Benjamin Moore & Co. *Paints ▲ Stains ▲ Clear Finishes*
NEWARK PLANT ▲ 134 LISTER AVENUE ▲ NEWARK, NEW JERSEY 07105-4566 ▲ (201) 344-1200 ▲ FAX: (201) 344-2716

November 22, 1996

Mr. Pasquale Evangelista
Emergency and Remedial Response Division
U.S. Environmental Protection Agency
26 Federal Plaza, Room 13-100
New York, New York 10278

Re: Benjamin Moore's Supplemental Response to EPA's First and Second Request for Information under CERCLA § 104 (e) Concerning the Passaic River

Dear Mr. Evangelista:

This is Benjamin Moore and Company's (BMC) supplemental response in accord with U.S. EPA's January 3, 1995 Request for Information under 42 U.S.C. § 9601 et seq (the Comprehensive Environmental Response Compensation and Liability Act ("CERCLA")) - Diamond Alkali Superfund Site, Passaic River Study Area (the "Request").

BMC's original responses were believed to be correct at the time they were submitted based on the limited information then available. The Request covered a long period of time for which few files survive and during which numerous people were in various positions of responsibility. Quite simply, things which were unimportant prior to the passage of CERCLA now are very important. Consequently, continuing its investigation into possible sources of releases into the Passaic River has been a long drawn out research process for BMC involving multiple requests to State and local agencies for files and records followed by attempts to determine if documents found in State files continue to exist in Benjamin Moore's retired files or elsewhere.

For example, EPA's Second Request asked for information about a 1969 Administrative order from the New Jersey State Department of Health. At the time of response, the only 1969 New Jersey Department of Health document that Benjamin Moore was aware of was related to an alleged discharge of smoke with the word "VOID" written across it. BMC spent months trying to track down this document and its background with the State only to find that it apparently does not exist. Of course the Health Department no longer is responsible for environmental enforcement, nor does it have ready access to its old documents. However, a personal search of the State archives revealed the 1969 Order referenced by EPA and related correspondence which enabled Benjamin Moore to better focus its files search. Subsequently, a long closed and heretofore abandoned file with the same order and other correspondence has been located and is provided and discussed in Attachment 1.

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As a result of BMC's continuing investigation, files have been found subsequent to BMC's responses which were not centrally located or identified in a manner that enabled them to be identified by CERCLA subject matter or related issues, or were in storage in separate isolated locations. Consequently, this supplement is necessary.

Additionally, in hindsight, some of the questions in EPA's request were misunderstood. For example, the Second Request asked if Benjamin Moore used zinc, copper or titanium are well known metals with a variety of applications in industry. Benjamin Moore does not use copper, zinc or titanium per se. However, it used commercial products in which these elements in varying degree from trace compounds, and still uses titanium dioxide, and zinc oxide. This is addressed in SR Question 3 in Enclosure 1.

The following supplemental responses at Enclosure 1 are keyed first to the Second Request ("SR") numbers, then to First Request ("FR") questions as indicated. It represents the best available information at this time. BMC is continuing its investigation and will supplement this response if it later discovers other relevant information.

If there are any questions, please call.

Sincerely,

Charles J. Ilsley, Jr.

CJI/je

cc: KRohrbacher, Esq
AShulcz, Esq
AWagner, Esq

ABK000364

Attachment 1

Supplement to Second and First Request for Information: Benjamin Moore and Passaic River Study

Attachment 1

Supplement to Second and First Request for Information: Benjamin Moore and Passaic River Study

Attachment 1.

Supplement to Second and First Request for Information: Benjamin Moore and Passaic River Study

SR Question 1. 1969 Administrative Order from New Jersey State Department of Health.

On August 15, 1969, the Water Pollution Control Program ("WPCP") of the New Jersey State Department of Health (the "State"), issued an administrative order to Benjamin Moore & Co. ("BMC") pursuant to the provisions of R.S. 58:12-2. (Enclosure 1). In response to a BMC inquiry for the specific details on which the order was based, in a Sept. 4, 1969 letter the State indicated that the alleged violation was based on "pollution of the Passaic River in terms of odor, turbidity, color, biochemical oxygen demand, chemical oxygen demand, ether soluble matter and suspended solids." (Enclosure 2). This was followed by a meeting at Trenton on September 19, 1969 "to explain the specific details that brought about [the] 'Order'." 10/20/69 letter from J. Calise (BMC) to E. Segessen, WPCP (Enclosure 3). At that time Benjamin Moore believed that rinsing strainers (filters used to capture naturally solidified latex particles) used in making pure latex vehicle[1] in an outside area of the plant allowed the rinse water to run into Benjamin Moore's flood control system and then be discharged into the River. BMC's solution to this problem was to collect and pump this rinse water "into the same storage area where all of the present latex wash[2] from the paint plant [was] collected." (Enclosure 4). As noted in an 11/20/69 Calise to Segessen letter, Benjamin Moore considered the case closed but solicited input from the State. Apparently from the record of correspondence, at Enclosure 4 and 5, the State never responded.

In February 1973, after Benjamin Moore sought to clarify the status of the 1969 order (Enclosure 5), the State again tested some effluent discharged from Benjamin Moore's storm water system. This test resulted in similar problems with color, turbidity, etc. At that time, BMC initially thought that the problem was caused by infiltration of river water into the sump, but Benjamin Moore decided to check the "entire underground drainage system which feeds the drainage sump." 3/26/73 Malkin (BMC) letter to Mr. Hamilton (N.J.D.E.P.) (Enclosure 6). This system review revealed

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[1] "Vehicle" is a term of art in the paint industry that identifies fully polymerized latex in a suspension that becomes the film forming agent which binds pigments and other coating components.

[2] "Latex wash" meant the water collected when latex paint equipment was cleaned; it is also called "wash water." See Supplement to SR Question 8.

that, contrary to Benjamin Moore's belief that all drains in the facility were hooked up to the sanitary sewer, three drains in the vehicle plant were in fact discharging to the storm sewer system: the portable kettle cooling operation, a reactor cooling system and a sink drain in building #11, all in the vehicle plant where pure latex was made. Once this was discovered, these drains were connected to the sanitary sewer system. (Enclosure 7).

Although there was a "release" of water that allegedly caused problems with turbidity, etc., there is no evidence that this release contained hazardous materials. Neither turbidity nor color is related to the presence or discharge of hazardous materials. The water discharged from cooling the portable kettles would not have come in contact with any product material, so it could not pick up any hazardous materials if any were present. The scrubber used in the reactor system operated only when the manhole in the reactor was opened to add certain solid ingredients and would have picked up airborne particles released only during the addition of these ingredients into the reactor when the reactor manhole was open. Monomer was added only after the manhole was closed. However, the ingredients added to the reactor and the particles captured by this system do not contain chemicals similar to the list in 104(e) question No. 3 as can be seen in examining the air permit for the scrubber at Enclosure 8. The sink was used to wash hands.

SR Question 2. The meaning of "received and utilized in prior years" in reference to certain chemicals identified in 104(e) question No. 3, Mercury, Lead, Methyl Ethyl Keytone, Benzene/Ethyl Benzene.

In 1968, Benjamin Moore stopped using raw materials that contained mercury compounds in the manufacture of paint; mercury compounds were a common component of biocides - used to prevent mildew in water (latex) based paints. BMC's elimination of mercury from its paint is verified by a June 1972 Consumer Reports article that tested exterior latex paints and commended Benjamin Moore for eliminating mercury from its paints although mercury was used by other paint manufacturers at the time of the article. (Enclosure 9). At about the same time it eliminated mercury compounds in its latex paints, Benjamin Moore also began eliminating the use of lead compounds. While these chemicals were once used in Benjamin Moore's paint manufacturing processes, there is no record of a release of these materials to the Passaic River.

Benjamin Moore did not use benzene as a raw material in its products and, as far as it can determine, never used a raw material that contained benzene. Prior to 1986, ethylbenzene was used as a

reflux solvent[3] in the manufacture of some alkyd resins. Commercially available xylol, which contains ethylbenzene as a common component, is now used as a reflux solvent in the manufacture of alkyd resins. Before completely switching to xylol as the chief alkyd resin reflux solvent in 1986, ethylbenzene was sometimes added to xylol to increase xylol's efficiency as a reflux solvent, when needed to meet specific product criteria. Ethyl Benzene is no longer used in the manufacture of alkyd resins.

Methyl ethyl keytone ("MEK") and toluol, a fraction of tolulene, were routinely used in formulating and manufacturing solvent based paints. MEK is not used now; see 11/27/95 response to Question 2. Toluol is used as a solvent. However, there is no record of releases of these solvents or materials containing these solvents to the Passaic River. Even if there had been a release(s) (see FR No 7.a below, release of an unknown liquid), these solvents are lighter than water, would float on the water and be carried away by the River, i.e., they would not make their way into the River sediment.

SR Question 3. Use ... of copper and zinc, titanium, methylene chloride, and xylene.

