

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

UNITED STATES OF AMERICA,

Plaintiff,

v.

OCCIDENTAL CHEMICAL CORPORATION,
CHEMICAL LAND HOLDINGS, INC.,

Defendants.

:
:
: HONORABLE JOHN W. BISSELL
:
: Civ. Action No. 89-5064 (JWB)
:
:

ORDER

STATE OF NEW JERSEY, DEPARTMENT
OF ENVIRONMENTAL PROTECTION,

Plaintiff,

v.

OCCIDENTAL CHEMICAL CORPORATION,
CHEMICAL LAND HOLDINGS, INC.,

Defendants.

:
:
: Civ. Action No. 89-5025 (AET)
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:
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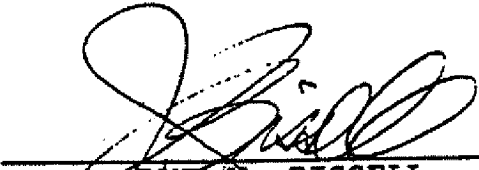
This matter having been opened to the Court by the United States Department of Justice on behalf of the United States Environmental Protection Agency, and the State of New Jersey on behalf of the Department of Environmental Protection on their joint motion, pursuant to Federal Rule of Civil Procedure 42(a), to consolidate the above-captioned matters and to enter the Consent Decree in Civil Action No. 89-5064(JWB) and the Court having reviewed the papers submitted,

IT IS on this 19th day of November, 1990

ORDERED:

1. that pursuant to Federal Rule of Civil Procedure 42(a), the above-captioned actions are hereby consolidated for all purposes under Civil Action No. 89-5064; and

2. that the Consent Decree lodged in Civil Action No. 89-5064(JWB) is hereby entered.



JOHN W. BISSELL
United States District Judge

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

UNITED STATES OF AMERICA,

Plaintiff,

v.

OCCIDENTAL CHEMICAL CORPORATION,
CHEMICAL LAND HOLDINGS, INC.,

Defendants.

- 11 A
Civil Action No. _____

COMPLAINT

Plaintiff, the United States of America, by authority of the Attorney General and at the request of the Administrator of the United States Environmental Protection Agency (hereinafter "EPA"), alleges as follows:

PRELIMINARY STATEMENT

1. This is a civil action brought under Sections 106 and 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. §§ 9606 and 9607, for injunctive relief and reimbursement of costs incurred and to be incurred by the United States in response to releases and threatened releases of hazardous substances into the environment from a portion of the Diamond Alkali Superfund site. The Diamond Alkali Superfund site is located at 80 and 120 Lister Avenue, Newark, New Jersey and areas which hazardous substances have migrated from these two parcels.

JURISDICTION AND VENUE

2. This court has jurisdiction over the subject matter of this action pursuant to 42 U.S.C. §§ 9606, 9607 and 9613(b) and 28 U.S.C. §§ 1331 and 1345.

3. Venue is proper in this judicial district pursuant to 42 U.S.C. §§ 9606, 9607 and 9613(b) and 28 U.S.C. § 1391(b) and (c), because the claims arose within the District of New Jersey.

DEFENDANTS

4. Defendant Occidental Chemical Corporation ("OCC") is a corporation incorporated under the laws of the State of New York. OCC is a successor in interest to Diamond Shamrock Chemicals Company, a prior owner and operator of the 80 and 120 Lister Avenue portions of the Diamond Alkali superfund site.

5. Defendant Chemical Land Holdings, Inc. ("CLH") is a corporation incorporated under the laws of the State of Delaware. CLH is the present owner of the Site.

FACTUAL BACKGROUND

Site History

6. The Diamond Alkali Superfund site includes the properties located at 80 and 120 Lister Avenue, Newark, New Jersey and the areas to which hazardous substances have migrated from these two parcels. The "Site" for purposes of this Complaint is limited to the properties located at 80 and 120 Lister Avenue, Newark, New Jersey. Such properties are

designated as Block 2438, Lots 57, 58 and 59 on the tax map of Newark.

7. Diamond Shamrock Corporation, which was named Diamond Alkali Company until 1967, operated a plant situated at the 80 Lister Avenue portion of the Diamond Alkali Superfund Site from 1951 through 1969, where, among other chemicals, the company manufactured 2,4-D, 2,4,5-T and 2,4,5-Trichlorophenol, from which 2,3,7,8-Tetrachlorodibenzo-p-dioxin is a by-product. Diamond Shamrock Corporation ceased production activities at the plant in August, 1969.

8. In 1971, Diamond Shamrock Corporation sold the plant and property to Chemicaland Corporation, which conducted certain chemical manufacturing activities for itself and others during the several years it owned and occupied the 80 Lister Avenue property.

9. Walter Ray Holding Company purchased the 80 Lister Avenue plant and property at a tax sale in 1980 and held the premises until 1981. Walter Ray Holding Company sold the property in June, 1981, to Marisol, Inc. which conducted salvage operations, including removal of certain materials to certain off-site locations, and waste consolidation activities.

10. In September, 1983, Diamond Shamrock Corporation adopted a new corporate structure. A stock holding company was formed under the name "Diamond Shamrock Corporation." The former Diamond Shamrock Corporation changed its name to Diamond Shamrock

Chemicals company, and became a subsidiary of the new Diamond Shamrock Corporation.

11. On April 19, 1984, Diamond Shamrock Chemicals Company acquired the property located at 120 Lister Avenue from E. M. Sergeant Pulp and Chemical Co., Inc. to assist with the cleanup of the 80 Lister Avenue property. Similarly, Diamond Shamrock Chemicals Company acquired the plant and property at 80 Lister Avenue from Marisol, Inc. on January 27, 1986.

12. On September 4, 1986, Diamond Shamrock Corporation sold all the outstanding stock in Diamond Shamrock Chemicals Company to Oxy-Diamond Alkali Corporation, a wholly-owned indirect subsidiary of Occidental Petroleum Corporation. Diamond Shamrock Chemicals Company was then renamed Occidental Electrochemicals Corporation. Title to the 80 and 120 Lister Ave properties had previously been transferred by way of an intra-Holding company transaction to Diamond Shamrock Chemical Land Holdings, Inc.

13. Effective November 30, 1987, Occidental Electrochemicals Corporation was merged into Occidental Chemical Corporation, a wholly-owned indirect subsidiary of Occidental Petroleum Corporation. On December 4, 1987, the name of Diamond Shamrock Chemical Land Holdings, Inc. was changed to Chemical Land Holdings, Inc.

History of Response Actions

14. During the summer of 1983, hazardous substances were detected at various related locations in Newark, New Jersey.

EPA conducted removal actions at four of these related locations known as 80 Lister Avenue, Brady Metals, Municipal Swimming Pool and Lockwood Street. Together these four locations are referred to as the Diamond Alkali Superfund Site.

15. The removal activities conducted by EPA at these four locations included vacuuming hazardous substances from the streets and excavating soil contaminated with hazardous substances. The hazardous substances were later secured on the 120 Lister Avenue site.

16. Pursuant to an administrative consent order entered into between the State of New Jersey Department of Environmental Protection ("NJDEP") and Diamond Shamrock Chemicals Company and Marisol, Inc., and authorized on March 13, 1984 (hereinafter "ACO I"), Diamond Shamrock Chemicals Company commenced a Site Evaluation for the property located at 80 Lister Avenue, Newark, New Jersey.

17. EPA, pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, placed the Diamond Alkali Superfund Site on the National Priorities List, which is set forth at 40 C.F.R. Part 300, Appendix B, by publication in the Federal Register on September 21, 1984, 49 Fed. Reg. 37070.

18. Pursuant to a second administrative consent order entered into between NJDEP and Diamond Shamrock Chemicals Company, et al. and authorized on December 21, 1984 ("ACO II"), Diamond Shamrock Chemicals Company commenced a Site Evaluation for the 120 Lister Avenue property. ACO II also required the

cleanup of certain off-site properties and the transfer of contaminated materials resulting from such action to 120 Lister Avenue for storage.

19. The Site Evaluations conducted pursuant to ACO I and ACO II for the 80 and 120 Lister Avenue properties together constitute a Remedial Investigation ("RI"), as that term is used at 40 C.F.R. § 300.68, to determine the nature and extent of contamination at the Site.

20. Pursuant to ACO I and ACO II, Diamond Shamrock Chemicals Company conducted a Feasibility Study ("FS"), as that term is used at 40 C.F.R. § 300.68, to develop and evaluate alternatives for the remediation of the Site and prepared an FS Report for the Site dated October, 1985.

21. EPA issued a Record of Decision on September 30, 1987, which documents the selection of a remedial action plan for the cleanup of the Site.

22. EPA has conducted other response actions at the Site, including collecting and analyzing soil and water samples, other investigative activities and oversight of investigative activities conducted by the owners and operators of the Site.

23. EPA has incurred response costs at the Site totalling at least \$2,003,018.50. EPA previously was reimbursed \$1,834,766.57 by potentially responsible parties associated with the Site. The United States will continue to expend monies to address the releases and threatened releases at the Site and to recover the cost of the response actions taken at the Site.

STATUTORY PROVISIONS

24. Subsection 106(a) of CERCLA, 42 U.S.C. § 9606(a), provides in pertinent part:

Sec. 106(a) - In addition to any other action taken by a State or local government, when the President determines that there may be an imminent and substantial endangerment to the public health or welfare or the environment because of an actual or threatened release of a hazardous substance from a facility, he may require the Attorney General of the United States to secure such relief as may be necessary to abate such danger or threat, and the district court of the United States in the district in which the threat occurs shall have jurisdiction to grant such relief as the public interest and the equities of the case may require. The President may also, after notice to the affected State, take other action under this section including, but not limited to, issuing such orders as may be necessary to protect public health and welfare and the environment.

25. Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), provides in pertinent part:

* * *

Sec. 107(a) - Notwithstanding any other provision or rule of law, and subject only to the defenses set forth in subsection (b) of this section --

- (1) the owner and operator of a . . . facility;
- (2) any person who at the time of disposal of any hazardous substance owned or operated any facility at which such hazardous substances were disposed of,
- (3) any person who by contract, agreement, or otherwise arranged for disposal or treatment, or arranged with a transporter for transport for disposal or treatment, of hazardous substances owned or possessed by such person, by any other party or entity, at any facility or incineration vessel owned or operated by another party or entity and containing such hazardous substances, and
- (4) any person who accepts or accepted any hazardous substances for transport to disposal or treatment facilities, incineration vessels or sites selected by such person, from which there is a release, or a threatened release which causes the incurrence of

response costs, of a hazardous substance, shall be liable for -

(A) all costs of removal or remedial action incurred by the United States Government . . . not inconsistent with the national contingency plan; . . .

26. The term "facility" is defined in Section 101(9) of CERCLA, 42 U.S.C. § 9601(9), as --

(A) any building, structure, installation, equipment, pipe or pipeline (including any pipe into a sewer or publicly owned treatment works), well, pit, pond, lagoon, impoundment, ditch, landfill, storage container, motor vehicle, rolling stock or aircraft, or (B) any site or area where a hazardous substance has been deposited, stored, disposed of, or placed, or otherwise come to be located; but does not include any consumer product in consumer use or any vessel.

27. "Hazardous substance" is defined by Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), to include:

(A) any substance designated pursuant to section 311(b)(2)(A) of the Federal Water Pollution Control Act, (B) any element, compound, mixture, solution, or substance designated pursuant to section 102 of this Act, (C) any hazardous waste having the characteristics identified under or listed pursuant to section 3001 of the Solid Waste Disposal Act (but not including any waste the regulation of which under the Solid Waste Disposal Act has been suspended by Act of Congress), (D) any toxic pollutant listed under section 307(a) of the Federal Water Pollution Control Act, (E) any hazardous air pollutant listed under section 112 of the Clean Air Act, and (F) any imminently hazardous chemical substance or mixture with respect to which the Administrator has taken action pursuant to section 7 of the Toxic Substance Control Act. . . .

28. "Person" is defined in Section 101(21) of CERCLA, 42 U.S.C. § 9601(21), as "an individual, firm, corporation, association, partnership, consortium, joint venture, commercial entity, United States Government, State, municipality,

commission, political subdivision of a State, or any interstate body."

29. "Release" is defined in Section 101(22) of CERCLA, 42 U.S.C. § 9601(22), as "any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment"

FIRST CLAIM FOR RELIEF -- SECTION 107(a) of CERCLA

30. Paragraphs 1 through 29 are realleged and incorporated herein.

31. The Site is a "facility" within the meaning of Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

32. At relevant times, a release or threatened release of hazardous substances occurred at the Site.

33. The United States has incurred costs for actions taken in response to the release or threatened release of hazardous substances from the Site.

34. The actions taken by the United States concerning the Site constitute "response" actions as defined in Section 101(25) of CERCLA, 42 U.S.C. § 9601(25).

35. The response actions at the Site were not inconsistent with the National Oil and Hazardous Substances Pollution Contingency Plan, 40 C.F.R. Part 300.

36. The United States has satisfied any condition precedent to a response action and to recovery under Section 107 of CERCLA, 42 U.S.C. § 9607.

37. Diamond Shamrock Chemicals Company is a person who owned and operated the Site at the time of disposal of hazardous substances at the Site. OCC is the successor in interest to Diamond Shamrock Chemicals Company. OCC is jointly and severally liable to the United States under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), for the costs of response actions incurred and to be incurred at the Site.

