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ADLER POLLOCK & SHEEHAN
INCORPORATED

ONE HOSPITAL TRUST PLAZA
PROVIDENCE, RHODE ISLAND 02904

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

March 17, 1982

08310020

Mr. Joel Blumstein
Enforcement Counsel
United States Environmental
Protection Agency
EPA Region I
John F. Kennedy Federal Building
Boston, MA

Re: Picillo Waste Disposal Site--Coventry, Rhode Island
(the "Site")

Dear Mr. Blumstein:

This shall serve as a formal response (the "Response") to the letter of December 15, 1981 sent to Hydron Laboratories, Inc. ("Hydron") by William A. Sullivan, Jr., Enforcement Counsel, United States Environmental Protection Agency (the "Request").

As a preliminary response to the Request, I spoke with you on December 21, 1981 requesting clarification which would assist Hydron in formulating the Response. As to certain aspects, you advised that certain of EPA's technical staff would be in a better position to furnish detail. By letter of December 22, 1981, I requested an opportunity for myself and officials of Hydron to meet with you and other representatives of EPA to investigate the Request and the issues raised thereby.

On January 8, 1982, Mr. John Shields, Plant Manager at Hydron, David Rapaport, Esquire, counsel to Hydron, David J. Oliveira, Esquire and myself of this office, Rhode Island counsel to Hydron, met with you and various other EPA officials, and your invitee Daniel Schatz, Assistant Counsel for the Rhode Island Attorney General's office (the "Meeting"), in response to my letter. At the conclusion of the Meeting, I informed you that Hydron would assess the additional information presented to it, and formulate an appropriate response.

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WALTER ADLER, Attorney

*Admitted Cause Only

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As stated at the Meeting, Hydron disclaims any liability, both in the action brought by the State of Rhode Island which is currently pending in the Superior Court for Providence County, C.A. No. 77-3161, and under the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA"), for the acts or omissions of any party relative to the Site. It is Hydron's continued position that it has acted at all times with due care, in good faith, and in accordance with the duties and standards required by law then, and/or now applicable. Accordingly, the Response is not, and should not be regarded as a waiver or deviation of Hydron's position to date. Notwithstanding anything to the contrary herein contained, Hydron expressly reserves any and all defenses available to it relative to any claim which has been or may be brought against it in any jurisdiction whatsoever.

Hydron has formulated its Response taking into account information and positions communicated to it by EPA including:

1. That item number 1 of paragraph 3 of the Request, contemplates, without citation to legal authority or factual predicate, an obligation on the part of Hydron to carry out the excavation and disposal of all drums remaining at the Site irrespective of whether Hydron was the generator thereof, or the circumstances leading to their location at the Site;
2. That the remaining items in paragraph 3 of the Request assume an obligation on the part of Hydron to carry out total clean up and monitoring activities relative to the entire Site;
3. That the State of Rhode Island, in conjunction with EPA, intends to undertake the necessary clean up operations at the Site, in accordance with the findings and recommendations of the Mitre Report, irrespective of any response plan and implementation schedule which may be submitted by Hydron, or other responsible parties.
4. That the remaining defendants named in C.A. No. 77-3161 brought by the State of Rhode Island in the Superior Court for Providence County, have been sent requests substantially similar or identical to the

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Request. In this regard, you indicated that only the defendants received such requests but declined to provide Hydron with such information as to whether you have identified other generators;

5. That no final determinations have yet been made by EPA as to what shall constitute an acceptable response by Hydron and, in fact, the Request was a procedural step precedent to a possible CERCLA action;

6. That the seventy-two hour period stated to be allowed for Hydron's Response was admittedly a short time, but was necessitated by the fact that EPA has been in extended discussions with the State of Rhode Island regarding clean up operations at the Site and that there was urgency in moving forward with Rhode Island's plan for clean up which was in the contracting stage with State vendors; this, notwithstanding that the Request was the first indication given to Hydron of the agreement process and the first request to Hydron to participate therein;

7. That the Request was made upon Hydron formally to apprise it of the clean up operations which are to be undertaken irrespective of Hydron's Response.

