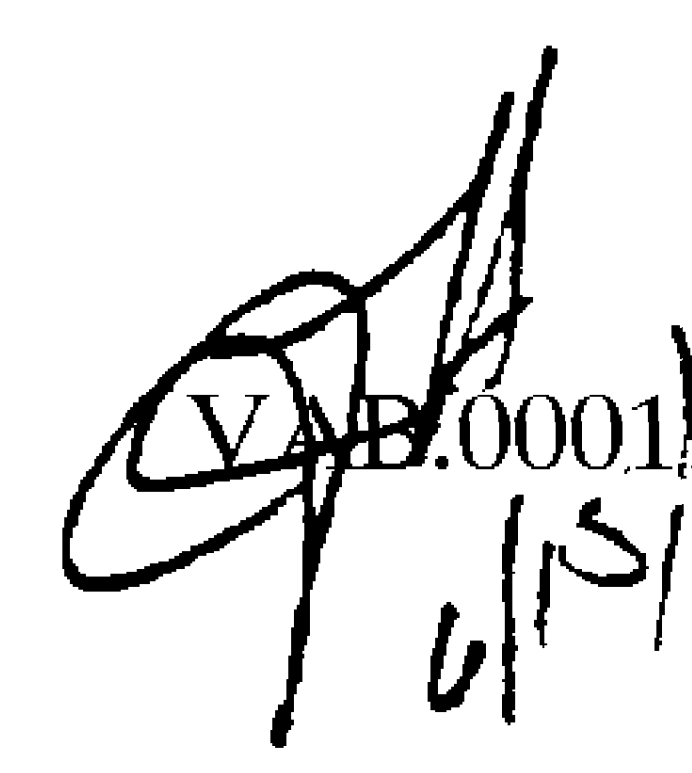


Schedule 3.6

ENVIRONMENTAL SURVEY

February 2, 1984


VAB.0001027402
6/15/84

I. Aberdeen, Mississippi Chemical Plant

A. Water Pollution

1. Water Permits. The plant holds a state water discharge permit which governs conventional parameters such as BOD, pH, stormwater runoff discharges, and imposes monitoring and reporting obligations for two priority (toxic) pollutants: vinyl chloride and phthalate esters.

Transfer of the state water discharge permit from Conoco to Vista will require Conoco to notify the Mississippi DNR at least 30 days prior to ownership transfer. Mississippi has received the permit authority from EPA and, therefore, a request for approval of the transfer of the permit should be made to that Agency.

Section 37 of the Mississippi Wastewater Permit Regulations provides that the applicable procedures and requirements in 40 C.F.R. 122.14 regarding "Transfer of Permits" shall be "adopted" as a part of Mississippi's regulations. The provisions governing State permit transfer are found at 40 CFR 122.61(b) (April 1, 1983, 48 FR 14153) formerly § 122.14 of the Consolidated Permit Regulations (May 19, 1980 45 FR 33428). Section 122.61(b) provides that any NPDES permit may be "automatically" transferred to a new permittee if (1) the current permittee notifies the appropriate agency at least 30 days in advance of the proposed transfer date; (2) the notice includes a written agreement between the existing and new permittees containing a specific date for "transfer of permit responsibility, coverage and liability between them"; and (3) the agency does not notify the parties of its intent to "modify or revoke and reissue the permit".

2. Water Compliance. The plant claims to consistently comply with all applicable limitations contained in the permit. A "Bio-Disc" which began operating at the plant's wastewater treatment system in April of 1983 is said to have improved removal of toxic components, such as vinyl chloride from the plant's wastewater prior to discharge to James Creek.

The most significant problem which the Aberdeen Plant faces with respect to surface water pollution concerns the persistent overflow of an oil-water separator upstream of the wastewater treatment plant. During rainstorms, this separator overflows to a drainage ditch and carries contaminants such as oil, grease, phthalate esters and plasticizers off the property via a permitted stormwater outfall. Plant officials claim that these occurrences have not resulted in visible contamination of off-site areas. Discharges from the separator are not covered by the plant's Spill Prevention

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Control and Countermeasure (SPCC) Plan. (The plant's SPCC plan is said to be up to date and has apparently enabled the plant to avoid any significant petroleum spills.)

Overflows from the separator have occurred several times within the past year, each time requiring notification to the State DNR. Conoco Chemicals representatives claim that all such notices have been provided for those bypasses that the plant is aware of.

As a result of the chronic nature of this problem, Conoco Chemicals has voluntarily committed to take steps in 1984 to prevent overflows from the separator. Specifically, the plant has obtained 1984 budget approval for \$180,000 to provide additional flow capacity between the separator and the wastewater treatment ponds. Currently the project is in the engineering phase.

3. Future Requirements and Potential Concerns. On March 21, 1983 EPA proposed new effluent guidelines and pretreatment standards for the Organic Chemicals, Plastics and Synthetic Fibers Industry (48 FR 11828). Once finalized (anticipated in early 1985), these regulations will impose additional water pollution control requirements for many plants - beyond the control levels mandated by existing regulations. An analysis conducted by Conoco Chemicals indicates that compliance with these proposed effluent guidelines at the Aberdeen Plant would require no significant additional controls.

B. Air Pollution

1. Air Permits. The Aberdeen Plant holds a single state operating permit and five construction permits which authorize all air pollution emission sources at the facility. These permits are not transferable. In order to continue to operate under a valid air permit, Vista will have to reapply for a new operating (presumably identical) permit prior to the transfer of ownership. (See Schedule 3.6 of the Asset Purchase Agreement.) The state has apparently informed Conoco Chemicals representatives that the review process for the new permit should be routine.

In addition to its recently issued state permit, the Plant received an initial federal approval from EPA after the NESHAP regulations were adopted in 1976. To obtain this approval, the plant was required to submit a "source report" which identified, inter alia, the name of the owner/operator of the plant. The NESHAP regulations require that changes in the information stated in the source report be reported within 30 days after the change has occurred (40 C.F.R. 61.10(c)). Notice by Conoco must be given to the Mississippi

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DNR, copy to EPA, since Mississippi has been delegated the authority by EPA for the NESHAP program.

2. Air Compliance. The substantive air pollution requirements of primary concern to Aberdeen are EPA's NESHAP regulations for vinyl chloride (40 C.F.R. 61, Subpart F, 1982). These regulations are now enforced by the State of Mississippi pursuant to a delegation of authority from the U.S. EPA (47 FR 12251). The State has, in turn, incorporated the substantive requirements of the NESHAP regulations into the plant's current operating permit.

From a compliance standpoint, the NESHAP provision which present greatest concern relates to past discharges of vinyl chloride from relief valves. EPA's regulations prohibit relief valve discharges of vinyl chloride except in "emergency" situations and requires all relief valve discharges to be reported to EPA within 10 days of their occurrence (40 C.F.R. § 61.65). In practice, EPA has interpreted the emergency relief valve provision very narrowly so as to treat as violations virtually all relief valve discharges except those caused by acts of God.

Several months after EPA's delegation of NESHAP authority to Mississippi in November of 1981 representatives from the Mississippi DNR asked the plant to provide information concerning past relief valve discharges. The DNR subsequently requested that the plant identify measures to prevent future releases. The plant has undertaken a study to evaluate the possibility of future releases and identify certain measures which it has implemented in the past and which it could implement in the future. The study has been completed but the study report has not yet been finalized for submission to the State DNR.

Since promulgation of EPA's vinyl chloride NESHAP in 1976 approximately 20 relief valve discharges have occurred at Aberdeen, none of which are likely to qualify as an "emergency" under EPA's strict interpretation. Some releases may have occurred which may not have been reported to the agency due to alleged confusion over legal reporting obligations during the 1977-1978 compliance waiver period. This matter is currently being reviewed by the Conoco Legal Department. This review may lead to a conclusion that Conoco must report any previously unreported releases which may have occurred.

On February 1, 1984, the Department of Justice advised outside counsel for Conoco that a complaint was filed in Federal District Court for the Northern District of Mississippi alleging that the Aberdeen Plant discharged vinyl chloride ten times from relief valves, and once from a vent valve, in violation of the vinyl chloride r

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notification form and a Part A permit application with EPA. Having met these requirements, such facilities could continue to treat, store or dispose of hazardous waste under "interim status" authority pending the issuance of a final permit. Facilities operating under interim status are subject to specific substantive requirements (40 C.F.R. Part 265) and must ultimately obtain a final permit according to a schedule established by EPA or an authorized state agency. (Mississippi has permit and interim status authority for the types of hazardous waste facilities located at Aberdeen.)

The Aberdeen Plant generates a number of wastes which the plant manages as hazardous, including phthalate esters, phthalate ester-contaminated filter cake and plasticizer wastes. Nonhazardous solid wastes are also generated and sent to the county landfill for disposal. Disposal of all hazardous wastes which the plant manages as hazardous occurs off-site at Chemical Waste Management's facility in Emelle, Alabama pursuant to Du Pont's National Waste Disposal Contract with Chemical Waste Management. Negotiations are now underway between Conoco Chemicals and Stauffer Chemical to arrange for a Stauffer facility in Tennessee to incinerate some portion of the wastes now being sent to oil recycling facilities.

As noted above, the Aberdeen plant filed a notification form and a Part A permit application with EPA Region IV in a timely fashion. This application was amended in July of 1981 to delete certain previously listed wastes, and again in July of 1982 to delete the plant's wastewater treatment ponds, based upon a determination that the ponds were not subject to regulation. The State of Mississippi approved these amendments by way of a letter dated August 9, 1982. Thus, the plant now has interim status authority for facilities which treat (oil/water separation) and store (tanks and drum storage) hazardous wastes. If a transfer or sale occurs before the Aberdeen plant has received a "final" permit (not anticipated within the next 12 months), such a change in ownership or control must comply with 40 C.F.R. § 270.72. This section requires that a revised Part A permit application be submitted for the facility no later than 90 days prior to the scheduled change in ownership or control. Specifically, Section 270.72 provides:

"Changes in the ownership or operational control of a facility may be made if the new owner or operator submits a revised Part A permit application no later than 90 days prior to the scheduled change.... All other interim status duties are transferred effective immediately upon the date of the change of ownership or operational control of the facility...."

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It is recommended that a revised Part A permit application and a notification form be promptly prepared and submitted by Vista, even in the absence of a specific closing date, to ensure timely agency receipt of the revised application. The revised application and notification should merely indicate the proposed change in ownership with no other changes from the present application and notification, thus requiring only a pro forma review of the revision by both EPA and the State of Mississippi. (These filings were made by Vista on December 31, 1983.)

Pursuant to the regulations (40 C.F.R. Part 265) the Aberdeen plant has provided EPA, Region IV, and the State of Mississippi, with documentation of financial responsibility for closure, post-closure, sudden accidental liability and non-sudden accidental liability relating to its hazardous waste activities. In brief, the closure and post-closure requirements involve the financial assurance (presently a Du Pont corporate guarantee) that proper closure and post-closure care of all facilities will occur. Similarly, the liability requirements involve the financial assurance (presently a Conoco-owned insurance policy) that liabilities to third parties arising from sudden or non-sudden accidental occurrences at the facilities will be satisfied.

In the event of a sale or transfer of the Aberdeen facility, the regulations provide in pertinent part as follows:

"...the old owner or operator shall comply with the requirements of 40 C.F.R. Part 265, Subpart H (financial requirements), ...until the new owner or operator has demonstrated to the Director that it is complying with that Subpart. ...upon demonstration to the Director by the new owner or operator of compliance with that Subpart, the Director shall notify the old owner or operator in writing that it no longer needs to comply with that part as of the date of demonstration." (40 CFR § 270.72) (Emphasis added.)

Thus, until Vista demonstrates to the satisfaction of EPA and the State of Mississippi that it has established the proper mechanisms for assuring financial responsibility for the closure/post-closure and liability requirements, the present Du Pont corporate guarantee and Conoco insurance policy will continue to cover such financial requirements. In order to avoid any potential post-closing liability to Du Pont or Conoco arising out of the financial responsibility requirements, Vista should be required to exercise its best efforts to obtain approval of the replacement financial responsibility mechanisms prior to or at the time of closing. Further, in the event that Vista has not obtained the required approval and release of the Du Pont guarantee and Conoco insurance

policy by the date of closing, Vista should fully indemnify Du Pont and Conoco for any post-closing liability under 40 CFR Part 265, Subpart H (financial requirements). (Vista indicated its intent to comply with the financial requirements in letters to EPA and the states dated December 31, 1983.)

The State of Mississippi Hazardous Waste Management Regulations have incorporated by reference and adopted the federal regulations. Thus, the Aberdeen Plant presently operates its hazardous waste facilities under interim status authority from the State of Mississippi. All requirements for transfer of the interim status authority and notification discussed above for the regulations are identical for transfer of the interim status authority under the State regulations.

2. RCRA Compliance. On May 6, 1982 and November 15, 1983 the Aberdeen Plant was inspected for compliance with RCRA requirements by the State DNR. The first inspection found no noncompliance problems but the second noted three relatively minor noncompliance problems: 1) the training records failed to specify the actual date(s) on which personnel retraining was conducted in 1983, 2) failure to provide copies of the plant's Emergency Contingency Plan to local fire and police authorities, and 3) failure to record corrective action taken regarding leaking drums in the hazardous waste storage area. These problems have been corrected and no formal enforcement action is anticipated. Aside from these three matters, the plant claims to be in compliance with applicable hazardous waste management regulations.