38. CLH is the current owner of the Site. CLH is jointly and severally liable to the United States under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), for the costs of response actions incurred and to be incurred at the Site.

SECOND CLAIM FOR RELIEF -- SECTION 106(a) of CERCLA

39. Paragraphs 1 through 35 are realleged and incorporated herein.

40. There has been an actual release or threatened release of hazardous substances into the environment at and from the Site within the meaning of Section 106(a) of CERCLA, 42 U.S.C. § 9606(a).

41. EPA has determined that there may be an imminent and substantial endangerment to the public health or welfare or the environment because of an actual or threatened release of hazardous substances at the Site.

42. OCC and CLH are jointly and severally liable under Section 106(a) of CERCLA, 42 U.S.C. § 9606(a), for taking such actions as may be necessary to abate the imminent and substantial endangerment or threat of such endangerment at the Site.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff the United States respectfully prays that this Court:

1. Enter judgment against defendants, jointly and severally, in favor the United States for all previously unreimbursed response costs incurred by the United States in response to the release or threatened release of hazardous substances at the Site, which costs are currently in excess of \$168,252.05, not including interest;
2. Enter a declaratory judgment against defendants, jointly and severally pursuant to Section 113(g) of CERCLA, 42 U.S.C. § 9613(g), in favor of the United States for all costs to be incurred in the future by the United States for response activities related to the Site;
3. Issue an injunction requiring defendants, jointly and severally, to remedy the imminent and substantial endangerment to the public health or welfare or the environment at the Site by implementing the remedial actions selected by EPA in its Record of Decision and any other action necessary to remediate conditions at the Site;
4. Award to the United States its costs, including the costs of this enforcement action, attorneys' fees and other expenses;
5. Grant such other relief as it may deem just and proper.

Respectfully submitted,



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CHEMICAL LAND HOLDINGS, INC.

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

UNITED STATES OF AMERICA,	X	
	X	
THE STATE OF NEW JERSEY,	X	
	X	CIVIL ACTION NO.
Plaintiffs,	X	
	X	
v.	X	
	X	
OCCIDENTAL CHEMICAL CORPORATION,	X	
	X	
CHEMICAL LAND HOLDINGS, INC.,	X	
	X	
Defendants.	X	
	X	

CONSENT DECREE

WHEREAS, on _____, 1989, the United States of America ("the United States"), on behalf of the Administrator of the United States Environmental Protection Agency ("EPA"), and the State of New Jersey, Department of Environmental Protection ("the State"), filed a Complaint in this matter against Occidental Chemical Corporation ("OCC"), as successor to Diamond Shamrock Chemicals Company, and Chemical Land Holdings, Inc. ("CLH") pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. §9601 et seq., and the authority vested in the Commissioner of the New Jersey Department of Environmental Protection ("NJDEP") pursuant to N.J.S.A. 13:1D-1 et

seg., the New Jersey Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq., the New Jersey Solid Waste Management Act, N.J.S.A. 13:1E-1 et seq., the New Jersey Spill Compensation and Control Act, N.J.S.A. 58:10-23.11a et seq., and the authority delegated to the Assistant Director of the Responsible Party Cleanup Element of the Division of Hazardous Waste Management of NJDEP pursuant to N.J.S.A. 13:1B-4 for the recovery of past response costs incurred by the United States and the State and for conduct of remedial design, remedial construction, operation and maintenance, remedy evaluation activities and Site stabilization activities in response to alleged releases and substantial threat of releases of hazardous substances into the environment at the Diamond Alkali Superfund Site located in the City of Newark, County of Essex, New Jersey, sometimes referred to as the Diamond Shamrock Superfund Site;

WHEREAS, Diamond Shamrock Corporation, which was named Diamond Alkali Company until 1967, operated a plant situated at the 80 Lister Avenue portion of the Diamond Alkali Superfund Site from 1951 through 1969, where, among other chemicals, the company manufactured 2,4-D, 2,4,5-T and 2,4,5-Trichlorophenol, from which 2,3,7,8-Tetrachlorodibenzo-p-dioxin is a by-product. Diamond Shamrock Corporation ceased production activities at the Site in August, 1969. In 1971, Diamond Shamrock Corporation sold the plant and property to Chemicaland Corporation, which

conducted certain chemical manufacturing activities for itself and others during the several years it owned and occupied the Site. Walter Ray Holding Company purchased the plant and property at a tax sale in 1980 and held the premises until 1981. Walter Ray Holding Company sold the property in June, 1981 to Marisol, Inc. which conducted salvage operations, including removal of certain materials to certain off-Site locations, and waste consolidation activities;

WHEREAS, in September, 1983, Diamond Shamrock Corporation adopted a new corporate structure. A stock holding company was formed under the name "Diamond Shamrock Corporation." The former Diamond Shamrock Corporation changed its name to Diamond Shamrock Chemicals Company, and became a subsidiary of the new Diamond Shamrock Corporation. On April 19, 1984, Diamond Shamrock Chemicals Company acquired the property located at 120 Lister Avenue from E. M. Sergeant Pulp and Chemical Co., Inc. to assist with the cleanup of the Site. Similarly, Diamond Shamrock Chemicals Company acquired the plant and property at 80 Lister Avenue from Marisol, Inc. on January 27, 1986;

WHEREAS, on September 4, 1986, Diamond Shamrock Corporation sold all the outstanding stock in Diamond Shamrock Chemicals Company to Oxy-Diamond Alkali Corporation, a wholly-owned indirect subsidiary of Occidental Petroleum Corporation. Diamond Shamrock Chemicals Company was then renamed Occidental

Electrochemicals Corporation. Title to the Site had previously been transferred by way of an intraholding company transaction to Diamond Shamrock Chemical Land Holdings, Inc., a wholly-owned indirect subsidiary of Diamond Shamrock Corporation. Effective November 30, 1987, Occidental Electrochemicals Corporation was merged into Occidental Chemical Corporation, a wholly-owned indirect subsidiary of Occidental Petroleum Corporation. On December 4, 1987, the name of Diamond Shamrock Chemical Land Holdings, Inc. was changed to Chemical Land Holdings, Inc. Chemical Land Holdings, Inc., a subsidiary of Maxus Energy Corporation, is the current holder of title to the Site;

WHEREAS, EPA, pursuant to Section 105 of CERCLA, 42 U.S.C. §9605, placed the Diamond Alkali Superfund Site on the National Priorities List, which is set forth at 40 C.F.R. Part 300, Appendix B, by publication in the Federal Register on September 21, 1984, 49 Fed. Reg. 37070;

WHEREAS, in response to alleged releases and substantial threat of releases of hazardous substances into the environment at the Diamond Alkali Superfund Site, and pursuant to an administrative consent order entered into between NJDEP and Diamond Shamrock Chemicals Company and Marisol, Inc., and authorized on March 13, 1984 (hereinafter "ACO I"), Diamond Shamrock Chemicals Company commenced a Site Evaluation for the property located at 80 Lister Avenue, Newark, New Jersey.

Thereafter, pursuant to a second administrative consent order entered into between NJDEP and Diamond Shamrock Chemicals Company, et al. and authorized on December 21, 1984 ("ACO II"), Diamond Shamrock Chemicals Company commenced a Site Evaluation for the property located at 120 Lister Avenue, Newark, New Jersey. ACO II also required the cleanup of certain off-site properties and the transfer of contaminated materials resulting from such action to 120 Lister Avenue for storage. The Site Evaluations conducted pursuant to ACO I and ACO II for the 80 and 120 Lister Avenue properties together constitute a Remedial Investigation ("RI"), as that term is used at 40 C.F.R. §300.68, to determine the nature and extent of contamination at the Site;

WHEREAS, pursuant to ACO I and ACO II, Diamond Shamrock Chemicals Company prepared a Site Evaluation Report for the 80 Lister Avenue property dated February, 1985, a Site Evaluation Report for the 120 Lister Avenue property dated May, 1985, and a Site Evaluation Addendum for the 80 and 120 Lister Avenue properties dated February, 1986. These Reports collectively constitute an RI Report for the Site;

WHEREAS, pursuant to ACO I and ACO II, Diamond Shamrock Chemicals Company conducted a Feasibility Study ("FS"), as that term is used at 40 C.F.R. §300.68, to develop and evaluate alternatives for the remediation of the Site;

WHEREAS, pursuant to ACO I and ACO II, Diamond Shamrock Chemicals Company prepared an FS Report for the Site dated October, 1985;

WHEREAS, on August 1, 1987, pursuant to Section 117 of CERCLA, 42 U.S.C. §9617, EPA published a notice of completion of the FS and of the proposed interim plan for remedial action, and provided opportunity for public comment to be submitted in writing to EPA by August 31, 1987, or orally at a public meeting scheduled and subsequently held in the City of Newark, New Jersey on August 11, 1987;

WHEREAS, pursuant to Section 117 of CERCLA, 42 U.S.C. §9617, EPA made and has kept a transcript of the August 11, 1987, public meeting and has made this transcript available to the public;

WHEREAS, certain persons, including a representative of OCC, provided comments on EPA's proposed remedial action plan;

WHEREAS, EPA issued a Record of Decision on September 30, 1987, which documents the selection of a remedial action plan for the cleanup of the Site, discusses EPA's reasons for adopting such plan and responds to each of the significant comments on and criticisms of the proposed remedial action plan;

WHEREAS, the State has given its concurrence to the remedial action plan selected in the Record of Decision;

WHEREAS, EPA and NJDEP consider the selected remedial action plan to be an interim remedy in view of the periodic

evaluation of the selected remedial action required under the Record of Decision in order to assure that human health and the environment are being protected by the Remedy, taking into account, as provided in Section 121 of CERCLA, 42 U.S.C. §9621, without limitation, any changes in knowledge concerning the risks posed by dioxin and other Hazardous Materials at the Site; and to develop, screen and assess the viability of implementing remedial alternatives more protective of human health and the environment, including those alternatives which are based purely on advances in technology and those which utilize more permanent solutions;

WHEREAS, pursuant to Section 117(b) of CERCLA, 42 U.S.C. §9617(b), EPA provided notice of adoption of the selected remedial action plan in the form of the Record of Decision, including notice of the availability of the Record of Decision to the public for review at EPA and NJDEP offices, and at the local community repository at the Newark Public Library, 5 Washington Street, Newark, New Jersey;

WHEREAS, pursuant to Section 117(d) of CERCLA, 42 U.S.C. §9617(d), EPA published such notice in a major local newspaper of general circulation on December 7, 1987;

WHEREAS, in accordance with Section 121(f)(1)(F) of CERCLA, 42 U.S.C. §9621(f)(1)(F), the State has had a substantial and meaningful involvement in the initiation, development and selection of the remedial action to be undertaken at the Site;

WHEREAS, the State has actively participated in negotiations leading to this settlement and is a party to this settlement;

WHEREAS, pursuant to Section 122(j) of CERCLA, 42 U.S.C. §9622(j), EPA notified the Federal natural resource trustees of negotiations with potentially responsible parties ("PRPs") on the subject of addressing releases and threatened releases of hazardous substances at the Site, and EPA encouraged the participation of the Federal natural resource trustees in such negotiations;

WHEREAS, pursuant to Section 121(d)(1), the United States, the State and OCC believe that the remedial action plan adopted by EPA and set forth in the Record of Decision is consistent with the NCP;

WHEREAS, OCC agrees to implement the Work as defined, infra, in Section II of this Consent Decree, and EPA has determined that the Work will be implemented properly by OCC and that OCC is qualified to implement the Work;

WHEREAS, Diamond Shamrock Chemicals Company's obligations under ACO I and ACO II will be fulfilled if Settling Defendants comply with this Consent Decree and complete, to the satisfaction of NJDEP, those items specified by the State in writing to be developed by the State within forty-five (45) Working Days of the entry of this Decree;

WHEREAS, OCC agrees that this Consent Decree addresses only remediation of the 80 and 120 Lister Avenue properties, and does not address performance of tasks related to the Passaic River, the bedrock aquifer and other properties;

WHEREAS, pursuant to Section 122 of CERCLA, 42 U.S.C. §9622, the United States, the State, OCC and CLH have each stipulated and agreed to the making and entry of this Consent Decree prior to the taking of any testimony, based upon the pleadings herein;

NOW THEREFORE, it is ORDERED, ADJUDGED, AND DECREED as follows:

I.

JURISDICTION

This Court has jurisdiction over the subject matter of this action and the parties to this Consent Decree pursuant to Sections 106, 107 and 113 of CERCLA, 42 U.S.C. §§9606, 9607 and 9613, and 28 U.S.C. §1345, and pendant jurisdiction over those claims arising under the laws of the State. OCC and CLH do not admit and reserve their rights to contest the jurisdiction of this Court over, and to award relief for, subject matters or activities not expressly required by this Consent Decree. The Parties agree that nothing in this Consent Decree nor the fact that it is being entered shall constitute an admission of fact or conclusion of law.

II.

DEFINITIONS

Whenever the following terms are used in this Consent Decree and the attachments hereto, the following definitions specified in this Section shall apply:

A. "Appendix" or "Appendices" means those attachments listed below, which are incorporated herein and made a part of this Consent Decree by reference:

- Appendix I - Statement of Work
- Appendix II - Cleanup Standards
- Appendix III - 80 Lister Avenue: Metes and Bounds
- Appendix III-1 - 120 Lister Avenue: Metes and Bounds
- Appendix III-2 - 80 and 120 Lister Avenue: Survey Plat

B. "CERCLA" means the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §9601 et seq.

C. "Consent Decree" means this Consent Decree, all Appendices to this Consent Decree and all modifications to such documents. For convenience, all references in the attached Appendices to this Consent Decree shall be understood to refer to this document.

