

WHITEMAN OSTERMAN & HANNA

MICHAEL WHITEMAN
MELVIN H. OSTERMAN, JR.
JOHN HANNA, JR.
JOEL L. HODES
PHILIP H. GITLEN
SCOTT N. FEIN
ALICE J. KRYZAN
DANIEL A. RUZOW

ATTORNEYS AT LAW
ONE COMMERCE PLAZA
ALBANY, NEW YORK 12260
(518) 449-7600
TELECOPY (518) 449-3345
CABLE ADVOCATE ALBANY

BUFFALO OFFICE
THE GUARANTY BUILDING
28 CHURCH STREET
BUFFALO, NEW YORK 14202
(716) 854-4420

MARGARET J. GILLIS
GÜNTER DULLY
JAMES W. LYTLE
PHILIP H. DIXON
SUE ROSENSHEIN
KEVIN M. YOUNG
KATHARINE K. DECKER
JONATHAN P. NYE
DONALD S. STEFANSKI
KENNETH S. RITZENBERG
MARY JANE BENDON COUCH
JEAN F. GERBINI
SAUL A. RIGBERG

14 October 1987

VIA HAND DELIVERY

Norman Nosenchuck, P.E., Director
Division of Solid & Hazardous Waste
Room 212
50 Wolf Road
Albany, New York 12233

Re: Hooker/Ruco Site
Hicksville, New York

Dear Mr. Nosenchuck:

Enclosed herewith is the Order on Consent, with a telefaxed facsimile of page 22, "Consent by Respondent", original to be delivered to your office tomorrow, in the above referenced matter, and Occidental Chemical Corporation's "Remedial Investigation/Feasibility Study Report Outline and Supplemental Data Collection Work Plan Ruco Polymer Corporation Site, Hicksville, New York (Proposal)". The signed Order on Consent and Proposal are substantively in accord with communications and negotiations we have had with officials of the New York State Department of Environmental Conservation ("DEC"), and are likewise submitted in accord with the time deadlines set forth in a letter received by us September 25, 1987 from Stephen D. Luftig, Director, Emergency and Remedial Response Division United States Environmental Protection Agency ("EPA").

The submitted documents reflect our understanding that both are acceptable to the DEC and the EPA notwithstanding the fact that Occidental Chemical Corporation, in the Consent Order, is precluded from asserting that the Proposal was submitted to the EPA for its approval.

*Joe
Call Vance - are
they looking for
sign off on
a response to this
letter*

RECEIVED

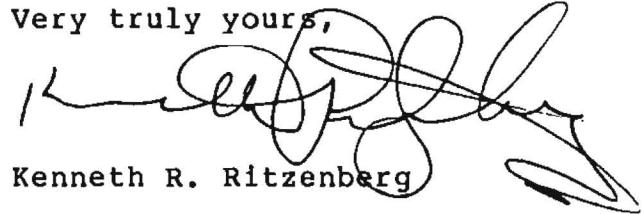
OCT 16 1987

BUREAU OF EASTERN REMEDIAL ACTION
DIVISION OF HAZARDOUS
WASTE REMEDIATION

*answer
sent
10/17
TL*

If you have any questions regarding this matter please do not hesitate to contact me.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Kenneth R. Ritzenberg', with a large, stylized flourish at the end.

Kenneth R. Ritzenberg

Enclosure

cc: Rocky Piaggione, Esq.
Mr. Vance Bryant
DEC, Regional Director, Region 1
Mr. Ronald Tramontano
Ms. Susan Shaw
J. Alan Mack, Esq. (w/o encl.)
Dr. Alan F. Weston (w/o encl.)
Mr. Robert Lamonica (w/o encl.)

STATE OF NEW YORK:
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

In the Matter of the Development	:	
of a Remedial Investigation and	:	
Feasibility Study for an Alleged	:	<u>ORDER ON CONSENT</u>
Inactive Hazardous Waste Disposal	:	
Site, Under Article 27, Title 13,	:	Index No. WP100018101
of the Environmental Conservation	:	
Law of the State of New York	:	
(the "ECL") by	:	
OCCIDENTAL CHEMICAL CORPORATION,	:	
	:	
Respondent.	:	

WHEREAS,

1. The New York State Department of Environmental Conservation (the "Department") is responsible for enforcement of Article 27, Title 13, of the Environmental Conservation Law of the State of New York ("ECL"), entitled "Inactive Hazardous Waste Disposal Sites."

