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To: N. C. Frost

PRIVILEGED AND CONFIDENTIAL  
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From: W. L. McClain  
Date: September 4, 1984

VISTA

Interoffice  
Communication

Subject: U. S. v. Conoco Vinyl Chloride Litigation

BACKGROUND

Three suits are now pending against Conoco alleging numerous past violations of EPA's Vinyl Chloride Hazardous Air Pollutant ("NESHAP") regulations at the Oklahoma City, Aberdeen and Lake Charles VCM Chemical plants. After extensive negotiations prior to the Vista Closing, Conoco and the Justice Department signed a Memorandum of Understanding which identified the basis for settlement of the three cases. In the Memorandum, the United States has made a binding offer to settle not only the violations already alleged in the pending suits (7 at Oklahoma City, 20 at Lake Charles, 11 at Aberdeen), but also those past incidents which the Justice Department was planning to add to the suits (potentially 15 leaks at Oklahoma City, 20 incinerator bypasses at Lake Charles and 96 slurry stripping excursions at Aberdeen). Also, included in the Justice Department's settlement offer is a release for all other claims the government could assert for any violations of the vinyl chloride NESHAP regulations which occurred prior to the date of entry of the Consent Decree, except for violations which should have been reported to EPA but were not.

The Memorandum of Understanding between Conoco and the Justice Department envisioned the settlement Consent Decree obligating Conoco to pay \$325,000 in civil penalties, and mandating negotiations to develop and implement a compliance plan for each of the three plants, in exchange for the above described settlement and releases. The compliance plans called for in the Memorandum of Understanding would be submitted to EPA for approval following entry of the Consent Decrees resolving the litigation. The plans would contain details of the plants' past, present and future practices and procedures to comply with the vinyl chloride NESHAP regulations. Failure to reach agreement with EPA on the plan measures would lead to litigation on the measures to be carried out, or to further settlement negotiation on the measures. Failure to reach agreement on the plans would not

disturb the settlement of the claims subject to the Consent Decrees.

Given that the sale to Vista of the three plants in question occurred prior to the settlement of this litigation, Vista's involvement in the commitment to future compliance measures is necessary both to protect Vista's interests and to effectuate the injunctive relief sought by EPA. Vista could either intervene voluntarily in the suits for purposes of joining the settlement efforts, or could be joined involuntarily by either Conoco or by the Justice Department for purposes of effectuating the relief sought by EPA. For a number of reasons, including minimizing litigation expenses and assuring Vista's input into future compliance measures, Vista has offered to intervene voluntarily in the litigation if an acceptable settlement can be obtained.

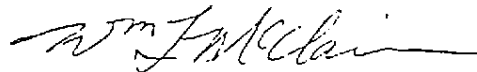
Responsibility for any measures agreed to in the compliance plans, or imposed through negotiation or litigation, will be allocated between Conoco and Vista in accordance with the provisions of the Asset Purchase Agreement. In brief, the Asset Purchase Agreement, as applied to this litigation, places the responsibility for measures requiring expenditures for the installation or modification of equipment on Conoco/DuPont and places the responsibility for costs associated with other measures (e.g., training, operating and maintenance costs) on Vista.

#### STATUS

Shortly prior to the Vista closing, the Justice Department submitted proposed Consent Decrees setting forth conditions required for a settlement of the litigation. Not unexpectedly, the Justice Department's proposed Consent Decrees contained several provisions which were unacceptable to both Conoco and Vista. Conoco then committed to submit a counter-proposal to the Justice Department by September 4, 1984. Following the Vista closing, Vista and Conoco began negotiations to agree upon settlement Consent Decrees which would be acceptable to both companies. Vista originally proposed that an agreement be entered into with Conoco in exchange for Vista's voluntary intervention in a settlement of the litigation. Vista proposed four principal points to Conoco for inclusion in any such agreement; namely, (1) a clear statement of expenses for which Conoco would be liable in any settlement, (2) application of a "best engineering judgement" standard to any compliance plans developed by the companies, (3) a provision for the submission of separate

compliance plans if the two companies could not agree upon a single plan, and (4) a provision for the sharing of outside counsel at Conoco's expense. Conoco refused to accept any formal agreement concerning the litigation, but was willing to address two of the four points in the proposed Consent Decrees. Specifically, item 3 above was expressly provided for in the proposed Consent Decrees, and language was agreed upon in the Consent Decrees which helps resolve any ambiguity as to the proper allocation of expenses under the Asset Purchase Agreement. On August 31, 1984, Vista and Conoco reached agreement on the terms of Consent Decree proposals which would be acceptable to both companies, and forwarded the proposals to the Justice Department.

