



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY - REGION II

290 BROADWAY

NEW YORK, NEW YORK 10007-1866

OCT - 4 1985

GENERAL NOTICE LETTER
URGENT LEGAL MATTER
EXPRESS MAIL - RETURN RECEIPT REQUESTED

Mr. John G. Breen, Chairman of the Board
The Sherwin-Williams Company
101 Prospect Avenue, N.W.
Cleveland, Ohio 44115-1075

Re: Diamond Alkali Superfund Site
Notice of Potential Liability for
Response actions in the Passaic River Study Area

Dear Mr. Breen:

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 ("CERCLA"), as amended, 42 U.S.C. §9601 *et seq.*

EPA has documented the release or threatened release of hazardous substances, pollutants and contaminants to the Passaic River Study Area which is a part of the Diamond Alkali Superfund Site ("Site"). By this letter EPA is notifying The Sherwin-Williams Company ("Sherwin-Williams") of its potential liability relating to the Site pursuant to Section 107 of CERCLA.

Sediment in the Passaic River contains numerous hazardous substances, pollutants and contaminants. Investigations undertaken by EPA indicate that hazardous materials were being released from the Sherwin-Williams facility at 60 Lister Avenue in Newark, New Jersey, into the Passaic River Study Area. Hazardous substances, pollutants and contaminants released from the Sherwin-Williams facility into the Passaic River Study Area present a risk to the environment and the humans who may ingest contaminated fish and shellfish. Therefore, Sherwin-Williams may be potentially liable for all response costs which the government may incur relating to the Passaic River Study Area.

Under Sections 106(a) and 107(a) of CERCLA, 42 U.S.C. §9606(a) and §9607(a) and other laws, potentially responsible parties ("PRPs") may be obligated to implement response actions deemed

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necessary by EPA to protect human health, welfare or the environment, and may be liable for all costs incurred by the government in responding to any release or threatened release at the Site. If response actions are performed by EPA rather than by the PRPs, those PRPs may be subject to legal action pursuant to Section 107(a) of CERCLA, 42 U.S.C. §9607(a), to recover public funds expended by EPA in response to the release and threatened release of hazardous materials at the Site. Such actions and costs may include, but need not be limited to, expenditures for conducting a Remedial Investigation/Feasibility Study ("RI/FS"), a Remedial Design/Remedial Action, and other investigation, planning, response, oversight, and enforcement activities. 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.

While EPA has the discretionary authority to invoke special notice procedures, EPA hereby notifies you that it will not utilize the special notice procedures contained in Section 122(e) of CERCLA, 42 U.S.C. §9622(e). EPA has concluded that use of the special notice procedures in Section 122(e) of CERCLA would delay the implementation of the RI/FS which is currently being performed at the Site to determine the extent of contamination and to evaluate possible actions to mitigate any adverse effects. EPA will determine at a subsequent time whether additional measures are required to mitigate releases from the Site in order to protect the public health, welfare, and the environment. The decision not to use the special notice procedures does not preclude you from entering into discussions with EPA regarding your participation in activities at the Site.

By this letter, EPA encourages you, as a PRP, to voluntarily participate in the EPA-approved activities underway at the Site in conjunction with other PRPs. At the present time, the Occidental Chemical Corporation ("OCC") is performing an RI/FS at the Site under an Administrative Consent Order. OCC, through its successor, Maxus Energy Corporation, can be contacted at the addresses listed in the Attachment to this letter. Be advised that notice of your potential liability at the Site is being forwarded to OCC by EPA.

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EPA requests your cooperation in this matter. If you are interested in participating in the ongoing response action you should notify EPA of your intentions to join with OCC. Notification should be in writing and should be delivered to EPA no later than fourteen (14) days after the date that you receive this letter. Your letter should be sent to:


Lance R. Richman, P.G.
U.S. Environmental Protection Agency
Emergency and Remedial Response Division
290 Broadway, Floor 19
New York, NY 10007-1866,

with a copy to Ms. Amelia Wagner, Esq., of the Office of Regional Counsel at the same address.

If EPA does not receive a written response from you in the time specified above, EPA will assume that you voluntarily decline to participate in any of the response actions taking place at the Site. EPA reserves the right to pursue its available enforcement options with regard to the Site.

If you wish to discuss this matter further, please contact Mr. Lance R. Richman, P.G., of my staff at (212) 637-4409 or Ms. Wagner at (212) 637-3141. Please note that all communications from attorneys should be directed to Ms. Wagner.

Sincerely yours,


Kathleen Callahan, Director
Emergency and Remedial Response Division

Attachments

CC: Mr. Donald J. McConnell, Esq.
Counsel for The Sherwin-Williams Company

Ms. Carol Dinkins, Esq.
Vinson & Elkins, L.L.P.

