



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4

ATLANTA FEDERAL CENTER  
61 FORSYTH STREET  
ATLANTA, GEORGIA 30303-8960

SEP 09 2011

**URGENT LEGAL MATTER - PROMPT REPLY REQUESTED**  
**CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

B. Chuck Anderson  
President  
Occidental Chemical Corporation  
Occidental Tower  
5005 LBJ Freeway  
Dallas, Texas 75244-6119

Re: General Notice Letter and Request for Information Pursuant to Section 104 of CERCLA and Section 3007 of RCRA for Black Leaf Chemical Superfund Site located at 1391 Dixie Highway, Louisville, Kentucky (Site)

Dear Mr. Anderson:

The purpose of this letter is to notify Occidental Chemical Corporation (the Company) of its potential liability, as defined by Section 107(a) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), that the Company may have incurred with respect to the above referenced Site. This letter also notifies the Company of forthcoming removal activities at the Site and requests that the Company perform or finance such activities and advise the U.S. Environmental Protection Agency of the Company's willingness to participate in negotiations to enter into a settlement agreement to perform the work described below.

The EPA is responsible for responding to the release or threat of release of hazardous substances, pollutants or contaminants into the environment - that is, for stopping further contamination from occurring and for cleaning up or otherwise addressing any contamination that has already occurred. The EPA has documented that such a release has occurred at the Black Leaf Chemical Site located at 1391 Dixie Highway, Louisville, Kentucky. The EPA has spent, or is considering spending, public funds to investigate and control releases of hazardous substances or potential releases of hazardous substances at the Site.

**Site Background**

On July 25, 2011, the Kentucky Department for Environmental Protection (KDEP) Superfund Branch requested that the EPA evaluate this Site for purposes of conducting a time-critical removal action. The request was based on the results of an October 2010 Preliminary Assessment and Site Investigation by the EPA and KDEP that revealed high concentrations of organochlorine pesticides in surface soil at the Site. KDEP also expressed concern regarding the lack of controls on access to the Site. On August 8, 2011, the EPA On-Scene Coordinator, Art Smith, and KDEP performed a site inspection. At that time, a gate at the 17th Street entrance to the Site was missing and evidence of trespassing was noted in areas of the Site where hazardous substance releases are present. The OSC completed the removal site evaluation under 40 CFR Section 300.410, and concluded that the Site meets the National Contingency Plan (NCP) criteria for a time-critical removal Action.

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The Site is located on a portion of a 29-acre parcel of land in the Park Hill neighborhood of Louisville, and is bordered by a densely populated residential area to the north, including a licensed daycare facility within 200 feet of the Site, a large rail yard to the south, and industrial/commercial areas to the east and west. Multiple brick structures occupy the Site, which formerly housed pesticide formulating operations that date back to at least the early 1950s to 1959 when the Site became a whiskey distillery followed by a wood drying and lumber distribution facility. The Site is currently abandoned.

### **Explanation of Potential Liability**

Potentially Responsible Parties (PRPs) under CERCLA include: current and former owners and operators of a site, as well as persons who arranged for disposal or treatment of hazardous substances sent to the Site, or persons who accepted hazardous substances for transport to a site. Under CERCLA, PRPs may be obligated to implement response actions to protect health, welfare or the environment. PRPs may also be liable for the costs incurred by the United States in responding to any release or threatened release at a site. In addition, PRPs may be required to pay for damages for injury to natural resources or for their destruction or loss, together with the cost of assessing such damages.

Based on the information collected, the EPA believes that the Company may be liable under Section 107(a) of CERCLA with respect to the Black Leaf Chemical Site, as a previous owner and/or operator of the Site. The EPA believes that the Company owned and/or operated the Site as Diamond Alkali Company from 1957-1959.