D. "Contractor" means the company or companies retained by OCC to perform the Work required by this Consent Decree and all attachments hereto.

E. "Diamond Alkali Superfund Site" means the real property located at 80 and 120 Lister Avenue, in the City of Newark, County of Essex, New Jersey, and those areas to which contamination originating at 80 Lister Avenue has migrated.

F. "Dioxin," "TCDD" and "2,3,7,8-TCDD" mean 2,3,7,8-Tetrachlorodibenzo-p-dioxin.

G. "EPA" means the United States Environmental Protection Agency.

H. "Hazardous Materials" means "hazardous substance" within the meaning of Section 101(14) of CERCLA, 42 U.S.C. §9601(14); "hazardous substances" within the meaning of Section 3 of the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11.b.k.; "pollutant" within the meaning of the New Jersey Water Pollution Control Act, N.J.S.A. 58:10A-3(n); and "pollutant or contaminant" within the meaning of Section 101(33) of CERCLA, 42 U.S.C. §9601(33).

I. "National Contingency Plan" shall be used as that term is used in Section 105 of CERCLA, 42 U.S.C. §9605, and the National Oil and Hazardous Substances Pollution Contingency Plan, 40 C.F.R. Part 300, and any amendments thereto.

J. "NJDEP" means the State of New Jersey Department of Environmental Protection.

K. "Operation and Maintenance" and "O&M" mean those activities required by Section H of Appendix I, as may be modified pursuant to the provisions of this Consent Decree and any schedules,

plans or reports required to be submitted pursuant hereto.

L. "Parties" means the United States of America on behalf of the United States Environmental Protection Agency; the State of New Jersey, Department of Environmental Protection; Occidental Chemical Corporation; and Chemical Land Holdings, Inc.

M. "Record of Decision" and "ROD" mean that document issued on September 30, 1987, to present the remedial action plan selected by the Regional Administrator of EPA Region II to address the 80 and 120 Lister Avenue portion of the Diamond Alkali Superfund Site;

N. "RCRA" means the Resource, Conservation and Recovery Act, as amended, 42 U.S.C. §6901 et seq.

O. "Remedy" means the selected remedial alternative set forth in the Record of Decision, as described in Section VI.B, infra, and as shall be developed, implemented and/or modified pursuant to this Consent Decree.

P. "Remedial Construction" means those activities required by Section G of Appendix I, as may be modified pursuant to the provisions of this Consent Decree and any schedules, plans or reports required to be submitted pursuant hereto.

Q. "Remedial Design" means those activities required by Section F of Appendix I, as may be modified pursuant to the provisions of this Consent Decree and any schedules, plans or reports required to be submitted pursuant hereto.

R. "Remedy Evaluation" means those activities required by Section I of Appendix I, as may be modified pursuant to the provisions of the Consent Decree and any schedules, plans or reports required to be submitted pursuant hereto.

S. "Settling Defendants" means Occidental Chemical Corporation, as successor to Diamond Shamrock Chemicals Company, and Chemical Land Holdings, Inc.

T. "Site" means the real property located at 80 and 120 Lister Avenue, in the City of Newark, County of Essex, New Jersey. Such properties are designated as Block 2438, Lots 57, 58 and 59 on the Tax Map of Newark, as described by metes and bounds in Appendices III and III-1, and the survey plat in Appendix III-2.

U. "Site Stabilization" means those activities required by Section D of Appendix I, as may be modified pursuant to the provisions of this Consent Decree and any schedules, plans or reports required to be submitted pursuant hereto.

V. "State" means the State of New Jersey.

W. "Statement of Work" means that document incorporated herein as Appendix I of this Consent Decree.

X. "Work" means all work and other activities required by this Consent Decree, including, but not limited to: Site Stabilization, Remedial Design, Remedial Construction, Operation and Maintenance, Additional Work pursuant to Section VII., infra,

Remedy Evaluation, and implementation of the response actions selected pursuant to Remedy Evaluation.

Y. "Working Day" means any day of the week except for Saturday or Sunday, that is not a designated Federal or State holiday.

Z. All terms not otherwise defined herein shall have their ordinary meanings except that those terms defined in Section 101 of CERCLA, 42 U.S.C. §9601, shall have the meanings set forth therein.

III.

PARTIES BOUND

A. This Consent Decree applies to and is binding upon the undersigned Parties and their successors and assigns. Each undersigned representative of a party to this Consent Decree certifies that he or she is fully authorized by the entity which he or she represents to enter into the terms and conditions of this Decree and to execute and legally bind that entity to it.

B. The Parties agree that CLH is a party to this Consent Decree for specific, limited purposes. CLH shall allow access to the Site as provided in Section XI, infra, and shall abide by the agreements on conveyance and use of the property in this Section III.

C. OCC shall provide a copy of this Consent Decree to each chief contractor and chief subcontractor retained to perform the

Work required by this Consent Decree. Chief contractors or subcontractors shall be those contractors or subcontractors whose contracts or subcontracts for Work performed pursuant to this Consent Decree have a total value exceeding twenty-five thousand dollars (\$25,000). The obligation to provide a copy of this Consent Decree to a chief contractor or chief subcontractor shall be triggered when the planned or actual value of Work exceeds twenty-five thousand dollars (\$25,000). OCC shall be responsible to the United States and the State for ensuring that each of its contractors and subcontractors perform the Work contemplated herein in accordance with this Consent Decree.

D. Conveyance of the Site

1. Settling Defendants may convey any or all of their interest in the Site, provided that no conveyance or transfer of title, lease, easement or other interests in the Site shall be consummated without a provision permitting a continuance of the Work pursuant to this Consent Decree, and all such conveyances of title, grants of easements or other conveyances of any interest in the Site shall contain a covenant to permit such Work. At least sixty (60) calendar days prior to any conveyance, Settling Defendants having control of or ownership over the Site shall notify EPA and NJDEP by registered mail of their intent to convey any interest in the Site, and the provisions to be made allowing the continued implementation of the Work. If such property is alienated, Settling Defendants' obligations under this Consent Decree shall continue

unless the grantee agrees to assume these obligations and both EPA and NJDEP agree, in writing, to allow the grantee to assume the obligations of the grantor.

2. The restrictions and obligations set forth herein shall run with the land and shall be binding on any and all parties who acquire any interest in the Site. In addition, Settling Defendants shall promptly give notice to EPA and NJDEP of any actual conveyance or transfer of any interest they may have in any property not part of the Site but which is used to implement the Work in the immediate vicinity of the Site, to the extent such conveyance is known or should be known to Settling Defendants.

3. A notification of the existence of this Consent Decree and where and how a copy may be obtained shall be recorded by Settling Defendants in the Office of the Clerk of Essex County, State of New Jersey and any other appropriate office as a lien and encumbrance on all parcels comprising the Site. Settling Defendants agree to execute such legal instruments and documents, if any, as may be required to effectuate the recording of such notice in the Office of the Clerk of Essex County, State of New Jersey and any other appropriate office, and to pay the costs of the preparation and recording of such documents.

4. Within forty-five (45) calendar days of entry by this Court of this Consent Decree, written proof of such recording with the Office of the Clerk of Essex County, State of New Jersey and any other appropriate office as required pursuant

to Section III.D.3, supra, shall be sent to those individuals specified in Section XXX, infra.

5. Any deed, title or instrument of conveyance for the Site or any part thereof shall contain a permanent deed restriction to the benefit of EPA and NJDEP that states:

The Owner agrees not to make any use of, or take any actions at, the Site inconsistent with the Work at the Site as set forth in the Consent Decree entered in United States of America v. Occidental Chemical Corporation, Civil Action No. _____, in the United States District Court for the District of New Jersey. The Owner also agrees to the imposition of such use and/or access restrictions as may be deemed necessary by the United States Environmental Protection Agency ("EPA") and the State of New Jersey Department of Environmental Protection ("NJDEP") to insure compliance with the referenced Consent Decree and/or the integrity of the Work. The restrictions shall continue until such time as the Site is declared by EPA, in consultation with the State, to be fit for unrestricted use. The restrictions shall include provisions for the continuation of access rights. The use and access restrictions are to run with the land and be for the benefit of and enforceable by EPA and NJDEP. The Owner shall record the restrictions with the Clerk of Essex County, State of New Jersey immediately upon the request of EPA and/or NJDEP that it do so.

Settling Defendants shall include the above statements in all leases, subleases or rental agreements relating to the Site or any part thereof which are executed on or after the effective date of this Consent Decree.

6. Any such lease or sublease for the Site or any part thereof shall contain the permanent deed restriction described in Section III.D.5, supra, until such time as the Site is declared

by EPA, in consultation with the State, to be fit for the removal of those restrictions set forth in Section III.D.5, supra.

7. Any deed restriction as described above shall run with the land until such time the Site is declared by EPA, in consultation with the State, to be fit for the removal of those restrictions set forth in Section III.D.5, supra.

E. Use of the Site

Until such time as EPA and NJDEP approve otherwise, the use or development of the Site shall be in a manner consistent with the terms of this Consent Decree, including the permanent deed restrictions described in Section III.D.5, supra.

IV.

PURPOSE

The purpose of this Consent Decree is to serve the public interest by protecting the public health, welfare and the environment from releases and threatened releases of Hazardous Materials at or from the Site through the implementation of the Work, and to settle the claims asserted by the United States and the State against Settling Defendants in the Complaint.

V.

GENERAL PROVISIONSA. Permits and Approvals.

1. All activities undertaken by OCC pursuant to this Consent Decree shall be undertaken in accordance with the requirements of Section 121(e)(1) of CERCLA, 42 U.S.C. §9621(e)(1), and the National Contingency Plan and any amendments thereto.

2. The off-site transfer, treatment, storage or disposal of Hazardous Materials removed from the Diamond Alkali Superfund Site by OCC must be in compliance with Section 121(d)(3) of CERCLA, 42 U.S.C. §9621(d)(3). To the extent applicable to it, OCC is responsible for compliance with all requirements relating to off-site management under RCRA, and N.J.A.C. 7:26-1.1 et seq., including fulfilling the standards applicable to generators and transporters of hazardous waste promulgated at 40 C.F.R. Parts 262 and 263. In particular, this responsibility includes using and signing manifest forms for hazardous wastes transported from the Diamond Alkali Superfund Site. Furthermore, in the Site Management Plans for Remedial Construction and for Operation and Maintenance, both of which are required by Appendix I, OCC shall designate any facilities it proposes to use for such off-site transfer, storage, treatment or disposal. OCC shall conduct off-site disposal activities in conformance with the National Contingency Plan and any amendments

thereto, and the Revised Procedures for Planning and Implementing Off-site Response Actions, EPA Office of Solid Waste and Emergency Response, November 13, 1987, and any amendments thereto.

3. Approvals which may be granted by EPA, the State or other governmental entity shall not relieve OCC from any liability it may have arising from or relating to its acts or omissions or the acts or omissions of any of its contractors, subcontractors or any other person or entity acting on its behalf in the performance of the Work or its failure to perform fully or complete the Work.

4. Notwithstanding any other provision in this Consent Decree, no Federal, State or local permits shall be required for any portion of the Work conducted entirely at the Diamond Alkali Superfund Site.

B. National Contingency Plan.

1. OCC shall design, implement and complete the Work in accordance with the provisions of the National Contingency Plan, and any amendments thereto, and any standards, specifications and schedules of completion developed in accordance with Section VI, infra, or agreed to by the Parties, or ordered by this Court.

2. This Court finds and the Parties agree that the Work is consistent with the National Contingency Plan. Settling Defendants do not waive their rights to contest the consistency

with the National Contingency Plan of any further response action ordered pursuant to Remedy Evaluation.

C. If the application of any amendment to CERCLA or the National Contingency Plan after the date of lodging of this Consent Decree would substantially alter OCC's obligations under this Decree, EPA, in consultation with the State, shall determine to what extent such amendment shall be incorporated to modify those tasks remaining to be implemented in furtherance of the Work.

D. At places in this Consent Decree the obligations of the Parties are calculated in terms of a specified number of calendar days. If performance of any responsibility under this Consent Decree falls due on a Saturday, Sunday, or official Federal or State holiday, the due date for such performance is automatically extended until the end of the next day that is not a Saturday, Sunday, or official Federal or State holiday.

VI.

WORK TO BE PERFORMED

A. Commitment by OCC.

OCC agrees to finance, design, construct, operate and maintain, and conduct periodic evaluations of the Remedy in accordance with all terms, conditions and schedules set forth herein and developed and approved hereunder, and to perform the Work in accordance with Appendix I.

B. The following is a description of the components of the selected remedial alternative:

1. Construct a slurry wall tying into the silt layer underlying the Site. The slurry wall shall be designed and constructed to encircle the soil and debris at the Site which exceeds any soil cleanup standard specified in Appendix II. Where a cleanup standard is exceeded at or beyond the Site boundary, the slurry wall shall extend as close as is practicable to the Site boundary.

2. Construct a flood wall and appurtenances to protect the Site from the 100 year flood. The flood wall may be designed to incorporate the functions of the slurry wall along the Passaic River front. The design considerations for such flood wall shall include the specifications and guidances of the United States Army Corps of Engineers and NJDEP, as well as the impact of the proposed Passaic River flood control project.