2. OCCIDENTAL CHEMICAL CORPORATION, ("Respondent"), a corporation organized and existing under the laws of the State of New York is doing business in the State of New York. The Respondent, through its formerly owned/named corporation HOOKER CHEMICALS & PLASTICS CORPORATION, owned and operated a manufacturing facility on a 14-acre site at Hicksville, in the Town of Oyster Bay, County of Nassau, State of New York (the "Site"). The Site is bordered on the southwest by the Long Island Railroad and on some other borders by long-existing industrial facilities. A map of

the Site is attached and incorporated into this Order as Appendix "A." The Site is presently owned by RUCO POLYMER CORP.

3. Since approximately 1946, Respondent or its predecessor owned and operated a manufacturing plant on this property. Respondent purchased the predecessor in 1965. The Department alleges that as a result of the operation of said manufacturing facility, certain hazardous and industrial wastes were handled and released on the Site.

4. The Department alleges that the Site is an inactive hazardous waste disposal site, as that term is defined in ECL Section 27-1301(2) with the site code number 130004.

5. The Department alleges that the hazardous and industrial wastes, hazardous waste constituents and toxic degradation products thereof at and in the vicinity of the Site and those threatening to migrate from the Site constitute a significant threat to the environment.

6. Pursuant to ECL Section 27-1313(3)(a), whenever the Commissioner of Environmental Conservation (the "Commissioner") "finds that hazardous wastes at an inactive

hazardous waste disposal site constitute a significant threat to the Environment, he may order the owner of such site and/or any person responsible for the disposal of hazardous wastes at such site (i) to develop an inactive hazardous waste disposal site remedial program, subject to the approval of the department, at such site, and (ii) to implement such program within reasonable time limits specified in the order."

7. In response to environmental concerns, Respondent has, during the period from June 1983 until the present, undertaken an extensive investigation at the Site. The investigation has consisted of an analysis of past records and the installation of 12 monitor wells at six locations on the Site, the collection and analysis of two rounds of ground-water samples from the wells, and collection and analysis of 65 samples from an area at and around a 6 foot by 6 foot area where PCBs apparently spilled. Water-quality data, both regional and that generated by the investigation, has been evaluated for public and industrial supply wells in the Site vicinity. The regional hydrogeologic framework has been defined through published reports and the on-Site field investigations. Respondent alleges that the on-Site ground-water quality and direction has been well defined. Respondent alleges a review of the pre-existing data and

data generated by the remedial investigation demonstrate that an off-Site upgradient source of ground-water contamination may exist in surrounding industrial sites.

8. The Department and Respondent acknowledge that the goals of this Order shall be that Respondent:

a. Collect supplemental data to fully evaluate the nature and extent of any on-Site or off-Site source of groundwater contamination.

b. More fully develop, conduct, implement and complete a remedial investigation.

c. Conduct a feasibility study.

9. As a mechanism for accomplishing the goals as set forth in paragraph 8 a proposal entitled "Remedial Investigation/Feasibility Study Report Outline and Supplemental Data Collection Work Plan Ruco Polymer Corporation Site, Hicksville, New York" (the "Proposal"), dated October 13, 1987, prepared by Leggette, Brashears & Graham, Inc. is herewith submitted by Respondent to the Department on October 13, 1987. That Proposal is incorporated herein by reference and attached hereto as Appendix B.

10. The State has reviewed and approved the Proposal.

11. Respondent, without admitting the allegations made herein, and for the purpose of settling the matters raised herein without litigation, having waived its right to a hearing as provided by law, and having consented to the issuance and entry of this Order, agrees to be bound by the terms hereof.

NOW, having considered this matter and being duly advised, IT IS ORDERED THAT:

I. All investigations, proposals, reports, plans and supplements and revisions thereto required by this Order shall address both on-Site and off-Site contamination caused by the disposal of hazardous and industrial wastes at and in the vicinity of the Site, and shall be prepared, designed and executed in accordance, with accepted engineering, scientific and construction principles and practices necessary for the performance of the goals of this Order as set forth in paragraph 8 hereof and which (a) are technologically feasible, (b) will most effectively identify, mitigate and eliminate any present or potential future threat to the environment posed by the disposal of hazardous and industrial wastes at and in the vicinity of

the Site, and (c) will cost an amount commensurate with the need to mitigate and minimize the threat or potential threat to public health and the environment posed by the Site, provided said cost is sufficient to perform the work to the Department's satisfaction and taking into account the possibility of reasonable cost overruns.

The failure of Respondent to submit or undertake a proposal, report, field investigation, construction program plan or any supplement or revision thereof, which is necessary for the performance of the goals of this Order as set forth in paragraph 8 hereof and which is in accordance with this paragraph shall constitute a violation of this Order.

II. As used herein, "hazardous wastes" shall mean hazardous wastes, as defined at 6 NYCRR §371, and any constituents of degradation products of such wastes.