### **Site Response Activities**

To date, the EPA and the State of Kentucky have taken several response actions at the Site under the authority of the Superfund Program. At present, the EPA is planning to conduct the following activities at the Site:

- Provide for Site security and control access to Site.
- Perform sampling and analyses to identify the nature and extent of hazardous substance releases from the Site. This will include sampling to be conducted in off-site residential areas to evaluate if contaminant migration has occurred.
- Mitigate the effects of releases of hazardous substances to the environment. This is expected to include, but not be limited to:
  - excavation and disposal of contaminated soils, debris, and other solid wastes;
  - demolition and/or decontamination of structures where contamination is identified and which requires abatement in order to prevent releases to the environment; and
  - restoration of disturbed areas to existing contours and conditions existing before the removal action.

### **Invitation to Conduct Removal/PRP Response**

The Company is encouraged to contact the EPA if it is interested in participating in negotiations to perform and/or finance the above described removal action at the Site. If the Company chooses to enter into negotiations with the EPA regarding its performance of the above described removal action, please respond in writing by providing a statement of the Company's willingness and financial ability to conduct the removal action and reimburse the EPA for costs already expended, and costs that the EPA

will incur in overseeing the performance of the removal action. The response is due **by October 11, 2011**. The EPA will then send the Company a draft Settlement Agreement in order to initiate a period of formal negotiations.

If a response to participate in negotiations is not received on or before **October 11, 2011**, the EPA will assume that Occidental Chemical Corporation has decided not to conduct the removal action and reimburse the Superfund for the Site expenditures. Please be aware however, that Occidental Chemical Corporation will remain potentially liable for the EPA's costs incurred in undertaking activities pursuant to CERCLA and the National Contingency Plan (NCP) at this Site. The EPA may then take appropriate action at the Site, which may include: (1) conducting the removal action and pursuing a cost recovery claim under Section 107 of CERCLA against the Company or (2) issuing a Unilateral Administrative Order (UAO) to the Company under Section 106(a) of CERCLA, 42 U.S.C. § 9606, requiring the Company to perform the work. Note that if the recipients of a UAO refuse to comply, the EPA may pursue civil litigation against the recipients to require compliance.

Response to this notice letter may be sent by email and should be sent to:

Marianne O. Lodin  
Associate Regional Counsel  
U.S. Environmental Protection Agency  
61 Forsyth Street, SW  
Atlanta, Georgia 30303  
lodin.marianne@epa.gov

#### **Decision Not to Use Special Notice**

Under CERCLA Section 122(e), the EPA has the discretionary authority to invoke special notice procedures to formally negotiate the terms of an agreement between the EPA and the PRPs to conduct or finance response activities. Use of these special notice procedures triggers a moratorium on certain agency activities at the Site while formal negotiations between the EPA and the PRP or PRPs are conducted. In this case, the EPA has decided not to invoke the Section 122(e) special notice procedures. The EPA's rationale for not invoking Section 122(e) special notice procedures is based on the Agency's removal policy regarding time-critical removals. Nonetheless, the EPA is willing to discuss settlement opportunities without invoking a moratorium, but will issue an order or initiate the response action as planned if such discussions do not lead to settlement expeditiously.

#### **PRP Response and Contact**

The EPA would like to encourage communication between your Company, other PRPs, and the EPA regarding the Site. The EPA recommends that PRPs meet to select a "steering committee" that will be responsible for representing the group's interests. Establishing a manageable group is critical to successful negotiations with the EPA. If this is not possible, the EPA encourages each PRP to select one person from its company or organization to represent its interests to the EPA.

To assist you in your efforts to communicate, listed below are the names and addresses of PRPs to whom this letter is being sent:

David B. Mantor, Esq.  
Counsel  
ExxonMobil Corporation  
800 Bell, Suite 1583k  
Houston, Texas 77002

Louisville Industrial Park, LLC  
Steve Brooks, Esq.  
105 S. Sherrin Avenue  
Louisville, Kentucky 40207

### **Insurance Coverage**

Some or all of the costs associated with the proposed settlement offer may be covered by current or past insurance policies issued to the Company. Most insurance policies require that the insured timely notify the insurance carrier(s) of any claim against it. To evaluate whether the Company should notify its insurance carrier(s) of this demand, the Company may wish to review current and past policies, beginning with the date of the Company's first contact with the Site, up to the present. Coverage depends on many factors, including the language of the particular policy and state law.