Mr. Richard P. McNutt
Maxus Energy Corporation

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ATTACHMENT

Contact for Maxus Energy Corporation:

Mr. Richard P. McNutt
Maxus Energy Corporation
1015 Belleville Turnpike
Kearny, New Jersey 07032

Counsel: Ms. Carol Dinkins, Esq.
Vinson & Elkins, L.L.P.
3700 Trammell Crow Center
2001 Ross Avenue
Dallas, Texas 75201-2916

PRPs in receipt of Notice Letters:

Mr. J. Roger Hirl
President and Chairman of the Board
Occidental Chemical Company
Occidental Tower
5005 LBJ Freeway
Dallas, Texas 75244

Brian C. Kelly, Esq.
Chris-Craft Industries, Inc.
600 Madison Avenue
New York, New York 10022

Counsel: Peter Simshauser, Esq.
Skadden, Arps, Slate, Meagher & Flom
300 South Grand Avenue
Los Angeles, California 90071-3144

Mr. Edgar S. Woolard, Jr., Chairman
E.I. du Pont de Nemours and Company
1007 Market Street
Wilmington, Delaware 19898

Mr. Robert D. McNeeley, President
Reilly Industries, Inc.
1510 Market Square Center
151 North Delaware Street
Indianapolis, IN 46204

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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**

Christopher Connor, CEO
The Sherwin-Williams Company
101 Prospect Avenue, N.W.
Cleveland, Ohio 44115-1075

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

Dear Mr. Connor:

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 October 4, 1995, notifying The Sherwin-Williams Company ("Sherwin-Williams") 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 Sherwin-Williams facility located at 60 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, Sherwin-Williams 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: Donald McConnell, Esq.
The Sherwin-Williams Co.

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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. Pearlmuter, 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

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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, 25 th Floor New York, New York 10121	J.L. Effinger, Esq. Ogden Corporation Two Pennsylvania Plaza, 25 th Floor New York, NY 10121
Henry McKinnell, Chairman Pfizer Inc. 235 E. 42 nd St. New York, New York 10017	Michael McThomas, Esq. Pfizer Inc. 235 E. 42 nd 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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PRELIMINARY ACCIDENT/ENVIRONMENTAL INCIDENT REPORT**1. GENERAL INFORMATION**REPORT BY SUE FREE LOCATION NEWARK DATE 4/1/92INFORMATION TAKEN
BY _____DATE OF INCIDENT AND LOCATION 3/30/92 TIME OF
INCIDENT NOONTYPE OF
OPERATION CLEANING OF LATEX PAINT SOLIDS SETTLING TANK
(SLUDGE CONE)FATALITY/SERIOUS INJURY _____ ENVIRONMENTAL
INCIDENT SPILL

OTHER _____

2. PERSONNEL INVOLVEDNAME AND EMPLOYEE
NUMBER _____SEX, AGE, MATERNAL
STATUS _____JOB CLASSIFICATION _____ COMPANY
SERVICE _____PLANT LOCATION OF
ACCIDENT _____NATURE OF
INJURY _____

3. SPILL INFORMATION**SUBSTANCE**SPILLED LATEX PAINT WASTE SOLIDS**LOCATION OF
SPILL**DATE/TIME AND DURATION OF
OCCURRENCE 10 - 15 MINUTESDATE/TIME OF
DISCOVERY 12:00 NOONRELEASE WAS TO (AIR, WATER,
GROUND) WATER (PASSAIC RIVER)**SOURCE OF**SPILL SLUDGE CONE OVERFLOWED AND SPILLED INTO A STORM DRAIN
WHILE BEING CLEANED BY A CONTRACTOR.**QUANTITY**
DISCHARGED LESS THAN 50 GAL**QUANTITY DISCHARGED WHICH REACHED A SURFACE WATER
BODY** LESS THAN FIFTY GAL**SIZE OF SHEEN (FOR OILS
ONLY)****WEATHER**
CONDITIONS LOW TIDE**CONTAINMENT/REMOVAL**
ACTION SLUDGE SPILLED ON MUD WAS CLEANED UP BY CONTRACTOR'S VAC
TRUCK. SLUDGE IN THE WATER WAS NOT CONTAINED**4. DESCRIPTION OF ACCIDENT/ENVIRONMENTAL INCIDENT**



State of New Jersey

DEPARTMENT OF ENVIRONMENTAL
PROTECTION

DIVISION OF
FISH, GAME AND WILDLIFE
RUSSELL A. COOKINGHAM
DIRECTOR

PLEASE REPLY TO:
CN 400
TRENTON, NEW JERSEY 08625

10Sept86

Plant Manager
Sherwin Williams
Brown St. & Lister Ave.
Newark, N.J. 07101

Dear Sir,

On 9Jun86 and subsequent dates, personnel of the N.J. Div. of Fish, Game, & Wildlife conducted an investigation into a reported discharge of Paint pigments into the Passaic River. It was determined that the pigments had emanated from the Sherwin Williams facility at the above location during a cleaning operation.