3. Past Waste Disposal Activities. Conoco Chemicals representatives have identified five locations which have received plant wastes in the past but which are no longer receiving wastes. These include:

a) A now inactive municipal landfill which was once operated by the City of Aberdeen and upon which an H.U.D. housing development has since been constructed. To the best of Conoco's knowledge, no CERCLA (i.e., Superfund) notification has been filed for this site. Although Conoco Chemicals has not located records which would provide a conclusive description of the wastes which the Aberdeen Plant may have deposited at the site, the plant does have evidence that plasticizer filter cake from the plant was taken to the site. Though this filter cake is contaminated with phthalate, the plant does not consider it to be a hazardous waste.

b) A currently inactive surface impoundment (known as pond #2) which contains a sizeable quantity of PVC resin as a result of prior plant operations. The resin

apparently does not constitute a "hazardous substance" for purposes of CERCLA and the site is not included in the plant's notification form filed under § 103(c) of CERCLA. This pond is currently being graded, covered and seeded with the concurrence of the Mississippi DNR.

c) Located on the plant property is a former waste disposal site for which a § 103(c) CERCLA notification was submitted to EPA in 1981. This site contains land-disposed waste "filter cake" contaminated with phthalate esters.

The State of Mississippi has taken recent steps to analyze the potential environmental impact of this former disposal site. Groundwater samples have been taken from existing groundwater wells located near the site. (The results from this sampling are not yet available.) Also, the State has requested Conoco to develop and implement a stormwater runoff control plan (cover and seeding) followed by one year of groundwater monitoring to ensure that the site does not pose a significant risk to surface water or groundwater quality. This plan was submitted to the DNR in November of 1983. No DNR response has yet been received.

d) In October of 1983 the Federal Bureau of Investigation ("FBI") notified Conoco that a number of Conoco-labeled chemical drums had been found on pallets in a vacant field approximately 15 miles from the plant in Hamilton, Mississippi. The FBI's concern focused on the possibility that the drums had been stolen from Conoco, although Conoco Chemicals officials do not know how or why the FBI became involved.

Upon being notified of the situation, Conoco Chemicals investigated and determined that the drums had been obtained and stored by the property owner (a former contractor for the Aberdeen facility) in the belief that the material could have salvage value. Conoco Chemicals representatives secured the return of the drums and has stored them at the plant's approved hazardous waste drum storage area pending their planned off-site disposal at the Emelle, Alabama site.

e) On November 18, 1983 the Aberdeen Plant environmental coordinator conducted a general environmental survey of the plant and discovered approximately 100 abandoned chemical drums in a remote wooded portion of the plant. (This matter was brought to the attention of the Conoco Legal Department on December 5, 1983 as part of the preparation of this report.) A preliminary technical assessment indicates that the drums contain a variety of waste materials such as used motor oil, plasticizer, detergent and glycerin. Cleanup activities were initiated on December 1, 1983. The drums

were moved to the plant's permitted waste storage area and tests are being conducted on both the drummed material and any contaminated soil to determine the precise nature of the substances involved. Some of the material from the drums is currently being stored in the plant's recovered oil tank for possible future off-site incineration.

On December 2, 1983, during the drum cleanup operations, the plant received an inquiry from a Tupelo, Mississippi newspaper concerning the discovery of drums at the plant site. At this point, the plant decided to notify the State DNR about the situation. This contact was made on December 2, 1983. Conoco Chemicals representatives say that the State officials indicated agreement with the plant's approach to the problem and that they suggested that the drummed materials (and any contaminated soil) be tested for toxic (priority) pollutants and that the plant report back to DNR as soon as the analytical data were received. PCB testing on composite samples has been conducted and none were found. Priority pollutant data is expected by late January 1984. Conoco Chemicals has been requested to coordinate closely with the Conoco Legal Department to ensure that all legal reporting requirements are satisfied and that the material is handled in accordance with applicable regulations.

4. Polychlorinated Biphenyls (PCBs). Under the Toxic Substances Control Act, detailed requirements have been promulgated by EPA concerning the handling and storage of electrical equipment which contains PCBs. The Aberdeen Plant has such equipment and has informed Conoco Legal that applicable PCB regulations are being fully satisfied. The plant has not assessed the potential impact of recently proposed EPA regulations governing the incidental manufacture of PCBs.

D. Radiation

The Aberdeen Plant has a license from the Mississippi State Board of Health to use specific sealed radiation sources for operating radioactive high level alarms on reactors. Vista must apply for a new license. See Schedule 3.6 of the Asset Purchase Agreement.

E. Other Matters

Pursuant to the release-reporting requirements of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA or Superfund), releases of one pound or more of vinyl chloride to the environment are to be reported to the National Response Center unless the release is "federally permitted" (42 U.S.C. 9603). The phrase "federally permitted" is defined to include, inter alia, releases which are "subject to" NESHAP provisions (42 U.S.C. 9601(10)).

Conoco has taken the position that relief valve discharges and certain other types of releases which are governed by the NESHAP regulations are, in accordance with the CERCLA definition, "federally permitted" and hence need not be reported to the National Response Center. This position has been memorialized in a formal Conoco Protocol submitted to EPA Region VI in the Summer of 1983 on behalf of the Lake Charles VCM Plant. Although the Aberdeen Plant is under the jurisdiction of EPA Region IV, the basic intent of the Protocol is followed by Aberdeen in that minor VCM leaks which are detected by the plant's approved NESHAP Leak Detection and Elimination Program are not reported to the Center. In submitting the Protocol, Conoco advised EPA it (Conoco) would operate pursuant to the terms contained therein unless EPA disapproved the Protocol. EPA has not yet responded.

II. The Aberdeen Transportation Terminal

The Aberdeen Transportation Terminal is located in Prairie, Mississippi approximately 12 miles from the Aberdeen Chemical Plant. The terminal is situated inside a warehouse facility and handles PVC. The facility performs all normal terminal functions, including truck cleaning, fueling and maintenance.

A. Water Pollution

Runoff from the washing of dry bulk trailers, including road dirt, water and biodegradable detergent, is done within the warehouse facility. These materials are collected periodically, placed in bags or boxes, and transferred to dumpster trash bins from which they are hauled to the municipal landfill. These plastic materials are not considered hazardous waste.

The water and detergent from these washing operations runs directly to a series of ditches outside the warehouse. Technically, this discharge may require a state water discharge permit, although no such permit has been obtained. Sanitary wastes are handled by a septic tank.

The terminal maintains a 10,000 gallon diesel storage tank which appears to require an SPCC plan and appropriate diking. The terminal does not have such a plan in place. It is anticipated that the Aberdeen chemical plant will attempt to include this tank in its SPCC plant in the near future.

B. Air Pollution

The terminal has no air pollution permits. No facilities exist at the terminal which appear to require such a permit.

C. Solid Wastes

The terminal does not have and does not appear to need any permits for solid or hazardous waste management. Those solid wastes which are generated are disposed of along with miscellaneous terminal trash. Surface Transportation representatives indicate that there are no solid and hazardous waste activities at the terminal (past and present) which pose a concern. Used motor oil from vehicles serviced at the terminal is blended with diesel for use as a motor fuel.

III. Oklahoma City, Oklahoma PVC Plant

A. Water Pollution

1. Water Permits. The plant's process wastewater is discharged to a city-owned wastewater treatment plant after passing through two on-site stabilization ponds. Conoco has legal authority to discharge this wastewater pursuant to a formal city authorization. Transfer of this authorization requires notification to the city. Based upon conversations with city representatives, this notice should be provided at least 60 days prior to transfer of ownership.

In addition, the plant has a formal permit from the Oklahoma Water Resources Board ("OWRB") which authorizes stormwater and minor amounts of wastewater discharges from the plant. (Since Oklahoma does not have NPDES permit issuance delegation from EPA, major industrial discharges in Oklahoma must obtain two water discharge permits: a wastewater discharge permit from OWRB and an NPDES permit from EPA.) In seeking this permit, application was made both to the OWRB and the U.S. EPA office in Dallas. However, EPA requested the OWRB to assume jurisdiction for issuance of this permit, rather than having EPA issue its own NPDES permit. Any legal exposure which the plant may face for discharging contaminated stormwater without a federal NPDES permit is probably minimal in light of the EPA-approved state permit and a June 7, 1982 EPA-industry Settlement Agreement under which EPA essentially committed not to take enforcement action against unpermitted stormwater discharges until six months from the date new final stormwater regulations have been promulgated. EPA proposed revisions on November 18, 1982 in the Federal Register in accordance with the Settlement Agreement but these proposed revisions have not yet been made final.

The transfer provisions of the current OWRB wastewater discharge permits parallel EPA requirements. A permit may be automatically transferred to a new permittee if 1) the current permittee notifies the OWRB at least 30 days in advance of the proposed transfer date and 2) the notice

contains a written agreement between the parties designating a specific date for transfer of permit responsibility, coverage and liability. If the OWRB does not respond to the parties, the transfer is effective on the designated date.

2. Water Compliance. The plant claims to have experienced no significant noncompliance problems with either the pretreatment requirements applicable to the process water discharges or the discharge limits specified in the storm-water permit. The plant's SPCC plan is also said to be up to date.

3. Future Requirements and Potential Concerns. As noted earlier, EPA has proposed new effluent guidelines for the Organic Chemicals, Plastics and Synthetic Fibers industry. An analysis by Conoco Chemicals indicates that if these guidelines are promulgated as proposed, additional controls could be required at the Oklahoma City PVC Plant for pretreatment of vinyl chloride prior to discharging plant wastewaters to the city treatment plant. No cost estimates have been prepared for this potentiality. It is likely that any such costs would be spread out over the three-year period following promulgation of the new guidelines. EPA expects to promulgate these guidelines in early 1985.

B. Air Pollution

1. Air Permits. The Oklahoma City PVC Plant has three state-issued operating permits governing nonhazardous air pollutants. To effect transfer of these permits, Purchaser and Seller must notify the State Air Quality Service of the change in ownership. The regulations are silent about a deadline for this notification. It is recommended that the notice be given 30 days prior to closing.

The Oklahoma City PVC Plant indicates that it has obtained all required approvals from EPA for its initial NESHAP compliance program. These approvals are not embodied in formal "permits" but are, instead, reflected by letters from EPA indicating approval of Conoco-submitted plans. (See discussion under Aberdeen PVC Plant, Air Pollution Permits, supra, for a discussion about the notice needed pursuant to the NESHAP program.) The State of Oklahoma, having been delegated the authority for the NESHAP program, has subsequently redelegated this authority to the Oklahoma County Health Department.

Within the plant boundaries of the Oklahoma City PVC Plant is a pilot plant PVC reactor under the jurisdiction of Conoco R&D in Ponca City. This pilot plant was shut down in July of 1981. Prior to that time, the pilot plant's operations were governed by EPA's NESHAP regulations. The only potentially

significant NESHAP noncompliance problem which the pilot plant experienced during its operating history was a 1979 rupture disc failure which led to the release of vinyl chloride to the atmosphere. Enforcement action is not anticipated over this release.

Any water pollution or solid wastes which were generated by the pilot plant were sent to and handled by the Oklahoma City PVC Plant. Vented vinyl chloride exhausts were also handled by the main plant. Schedule 3.6 lists the permits held by the pilot plant.

2. Air Compliance. The Oklahoma City PVC Plant has not experienced any significant noncompliance with non-NESHAP related air pollution control requirements. Furthermore, its compliance with NESHAP requirements has been excellent in recent years. The principal air pollution compliance matter facing the Oklahoma City PVC Plant stems from the lawsuit which the U.S. Department of Justice filed on August 10, 1983, alleging that the plant released vinyl chloride to the atmosphere in violation of the Clean Air Act and EPA's vinyl chloride regulations. The suit seeks penalties of \$25,000 for each of six releases and additional penalties for failure to report one of the releases within ten days of its occurrence. Injunctive relief is not sought.

The releases occurred between April 5, 1978 and March 23, 1980. Three releases involved relief valves and resulted from operator error or a combination of mechanical/power failure coupled with operator error. The other three, involving double rupture disc assemblies (as opposed to relief valves), resulted from premature failure of the rupture discs. The April 5, 1978 release was not reported to EPA until September 15, 1981 when Conoco responded to EPA's comprehensive request for information about past vinyl chloride releases at the plant.

An assessment of the case indicates several possible defenses. Most importantly, Conoco contends that the pertinent vinyl chloride regulations are "work practice" standards adopted prior to the time that Congress authorized EPA to adopt such standards. In a similar suit filed by EPA against Ethyl Corp., the Federal District Court for the Middle District of Louisiana granted Ethyl's Motion to Dismiss on the grounds that prior to the 1977 CAA Amendments, EPA had no authority to promulgate work practice standards. United States v. Ethyl Corp., Docket No. 83-0120-A, June, 1983. Ethyl held that the vinyl chloride regulations were work practice standards which were promulgated prior to the 1977 Amendments to the CAA and, never having been repromulgated after passage of the 1977 Amendments, were unenforceable.

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Ibid. The Government filed its appeal in the Ethyl case on August 29, 1983.

Since rendering the Ethyl opinion, the District Court has also ruled in favor of Occidental Petroleum and Firestone on the same grounds as Ethyl (October 7, 1983; no written opinion). The Occidental/Firestone case has been consolidated with the Ethyl case on appeal.

In a decision upholding the Government's position, a federal District Court in Massachusetts has ruled that the vinyl chloride regulations are valid emission standards. United States v. Borden, Docket No. 83-1892-MA; D. Mass., September 30, 1983.

The Ethyl decision, while being the first to hold that the vinyl chloride regulations are work practice standards, is not the first to hold that EPA lacked authority to promulgate such standards prior to 1977. In Adamo Wrecking Co. v. United States, 434 U.S. 275 (1978), the U.S. Supreme Court struck down EPA's asbestos work practice regulations on the same grounds. A key issue in Conoco's case, an issue left open in Adamo Wrecking, is whether the 1977 Clean Air Act Amendments retroactively validated pre-1977 work practice standards.

With respect to the alleged failure to report, Conoco maintains that since the substantive requirements of the regulation are invalid, the reporting requirement is also invalid. If the basic regulation is held to be valid, Conoco contends that any failure to report is a onetime infringement rather than a continuing violation. This is imperative if Conoco is to limit the penalty for non-reporting to no more than \$25,000.