### **Information to Assist You**

The EPA will establish an Administrative Record that contains documents that serve as the basis for the EPA's selection of a cleanup action for the Site. The Administrative Record will be made available at a location near the Site. The Administrative Record will also be available for inspection at the Superfund Records Center, EPA Region 4, Atlanta Federal Center, 61 Forsyth St. SW, Atlanta, GA.

### **Information Request**

Pursuant to the authority of Section 104 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. § 9604, as amended, and Section 3007 of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. § 6927, the Company is hereby requested to respond to the Information Request set forth in Enclosure A. Instructions on how to respond to the questions are included in Enclosure A, as well as definitions that apply to the words appearing in the questions.

The Company's response to this Information Request is due on or before **October 11, 2011**. Compliance with the Information Request is mandatory. Failure to respond to this Information Request can result in enforcement action by the EPA pursuant to Section 104(e) of CERCLA, as amended, and/or Section 3008 of RCRA. Each of these statutes permits the EPA to seek the imposition of penalties of up to thirty-seven thousand five hundred (\$37,500) for each day of continued non-compliance. Please be further advised that provision of false, fictitious, or fraudulent statements or representations to the Information Request may subject you to criminal penalties under 18 U.S.C. § 1001 or Section 3008(d) of RCRA, 42 U.S.C. § 6928(d).

This Information Request is not subject to the approval requirement of the Paperwork Reduction Act of 1980, 44 U.S.C. § 3501, et seq.

Your response should be mailed to:

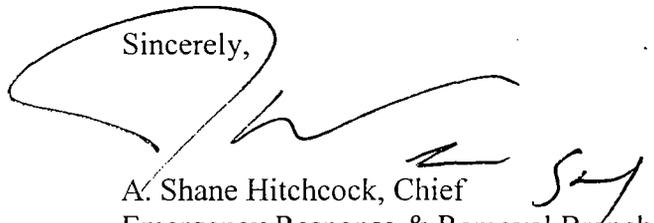
Marianne O. Lodin  
Associate Regional Counsel  
U.S. Environmental Protection Agency  
61 Forsyth Street, SW  
Atlanta, Georgia 30303  
lodin.marianne@epa.gov

**Conclusion**

Due to the seriousness of the problem at the Site and the legal ramifications of failure to respond properly, the EPA strongly encourages you to give this matter your immediate attention. If you have any legal questions regarding this letter, please contact Marianne O. Lodin, Associate Regional Counsel, at 404-562-9547. If you have any general questions or specific questions related to the information requests, please contact Karen Coleman, Enforcement Project Manager at 404-562-8853. For technical questions, please contact Art Smith, On Scene Coordinator, at 502-905-7559.

The factual and legal discussions contained in this letter are intended solely for notification and information purposes. They are not intended to be and cannot be relied upon as final EPA positions on any matter set forth herein. Thank you for your prompt attention to this matter.

Sincerely,



A. Shane Hitchcock, Chief  
Emergency Response & Removal Branch  
Superfund Division  
Region 4  
U.S. Environmental Protection Agency

Enclosure

## ENCLOSURE A

### Information Request Regarding Black Leaf Chemical Superfund Site

#### Instructions

1. Answer Every Question Completely.

A separate response must be made to each of the questions set forth in this Information Request. For each question contained in this letter, if information responsive to this information request is not in your possession, custody, or control, please identify the person(s) from whom such information may be obtained.

2. Number Each Answer.

Precede each answer with the corresponding number of the question and the subpart to which it corresponds.