III. Respondent believing that it has heretofore proffered all data within its possession or control regarding environmental conditions on-Site, nonetheless agrees that within thirty (30) days after the effective date of this Order, Respondent shall submit to the Department all data within its possession or control regarding

environmental conditions on-Site and off-Site, to the extent that such data have not heretofore been provided to the Department. At a minimum, this information shall include:

a. A brief history and description of the Site, including the types, quantities, physical state and location of hazardous wastes disposed of, including spills and the dates and methods of disposal and spillage of such wastes;

b. A description of the results of all previous investigations of the Site and of investigations known by Respondent to have been conducted within its possession or control of areas in the vicinity of the Site, including copies of all topographic and property surveys and engineering studies of the Site and areas in the vicinity of the Site; and

c. A historical inventory of all aerial photography available for the Site, including date of flight, area of coverage, scale of reprints, and present owner of photography.

IV. Respondent shall perform the Remedial Investigation and Supplemental Data Collection Work Plan in

accordance with Appendix B. Respondent shall commence these portions of the Proposal immediately upon the effective date of this Order and upon obtaining access to private property adjacent to the Site. The work described in the work plan in Appendix B is to proceed continuously and expeditiously and in accord with the "Schedule of Implementation" contained therein until the requirements of the Proposal are fulfilled.

V. All submittals made by Respondent pursuant to this Order shall be subject to Departmental review and approval. Within the time limits set forth by Table 1 herein, the Department shall approve or disapprove each submittal in writing.

If the Department approves a submittal, Respondent shall perform the specified work or continue with Respondent's obligations under this Order in accordance with the terms of the approval and under Department's supervision.

If the Department disapproves a submittal, the Department shall notify Respondent in writing of the Department's objections. Within the time limits set forth by Table 1 herein after its receipt of notice of disapproval, Respondent shall notify the Department of its

disagreement with the Department's objections or shall revise the submittal in accordance with the terms of this Order and shall submit to the Department a submittal which has been revised in accordance with the Department's objections.

Within thirty (30) days of receipt of the revised submittal, the Department shall determine if the revised submittal is in accordance with the terms of this Order and shall provide written notification to Respondent of its approval or disapproval of the revised submittal.

If the Department disapproves the revised submittal, the Department and Respondent shall have the right to pursue whatever relief may be legally available to them, without prejudice to either's right to contest the same.

TABLE NO. 1

Submittals

Submittal	Consent Order Paragraph	Days After Receipt for Department Revision	Days to Prepare and Submit Revisions
Report	V	60	60
Feasibility Study	VI	60	60

VI. Within the time limits set forth in the Approved Proposal, Appendix B, Respondent shall perform the Remedial Investigation and shall submit to the Department a Remedial Investigation Report (the "Report") founded upon its performance of the Remedial Investigation in accordance with the terms of this Order and the Proposal and is consistent with the National Contingency Plan, the Superfund Amendments and Reauthorization Act (SARA) of 1986 and the USEPA Guidance Document entitled "Guidance on Remedial Investigations Under CERCLA" dated June 1985 with the most current revisions thereof.

VII. Within ninety (90) days after receipt of the Department's approval of the Report, Respondent shall submit to the Department a feasibility study (the "Feasibility Study") in accordance with the terms of this Order and the Proposal and is consistent with the National Contingency Plan, the Superfund Amendments and Reauthorization Act (SARA) of 1986 and the USEPA Guidance Document entitled "Guidance on Feasibility Studies Under CERCLA" dated June 1985 with the most current revisions thereof.

Following submittal and approval of the Report and submittal of the Feasibility Study, the Department will announce the availability of both the Approved Report and

*who runs the
meeting, prepares
responses
summarily
etc
?*

the Draft Feasibility Study to the public for review and comment. Department policy and guidance in effect, if any at the time the public comment period is initiated shall be followed, except to the extent that such policy and guidance is superseded by SARA. Following the public comment period (which may involve both written and oral comments), the Department shall notify Respondent in writing whether the Feasibility Study was completed in accordance with the Proposal.

In the event that the Department is not satisfied that the Feasibility Study was completed in accordance with the Proposal, the Department shall notify Respondent in writing of the Department's objections. Within the time limits set forth in Table 1 herein after its receipt of notice of disapproval, Respondent shall notify the Department of its disagreement with the Department's objections or shall resubmit the Feasibility Study ("Revised Feasibility Study") in accordance with the terms of this Order and shall submit to the Department a report which addresses the Department's objections.