Conoco also maintains that even if the regulations are valid, they apply only to "relief valves in vinyl chloride service". Three of the incidents alleged in the complaint occurred at double rupture disc assemblies, not relief valves.

In the alternative, Conoco argues that the regulations allow "emergency" discharges of vinyl chloride and that all six releases were in fact emergency discharges which could not have been prevented.

Finally, for some of the releases, Conoco has raised a statute of limitations defense.

Conoco's Answer was filed on August 31, 1983 in the form of a general denial together with an assertion of the affirmative defenses described above. On October 5, 1983 Conoco filed a

Motion to Dismiss, raising the legal issues noted above. The District Court denied this Motion on January 21, 1984.

Like the Aberdeen Plant, the Oklahoma City PVC Plant requested approval from EPA to use certain operating procedures in lieu of actually testing for compliance with the reactor opening loss emission limitations of the NESHAP regulations. The Region VI office of EPA requested additional information about the procedures. According to plant personnel, EPA orally agreed that the plant could continue to use the procedures in lieu of testing unless EPA advised the plant to the contrary. Five years later, no advice to the contrary has been received.

Another matter of potential concern relates to the plant's request for approval of modifications to its Leak Detection and Elimination Program following construction of the plant's sixth PVC reactor. EPA has never formally approved the modifications.

Finally, it should be noted that several leaks of vinyl chloride have occurred at the plant in the last 3½ years. Prior to development of the Superfund Reporting Protocol (see related discussion under Aberdeen Plant for details) some of these leaks were reported to the National Response Center. Since development of the Protocol, Conoco has taken the position that leaks and releases which are governed by the NESHAP regulations need not be reported to the National Response Center because they are "federally permitted" releases which are exempt from the reporting requirements of CERCLA.

The Environmental Protection Agency has requested the plant to provide detailed information about several of the leaks which have occurred at the plant. That information was provided in August of 1983. EPA may amend its complaint to include the leaks as exceedances of the 10 ppm exhaust standard. (See discussion under Lake Charles VCM Plant concerning this emission standard.)

C. Solid Waste

1. RCRA Permits. The Oklahoma City PVC Plant has filed a hazardous waste notification form and a Part A permit application and, hence, has interim status under federal and state law for both treatment and storage of hazardous waste. Nonhazardous solid waste generated by the plant is transported and disposed off-site by the Oklahoma Disposal Company. Small quantities of hazardous waste are shipped off-site to the U.S. Pollution Control Inc. Lone Mountain facility. Small quantities of waste oil are shipped off-site to waste oil recycling facilities.

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Requirements for transferring the plant's interim status authority and corresponding financial responsibility requirements upon the sale or transfer of the facility are identical to those discussed previously for the Aberdeen Plant. The State of Oklahoma has adopted the federal requirements concerning the transfer of ownership. Thus, the state transfer requirements are also identical to those discussed previously for the Aberdeen facility. (Vista made these filings on December 31, 1983 and indicated intent to comply with the financial requirements prior to the transfer of ownership.)

In addition to the above permits, the plant has filed its Controlled Industrial Waste Disposal Plan with the Oklahoma Department of Health. Under such plan, No. 55003, the plant is permitted to handle hazardous waste. Vista will need to request, in writing, that the change in ownership be effected and assure the agency that the plant will continue to operate under the plan. It is recommended that such notification be provided at least 30 days prior to the closing date.

2. RCRA Compliance. One of the plant's principal environmental concerns relates to the two wastewater treatment ponds which are currently included on the Part A application. These ponds are included on the application due to the high and low pH levels of the wastewater they receive and neutralize. But for the required neutralization of this wastewater, the ponds would not be considered facilities. Since the ponds are considered surface impoundments, groundwater monitoring has been implemented both up- and down-gradient from the ponds. In fact, "statistically significant" changes in levels of pH and total organic halogens down-gradient and up-gradient of the pond have been detected in recent months. Specifically, groundwater monitoring has detected levels of trichloroethane (TCE), a common degreasing solvent, both up-gradient and down-gradient of the wastewater ponds. The Oklahoma City PVC Plant does not use TCE. The state is aware of the TCE findings and is investigating up-gradient facilities.

Plant officials believe that these measured pH levels are attributable to non-plant factors, such as rainfall levels and soil chemistry, rather than to seepage from the ponds. Neither the federal EPA nor the state DNR has indicated any intention to seek remedial measures as a result of these findings.

RCRA monitoring activity is expensive, time-consuming and presents an ever-present risk that groundwater contamination attributable to the impoundments will be discovered, leading to potentially costly remedial measures. To minimize the expense and risk associated with maintaining the wastewater

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ponds as surface impoundments, the plant has given consideration to a project which would neutralize its process wastewater prior to discharge to the ponds. Such a project would allow the plant to seek removal of the ponds from its Part A application.

During July of 1981 and December of 1982 the Oklahoma City plant was inspected for compliance with hazardous waste requirements by the State Department of Health. The inspection found no noncompliance problems, and the plant appears to be in compliance with applicable hazardous waste management regulations.

3. Past Waste Disposal Activities. Conoco Chemicals environmental managers are presently aware of two abandoned waste disposal sites which contain hazardous substances generated by the Oklahoma City PVC Plant. Both of these sites were the subject of notifications filed under Section 103(c) of CERCLA.

The first past disposal site is located at an adjacent PVC pipe fabrication facility on property formerly owned by Conoco, which property was transferred in 1972 to Carlon Company (an Indian Head Corporation). During the period from 1971 to 1977 the Oklahoma City PVC Plant disposed of a number of waste materials in a landfill located on the Carlon property. The discarded materials include spent caustic, miscellaneous trash, PVC resin and nonhazardous cooling tower sludge.

On June 3, 1981 Conoco filed a CERCLA notification for the Carlon site with EPA. In October of 1982 Carlon was contacted by EPA and informed that an EPA contractor (Ecology and Environment Inc.) intended to conduct an assessment of the waste site. Conoco requested that Carlon notify Conoco as to when the assessment was to occur and allow Conoco to be present at the assessment. However, Carlon did not provide such a notification to Conoco.

According to the best information available to Conoco, the EPA assessment was conducted in November, 1982. Based upon a review of EPA records and the EPA contractor's report, both EPA and the State of Oklahoma have concluded that the Carlon site poses no current potential problems and requires no further action.

A second potential concern related to prior waste disposal activities stems from plant records which indicate that Conoco contributed spent caustic and possibly other wastes to the Criner-Hardage waste disposal site near Criner, Oklahoma.

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The Criner-Hardage disposal site is presently the subject of both state and EPA enforcement activity attempting to secure a clean-up of the site. Federal enforcement activity includes a lawsuit which resulted in a judgment against the site owner on December 13, 1982 for costs of remedial action incurred by the government at the site. (U.S. v. Hardage, No. CIV-80-103-1, U.S.D.C., W.D. Okla.) To date, Conoco has not been involved in the enforcement activity at the Hardage site, nor have any claims for contribution been asserted against Conoco.

IV. Lake Charles, Louisiana Chemical Complex (Including the Lake Charles Chemical Plant ("LCCP"), the Lake Charles VCM Plant ("LCVCM" or "VCM") and the Lake Charles LAB Plant ("LCLAB" or "LAB"))

A. Water Pollution

1. Water Permits. The Lake Charles Chemical Complex ("LCCC") has two NPDES wastewater discharge permits, LA0003336 at the LCCP and LA0003476 at the LC VCM. Wastewater from the Lake Charles LAB Plant is treated in the LCCP system. Both permits cover process discharges as well as stormwater. Permit applications for renewal of both permits were submitted to EPA in March, 1981. EPA has taken no action on the applications to date. Thus, LCCP and LCVCM are discharging water under expired permits which are on indefinite extension.

The fact that EPA Region VI has taken no action on issuing new or renewal NPDES permits does not present a liability problem. Pursuant to the permit carryover provisions of 5 U.S.C. § 558, both facilities will continue to be subject to the existing values and conditions contained in their respective existing NPDES permits.

EPA Region VI evidently has "placed on hold" all NPDES permit applications for facilities discharging wastewater into the Calcasieu River, a water quality limited stream. The State of Louisiana currently is evaluating procedures to conduct a wasteload allocation study on the Calcasieu. Such a study might eventually be the genesis for the State to impose highly restrictive permit values for Calcasieu River dischargers.

EPA has not yet granted the NPDES permit authority to the State of Louisiana and, therefore, the requests for approval of the transfer of the permits should be addressed to EPA Region VI with copies to the Louisiana Department of Natural Resources. Reference should be made in these requests to the March 1, 1981 reapplications for permits. As noted earlier, 40 CFR § 122.61(b) provides that an NPDES permit may be

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automatically transferred if (1) the current permittee notifies EPA at least 30 days in advance of the proposed transfer date; (2) the notice contains a written agreement between the parties containing a specific date for transfer of permit responsibility, coverage and liability between them; and (3) EPA does not notify the parties of its intent to modify or revoke and reissue the permit.

2. Water Compliance. The LCCP system has experienced winter-time BOD and TSS compliance problems over the past several years. Cold weather in January and February tends to reduce biological activity in the system, leading to monthly average exceedances for both parameters. The plant has had past enforcement attention as a result of this problem and received an Administrative Order (AO) in May, 1983 for exceedances of BOD.

The plant has initiated a program to eliminate similar permit exceedances in the future. New high efficiency aerators have been installed along with continuous raw wastewater analyzers to provide early detection of spills and high waste loads. Hydraulic reduction and organic reduction projects have been identified and will be implemented to the extent feasible. In addition, Conoco's wastewater pilot plant trailer is currently at LCCC working to define improved treatment alternatives for both the LCCP and LCVCM systems.

An EPA Administrative Order was served on the LCCP on May 5, 1983 providing that the named exceedances were to be corrected within 30 days or a comprehensive plan be submitted within such time period specifying corrective actions. Within the 30-day period, the LCCP replied, detailing proposed plans to minimize further exceedances. LCCP denied that such exceedances constituted violations, contending that they were legally excusable as a result of malfunctions, upsets, acts of God and other force majeure conditions. EPA Region VI has not responded at this date to the LCCP's reply.

Experience suggests that a carefully considered reply such as was prepared by the LCCP will normally result in a favorable response by EPA with no further action being taken by the Agency. The crucial test will occur in the next few months when it will be determined whether the proposed LCCP plans have indeed corrected the problems and have limited exceedances of the BOD values. The most recent cold spell, which was one of the most severe in LCCP history, reduced the biological efficiency and increased the hydraulic loading due to broken water lines and freeze precautions. This led to a number of exceedances of the BOD permit limits during January of 1984.

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The AO was issued by EPA under § 309(a)(3) of the Clean Water Act and carried with it no monetary penalty or other sanction. However, if persistent exceedances again occur with respect to the same value, the LCCP may reasonably expect additional and harsher treatment by way of EPA seeking a court injunction or levying of civil penalties of up to \$10,000 per day. Criminal sanctions are unlikely, but are available by way of \$25,000 per day fines or imprisonment.

The LCVCM system has had a generally good history of permit compliance with only occasional daily exceedances of its daily maximum or monthly average NPDES permit values. The LCVCM plant has automatically bypassed wastewater around the treatment system in periods of heavy rain. The LCVCM plant wastewater system has experienced severe flooding problems in the past during a particularly severe rainstorm. This flood inundated the entire wastewater treatment system. (During the bypasses, no permit exceedances occurred despite the bypassed water receiving no treatment.) Discussions have occurred on this issue with EPA although no enforcement action has resulted to date. The plant has taken steps to minimize bypasses.

By letter date January 19, 1984, and received by Conoco on January 23, 1984, Anthony Z. Roisman, Executive Director, Trial Lawyers for Public Justice, Washington, D.C., as Counsel for Sierra Club, served upon the Manager of the Lake Charles Chemical Plant ("LCCP") a "60 day letter." The Sierra Club advised the Manager that § 505(b) of the Clean Water Act ("Act") requires that 60 days prior to the filing of a citizen suit in federal district court, a notice must be given of any alleged violations to the alleged violator, Environmental Protection Agency ("EPA"), and the appropriate State.

The Sierra Club placed the LCCP on notice that it believes the plant has violated and continues to violate "an effluent standard or limitation" under § 505(a)(1)(A) of the Act by failing to comply with the LCCP NPDES permit No. LA 0003336 in the manner specifically set forth in the letter. The letter sets forth alleged violations of permit limitations for pH, ammonia, BOD, TSS, oil and grease and TOC. The Sierra Club apparently obtained these alleged violations from the Discharge Monitoring Reports (DMRs) required to be filed periodically by LCCP when it experiences one or more exceedances of permit values.

Such a letter is a condition precedent to the Sierra Club filing an action against the LCCP in the appropriate federal district court in Louisiana. Section 505(a) grants the district courts jurisdiction 1) to enforce the applicable effluent standard or limitation; 2) to enforce any order

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issued by EPA or State; 3) to order EPA to perform certain nondiscretionary duties; and 4) to apply appropriate civil penalties under § 309(d) of the Act. Section 309(d) authorizes the levying of a civil penalty "not to exceed \$10,000 per day of such violation." EPA Region VI heretofore issued to the LCCP an Administrative Order, although the Sierra Club letter does not refer to the AO.

The Sierra Club has heretofore focused its efforts in the northeastern part of the United States, but apparently is expanding its area of interest. Experience from the northeast suggests the Sierra Club will be seeking recovery of attorney fees as well as civil penalties. Evidently, Sierra Club will file its action in the appropriate court promptly after the expiration of the 60-day notice.

Conoco Legal has preliminarily advised that this matter be treated with great urgency. Efforts are being made, within the 60 day period,

- 1) to marshal and evaluate in-house all the facts;
- 2) to first meet with appropriate EPA personnel; and
- 3) to then contact the Sierra Club.

The first meeting of all interested Conoco personnel will be on Friday, February 3, 10:00 a.m., Timberway, Houston.

