

100759

OxyChem®

Michael A. James
Assistant General Counsel

December 15, 1995

**By Facsimile and
Certified Mail, Return Receipt Requested**

Katherine Lose
U.S. Environmental Protection Agency
841 Chestnut Building
Philadelphia, PA 19107

RE: Standard Chlorine of Delaware Superfund Site

Dear Ms. Lose:

This is in response to your letter to Mr. J.R. Hirl of our company, dated November 27, 1995, and received on December 1, regarding EPA Region 3's decision not to apply special notice procedures with regard to a potential role for Occidental Chemical Corporation ("OxyChem") at the above-referenced Site. As I have stated in previous correspondence with Region 3, OxyChem does not consider Region 3's attempts to draw it into this Site to have legitimate legal or policy foundations. Region 3's efforts exhibit the type of "hit the deep pockets" mentality that has helped fuel the heavy criticism of EPA's implementation of the Superfund program that is rampant in Congress and the media.

OxyChem's position is that it has no liability for this Site under the Superfund law because it qualifies for the defense provided by Section 107(b)(3), that is, the release or releases of hazardous substances and any damages resulting from those releases were the consequence of acts or omissions of a third party, Standard Chlorine of Delaware, Inc. ("SCD"). OxyChem is prepared to make the evidentiary demonstrations called for by the statute to support this defense. The releases at the Site which give rise to the Site designation and subsequent investigation and response activities did not occur "in connection with a contractual relationship existing" between SCD and OxyChem or its predecessors. At the time of the National Priorities List listing determination, OxyChem's predecessor, Diamond Shamrock Corporation, convinced EPA to remove its properties from the listing. It was subsequent to that determination that the two major chlorobenzene spills occurred at the SCD plant, resulting in the contamination which led to the Consent Order between SCD and the State of Delaware for various investigation and remediation actions.

In order to assist SCD and the State in carrying out elements of their Consent Order, OxyChem granted SCD licenses to access OxyChem's property located to the north of SCD's property.



Occidental Chemical Corporation
Corporate Office
Occidental Tower, 5005 LBJ Freeway
P.O. Box 809050, Dallas, TX 75380-9050
214/404-3966; FAX 214/404-3647

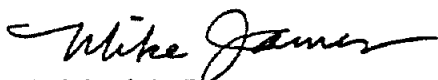
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OxyChem also granted to SCD a license to install and operate groundwater monitoring wells on our property just west of Route 9. Quite recently, OxyChem sold to SCD the 34.459 acres immediately to the north of SCD's facility (copy of deed attached). This latter parcel was the tract of OxyChem's most heavily impacted by the approximately 500,000 gallon spill of paradichlorobenzene in 1986 and has been the location of much of the activity under the Consent Order. At the behest of the State, OxyChem has, for the past 10 years, allowed SCD to perform investigation and remediation activities on this tract, as well. OxyChem rejects any contention by Region 3 that we have incurred Superfund liability as a result of allowing SCD to carry out its Consent Order responsibilities.

OxyChem believes that its situation adjacent to the SCD Site is covered by the EPA policy announcement published July 3, 1995 (60 FR 34790). The circumstances of the Site and our contiguous property satisfy all three elements of that policy. OxyChem's situation is more straightforward than many cases that EPA will face in applying the policy, because we did not acquire contaminated property; to the contrary, we have transferred ownership of property to the party responsible for its contamination.

OxyChem will continue to work with Region 3 to implement the RCRA corrective action program at our facility on the east side of Route 9 and in the adjacent segment of Red Lion Creek. If Region 3 and the State were to simply transfer the SCD matter from Superfund to RCRA corrective action -- a more attractive proposition now that Air Products and Chemicals, Inc. and OxyChem have sold to SCD their respective properties contaminated by SCD -- both government agencies could look only to the two facility owners for remediation responsibilities at or adjacent to those facilities.

Sincerely,



Michael A. James

MAJ/pn

cc: Wes Sanders, Delaware City Plant, OCC
La Vern Heble, Special Environmental, OCC

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Kenneth J. Barnhouse
Associate Counsel

RECEIVED

DEC 14 1995

VIA FEDERAL EXPRESS

LEGAL DEPARTMENT
OCCIDENTAL CHEMICAL CORPORATION
M. A. JAMES

13 December 1995

Margaret Weiner
Standard Chlorine Chemical Company, Inc.
1035 Belleville Turnpike
Kearny, NJ 07032

RE: Special Warranty Deed

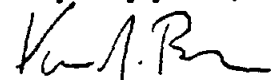
Dear Ms. Weiner:

Enclosed please find two (2) executed copies of the Special Warranty Deed. Once you have had the Deed recorded, please send me the recording data.