Benjamin Moore did receive and use raw material containing trace amounts of copper and zinc, but only as compounds in commercial products used in making paint. Titanium is a non-hazardous component of titanium dioxide, which is used in paint manufacturing.

Methylene chloride was used in small quantities in aerosols as a propellant up until 1980. Xylene was never used in its pure form. Xylol, as a fraction of xylene, was used in the past and is still used as a reflux solvent. See Supplement to SR Question 2 above. Solvent based paint wastes have always been segregated from other wastes and handled and disposed separately. There is no record of any Benjamin Moore releases in the Passaic River of either these substances or wastes containing these substances.

SR Question 6. Manufacturing processes.

Benjamin Moore's prior response described in general the various processes used to manufacture the paint products produced at the plant. However in reviewing the response, the use of caustics, sodium hydroxide or caustic soda, to clean the equipment was inadvertently omitted. The caustic cleaner is/was used over and over until it loses its ability to clean equipment. Spent

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[3] "Reflux solvent" is a solvent which is used to facilitate water removal in manufacturing alkyds but is recoverable during the process. A small percentage of the reflux may become part of the resin product.

caustic (D002) is/was drummed and removed to a licensed treatment storage and disposal (TSD) facility. At one time, prior to 1981, diluted spent caustic was permissibly discharged into the sanitary sewer.

The other hazardous wastes historically generated at the plant are ignitable mineral spirit wastes and paint sludge (paint thinner or solids that could not be recycled) (D001) and spent non-halogenated solvents (F003 & F005) including MEK and dirty wash solvent (mostly mineral spirits) which were used to clean equipment and could not be recycled into subsequent batches.

The recollection of Benjamin Moore employees who began work in the mid-1960's is that dirty wash solvent was collected and shipped to a recycler who returned the clean solvent for reuse. From 1982 to 1986, wash solvent was burned as an alternative fuel in the plant's boilers. Subsequently, Benjamin Moore began recycling its own wash solvent.

ii. Assuming that this question is asking for the amount of hazardous waste generated per volume of finished product, this is not an area in which records were kept until the manifest system began for hazardous wastes in 1978 which provides information on individual shipments only. Benjamin Moore provided copies of NJDEP's Hazardous Wastes Generation Annual Reports from 1988 to 1993 with its response to EPA's First Request for Information. Benjamin Moore has assumed this information was sufficient for EPA's purposes since, if the manifested waste was transported elsewhere, it obviously was not disposed of in the River and therefore the information has no relevance to the Passaic River Study. However, if EPA needs more information, Benjamin Moore will provide whatever is needed, available, and reasonable.

iii. Wastes are/were always kept separate by type.

SR Question 7. Mr. Shippey and responsibility for "waste management techniques and strategies."

Prior to Mr. Harold Shippey's assumption of specific "responsibilities for waste management techniques and strategies," those responsibilities were part of the general duties of the plant manager who might further delegate those responsibilities. The passage of the Resource Conversation Recovery Act ("RCRA" - also known as the Solid Waste Management Act) in 1976, imposed specific duties and responsibilities along with a set of regulations addressing the storage, manifesting, and deposal of wastes. Accordingly these duties were formally centralized in a single person, Mr. Shippey held the first such position. Prior plant managers are:

Prior to 1960	deceased
1960-1965	Joseph Calise
1965-1969	William McDougal
1969-1973	John Brady (deceased)
1973-1979	Lawrence Berg

SR Question 8. Discharge of wash waters into PVSA sewer system.

As explained in its response, "wash water" is a paint industry term identifying the result of washing with water equipment used in making latex paint. As to its characteristics, this water based waste was non-hazardous as recognized by EPA's own decision not to list latex wash water as a hazardous waste. Compare 45 FR 47832 (July 16, 1980) (proposed rule) with 46 F.R. 4614, January 16, 1981 (interim rule removing latex paint waste as a proposed listed hazardous waste).

SR Question 9(i). Waste Water Recycling.

The only "waste water" produced in its paint manufacturing process that BMC is aware of at this time, is "wash water" as defined in SR Question 8 above. Wash water recycling began in 1955 when the plant began producing latex paint. See page 2, Question 6, 11/27/95 Response to 2d Request. When the wash water could not be recycled because of its color, it was placed in a settlement basin, the water allowed to percolate or evaporate and the dried latex collected and disposed of as solid waste. NJDEP analysis of aerial photos of the plant concluded that a definite basin first appeared in 1971. However, one employee remembers that there was a settling system in use in 1966. This basin/system eventually became part of the storm water retention system. See 11/27/95 Response to SR Question 13. For a short period, 1967-1968, excess wash water was diluted with water to lower the solids content and then permissibly disposed of in the sanitary sewer. The wash water was then collected and sent to Earthline, a waste treatment facility next door to BMC, which then became SCA and finally Chemical Waste Management (CMW). There are no known records of these waste water shipments although a BMC employee who used to work for the SCA/CWM remembers treating BMC's wash water (floculation of solids). In 1980, better use of recycling techniques led to the complete recycling of all wash water. (ii) There was no "wash water" produced prior to 1955, when the plant began producing latex paint. Consequently, there are no diagrams of waste water collection or disposal systems.

SR Question 10. Discharge pipes leading directly to Passaic River.

Contrary to the assumption in the question, Benjamin Moore has only one discharge pipe that leads directly to the Passaic River. This 14 inch discharge pipe is the outfall for the backup storm water discharge system which is activated manually only when a

certain level of storm water accumulates in the pump house that exceeds the capacity of the normal storm water discharge system. See, e.g., Enclosure 6. It is a backup since it provides an alternative if the primary storm water discharge system is not working, as well as an emergency discharge system that supplements the primary system under flood conditions. The primary storm water discharge system consists of a sump pump and discharge pipe which empties into the Newark City Storm Water Discharge System's 60 inch outfall to the River on the extreme eastern part of the Benjamin Moore property.

While the 60 inch outfall is technically on the Plant's property, this system and outfall is part of the Newark storm water discharge system and is owned and maintained by the City of Newark, which has an easement across Benjamin Moore's property for this purpose. Neither the direct (to the River)/emergency discharge system nor the normal storm water discharge system is connected to any process on the property. The sole function of both systems is to discharge storm water and any water that might collect within the property through rain, infiltration, or flood.

It is apparent that EPA has made the same mistake that other federal agencies made concerning ownership and responsibility for the 60" outfall. A 1969 study of possible contamination of the Passaic River incorrectly identified this City of Newark's storm drain as belonging to Benjamin Moore. (Enclosure 10). That incorrect assumption was based on a failure to check the appropriate records or understand the storm sewer discharge system.

Supplemental Responses to First Request for Information

FR Question 3. BMC did "receive" and use materials or products which have as components some of the substances listed in Question 3. See Supplemental Response to SR Question 4 above. A further check of compounds used by BMC indicates that BMC did use a pigment shade that had trace amounts of nickel. The nickel was removed from the compound in February 1995. BMC did not manufacture, discharge or release any of the identified hazardous substances. Wastes containing those substances used by BMC were disposed of according to regulations where appropriate. See, e.g., Supplement to FR Question 12 (addressing waste manifests).

FR Question 4(a). BMC did not generate hazardous substances *per se* although some listed hazardous wastes were a by product of BMC's process. Waste that may have contained hazardous substances was the result of the residual paint products that adhered to the sides of paint tanks or equipment and that was collected in cleaning the tanks or equipment or spent caustic cleaning solution. Used wash solvent was segregated from other wastes, classified by color and, if unable to be used again, disposed according to the appropriate regulations, which at one time included burning in the plant's boiler. Caustic soda was/is used until it loses its ability to

clean, was/is then drummed and is sent to a treatment storage and disposal (TSD) facility.

FR Question 4(b). As stated previously, hazardous substances *per se* are used but not generated in the manufacturing process, but hazardous substances may have been part of the resulting waste from the clean up of the equipment that is used to make paint. With solvent based paints, the waste is hazardous because the solvents typically used are typically combustible. Sodium hydroxide and caustic soda are hazardous because they are caustic. Latex wash water is not hazardous. See Supplement to SR Question 6 above which addresses the remainder of this question.

FR Question 5. Benjamin Moore's original response provides a detailed description of its storage of raw materials and products whether they contain hazardous substances or not. For purposes of this report, it is assumed this question focuses on hazardous wastes which are listed as such, otherwise the question becomes impossible to answer, e.g., table salt (NaCl) is composed of two hazardous substances, but the product itself is both non-hazardous and useful. The only hazardous wastes generated at the plant are/were the wash solvent related wastes produced by cleaning paint making equipment, including the mixing/let down tanks, and spent caustic. The solvent waste is/was collected, stored in outside tanks, and where possible, used in subsequent batches. From 1982 to 1986, the unrecyclable wash solvent was burned on site in the plant's boilers. There is some evidence that in the late 1960's, some dirty solvent was burned on site in cleaning out portable tanks. Caustic cleaners are stored in outside tanks and reused until the caustic has lost its cleaning power; then it is drummed and disposed of at a TSD facility.