The LC VCM laboratory and sampling practices have been the subject of a number of EPA inspections, Notices of Deficiency and observation of sample collection equipment and procedures. One inspection was termed a "Performance Evaluation" which is more rigorous than the typical Compliance Evaluation Inspection. The inspection was a test of the acceptability of LC VCM monitoring and evaluation practices and the validity of the results obtained.

The LC VCM Plant received notice, dated January 3, 1984, that EPA Region VI plans to conduct an evaluation of its NPDES monitoring facility, equipment and procedures, with focus on sampling and analytical procedures, within the next three months.

On May 23, 1983 the Lake Charles LAB plant experienced a relatively minor oil spill which reached a nearby stream. Following negotiations with the U.S. Coast Guard, a final penalty assessment of \$300 was levied by the Coast Guard on November 25, 1983. The penalty assessment has been satisfied by the LAB plant. More recently, on December 28th and 29th of 1983 oil spills occurred at the LCCC, leading to Coast Guard involvement.

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3. Future Requirements and Potential Concerns.

The LCVCM may in the future, as in the case of the LCCP, experience significant difficulty in meeting restrictive State water quality standards arrived at as a result of the proposed Calcasieu River wasteload allocation study. LCCC wastewater is discharged into a water quality limited stream. The State of Louisiana has indicated that BOD and TSS discharge limitations may be lowered substantially in the future. Stormwater bypass and system capacity may also be significant issues. Pilot plant work is currently proceeding to determine what changes may be necessary in both treatment systems to meet more stringent future permits limitations.

A comparison of the recently proposed effluent guidelines (discussed earlier) for toxic pollutants does not indicate a serious problem at either plant. The program to reduce BOD and TSS should provide enough additional toxics removal to comply with anticipated priority pollutant discharge limitations.

B. Air Pollution

1. Air Permits. The Lake Charles Chemical Complex has a number of federal pre-construction ("PSD") permits and air operating permits governing nonhazardous air pollutants.

State permit regulations require that notice of a change in ownership be given to the Environmental Control Commission ("ECC") within 90 days after the change has occurred. Failure to file timely notice can serve as grounds to invalidate the permit (LAQR 6.1.4).

In addition to state permits, the VCM plant received an initial approval from EPA to operate as a NESHAP source. A subsequent NESHAP approval has also been obtained for the expansion and modernization of the VCM plant. These approvals are in the form of letters from EPA to the plant. (See the discussion under Aberdeen for details concerning the approach to be used to notify EPA of the change in ownership of NESHAP sources.)

The State of Louisiana has been delegated the authority to carry out the NESHAP program by EPA. Furthermore, the State has adopted its own hazardous air pollutant regulations. These regulations also required the submission of an initial source report which identified the owner/operator of the VCM plant. Changes in the information contained in the source report must be reported to the State within 30 days after change has occurred (LESHAP 76.11(a)(c)).

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The PSD permits issued by EPA must be transferred to a purchaser by requesting EPA to change their records to reflect the name change. It is recommended that both Conoco and Vista notify EPA and the Louisiana DNR of the change in ownership 30 days prior to and 30 days after closing.

Other equipment requirements, emission limits, or operating procedures specified pursuant to Section 111 of the Clean Air Act have been met or are not applicable to the LCCC.

2. Air Compliance. One of the major air pollution compliance concerns at the LC VCM is the suit filed by the Department of Justice, on behalf of EPA alleging violations of the Clean Air Act and EPA's vinyl chloride regulations. The Government's complaint seeks penalties of up to \$25,000 for each of fourteen relief valve discharges, penalties of up to \$25,000 for each of two days on which exhaust gas limits were exceeded, and penalties of up to \$25,000 for failure to report four relief valve discharges within ten days of their occurrence. The Complaint further seeks a permanent injunction to order Conoco to develop and submit for EPA approval a program designed to prevent future releases of vinyl chloride. The program is to include, but not be limited to, the following: a) installation of monitoring and containment equipment; b) a preventative inspection and maintenance program for equipment in vinyl chloride service; c) an improved program to detect and eliminate future releases; d) publicized written operating procedures; and e) a program of frequent operator training.

The releases which are the subject of this suit occurred between April 20, 1978 and August 26, 1983. The releases have resulted from operator error, premature rupture disc failure, thermal expansion, equipment problems, or a combination of these factors.

The issues presented are similar to those in the Oklahoma City case except the LC VCM suit also involves allegations that leaks or spills of vinyl chloride are subject to the NESHAPE exhaust gas limits. Conoco disputes these allegations.

Conoco filed its Answer to the Complaint on November 1, 1983. Further pleadings in this matter are being held in abeyance pending the results of an industry request for information, pursuant to the Freedom of Information Act and responses to industry interrogatories.

It is not possible at this time to estimate a cost range for the injunctive relief sought by EPA because the prayer for relief is too vague to ascertain the Government's intent. Similar litigation pending against other companies has not

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reached the negotiation stage so it is not possible to confer with those companies about the nature of the Government's request for injunctive relief.

The plant has experienced two additional relief valve discharges since the suit was filed that could potentially subject the plant to additional enforcement action, including addition to the present suit by amendment of the Complaint.

In the course of routine operation, the plant has experienced several leaks and spills of vinyl chloride. These incidents resulted from normal wear and tear on equipment, accidental or sudden line ruptures, operator inattention, etc. It is possible that EPA could allege that these leaks and spills, no matter how minor, constitute exceedances of the 10 parts per million emission limit set for exhaust gases from equipment in vinyl chloride service (40 C.F.R. 61.62, 61.63, 61.64) or a violation of the regulation which limits the amount of vinyl chloride which can be present in equipment when it is opened to the atmosphere. 40 CFR 61.65(b)(6).

As noted above, in the suit now pending against the LC VCM Plant, two incidents (one spill and one leak) reported to EPA pursuant to a formal agency information request have been included in the suit as excursions of the 10 ppm exhaust gas limit.

Furthermore, over the past several years, the plant has had of approximately 140 instances in which exhaust gases have bypassed the plant incineration system and been vented to the atmosphere. These incinerator bypasses have occurred because conditions in the plant have resulted in surges in the amount of gas vented to the incinerator such that the incinerator could not handle them safely. In a suit currently pending against B. F. Goodrich, EPA has alleged that similar incinerator bypasses constitute "relief valve discharges" subject to the NESHAP requirements. However, in the Goodrich case, Goodrich itself initially treated the occurrences as relief valve discharges. It is also possible that EPA could attempt to treat these incinerator bypasses as violations of the 10 ppm exhaust gas limitation discussed above.

Another item reported to EPA in the past is the exceedance of the oxychlorination vent emission limit. The regulations limit emissions of vinyl chloride to the atmosphere from the oxychlorination reactor to no more than 0.2 g/kg of 100% EDC produced. The VCM plant has exceeded this limitation on over 100 occasions. As required, the exceedances have been reported to EPA in the plant's semiannual report. To the best of Conoco's knowledge, EPA has not undertaken enforcement action against any company for exceedances of this type of emission limit. Furthermore, the recently completed

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modernization project at the LC VCM plant has resulted in process changes which should eliminate the possibility of exceeding this limit in the future.

Two emission reduction credit ("ERC") banks have been established between Conoco and the State of Louisiana for use at the Lake Charles Refinery and Chemical Complex. One bank, containing credits for sulfur dioxide, nitrogen oxide, particulate matter and carbon monoxide was created when the Refinery bought the then-closed Continental Carbon plant located adjacent to the Refinery. The ERCs in this bank were internally allocated between the Refinery and the Chemical Plant. The second bank was created by the modernization of the oxychlorination reactor system at the VCM Plant which resulted in a reduction of over 4000 tons of hydrocarbon emissions. The proper allocation of these ERCs between Conoco and Vista is currently being discussed among the parties.

In early 1983 the LCCC entered into a Bubble Agreement with the Louisiana DNR, offsetting certain emissions from two separator facilities, pending the installation of a new single separator facility with covers to reduce emissions. The Bubble Agreement required the LCCC to complete installation of the new separator equipment by December 31, 1983. The LCCC has completed the equipment installation and, thus, the Bubble Agreement relating thereto has expired by its own terms. On September 30, 1983 EPA, Region VI, issued a Notice of Violation ("NOV") to the LCCC concerning the emissions from the two separator facilities covered by the Bubble Agreement. On October 26, 1983 the LCCC responded to the NOV by explaining the Bubble Agreement with the State and the proposed new equipment installation. Given that the new equipment is now installed and operating, it is hoped that the NOV can be resolved satisfactorily.

Another item reported to EPA which resulted in the issuance of an NOV in 1983 involved emissions testing results for furnace heaters at the LAB Plant. The LAB plant furnace heaters have NO_x limits included in PSD permit covering the heaters. An emissions test of the heaters initially showed exceedances of the NO_x limits, and such results were required to be given to EPA to comply with the permit's testing provisions. Following the submission of the results to EPA, an NOV was issued based upon the indicated exceedances. Prior to the hearing on the NOV, however, testing by a different contractor established compliance. The original contractor acknowledged certain possible errors in the original testing process. Such information has been given to EPA, and it is our understanding at this time that EPA considers the NOV issue resolved.

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C. Solid Waste

1. Permits. All of the LCCC hazardous and solid wastes are presently disposed of off-site at authorized commercial waste disposal facilities. Conoco Chemicals representatives claim that all hazardous wastes are presently disposed of at the Browning Ferris Industries ("BFI") hazardous waste landfill at Willow Springs, Louisiana. Beginning in January of 1984, it is anticipated that all hazardous wastes have been disposed of at the Chemical Waste Management Inc. ("CWMI") hazardous waste landfill in Carlyss, Louisiana due to the anticipated closure of the BFI Willow Springs facility.

All nonhazardous solid wastes are presently disposed of at another BFI solid waste landfill in Lake Charles, Louisiana. In addition, one waste stream (heavy ends) from the Lake Charles VCM Plant is presently transported to the PPG Lake Charles, Louisiana facility for what Conoco Chemicals representatives indicate is beneficial recycling. Although this recycling activity is considered to be exempt from federal and state hazardous waste management regulations, increased regulatory attention has been focused on waste recycling in recent months to ensure that such operations represent bona fide recycling. As a matter of caution, and at the State DNR's direction, Conoco Chemicals follows hazardous waste manifest procedures in shipping the heavy ends to PPG.

The LCCC has filed a hazardous waste notification form, a Part A permit application and a corresponding Louisiana hazardous waste management permit application. Thus, the LCCC now has interim status authority for both treatment and storage of hazardous waste under federal and state law. A state interim permit was issued to the LCCC on October 22, 1980 to formalize the corresponding state interim status. Pursuant to new state requirements adopted in 1983 an additional state interim permit application was submitted by the LCCC on October 28, 1983. (Vista submitted a revised Part A application and Notification to EPA on December 31, 1983.)

Requirements for transferring the LCCC notification and interim status authority and corresponding federal financial responsibility requirements upon the sale or transfer of the complex are identical to those discussed previously for the Aberdeen facility. However, the Louisiana Hazardous Waste Management Plan ("HWMP") regulations promulgated on July 20, 1983, impose additional administrative requirements for transferring state interim status authority for the LCCC. HWMP Section 5.1.2(C)(3)(e) provides that a facility, such as the LCCC, which has obtained interim status, is treated as having been issued a permit pending final agency action on the permit application. Any change in ownership or

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operational control of the LCCC must comply with HWMP Section 5.2.7(A) provides, in pertinent part, the following:

"... any operator or ownership change must be reported in writing to the Administrative Authority prior to such an occurrence and obtain a permit modification in accord with the application, public notice and permit requirements of Chapter 5. The Administrative Authority may approve an ownership change (transfer of permit) based on the following factors:

1. Assumption of liability for existing violations;
2. Financial Responsibility; and
3. Managerial competence."

HWMP Section 5.2.7(B) sets forth the available administrative options for the transfer of permits as follows:

"A permit may be transferred by the permittee to a new owner or operator only if the permit has been modified or revoked and reissued under 5.2.8 B. or a minor modification made under 5.2.7 C. to identify the new permittee and incorporate such other requirements as may be necessary under the appropriate Act."

If a permit modification can be obtained as a "minor modification" under HWMP Section 5.2.7(C), the modification can be made without the requirement for a draft permit or public review. Otherwise, a draft permit must be obtained and public notification and review requirements must be followed. Thus, the more administratively expedient method of modifying the LCCC permit to reflect a change in ownership is to obtain a minor modification under HWMP Section 5.2.7(C). HWMP Section 5.2.7(C)(4), which authorizes the Administrative Authority to modify a permit as a minor modification, provides as follows:

"A change in ownership or operational control of a facility [may be allowed] where the Administrative Authority determines that no other change in the permit is necessary, provided that a written Agreement containing a specific date for transfer of permit responsibility, coverage, and liability between the current owner and new permittees has been submitted to the Administrative Authority for hazardous waste permits." (Emphasis added.)

In addition to the foregoing requirements for permit transfers, HWMP Section 11/2/3(c) requires the present owner to

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notify the new owner, in writing, prior to transferring ownership, of the applicable HWMP requirements relating to the facility being transferred.

It is recommended that a minor modification of the LCCC permit under the HWMP be promptly requested, and that a notification from Conoco to Vista be prepared in accordance with HWMP Section 11.2.3(C). Since a request for a minor modification to change the name of the LCCC owner under HWMP Section 5.2.7(c)(4) will require providing an "agreement containing a specific date for transfer of permit responsibility, coverage and liability", timing of the request must be delayed until such an agreement is available for submission to the State. Thus, as in the case of financial responsibility filings discussed above for the Aberdeen facility, it is recommended that Vista be required to exercise its best efforts to obtain approval of the permit transfer from Louisiana prior to or at the time of closing. In the event that Vista has not obtained the required approval (and removal of Conoco as owner under the permit) Vista should fully indemnify Du Pont and Conoco for any liability arising after closing under the permit.