Regarding an equitable proration of taxes, please contact Tom Kuches (302-834-3845).

With the providing of the Special Warranty Deed, this should close out this matter (with the exception of the proration of taxes). If you have any questions regarding this matter, please do not hesitate to contact me.

Very truly yours,



Kenneth J. Barnhouse

KJB/pn
Enclosure

cc: Robin Burns (w/enclosure)
Tom Kuches (w/ enclosure)



Occidental Chemical Corporation
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SPECIAL WARRANTY DEED

This Warranty Deed, made this 13th day of December, 1995 between OCCIDENTAL CHEMICAL CORPORATION, a New York corporation, as Grantor, and STANDARD CHLORINE OF DELAWARE, INC. a Delaware corporation, as Grantee.

WITNESSETH:

That said Grantor for and in consideration of the sum of Ten Dollars (\$10.00) lawful money of the United States of America and other good and valuable consideration, the receipt thereof is hereby acknowledged, hereby remises, releases and warrants unto said Grantee:

All of the right, title and interest by, of and through Grantor but not otherwise, in approximately 34.459 acres of land described as follows:

BEGINNING at a point in the northerly right-of-way line of Governor Lea Road, said point being N 582,082.06 E 437,879.66 on the Delaware State Plane Grid System, said point being further located N 86° 34' 10" W 1792.10' from the intersection of the centerline of River Road (Delaware Route 9) with the northerly right-of-way line of Governor Lea Road extended.

THENCE from the point of beginning and along the northerly side of Governor Lea Road N 86° 34' 10" W 60.11' to a point a corner for Lands Now or Late of Air Products, Inc.

THENCE by the same Due North 2086.89' to a point in Lands Now or Late of Tidewater Oil Co.

THENCE by the same and with Red Lion Creek the following three courses and distances:

1. N 25° 16' 40" E 820.47' to a point in Red Lion Creek;
2. S 74° 07' 30" E 602.00' to a point in Red Lion Creek;
3. S 82° 07' 20" E 0.97' to a point in Red Lion Creek.

THENCE along Lands Now or Late of Diamond Shamrock Corporation Due South 1568.96' to a point a corner for Lands Now or Late of Standard Chlorine of Delaware, Inc.

THENCE by the same the following two courses and distances:

1. Due West 870.35' to a point;
2. Due South 1098.63' to a point on the northerly side of Governor Lea Road the first mentioned point and place of beginning.

Containing within said metes and bounds 34.459± acres. The property being conveyed is more particularly shown and described on a Plan of Parcel survey dated November 26, 1986, prepared by L. Franklin Beers, Jr., Surveyor.

This Deed is made subject to the following matters:

- (a) All covenants, conditions, reservations, encroachments, restrictions, easements, rights-of-way and other limitations disclosed of record or visually observable;
- (b) All easement rights, line-ownership rights and other rights of all third parties upon the property, disclosed of record or visually observable;
- (c) All exceptions and limitations set forth in any title examination report if obtained by Grantee;
- (d) All zoning laws, ordinances, building code restrictions, and other regulatory restrictions (including without limitation the Delaware Coastal Zone Act and the Delaware Wetlands Act), whether municipal, state or federal, if any; and,
- (e) Reservation by Grantor of ownership of all pipelines, if any presently existing under, in or on said property.

IN WITNESS WHEREOF, said OCCIDENTAL CHEMICAL CORPORATION as Grantor has caused its name by Robin Burns, Director - Regional Purchasing, to be hereunto set, and its common and corporate seal to be hereunto affixed, duly attested by the Assistant Secretary, as of the day and year first written above.