FR Question 5(b). Benjamin Moore's original response indicated that it had hazardous waste manifests from 1978, but did not provide them due to the volume of material representing 18 years worth of records. Benjamin Moore again asserts its willingness to allow EPA to inspect and copy these records, but sees nothing relevant to the Passaic River Study in their production since if the material was taken off site to a facility, it was obviously not discharged into the River.

FR Question 7(b), 8 and 9. In its continuing investigation, Benjamin Moore has discovered records of several incidents when small spills or leaks occurred in which low specific gravity liquids were released to the Passaic River.

a. On March 23, 1978, the Coast Guard notified Benjamin Moore that a Coast Guard helicopter had noticed a spill from the plant in the River. Investigation with the Coast Guard found a 55 gallon drum had been punctured "approximately amid ship's" and part of its contents had migrated to the River. The Coast Guard saw the material floating on the surface. There is no record of the

contents of the drum. However, the fact that material was floating on the surface indicates it was lighter than water, and would not have contained materials that would find themselves in the river sediment. (Enclosure 11).

b. At 12:50 PM, July 8, 1980, a valve malfunction spilled about 3,000 gallons of wash solvent. Although this was contained by the retaining dike around the tanks, about 25-50 gallons allegedly leaked from the dike into the River. Benjamin Moore reported the incident to Passaic Valley Sewerage Commission, the New Jersey Department of Environmental Protection ("DEP"), the Coast Guard and called in environmental spill specialists who used absorbent pads to collect the spill contents where possible. See Enclosure 12 (Report plus memoranda on notification).

c. On April 14, 1982, a truck belonging to Linden Bulk Transport Co. was delivering a shipment of Butyle Acrylate. Due to a malfunction on the truck, approximately 2,000-3,300 gallons of Butyl Acrylate were spilled during the unloading. The spill was contained by building a sand dike around the area. The carrier called in Peabody Clean Industry of Linden N.J. to clean up the spill. The Coast Guard, NJDEP and PVSC were notified. Apparently, 5-10 gallons made its way to the River which was absorbed, collected, and removed. Although the spill occurred at Benjamin Moore's Plant, the carrier assumed all responsibility since the spill was due to the carrier's equipment malfunction. (Enclosure 13).

d. On April 20, 1982, a small discoloration in the area was noted in the same area where the Butyl Acrylate spill occurred, resulting in a small slick for about 8 minutes. The same agencies and clean up service were notified and the clean up crew mopped up the material from the River's surface (Enclosure 14).

e. Additionally, there were several accidental spills of non-hazardous latex at the Plant in 1970, 1982, and 1988, and other minor spills of non-hazardous materials at various times. These details are not provided here because latex and the other materials are not hazardous substances.

FR Question 11. This question seems to be focused on formal adversarial proceedings for which there are none that Benjamin Moore is aware of. However, there have been some minor administrative actions involving the State or Coast Guard and Benjamin Moore which, in an abundance of caution, are provided here.

a. The 1969 Order from the NJ Department of Health has been explained in SR Question 1. The Order is Enclosure 1.
b. The March 23, 1978 minor spill of an unidentified floating liquid apparently resulted in a Coast Guard fine. This is an assumption drawn from the documents

that survive although no record of such a file exists.

c. On January 20, 1988, a NJ DEP inspector cited Benjamin Moore for an "NaOH overflow from cylinder cleaning operations" within the Plant. (Enclosure 15) This was not a discharge to the River and required only remedial action to prevent any further spills.

d. At this time, there are no other actions or proceedings that Benjamin Moore is aware of.

FR Question 12. Benjamin Moore's original response offered to make the numerous hazardous waste manifests available for review if EPA so desires. See FR Question 5(b) above. To the extent that EPA seeks information on the "purchase, use... hauling... of all hazardous substances", this same offer applies. Benjamin Moore purchased and purchases solvents (and all its materials) in bulk, which are shipped by common carrier, stored and inventoried at the Plant. The documents reflecting these many transactions, whose relevance to the Passaic River Study is questionable, represent a considerable volume as well as expense to copy. Additionally, given the time period for which this information is sought, obviously many such documents are not available due to age, destruction, etc. Benjamin Moore would be glad to allow review of these documents or provide whatever documents are required provided the requirement(s) is more narrowly defined.

FR Question 13. "Results of any analysis of groundwater, surface water, and any other environmental media performed at the facility."

Responding to a false report that Benjamin Moore was operating a "waste lagoon," see 11/25/95 response to SR Question 13, the State inspected the Plant on 11/26/84. As the record shows, Enclosure 16, no waste lagoon was found. A subsequent visit on 12/19/84 investigated a suspected discharge from the plant in the area of the storm water retention ponds. The State performed soil and surface water analysis but, these are questionable since the holding time was exceeded. (Enclosure 17). Nonetheless, no dioxins, PCBs, or mercury were found.

Results of media testing supporting various Benjamin Moore submissions for permits are attached at Enclosure 18.

FR Question 16.
Arthur A. Schulcz, Sr., Esq.
The Harker Firm
5301 Wisconsin Avenue, NW
Suite 740
Washington, DC 20015
Counsel for Benjamin Moore & Co.

assisted in review of responses, records, and preparation of this supplement.

Mr. Harold Shippey and Mr. Dominic Muscara, BMC employees, assisted with the supplemental responses to SR 6, FR 4, 5 and 9.

Enclosures:

1. August 15, 1969 WPCP Order
2. September 4, 1996 NJ WPCP Letter
3. 10/10/69 letter - J. Calise (BMC) to E. Segessen (WPCP)
4. 11/20/69 letter - J. Calise (BMC) to E. Segessen (WPCP)
5. BMC - WPCP correspondence re 1969 Order
6. 3/26/73 letter - Malkin (BMC) to Hamilton (NJDEP)
7. drains connected to sanitary sewer
8. Permit for a scrubber listing compounds collected
9. June 1972 Consumer Reports
10. 1969 Study showing outfalls on River
11. 1978 spill related documents
12. 7/8/80 wash solvent spill
13. 4/14/82 butyl acrylate
14. 4/20/82 slick on River
15. 1/20/88 NaOH overflow
16. Reports of 11/26/84 State Inspection
17. Report on 12/19/84 Inspection
18. Media tests for permits

ABK000377

Enclosure 1

August 15, 1969 WPCP Order

RECEIVED AND FORWARDED
TO
AUG 19 1969
DIVISION OF LOCAL HEALTH SERVICES

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

August 15, 1969

RECEIVED
AUG 20 1969
METROPOLITAN STATE HEALTH DISTRICT

Mr. Ralph W. Lettieri, Regional Director
Benjamin Moore and Company
134 Lister Avenue
Newark, New Jersey 07105

Dear Mr. Lettieri:

There is enclosed for service upon you an Order, in duplicate, made by this Department pursuant to the provisions of R.S. 58:12-2.

Kindly acknowledge receipt of this Order by affixing your signature and date of acceptance on the back of the original and return it to this Department in the enclosed envelope. The duplicate may be retained by you.

Very truly yours,

Ernest R. Gegesser, Chief Engineer
Water Pollution Control Program

6E22:014

Enclosure

cc: Air Sanitation
Division of Fish and Game
Metropolitan State Health District ✓
Passaic Valley Sewerage Commissioners

RECEIVED
MAY 1 1972
N.J. STATE DEPT. OF ENVIRONMENTAL PROTECTION
BUREAU OF WATER POLLUTION CONTROL

ABK000379

O R D E R

WHEREAS, The State Department of Health of the State of New Jersey has found through investigations made by its representatives that Benjamin Moore and Company in the City of Newark, County of Essex and State of New Jersey, is discharging industrial waste and other polluting matter into the Passaic River, being waters of this State, thereby causing or threatening injury to the inhabitants of this State either in their health, comfort or property, in violation of R.S. 58:12-2; and

WHEREAS, The State Department of Health of the State of New Jersey has found through investigations made by its representatives that Benjamin Moore and Company in the City of Newark, County of Essex of the State of New Jersey, is discharging harmful, deleterious and polluting matter from a sewer or drain into the Passaic River, being waters of this State, without approval of the State Department of Health as required by R.S. 58:12-3.

WHEREAS, The State Department of Health of the State of New Jersey, in consideration of the aforesaid findings, is of the opinion that in order for the wastewater to be properly, adequately and sufficiently treated and/or otherwise disposed of, wastewater treatment and/or disposal facilities must be provided in a manner approved by the State Department of Health of the State of New Jersey; therefore

NOTICE IS HEREBY GIVEN, by the State Department of Health of the State of New Jersey, pursuant to the applicable provisions of R.S. 58:12-2 to Benjamin Moore and Company in the City of Newark, County of Essex and State of New Jersey, requiring that the Company, on or before November 10, 1969, install and provide wastewater treatment and/or disposal facilities in order that the Company's wastewaters be properly, adequately, and sufficiently treated and/or otherwise be disposed of in a manner approved by the State Department of Health; and

ABK000380

NOTICE IS FURTHER GIVEN, by the State Department of Health of the State of New Jersey that the Company cease and desist discharging its industrial waste or other polluting matter from any sewer or drain into the waters of the Passaic River being waters of this State by November 10, 1969 and thereafter.