3. To the maximum extent practicable, disassemble and decontaminate all non-porous permanent structures and materials to facilitate off-site reuse, recycle or disposal. Decontamination procedures shall be designed and implemented to attain the cleanup standard for dioxin specified in Appendix II. The decontamination procedures shall also be protective of human health and the environment with respect to all other Hazardous Materials known to be present at the Site.

4. To the extent practicable, transport all containers (other than those shipping containers currently stored at 120 Lister Avenue) containing Hazardous Materials, but containing less than 1.0 ppb of dioxin, off-site, for treatment or disposal.

5. Demolish all remaining structures on-site and secure all materials contaminated at or above 1.0 ppb of dioxin on-site. Secured materials shall be segregated to the maximum extent practicable. The placement of secured materials shall be in accordance with the requirements specified in Appendix II.

6. Stabilize and immobilize the contents of the remaining containers (other than those shipping containers currently stored at 120 Lister Avenue) of dioxin contaminated materials.

7. Locate and plug inactive underground conduits, and reroute active systems.

8. Haul, empty, spread and compact the contaminated materials stored at 120 Lister Avenue and, to the maximum extent practicable, decontaminate the non-porous portions of the shipping containers for off-site reuse, recycle or disposal. Decontamination procedures shall be designed and implemented to attain the cleanup standard for dioxin specified in Appendix II. The decontamination procedures shall also be protective of human health and the environment with respect to all other Hazardous Materials known to be present at the Site.

9. Install, operate and maintain a ground water withdrawal system designed to maintain a hydraulic gradient preventing the migration of ground water from the volume contained within the slurry wall.

10. Install, operate and maintain a treatment system for ground water and other aqueous liquids resulting from the Work. The treatment system shall discharge treated wastewater either to the Passaic Valley Sewerage Commission treatment works or directly to the Passaic River. The treatment system shall be designed, constructed, and operated and maintained to attain and shall attain the cleanup standards (effluent limitations) specified in Appendix II. The treatment system shall be designed, constructed, and operated and maintained in accordance with the requirements (other than administrative requirements) for discharge of treatment system effluent to navigable waters, discharge to publicly owned treatment works and discharge to surface waters specified in Appendix II, as appropriate.

11. Construct a surficial cap consisting of suitable materials designed to meet the requirements of RCRA. The cap shall cover the slurry wall and the entire area encircled by the slurry wall. The design, construction, and operation and maintenance of the cap shall be in accordance with the requirements specified in Appendix II.

12. Implement suitable monitoring, contingency, operation and maintenance, and site security plans designed to

ensure the protection of human health and the environment during the Remedial Construction and after the completion of the Remedial Construction.

13. On-site containment of all sludge generated from the wastewater treatment processes until such time that an alternative method of sludge management is approved.

14. Design, construct, and operate and maintain the Remedy to attain the cleanup standards listed in Appendix II.

C. With respect to Sections VI.B.3, VI.B.4 and VI.B.8, supra, EPA, in consultation with the State, shall determine the level constituting compliance with an individual Subparagraph "to the maximum extent practicable" or "to the extent practicable," and, in so doing, shall determine what constitutes implementation of the particular component of the selected remedial alternative for the Site.

D. Within seven (7) calendar days of the date of lodging of this Consent Decree with this Court, OCC shall commence those tasks required by Sections D and E of Appendix I and, thereafter, complete such tasks in accordance with those schedules set forth in or developed and approved under Appendix I.

E. Schedules prepared by OCC pursuant to Appendix I shall express schedule dates in terms of periods of time following prerequisite events, rather than as calendar dates. The entry of this Consent Decree by this Court shall be deemed a prerequisite event for activities conducted pursuant to Sections F, G, H and I

of Appendix I. The previous statement shall not, however, preclude OCC from performing Work in accordance with Section F of Appendix I prior to the entry of this Consent Decree, should OCC elect to do so, if OCC obtains EPA's prior written approval.

F. The timing of compliance with the requirements of Section VI.B, supra, with respect to the attainment of cleanup standards shall be governed by the following:

1. With respect to any action-specific cleanup standards specified or referenced in Appendix II, and except as expressly provided in this Consent Decree and in plans and/or schedules developed and approved by EPA, in consultation with the State, OCC shall comply with the requirements of Section VI.B, supra, during the implementation of the Work.

2. With respect to any cleanup standards specified or referenced in Appendix II which were not being attained prior to the commencement of the Work, OCC shall comply with the requirements of Section VI.B, supra, regarding such cleanup standards by not later than the completion of Remedial Construction. Such cleanup standards are not deemed action-specific cleanup standards with respect to any occurrences of non-attainment which existed prior to the commencement of the Work and continue subsequent to the commencement of the Work.

3. With respect to any cleanup standards specified or referenced in Appendix II which were being attained prior to the

commencement of the Work, OCC shall comply with the requirements of Section VI.B, supra, during the implementation of the Work.

G. With respect to the attainment of effluent limitations required by Section VI.B.10, supra, the following shall apply:

1. In the event that an analysis (or a number of analyses) of a treatment system effluent sample (or samples) yields a concentration value (or an average concentration value) for an analyte which is less than or equal to the practical quantitation limit ("PQL") value for the analytical method employed as specified in the Sampling, Analysis and Monitoring Plan for Remedial Design (see Section E.2.a of Appendix I), the effluent limitation shall be deemed to have been attained for that analyte with respect to that sample (as well as for any average effluent limitation for that analyte with respect to that group of samples). However, if at any time EPA, in consultation with the State, approves an analytical method with a lower PQL, the achievability of such new PQL or such effluent limitation, whichever is less stringent, shall be grounds for additional work pursuant to Section VI.G.5, infra, unless OCC proves to the satisfaction of EPA, in consultation with the State, that attainment of effluent values at or below the new PQL is not technically practicable.

2. In the Remedial Design Workplan required by Section E of Appendix I, OCC shall, at a minimum, set forth plans to conduct treatability studies to evaluate all known wastewater

treatment methods that are or may be feasible for the treatment of those Hazardous Materials present at the Site in order to attain the effluent limitations set forth in Appendix II.

3. In the event that the wastewater treatability studies conducted pursuant to the approved Remedial Design Workplan lead EPA, in consultation with the State, to conclude, based on technical evidence presented to EPA and the State by OCC and on any other relevant information, that it is not technically practicable to attain an effluent limitation for a particular Hazardous Material, EPA, in consultation with the State, may direct the Remedial Design to proceed based on the most stringent design criteria and effluent values which EPA, in consultation with the State, determines are technically practicable; provided that OCC proves to the satisfaction of EPA, in consultation with the State, that the most stringent design criteria, when implemented, will result in a reduced adverse impact on the water quality of the Passaic River compared to the impact associated with the unremediated ground water migration from the Site to the Passaic River. In the event EPA, in consultation with the State, directs the Remedial Design to proceed as set forth above, OCC shall not be deemed in violation of this Consent Decree for failure to attain such effluent limitations, provided that an effluent value which is based on the design criteria and is specified in the Final Design Report (see Section F of Appendix

I), is attained for the Hazardous Material or parameter to which the effluent limitation applies.

4. If OCC does not achieve the effluent values approved by EPA, in consultation with the State, pursuant to Sections VI.G.1 and VI.G.3, supra, OCC shall be deemed in violation of this Consent Decree unless OCC proves to the satisfaction of EPA, in consultation with the State, that the attainment of such effluent values is not technically practicable despite OCC's evaluation and testing of all known methods to attain such values. If EPA, in consultation with the State, agrees that OCC has proved that the attainment of such effluent values is not technically practicable, the Remedial Construction and/or Operation and Maintenance activities may continue, provided that OCC shall, as part of the Remedy Evaluation required by Section VIII, infra, evaluate and, if not previously tested, test all known methods for achieving such effluent values, and provided that OCC proves to the satisfaction of EPA, in consultation with the State, that the Final Design Report and/or Operation and Maintenance Plan, when implemented, will result in a reduced adverse impact on the water quality of the Passaic River compared to the impact associated with the unremediated ground water migration from the Site to the Passaic River.

5. Notwithstanding Sections VI.G.1, VI.G.2, VI.G.3 and VI.G.4, supra, the finding of an effluent value greater than an effluent limitation may be grounds for additional work pursuant

to Section VII, infra, and may be a factor considered in the determination of the appropriateness of additional response action pursuant to Section VIII.B, infra.

6. The relief provided by Sections VI.G.1, VI.G.2, VI.G.3 and VI.G.4, supra, may be terminated by EPA, in consultation with the State, pursuant to schedules developed by or approved by EPA, in consultation with the State, to attain more stringent effluent values established and approved pursuant to Section(s) VII and/or VIII.C, infra.

7. With respect to this Section VI.G, EPA, in consultation with the State, shall determine what constitutes "technically practicable" in consideration of the EPA CERCLA Compliance With Other Laws Manual, August, 1988.

VII.

ADDITIONAL WORK

A. In the event EPA, in consultation with the State, and/or OCC determine(s) that additional work, including additional Remedial Design or Remedial Construction, is necessary to meet, at the Site, the cleanup standards described and/or referenced in Section VI, supra, and/or the Statement of Work, notification of the need for such additional work will be provided to the other parties. Additional work as defined in this Section VII shall be limited to that work which is required to achieve successful implementation of the components of the selected remedial

alternative, as set forth in Section VI.B, supra. The performance of Additional Work shall not be deemed a "modification" within the meaning of Sections XXXII.A and XXXII.C., infra.

B. Any additional work which OCC determines to be necessary is subject to approval by EPA, in consultation with the State.

C. Any additional work which is determined to be necessary by OCC and approved by EPA, in consultation with the State, or determined to be necessary by EPA, in consultation with the State, to meet the cleanup standards, shall be completed by OCC in accordance with those standards, specifications and schedules developed by OCC and approved by EPA, in consultation with the State.

D. The provisions of this Section VII shall remain effective throughout the duration of this Consent Decree.

VIII.

REMEDY EVALUATION TO ASSURE PROTECTION OF HUMAN HEALTH AND THE ENVIRONMENT AND TO ASSESS REMEDIAL ALTERNATIVES

A. OCC shall conduct a Remedy Evaluation for the Site once every two (2) years following completion of the Remedial Construction activities required under this Consent Decree (1) to assure that human health and the environment are being protected by the Remedy implemented by OCC under this Decree, taking into account, as provided in Section 121 of CERCLA, 42 U.S.C. §9621, without limitation, any changes in knowledge concerning the risks posed by dioxin and other Hazardous Materials at the Site and addressed by this Decree; and (2) to develop, screen and assess

the viability of implementing remedial alternatives more protective of human health and the environment, including those alternatives which are based purely on advances in technology and those which utilize more permanent solutions.

B. In the event that a Remedy Evaluation results in modifications of the Remedy that may affect subsequent Remedy Evaluations in some manner, OCC may request EPA to revise the format or content of any subsequent Remedy Evaluation to accomodate the modifications. EPA, in consultation with the State, will make such revisions as it deems appropriate.

C. EPA and the State will review each Remedy Evaluation conducted by OCC. If, upon such review, EPA, in consultation with the State, determines that further response action is necessary as a result of a Remedy Evaluation conducted pursuant to Sections VIII.A.1 and VIII.A.2, supra, EPA will notify OCC of its preliminary determination with respect to the need for further study and/or remedial action. The criteria for EPA's determination regarding the necessity of further response action as a result of a Remedy Evaluation conducted pursuant to Section VIII.A.2, supra, will be the same as the criteria for the Selection of appropriate remedial actions set forth in Section 121 of CERCLA, 42 U.S.C. §9621, with the exception of the criteria set forth in Section 121(c), 42 U.S.C. §9621(c). OCC will be provided an opportunity to confer with EPA, which may coincide

with an opportunity for public comment, if appropriate, with respect to any response action proposed by EPA pursuant to this Section VIII, and to submit written comments for the record with respect to any response action proposed by EPA. After the comment period closes, EPA will either affirm, modify or rescind its proposed response action in writing, stating the reasons for any further response action required. OCC shall implement and finance such response action, subject to its rights under Section XXIV, infra, to dispute whether the response action selected by EPA is consistent with the criteria specified above. OCC shall not be liable for any stipulated penalties that may accrue during any period of dispute resolution referred to in the preceding sentence unless OCC's invocation of dispute resolution is determined to be without sufficient cause. The requirement that such response action be performed shall not be deemed a "modification" within the meaning of Sections XXXII.A and XXXII.C, infra.

D. OCC agrees to reimburse the United States and the State for those costs incurred in overseeing and reviewing OCC's Remedy Evaluations and any subsequent remedial action conducted by OCC under this Section VIII.

E. EPA and the State reserve their rights as set forth in Section 121(f) of CERCLA, 42 U.S.C. §9621(f).

F. The provisions of this Section VII shall terminate upon EPA's determination that a permanent remedy has been implemented at the Site.

IX.

ENDANGERMENT

A. In the event of any action or occurrence during the term of this Consent Decree which causes or threatens a release of Hazardous Materials from the Site or which causes or may cause an imminent and substantial endangerment to public health or welfare or the environment, OCC shall immediately, upon notice or discovery of such action or occurrence, take all appropriate action to prevent, abate or minimize such release or endangerment and shall immediately notify the EPA RPM or, if that is impossible, the Response and Prevention Branch, EPA Region II at (201) 548-8730. OCC shall take such action in accordance with all applicable provisions of the Health and Safety/Contingency Plan developed pursuant to Appendix I and approved thereunder.