3. Provide the Best Information Available.

Provide responses to the best of your ability, even if the information sought was never put down in writing or if the written documents are no longer available. You should seek out responsive information from current and former employees/agents. Submission of cursory responses when other responsive information is available to you will be considered non-compliance with this Information Request.

4. Identify the Sources of Each Answer.

For each and every question contained herein, identify (see Definitions) all persons consulted in the preparation of the answer. Also identify all documents consulted, examined, or referred to in the preparation of the answer or that contain information responsive to the question and provide true and accurate copies of all such documents.

5. Abide By Your Continuing Obligation to Provide/Correct Information.

If additional information or documents responsive to this Request become known or available to you after you respond to this Request, the EPA hereby requests pursuant to CERCLA Section 104(e) that you supplement your response to the EPA.

6. Understand How to Request Confidential Treatment of Your Information.

The information requested herein must be provided even though you may contend that it includes confidential information or trade secrets. You may assert a confidentiality claim covering part or all of the information requested, pursuant to Sections 104(e)(7)(E) and (F) of CERCLA, 42 U.S.C. Sections 9604(e)(7)(E) and (F), and Section 3007(b) of RCRA, 42 U.S.C. Section 6927(b), and 40 C.F.R. Section 2.203(b).

If you make a claim of confidentiality for any of the information you submit to the EPA, you must prove that claim. For each document or response you claim confidential, you must separately address the following points:

- a. The portions of the information alleged to be entitled to confidential treatment;
- b. The period of time for which confidential treatment is desired (e.g., until a certain date, until the occurrence of a specific event, or permanently);
- c. Measures taken by you to guard against the undesired disclosure of the information to others;
- d. The extent to which the information has been disclosed to others and the precautions taken in connection therewith;
- e. Pertinent confidentiality determinations, if any, by the EPA or other federal agencies and a copy of any such determinations or reference to them, if available; and
- f. Whether you assert that disclosure of the information would likely result in substantial harmful effects on your business' competitive position, and if so, what those harmful effects would be, why they should be viewed as substantial, and an explanation of the causal relationship between disclosure and such harmful effects.

To make a confidentiality claim, please stamp, or type "confidential" on all confidential responses and any related confidential documents. Confidential portions of otherwise non-confidential documents should be clearly identified. You should indicate a date, if any, after which the information need no longer be treated as confidential. Please submit your response so that all non-confidential information, including any redacted versions of documents are in one envelope and all materials for which you desire confidential treatment are in another envelope.

All confidentiality claims are subject to verification by the EPA. It is important that you satisfactorily show that you have taken reasonable measures to protect the confidentiality of the information and that you intend to continue to do so, and that it is not and has not been obtainable by legitimate means without your consent. Information covered by such claim will be disclosed by the EPA only to the extent permitted by CERCLA Section 104(e). If no such claim accompanies the information when it is received by the EPA, then it may be made available to the public by the EPA without further notice to you.

7. Be Aware of Potential Disclosure to EPA Contractors.

Information which you submit in response to this Information Request may be disclosed by the EPA to authorized representatives of the United States, pursuant to 40 C.F.R. 2.310(h), even if you assert that all or part of it is confidential business information. Please be advised that the EPA intends to disclose all responses to this Information Request to one or more of its private contractors for the purpose of organizing and/or analyzing the information contained in the responses to this Information Request. If you are submitting information which you assert is entitled to treatment as confidential business information, you may comment on this intended disclosure within fourteen (14) days of receiving this Information Request.

8. Mark Any Personal Privacy Information.

Personnel and medical files, and similar files, the disclosure of which to the general public may constitute an invasion of privacy, should be segregated from your responses, included on separate sheet(s), and marked as "Personal Privacy Information."

9. Answer Despite Objections to Questions.

If you have objections to some or all the questions within the Information Request letter, you are still required to respond to each of the questions.