STATE DEPARTMENT OF HEALTH OF THE STATE OF NEW JERSEY

Richard J. Sullivan, Director
Division of Clean Air & Water

Dated: August 15, 1969

August 27, 1969

New Jersey State Department of Health
Division of Clean Air and Water
Water Pollution Control Program
P.O. Box 1540
Trenton, New Jersey 08625

Attention: Mr. Ernest R. Segesser, Chief Engineer

Dear Mr. Segesser:

I am returning as per your instructions an acknowledged receipt of an Order served on Mr. R. W. Lettieri, Operational Vice President of our organization, pertaining to a citation that Benjamin Moore & Co. in Newark, New Jersey, has been in some way polluting the Passaic River. In returning the acknowledged Order, which I have been asked to follow-up on and take whatever measures may be necessary to comply with your request, I must ask whom I can contact, that can supply me with the specific details of the citation which led to your office serving us with this Order.

Quite frankly, we are not aware of any action on our part that leads to a direct discharge into the Passaic River that could cause pollution. I am sure, however, that the people in your office must have had a good reason for initiating this Order against us. If we can be appraised of the specific details and shown that we have been negligent, I am sure that immediate corrective measures will be taken.

I would appreciate your expediting my receiving the information I seek.

Very truly yours,

BENJAMIN MOORE & CO.

JOSEPH B. CALISE
Production Manager

JBC:jb
Encl.

ABK000382

Enclosure 2

September 4, 1996 NJ WPCP Letter

ROSCOE P. KANDLE, M.D., M.P.H
STATE COMMISSIONER OF HEALTH

RICHARD J. SULLIVAN, DIRECTOR
DIVISION OF CLEAN AIR AND WATER

State of New Jersey

DEPARTMENT OF HEALTH
JOHN FITCH PLAZA, P.O. BOX 1540, TRENTON, N. J. 08625

September 4, 1969

Mr. Joseph B. Calise, Production Manager
Benjamin Moore & Company
511 Canal Street
New York, New York 10013

Dear Mr. Calise: Re: Administrative Order
Benjamin Moore & Company
Newark, New Jersey

Your letter of August 27, 1969 addressed to Mr. Ernest R. Segesser of this office has been referred to me for reply.

The basis of our Administrative Order to you dated August 15, 1969 is pollution of the Passaic River in terms of odor, turbidity, color, biochemical oxygen demand, chemical oxygen demand, ether soluble matter and suspended solids. We would be happy to discuss more details should you deem this necessary. I may be reached at 609-292-5560.

Very truly yours,

Douglas M. Clark

Douglas M. Clark
Supervising Public Health Engineer

6E18:G6

9/9/69 - called - not in - left message my call
9/11/69 - called spoke to Mr. Calise - will go to Trenton on 9/19/69.

ABK000385

Enclosure 5

BMC - WPCP correspondence re 1969 Order

ABK000393

609-292-~~2456~~ 5560

State of New Jersey
DEPARTMENT OF ENVIRONMENTAL PROTECTION
DIVISION OF WATER RESOURCES
TRENTON, NEW JERSEY 08625

April 24, 1972

Benjamin Moore
134 Lister Avenue
Newark, New Jersey

Attn: Plant Manager

Gentlemen:

Re: Administrative Order of
August 15, 1969
Benjamin Moore, Newark

A review of our records shows that you have not complied with the Administrative Order of August 15, 1969. Kindly advise this office on or before May 3, 1972 as to the status of compliance with our Administrative Order. Failure to do so will leave us no recourse but to refer this matter to the Office of the Attorney General for litigation.

Very truly yours,

Thomas Harding
Senior Environmental Engineer

6M26:G5

c.c. Mr. Steve Gordon, Deputy Attorney General

ABK000394

Benjamin Moore & Co.
Paints · Varnishes · Enamels

NEW YORK
NEWARK
BOSTON
RICHMOND
JACKSONVILLE
CLEVELAND
PITTSBURGH
CHICAGO
ST. LOUIS
HOUSTON
DENVER
LOS ANGELES
SANTA CLARA
TORONTO
MONTREAL
VANCOUVER

134 LISTER AVE. · NEWARK, N. J. 07105

ENGINEERING DEPARTMENT

28 April 1972

State of New Jersey
Department of Environmental Protection
Division of Water Resources
Trenton, N. J. 08625

Attention: Mr. Thomas Harding

Subject: Your Administrative Order of 15 August 1969

Gentlemen:

This will acknowledge receipt of your letter of 24 April 1972 regarding the subject Administrative Order and will confirm the telephone conversation with your Mr. Thomas Harding on 28 April 1972.

Since the writer is not aware of the nature of your Administrative Order of 15 August 1969, it was agreed that a copy of the order and all other pertinent data will be sent as soon as possible.

We will subsequently be in contact with your office regarding steps to be taken to satisfy the Administrative Order.

Very truly yours,

BENJAMIN MOORE & CO.

Gabriel Malkin, P. E.
Chief Engineer

GM:nb

BCC: Mr. John F. Brady

ABK000395

Benjamin Moore & Co.
Paints · Varnishes · Enamels

NEW YORK
NEWARK
BOSTON
RICHMOND
JACKSONVILLE
CLEVELAND
PITTSBURGH
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134 LISTER AVE. · NEWARK, N. J. 07105

ENGINEERING DEPARTMENT

22 May 1972
(Dictated 12/May/72)

State of New Jersey
Department of Environmental Protection
Division of Water Resources
Trenton, N. J. 08625

Attention: Mr. Thomas Harding

Subject: Our Job #72-43
Your Administrative Order of 15 August 1969

Dear Mr. Harding:

This will serve to confirm our telephone conversation of 12 May 1972, as follows:

1. In response to your Executive Order of 15 August 1969, our Mr. Joseph B. Calise visited your offices and met with you and Mr. Douglas Clark and others of your office to explain the situation that brought about the Administrative Order.

2. The conversations of 19 September 1969 were confirmed by a letter dated 20 October 1969 sent to your office via certified mail, received by Mr. Ben W. Rounds on 23 October 1969.

ABK000396

3. It was our understanding that as a result of the visit and letter, the situation was cleared up.

4. We understand at that time that you will check the records and visit our plant for another inspection to confirm that we are complying.

Thank you very much for your courtesies.

Very truly yours,

BENJAMIN MOORE & CO.

Gabriel Malkin, P. E.
Chief Engineer

GM:nb

BCC: Messrs. R. W. Lettieri
L. W. Neumann

ABK000397

January 2, ~~1992~~ '73

State of New Jersey
Department of Environmental Protection
Division of Water Resources
Trenton, New Jersey 08625

Attention: Mr. Thomas Harding

Subject: Our Job #72-43
Your Administrative Order of 8/15/69

Dear Mr. Harding:

We enclose herewith a photocopy of a letter mailed to you on May 22, 1972 regarding your administrative order of 8/15/69.

It was our understanding that as a result of the conversation on May 12, you would let us know the current status of your administrative order. To date we have not heard from you.

We would appreciate a response indicating that your administrative order of 8/15/69 has been vacated, to enable us to clear our records.

Your prompt attention to this matter would be appreciated.

Very truly yours,

BENJAMIN MOORE & COMPANY

Gabriel Malkin, P.E.
Chief Engineer

GM:mjs

Enclosure

ABK000398

State of New Jersey
DEPARTMENT OF ENVIRONMENTAL PROTECTION
DIVISION OF WATER RESOURCES
P. O. BOX 1390
TRENTON, NEW JERSEY 08625

March 15, 1973

Mr. Gabriel Malken
Benjamin Moore and Co.
134 Lister Avenue
Newark, New Jersey 07105

Dear Mr. Malken:

Re: Administrative Order
dated August 15, 1969

On February 5, 1973 Mr. Wonderlich and I met with you at your plant and discussed the above-referenced Administrative Order. Our discussion revealed that some latex wastewater which had earlier contaminated your discharge had been removed and that you felt your discharge was now acceptable.

However, the laboratory analyses of the samples collected from your six inch pipe on February 5, 1973 show your discharge to be unacceptable in color, turbidity, pH, suspended solids, chemical oxygen demand, and biological oxygen demand. Copies of the laboratory analysis are enclosed for your records.

Therefore, this office directs Benjamin Moore and Co. to respond in writing within two weeks of receipt of this letter, detailing what measures will be taken to insure compliance with the Administrative Order of August 15, 1969.

Very truly yours,

James K. Hamilton

James K. Hamilton
Enforcement Unit
Bureau of Water Pollution Control

6E44:G8
cc: Mr. Harding

Form 25
Rev 68

NEW JERSEY STATE DEPARTMENT OF HEALTH
STREAM OR WASTEWATER ANALYSIS

Date Received
Lab. No.