In addition to hazardous waste management regulations, Louisiana has recently significantly expanded its regulation of nonhazardous solid waste. Although the LCCC does not presently have a solid waste activity permit from Louisiana, a notification form is currently being prepared and will have to be submitted to the DNR in the near future. The notification will provide detailed information concerning nonhazardous solid waste activities conducted at the LCCC.

Finally, the LCCC is presently attempting to amend its Part A permit application to remove certain wastewater treatment system surface impoundments and the landfill (presently under construction) from the application. The primary reason for attempting to remove these facilities is to reduce the burden of groundwater monitoring activity as was discussed earlier in connection with the Oklahoma City facility. EPA has required substantial documentation to support the requested amendments.

2. RCRA Compliance. On September 13, 1983 an inspection of the LCCC was performed by the Louisiana DNR to determine compliance with the Louisiana Hazardous Waste Management Plan. During the course of the inspection, the following violations were alleged in a September 27, 1983 Warning Letter from the Louisiana DNR:

o Contrary to Section 5.4.3 A. of the Hazardous Waste Management Plan, some manifests lacked a designated disposer.

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Contrary to part C.3.7 of the Analytical Operating Procedures Manual, the inspection logs lacked notation of the time of the inspection. A few also lacked the date of inspection or the inspector's name.

These allegations were brought to the attention of the LCCP environmental coordinator at the time of the inspection. In addition, a few other concerns were brought to his attention, including:

The apparent lack of any indication of the hazardous nature of the material in the Incinerator Neutralization Pits.

The lack of containment and security in both drum storage areas, although at the time of inspection neither area was being used to store hazardous waste.

Action was requested to correct the alleged violations by October 27, 1983 including written notification to the DNR of the corrections made or proposed, as well as the steps which had been or which were to be taken by management to prevent any recurrence of the alleged violations. The area has had a curb, drain and signs installed since the inspection.

On October 27, 1983 Ralph Ferrell, Manager of Lake Charles Operations, responded to the State Warning Letter, addressing each of the items raised therein. No further enforcement action is anticipated in connection with this matter.

In addition to the foregoing, two additional areas of potential noncompliance with the hazardous waste regulations are known to exist at the LCCC. First, due to problems relating to chain of custody and quality control procedures at a contractor laboratory, several groundwater monitoring samples were deemed to be unusable by plant environmental representatives. These laboratory problems resulted in delaying initiation of the required groundwater monitoring program at the complex by approximately six months. The data that are available indicate that significant contamination of groundwater by chlorinated hydrocarbons exists beneath one of the plant's wastewater treatment systems. The source and extent of this contamination has not yet been determined.

Second, it was brought to the attention of the Conoco Legal Department on December 6, 1983 during the preparation of this memorandum, that the financial responsibility filing for the LCCC (including a Du Pont corporate guarantee and a Conoco insurance policy) was made to EPA, Region VI, but had not been submitted to the State of Louisiana. Conoco Chemicals has been requested to promptly ensure that the required submission is given to the State.

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3. Past Waste Disposal Activities. At present, three broad areas of potential liability exposure relating to past waste disposal are believed to exist at the LCCC. First, the facility has filed a notification under Superfund acknowledging past on-site disposal of hazardous substances at two separate sites at the complex. One of the two sites consists of previously utilized settling ponds which have since been graded and seeded. The settling ponds were characterized as hazardous waste facilities due to the ignitability of the wastes previously placed in the ponds. The ponds were identified in the notification as a closed landfill.

The other on-site disposal facility included in the notification consists of a section of land and a large pond which, due to the lack of security and supervision by the owner from whom Conoco Chemicals purchased the property, was the site for the dumping of unknown materials by numerous and unknown persons for many years. Available data indicate that this pond may have caused groundwater contamination in the surrounding area.

These past on-site disposal practices could present potential liabilities in the future. However, the current lack of detailed information concerning the sites makes it impossible to quantify these liabilities at the present time.

The second broad area of potential Superfund liability concerns litigation which is presently pending between Conoco and Browning Ferris Industries ("BFI") in the Civil District Court for the Parish of Orleans. This litigation deals with past waste disposal activities by the LCVCM plant at one or more off-site facilities. (This litigation will be summarized under separate cover by J. J. Doyle, Conoco's lead in-house attorney on the case.)

The third area of potential liability under Superfund relates to past disposal of hazardous materials in various disposal sites not located on the LCCC premises. Since approximately 1979 LCCC environmental representatives have attempted to identify all off-site disposal areas potentially containing hazardous materials generated by the LCCC. This review has identified five sites, in addition to the two sites potentially involved in the BFI v. Conoco litigation, where potentially hazardous materials from the LCCC may have been disposed of in the past. The following is a summary of the presently available information regarding the five sites which Conoco Chemicals has identified for Conoco Legal in connection with this review.

a) R&W Heavy Equipment Site: A landfill disposal site located approximately one and one-half miles

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west of the VCM plant, north of Old Spanish Trail, owned by R&W Heavy Equipment Co. LCCC representatives indicate that the complex disposed of a small quantity of acidic material at the site at some time prior to 1980. No further information is presently known about the site.

b) Willow Springs Site: A commercial landfill disposal site located approximately five miles north of the LCCC which is presently owned by BFI. This site was operated by a former owner, Mud Movers, Inc., from at least 1971 until 1978 and continues to be operated as a hazardous waste disposal site by BFI. LCCC has disposed of large quantities of a variety of hazardous wastes at this site since 1971. Substantial public opposition to the continued operation of this site has developed, and BFI is presently appealing an order from the Louisiana DNR requiring the cessation of hazardous waste disposal activities by January 1, 1984.

c) Chemical Waste Management Carlyss Site: A commercial landfill disposal site located approximately seven miles south of Sulphur, Louisiana which is presently owned by Chemical Waste Management, Inc. ("CWMI"). This site was operated by the former owner, Sediment Remover, Inc., from at least 1977 until 1978 and continues to be operated as a hazardous waste disposal site by CWMI. LCCC has disposed of large quantities of biological sludge from LCCC wastewater treatment facilities at this site since 1977.

d) Sonics Site: A deepwell injection disposal site located in Ranger, Texas which is owned by Sonics, Inc. During 1976 and 1977 the LCCC disposed of small quantities of VCM plant wastes at this site. No further information is presently known about the site.

e) Reco Construction Site: An inactive landfill disposal site located south of Old Spanish Trail near the LCCC which is owned by Reco Construction Inc. During the mid-1970s, the LCCC disposed of unknown quantities of filter material and aluminum hydroxide at this site. No further information is presently known about this site.

Potential future liability for remedial action at past disposal sites utilized by the LCCC could arise under Superfund, state law or common law. However, given the scant information available concerning these sites, and the unpredictability of governmental or private enforcement activity in this area, it is not possible to reliably estimate the magnitude of Conoco's potential liability exposure at this time.

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4. Polychlorinated Biphenyls (PCBs). Under the Toxic Substances Control Act ("TSCA"), detailed requirements have been promulgated by EPA concerning the handling and storage of electrical equipment which contains PCBs. The Lake Charles Chemical Complex has such equipment and has informed Conoco Legal that applicable PCB regulations are being fully satisfied.

EPA has recently proposed regulations under TSCA relating to the inadvertent incidental generation/manufacture of PCBs. The LCCC does generate one waste stream (heavy ends) from the VCM plant which has been identified as containing relatively low concentrations (i.e., approximately 30 ppm) of PCBs. This waste stream is currently transported to a PPG Lake Charles, Louisiana facility for re-use/recycle by PPG. The proposed incidental PCB manufacturing regulations could impose restrictions on the handling and use of the heavy ends stream, conceivably requiring cessation of the PPG arrangement. Termination of the PPG arrangement could necessitate a much more costly method of disposing of the heavy ends stream.

D. Radiation

The LCCP and the LC LAB use specific radiation sources under radiation source permits from the Louisiana Department of Health. Vista must apply for new licenses. See Schedule 3.6 of the Asset Purchase Agreement.

E. Other Matters

In July of 1982 the Louisiana Legislature enacted legislation which requires notification to various governmental authorities in the event of certain violations of environmental requirements or limitations. Specifically, the law provides in pertinent part that:

"Any person who discharges, emits or disposes of any substance in contravention of any provision of this Chapter or of any permit or license terms and conditions, shall immediately upon learning of the discharge, emission, or disposal notify the office, the Department of Public Safety, and local law enforcement authorities as to the nature and amount thereof and the circumstances surrounding same.... Each day of failure to give notification required herein shall constitute a separate violation, and shall be in addition to any other violations of this Chapter." R.S. 30:1073(I)

During the course of preparing this environmental status report, it was determined that the LCCC may not have been aware of the reporting obligations imposed by this statute.

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Since enactment of the statute, LCCC representatives indicate that a number of environmental violations may have occurred at the LCCC which may have required reporting under the statute but which may not have been reported to all required agencies. This matter is now under review by the Conoco Legal Department.

V. The Westlake Transportation Terminal

Among the assets being transferred from Conoco to Vista is the truck transportation terminal which presently abuts the Lake Charles Chemical Complex on the north. This terminal's annual volume is approximately 120 million pounds per year of LCCC-produced alcohols, solvents, tars, dewatered sludge (a hazardous waste) and methyl chloride. Six to eight million gallons of light oil are also handled. The terminal's principal functions for the LCCC are: 1) to haul products and waste materials; 2) to clean the exterior and engine parts of the terminal's truck fleet; and 3) to perform routine maintenance and fueling of the truck fleet. The terminal also serves the Conoco Lake Charles Refinery.

A. Water Pollution

1. Water Permits. Stormwater runoff from the terminal, together with drainage from the truck wash rack are discharged untreated to a small ditch which ultimately leads to the West Ditch. Discharges from the terminal's small sanitary waste treatment unit are discharged after treatment to the same ditch. The West Ditch carries effluent from the LCCC outfalls, across the property of the Conoco Refinery, and ultimately into Bayou Veridine - a tributary of the Calcasieu River. This discharge is not authorized by a permit. Periodically, the terminal dredges the small ditch which receives its direct discharges and hauls the material to a nearby BFI facility for disposal.

Some state environmental inspectors are said to be aware of this unpermitted discharge but have apparently shown little concern. Nonetheless, the discharge does appear to require at least a state discharge permit.

As an alternative to seeking a permit for this discharge, Conoco Surface Transportation representatives maintain that all existing discharges from the terminal could be piped to the LCCC for proper treatment for a relatively modest cost. Vista may want to give consideration to this approach for at least two reasons. First, it would minimize potential liabilities associated with an unpermitted discharge from the terminal. Second, it would allow the Vista terminal to steam clean the interiors of its truck trailers and discharge the cleaned-out contents to the LCCC waste treatment system. In

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the past, the terminal did steam clean the interior of its truck trailers, discharging the cleaning residues to a buried 2000 gallon railcar. However, when the railcar contents were periodically pumped to the LCCC wastewater treatment system, solidified heavy alcohols led to treatment difficulties in the LCCC system.

At present, steam cleaning is carried out within the LCCC property because the terminal lacks an efficient method for introducing the steam condensate and product residues into the LCCC waste system. The residues are discharged directly to the LCCC system prior to the solidification of the heavy alcohols, thereby eliminating wastewater treatment problems. Terminal representatives maintain that it would be more economical to carry out the trailer clean-out operations at the terminal itself rather than the LCCC.

2. Water Compliance. Due in part to the small size of the terminal and its relatively minor water quality impact, governmental authorities have not directed any significant enforcement attention to the Westlake Terminal. Nonetheless, the unpermitted discharge represents an area of potential future liability. The significance of this deficiency is increased somewhat by the fact that the terminal lacks an SPCC plan and related diking to control spills of diesel fuel from its above ground diesel storage tank. Such a plan appears to be required by applicable federal regulations (40 CFR, Part 112, 1982). This deficiency could be addressed through an amendment to the LCCC's SPCC plan.

B. Air Pollution

The terminal has no air pollution permits. Conoco Legal, in conjunction with Conoco Surface Transportation Safety and Environmental Affairs ("STSEA") have reached the preliminary conclusion that no such permits are required. Conoco knows of no air pollution noncompliance problems related to the Westlake Terminal. As required by most state regulations, all of the terminal's trucks are equipped for vapor recovery. This is true for all of the trailers at the four transportation terminals being transferred to Vista.

C. Solid Waste

1. Permits. The terminal generates and transports hazardous wastes associated with the operations of the terminal itself and the LCCC. However, since the terminal does not claim to treat, store or dispose of hazardous waste, no federal or state hazardous waste permits have been sought or obtained.

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2. RCRA Compliance. The primary waste materials generated by the Westlake Terminal include:

- ° Used transmission fluids from trucks which fluids are blended with diesel for use as a motor fuel
- ° Degreasing solvents (diesel fuel)
- ° Used oil and drained oil filters
- ° Cleaning agents - detergents

At Westlake these waste materials are typically accumulated prior to transport to waste disposal facilities or, as in the case of used motor oils, transmission fluids and degreasing solvents (diesel fuel), are recycled. Representatives from STSEA are aware of no noncompliance problems at the Westlake Terminal with respect to hazardous or solid waste management.

In the past, the Westlake Terminal stored product trailer residues generated by steam cleaning activities in a 2,000 gallon buried railcar at the terminal. This railcar has recently been steam cleaned and filled with water. It is not known whether these residues constituted hazardous waste under federal or state law. Although the residues generated by the final tank cleaning and pump-out operation were properly disposed of, it is not presently possible to conclude whether this buried railcar was exempt from federal or state hazardous waste management regulations during the period when it was actively storing waste.