B. In the event EPA and/or the State take action to respond to the circumstances set forth in Section IX.A, supra, OCC shall reimburse all costs of the response action incurred by EPA that are not inconsistent with the National Contingency Plan and/or incurred by the State as the State is authorized to recover by

law, subject to those defenses set forth under Section 107(b) of CERCLA, 42 U.S.C. §9607(b).

C. Nothing in this Consent Decree shall be deemed to limit the power and authority of the United States, the State or this Court to take, direct or order all appropriate action to protect human health and the environment or to prevent, abate or minimize an actual or threatened release of Hazardous Materials on, at or from the Site.

X.

PARTIES' DESIGNATED REPRESENTATIVES

A. 1. Within ten (10) calendar days of lodging of this Consent Decree, EPA shall designate a Remedial Project Manager ("RPM") and NJDEP shall designate a Case Manager to monitor the progress of the Work and to coordinate communications among EPA, NJDEP and OCC. EPA and NJDEP may each designate an alternate representative.

2. Within ten (10) calendar days of lodging of this Consent Decree, OCC shall designate a Project Coordinator who shall have primary responsibility for implementation of the Work.

B. 1. The EPA RPM and any designated representative exercising the authority of Section X.B.3, infra, shall have the training provided for a grant of the authority set forth in 40 C.F.R. §§300.68(a)(2) and 300.33(b), or any similar provision in future amendments or revisions to the National Contingency Plan.

2. The EPA RPM shall work in cooperation with the NJDEP Case Manager.

3. The EPA RPM and the NJDEP Case Manager shall each have the authority to require a cessation of the performance of the Work or any other activity at the Site that may present or contribute to an imminent and substantial endangerment to public health, welfare or the environment or cause or threaten to cause the release of Hazardous Materials from the Site. In the event the EPA RPM or the NJDEP Case Manager suspends the Work or any other activity at the Site, EPA, in consultation with the State, may extend the compliance schedule developed under this Consent Decree as appropriate.

4. EPA, NJDEP and OCC shall each have the right to change their respective designated representatives by notifying the other parties in writing. OCC shall notify EPA and NJDEP of any such change at least seven (7) calendar days prior to the change. EPA and NJDEP will make reasonable efforts to notify OCC prior to any such change; however, any failure by EPA and/or NJDEP to notify OCC shall not be a breach of this Consent Decree.

C. The EPA RPM and the NJDEP Case Manager may assign other representatives, including other EPA and NJDEP employees or contractors, to serve as their representatives for oversight of performance of daily operations during implementation of the Work.

D. The EPA RPM, or the NJDEP Case Manager, acting with the concurrence of the EPA RPM, may make or authorize field modifications, consistent with the implementation of the Work, in writing, to the studies, designs, techniques or procedures undertaken or utilized in performing the Work required under this Consent Decree, provided any such modifications are consistent with Appendix I. Such field modifications shall not be deemed a modification within the meaning of Section XXXII, infra.

E. The absence of OCC's Project Coordinator shall not be cause for work stoppage.

F. To the maximum extent possible, except as specifically provided in this Consent Decree, communications among the Parties shall be between their designated representatives.

XI.

FACILITY ACCESS

A. EPA and the State, and their representatives, including contractors and subcontractors, shall have access at all times to the Site and any other property on which the Work is being performed to the extent that access to such property is controlled by or available to Settling Defendants to enable the Parties and their representatives to conduct any activity authorized by this Consent Decree, including, but not limited to:

1. Monitoring the progress of activities taking place;
2. Verifying any data or information submitted to EPA and NJDEP;
3. Conducting investigations relating to contamination at or near the Site;
4. Obtaining samples at or relating to the Site; and
5. Inspecting and copying records, operating logs, contracts or other documents required to assess compliance with this Consent Decree.

B. All access to the Site shall be in compliance with the applicable Health and Safety/Contingency Plan as uniformly applied to all Parties.

C. 1. To the extent that the Diamond Alkali Superfund Site or other areas where the Work is to be performed hereunder is owned by parties other than those bound by this Consent Decree, OCC shall use best efforts to obtain access from the owners for the purpose of implementing the requirements of this Decree in accordance with the schedule set forth in the approved Remedial Design Work Plan. Such agreements shall provide access not only for OCC, but also for EPA and the State and authorized representatives or agents of EPA and the State.

2. If such access agreements are not obtained within the time specified herein, OCC shall so notify EPA and NJDEP in

accordance with the procedures set forth in Section XXX, infra, and OCC shall use its best efforts to otherwise secure necessary access. For purpose of securing access, "best efforts" may involve the expenditure of money and the initiation of judicial proceedings to the extent authorized by law.

3. Should OCC, using its best efforts, fail to secure access to the Site or other areas where the Work is to be performed hereunder, EPA and the State may assist OCC in obtaining such access. OCC shall reimburse EPA and the State for all expenses incurred in obtaining access, in accordance with Section XXII, infra.

XII.

SAMPLING AND DATA

A. Within seven (7) calendar days of a request by EPA or the State, OCC shall make available to EPA and the State all requested results of sampling and/or tests or other data generated by or for OCC with respect to the implementation of the Work.

B. At the request of any party, any other party shall provide split or duplicate samples to the requesting party, or allow split or duplicate samples to be taken by the requesting party of any samples collected that relate in any way to the implementation of the Work. OCC shall notify EPA and the State not less than ten (10) calendar days in advance of any sample collection activity. In addition, EPA and the State shall have the right to

take any additional samples or direct OCC to take any additional samples that EPA and the State deem necessary to determine whether the Work is being implemented properly.

C. Notwithstanding any other provision of this Consent Decree, EPA and the State hereby retain all of their information gathering, access and inspection authorities and rights under CERCLA, RCRA, and any other applicable Federal or State statutes or regulations.

XIII.

PUBLIC INSPECTION

All data, factual information and documents submitted by Settling Defendants to EPA and NJDEP pursuant to this Consent Decree shall be available for public inspection. Settling Defendants shall not assert a claim of confidentiality regarding any monitoring or hydrogeologic data, any information specified under Section 104(e)(7)(F)(i) through (viii) of CERCLA, 42 U.S.C. §9604(e)(7)(F)(i) through (viii), or any other chemical, scientific or engineering data related to the Work or submitted to EPA and the State pursuant to this Consent Decree. Information entitled to protection under 18 U.S.C. §1905 is excluded from public inspection in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. §9604(e)(7).

XIV.

REPORTING REQUIREMENTSA. Monthly Progress Reports.

In addition to any other requirement of this Consent Decree, OCC shall prepare and provide to EPA and the State written monthly progress reports. For each calendar month, or part thereof, such monthly progress report shall: (1) describe all actions which have been taken to fulfill the requirements of this Consent Decree during the prior month; (2) describe any potential and/or actual noncompliance with this Consent Decree and other problems encountered; (3) describe all corrective actions taken in response to any potential and/or actual noncompliance or problems which occurred during the prior month; (4) include all final results of sampling, tests and all other data received or generated by OCC during the course of implementing the Work during the prior month; (5) describe all actions, data and plans which are scheduled for the next two months; (6) include information regarding percentage of completion, all delays encountered or anticipated that may affect the future schedule for performance of the Work, and a description of all efforts made to mitigate those delays or anticipated delays; and (7) include a section entitled "Summary For Submission to Court" which summarizes items (1) through (6), supra. Such monthly progress reports are to be submitted to EPA and the State by the twentieth (20th) calendar day of each succeeding month, the first

such report being due following the first full month following lodging of this Consent Decree with this Court.

B. Weekly Progress Reports.

In addition to the monthly progress report required pursuant to Section XIV.A, supra, during Remedial Construction, OCC shall prepare and provide to EPA and the State a weekly written progress report. For each calendar week, such weekly progress report shall: (1) describe all actions which have been taken toward fulfilling the requirements of this Consent Decree; (2) describe any potential and/or actual noncompliance with this Consent Decree and other problems encountered; (3) describe all corrective actions taken for any potential and/or actual noncompliance or problems which occurred during the relevant week; (4) describe all actions, data and plans which are scheduled for the next three (3) consecutive weeks; and (5) describe the types and amounts of Hazardous Materials removed or remediated. Such weekly Remedial Construction progress reports shall be submitted to EPA and the State by the tenth (10th) calendar day following each Sunday for the week ending on that Sunday.

C. Incomplete or Deficient Reports.

1. In the event that EPA deems a progress report to be incomplete or otherwise deficient, EPA shall notify OCC of the

alleged deficiency in writing. OCC shall make the necessary revisions and resubmit the revised progress report with the next scheduled progress report or, if the next progress report is due less than fourteen (14) calendar days following OCC's receipt of the notice of deficiency, with the subsequently scheduled progress report.

2. In the event EPA determines that a revised progress report is deficient for failure to address a deficiency stated in accordance with the procedures of Section C.1, supra, OCC shall be deemed in violation of this Consent Decree.

D. Submittal of Reports.

1. If the date for submission of any report, item or notification required pursuant to this Consent Decree falls upon a weekend or Federal or State holiday, the time period for submission of that item or notification is extended to the next Working Day following the weekend or holiday.

2. In the event EPA or the State requests more than one (1) copy of any report, OCC shall provide a reasonable number of copies as requested.

E. 1. Upon the occurrence of any event during performance of the Work which requires reporting to the National Response Center pursuant to Section 103 of CERCLA, 42 U.S.C. §9603, or which requires notification pursuant to N.J.A.C. 7:1E-1.1 et seq., OCC shall also orally notify the EPA RPM and the NJDEP Case Manager promptly.

2. In the event of the unavailability of the EPA RPM, OCC shall promptly orally notify the Response and Prevention Branch, EPA, Region II at (201) 548-8730, in addition to the reporting required by Section 103 of CERCLA, 42 U.S.C. §9603.

3. In the event of the unavailability of the NJDEP Case Manager, OCC shall promptly notify the NJDEP Bureau of Emergency Response at (609) 292-1075.

4. Within ten (10) calendar days of the onset of such an event, OCC shall furnish to EPA and NJDEP a written report setting forth the event(s) which occurred and the measure(s) taken and to be taken in response thereto.

XV.

PLANS, REPORTS AND ITEMS REQUIRING AGENCY APPROVAL OR RESPONSE TO AGENCY COMMENTS

A. In the event EPA disapproves any plan, report (other than a progress report covered by Section XIV, supra), or other item required to be submitted to EPA and NJDEP for approval pursuant to this Consent Decree, OCC shall have a reasonable time as specified in the notice, but not less than fourteen (14) calendar days from the receipt of written notice of such disapproval to correct any deficiencies and resubmit the plan, report or other item for approval. The notice of disapproval from

EPA shall include an explanation of why the plan, report or other item is being disapproved. OCC shall address each of EPA's comments and resubmit the previously disapproved plan, report or other item along with the required changes to EPA and NJDEP within the period set forth above.

B. In the event any comment on any report required under Appendix I is not adequately addressed by OCC in the second (2nd) submittal, OCC shall be deemed in violation of this Consent Decree, subject to the provisions of Section XV.C, infra. In the event EPA, in consultation with the State, does not approve OCC's second (2nd) submittal, or any portion thereof, EPA retains the right to amend or develop the submittal. OCC shall implement any such submittal as amended or developed by EPA, subject to OCC's right to invoke dispute resolution under this Consent Decree.

C. It is the intention of the Parties to engage in such discussions as may be necessary to resolve technical issues raised by EPA's comments made pursuant to Sections XV.A and XV.B, supra. EPA, in consultation with the State, may modify its comments and/or extend the due date for a subsequent submittal as a consequence of such discussions.

D. EPA and NJDEP will endeavor to complete their review of plans, reports and other items submitted to them for approval within the time periods specified as goals for such review and set forth in the letter from EPA to OCC dated October 17,

1989, as may be revised by subsequent letters. Failure by EPA and/or NJDEP to complete review in accordance with such letter(s) shall not relieve OCC of any obligation under this Consent Decree, nor shall it automatically extend the time for performance by OCC except to the extent that Appendix I or a schedule approved under this Section XV requires that performance of a particular activity commence following approval of the plan, report or other item under review.

XVI.

YEARLY PROGRESS REPORTS FOR THE BENEFIT OF THIS COURT

On or before March 31st following each calendar year during which this Court retains jurisdiction hereof pursuant to Section XXXIV, infra, EPA and the State shall file with this Court a compilation of the monthly "Summary For Submission to Court" submitted by OCC pursuant to Section XIV.A, supra, during the preceding calendar year.

XVII.

COMPLETION OF REMEDIAL CONSTRUCTION

A. Within ninety (90) calendar days of completion of all activities required pursuant to Sections G.1 through G.6 of Appendix I, OCC shall submit to EPA and the State a written

report certifying that, subject to any exceptions identified in the Final Report for Remedial Construction required by Section G.7 of Appendix I, all Remedial Construction activity components have been completed in full satisfaction of the standards and specifications set forth in the Final Design Report prepared and approved pursuant to this Consent Decree. Said report shall be signed by a New Jersey licensed professional engineer. The Final Report for Remedial Construction required by Section G.7 of Appendix I shall be submitted together with the written certification.

B. If EPA, in consultation with the State, determines that Remedial Construction has not been completed in accordance with the standards and specifications set forth in the Final Design Report prepared and approved pursuant to this Consent Decree, EPA shall notify OCC, in writing, of the specific tasks and activities which have not been so performed. OCC shall then implement the specified activities and tasks in accordance with those standards, specifications and schedules approved by EPA.