Definitions

The following definitions shall apply to the following words as they appear in this Enclosure A:

1. The term "you" or "Company" or "Respondent" shall mean the addressee of this Request, the addressee's officers, managers, employees, representatives, contractors, trustees, partners, successors, assigns and agents.
2. The term "person" shall have the same definition as in Section 101(21) of CERCLA: an individual, firm, corporation, association, partnership, consortium, joint venture, commercial entity, United States Government, State, municipality, commission, political subdivision of a State, or any interstate body.
3. The terms the "Site" or the "facility" shall mean the Black Leaf Chemical Superfund Site located at 1391 Dixie Highway, Louisville, KY 40210.
4. The term "Site Property" shall mean any of the parcels of real estate that make up the Site, including, but not limited to, the parcels located at 1391 Dixie Highway, Louisville, KY 40210.
5. The term "materials" shall mean all substances that have been generated, treated, stored, or disposed of or otherwise handled at or transported to the Site, including but not limited to, all hazardous substances, pollutants and contaminants, hazardous wastes and solid wastes, as defined above.
6. The term "hazardous substance" shall have the same definition as that contained in Section 101(14) of CERCLA, and includes any mixtures of such hazardous substances with any other substances, including mixtures of hazardous substances with petroleum products or other nonhazardous substances.
7. The term "contamination" shall include, but not be limited to, hazardous substances, plus any element, substance, compound, or mixture, including disease-causing agents, which after release into the environment will or may reasonably be anticipated to cause death, disease, behavioral abnormalities, cancer, genetic mutation, physiological malfunctions (including malfunctions in reproduction) or physical deformations; except that the term shall not include petroleum.
8. The term "identify" means, with respect to a natural person, to set forth the person's name, present or last known business address and business telephone number, present or last known home address and home telephone number, and present or last known job title, position or business.
9. The term "identify" means, with respect to a corporation, partnership, business trust or other association or business entity (including a sole proprietorship), to set forth its full name, address, legal form (e.g., corporation, partnership, etc.), organization, if any, and a brief description of its business.
10. The term "identify" means, with respect to a document, to provide its customary business description, its date, its number, if any (invoice or purchase order number), the identity of the author, addressor, addressee and/or recipient, and the substance or the subject matter.

11. The terms "document" and "documents" shall mean any object that records, stores, or presents information, and includes writings of any kind, formal or informal, whether or not wholly or partially in handwriting, including by way of illustration and not by way of limitation, any invoice, manifest, bill of lading, receipt, endorsement, check, bank draft, canceled check, deposit slip, withdrawal slip, order, correspondence, record book, minutes, memorandum of telephone and other conversations including meetings, agreement and the like, diary, calendar, desk pad, scrapbook, notebook, bulletin, circular, form, pamphlet, statement, journal, postcard, letter, telegram, telex, report, notice, message, analysis, comparison, graph, chart, interoffice or intraoffice communications, photostat or other copy of any documents, microfilm or other film record, any photograph, sound recording on any type of device, any punch card, disc or disc pack; any tape or other type of memory generally associated with computers and data processing (together with the programming instructions and other written material necessary to use such punch card, disc, or disc pack, tape or other type of memory and together with printouts of such punch card, disc, or disc pack, tape or other type of memory); and (a) every copy of each document which is not an exact duplicate of a document which it produces, (b) every copy which has any writing, figure or notation, annotation or the like on it, (c) drafts, (d) attachments to or enclosures with any document, and (e) every document referred to in any other document.

12. The terms "and" and "or" shall be construed either disjunctively or conjunctively as necessary to bring within the scope of this Information Request any information which might otherwise be construed to be outside its scope.

13. The term "arrangement" means every separate contract or other agreement between two or more persons.

14. The terms "transaction" or "transact" mean any sale, transfer, giving, delivery, change in ownership, or change in possession.

15. All terms not defined herein shall have their ordinary meaning, unless such terms are defined in CERCLA, RCRA, 40 C.F.R. Part 300, or 40 C.F.R. Parts 260-280, in which case the statutory or regulatory definitions shall apply.