A final matter which should be noted with reference to the Terminal's compliance with hazardous waste management regulations concerns its hazardous waste transportation activities. For the past few years, dedicated trailers from the Terminal have been used by the LCCC to accumulate plant-generated hazardous waste. On a periodic basis, the Terminal will bring in truck tractors to remove the trailers and haul the accumulated waste to licensed disposal facilities. STSEA representatives indicate that the Terminal routinely complies with all applicable regulations governing the transportation of these waste materials. Conoco Surface Transportation has obtained a single uniform Hazardous Waste Identification Number from EPA with respect to all its domestic hazardous waste transport operations. Vista will be required to apply for and obtain its own Identification Number(s) prior to the Closing Date. See 40 CFR § 262.12 and Schedule 3.6 of the Asset Purchase Agreement.

3. Past Waste Disposal Activities. Conoco STSE representatives claim that the only waste disposal activities in which they engage are those carried out in connection with Conoco plant operations. Thus any past waste disposal concerns relating to the assets will be addressed in the

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environmental status reports which cover the plants served by the terminals.

4. Polychlorinated Biphenyls (PCBs). The terminal does not use or store regulated PCB equipment.

VI. Baltimore, Maryland Chemical Plant

A. Water Pollution

1. Water Permits. From 1977 until January 31, 1983 the plant discharged process wastewater under a temporary order from the Maryland Department of Health and Mental Hygiene ("DHMH"). The order established discharge parameters applicable until a Baltimore city-owned wastewater treatment plant was completed and ready to receive the plant's discharges. The agreement with the city to utilize its wastewater treatment plant was signed in 1977. As of January 31, 1983 the plant's process wastewater has been discharged into the Patapsco River Waste Treatment Plant, a city-owned wastewater treatment plant. After treatment by the plant's wastewater pretreatment system, which includes an oil-water separator, Conoco is authorized by the city to discharge the wastewater. Transfer of this authorization will require Vista to request permission from the city to continue to discharge wastewater under the agreement. It is recommended that this request be made at least 30 days prior to the transfer of ownership. The sole parameters are pH and oil and grease.

In addition, the plant has a formal permit from the DHMH which authorizes non-process stormwater discharges from the plant. Maryland has obtained the NPDES permit authority from EPA Region III, Philadelphia. The proposed draft permit contained highly restrictive values and conditions. Conoco protested these limits and conditions by formally requesting an adjudicatory hearing. Pursuant to a meeting between plant personnel and DHMH personnel on January 28, 1983 it was agreed that Conoco would monitor the stormwater for six months, at which time the parties would confer to determine final values. This satisfactory meeting obviated the need for an adjudicatory hearing. The request was withdrawn subject to the final draft permit containing the agreed-upon matters. Upon issuance, the revised provisions will become final after a 30-day comment period.

Conoco personnel have completed their six months' monitoring and have conferred with DHMH personnel. No final permit values have been issued by the DHMH at this time. If satisfactory values cannot be worked out with DHMH, the request for an adjudicatory hearing may be resurrected in order to obtain a formal administrative hearing.

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One area of concern in regard to the final permit relates to an area near the discharge point for the plant's stormwater runoff (a walled-off slip which leads to the Patapsco River). This area is contaminated with aluminum hydroxide solids. There is a definite possibility that the State of Maryland will require the plant to dredge this slip and dispose of the dredged material. Such a requirement, coupled with other steps which the plant may be forced to take to control contaminated stormwater runoff, could involve significant financial outlays of between \$500,000 and \$750,000.

The State permit provides that the permit may be transferred if 1) the permittee notifies DHMH in writing, 2) a written agreement is submitted to DHMH which indicates the specific date of proposed transfer and acknowledging responsibilities of current and new permittees, and 3) neither party receives notification from DHMH within 30 days. No significant difficulties are anticipated in connection with such a transfer.

2. Water Compliance. Over the years the plant has experienced a large number of exceedances which have led to enforcement activity by the DHMH and EPA Region III. Until the recent tie-in with the city POTW, the plant has been operating under interim standards set forth in an Order dated November 21, 1977 from the DHMH. On November 23, 1982 the plant was served by EPA Region III with an NOV and a copy thereof was sent to the Maryland DHMH stating that failure of the State to take appropriate enforcement action within 30 days might lead to EPA enforcement under § 309 of the CWA. Values allegedly exceeded were primarily for pH and oil and grease. Conoco submitted a letter jointly to EPA and DHMH denying many of the allegations, pointing out that EPA was relying upon a draft permit which no longer applied to the plant and noting that the plant would soon tie-in with the city POTW. Conoco has conferred with both EPA and DHMH personnel. The NOV has not been formally dismissed, but plant personnel have been orally advised that EPA and the DHMH plan no further action.

The plant claims to have had no trouble in 1983 meeting the pretreatment values for pH and oil and grease established by the city POTW. Experience suggests that the State and EPA will not conduct further enforcement efforts. However, the uneven enforcement activities of this Administration, coupled with escalated interest by public interest groups in individual permits, make it impossible to rule out such a possibility.

3. Future Requirements and Potential Concerns.
The Organic Chemicals, Plastics and Synthetic Fibers Category Effluent Limitation Guidelines (March 21, 1983 Federal

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Register) set forth pretreatment standards for existing sources in 40 C.F.R. § 414.26. Values have been established for a number of compounds, including vinyl chloride, acrolein, cyanide and lead. None of these values appear to be a problem for the plant. Further, the general pretreatment provisions set forth in 40 C.F.R. Part 403 do not appear to adversely affect the plant. However, if a pretreatment standard for benzene is ever issued, the plant may have difficulty meeting such a limitation.

It should also be mentioned that the City POTW has recently expressed concern over the possibility of explosions at the POTW due to high levels of hydrocarbons being sent to the plant. It is possible that future controls could be imposed on the plant to help correct this problem.

B. Air Pollution

1. Air Permits. Plant officials represent that all required air pollution permits have been obtained and are currently valid. These air quality operating permits (including two for the plant boilers and several covering other plant process equipment) may not be transferred from Conoco to Vista. (See Title 10, Code of Maryland Regulations, § 10.18.02.03(K)). The Maryland regulations are silent on the procedure which governs the sale or transfer of permitted installations. Oral guidance obtained from the DHMH suggests that the appropriate course of action for Vista is to submit application for identical permits to the MDHMH at least 30 days prior to the transfer of ownership from Conoco to Vista.

A state license to handle asbestos is also in effect at the plant. The MDHMH requires that a purchaser notify the DHMH, in writing, of the date ownership changes, and whether personnel remain the same at the plant for which the license was issued. It is recommended that Vista provide the notification at least 30 days prior to closing.

2. Air Compliance. Plant officials indicate that the facility has not experienced any compliance problems with respect to air pollution control. Looking to the future, the only significant potential compliance issues relate to upcoming EPA NESHAP regulations governing the storage of benzene and fugitive emissions of benzene. With respect to benzene storage, the plant expects to be able to demonstrate compliance by a method (paraffin absorption) which is equivalent to the anticipated EPA reference method (double-sealed floating roof). Since the tanks are spherical, it would be infeasible for the plant to comply by way of the reference method.

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With regard to the fugitive benzene NESHAP regulation, the plant's principal concern is the anticipated burden presented by the proposed recordkeeping, monitoring and repair provisions.

EPA may promulgate these NESHAP regulations as early as April or May of 1984, with compliance required at Baltimore within 90 days thereafter. Waivers for extended compliance are available under certain circumstances.

C. Solid Waste

1. Permits. The Baltimore plant has filed a hazardous waste notification form and an original and a revised Part A application with EPA to obtain interim status for various hazardous waste treatment and storage facilities at the plant. (The revision to the Part A application was made to redesignate several concrete basins as treatment units rather than surface impoundments, the former being subject to less demanding requirements.) The transfer requirements applicable to notification and to Part A applications are discussed earlier in this memorandum for other facilities.

In addition, the plant has received a Designated Hazardous Substance Facility permit from the DHMH authorizing the plant to manage hazardous substances under state law. Transfer of this permit may be handled as a "minor modification" under the Maryland Hazardous Waste Regulations. (Title 10, Subtitle 51, Code of Maryland Regulations, § 10.51.07.02(L)). Minor modifications qualify for expedited and simplified treatment under the State regulations. For facility transfers, the regulations provide for a minor modification to:

"Allow for a change in ownership or operational control of a facility if the Secretary determines that no other change in the permit is necessary, provided that a written agreement containing a specific date for transfer of permit responsibility, coverage, and liability between the current and new permittees has been submitted to the Secretary."

It is recommended that Vista be required to exercise its best efforts to obtain approval of the permit transfer from DHMH prior to or at the time of closing. Further, in the event that the Vista has not obtained the required approval (and removal of Conoco as owner under the permit) Vista should fully indemnify Du Pont and Conoco for any liability arising after closing under the permit. (Vista submitted the revised Part A Application and Notification to DHMH on December 31, 1983. The letter also indicated intent to apply for a minor

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modification of Maryland Designated Hazardous Substance Facility Permit #A005 in the near future.)

2. RCRA Compliance. Plant officials say that the plant has had numerous state hazardous waste inspections over the past several years and that no noncompliance problems have been uncovered. Furthermore, the plant environmental coordinator is not aware of any noncompliance problems in this area. The large majority of the plant's solid wastes have been determined to be nonhazardous under federal and state law according to Conoco Chemicals representatives. Both nonhazardous and hazardous wastes are disposed of off-site.

Some of the plant hazardous waste was taken to the BFI Solley Road Landfill and the BFI Norris Farm Treatment Center, both of which have apparently been closed as a result of litigation. Currently the plant's hazardous waste is taken to a site in Oregon, Ohio.

3. Past Waste Disposal Activities. The Baltimore Plant notified EPA under 103(c) of Superfund of an on-site surface impoundment designated as the "Sulfone Pit". Notification was made on June 9, 1981. Subsequent testing of material in the pit indicated that it was nonhazardous. A follow-up letter was submitted to EPA in August, 1981 attempting to revoke the original submittal but EPA has not responded to this letter. The Sulfone Pit contents have since been removed and landfilled at a permitted facility. The plant voluntarily did the clean-up under the supervision of Maryland State officials.

The plant environmental coordinator informed the writer that no other notifications have been filed with governmental authorities with respect to on-site or off-site properties where hazardous substances from the plant may have been disposed. Similarly, the plant has no record of the wastes which may have been sent to off-site locations throughout the facility's long operating history. (The plant at one time was operated as a small oil refinery.) It is strongly recommended that Conoco Chemicals management conduct a prompt records review so as to be able to provide information on the plant's CERCLA notifications and its historical waste disposal practices. Although a tentative list of sites has been provided (Attachment I). This list provides no information as to the types of waste sent to the listed sites.

A matter related to past waste disposal activities concerns groundwater contamination beneath the plant property. Plant officials concede (and government environmental agencies are apparently aware) that groundwater beneath the plant (and throughout the surrounding industrial area) is extensively

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contaminated with oil and a variety of chemical substances. Little data and no wells exist from which to prepare a qualitative or quantitative description of this situation.

4. Polychlorinated Biphenyls (PCBs). The plant does use PCB equipment subject to TSCA regulation. Plant environmental officials indicate that this equipment is in full compliance with applicable requirements.

VII. The Baltimore Transportation Terminal

Within the plant boundaries at Baltimore is a Conoco truck transportation terminal which performs routine terminal functions for that plant. From an environmental standpoint, the terminal is linked closely with the plant. Although the terminal has no environmental permits issued in its own name, most activities which would require permits (e.g. water discharges and waste storage) are handled by Chemical plant facilities which have proper permits and authorizations.

A. Water Pollution

General stormwater runoff, exterior truck/trailer cleaning runoff, benzene, xylene and toluene residues from steam-cleaned trailer interiors, and any spillage from the two 4000-gallon above ground fuel storage tanks are channelled to an underground storage tank from which they are periodically pumped to the plants' wastewater treatment system. The material from this tank is sampled before it is sent to the wastewater system. Neither the plant nor the terminal has in place an SPCC plan covering diesel storage tanks at the terminal. It is anticipated that Vista will amend the plant's SPCC plan in due course to cover these tanks.

B. Air Pollution

The terminal does not have any air pollution permits in its own name and none appear to be required.

C. Solid Waste

The large majority of waste materials generated by the terminal are treated in the chemical plant wastewater system. On July 21, 1981, the terminal shipped five drums of corrosive alaphatic soap to J&L Industries, a waste management facility in the Baltimore area. (These types of wastes are not presently generated at the terminal.) With one possible exception, Conoco Surface Transportation (STSE) representatives are unaware of any possible noncompliance at the terminal with respect to hazardous waste management regulations. The possible exception concerns an on-site holding

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tank at the terminal in which STSE officials believe waste oils and perhaps waste solvents and other substances, are stored prior to being sent off-site for disposal. The terminal has a contract with Safety Kleen Inc. to provide parts cleaning solvent and to periodically remove spent solvent and replace it with clean solvent. Assuming these wastes qualify as hazardous waste (an assumption which must be confirmed) this storage tank would have to be covered under the plant's Part A Application, and presumably, the plant's existing state hazardous waste permit. Also, the terminal would have to comply with requirements applicable to hazardous waste generators. It does not appear that such compliance measures are in place.

D. Polychlorinated Biphenyls (PCBs).

The terminal does not use or store PCB-regulated equipment.

VIII. Hammond, Indiana Chemical Plant

A. Water Pollution

1. Water Permits. The Hammond plant is located immediately adjacent to a Stauffer Chemical facility from which it receives its primary raw material feedstock. All plant wastewater and surface runoff is piped to the Stauffer facility where it undergoes pretreatment prior to being sent to the City of Hammond wastewater treatment plant. The plant has no water pollution permits and a preliminary legal review indicates that no such permit is required. It is unknown at the present time whether the plant has (or needs) an SPCC plan.

2. Water Compliance. Conoco Chemicals representatives indicate that the plant has experienced no water pollution problems of any kind. No data exist for ground-water quality beneath the site.