C. 1. Any portion of the Work performed pursuant to this Consent Decree shall not be deemed complete until it has been reviewed by EPA and NJDEP, and approved by EPA in writing.

2. At such time as EPA determines that Remedial Construction has been completed in accordance with the standards and specifications set forth in this Consent Decree, and that the

Remedial Construction is operating in accordance with such requirements, EPA shall notify OCC of such approval in writing.

D. Approval of completion of the Remedial Construction work in no way limits OCC's obligations under Sections VI, VII and VIII, supra.

XVIII.

ASSURANCE OF ABILITY TO COMPLETE WORK

A. Within fourteen (14) calendar days of the effective date of this Consent Decree, OCC shall submit a letter of credit to EPA for the purpose of demonstrating its ability to complete the Work and to pay all claims that arise in connection with the performance of the Work. The letter of credit must be adequate to assure EPA and the State that it is unnecessary to require additional assurances.

B. OCC shall submit such financial assurance annually.

C. The Parties agree that the total of sixteen million dollars (\$16,000,000) in letters of credit presently in effect pursuant to ACO I and ACO II shall be adequate financial assurance hereunder as of the effective date of this Consent Decree, provided however, that by no later than fourteen (14) calendar days after the effective date of this Decree, such letters of credit shall be

modified to be held by OCC for the benefit of EPA and NJDEP to satisfy the requirements of this Consent Decree.

D. In the event EPA or the State subsequently determines such financial assurance is inadequate, EPA shall so inform OCC in writing and OCC shall have thirty (30) calendar days from the date of receipt of such written notice to obtain further financial assurance which shall assure EPA and the State that OCC has sufficient assets to implement and complete the Work or the requirements of ACO I and ACO II.

E. OCC may petition EPA for a reduction in the amount of financial assurance required following EPA's approval of the completion of Remedial Construction work pursuant to Section XVII.C.2, supra, and at such time as OCC submits each Remedy Evaluation conducted pursuant to Section VIII.A, supra.

XIX.

RETENTION OF RECORDS

A. Settling Defendants shall preserve and retain, and EPA and the State shall use their best efforts to preserve and retain, all records and documents now in their possession or control and those which may come into their possession or control (including, for OCC, those in the possession or control of Maxus Energy Corporation) that relate in any manner to the Site or the Work, regardless of any document retention policy to the contrary, for not less than six (6) years after EPA certifies

approval of the Remedial Construction or six (6) years after the records or documents come into a party's possession, whichever is later.

B. Settling Defendants shall preserve, or shall instruct their contractors, their contractors' subcontractors and anyone else acting on their behalf in connection with the Site, to preserve (in the form of originals or exact copies, or upon EPA approval, microfiche of all originals) all records and documents of whatever kind, nature or description that relate to the Site or the Work for the time period specified in Section XIX.A, supra.

C. OCC shall, within sixty (60) calendar days of the effective date of this Consent Decree, obtain the written agreement of Maxus Energy Corporation to preserve, retain and provide to OCC on demand originals or copies of all records and documents fitting the description set forth in Section XIX.B, supra, for the time period specified in Section XIX.A, supra. A copy of the executed agreement between OCC and Maxus Energy Corporation shall be submitted to EPA and the State within ninety (90) calendar days of the effective date of this Consent Decree.

D. Prior to ceasing to preserve and retain any records and documents retained pursuant to Sections XIX.A, XIX.B and XIX.C,

supra, Settling Defendants shall provide at least ninety (90) calendar days written notice to EPA and the State. EPA will thereafter notify Settling Defendants in writing with respect to the appropriate disposition of said records and documents, which may include transfer of said materials to EPA or the State.

E. Failure by EPA or the State to preserve and retain records and documents that relate to the Site or the Work shall not be deemed a violation of this Consent Decree.

F. Nothing herein shall require the disclosure of information subject to a legally applicable privilege.

XX.

RESPONSE AUTHORITY

Subject to the provisions of Section XXV, infra, and notwithstanding any other provision of this Consent Decree, EPA and the State reserve all rights to take any and all response actions authorized by law.

XXI.

FORCE MAJEURE

A. For the purposes of this Consent Decree, "Force Majeure" shall mean any event arising from causes entirely beyond the control of OCC and of any entity controlled by OCC, including its contractors and subcontractors, which delays or prevents the performance of any obligation under this Consent Decree. "Force Majeure" shall not include increased costs or expenses, or finan-

cial incapacity. OCC's inability to meet the effluent limitations set forth in Appendix II for the reasons stated in Section VI.G, supra, shall not be a Force Majeure event and shall be resolved as set forth in Section VI.G, supra. If OCC claims and EPA agrees that a delay or prevention of performance is or was attributable to a Force Majeure event, any failure by OCC to perform Work under this Consent Decree that results solely from the Force Majeure event shall not be deemed a violation of this Consent Decree.

B. 1. OCC shall, within forty-eight (48) hours of when it knows of a Force Majeure, knows or should have known of a Force Majeure event, notify, by telephone, the EPA RPM or, in the event of his or her unavailability, the Chief of the Site Compliance Branch, Emergency and Remedial Response Division of EPA, Region II at (212) 264-2649, and the NJDEP Case Manager at (609) 633-1455 or, after business hours, the NJDEP Hotline at (609) 292-7172.

2. Within fourteen (14) calendar days of the date it provides the notice specified in Section XXI.B.1, supra, OCC shall also notify EPA and NJDEP, in writing. Such notice shall include, to the extent such information is available to or obtainable by OCC, the reason(s) for such delay or prevention of performance, the anticipated duration of such delay, OCC's rationale for interpreting such circumstances as being beyond its

control (should that be its claim), the measure(s) taken and to be taken by OCC to prevent or minimize the delay, and the time OCC estimates to implement such measure(s). Such notice shall be accompanied by all pertinent documentation including, but not limited to, third party correspondence.

3. Failure to provide timely notice in accordance with Section XXI.B.2, supra, shall constitute a waiver of any claim of Force Majeure.

C. If OCC claims and EPA agrees that a delay or prevention of performance is or was attributable to a Force Majeure event, the affected plans or schedules incorporated in this Consent Decree may be modified by OCC, subject to EPA's approval, to provide such additional time as may be necessary to allow for completion of the specific phase of the Work and/or any succeeding phase of the Work affected by such delay, or to allow for the completion of a substitute activity in furtherance of the implementation of the Work in the event EPA, in consultation with the State, determines that a substitute activity is appropriate. The modification of such affected plans or schedules, and/or the substitution of an activity shall not be deemed a "modification" within the meaning of Sections XXXII.A and XXXII.C, infra.

D. EPA's determination that a delay or prevention of performance is or was attributable to a Force Majeure event shall not necessarily justify or excuse nonperformance on any subsequent day.

E. OCC shall have the burden of proving that any failure to perform any obligation under this Consent Decree is excused by this Section XXI.

XXII.

REIMBURSEMENT

A. United States.

1. Past Costs.

a. Within forty-five (45) calendar days of receipt of a demand for payment, subject to Section XXII.A.4, infra, OCC shall pay to the Hazardous Substances Superfund all costs incurred by the United States since February 1, 1985, for response actions relating to the Diamond Alkali Superfund Site. Payment shall be made by certified or cashiers check payable to the "EPA Hazardous Substances Superfund," mailed to EPA - Region II, Attention: Superfund Accounting, P.O. Box 360188M, Pittsburgh, Pennsylvania 15251. A copy of such check shall be sent to the Regional Counsel, Office of Regional Counsel, EPA, Region II, 26 Federal Plaza, New York, New York 10278, Attention: Diamond Alkali Site Attorney.

b. As soon thereafter as is practicable, EPA shall make a demand or successive demands for payment of those remaining costs incurred by the United States as of the effective date of

this Consent Decree. OCC shall make payment of such costs in accordance with Section XXII.A.1.a, supra, subject to Section XXII.A.4, infra.

2. Oversight Costs.

Within forty-five (45) calendar days of receipt from the United States of an itemized accounting of costs incurred in connection with its oversight functions under this Consent Decree for a fiscal year or any part thereof, OCC shall pay to the Hazardous Substances Superfund all those undisputed costs incurred by the United States during the period in question. Such costs shall include, but shall not be limited to, those costs incurred by the United States in connection with its review or development of plans, reports and other items, its oversight of the Work implemented by OCC pursuant to this Consent Decree, its efforts to secure access to the Site or other areas for performance of the Work required under this Decree, and any additional response costs, including enforcement costs, relating to matters covered by this Decree. Such payments shall be remitted by OCC as specified in Section XXII.A.1.a, supra.

3. Effect of Dispute Resolution.

i. During the pendency of and pending the resolution of any dispute pursuant to Section XXIV, infra, and subject to Section XXII.A.4, infra, OCC shall not be required to tender payment of any disputed costs to EPA under Sections XXII.A.1 or XXII.A.2, supra, provided that, during the pendency

of the resolution of the dispute, such disputed costs shall be paid into an interest-bearing escrow account within forty-five (45) calendar days of receipt of a demand for payment, plus any additional time for payment that may accrue pursuant to Section XXII.C, infra.

ii. In the event OCC prevails in any dispute resolution under Section XXIV, infra, OCC shall have no liability to pay such disputed costs to EPA under Sections XXII.A.1 and XXII.A.2, supra, and the monies in the interest-bearing escrow account shall be returned to OCC.

iii. In the event OCC does not prevail in any dispute resolution under Section XXIV, infra, OCC shall be liable to EPA for the monies in the interest-bearing escrow account, such monies to be paid to EPA within forty-five (45) calendar days of the final resolution of the dispute.

4. The initial one million dollars (\$1,000,000) of response costs set forth in Section XXII.A.1, supra, are not inconsistent with the National Contingency Plan. The Parties are not addressing the issue of consistency with the National Contingency Plan with respect to those Section XXII.A.1 response costs, if any, which exceed one million dollars (\$1,000,000).

5. Payment by OCC of the response costs set forth in Sections XXII.A.1 and A.2, supra, is not a penalty, fine or monetary sanction.

6. Interest shall accrue on any amounts overdue under Sections XXII.A.1 and A.2, supra, in accordance with Section 107(a) of CERCLA, 42 U.S.C. § 9607(a). In accordance with 31 U.S.C. §3717, a handling charge shall be assessed at the end of each thirty (30) calendar day late period, and a six (6) percent per annum penalty charge shall be assessed if the penalty is not paid within ninety (90) calendar days of the due date.

B. The State of New Jersey.

1. Past Costs.

a. Within forty-five (45) calendar days of receipt of a demand for payment, OCC shall pay to the State all costs incurred by the State as of the effective date of this Consent Decree, for response actions relating to the Diamond Alkali Superfund Site. Payment shall be made by certified check payable to the "Treasurer, State of New Jersey," mailed to the Division of Hazardous Waste Management, New Jersey Department of Environmental Protection, 401 East State Street - CN 028, Trenton, New Jersey 08625-0028, Attention: Ms. Melinda Dower.

b. As soon thereafter as is practicable, the State shall make a demand or successive demands for payment of those remaining costs incurred by the State as of the effective date of

this Consent Decree. OCC shall make payment of such costs in accordance with Section XXII.B.1.a, supra.

2. Oversight Costs.

Within forty-five (45) calendar days of receipt from the State of an itemized accounting of costs incurred in connection with its oversight functions under this Consent Decree and those items of work specified in the letter produced by the State pursuant to Section XXXVI.C.2, infra, for a fiscal year or any part thereof, OCC shall pay to NJDEP those costs incurred by the State for the period in question. Such costs shall include, but shall not be limited to, those costs incurred by the State in connection with its review or development of plans, reports and other items, its oversight of the Work implemented by OCC pursuant to this Consent Decree, its efforts to secure access to the Site or other areas for performance of the Work required under this Consent Decree, and any additional response costs, including enforcement costs, relating to matters covered by this Decree and those items of work specified in the letter produced by the State pursuant to Section XXXVI.C.2, infra. Payment shall be remitted as specified in Section XXII.B.1.a, supra.

3. Payment by OCC of the response costs set forth in Sections XXII.B.1 and XXII.B.2, supra, is not a penalty, fine or monetary sanction.

4. The payments due to the State under this Section XXII.B are not subject to dispute resolution under this Consent Decree.

C. Documentation.

1. All demands for payment made by EPA or the State pursuant to this Section XXII. will include cost documentation that verifies that the claimed costs were incurred and that the amount of the demand was properly calculated, and will include the amount, date, description of activity, entity or person to whom the costs were paid or by whom the costs were incurred.

2. Upon receipt of written request, EPA and the State shall make the underlying cost documentation available to OCC for review, and shall designate persons with information concerning the incurrence of costs to answer reasonable questions of OCC concerning such costs, subject to any legal or statutory privilege. Any delay of greater than fourteen (14) calendar days from the date of request by OCC under this Section XXII.C.2 shall extend the due date by an equivalent number of days of delay beyond the fourteenth (14th) calendar day for the payment of those costs which are the subject of the data request, but in no event beyond an additional sixty (60) calendar days.

XXIII.

STIPULATED PENALTIES

A. Subject to Section XXI, supra, and Section XXIV, infra, Settling Defendants agree to make payments to EPA and the State as set forth in this Section XXIII.

B. For each and every violation of the reporting requirements set forth in Sections XIV.A, B, C and D, OCC shall pay stipulated penalties to EPA and the State in the amount of five hundred dollars (\$500) per calendar day per violation.

