

**BEFORE THE UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 3**

IN THE MATTER OF:	:	
	:	
Occidental Chemical Corp. Superfund Site,	:	
Lower Pottsgrove, Montgomery County,	:	
Pennsylvania	:	
	:	Docket No. III-94-26-DC
	:	
Occidental Chemical Corp., and	:	
	:	
Bridgestone Americas Tire Operations, LLC (f/k/a	:	
Bridgestone/Firestone, Inc.),	:	
	:	
Respondents	:	
	:	
Proceeding under Section 106(a) of the	:	
Comprehensive Environmental Response,	:	
Compensation, and Liability Act of 1980, as	:	
amended, 42 U.S.C. § 9606	:	
	:	

**Amendment No. 3 to the
Administrative Order For Remedial Design and Remedial Action**

The U.S. Environmental Protection Agency (“EPA”) selected a remedial action for the Occidental Chemical Corporation Superfund Site, located near Pottstown, in Lower Pottsgrove Township, Montgomery County, Pennsylvania (“the Site”), in a Record of Decision (“ROD”) dated June 30, 1993. To implement the remedial action, EPA issued an Administrative Order for Remedial Design and Remedial Action (EPA Docket No. III-94-26-DC) (“Order”) to two potentially responsible parties (“Respondents”) on June 23, 1994, in accordance with Section 106(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended.¹ Following the completion of the construction of the remedial action by Respondent Occidental Chemical Corp. (“OxyChem”) under this Order, EPA has determined that modifications to Section XVI of this Order (Assurance of Ability to Complete Work) are appropriate.

¹ 42 U.S.C. § 9606(a).

I. MODIFICATION OF ORDER

As provided by Section XXVIII (Modifications) of the Order, EPA hereby replaces Section XVI (Assurance of Ability to Complete Work) in its entirety with the following provisions:

XVI. FINANCIAL ASSURANCE

1. In order to ensure completion of the Work required under this Order, Respondents shall secure financial assurance in the amount of \$9,941,245.00 (“Estimated Cost of the Work”). The “Work”, as used in this Section XVI shall mean all activities Respondents are required to perform under the Order, except those required by Section XVII (Record Retention). The “Work” includes, without limitation, all operation and maintenance (“O&M”) activities required for maintenance of the Remedial Action, as approved or developed by EPA under the Order, and any additional response actions EPA determines are necessary to meet the Performance Standards or to carry out the remedy selected in the ROD and any existing or future Explanations of Significant Differences (“ESD”) or ROD Amendments. The financial assurance must be one or more of the mechanisms listed below, in a form substantially identical to the relevant sample documents available from EPA or under the “Financial Assurance - Orders” category on the Cleanup Enforcement Model Language and Sample Documents Database at <https://cfpub.epa.gov/compliance/models/>, and satisfactory to EPA. Respondents may use multiple mechanisms if they are limited to trust funds, surety bonds guaranteeing payment, or letters of credit. The following are acceptable mechanisms:

a. A trust fund: (i) established to ensure that funds will be available as and when needed for performance of the Work; (ii) administered by a trustee that has the authority to act as a trustee, and whose trust operations are regulated and examined by a federal or state agency; and (iii) governed by an agreement that requires the trustee to make payments from the fund only when the Superfund Division Director advises the trustee in writing that: (A) payments are necessary to fulfill the affected Respondents’ obligations under the Order; or (B) funds held in trust are in excess of the funds that are necessary to complete the performance of Work in accordance with this Order;

b. A surety bond, issued by a surety company among those listed as acceptable sureties on federal bonds as set forth in Circular 570 of the U.S. Department of the Treasury, guaranteeing payment or performance in accordance with ¶ 7 (Access to Financial Assurance);

c. An irrevocable letter of credit, issued by an entity that has the authority to issue letters of credit and whose letter-of-credit operations are regulated and examined by a federal or state agency, guaranteeing payment in accordance with ¶ 7 (Access to Financial Assurance);

d. A demonstration by a Respondent that it meets the relevant financial test criteria of ¶ 4 below; or

e. A guarantee to fund or perform the Work executed by a company (i) that is a direct or indirect parent company of a Respondent or has a “substantial business relationship” (as defined in 40 C.F.R. § 264.141(h)) with a Respondent; and (ii) can demonstrate to EPA’s satisfaction that it meets the financial test criteria of ¶ 4 below.

2. **Standby Trust.** If Respondents seek to establish financial assurance by using a surety bond, a letter of credit, or a corporate guarantee, Respondents shall at the same time establish and thereafter maintain a standby trust fund, which must meet the requirements specified in ¶ 1.a above, and into which payments from the other financial assurance mechanism can be deposited if the financial assurance provider is directed to do so by EPA pursuant to ¶ 7 (Access to Financial Assurance). An originally signed duplicate of the standby trust agreement must be submitted, with the other financial mechanism, to EPA in accordance with ¶ 3 below. Until the standby trust fund is funded pursuant to ¶ 7 (Access to Financial Assurance), neither payments into the standby trust fund nor annual valuations are required.