PLEASE TYPE OR PRINT
WITH BALL POINT PEN

FIELD INFORMATION

Date of Collection 19

Hour A.M. P.M.

Sample No.

Composite Period Interval

Collected by

Municipality

Residual Chlorine:
Immediate

Plant

Developed

Stream

Flow Rate

Location

Temperature

Description and Remarks:

Dilutions Requested (Bacteriological)

10	1	10^{-1}	10^{-2}	10^{-3}	10^{-4}	10^{-5}	10^{-6}

LABORATORY RESULTS
BACTERIOLOGICAL

Coliform MPN/100 ml. (Confirmed Test); Fecal Coliform MPN/100 ml. 9200

Fecal Streptococci MPN/100 ml. Other

CHEMICAL AND PHYSICAL ANALYSES (mgs./liter, unless otherwise noted)

						Other Determinations
X	Color (units) GRAY		Nitrite N	X	Total Solids 412	
X	Odor (cold) III Cold		Nitrate N	X	Ash 276	
X	Turbidity (units) 73		Ammonia N		Total Phosphate (PO_4)	
X	pH 9.5		Total Nitrogen	X	Detergents 1.04	
	Acidity to pH 4	X	Chloride 84		Phenols	
	Alkalinity to pH 4	X	Suspended Solids 66	X	COD 176	
		X	Ash 28		Ether Soluble	

BIOCHEMICAL OXYGEN DEMAND (mgs./liter)

REPORTED

Field D.O.			Chlorine Special				pH Special				
Initial D.O. (Lab.) 7.6			Dil. Water D.O.				Seed Corr.				
Sample Conc. %	0.1	0.2	0.5	1.0	2.0	5.0	10	25	50	75	100
D.O. after Incubation											
BOD 5 day					176						

ABK000400

Enclosure 11

1978 spill related documents

MEMORANDUM

Job #78-12, Newark
Oil Spill

March 23, 1978

On the afternoon of Monday, March 13, 1978, Larry Berg called and requested that I get up to his office immediately. Upon arriving there I found Larry and Miron Dacko in conference with three men from the U. S. Coast Guard. At approximately 9:00 A.M. on the morning of the 13th, a Coast Guard helicopter patrolling the Passaic River had spotted a spill from our plant. The Coast Guard team in Larry's office had arrived as a follow-up to the spill sighting.

All six of us went out to the scene of the crime which consisted of leakage from a single 55 gallon drum, stored near the river. This drum had been punctured approximately amidships, presumably by a fork truck or a snow plow. The Coast Guard investigator wanted us to see the drum as verification. For his records he took our names and home addresses and telephone numbers. In addition since Chick was the only one of the three of us who had actually seen the drum leaking, he requested and received a statement from Miron to the effect that yes, a drum had been punctured and had leaked into the Passaic River.

The Coast Guard team was led by Mr. D. W. "Jack" Jaklitsch, Investigator, Law Enforcement Section, Water Pollution Office, U. S. Coast Guard Captain of the Port of New York, Governors Island, New York 10004. Their telephone number is (212) 264-8753 and night-time (212) 264-8770.

Jaklitsch was not satisfied with the general cleanliness of our yard particularly when he learned that our storm sewer system pumps all our surface water into the river. Regarding that storm sewer it should be pointed out that our present arrangement is not satisfactory since the collecting sump for the system does not have any warning device to shut down the pump in the event of oil floating on the surface of the sump water. It was agreed at that time that the Engineering Department will proceed immediately to arrange for procurement of the necessary equipment. (The Coast Guard is concerned only with materials that will float on top of the water, they are not concerned with soluble material.)

At the time of this meeting Larry also agreed to take immediate steps to clean up the plant yard in the vicinity of the river and to have the drums stored near the bulkhead moved to a different location so that any spills from them will run into the storm sewer system rather than into the river.

Garry A. Lehnert

GAL:mjh

GAL

ABK000428

CLOSE OUT MEMORANDUM

Job #78-12, Newark
Oil Spill

April 28, 1980

As a result of the spill we were cited by the Coast Guard and subsequently paid a $500 fine. At the time it was Larry Berg's and my feeling that it was best to pay the fine rather than go to court with the Coast Guard, and we so advised Richard Roob. The Passaic River was then under almost constant surveillance by Coast Guard helicopter and we were concerned that we would become victims of a nit-picking campaign if we legally battled with the Coast Guard.

As there is nothing further to be done concerning this incident, the job can now be closed out of our active file.

Garry A. Lehnert

GAL:mjh

ABK000429

Enclosure 12

7/8/80 wash solvent spill

Benjamin Moore & Co.

INTER-OFFICE – ENGINEERING DEPT.

To Newark

Date 7/9/80

Attention of Mr. J. N. Caruso

From Garry A. Lehnert

Reference Job #80-17, Newark

River Spill - Dirty Solvent

Dear John:

In accordance with legal requirements, the small solvent spill which occurred yesterday was reported to three governmental agencies. For your information, these agencies and their phone numbers are listed in the order in which they were contacted:

1. Passaic Valley Sewerage Commissioners (201) 472-4083

2. Newark Office of the New Jersey Department of Environmental Protection (201) 648-2200

3. U.S. Coast Guard (Governor's Island) (212) 668-7835

The three person crew which arrived from the Coast Guard, in addition to viewing the spill site, met with me in the Engineering Department office in order to record the details of the incident, which I attributed to a valve being left open. Their report therefore will indicate that it was an "operator error".

I signed a form presented to me, a copy of which is enclosed.

The Coast Guard representative, D. R. Dotte, while in the office, indicated that there was no need to take further action regarding the solvent in the river, as all they had seen was a thin film, or haze on the water which he stated would quickly dissipate. He stated that he would be satisfied providing we continued to clean up the solvent which was puddled on the ground between the tank dike and the river bulkhead.

I did not question him as to whether any fine would be levied, as was done at the time of the one previous incident, several years ago. The circumstances this time are quite different from the previous incident. This spill was reported to the Coast Guard by us whereas the earlier one was spotted by the Coast Guard from a helicopter before we were aware of it. That spill was photographed from the helicopter whereas yesterday's spill was not visible by the time the Coast Guard

ABK000432

Form 356B

had arrived because you had called in an outside contractor who was equipped with a motor boat and absorbent material which had been used to accomplish an almost complete cleanup of the material which had spilled into the river. They (Coast Guard) did take pictures of the river this time, which will document that there was no spill to be seen on the water.

We have set up a job file for this incident in which is recorded the time of the spill, 12:50 P.M., July 8, 1980, the time each of the three governmental agencies were contacted, and the name of the person who took the information over the telephone.

Very truly yours,

Garry

GAL:mjh

Enclosure

cc: Mr. L. N. Berg (w/enc.)
Mr. D. J. Herring " "

ABK000433

Olsen & Hassold Inc.

CHEMICAL CLEANING SERVICE DIV
POWER-VAC CLEANING DIV
SPILL DIV

[illegible] Paterson, N.J. 07514
(201) 525-2600

Job #80-17

SOLD TO
Benjamin Moore & Co.
134 Lister Avenue
Newark, NJ 07105

TERMS: Net 30 Days
All Bills Must Be Paid in 30 Days

/8/80	7/22/80	verbal	Go-261		
QUANTITY	DESCRIPTION			UNIT PRICE	AMOUNT
	Paint spill clean-up				
/8/80	Supervisor	4½ hrs		$ 18.00/hr	$ 81.00
	2 Operators	4½ "/ea		13.00/"/ea	117.00
	2 Laborers	4½ "/"		11.00/"/"	99.00
	2 pick-up trucks	4½ "/"		8.00/"/"	72.00
	1 power boat	4½ "		42.00/"	189.00
	1 motor boat	4½ "		25.00/"	112.50
	100' boom			.35/ft.	35.00
	2 rolls #210 sorbents			80.00/ea	160.00
	3 bales #156 "			65.00/"	195.00
	2 " #151 "			67.00/"	134.00
/9/80	100' boom			.35/ft.	35.00
10/80	2 Laborers	4 hrs.		11.00/hr	88.00
	1 pick-up truck	4 "		8.00/"	32.00
					$ 1,349.50
		5% NJ Sales Tax			67.48
					$ 1,416.98

ISTOMER'S INVOICE

ABK000434

Montvale

July 9, 1980

Mr. L. N. Berg

J. N. Caruso

Dear Larry:

Yesterday, at 12:45 p.m. we experienced an accident, which resulted in approximately 25-50 gallons of "recycled wash solvent" spilling into the Passaic River.

A valve malfunction spilled about 3,000 gallons of solvent from bulk storage into the retaining dyke, and from this reservoir the above mentioned quantity leaked into the river.

Dominic, and the maintenance crew pumped the dyke area dry, and the material was collected in a 20,000 holding tank.

Harold Shippey, contacted Olsen and Hassold, Inc. who responded to clean the "slick" on the river.

Gary Lehnert, contacted the Passaic Valley Sewerage Commission, and a rever inspector was on hand. Gary, also reported the same to the D.E.P. and Coast Guard.