B. Air Pollution

1. Air Permits. The Hammond plant has air pollution operating permits from the Hammond Air Pollution Board ("HAPB") for an SO₂ scrubber vent (used occasionally to vent SO₂ to the atmosphere when the Stauffer facility cannot accept SO₂ from the plant) and a small boiler. These permits may be transferred from Conoco to Vista as indicated in Schedule 3.6 to the Asset Purchase Agreement.

2. Air Compliance. Except for occasional minor exceedances of the opacity limitation from the vent stack, Conoco Chemicals representatives indicate that the plant has

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not experienced any noncompliance with its permits or applicable air pollution control regulations.

C. Solid Wastes

The Hammond plant generates only small amounts of solid or hazardous waste, all of which are transported off-site. The plant has no solid waste permits.

Conoco Chemicals representatives claim to have no knowledge of any on-site or off-site properties where waste materials may have been disposed, other than wastes routinely handled by licensed waste haulers.

Adjacent to the Hammond plant is a tract of Conoco-owned property, approximately 30 acres in size, on which a now-abandoned petroleum refinery and products tank farm is located. This tank farm was apparently owned and operated in the past by Shell Oil. Conoco Chemicals has no information concerning the environmental status of this facility. However, Conoco environmental personnel are presently attempting to assess the environmental status of this site and obtain any available environmental information concerning the property from Shell Oil. The results of this assessment will be covered in a supplement to this status report.

IX. The Hammond Transportation Terminal

Environmental concerns at this terminal appear to be insignificant. The terminal is intimately tied to the surrounding chemical plant. All water runoff enters the plant's wastewater drainage system which is piped to the adjacent Stauffer facility. It appears that no air, water or waste permits or SPCC plans are required for this terminal and no significant waste generation occurs as a result of the terminal operations.

X. The Conoco Ethane Pipeline Between Mont Belvieu, Texas and Lake Charles, Louisiana

While no environmental permits per se are required for pipelines in Texas, Conoco NGP holds a permit from the Texas Railroad Commission ("TRC") to operate all of its Texas pipelines, including the ethane pipeline which will be sold to Vista. No environmental permits are required for such pipelines in Louisiana. To transfer the TRC permit, Vista will have to file a permit application with the TRC Administrative Services Division, Pipeline Section, prior to transfer of ownership. It is recommended that the application be filed at least 30 days prior to the closing.

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The ethane pipeline poses no significant environmental concerns. No solid or liquid wastes are generated by its operation and since all compressor stations associated with the line are electrified no air emissions are generated by their operation.

XI. Ponca City Research and Development Equipment

As part of the sale, Vista will acquire special purpose research, development and technical service equipment in Ponca City which has been dedicated to the Conoco Chemicals business. Some of this equipment, particularly the pilot plants, is affected by environmental regulation.

A. Water Pollution

All wastewater from the R&D facilities is currently discharged through the Ponca City Refinery's wastewater treatment system. Thus, no separate discharge permits are held by these facilities. The R&D facilities being transferred to Vista have not caused significant adverse impacts on the refinery's wastewater treatment system. R&D has internal procedures governing the types of materials which may be discharged to the Refinery's wastewater treatment system.

The so-called "Berm Area" behind the Research & Development West Building in Ponca City (a relatively long and narrow strip of land) contains a number of storage tanks for oil and oil related products. This area includes high pressure tube trailers containing ethylene and hydrogen; a storage tank for VCM; a storage tank for hexane; small storage tanks on platforms containing base oils and lubricants; and a warehouse containing many drums of solvent. A recent Conoco environmental review raised a question as to whether an SPCC plan for the Berm Area should be prepared and implemented. R&D personnel are currently gathering precise volumes and other information. The Legal Department will assist in determining the advisability of an SPCC plan and implementation thereof. PED will be asked to design appropriate dikes and other measures if necessary. This matter appears to represent a low-level environmental problem, but any oversight in this connection should be corrected.

B. Air Pollution

The only environmental permit held by the R&D facilities is a state air pollution permit which governs conventional pollutant and vinyl chloride emissions from the VCM pilot plant facility. R&D has had no difficulty in complying with this permit.

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It is recommended that Vista apply for its own air permit from The Oklahoma Air Quality Service covering all air pollution sources which it will acquire in the transaction. Vista should obtain guidance from the Air Quality Service as to whether a new permit application will be required, as opposed to a mere notification of ownership transfer.

Solid Waste

The R&D facility generates only relatively small amounts of solid or hazardous wastes. These waste are managed in a number of ways, including off-site disposal, treatment at the Refinery landfarm, recycling through the Refinery and off-site recycling. At present, the R&D facility utilizes and manages the Ponca City Refinery's RCRA Interim Status drum storage facility for storage of hazardous wastes prior to off-site disposal. With regard to hazardous waste generation after closing, it is recommended that Vista promptly file a RCRA hazardous waste notification form and obtain an EPA Generator Identification Number.

With regard to the possible desire for hazardous waste drum storage facilities after closing, several options are potentially available to Vista. First, Vista could obtain authority to construct and operate a new drum storage facility. Alternatively, Vista could attempt to promptly dispose of hazardous wastes off-site, obviating the need for a storage facility. Finally, Vista could attempt to negotiate with the Ponca City Refinery and R&D for interim or permanent use of the existing storage facility.

With respect to past waste handling activities, the only known area of potential concern involves the discovery in November, 1983 of a number of drums of potentially hazardous wastes which were located in a processing area. All drums were intact and non-leaking. Since the discovery, most of the drums have been disposed of in permitted disposal sites, with fewer than ten drums now remaining in the RCRA drum storage area awaiting disposal arrangements.

Schedule 3.6

SUPPLEMENTAL ENVIRONMENTAL
DISCLOSURES

June 18, 1984

IN

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6/20/84

1. WITH RESPECT TO ALL PLANTS, PROPERTIES AND PREMISES:

The Environmental Survey, the Environmental Status Report (Schedule 16.2 (ii)) and this Supplemental Disclosure discuss matters of environmental concern about which Conoco has specific knowledge. It has been Conoco's policy to operate in compliance with all applicable laws and regulations. However, it must be noted that pollution control equipment at all of the plants and properties comprising the Business has not been able to achieve 100% compliance with existing governmental requirements on a continuous basis. Periodic exceedances of permit limitations and regulatory standards have occurred throughout the history of the Business, although the majority of these exceedances were de minimis violations having no significant environmental impact. Seller and Du Pont cannot provide assurances that exceedances of permit limitations and regulatory standards will not occur in the future.

Also, it should be emphasized that there is a strong likelihood that soil and groundwater at various locations beneath the plants and properties comprising the Business has been exposed to chemical contamination as the result of spills, seepage and leaks from process equipment, vehicles, pipes, sewer lines, tanks, pits, ponds, lagoons, basins and other related equipment. This is a common condition at many industrial facilities. The documents comprising Schedule 3.6 have identified known instances of soil and groundwater contamination, but it is reasonably certain that other instances of contamination exist.

2. In June, 1984, the Conoco Legal Department provided written comments (based on an April 26, 1984 memo) on the Aberdeen Chemical Plant's VCM Release Prevention Study.

3. The Oklahoma City Plant has experienced some difficulties with respect to particulate (resin) emissions from bag house upsets and rail car loading. This has not been a problem for the past few years.

4. On March 2, 1984, Conoco's Baltimore Chemical Plant was served with a Summons and a Subpoena Duces Tecum issued by both the Circuit Court for Baltimore City Grand Jury and the Grand Jury for Baltimore County. The City and County Grand Juries originally ordered an authorized records custodian to

appear before them on March 8, 1984, (County Grand Jury), and March 9, 1984, (City Grand Jury), and to bring an extensive collection of documents relating to hazardous waste matters from the period between January 1, 1982, and August 1, 1983.

Both Grand Jury proceedings were initiated by the Maryland Attorney General's office on behalf of the Maryland Hazardous Waste Strike Force. Based upon discussions with the Assistant Attorney General, it is Conoco's understanding that the focus of the Grand Jury investigations is on two waste recycle operations which have handled the Baltimore Plant's wastes.

An informal meeting between Conoco and the Maryland Attorney General's office was held on March 20, 1984, in lieu of a formal appearance before the Grand Jury proceedings. Following the meeting on March 20, the Assistant Attorney General complied with her agreement to notify Conoco of its status in the pending investigation. Specifically, the Assistant Attorney General has assured Conoco that the Baltimore Chemical Plant is not presently a target of the pending Grand Jury proceedings.

At this time, the plant intends to maintain all relevant documents and be prepared to provide one or more plant personnel as witnesses, if requested. In addition the Baltimore Plant Manager has initiated an internal review of hazardous waste procedures followed at the plant to assist in locating any areas requiring changes in training or procedures.

5. The memoranda attached to this Supplement as Attachment 1, related to the Hammond Chemical Plant, are incorporated into this Schedule 3.6.

6. Conoco owns several experimental facilities used for research purposes by the Research and Development Department. The plants, located in the Ponca City R & D complex, include a PVC pilot plant, alkylation pilot plant, sulfonation pilot plant, alumina pilot plant, and a molecular sieve pilot plant. These pilot plants are sources of various air contaminants in small amounts; the plants are operated only intermittently.

On November 6, 1981, the Oklahoma State Department of Health issued Air Permit number 81-105-0 authorizing operation of

the experimental pilot plants. The molecular sieve plant was not covered by this permit because it was deactivated at the time the permit was applied for. The plant was later activated when the sulfonation pilot plant was "mothballed".

The air permit, in addition to the standard permit conditions, limited total emissions from the various pilot facilities not to exceed the de minimus quantities specified in EPA's PSD regulations and requires Conoco to submit a semi-annual report of actual emissions which are 50% or greater of the PSD de minimus quantities. The R & D Department interprets the emission limit in their permit as an authorization to operate any pilot facility so long as the total emissions remain within 50% of the PSD de minimus levels. For this reason, the air permit was not amended when the molecular sieve unit was reactivated.

As part of Conoco's asset transfer to Vista, attorneys for Vista have applied for an air permit for all the pilot plants being sold to Vista, including the sulfonation plant and the molecular sieve plant.

7. On May 21, 1984, the Lake Charles Chemical Complex submitted its State Part 1 Hazardous Waste Application and Notification Form. This application did not include a number of hazardous waste facilities that had earlier been included on the Complex's Federal Part A Hazardous Waste Application. The reasons justifying these deletions are currently being documented in a letter that will be submitted in June of 1984 to the State Department of Environmental Quality. The rationale for these deletions, in most cases, relates to the fact that the wastes being handled by the deleted units no longer qualify as hazardous waste. For most of the facilities for which deletions were made, Solid Waste Notification Forms will be submitted to the state along with the explanation letter. The LCCC is currently late in submitting the solid waste notification required by state law. The LCCC will submit a solid waste notification in accordance with the State's guidance for reconciling the solid and hazardous waste program applications. This requested reconciliation is the reason for the late submittal.

The Lake Charles Chemical complex has also received ground water quality analyses which indicate that the complex is affecting ground water quality beneath the plant. Two written notifications and two ground water quality assessment plans have been submitted to the state, in

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accordance with state regulations, to address Conoco's additional efforts to assess these impacts.

8. By letter dated May 3, 1984, from the Oklahoma State Department of Health, the Oklahoma City Chemical Plant was requested to submit an application for a final permit for hazardous waste management facilities pursuant to the Oklahoma Controlled Industrial Waste Disposal Act. Subsequent meetings with the state have resulted in negotiations to classify the plant as only a generator of hazardous waste, obviating the need for a hazardous waste permit. An outline of the submissions which the plant will need to make in order to be so reclassified is attached to and incorporated into this Supplement as Attachment 2.

9. Both the Oklahoma City PVC plant and the Ponca City R & D complex generate resin wastes. This material is a powdered plastic which is typically used for producing water pipes, plastic jacketing on electrical wires and other plastic products. Since 1979, Conoco has been handling this material as common trash for ultimate disposal at sanitary landfills. The decision to use this mode of disposal is based on communications between the Oklahoma Department of Health's Nancy Haxton Davis and Conoco's J. Paul Warner, at the Oklahoma City PVC plant. All material from the Ponca City R & D facility is tested to assure that residual VCM monomer is below 400 mg/kg. Since daily analyses are made to confirm that residual VCM concentrations are below 400 ppm in the materials contained in the reactors (after steam stripping), the Oklahoma City PVC plant does not run additional tests on PVC resin waste materials to ensure that concentration of VCM is below 500 ppm.

By letter dated April 17, 1984, Conoco's R & D Department requested the Oklahoma Health Department's Industrial Waste Division to reconfirm that PVC resin with residual monomer concentrations lower than 500 mg/kg is still defined as a non-controlled industrial waste. The state's response is attached to and incorporated into this Supplement as Attachment 3.

10. Attached to and incorporated into this Supplement as Attachment 4 is a memorandum from J. J. Hall to B. I. Raffle which provides additional information on the closed municipal landfill in Aberdeen, Mississippi, which is believed to contain waste material from the Aberdeen Chemical Plant.

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11. The Aberdeen Chemical Plant has formally requested the State of Mississippi to rescind its application for hazardous waste storage. If approved, the plant would be classified as a generator of hazardous waste, but not as a treater, storer or disposer. The documents relating to this request are attached to and incorporated into this Supplement as Attachment 5.

12. On May 19, 1984, the Baltimore Chemical Plant submitted an amendment to its RCRA Part A Application to the Maryland Waste Management Administration. A copy of the amended application is attached to and incorporated into this Supplement as Attachment 6.

13. On February 14, 1984, the State of Maryland requested information from the Baltimore Chemical Plant concerning hazardous waste management facilities at the plant. The status of Conoco's response to this information request is discussed in the documents which are attached to and incorporated into this Supplement as Attachment 7.

14. By letter dated May 25, 1984, co-signed by the Managers of Conoco's Lake Charles Refinery and Lake Charles Chemical Complex, to the Louisiana Department of Environmental Quality, the air emission rights associated with the Polyalphaolefin Unit (CDRTM) were transferred from the Chemical Complex to the Refinery.