3. **Requirements for Submissions.**

a. Within 30 days after the Effective Date, as defined in Section II of this Amendment No. 3 to the Order (“Amendment No. 3”), Respondents shall submit to EPA a proposed financial assurance mechanism(s) in draft form in accordance with ¶ 1 for EPA’s review. Any proposed draft financial assurance mechanism(s) shall be submitted to EPA Financial Assurance Specialist, Kimberly Scharl, via email at scharl.kimberly@epa.gov, with a copy via email to Assistant Regional Counsel, Robert Hasson, at hasson.robert@epa.gov.

b. Within 90 days after the Effective Date, or 30 days after EPA’s approval of the form and substance of Respondents’ financial assurance, whichever is later, Respondents shall secure all executed or otherwise finalized mechanisms or other documents consistent with the EPA-approved form of financial assurance and shall submit such mechanisms and documents to:

Linda Dietz (3SD00)
Deputy Director
Superfund & Emergency Management Division
U.S. Environmental Protection Agency – Region 3
Four Penn Center
1600 John F. Kennedy Boulevard
Philadelphia, PA 19103
dietz.linda@epa.gov

c. All submissions of financial assurance mechanisms and documents under this Order **must** include a cover letter identifying the name of the Site (Occidental Chemical Corp. Superfund Site), Site Spill ID No. 03S9, EPA ID No. PAD980229298, and the EPA Docket Number for the Order (Docket No. III-94-26-DC).

4. Respondents seeking to provide financial assurance by means of a demonstration or guarantee under ¶ 1.d or 1.e above must, within 30 days of the Effective Date:

a. Demonstrate that:

(1) the affected Respondent or guarantor has:

- i. Two of the following three ratios: a ratio of total liabilities to net worth less than 2.0; a ratio of the sum of net income plus depreciation, depletion, and amortization to total liabilities greater than 0.1; and a ratio of current assets to current liabilities greater than 1.5; and
- ii. Net working capital and tangible net worth each at least six times the sum of the Estimated Cost of the Work and the amounts, if any, of other federal, state, or tribal environmental obligations financially assured through the use of a financial test or guarantee; and
- iii. Tangible net worth of at least \$10 million; and
- iv. Assets located in the United States amounting to at least 90 percent of total assets or at least six times the sum of the Estimated Cost of the Work and the amounts, if any, of other federal, state, or tribal environmental obligations financially assured through the use of a financial test or guarantee; or

(2) The affected Respondent or guarantor has:

- i. A current rating for its senior unsecured debt of AAA, AA, A, or BBB as issued by Standard and Poor's or Aaa, Aa, A or Baa as issued by Moody's; and

- ii. Tangible net worth at least six times the sum of the Estimated Cost of the Work and the amounts, if any, of other federal, state, or tribal environmental obligations financially assured through the use of a financial test or guarantee; and
- iii. Tangible net worth of at least \$10 million; and
- iv. Assets located in the United States amounting to at least 90 percent of total assets or at least six times the sum of the Estimated Cost of the Work and the amounts, if any, of other federal, state, or tribal environmental obligations financially assured through the use of a financial test or guarantee; and

b. Submit to EPA for the affected Respondent or guarantor: (i) a copy of an independent certified public accountant's report of the entity's financial statements for the latest completed fiscal year that does not express an adverse opinion or disclaimer of opinion; and (ii) a letter from its chief financial officer and a report from an independent certified public accountant substantially identical to the sample letter and reports available from EPA or under the "Financial Assurance – Orders" subject list category on the Cleanup Enforcement Model Language and Sample Documents Database at <https://cfpub.epa.gov/compliance/models/>.

5. Respondents shall diligently monitor the adequacy of the financial assurance. If any Respondent becomes aware of any information indicating that the financial assurance provided under this Section is inadequate or otherwise no longer satisfies the requirements of this Section, such Respondent shall notify EPA of such information within 30 days. If EPA determines that the financial assurance provided under this Section is inadequate or otherwise no longer satisfies the requirements of this Section, EPA will notify the affected Respondent of such determination. Respondents shall, within 30 days after notifying EPA or receiving notice from EPA under this Paragraph, secure and submit to EPA for approval a proposal for a revised or alternative financial assurance mechanism that satisfies the requirements of this Section. Respondents shall follow the procedures of ¶ 8 (Modification of Amount, Form, or Terms of Financial Assurance) in seeking approval of, and submitting documentation for, the revised or alternative financial assurance mechanism. Respondents' inability to secure financial assurance in accordance with this Section does not excuse performance of any other obligation under the Order.

6. Respondents providing financial assurance by means of a demonstration or guarantee under ¶ 1.d or 1.e must also:

- a. Annually resubmit the documents described in ¶ 4.b within 90 days after the close of the affected Respondent's or guarantor's fiscal year;
- b. Notify EPA within 30 days after the affected Respondent or guarantor determines that it no longer satisfies the relevant financial test criteria and requirements set forth in this Section XVI (Financial Assurance); and
- c. Provide to EPA, within 30 days of EPA's request, reports of the financial condition of the affected Respondent or guarantor in addition to those specified in ¶ 4.b; EPA may make such a request at any time based on a belief that the affected Respondent or guarantor may no longer meet the financial test requirements of this Section.