Within thirty (30) days after its receipt of the Revised Feasibility Study, the Department shall determine if the Revised Feasibility Study is in accordance with the terms of

the Proposal and shall provide written notification to Respondent of its approval or disapproval of the Revised Feasibility Study.

If the Department disapproves the Revised Feasibility Study, the Department and Respondent shall have the right to pursue whatever relief may be legally available to them, without prejudice to either's right to contest the same.

VIII. The Department shall have the right to obtain "split samples" and/or duplicate samples for the purpose of comparative analysis of all substances and materials sampled by Respondent pursuant to this Order. As used herein: "split samples" shall mean whole samples divided into aliquots and duplicates.

IX. Respondent shall provide notice to the Department of any excavating, drilling or sampling to be conducted pursuant to the terms of this Order at least five (5) working days in advance of such activities.

X. Respondent shall proceed with reasonable diligence to obtain permission from Ruco Polymer Corp. to permit any duly designated officer, employee, consultant, contractor or agent of the Department to enter upon the Site or areas in

the vicinity of the Site which may be under the control of Ruco Polymer Corp., for inspection purposes and for the purpose of making or causing to be made such sampling and tests as the Department deems necessary, and for ascertaining Respondent's compliance with the terms of this Order. Respondent shall not conduct any work pursuant to the work plan in Appendix B if the Department notifies Respondent that it is unable to enter upon the site because of Ruco Polymer Corporation's refusal to grant access. In such event, Respondent shall delay any work upon the site until such access to the Department is obtained from Ruco Polymer Corporation.

XI. Respondent shall proceed with reasonable diligence to obtain whatever permits, easements, rights-of-way, rights-of-entry, approvals or authorizations which are necessary in order to perform Respondent's obligations pursuant to this Order and the Proposal. In the event Respondent is unable to obtain whatever permits, easements, rights-of-way, rights-of-entry, approvals or authorizations, after documented reasonable efforts, the Department shall, consistent with its legal authority assist in obtaining as appropriate, all such authorizations. Reasonable efforts by Respondent shall not include the payment of money to obtain access, easements, rights-of-way or rights-of-entry

necessary to enable Respondent to carry out the terms of this Order and the Proposal.

XII. Respondent shall retain a third-party professional consultant or in-house equipment and employees, contractor or technically acceptable laboratory to perform the technical, engineering and analytical obligations required by this Order and the Proposal said in-house equipment, employees, contractor or laboratory shall be used only if approved in writing by the Department in advance of such usage.

XIII. Respondent shall not suffer any penalty under any of the terms of this Order, or be subject to any proceeding or actions for any remedy or relief if it cannot comply with any requirements of the terms hereof or of the Proposal because of an act of God, war, riot, or other condition as to which negligence or willful misconduct on the part of Respondent was not a proximate cause, provided, however, that Respondent shall immediately notify the Department in writing when it obtains knowledge of any such condition and request an extension or modification of the terms of this Order.

XIV. The failure of Respondent to comply with any term of this Order shall constitute a default and a failure to perform an obligation under this Order and under the ECL.

XV. Nothing contained in this Order shall be construed as barring, diminishing, adjudicating or in any way affecting (1) any legal or equitable rights or claims, actions, suits, causes of action or demands whatsoever that the Department may have against anyone other than Respondent, its directors, officers, employees, servants, agents, successors and assigns; (2) the Department's right to enforce at law or in equity the terms of this Order against Respondent, its directors, officers, employees, servants, agents, successors and assigns in the event that Respondent shall fail to fulfill any of the terms hereof; (3) the Department's right to bring any action at law or in equity against Respondent its successors and assigns with respect to areas or resources¹ that may have been affected or contaminated as a result of the release or migration of hazardous or industrial wastes from the Site provided that such action does not seek relief inconsistent with that provided by this Order; or (4) any right the United States Environmental Protection Agency ("EPA") may have pursuant to Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), Resource Conservation and Recovery

Act ("RCRA"), or any other federal statute or regulation as from time to time amended, except that if the EPA or United States Department of Justice commences an environmental proceeding or environmental action with respect to the Site under CERCLA, RCRA or any other federal environmental statute or environmental regulation as from time to time amended and relating to activities of this Order, this Order shall be deemed to be cancelled, null and void and Respondent shall be released from all terms and obligations occurring hereunder or pursuant to the Proposal.

XVI. The terms of this Order shall not be construed to prohibit the Commissioner or his duly authorized representative from exercising any summary abatement powers, either at common law or as granted pursuant to statute or regulation.