Attest: OCCIDENTAL CHEMICAL CORPORATION

V. A. B.
Assistant Secretary

By Robin A. Burns
Title Director - Regional Purchasing

STATE OF Texas *
*
COUNTY OF Denton *

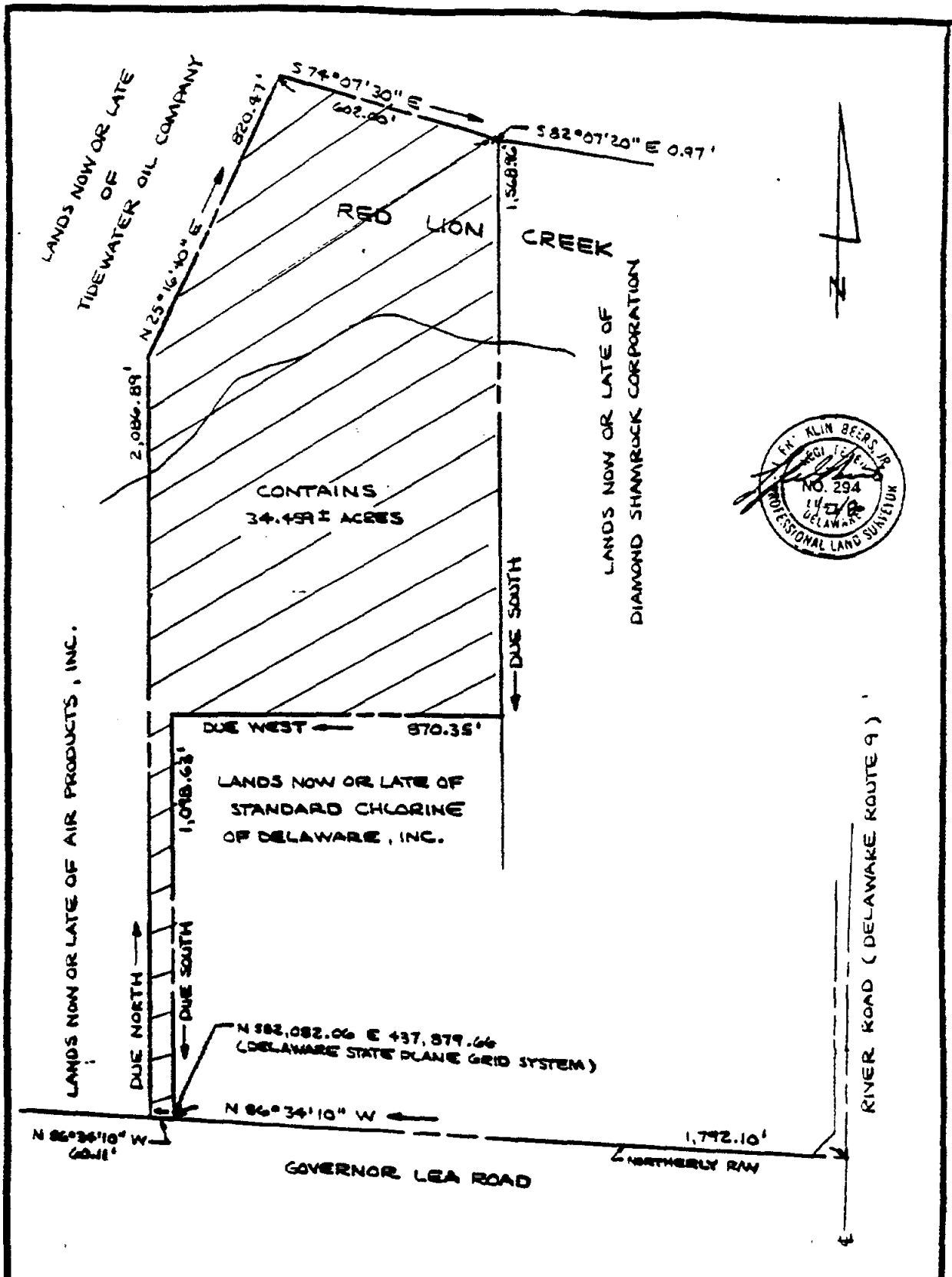
I, a Notary Public in and for the State and County aforesaid, hereby certify that the foregoing Special Warranty Deed was signed by Robin A. Burns whom I know to be the Director, Regional Purchasing of Occidental Chemical Corporation, and that the seal of the corporation was affixed thereto by him in my presence.

DATED this 13th day of December, 1995.

Mary DeLoach
Notary Public

My commission expires: 8/24/98

c:warranty



PLAN OF PARCEL
 TO BE CONVEYED TO
 STANDARD CHLORINE OF DELAWARE, INC.
 RED LION HUNDRED
 NEW CASTLE COUNTY
 DELAWARE

TETRA TECH RICHARDSON
 A HONEYWELL SUBSIDIARY

Engineers	Architects	Scientists
110 South Chesapeake Street, P.O. Box 675, Newark, DE 19711-0675 (302) 739-7100		
FAX: (302) 739-7101		
DATE: 11/26/06	SCALE: RPN	SCALE: 1" = 250'
NO: 4652-01	DATE: 8-01	SCALE: 1 OF 1

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