C. Except as otherwise specified in Section XXIII.B, supra, in the event OCC or CLH fails to meet any requirement as to it under this Consent Decree that falls after the entry of this Decree with this Court, including, but not limited to: (1) any requirement set forth in an approved plan which becomes incorporated in this Decree, (2) any deadline, time limit or schedule milestone established under this Decree, and (3) any payment of past costs, oversight costs, stipulated penalties or interest required hereunder, OCC or CLH shall pay to EPA and the State stipulated penalties in the following amounts for each calendar day of each and every violation of said requirement:

<u>Calendar Days of Delay</u>	<u>Penalty Per Violation Per Calendar Day</u>
1st through 5th day	\$ 1,500
6th through 14th day	\$ 5,000
15th through 30th day	\$ 6,500
31st through 90th day	\$ 8,500
91st day and beyond	\$15,000

The sums shown are the total penalty owed per violation per calendar day to EPA and the State.

D. Stipulated penalties shall begin to accrue on the day that performance is due or noncompliance occurs, and shall continue to accrue through the final day of correction of the noncompliance. Stipulated penalties relating to the adequacy of any reports, plans or other items requiring EPA's response shall begin to accrue on the day OCC or CLH receives written notification of the violation from EPA. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Consent Decree, provided that in the event a report, plan or other item requiring EPA approval pursuant to Sections XIV or XV, supra, is disapproved for more than one (1) reason, only a single stipulated penalty shall be owed for each day of noncompliance stemming from such disapproval. This does not, however, preclude the imposition of separate stipulated penalties stemming from the disapproval of and the lateness of the same submittal.

E. Subject to Section XXIII.M, infra, all stipulated penalties due under this Section XXIII shall be payable to EPA and the

State within forty-five (45) calendar days of OCC or CLH's receipt of a notification of noncompliance. Interest shall begin to accrue on any unpaid balance, if any, on the first calendar day after payment is due.

F. Interest shall accrue on any amounts overdue under this Section XXIII in accordance with Section 107(a) of CERCLA, 42 U.S.C. §9607(a). In accordance with 31 U.S.C. §3717, a handling charge shall be assessed at the end of each thirty (30) calendar day late period, and a six (6) percent per annum penalty charge shall be reassessed if the penalty is not paid within ninety (90) calendar days of the due date.

G. Those stipulated penalties which become due shall be paid by Settling Defendants, fifty (50) percent to EPA and fifty (50) percent to the State.

H. Those stipulated penalties due to EPA shall be paid by certified or cashiers check payable to "EPA Hazardous Substances Superfund," and shall be mailed to EPA - Region II, Attention: Superfund Accounting, P.O. Box 360188M, Pittsburgh, Pennsylvania 15251. A copy of such check shall be sent to the Regional Counsel, Office of Regional Counsel, EPA, Region II, 26 Federal Plaza, New York, New York 10278, Attention: Diamond Alkali Site Attorney.

I. Those stipulated penalties due to the State shall be paid by certified check payable to the "Treasurer, State of New Jersey," and shall be mailed to the Division of Hazardous Waste

Management, New Jersey Department of Environmental Protection,
401 East State Street - CN 028, Trenton, New Jersey 08625-0028,
Attention: Ms. Melinda Dower.

J. In addition to the payments set forth above, the United States and the State specifically reserve the right to seek remedies, sanctions and/or penalties which may be available to the United States and the State by reason of OCC or CLH's failure to comply with the requirements of this Consent Decree, including sanctions and penalties that the United States may seek under Section 122(1) of CERCLA, 42 U.S.C. §9622(1). The United States and the State, however, will not utilize such remedies to obtain penalties inconsistent with the exercise or result of the dispute resolution provisions of Section XXIV, infra. The United States and the State agree that this Court should consider the amount of stipulated penalties already paid by OCC or CLH under this Section XXIII for a particular violation, in the award of any monetary sanctions or penalties that OCC or CLH may be required to pay in the event that the United States or the State seeks additional relief against OCC or CLH for the same noncompliance. Nothing in this Section XXIII.J shall limit any remedy or action available to the United States or the State at law or equity (including the remedy of contempt) to enforce the terms of this Consent Decree.

K. No payments under this Section shall be tax deductible.

L. The payment of stipulated penalties does not alter

Settling Defendants' responsibility to complete any requirement of this Consent Decree.

M. Effect of Dispute Resolution.

1. During the pendency of and pending the resolution of any dispute pursuant to Section XXIV, infra, OCC or CLH shall not be required to tender payment of any stipulated penalties to EPA and the State under this Section XXIII provided that, during the pendency of the resolution of such dispute, those stipulated penalties that accrue during any month shall be paid into an interest-bearing escrow account monthly, by not later than the fifth (5th) calendar day of each calendar month after the dispute arises.

2. In the event OCC or CLH prevails in any dispute resolution under Section XXIV, infra, OCC or CLH shall have no liability to pay stipulated penalties to EPA and the State under this Section XXIII with respect to the matter submitted for dispute resolution, and the monies in the interest-bearing escrow account shall be returned to OCC or CLH.

3. In the event OCC or CLH does not prevail in any dispute resolution under Section XXIV, infra, OCC or CLH shall be liable to EPA and the State for the monies in the interest-bearing escrow account plus all stipulated penalties that have accrued which have not yet been paid into the escrow account, all such monies to be paid to EPA and the State within forty-five

(45) calendar days of the final resolution of the dispute, except as provided in Section VIII.C, supra.

N. EPA and the State each have the discretion to waive or reduce payments otherwise due under this Section XXIII.

XXIV.

DISPUTE RESOLUTION

A. As required by Section 121(e)(2) of CERCLA, 42 U.S.C. §9621(e)(2), the Parties shall attempt to resolve expeditiously and informally any disagreements concerning the implementation or application of this Consent Decree or the performance of the Work required hereunder. Unless the Parties agree otherwise, in writing, such attempted informal resolution shall not extend beyond thirty (30) calendar days from the date on which EPA, OCC or CLH receives written notice of the existence of a dispute.

B. If a dispute arising under this Consent Decree is not resolved through informal means under Section XXIV.A, supra, the interpretation advanced by EPA shall be considered binding unless OCC or CLH invokes the dispute resolution provisions of this Section XXIV. Should OCC or CLH desire dispute resolution under this Section XXIV, it shall give written notice to EPA within five (5) calendar days after receipt of EPA's written interpretation of the subject of the dispute.

C. 1. Within fifteen (15) Working Days of receipt of notice of dispute pursuant to Section XXIV.B, supra, OCC and/or

CLH shall serve on EPA and the State a written statement which sets forth the issues in dispute, the relevant facts upon which the dispute is based, any factual data, analysis or opinion supporting its position, and supporting documentation (hereinafter such written statement shall be referred to as a "Statement of Position") on which it relies.

2. EPA shall serve its Statement of Position on OCC or CLH no later than thirty (30) calendar days after receipt of OCC or CLH's Statement of Position.

3. Within fifteen (15) calendar days of receipt of EPA's Statement of Position, OCC or CLH may serve a Reply Statement of Position.

4. Within fifteen (15) calendar days of receipt of OCC or CLH's Reply Statement of Position, EPA may serve a Surreply Statement of Position.

5. EPA may extend the time periods for exchange of Statements of Position by any party.

D. An administrative record of any dispute under this Section XXIV shall be maintained by EPA. This record shall include the written notification of such dispute, the Statements of Position and any other relevant information. The record shall be available for review by the Parties.

E. Upon review of the administrative record, the Director of the Emergency and Remedial Response Division, EPA Region II

shall issue an Order resolving the dispute, a copy of which will be provided to OCC or CLH.

F. Any such Order issued pursuant to Section XXIV.E, supra, shall be reviewable by this Court provided that within seven (7) calendar days of receipt of the Order, OCC or CLH files a petition for judicial review with this Court which describes the nature of the dispute. Thereafter, judicial review will be available only by instituting a new action to the extent permitted by law. In proceedings on any dispute between EPA and OCC concerning matters covered by Section 113(j) of CERCLA, 42 U.S.C. §9613(j), OCC shall have the burden of demonstrating that the position of EPA is arbitrary and capricious or otherwise not in accordance with law. In all other disputes, the standard of review will be determined in accordance with applicable law.

G. The invocation or implementation of the procedures stated in this Section XXIV shall not stay the accrual of stipulated penalties, extend or postpone any deadline, or affect in any way Settling Defendants' obligations (including the obligation to pay stipulated penalties) under this Consent Decree with respect to the disputed issue unless otherwise agreed to by EPA, in writing, or ordered by this Court, provided that this Court may modify such schedule only if OCC or CLH both prevails in dispute resolution and demonstrates that such schedule modification is required by the impracticality of having to continue the Work pending the resolution of the dispute. In the event that a dispute

relates solely to the issue of stipulated penalties that arise in connection with an agreed upon or Court ordered schedule modification, OCC need only address the issue of the appropriateness of stipulated penalties to be paid to EPA and the State.

H. The invocation or implementation of the procedures stated in this Section XXIV shall not stay the accrual of stipulated penalties under Section XXIII, supra. However, such penalties shall be paid into an interest-bearing escrow account pursuant to Section XXIII.M, supra.

XXV.

COVENANTS NOT TO SUE

A. OCC.

1. In consideration of the Work which will be performed and payments which will be made by OCC under the terms of this Consent Decree, and in consideration of the work which has been performed and will be performed pursuant to ACO I and ACO II, and except as otherwise specifically provided in Sections XXV.A.2, XXV.A.3, XXV.A.4, XXV.A.5 and XXV.A.6, infra, the United States and the State covenant not to sue or to issue any administrative orders against OCC for Covered Matters. These covenants extend only to OCC and do not release any other person from liability. For purposes of this Section XXV.A, and except as provided in Sections XXV.A.4, XXV.A.5 and XXV.A.6, infra, "Covered Matters"

include any and all civil claims available to the United States under Sections 106(a) and 107(a) of CERCLA, 42 U.S.C. §§9606(a) and 9607(a), and Section 7003 of RCRA, 42 U.S.C. §6973, and available to the State under Section 107(a) of CERCLA, 42 U.S.C. §9607(a), and N.J.S.A. 58:10-23.11a et seq., N.J.S.A. 13:1E-1 et seq., and N.J.S.A. 58:10A-1 et seq., relating solely to the Work performed under this Consent Decree and ACO I and ACO II, and for the reimbursement of costs incurred by the United States and the State prior to the effective date of this Decree, in connection with this Site pursuant to Section XXII, supra. This covenant not to sue OCC shall take effect upon receipt of all payments due, and does not extend to future liability.

2. This covenant not to sue OCC shall be conditioned upon performance by OCC of its obligations under this Consent Decree, ACO I and ACO II.

3. This covenant not to sue OCC does not pertain to any matters other than Covered Matters as defined by Section XXV.A.1, supra.

4. "Covered Matters" does not include:

- i. Liability arising from Hazardous Materials removed from the Diamond Alkali Superfund Site;
- ii. Liability arising from past, present or future disposal or release or threatened release of Hazardous Materials outside of the Site;

iii. Liability for damages for injury to, destruction of or loss of natural resources resulting from the release of Hazardous Materials at the Diamond Alkali Superfund Site;

iv. Claims based on a failure by OCC to meet the requirements of this Consent Decree including, but not limited to, claims for injunctive relief or claims for civil penalties pursuant to Section 122(1) of CERCLA, 42 U.S.C. §9622(1);

v. Liability for violations of Federal or State law which occur during implementation of the Work;

vi. Claims based on criminal liability;

vii. Any matter as to which the United States or the State is owed indemnification under Section XXVII.A, infra; and

viii. Liability for third party claims asserted against EPA, NJDEP and the New Jersey Spill Compensation Fund, N.J.S.A. 58:10-23.11a et seq.

5. Notwithstanding any other provision of this Consent Decree, the United States reserves its right to institute proceedings in this action or in a new action seeking to compel OCC (1) to perform additional response actions at the Site, or (2) to reimburse the United States for response costs if:

i. conditions at the Site, previously unknown to the United States, are discovered, or

ii. information is received, in whole or in part, after entry of this Consent Decree,

and the Administrator of EPA or his delegate finds, based on these unknown conditions or this information, together with any other relevant information, that the Work is not protective of public health or welfare or the environment. The provisions of this Section XXV.A.5 in no way limit OCC's obligations under Section VIII, supra, to perform any additional response action.

6. Notwithstanding any other provision of this Consent Decree, the State reserves its right to institute proceedings in this action or in a new action seeking to compel OCC (1) to perform additional response actions at the Site, or (2) to reimburse the State for response costs if:

i. conditions at the Site, previously unknown to the State, are discovered, or

ii. information is received, in whole or in part, after entry of this Consent Decree, and the Commissioner of NJDEP or his delegate finds, based on these unknown conditions or this information, together with any other relevant information, that the Work is not protective of public health or welfare or the environment. The provisions of this Section XXV.A.6 in no way limit OCC's obligations under Section VIII, supra, to perform any additional response action.

B. Limited Covenant For CLH.

1. Except as otherwise specifically provided in Section XXV.B.3., infra, the United States and the State covenant not to

sue or to issue any administrative orders against CLH for Covered Matters as defined in Section XXV.B.2, infra. These covenants extend only to CLH and do not release any other person from liability.

2. For purposes of this Section XXV.B, and except as specifically provided in Section XXV.B.3, infra, "Covered Matters" include those actions which will be performed by CLH pursuant to Sections III and XI, supra. This covenant not to sue CLH shall be conditioned upon performance by CLH of its obligations under this Consent Decree.