XVII. Respondent shall indemnify and hold the Department, the State of New York, and their representatives and employees harmless for all claims, suits, actions, damages and costs of every name and description arising out of or resulting from the negligent acts or omissions of Respondent in the fulfillment or attempted fulfillment of the terms of this Order or of the Proposal by Respondent,

its directors, officers, employees, servants, agents, successors or assigns.

XVIII. The effective date of this Order shall be the date Respondent is served, by certified mail, with a conformed copy of this Order.

XIX. If, for any reason, Respondent desires that any term of this Order be changed, Respondent shall make timely written application thereof to the Commissioner, setting forth reasonable grounds for the relief sought, such requests shall not be unreasonably withheld.

XX. The Department expressly reserves its rights and the rights of the State of New York to seek reasonable response costs of every name and description from Respondents for any and all actions taken relative to the Site and neither this Order nor any of its appendices shall be construed as an express or implied waiver of the State's response costs and expenses incurred relative to the site.

The Respondents reserve their rights to oppose response cost claims on any legal, equitable, or factual basis at their disposal.

XXI. A. All communication required by this Order to be made between the Department and Respondent shall be made in writing and transmitted by United States Postal Service Return Receipt Requested, or hand delivered to the address listed below.

B. Communication to be made from Respondent to the Department shall be as follows:

1. Two copies to the Division of Solid and Hazardous Waste, Room 212, 50 Wolf Road, Albany, New York 12233. Attn: Norman H. Nosenchuck, P.E., Director.

2. Two copies to the Division of Environmental Enforcement, 202 Mamaroneck Avenue, White Plains, New York 10603. Attn: Rocky Piaggione, Esq.

3. Two copies to the NYS Department of Environmental Conservation, Region 1, SUNY - Building 40, Stony Brook, New York 11790. Attn: Regional Director.

4. Two copies to NYS Department of Health, Bureau of Environmental Exposure Investigation, 2 University Place, Albany, New York 12237. Attn: Ronald Tramontano.

5. Two copies to USEPA-Region II, Site Compliance Branch, 26 Federal Plaza Rm. 747, New York, New York 10278. Attn: Susan Shaw.

C. Communication to be made from the Department to Respondent shall be made as follows:

John Hanna, Jr., Esq.
Whiteman Osterman & Hanna
One Commerce Plaza
Albany, New York 12260

Dr. Alan Weston
Occidental Chemical Corp.
360 Rainbow Boulevard, South
Niagara Falls, New York 14302

Alan J. Mack, Esq.
Occidental Chemical Corp.
Occidental Tower
P.O. Box 809050
Dallas, Texas 75380

D. The Department and Respondent respectively reserve the right to designate other or different addresses on notice to the other.

E. No oral advice or guidance by the Department's officers or employees or representatives upon any plan, report, proposal, study or other document, or modification or additions thereto, submitted by Respondent to the Department, shall be binding or shall relieve Respondant of any obligation it may have pursuant to this

Order unless the Department gives written approval of the same.

XXI. The terms of this Order shall be deemed to bind Respondent, and its successors and assigns. Respondent is responsible for ensuring that its officers, directors, agents, servants, employees, and all persons, firms and corporations acting under or for it pursuant to this Order comply with the terms of this Order.

XXII. Nothing herein shall be construed to bind any entity not specifically bound by the terms of this Order.

XXIII. The terms hereof shall constitute the complete and entire Order between Respondent and the Department concerning the Site. No terms, conditions, understandings or agreements purporting to modify or vary the terms hereof shall be binding unless made in writing and subscribed by the party to be bound.

XXIV. The terms of this Order shall not create any presumptions of law or findings of fact which shall inure to or be for the benefit of any person, including the Department and Respondent, in any action not arising out of the enforcement of this Order and shall not constitute an

admission of any kind on the part of the Respondent, its officers or employees.

Dated: Albany, New York

THOMAS C. JORLING
Commissioner
New York State Department of
Environmental Conservation

-22-

CONSENT BY RESPONDENT

Respondent hereby consents to the issuing and entering of this Order and agrees to be bound by the provisions, terms and conditions contained in this Order.

By: Michael J. Rudick

Michael J. Rudick

Title: Vice President & General CounselDate: October 14, 1987

STATE OF TEXAS)
 : ss.:
COUNTY OF DALLAS)

On this fourteenth day of October, 1987, before me personally came Michael J. Rudick, to me known, who being duly sworn, did depose and say that he resides in Norwalk, Connecticut; that he is the Vice President & General Counsel of the Occidental Chemical Corporation described in and which executed the foregoing instrument; that he knew the seal of said corporation; that the seal affixed to said instrument was such corporate seal; that it was so affixed by the order of the Board of Directors of said corporation, and that he signed his name thereto by like order.

Claudette Mikeska
Notary Public