## Questions

1. Identify the person(s) answering these Questions on behalf of Respondent.
2. For each and every Question contained herein, identify all documents consulted, examined, or referred to in the preparation of the answer or that contain information responsive to the Question and provide true and accurate copies of all such documents. Similarly, identify any person consulted, examined or referred to in preparation of the answer or that may possess information related to the Question and provide contact information for such person.

### Corporate Successor

3. Is Respondent the successor to all liabilities, including those under CERCLA, of Diamond Alkali Company (DAC) and/or Occidental Electrochemical Corporation (OEC)?
4. If Respondent's answer to number 3 above is "no," respond fully to the following questions:
  - a. Describe in detail Respondent's past and current relationship with DAC, OEC, and the Site located at 1391 Dixie Highway, Louisville, KY.
  - b. State the date on which Respondent acquired ownership or an interest in DAC, OEC, and the Site. State the prior owners, if any, of DAC, OEC, and the Site. Submit a copy of all documents relating to Respondent's purchase of DAC and/or OEC.
  - c. Did Respondent sell or otherwise divest itself of any stock, assets, or other interest in DAC and/or OEC, or any other company which operated a manufacturing facility at 1391 Dixie Highway, Louisville, KY?
  - d. If the answer to 4(c) is "yes," fully describe the nature of the sale and/or transaction. State if the transaction consisted of a merger, consolidation, sale or transfer of assets and submit all documents relating to such transaction, including all documents pertaining to any agreements, express or implied, for the purchasing corporation to assume the liabilities of the selling corporation.
  - e. Did Respondent retain the liabilities of DAC and/or OEC for events prior to the sale?

### Acquisition of Site Property

5. Describe what Respondent knows about DAC's operations at the Site Property, including, but not limited to, the type of operations maintained at the Site and dates of operation.
6. During DAC's operation of the Site, does Respondent know or have reason to know that any hazardous substances, including but not limited to pesticides, were disposed of on or at the Site?
7. Identify all persons, including Respondent's employees, who may have knowledge, information or documents about DAC's operations or the manufacturing, mixing, storage, disposal, or other handling of hazardous materials at or transportation of materials to the Site.

### DAC Operations

8. Describe the nature of DAC's activities or business at the Site, with respect to purchasing, receiving, manufacturing, mixing, processing, storing, treating, disposing, or otherwise handling hazardous

substances or materials, including but not limited to pesticides, at the Site. Please provide the chemical or trade name of any pesticides.

9. Provide information specifying whether DAC engaged in fertilizer manufacturing and acid production operations at this location, or whether these activities were conducted at this location prior to acquiring the property.

Documents and Other Sources

10. Produce any and all documents upon which Respondent has relied to answer any of the questions above.
11. If Respondent has reason to believe that someone could provide a more detailed or complete response to any of these Requests or who may be able to provide additional responsive documents, identify such person(s) and the additional information or documents that they may have.

**U.S. Postal Service**  
**CERTIFIED MAIL RECEIPT**  
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Street, Apt or PO Box		
City, State,		

PS Form 3800, January 2001

See Reverse for Instructions

**SENDER: COMPLETE THIS SECTION**

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

B. Chuck Anderson  
 President  
 Occidental Chemical Corp.  
 Occidental Tower  
 5005 LBJ Freeway  
 Dallas, TX 75244-6119

2. Article Number  
 (Transfer from service label)

7001 2510 0008 6428 9706

**COMPLETE THIS SECTION ON DELIVERY**

A. Signature  
 X *Michael Kivra*  Agent  Addressee

B. Received by (Printed Name) *Michael Kivra* C. Date of Delivery *9-12*

D. Is delivery address different from item 1?  Yes  
 If YES, enter delivery address below:  No

3. Service Type  
 Certified Mail  Express Mail  
 Registered  Return Receipt for Merchandise  
 Insured Mail  C.O.D.

4. Restricted Delivery? (Extra Fee)  Yes