After the inspection, it was reported by the Coast Guard, and P.V.S.C. that the spill in the river was small, would dissipate, and nothing to worry about. The cleaning crew was on-hand for 4-1/2 hours, mopping the water with absorbent pads.

Now that this experience has passed, Dominic, Harold, and myself, would like to take some precautionary measures.

Since this was a "first," we were caught without some simple equipment, which could have cleaned the water in one hour time.

By the time the "spill crooks" -- I mean specialists arrived, the "solvent slick" was breaking-up and carried by the drifts of the current. The only equipment this outfit used was a Motor-boat, and absorbent pads. They also had available a floation boom for containment, but it was not necessary.

Mr. L. N. Berg July 9, 1980

We will now purchase a few hundred feet of floation material, to make a containment boom. We will also, purchase a supply of the absorbent pads used by the spill specialists.

At this time, I do not feel a boat is necessary, since we would probably run an even greater risk of on-the-water accidents, by those involved.

Sincerely,

JNC:nt
cc: G. A. Lehnert
D. Muscara
H. Shippey
File

ABK000436

BENJAMIN MOORE & CO.

APR 15 1982

ENG. DEPT.

April 14, 1982

Memorandum: Re: Butyl Acrylate Spill

At approximately 8:15 a.m. a tank wagon (Linden Bulk Transport Company) delivering 5,300 gallons of Butyl Acrylate sustained a valve malfunction/rupture, while unloading into bulk storage. The driver called for help as the 3" line was spilling the contents; and our employee (Howard Bischoff) was on the scene to assist. Two maintenance men were summoned as well as an emergency crew (8 men assigned to the filling department) whose function was to contain the spill with a sand dike. The rupture was sealed, and within 15 minutes a sand dike had been poured against a bulkhead abutting the river. A portion of the spill had flowed into the neighboring company property (Thomasett Chemical Company) and was contained within a bulkhead abutting the river. Approximately 3,300 gallons had spilled from the tank before the rupture was sealed. No injuries were incurred.

Together with Mr. G.A. Lehnert the following people were called:

1. Mr. Paul DeFalco - Linden Bulk Transport Company 862-3883 @8:30 a.m. requesting assistance in the situation. He assured the writer that the carrier company would take responsibility for the situation and call in a specialized clean-up crew. The service of Peabody Clean Industry of Linden would be summoned.

Mr. Bob Brozen from Linden Bulk Transport Company arrived on location at 8:35 a.m.

2. Passaic Valley River Inspector was notified at 8:45 a.m., and Mr. Patricia Sventy and another gentleman inspector arrived on location at 9:25 a.m.

3. Mr. Scott Anderson of Peabody Clean Industry, Linden, notified the writer @9:15 a.m. that a clean-up crew was en route. The writer briefed Mr. Anderson as to the situation, and indicated that the spill was contained within the bulkhead and sand dike area. It should be noted that a visual estimate of material spilled into the Passaic River amounted to no more than 5-10 gallons.

ABK000437

4. Mr. Robert Esposito of the local D.E.P. was notified at 9:18 a.m. as well as a transfer call to Ms. Annette Russo of the local D.E.P.

5. Mr. John Strong of the local D.E.P. Air Pollution Division was notified at 9:30 a.m. as a precautionary measure since the material was evaporating rapidly and did have a characteristic odor.

6. Mr. Scott of the U.S. Coast Guard stationed on Governors Island, was called at 10:00 a.m.

7. Mr. Terry Ostrander with the state D.E.P. was notified.

At 10:30 a.m. a clean-up crew arrived and began the normal procedure.

At 11:30 a.m. five (5) representatives from the U.S. Coast Guard arrived and gathered information.

At 1:45 p.m. Mr. Randolph Crudup, claims adjuster with Liberty Mutual Insurance Company, representing the carrier company, arrived and gathered information. The writer indicated that eight (8) men were diverted, from their normal assignments on the filling department, and directed to the spill emergency for a total time of 1-1/2 man hours each. This disruption meant a sacrifice of 4,000 gallons of finished material normally packaged within this time frame.

At 2:30 a.m. the clean-up crew had completed the designated task.

Mr. G.A. Lehnert followed through with a final telephone call to Mr. Scott of the U.S. Coast Guard, and Mr. Terry Ostrander of the state D.E.P.

Sincerely,

JNC:nt
Mr. J.E. Lynch
cc: P. B. Raeder
L. N. Berg
G. A. Lehnert
G. Soldo
M. Dacko

ABK000438

Enclosure 13

4/14/82 butyl acrylate

April 16, 1982

United States Coast Guard
Bldg. 109 Governors Island
New York, New York 10004

Att: GM3 Thomas Koupash

Re: Accidental spill of Butyl Acrylate on 4/14/82, at Benjamin Moore & Company, Newark, New Jersey

Dear Sir,

As per your request, the folowing statement of events regarding the above, is offered:

On April 14, 1982, at approximately 8:15 a.m., while operating a lift truck in the yard, I heard someone yelling for help. I looked up and saw the Linden Freight truck driver soaked with Butyl Acrylate and the contents of the tank wagon spilling to the ground.

I ran over to the driver, who at this point could not see, and guided him to the sink in the Alkyd Building's control room so that he could flush out his eyes. I then proceeded back to the tank wagon to try to stop the Butyl Acrylate that was gushing from the tank and spilling on the ground. My first thought was to close the internal valve. I found the handle in the closed position, but the valve seemed to be stuck open. At this point, I found the entire external valve system laying on the ground.

By this time, one of the maintenance men had seen what had happened and ran over to help me. We tried to put the external valve back into position, but the flow rate of the spilling Butyl Acrylate was too strong. I then proceeded to climb to the top of the tank wagon, and closed the hatch in an effort to restrict the rate of flow. During this time, another maintenance man came over to help, and with the restriction in the flow, both men managed to put the external valve back in place. The entire procedure took between ten and fifteen minutes to complete, with the loss of approximately 2000to 3000gallons of Butyl Acrylate.

If there are any questions regarding the above, please contact me at 201-344-1200, ext# 12, between the hours of 7:30 a.m., and 3:30 p.m., any Monday through Friday.

Very truly yours,

Howard Bischoff Jr.

Howard Bischoff Jr.
Chemical Operator
BENJAMIN MOORE & COMPANY

ABK000441

NEWARK TESTING LABORATORIES, Inc.

46-50 GOTTHART STREET
NEWARK, N. J. 07105

DATE 8/16/67
SHEET 1 OF 2

CLIENT — CITY OF NEWARK
SUBJECT — POLLUTION OF PASSAIC RIVER BY LOCKWOOD ST. STORM SEWER.
REPORTED TO — DIR. ANTHONY LA MORTE & MR. R. VAN RIPER

PRELIMINARY REPORT # 5

INTERNAL INSPECTION OF THE STORM SEWER ON LISTER AVENUE (BETWEEN LOCKWOOD ST. AND GATE) SEE SKETCH NO. 1) REVEALED A HEAVY DISCHARGE OF POLLUTANT INTO THE STORM SEWER THROUGH ERODED OPENINGS IN THE SEWER (NORTH SIDE) WALLS. THE OPENINGS WERE SPACED IRREGULAR OVER A DISTANCE OF 30 TO 40 FEET ALONG THE WALL; THE FIRST OPENINGS STARTING AT APPROXIMATELY 75 FEET WEST OF MANHOLE Y (SEE SKETCH). TESTS AND OBSERVATIONS INDICATE THAT THE SEWAGE FROM THE SANITARY SEWER ON LISTER AVENUE HAS CORRODED AND ERODED ITS WAY INTO THE STORM SEWER. THE TESTS AND OBSERVATIONS MADE ARE AS FOLLOWS:

(1) FLOW IN THE SANITARY SEWER (AS OBSERVED AT MANHOLE A) IS TO THE EAST - IT SHOULD BE TO THE WEST (TRUE LOW TIDE FLOW OF STORM SEWER AT THIS POINT IS TO THE EAST.
(2) MANHOLE B, SANITARY SEWER, IS CLOGGED - NO FLOW. SEWERAGE IS N FLOWING PASS THIS POINT.
(3) TEST OF PAINT SOLIDS IN SANITARY SEWER SAME AS IN STORM SEWER.
(4) DYE PLACED IN SANITARY SEWER (MANHOLE A) OBSERVED SIX MINUTES LATER AT STORM SEWER MANHOLE Y.
(5) ACTUAL OBSERVATION OF POLLUTANT AND DYE FLOWING INTO STORM SE THROUGH ERODED WALL OPENINGS.

A TEMPORARY SOLUTION OF THIS CONDITION WOULD BE TO CLEAN OUT TH LISTER AVE. SANITARY SEWER, AND, IF POSSIBLE, PROHIBIT THE DISC ING OF PAINT SOLIDS INTO THE SANITARY SEWER. THE PAINT SOLIDS, PART, ARE COMPOSED OF POLYMERS WHICH TEND, ESPECIALLY WITH SLO FLOWS, TO COALESCE AND CLOG THE SEWER. THE PAINT SOLIDS SHOULD SETTLED IN A SUMP AND ONLY THE OVER FLOW LIQUID GOES INTO THE S

CONT'D.