3. The United States and the State reserve their rights to take any administrative or judicial action against CLH for any other liability which it may have pursuant to CERCLA, RCRA, N.J.S.A. 13:1D-1 et seq., N.J.S.A. 58:10A-1 et seq., N.J.S.A. 13:1E-1 et seq., and N.J.S.A. 58:10-23.11a et seq., including, but not limited to, any liability which CLH may have for those matters set forth in Section XXV.A.4, supra.

XXVI.

WAIVER OF ANY CLAIM-SPLITTING DEFENSE

The Parties recognize and acknowledge that the settlement embodied in this Consent Decree is only a partial resolution of issues related to the remediation of conditions at the Diamond

Alkali Superfund Site. Settling Defendants hereby waive the defenses of the entire controversy doctrine and claim-splitting by the United States and the State with respect to amending of the Complaint in this action or the filing of sequential lawsuits by the United States and/or the State for claims involving the Diamond Alkali Superfund Site in subsequent litigation regarding Settling Defendants' liability for remedial action to address off-Site areas, including, without limitation, the Passaic River and other areas and/or payment of costs to finance remedial action to address the Passaic River and other areas.

XXVII.

OTHER CLAIMS

A. OCC agrees to indemnify, save and hold harmless the United States and the State and their representatives from any and all claims or causes of action arising from acts or omissions of Settling Defendants and/or their contractors, subcontractors or any other person acting on their behalf in the performance of the Work or their failure to perform fully or complete the Work.

B. The United States and the State are not to be construed as parties to, and do not assume any liability for, any contract entered into by Settling Defendants in carrying out the activities required pursuant to this Consent Decree. The proper completion of the Work required under this Consent Decree is the sole responsibility of OCC.

C. Settling Defendants waive any claims for damages or reimbursement from the United States or the State or for set-off of any payments made or to be made to the United States or the State, arising from or on account of any contract, agreement or arrangement between any one or more of the Settling Defendants and any person performing the Work on or with respect to the Site, including but not limited to claims on account of construction delays.

XXVIII.

CLAIMS AGAINST THE FUNDS

A. In consideration of the entry of this Consent Decree, Settling Defendants waive any rights they may have to assert any claims pursuant to Sections 106(b)(2) and/or 112 of CERCLA, 42 U.S.C. §§9606(b)(2) and/or 9612, against the United States for reimbursement from the Hazardous Substances Superfund for any past costs or costs incurred by Settling Defendants in performing the Work required by this Consent Decree, and nothing in this Decree shall be construed as EPA's preauthorization of a CERCLA claim against the Hazardous Substances Superfund within the meaning of 40 C.F.R. §300.25 and any amendments thereto. Settling Defendants' waiver of any rights they may have to assert claims pursuant to Section 106(b) of CERCLA, 42 U.S.C. §9606(b), is limited to claims that may arise in the implementation of the Work.

B. Settling Defendants waive their rights to assert any claims against the State, including the New Jersey Spill Compensation Fund, N.J.S.A. 58:10-23.11a et seq., for reimbursement of any sum related to any past costs or costs incurred in performing the Work required under this Consent Decree.

XXIX.

INSURANCE/FINANCIAL RESPONSIBILITY

A. Prior to commencing any on-Site Work, Settling Defendants shall procure and shall maintain or shall cause to be procured and maintained for the duration of this Consent Decree, general liability and automobile insurance with limits of five million dollars (\$5,000,000), and one million dollars (\$1,000,000), respectively, and shall use best efforts to and shall document and provide to EPA and the State documentation of their efforts to have EPA and the State named as additional insureds. In addition, for the duration of this Consent Decree, Settling Defendants shall satisfy all applicable laws and regulations regarding the provision of workers compensation insurance.

B. Prior to commencement of the Work under this Consent Decree, OCC shall provide EPA and NJDEP with a certificate of insurance in the required amounts.

C. If OCC demonstrates by evidence satisfactory to EPA that any contractor or subcontractor maintains insurance equivalent to

that described above, or insurance covering the same risks but in a lesser amount, then, with respect to that contractor or subcontractor, OCC need provide only that portion of the insurance described above which is not maintained by the contractor or subcontractor.

D. OCC shall not be liable to EPA and the State for and does not assume liability for any injury or damages to persons or property resulting solely from acts or omissions of EPA or the State or by any person acting by, through or under them or on their behalf in carrying out any activity under this Consent Decree.

XXX.

NOTICES

A. Whenever, under the terms of this Consent Decree, notice is required to be given, a report or other document is required to be forwarded by one party to another or any other written communication is required, such correspondence or a copy thereof shall be directed to the addresses and individuals specified below, unless this Consent Decree specifies otherwise:

1. As to the United States and/or EPA:

- a. Chief, New Jersey Superfund Branch
Office of Regional Counsel
United States Environmental Protection Agency,
Region II
26 Federal Plaza
New York, New York 10278
Attention: Diamond Alkali Site Attorney

- b. Chief, New Jersey Compliance Branch
United States Environmental Protection Agency,
Region II
26 Federal Plaza, Room 737
New York, New York 10278
Attention: Diamond Alkali Project Manager
- c. Chief, Environmental Enforcement Section Land &
Natural Resources Division
United States Department of Justice
Benjamin Franklin Station
P.O. Box 7611
Washington, D.C. 20044
Attention: File No. 90-11-2-399

2. As to the State and/or NJDEP:

New Jersey Department of Environmental Protection
Division of Hazardous Waste Management
401 East State Street
CN 028
Trenton, New Jersey 08625-0028
Attention: Ms. Melinda Dower

3. As to OCC:

Occidental Chemical Corporation
c/o Maxus Energy Corporation
717 North Harwood Street
Dallas, Texas 75201
Attention: Mr. William C. Hutton
Director, Environmental Affairs

4. As to CLH:

Chemical Land Holdings, Inc.
c/o Maxus Energy Corporation
717 North Harwood Street
Dallas, Texas 75201
Attention: Mr. William C. Hutton
Director, Environmental Affairs

B. The United States (and, where applicable, EPA) and the State (and, where applicable, NJDEP) agree that they will provide each other with a copy of any notice, report or other document

directed to OCC or CLH. Such copies shall be directed to the addresses and individuals specified in Section XXX.A, supra.

XXXI.

LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

A. This Consent Decree shall be lodged with this Court for not less than thirty (30) calendar days for public notice in accordance with the requirements of Section 122(d)(1)(2) of CERCLA, 42 U.S.C. §9622(d)(1)(2), and 28 C.F.R. §50.7.

B. The United States and the State reserve their right to withhold consent if comments disclose facts or considerations which indicate that this Consent Decree is inappropriate, improper or inadequate.

XXXII.

MODIFICATION

A. Except as expressly provided for in Sections VII, VIII, X, and XXI, supra, there shall be no material modification of this Consent Decree without written approval of all Parties to this Decree and this Court.

B. No oral modifications of this Consent Decree shall be effective.

C. Modifications that do not materially alter the requirements of this Consent Decree may be made upon written consent of all Parties, which shall be filed with this Court.

XXXIII.

ADMISSIBILITY OF DATA

In the event that this Court is called upon to resolve a dispute concerning implementation of this Consent Decree, the Parties waive any evidentiary objection to the admissibility into evidence of the results of any analyses of samples conducted by or for a party at or in connection with the Diamond Alkali Superfund Site, or other data gathered, generated, or evaluated pursuant to this Decree, unless a party can demonstrate that there was a significant noncompliance with applicable chain of custody procedures. The Parties waive their right to contest the validity of any data unless it is established that such data has not been validated in accordance with all relevant quality assurance and quality control procedures established by or pursuant to this Consent Decree, or unless it is established that the data has not met the quality assurance and quality control criteria of the applicable approved Quality Assurance Project Plan.

XXXIV.

CONTINUING JURISDICTION

This Court retains jurisdiction over both the subject matter of this Consent Decree and over all Parties for the duration of the performance of the terms and provisions of this Consent Decree for the purposes of issuing such further orders or

directions as may be necessary or appropriate to construe or modify the terms of this Decree, or to effectuate compliance with its terms, to the extent allowed by law.

XXXV.

COMMUNITY RELATIONS

Settling Defendants shall cooperate with EPA and NJDEP in providing information regarding the Work required under this Consent Decree to the public. As requested by EPA or NJDEP, Settling Defendants shall participate in the preparation of all appropriate information disseminated to the public and in public meetings which may be held or sponsored by EPA and/or NJDEP to explain activities at or concerning the Diamond Alkali Superfund Site.

XXXVI.

OTHER PROVISIONS

A. This Consent Decree shall be effective upon the date of its entry by this Court.

B. Notwithstanding Section XXXVI.A, supra, within seven (7) calendar days of lodging of this Consent Decree with this Court, each party, to the extent applicable to it, agrees to comply (except as expressly provided elsewhere in this Decree) with the

following Sections of this Consent Decree: V, VI, X, XIV, XV, XIX, XXI, XXIV, XXVII, XXX, XXXII, XXXIII and XXXV.

C. 1. OCC hereby agrees to perform the obligations imposed upon Diamond Shamrock Chemicals Company under ACO I and ACO II. Those provisions of ACO I and ACO II that relate to matters beyond the scope of the matters covered by this Consent Decree shall remain in effect. Those provisions of ACO I and ACO II that relate to matters within the scope of the matters covered by this Consent Decree are superseded. The letters of credit referenced in Section XVIII, supra, shall remain in effect as provided therein, and NJDEP shall be able to draw upon said letters of credit in order to satisfy the requirements of ACO I and ACO II.

2. The remaining specific items of work which were originally to be performed pursuant to ACO I and ACO II and which are beyond the scope of this Consent Decree shall be identified by the State within forty-five (45) Working Days of the entry of this Decree. Failure by the State to provide such an identification will not constitute a violation of this Consent Decree. The specific items of work which remain to be identified under ACO I and ACO II, and NJDEP's review and approval of the implementation and completion of such items by OCC are not subject to dispute resolution under this Consent Decree.

D. The provisions of State of New Jersey Executive Orders Nos. 40 and 40 D (1983) shall remain in effect. The Work

performed by OCC pursuant to this Consent Decree is consistent with said Executive Order.

E. The section headings set forth in this Consent Decree are included for convenience of reference only, and shall be disregarded in the construction and interpretation of any of the provisions of this Decree.

F. This Consent Decree represents the entire agreement among the Parties with respect to the matters covered by this Decree, and shall supersede all drafts, writings, negotiations and discussions among the Parties.

THE UNDERSIGNED PARTIES hereby enter into this Consent Decree:

PLAINTIFFS

FOR THE UNITED STATES:



RICHARD B. STEWART
Assistant Attorney
General
Land and Natural Resources
Division
U.S. Department of Justice
Washington, D.C. 20530



SUSAN C. CASSELL
United States Attorney's Office
District of New Jersey
Newark, New Jersey 07102



JERRY SCHWARTZ
Attorney
Environmental Enforcement
Section
Land and Natural Resources
Division
U.S. Department of Justice
Washington, D.C. 20530



EDWARD E. REICH
Acting Assistant Administra-
tor for Enforcement and
Compliance Monitoring
U.S. Environmental Protection
Agency
Washington, D.C. 20460

Randy B. Stein
RANDY B. STEIN
Assistant Regional Counsel
U.S. Environmental Protection
Agency
Region II
New York, New York 10278

FOR THE STATE OF NEW JERSEY:

Type Name:

Ronald T. Corcoran
(Signature)
Ronald T. Corcoran
Assistant Director for
Responsible Party Cleanups
Division of Hazardous Waste
Management
State of New Jersey
Department of Environmental
Protection
Trenton, N.J. 08625

SETTLING DEFENDANTS

Settling Defendants herein, Occidental Chemical Corporation, as successor to Diamond Shamrock Chemicals Company, and Chemical Land Holdings, Inc., by the duly authorized representatives named, titled and signed hereunder, hereby consent to this Consent Decree with respect to the Diamond Alkali Superfund Site located in Newark, New Jersey, and to the filing of this Decree with the United States District Court for the District of New Jersey, and agree to be bound by the terms and conditions hereof.

Upon the lodging of this Consent Decree, Settling Defendants agree that all requirements as to service of process set forth in Federal Rule of Civil Procedure 4, including service of a


summons, and all requirements as to service of pleadings and other papers set forth in Federal Rule of Civil Procedure 5, and any applicable local rules of this Court, shall be deemed to be met by service of process by mail upon the following authorized agents:

FOR OCCIDENTAL CHEMICAL CORPORATION,
as successor to
Diamond Shamrock Chemicals Company:

Authorized agent for service of process:

Michael J. Rudick
Vice President and General Counsel
Occidental Chemical Corporation
5005 LBJ Freeway
Occidental Tower
Dallas, Texas 75244

By:

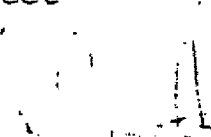

MICHAEL J. RUBICK
Vice President and General
Counsel
Occidental Chemical Corpora-
tion

FOR CHEMICAL LAND HOLDINGS, INC.

Authorized agent for service of process:

D. L. Smith
President
Chemical Land Holdings, Inc.
717 North Harwood Street
Dallas, Texas 75201

By:


D. L. SMITH
President
Chemical Land Holdings, Inc.

Handwritten initials: RLH

DACD:07:14:89

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APPROVED and ENTERED this

day of _____, 1989.

UNITED STATES DISTRICT JUDGE