8. That Hydron has represented (and you have expressly disclaimed any probable cause or reasonable factual basis to conclude or assume otherwise) that of the 44,000 drums estimated by Mitre to be at the Site, the maximum number of such drums which could have originated with Hydron is twenty-eight. You have informed us that of such twenty-eight drums, fifteen have been recovered to date and afforded no information presently available to EPA or the State upon which to base a reasonable assumption that any or all of the thirteen barrels which remain unaccounted for are in fact located at the Site. Additionally, the State has resisted production requests with regard to certain materials which it asserts constitute "inquiries or investigations" into the subject matter of the State litigation, the contents of which may or may not be of material assistance to Hydron.

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9. The State has, in response to interrogatories, furnished a list of companies currently under investigation by it as possible generators and/or transporters to the Site based upon observations made by the State at the Site and/or communications, as more fully described in the State's response. A copy of the relevant facts of the answers is attached as Exhibit "A". This information was first disclosed to Hydron on February 11, 1982 and March 1, 1982, notwithstanding the fact that such was apparently available to the State, and we assume to EPA, at a much earlier date, and prior to the Request.

10. Hydron has served Freedom of Information Act requests upon the State and upon EPA under the relevant statutes. The State has yet to reply in full, having taken advantage of the statutory provisions for extensions. Apart from a claim of exemption dated March 11, 1982, EPA has failed to comply with the request. You have indicated that the matter of compliance was to be the subject of discussion among EPA staff and that you are not in a position to advise whether some or all of the data determined would be supplied and if so, on what timetable. The exemption claim, except by implications, does not clarify that situation. It is in any event untimely and inadequate.

Hydron rejects the liability assumptions made by EPA in points 1 and 2 above. Points 3, 5, 6 and 7 evince an intent by the State of Rhode Island and EPA to proceed upon a previously determined course of action irrespective of the demand upon Hydron, or any response Hydron might make. Subject to persuasion to the contrary, the approach by EPA appears calculated to posture EPA to assert its perceived recovery remedy against Hydron under CERCLA. Nevertheless, and notwithstanding, and wholly without prejudice to its position on the merits, as an offer of compromise in pending litigation and not to be receivable in evidence, Hydron has authorized us to advise you that it is prepared to offer the following Response:

Hydron adopts, as reasonable, the findings and recommendations of the Mitre Report prepared on behalf of the State of Rhode Island the same to be implemented as the State

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and EPA have presently elected so to do. Hydron will share in the clean up costs to be incurred in the proportion which the thirteen drums originating with Hydron and remaining unaccounted for bear to the total number of drums removed from the Site, irrespective of whether the thirteen drums are ultimately found at the Site. The foregoing Response is conditioned upon EPA forthwith disclosing the names of other possible generators and taking such steps as may be necessary to assure their being dealt with consistently with your position toward Hydron.

With specific reference to the drums from Hydron Laboratories, if any, yet to be located at the Site: The State has been made aware of the contents of drums released by Hydron to Chemical Waste Removal Co. Similarly, an awareness was expressed by EPA personnel of the contents of any such drums. Extreme care and caution should be utilized in the handling of such drums in accordance with the Customer Services Information document including a Materials Safety Data Sheet, previously made available to the State.

Please be advised that this offer shall remain in full force and effect until April 19, 1982. Kindly advise, prior to such date, as to the acceptability of this offer. In the event you deem this offer unacceptable as proposed, kindly advise of the amendments which shall be required thereto in order to acquire an acceptable status.

Finally, in order to be fully informed in the premises, it is apparent that Hydron must resort to litigation rather than be permitted a free exchange of data which, given the reply of the State, is demonstrably relevant to forming an intelligent response to the Request. We consider that the position taken by EPA in the premises in (a) seeking to vest liability on Hydron, (b) exacting a comprehensive response on short notice, and (c) failing to provide relevant data in a cooperative manner, is unwarranted and wholly out of keeping with the purpose of CERCLA as well as the Freedom of Information Act.

