again informed the PRPs of our intention to use the services of a third party allocator in our letter of May 17, 2017. Then, based on comments we had received from some PRPs regarding EPA's allocation approach, EPA issued a letter on August 3, 2017, inviting

the OU2 PRPs to a meeting at EPA's New York offices to discuss the Agency's proposed allocation framework. That meeting, which took place on August 28, 2017, was attended by representatives of OCC both in-person in New York and by phone. During that meeting, parties including OCC raised questions regarding EPA's enforcement approach and discussed the relative merits of proceeding with an allocation including only "middle tier" parties or expanding the scope of the allocation to include additional parties.

In addition to these letters and the August meeting, this past summer, staff from EPA's Office of Regional Counsel spoke with representatives of OCC concerning the proposed allocation for OU2. During those discussions, OCC expressed its concern about participating in an allocation given OCC's belief that an allocation would not assure "compulsory disclosure" of all documents and information regarding PRPs' releases or potential releases into the Lower Passaic River.

#### Proposed Allocation and the Record of Decision for OU2

Again, we are pleased that we were able to clarify at the October 19 meeting that EPA intends to pursue all the OU2 PRPs and not simply those parties responsible for the release of dioxin, furans and/or polychlorinated biphenyls (PCBs) into the Lower Passaic River. As we stated at the meeting, EPA continues to believe that parties responsible for the release of dioxins, furans and/or PCBs into the lower 8.3 miles of Lower Passaic River Study Area should perform the remedial action for OU2 under a consent decree with the United States, and that the remaining PRPs should contribute their fair share of the costs of the remedial action by providing funding for the remedial work, and/or by providing in-kind services.

As we discussed during our October 19 meeting, whether and to what extent hazardous substances other than contaminants of concern (COCs) will be taken into consideration in the allocation is a question that should be raised with AlterEcho within the process established by the allocator for the parties to offer feedback on the design of the allocation.

The Agency intends to pursue all of the OU2 PRPs and is committed to ensuring that all of the OU2 PRPs contribute their fair share towards the costs for OU2 of the Site. While we may at a future point conclude that some PRPs – perhaps, but not necessarily, those not responsible for dioxin, furans and/or PCBs – are eligible for cash-out settlements, any such cash-out would be based on such parties' fair share (with an appropriate premium), and monies recovered would go towards funding of the OU2 remedial action. Importantly, EPA expects future cash-out settlements to be in the form of a judicial consent decree or decrees, subject to public comment and federal court review and approval.

#### Sufficiency of Information for the Allocation

We also had a productive conversation at our October 19 meeting regarding OCC's views and concerns with the amount, veracity, and completeness of information available for OU2 and the allocation. We understand that OCC is concerned that without the type of compelled production

of documents and depositions available in litigation, certain parties may not produce all relevant information. We do, however, remain optimistic given our discussion at our October 19 meeting that OCC will see the opportunities provided by the non-binding allocation process, described by David Batson at the October 13, 2017 allocation “kick off” meeting. During the allocation, OCC will have the ability to share its concerns about information with the allocator and the other participants in the allocation process. The allocator will be able to take OCC’s concerns into consideration in shaping the allocation process, or bring them back to EPA, as appropriate.

Moreover, as indicated at the October 19 meeting, if gaps in the information or data available to AlterEcho threaten to impede the effectiveness of the process, the Agency will consider using its enforcement resources to supplement the information provided by the Agency and PRPs. Further, should EPA conclude that additional cash-out settlements are warranted, we will consider how to incorporate a suitable certification from the settling parties about the completeness of their disclosures.

We note, with regard to the statement in your Letter that “[a]llocation is a judicial, not an administrative, function under CERCLA” that allocation of Superfund site costs outside of court is a commonly used approach. In fact, at large multiparty sites, allocation is a conventional approach to sharing costs and responsibility. EPA has a Conflict Prevention and Resolution Center that provides alternative dispute resolution and conflict resolution services such as the use of third party neutrals.

As we have stated, we do not think that litigation is the best approach to resolving liability for OU2. While this Site has proven to be particularly challenging in that the PRPs have been unable to reach sufficient consensus to begin their own allocation for OU2, we continue to think that the resources expended in litigation coupled with the uncertainty of a legal proceeding and loss of control over the process will far outweigh the challenges associated with the allocation process.

#### The Allocation Should Be Completed Before Negotiations for the Remedial Action Begin

You state in the Letter that there are “significant unknowns and uncertainties that exist concerning how much the remedy will eventually cost” and that therefore “OCC believes it is premature and inequitable for EPA to attempt to allocate the costs of the remedy” until the remedial design is completed.