844680066

NEWARK TESTING LABORATORIES, Inc.

46-50 GOTTHART STREET
NEWARK, N. J. 07105

DATE 8/16/67
SHEET 1 OF 1

CITY OF NEWARK - POLLUTION OF PASSAIC RIVER BY LOCKWOOD ST. STORM SEWER

THE INTERNAL INSPECTION OF THE LOCKWOOD STREET STORM SEWER, FROM EUCLID AVE. TO THE PASSAIC RIVER, HAS BEEN COMPLETED WITH THE EXCEPTION OF TWO LOCATIONS THAT REQUIRE FURTHER INVESTIGATION.

HOWEVER, BEFORE CONTINUING, IT WOULD SIMPLIFY INSPECTION IF THE ABOVE CONDITION WAS CORRECTED FIRST.

NEWARK TESTING LABORATORIES INC.

T. Regan

W. CURRY.
DIR. A. LAMORTE(1)
MR. A. VAN RIPER(5)

844680067

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

SEP 15 2003

GENERAL NOTICE LETTER
CERTIFIED MAIL-RETURN RECEIPT REQUESTED

Yvan Dupay, President
Benjamin Moore & Co.
51 Chestnut Ridge Road
Montvale, New Jersey 07645

RE: Diamond Alkali Superfund Site
Notice of Potential Liability for
Response Actions in the Lower Passaic River, New Jersey

Dear Mr. Dupay:

The United States Environmental Protection Agency ("EPA") is charged with responding to the release and/or threatened release of hazardous substances, pollutants, and contaminants into the environment and with enforcement responsibilities under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. §9601 et seq.

You received a letter from EPA, dated April 26, 1996, notifying Benjamin Moore & Co. ("Benjamin Moore") of its potential liability relating to the Passaic River Study Area, which is part of the Diamond Alkali Superfund Site ("Site") located in Newark, New Jersey, pursuant to Section 107(a) of CERCLA, 42 U.S.C. §9607(a). Under CERCLA, potentially responsible parties ("PRPs") include current and past owners of a facility, as well as persons who arranged for the disposal or treatment of hazardous substances at the Site, or the transport of hazardous substances to the Site. Accordingly, EPA is seeking your cooperation in an innovative approach to environmental remediation and restoration activities for the Lower Passaic River.

EPA has documented the release or threatened release of hazardous substances, pollutants and contaminants into the six-mile stretch of the river, known as the Passaic River Study Area, which is part of the Site located in Newark, New Jersey. Based on the results of previous CERCLA remedial investigation activities and other environmental studies, including a reconnaissance study of the Passaic River conducted by the United States Army Corps of Engineers ("USACE"), EPA has further determined that contaminated sediments and other potential sources of hazardous substances exist along the entire 17-mile tidal reach of the Lower Passaic River. Thus, EPA has decided to expand the Study to include the areal extent of contamination to which hazardous substances from the six-mile stretch were transported; and those sources from which hazardous substances outside the six-mile stretch have come to be located within the expanded Study Area.

In recognition of our complementary roles, EPA has formed a partnership with USACE and the New Jersey Department of Transportation-Office of Maritime Resources ("OMR") ["the governmental partnership"] to identify and to address water quality improvement, remediation, and restoration opportunities in the 17-mile Lower Passaic River. This governmental partnership is consistent with a national Memorandum of Understanding ("MOU") executed on July 2, 2002 between EPA and USACE. This MOU calls for the two agencies to cooperate, where appropriate, on environmental remediation and restoration of degraded urban rivers and related resources. In agreeing to implement the MOU, the EPA and USACE will use their existing statutory and regulatory authorities in a coordinated manner. These authorities for EPA include CERCLA, the Clean Water Act, and the Resource Conservation and Recovery Act. The USACE's authority stems from the Water Resources Development Act ("WRDA"). WRDA allows for the use of some federal funds to pay for a portion of the USACE's approved projects related to ecosystem restoration.

For the first phase of the Lower Passaic River Project, the governmental partners are proceeding with an integrated five- to seven-year study to determine an appropriate remediation and restoration plan for the river. The study will involve investigation of environmental impacts and pollution sources, as well as evaluation of alternative actions, leading to recommendations of environmental remediation and restoration activities. This study is being conducted by EPA under the authority of CERCLA and by USACE and OMR, as local sponsor, under WRDA. EPA, USACE, and OMR are coordinating with the New Jersey Department of Environmental Protection and the Federal and State Natural Resource Trustee agencies. EPA, USACE, and OMR estimate that the study will cost approximately $20 million, with the WRDA and CERCLA shares being about $10 million each. EPA will be seeking its share of the costs of the study from PRPs.

Based on information that EPA evaluated during the course of its investigation of the Site, EPA believes that hazardous substances were being released from the Benjamin Moore facility located at 134 Lister Avenue in Newark, New Jersey, into the Lower Passaic River. Hazardous substances, pollutants and contaminants released from the facility into the river present a risk to the environment and the humans who may ingest contaminated fish and shellfish. Therefore, Benjamin Moore may be potentially liable for response costs which the government may incur relating to the study of the Lower Passaic River. In addition, responsible parties may be required to pay damages for injury to, destruction of, or loss of natural resources, including the cost of assessing such damages.

Enclosed is a list of the other PRPs who have received Notice letters. This list represents EPA's findings on the identities of PRPs to date. We are continuing efforts to locate additional PRPs who have released hazardous substances, directly or indirectly, into the Passaic River. Inclusion on, or exclusion from, the list does not constitute a final determination by EPA concerning the liability of any party for the release or threat of release of hazardous substances at the Site. Be advised that notice of your potential liability at the Site is being forwarded to all parties on this list.

We request that you consider becoming a "cooperating party" for the Lower Passaic River

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Project. As a cooperating party, you, along with many other such parties, will be expected to fund EPA's share of the study costs. Upon completion of the study, it is expected that CERCLA and WRDA processes will be used to identify the required remediation and restoration programs, as well as the assignment of remediation and restoration costs. At this time, the commitments of the cooperating parties will apply only to the study. For those who choose not to cooperate, EPA may apply the CERCLA enforcement process, pursuant to Sections 106 (a) and 107(a) of CERCLA, 42 U.S.C. §9606(a) and §9607(a) and other laws.

Pursuant to CERCLA Section 113(k), EPA must establish an administrative record that contains documents that form the basis of EPA's decision on the selection of a response action for a site. The administrative record files, which contain the documents related to the response action selected for this Site are located at EPA's Region 2 office (290 Broadway, New York) on the 18th floor. You may call the Records Center at (212) 637-4308 to make an appointment to view the administrative record for the Lower Passaic River Project.

EPA will be holding a meeting with all PRPs on October 29, 2003 at 10:00 AM in Conference Room 27A at the Region 2 office. At that meeting, EPA will provide information about the actions taken to date in the Lower Passaic River, as well as plans for future activities. After the presentation, PRPs will be given the opportunity to caucus, and EPA will return to answer any questions that might be generated during the private session. Please be advised that due to increased security measures, all visitors need to be registered with the security desk in the lobby in order to gain entry to the office. In order to ensure a smooth arrival, you will need to provide EPA with a list of attendees no later than October 15, 2003.

EPA recommends that the cooperating parties select a steering committee to represent the group's interest as soon as possible, since EPA expects a funding commitment for the financing of the CERCLA share of the $20 million study by mid-November 2003. If you wish to discuss this further, please contact Ms. Alice Yeh, Remedial Project Manager, at (212) 637-4427 or Ms. Kedari Reddy, Assistant Regional Counsel, at (212) 637-3106. Please note that all communications from attorneys should be directed to Ms. Reddy.