15. Supply and Transportation's Westlake Terminal has a diesel storage tank which is approximately 15 years old. Given the age of the tank, an air permit is not necessary because the tank was in existence prior to Louisiana's promulgation of hydrocarbon storage regulations. Even though it is "grandfathered," the tank's air emissions need to be reported to the Louisiana Department of Environmental Quality on an Emission Inventory Questionnaire (EIQ). Conoco has not previously filed an EIQ for this tank. When the terminal assets are transferred to Vista, Vista will need to add the emissions from the diesel tank to its emissions inventory by filing an EIQ for this tank (and any other air emission sources being transferred to it) with the DEQ.

16. On June 4, 1984, the Lake Charles Chemical Plant was visited by an EPA inspector inquiring about compliance with EPA's Toxic Substances Control Act regulations. Specific-

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ly, the inspector checked compliance with the PCB and Section 8(a), (c), (d) and (e) requirements.

The inspector initially indicated that the Dallas Regional EPA office had not received the LCCP's 8(a) report form for MeCl_2 in 1982. Subsequent investigation revealed an acknowledgement of receipt from EPA. The inspector then reviewed 8(c) and 8(d) programs. He was pleased with the TSCA posters and did not ask to see 8(e) training records. The plant was not able to respond to the 8(d) and 8(e) requests because the pertinent files are kept at the corporate offices in Houston.

17. By letter to Conoco dated May 15, 1984, the Interagency Testing Committee, established under TSCA § 4(e) to make recommendations to the EPA on chemicals that should be given priority for test rules under TSCA, requested information on 2-chloro-1, 3-butadiene. The request does not require a response but it does indicate interest in this chemical, manufactured as an inadvertent byproduct at the Lake Charles VCM Plant. That interest may or may not lead eventually to a test rule being promulgated by EPA. If a test rule were promulgated, however, it would mean that a financial contribution to the testing would be required.

18. The Dallas office of EPA has returned to the Louisiana DEQ the LAB plant's PSD permit modification (which would permit the LAB plant to burn fuel oil in certain pieces of equipment). EPA asked that the DEQ change the name of the permit's cover sheet from Conoco to Vista. EPA's action is based on Conoco's notice that transfer of the LAB plant would occur on or about May 31, 1984. The DEQ has forwarded a draft to the LAB plant showing the name change. The EPA has also asked that the DEQ incorporate the original PSD LA 291 into the modified permit. This would cause the LAB Plant to operate under a single PSD permit, rather than two permits for the same source.

The plant is presently operating on natural gas firing for those pieces of equipment covered by the permit modification.

19. In correspondence dated June 1, 1984, EPA notified the Plant Manager of the Oklahoma City PVC Plant effective June 2, 1984 of its "final permit decision" regarding NPDES Permit No. OK0001031. The permit holder has 30 days from

June 3 to request an evidentiary hearing. Unless suspended in whole or in part by the grant of a request for evidentiary hearing, the permit becomes effective July 2, 1984.

20. On June 6, 1984, EPA issued Administrative Order No. VI-84-098 to Conoco Chemicals Company requiring immediate steps be taken to prevent recurrence and submission of a report and comprehensive prevention plan regarding an alleged violation of NPDES Permit No. LA0003476. The response is due thirty days after the date of receipt from EPA.

21. Browning-Ferris Industries, Inc. ("BFI") has alleged variously in correspondence and in Cause No. 83-4339 in the Civil District Court for the Parish of Orleans Louisiana (Division "D") that hazardous or toxic wastes were taken by BFI from the Westlake VCM Plant and deposited or burned at various locations in West Louisiana, principally disposal sites owned by Olin Corp. near Ellender Ferry, Louisiana; by BFI near Carlyss, Louisiana; and possibly BFI's Willow Springs, Louisiana site. Similar material may also have been injected in a deep well operated by Sonics International near Ranger, Texas and taken for incineration at PPG's Westlake Plant Complex.

BFI's suit against Conoco seeks \$7 million under a contract between Conoco and Nelson Industrial Services that commenced in 1968. Olin Corporation has also stated its position that waste generators are responsible for cleanup of its land.

The State of Louisiana is understood to be considering sending Conoco correspondence regarding some or all of these sites, and EPA has reportedly reviewed data regarding some or all of these sites in its CERCLA (Superfund) program.

The Legislature of the State of Louisiana is considering bills which would purport to make toxic and hazardous waste generators liable in solido for waste site cleanup.

22. On June 1, 1984, Conoco's Motion for Stay and for Summary Judgment was granted in the U.S. v. Conoco case pertaining to the Lake Charles VCM plant. The victory on Summary Judgment exonerates Conoco's position as to the two exhaust gas discharge allegations. The Stay affects the Government's allegations regarding relief valve discharges and reporting obligations; the Stay is effective until the U.S. Court of Appeals for the Fifth Circuit rules in

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United States v. Ethyl. The Ethyl case has been fully briefed by both sides but oral argument has not been set.

Also, in May of 1984, Conoco's Aberdeen Chemical Plant received an information request from EPA concerning past releases of vinyl chloride and other potential excursions of the vinyl chloride regulations at the Plant. This information request could require substantial effort in preparing a reply.

23. Both Federal and State Hazardous Waste regulatory programs require the submission of documents establishing financial responsibility for hazardous waste facilities. Federal financial responsibility documents were filed for the LCCC with both EPA, Region VI, and the State of Louisiana, in compliance with the RCRA regulations. The federal filing referenced only federal regulations in the documents, and thus the filing with the state did not reference the parallel state regulations. A revised state filing is being prepared for prompt filing.

24. Westlake Terminal Transport Fuel Tank

The Westlake Transportation Terminal has utilized a 5000 gallon fuel tank for fueling transport vehicles. M. G. Hayes, Lake Charles Chemical Plant, has asserted that, if used, the transport fuel tank requires a dike and a Spill Prevention Control and Countermeasure ("SPCC") plan, and could be included within the LCCP SPCC plan.

The SPCC regulations apply generally to owners and operators of non-transportation related onshore and offshore facilities engaged in storing oil and oil products, and which, due to their location, could reasonably be expected to discharge oil in harmful quantities into or upon the navigable waters of the United States or adjoining shorelines.

40 CFR § 112.1(b). "Oil" is defined broadly in the regulations to include petroleum in any form. 40 CFR § 112.2(a). Among the facilities excluded from regulation under the SPCC program are "transportation-related" onshore facilities. 40 CFR § 112.1(d)(ii). The terms "transportation-related" are defined, for purposes of the SPCC regulations, in a Memorandum of Understanding between the Secretary of Transportation and the Administrator of the Environmental Protection Agency dated November 24, 1971 (the "MOU"). 36 FR24080.

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The MOU is ambiguous concerning which facilities are "transportation-related" as opposed to "non-transportation-related". Whether a transport fuel tank is a "transportation-related facility" has been hotly debated and remains unclear under the MOU. (e.g. compare 40 CFR Part 112, Appendix, Section II (1)(F) and Section II (2)(D). Applying the more conservative interpretation, the transport fuel tank at the Westlake Terminal would be considered to fall within the requirements of the SPCC regulations. Conoco does not concede, however, that these regulations do in fact apply to this tank.

The SPCC regulations would impose two general requirements upon the use of the Westlake transport fuel tank. First, the tank would be required to be included within an SPCC plan (such as the existing LCCP SPCC plan). 40 CFR § 112.3(a).

Second, the tank would be required to have a dike, berm or retaining wall sufficiently impervious to contain spilled oil. 40 CFR § 112.7(c)(1)(i).

25. Westlake Terminal Wastewater Discharges

The Westlake Terminal has three general sources of potential wastewater discharges; namely, truck washing operations, repair shop operations, and a sewage treatment system. [The repair shop operations do not presently discharge wastewater.]

At least two options exist which would allow the continued operation of the above described facilities without necessitating conveying the discharges to the LCCP wastewater system.

One option would involve obtaining federal and state authorization for the wastewater discharges from the terminal. Under federal law (Clean Water Act) it may be possible for the terminal to wait to apply for NPDES discharge authorization until EPA, Region VI, publishes in final form its General Permit for Petroleum Storage and Transfer ("PS&T") Facilities. A facility electing to be covered by the General Permit will have six months after final publication within which to make application. EPA is currently reviewing the PS&T General Permit and publication should be forthcoming in the near future. In the interim period, reasonable protection from federal enforcement action for discharging without

a permit is afforded by the Settlement Agreement relating to the EPA generic NPDES permit regulations litigation. It is not clear at this point whether the PS&T general permit will be applicable to the Westlake terminal or to the other Conoco transportation terminals being conveyed to Vista.

State industrial waste discharge regulations would appear to require a discharge permit for any discharges at the terminal from the above discussed operations. La. R.S. § 30:1096A. Thus, if operated in a manner which results in a discharge of pollutants to the waters of the State, the terminal facilities appear to require a Louisiana industrial waste discharge permit.

A second option for handling discharges which would not involve conveyance to the LCCP wastewater system or a state discharge permit would be to convey the discharges to the 9,000 gallon asphalt-coated underground steel tank at the terminal for storage. Exercising this option would not necessitate obtaining either federal or state discharge permits, but would require compliance with the Louisiana Solid Waste Disposal program which is discussed in item 26 below.

26. Westlake Underground Storage Tank

A 9,000 gallon asphalt-coated underground steel tank is located at the terminal and has been used in the past to store wastewater.

Use of the terminal underground storage tank to hold wastewater prior to proper disposal would be subject to compliance with the Louisiana Solid Waste Regulations ("LSWR") since the definition of solid waste would include wastewater not discharged from a point source pursuant to an NPDES or State Discharge Permit. LSWR § 3.0. If the underground tank were to be used as a solid waste (i.e., wastewater) storage tank, two options exist to comply with the Louisiana Solid Waste program. First, pursuant to LSWR § 6.31(b)(2), the underground tank could submit Part I of the Louisiana Solid Waste permit application to notify the state of the activity. Second, the facility could apply under Section 4.2 of the LSWR for an exemption from the Solid Waste notification requirement. It is anticipated that a solid waste application will be filed by Conoco for this tank prior to the Closing Date.

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27. Prairie Transport Fuel Tank

The Prairie Transportation Terminal has utilized a 10,000 gallon fuel tank for fueling transport vehicles.

As to the SPCC general requirement, the analysis related to the Westlake SPCC plan requirement in item 24 also applies to the Prairie facility. The Prairie fuel tank facility presently does have an earthen dike around it, and Conoco, has directed that the earthen dike be inspected and improved, if necessary, to ensure compliance with the SPCC diking requirements, notwithstanding the question regarding the applicability of SPCC regulations.

28. Prairie Wastewater Discharges

The Prairie terminal has one general source of potential wastewater discharge; namely truck and hopper washing operations. The repair shop operations no longer discharge any used oils through a point source. The used oils generated by the repair shop now are filtered and re-cycled into the fuel transport tank.

The truck washing operations do discharge wastewater through a point source discharge.

Mississippi was delegated NPDES permit authority from EPA on May 1, 1974, and thus has authority to implement the federal wastewater regulatory program in lieu of EPA. It would appear that the Mississippi Pollution Control Regulations ("MPCR") require a discharge permit for the washing operations discharges.

Also, the "Token" brand fuel pump at the terminal is designed in such a way that approximately one gallon per month of fuel is discharged from the pump. Such a discharge without prior authorization may violate Mississippi pollution control regulations. Replacement of the pump is the only known way to eliminate the discharge.

29. Prairie Underground Tank

The 750 gallon underground steel tank, used previously for storing used oils from the repair shop operations, is now inactive and has been substantially cleaned-out. The underground tank is estimated to presently contain 10 gallons of

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used oil. Although use of the tank may be subject to Mississippi pollution control or solid waste regulation, the used oil filtering and re-cycle operation has eliminated the need for future operation of the underground tank. A review of applicable regulatory requirements would be needed to determine the potential future uses of this underground tank.

30. The Lake Charles VCM plant has raised a concern regarding the possibility that underground sewer and pipe lines carrying the plant's waste materials may be affected by chronic leaks. At least one known leak has occurred in the VCM process area. It is possible that this problem exists at all the plants and properties comprising the Business.

31. The LDEQ has received notice from EPA that the continuous oxidation reactor air emissions bank has been disapproved by EPA. The basis for disapproval is the EPA position that the banked emission would not be "bankable" under the current regulatory program, and as such are unusable for offsets. The State has asked the Federal EPA for an opinion on this issue, as it affects many banked emissions with the State.

This interpretation would negate the bubbles for the two batch oxidation reactors, requiring use of the VC, Oxy Bank. The VC Bank was approved by EPA. For the Barometric Cooling Tower, an attempt will be made to handle this as a straight offset, not requiring Agency review. As the VCM Bank did not exist prior to March, 1983, there is a period for which no approved offsets were available.

32. A letter of warning was issued on June 14, 1984, by the Department of Environmental Quality for deficiencies in the LCCC Part I permit application for hazardous waste facilities. The wrong units were used for storage and treatment tanks. Corrections have been submitted.

33. A diesel fuel storage tank is currently used at the Baltimore transportation terminal for truck-fueling. This tank is not covered by the Baltimore plants' SPCC plan and is not diked. It is not clear, as discussed elsewhere in this Supplement, whether EPA's SPCC regulations apply to tanks such as the one at Baltimore.

34. An inactive settling pond, known as pond number one, is located at the Aberdeen Chemical Plant. This pond contains significant quantities of PVC resin from prior plant

operations. Closure of this pond should be undertaken with guidance from appropriate state authorities.

35. The Lake Charles Vinyl Chloride Plant received a Clean Air Act 114 letter from EPA on June 10, 1984, requesting information on 33 incinerator bypasses occurring between November 2, 1982 and September 2, 1983. A response was submitted to EPA on June 9, 1984.