Hydron considers that EPA is, in the circumstances, obligated to advise as to such steps, if any, it has taken with regard to the companies identified on the attached exhibit, the

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content of any investigation with regard thereto, and the
rationale upon which EPA has limited its CERCLA demands to the
Defendants in the within action.

Your prompt response on the points herein raised is
requested.

Sincerely,

JOHN F. BOMSTER

JFB/jag
cc: Mr. William Sullivan, Jr.

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EXHIBIT ⁴

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Acheson Industries
Colloids Division
Port Huron, Michigan

Advance Environmental Technology Corp.
520 Speedwell Avenue
Morris Plains, N.J. 02950

AHM Corporation

Aldrich Chemical Corporation
Milwaukee, Wisconsin

American Cyanamid Corporation
Fortier Plant
P. O. Box 10800
River Road
West Wego, LA

American Cyanamid Corporation
Agricultural Division
Princeton, N.J.

American Hoechst
Route 117
Coventry, R.I.

Arapahoe Chemical, Inc.
Boulder, CO

Asland Chemical
P. O. Box 2219
5200 Blazer Parkway
Columbus, OH

BASF, Wyandotte Company
100 Cherry Hill Road
Parsippany, N.J. 07054

City Chemical Corporation
New York City, NY

Colloids
Newark, NJ

Crown Zellerbach
Camas, WA

Drew Chemical Corporation

Dupont
Wilrington, DE

Eastern Chemical Company
230 Marcus Boulevard
Hempstead, NY

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GAR Electroforming
Division of MITE
Corporation
Augusta Drive
Danbury, CT 06810

G. E. Corporation
Waterford, NY

George Senn
Philadelphia, PA

Hammermill Paper Company
Manning Paper Company Division
Green Island, NY

Hercules Powder Company
Pipe & Paper Department
Wilmington, DE

ICN Pharmaceutical
Plainview, NY

Inland Steel Container
Jersey City, NJ

J.T. Baker
Phillipsburg, N.J.

Kay Fries Chemical, Inc.
West Haverstraw, NY

King Industries, Inc.
South Norwalk, CT

Kouffel & Bouser Co.
Millerton, NY 12546

MC/B Reagents
East Rutherford, NY

Eastman Kodak
Rochester, NY

Englehard
113 Astor Street
Newark, NJ

Exxon
Research & Engineering Company
Linden, NJ

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Fischer Scientific Corp. ny
P. O. Box 375
One Reagent Lane
Fairlawn, NJ 07410

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FMC Corporation
Industrial Chemical Group
Philadelphia, PA 19103

GAF Corporation
140 West 51st Street
New York, NY 10020

Hodag Chemical Corporation
7247 North Central Park Avenue
Skokie, IL 60076

Hooker Chemical & Plastic Corp.
Durez Division
North Tonawanda, NY

Hubbard Hall Chemical Company
Waterbury, CT

Hunt Chemical
Lincoln or East Providence, R.I.

Monomer Polymer Laboratory
Bordon, Inc.
Chemical Div.
Philadelphia, PA 19124

Monsanto
Springfield, Mass.

M & T Chemical, Inc.
Woodbridge Road & Randolph Avenue
Rahway, NJ

Natural Berry Growers
San Jose, CA 96156

Naugatuck Chemical
Naugatuck, CT

Norton Company
Worcester, Mass. 01606

Pearsall Chemical

Pennwalt Corp.
Rubber Chemical Dept.
Three Parkway
Philadelphia, PA

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Pfizer
Central Research Dept.
Groton, CT

Rohm & Haas Co.
Independence Mall West
Philadelphia, PA 19105

Rutgers University
Newark, NJ

Shell Chemical Co.
Houston, TX

Sigma Chemical
St. Louis, MO

Thickol Corp.
Specialty Chemical Div.
Trenton, NJ

Tinplate Lithographic
529 Dowd Avenue
Elizabeth, NJ

Vita Varco
N. Brunswick, NJ

Watertree Chemical Co.
Lugoff, SC

Westinghouse Electrical Corp.
Electronic Tube Div.
Westinghouse Circle
Horsehead, NY 14845