EPA conducted a remedial investigation and focused feasibility study for OU2 and selected the remedy for OU2 based on a very large data set, and there is a large amount of data in the record that provides a detailed understanding of both the COCs that drive the risk, and also the hazardous substances that are not COCs but may affect costs. In addition, OCC, through Tierra Solutions, Inc., has already conducted a removal action in the river and has the data from that work. Similarly, the Cooperating Parties Group capped a highly contaminated mudflat and is currently monitoring the results.

The purpose of allocation is to provide recommendations regarding the relative shares of responsibility of the parties. Parties will be assigned a percentage share of liability in relation to the other PRPs, not dollar amounts. To the extent that information gathered during the OU2 remedial design affects the ultimate costs of the remedy, EPA will be able to take that information and those additional costs into account in any potential settlements with the PRPs.

Delaying the allocation until the remedial design is completed would defeat a primary goal of the allocation, namely, to have a remedial action consent decree in place so that the remedial action work can begin without delay following completion of the remedial design. While EPA agrees that the remedial design for OU2 may provide additional information that could be relevant to the allocation, the Agency does not believe information gathered during the remedial design will materially affect the factors that drive the costs of the OU2 remedy.

#### Allocation Will Not Create a Barrier to Settlement

We agree that a fair, carefully structured, information-based allocation is necessary to promote settlements. This is why we initiated the allocation process. We have received numerous requests over the decade that work has been underway for an equitable resolution that would allow parties with minimal responsibility to exit the process so as not to incur transaction costs far in excess of their liability. It is not our view that the allocation, and any cash-out settlements based on the allocation, will create disincentives to any remaining PRPs to assume responsibility for the remedial action especially in light of the fact that we envision that such early settlements would include a premium. Rather than reducing the pool of responsible parties, settlements with such parties will bring funds to the remedial action, and should streamline the negotiation of a remedial action consent decree.

We appreciate OCC's concern that all costs, including long-term "maintenance obligations...must be borne by the parties responsible for them." We did discuss, at some length, OCC's concerns during our October 19 meeting and I believe those discussions were worthwhile and hope that our discussions assured OCC of the Agency's intention to pursue all of the OU2 PRPs for their fair share of OU2 costs.

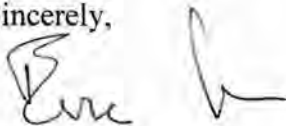
As we discussed during our meeting, the proposed allocation is non-binding and participation in the allocation does not require any party to forgo its right to contribution or its cost recovery rights. Parties that participate in the allocation process will not be obliged to accept any settlement offers that EPA may make, or to refrain from challenging a settlement offer made to another party. The allocation process is structured to allow OCC and other participants to participate in the design of the allocation and the factors to be considered. And again, assuming EPA identifies additional parties for cash-out settlements, such settlements would take the form of a judicial consent decree, which would be lodged with the federal court, and would be subject to public comment and judicial review and approval. We hope these facts will address the Company's concern that the proposed allocation will "come at the expense of OCC's legal rights to obtain contribution and cost recovery from all responsible PRPs who have contaminated the sediments of the Lower Passaic River."

Most important, we understand that to be successful, the allocation must be fair, and that all PRPs, whether those responsible for the COCs driving the remedial costs or others, are more likely to enter into a settlement or settlements with the United States for implementation and/or funding of the remedial action if they find that the settlements are also fair and reasonable.

The Agency is Hearing and Considering OCC's Concerns

As noted, EPA appreciates OCC's concerns and we are listening. We worked with OCC and the other creditors throughout the Maxus Energy Corporation bankruptcy proceeding to achieve a positive result. We intend to continue our efforts at having an open and transparent relationship with OCC, as with other OU2 PRPs, and hope that OCC shares our goal of having the remedial design and remedial action for OU2 performed timely and effectively. As we discussed at the October 19 meeting, we encourage OCC to participate actively and fully in the allocation process and to raise its concerns with the allocator so that they can be addressed in the allocation process.

Sincerely,

A handwritten signature in black ink, appearing to read "Eric J. Wilson". The signature is written in a cursive style with a large initial "E" and a long horizontal stroke at the end.

Eric J. Wilson  
Deputy Director for Enforcement and Homeland Security  
Emergency and Remedial Response Division

cc: Brian Donohue, Esq., USDOJ