This incident is a violation of Title 23, N.J. Revised Statutes, copy enclosed. A notice of violation is attached. Deputy Attorney General Neil Magnus, Dept. of Law & Public Safety, CN-112, Trenton, N.J., 08625, (609-292-6945) may be contacted regarding this notice.

Very Truly Yours,

John L. Mihatov

John L. Mihatov
Lt., Bureau of Law Enforcement



State of New Jersey

DEPARTMENT OF ENVIRONMENTAL
PROTECTION

DIVISION OF
FISH, GAME AND WILDLIFE
RUSSELL A. COOKINGHAM
DIRECTOR

PLEASE REPLY TO:
CN 400
TRENTON, NEW JERSEY 08625

RETURN RECEIPT REQUESTED

Plant Manager
Sherwin Williams
Brown St. & Lister Ave.
Newark, N.J., 07101

DATE:

10Sept86

NOTICE OF VIOLATION

Gentlemen:

Investigation by personnel of this Division on 9Jun86 & subsequent dates found your firm to be in violation of N.J.S.A. 23:5-28 by virtue of an unauthorized discharge of deleterious materials.

N.J.S.A. 23:5-28 Draining deleterious substances into waters prohibited:

"No person shall put or place into, turn into, drain into or place where it can run, flow, wash or be emptied into, or find its way into any of the fresh or tidal waters within the jurisdiction of this State, any petroleum products, debris, hazardous, deleterious, destructive or poisonous substances of any kind. . . A person violating this section shall be liable to a penalty of not more than \$6000.00 for each offense."

The statute permits the State to compromise and settle any claim for a penalty against Sherwin Williams

This violation may be settled by payment of \$300.00

You are reminded that the aforementioned statute has been interpreted to impose strict liability upon the responsible party.

Should you desire to settle this demand for a penalty, payment must be received not later than 10Oct86 in the form of a money order or certified check drawn to the order of the New Jersey Division of Fish, Game, & Wildlife. This is to be sent to Russell A. Cookingham, Director, CN-400, Trenton, N.J., 08625, and a copy of the cover letter is to be sent to me at the Bureau of Freshwater Fisheries, PO Box 394, Lebanon, N.J., 08833.

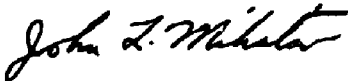
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In the event payment is not made in the time specified, action will be taken to refer the matter to the Deputy Attorney General to initiate prosecution for the maximum penalty of \$6000.00.

This proposal of settlement is without prejudice as to the State's position in the event this settlement is unacceptable to you.

The issuance of this document does not preclude other State agencies from initiating further administrative or legal action, or from the assessing of penalties, with respect to this or other violations.

Very truly yours,



Lt. John L. Mihatov
Bureau of Law Enforcement

cc: R.A. Cookingham, Director
N. Magnus, DAG
Chief, Bu. of Law Enforcement
A. Bruce Pyle, Fisheries
Office of Regulatory Services

CHAPTER 173, Laws of 1971
Senate No. 928, Approved: 6/1/71

AN ACT concerning the prevention and abatement of pollution of the waters of this State resulting from the discharge therein of petroleum products, debris, and hazardous substances, and amending R.S. 23:5-28, 23:9-36, and 23:9-52.

23:5-28. No person shall put or place into, turn into, drain into, or place where it can run, flow, wash, or be emptied into, or where it can find its way into any of the fresh or tidal waters within the jurisdiction of this State any petroleum products, debris, hazardous, deleterious, destructive or poisonous substances of any kind; provided, however, that the use of chemical by any State, County, or Municipal government agency in any program of mosquito or other pest control or the use of chemical by any person on agricultural, horticultural or forestry crops, or in connection with livestock, or aquatic weed control or structural pest and rodent control, in a manner approved by the State Department of Environmental Protection or discharge from facilities for the treatment, or the disposal of sewage or other wastes in a manner which conforms to rules and regulations promulgated by the State Department of Environmental Protection, shall not constitute a violation of this section. In case of pollution of said waters by any substance injurious to fish, birds, or mammals, it shall not be necessary to show that the substances have actually caused the death of any of these organisms. A person violating this section shall be liable to a penalty of not more than \$6000.00 for each offense, to be collected in a summary proceeding under the Penalty Enforcement Law (N.J.S. 2A:58-1 et seq.), and in any case before a court of competent jurisdiction wherein injunctive relief has been requested. The Superior Court, County Court, and county district court shall have jurisdiction to enforce said Penalty Enforcement Law. If the violation is of a continuing nature, each day during which it continues shall constitute an additional, separate and distinct offense. The department is hereby authorized and empowered to compromise and settle any claim for a penalty arising under this section in such amount is the discretion of the department as may appear appropriate and equitable under all of the circumstances. The department may institute a civil action in a court of competent jurisdiction for injunctive relief to prohibit and prevent any person from violating the provisions of this section and said court may proceed in the action in a summary manner.