Sincerely yours,

George Pavlou, Director
Emergency and Remedial Response Division

Enclosure

cc: Arthur Schulz, Esq.
Environmental Counsel

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PRPs in Receipt of Notice Letters:

PRP	Legal Counsel
J. Roger Hirl President and Chairman of the Board Occidental Chemical Co. Occidental Tower 5005 LBJ Freeway Dallas, Texas 75244	Paul W. Herring, Esq. Andrews & Kurth L.L.P. 1717 Main Street, Suite 3700 Dallas, Texas 75201
Joseph Gabriel Vice President of Operations 360 North Pastoria Environmental Corp. 1100 Ridgeway Avenue Rochester, New York 14652-6280	Philip Sellinger, Esq. Sills Cummis Zuckerman One Riverfront Plaza Newark, NJ 07102
Robert Ball, President Alcan Aluminum Corporation 100 Erieview Plaza, 29th Floor Cleveland, Ohio 44114	Lawrence Salibra, Esq. Alcan Aluminum Corporation 6060 Parkland Blvd. Mayfield Hts., OH 44124
Mark Epstein, President Alden Leeds Inc. 55 Jacobus Ave. Kearny, New Jersey 07032	Eric Aronson, Esq. Whitman Breed Abbott & Morgan One Gateway Center Newark, NJ 07102
Alan Bendelius, President Alliance Chemical, Inc. Linden Avenue Ridgefield, New Jersey 07657	Fredi L. Pearlmutter, Esq. Cooper, Rose & English, LLP 480 Morris Avenue Summit, New Jersey 07901-1527
William Gentner, President The Andrew Jergens Co. 2535 Spring Grove Ave. Cincinnati, Ohio 45214	A. Christian Worrell III, Esq. Head & Ritchey, LLP 1900 Fifth Third Center 511 Walnut Street Cincinnati, OH 45202
Gary Cappeline, President Ashland Specialty Chemical Co. 5200 Blazer Parkway Dublin, Ohio 43017	Stephen Leermakers, Esq. Ashland Specialty Chemical Co. 5200 Blazer Parkway Dublin, OH 43017
Klaus Peter Loebbe, President BASF Corporation 3000 Continental Drive North Mount Olive, New Jersey 07828	Nan Bernardo, Esq. and Nancy Lake Martin, Esq. BASF Corporation 3000 Continental Drive North Mount Olive, NJ 07828

Joseph Akers, Vice President Bayer Corporation 100 Bayer Road Pittsburgh, Pennsylvania 15205-9741	Gerard Hickel, Esq. Bayer Corporation 100 Bayer Road Pittsburgh, PA 15205-9741
Yvan Dupay, President Benjamin Moore & Co. 51 Chestnut Ridge Road Montvale, New Jersey 07645	Arthur Schulz, Esq. Environmental Counsel 4910 Massachusetts Ave., N.W. Suite 221 Washington, DC 20016
Alberto Celleri, President Chemical Compounds Inc. 10 Baldwin Court Roseland, New Jersey 07086	Jim Giannotti Chemical Compounds Inc. 29-75 Riverside Avenue Newark, NJ 07104
President Chris-Craft Industries, Inc. 767 Fifth Avenue, 46th Floor New York, New York 10153	Brian Kelly, Esq. Chris-Craft Industries, Inc. 767 Fifth Avenue, 46th Floor New York, NY 10153
John Guffey, President Coltec Industries, Inc. 3 Coliseum Centre 2550 West Tyvola Road Charlotte, North Carolina 28217	John R. Mayo, Esq. Coltec Industries, Inc. 430 Park Avenue New York, NY 10022
Roger Marcus, President Congoleum Corporation 3705 Quakerbridge Road Mercerville, New Jersey 08619	Russell Hewit, Esq. Dughi & Hewit 340 North Avenue Cranford, NJ 07016
Martin Benante, Chairman Curtiss-Wright Corp. 4 Becker Farm Road Roseland, New Jersey 07068	James Maher, Esq. Curtiss-Wright Corp. 4 Becker Farm Road Roseland, NJ 07068
Antonio Perez, President Eastman Kodak Company 343 State Street Rochester, New York 14650	Elliot Stern, Esq. Eastman Kodak Company 343 State Street Rochester, NY 14650
Edgar Woolard, Chairman E.I. du Pont de Nemours & Co. 1007 Market Street Wilmington, Delaware 19898	Bernard J. Reilly, Esq. Corporate Counsel E.I. du Pont de Nemours & Co. 1007 Market Street Wilmington, DE 19898

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David Weisman, CEO Elan Chemical Company 268 Doremus Ave. Newark, New Jersey 07105	Jeffrey Schwartz, Esq. Sarber Schlesinger Satz & Goldstein One Gateway Center Newark, NJ 07102
Al Reisch, President E M Sergeant Pulp & Chemical Co. Inc. 6 Chelsea Road Clifton, New Jersey 07102	None
Mark Tucker, Esq. Essex Chemical Corp. 2030 WMDC Midland, Michigan 48674	Kenneth Mack, Esq. Fox, Rothschild, O'Brien & Frankel Princeton Pike Corp.Center 997 Lenox Drive, Building 3 Lawrenceville, NJ 08648
Todd Walker, President Fairmount Chemical Co. Inc. 117 Blanchard St. Newark, New Jersey 07105	John Ix, Esq. Porzio Bromberg & Newman 163 Madison Ave. Morristown, NJ 07962
Bradley Buechler, President Franklin-Burlington Plastics Inc. 113 Passaic Ave. Kearny, New Jersey 07032	Robert M. Becker, Esq. Kraemer, Burns, Mytelka & Lovell, P.A. 675 Morris Ave. Springfield, NJ 07081
Henry Benz, President Hoescht Celanese Chemicals, Inc. Route 202-206 P.O.Box 2500 Somerville, New Jersey 08876	Anne Conley-Pitchell, Esq. Hoescht Celanese Corp. Route 202-206 P.O.Box 2500 Somerville, NJ 08876
Francine Rothschild, President Kearny Smelting & Refining 936 Harrison Ave #5 Kearny, New Jersey 07032	None
Henry Schact, CEO Lucent Technologies, Inc. 600 Mountain Avenue Murray Hill, New Jersey 07974	Ralph McMurry, Esq. Hill, Betts & Nash LLP 1 Riverfront Plaza, Suite 327 Newark, NJ 07102-5401
Richard Meelia, President Mallinckrodt, Inc. 675 McDonnell Blvd. Hazelwood, Missouri 63042	Patricia Duft, Esq. Mallinckrodt, Inc. 675 McDonnell Blvd. Hazelwood, MO 63042

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Richard Mahoney, CEO Monsanto Company 800 N. Lindbergh Blvd. St. Louis, Missouri 63167	L. William Higley, Esq. Monsanto Company 800 N. Lindbergh Blvd. St. Louis, MO 63167
Joseph Galli, President Newell Rubbermaid, Inc. 29 E. Stephenson St. Freeport, Illinois 61032	Peter Schultz, Director Environmental Affairs Newell Co. 4000 Auburn St. Rockford, IL 61101
Jean-Pierre van Rooy, President Otis Elevator Company North American Operations 10 Farm Springs Road Farmington, Connecticut 06032	Sarah Hurley, Esq. Robinson & Cole LLP 695 East Main Street Stamford, CT 06904-2305
Richard Ablon, President Ogden Corporation Two Pennsylvania Plaza, 25th Floor New York, New York 10121	J.L. Effinger, Esq. Ogden Corporation Two Pennsylvania Plaza, 25th Floor New York, NY 10121
Henry McKinnell, Chairman Pfizer Inc. 235 E. 42nd St. New York, New York 10017	Michael McThomas, Esq. Pfizer Inc. 235 E. 42nd St. New York, NY 10017
Raymond LeBoeuf, President PPG Industries, Inc. One PPG Place Pittsburgh, Pennsylvania 15272	Joseph Karas, Esq. PPG Industries, Inc. One PPG Place Pittsburgh, PA 15272
Lawrence Codey, President PSE&G Co. P.O. Box 570 Newark, New Jersey 07101-0570	Hugh Mahoney, Esq. PSE&G Co. P.O. Box 570 Newark, NJ 07101
Phillip D. Ashkettle, President Reichhold Chemicals, Inc. P.O. Box 13582 Research Triangle Park, North Carolina 27709	Adam S. Walters, Esq. Phillips, Lytle, Hitchcock, Blaine & Huber 3400 Marine Midland Center Buffalo, NY 14203
Robert McNeeley, President Reilly Industries, Inc. 1510 Market Square Center 151 North Delaware Street Indianapolis, Indiana 46204	Paul Rivers, Director Corporate Environmental Affairs Reilly Industries, Inc. 1500 S. Tibbs Avenue Indianapolis, IN 46242

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Robert Finn, President RSR Corporation 2777 Stemmons Freeway, Suite 1800 Dallas, Texas 75207	Howard Myers, Esq. RSR Corporation 2777 Stemmons Freeway, Suite 1800 Dallas, TX 75207
Christopher Connor, CEO The Sherwin-Williams Company 101 Prospect Avenue, N.W. Cleveland, Ohio 44115-1075	Donald McConnell, Esq. The Sherwin-Williams Co. 101 Prospect Ave., N.W. Cleveland, OH 44115
George Barrett, President Teva Pharmaceuticals USA Inc. 1090 Horsham Road North Wales, Pennsylvania 19454	Kirsten E. Bauer, Esq. Teva North America 1090 Horsham Road North Wales, PA 19454
Robert Senior, President Three County Volkswagen 701 Riverside Ave. Lyndhurst, New Jersey 07071	Robert DiLascio, Esq. 30 Park Avenue, Suite 101 Lyndhurst, NJ 07071
Michael Jordan, President Westinghouse Electric Corp. 11 Stanwix Street Pittsburgh, Pennsylvania 15222	Roger Willis, Esq. Westinghouse Electric Corp. 11 Stanwix Street Pittsburgh, PA 15222
Isaac Weinberger, President Wiggins Plastics Inc. 547 Maitland Ave. Teaneck, New Jersey 07666	None

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