We anticipate the Justice Department will object to certain terms of the August 31 counter-offer, and that further negotiations among Vista, Conoco and the Justice Department will be necessary to obtain acceptable settlement Consent Decrees. During the interim, Vista and Conoco engineers will be beginning the development of the compliance plans expected to be required in any settlement. In addition, I have recommended that outside counsel be retained to represent Vista in the intervention required for settlement, and for litigation in the event settlement cannot be reached.



William L. McClain

/jmv

cc: R. J. Anderson - Houston  
R. Conrad, Lake Charles  
H. R. Flammer, - Houston  
J. Friend, Aberdeen  
H. D. Garrison, Oklahoma City  
R. D. Gamblin - Houston  
J. J. Hall - Houston  
D. A. Kuhn - Houston  
R. E. Lehmkuhl - Houston

RECEIVED

To: Distribution

FEB 14 1986

M.C.M.

From: S. C. Racca  
Date: February 13, 1986

VISTA

Interoffice  
Communication

Subject: Consent Decree "Emission Control Plan"

As a result of the USA vs. Conoco Consent Decree entered into by Vista, an "Emission Control Plan" (ECP) was prepared and submitted to the Environmental Protection Agency (EPA). The ECP includes several administrative and physical measures, with time tables for completion, intended to reduce/eliminate emissions of vinyl chloride due to relief valve releases and incinerator bypasses. It was made an enforceable addendum to the Decree on February 7. This, in effect, started the "clock" ticking on the completion dates committed to in the ECP. To insure that all deadlines are met, and thus avoid monetary penalties (\$1000 per day) for exceeding them, the attached documents outlining responsibility and timing for identified measures should be adhered to. In addition to physical and administrative measures outlined in the ECP, the Decree requires certain reporting of emissions and progress. Responsibility and timing for reporting is also outlined in the attached.

The VCM Plant contact on all items identified herein is M. C. Manion. Keep him informed of project status and of any changes/alterations to project scope. If there are any questions concerning the attached or if any obstacles, which may result in exceeding deadlines, are encountered please notify M. C. Manion at (318) 494-5031 immediately.



Stephen C. Racca

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CWH 000011632

Table I. Physical Measures Timing

|    |                                                                                                     | Completion<br>Date | Actual<br>Date                 |
|----|-----------------------------------------------------------------------------------------------------|--------------------|--------------------------------|
| 1) | Complete review designs for all physical measures identified in the ECP (See Table II for listing). | 2-21-86            | 2-14-86                        |
| 2) | Conduct in-plant review of all designs.                                                             | 2-28-86            | 2-21-86                        |
| 3) | Complete definitive designs for all physical measures identified in the ECP.                        | 3-28-86            | 3-28-86                        |
| 4) | Complete definitive quality planning packages and estimates.                                        | 4-28-86            | 6-4-86                         |
| 5) | Complete and receive approval of Vista AFE for all physical measures identified in the ECP.         | 5-12-86            | 6-10-86                        |
| 6) | Submit planning packages, estimates, and AFE for all physical measures to Conoco.                   | 5-19-86            | Subm. 6-10-86<br>app'd 6-26-86 |
| 7) | Submit progress payment invoices to Conoco.                                                         | (1)                | in prog.                       |
| 8) | Complete construction of all physical measures.                                                     | 4-07-87            |                                |
| 9) | Conduct audit of expenditure records(2) and invoice Conoco for monies over the approved AFE amount. | (3)                |                                |

Notes

- (1) Submit within 30 days after Conoco has completed review of the AFE and every 30 days thereafter (See Stipulated Penalties Agreement in Attachment I).
- (2) See Attachment I for documentation of expenditures required for reimbursement by Conoco.
- (3) Audit to be conducted after completion of construction and clearance of all charges (See Attachment I).

\* delayed due to Incin Burner Modif Version selection ; firm quote req'd for AFE.