7. Access to Financial Assurance

- a. If EPA determines that Respondents (i) have ceased implementation of any portion of the Work, (ii) are seriously or repeatedly deficient or late in their performance of the Work, or (iii) are implementing the Work in a manner that may cause an endangerment to human health or the environment, EPA may issue a written notice ("Performance Failure Notice") to both Respondents and the financial assurance provider regarding the affected Respondents' failure to perform. Any Performance Failure Notice issued by EPA will specify the grounds upon which such notice was issued and will provide Respondents a period of 10 days within which to remedy the circumstances giving rise to EPA's issuance of such notice. If, after expiration of the 10-day period specified in this Paragraph, Respondents have not remedied to EPA's satisfaction the circumstances giving rise to EPA's issuance of the relevant Performance Failure Notice, then, in accordance with any applicable financial assurance mechanism, EPA may at any time thereafter direct the financial assurance provider to immediately: (1) deposit any funds assured pursuant to this Section into the standby trust fund; or (2) arrange for performance of the Work in accordance with this Order.
- b. If EPA is notified by the provider of a financial assurance mechanism that the provider intends to cancel the mechanism, and the affected Respondent fails to provide an alternative financial assurance mechanism in accordance with this Section at least 30 days prior to the cancellation date, EPA may, prior to cancellation, direct the financial assurance provider to deposit any funds guaranteed under such mechanism into the standby trust fund for use consistent with this Section.

8. Modification of Amount, Form, or Terms of Financial Assurance.

- a. Respondents may submit, on any anniversary of the Effective Date or following Respondents' request for, and EPA's approval of, another date, a request to reduce the amount, or change the form or terms, of the financial assurance mechanism. Any such request must be submitted via email to Remedial Project Manager, Andrew Haneiko, at

haneiko.andrew@epa.gov, with a copy via email to Senior Assistant Regional Counsel, Robert Hasson, at hasson.robert@epa.gov, and the request must include an estimate of the cost of the remaining Work, an explanation of the bases for the cost calculation, a description of the proposed changes, if any, to the form or terms of the financial assurance, and any newly proposed financial assurance documentation in accordance with the requirements of ¶¶ 1 and 2 (Standby Trust).

b. EPA will notify Respondents of its decision to approve or disapprove a requested reduction or change. Respondents may reduce the amount or change the form or terms of the financial assurance only in accordance with EPA's approval.

c. Within 30 days after receipt of EPA's approval of the requested modifications pursuant to this Paragraph, Respondents shall submit to the EPA official referenced in ¶ 3.b, above, all executed or otherwise finalized documentation relating to the amended, reduced, or alternative financial assurance mechanism(s). All such executed or otherwise finalized documentation must include a cover letter identifying the name of the Site (Occidental Chemical Corp. Superfund Site), Site Spill ID No. 03S9, EPA ID No. PAD980229298, and the EPA Docket Number for the Order (Docket No. III-94-26-DC).

d. Upon EPA's approval, the Estimated Cost of the Work shall be deemed to be the estimate of the cost of the remaining Work in the approved proposal.

9. Release, Cancellation, or Discontinuation of Financial Assurance.

Respondents may release, cancel, or discontinue any financial assurance provided under this Section only: (i) after receipt of documentation issued by EPA certifying completion of the Work; or (ii) in accordance with EPA's written approval of such release, cancellation, or discontinuation.

II. EFFECTIVE DATE

The Effective Date for this Amendment No. 3 shall be ten (10) days after it is signed by the Director of the EPA Region 3 Superfund & Emergency Management Division or his delegatee, unless a conference is requested or notice is given that written materials will be submitted in lieu of a conference in accordance with the procedures for Respondents' Notice of Intent to Comply ("Notice"), as provided below. If a conference is requested, or such Notice is submitted, this Amendment No. 3 shall be effective on the 10th day after the day of the conference, or if no conference is requested, on the 10th day after written materials, if any, are submitted, unless EPA determines that this Amendment No. 3 should be modified based on the conference or written materials. In such event, EPA shall notify Respondents, within the applicable 10-day period, that EPA intends to modify this Amendment No. 3. The modified Amendment No. 3 shall be effective five (5) days after it is signed by the Superfund Division Director or his delegatee.

III. NOTICE OF INTENT TO COMPLY

On or before the Effective Date, each Respondent shall notify EPA in writing of Respondent's irrevocable intent to comply with this Amendment No. 3. Such written notice shall be sent via email to EPA's Remedial Project Manager, Andrew Haneiko, at haneiko.andrew@epa.gov, and to Senior Assistant Regional Counsel, Robert Hasson, at hasson.robert@epa.gov. Each Respondent's written Notice shall describe, using facts that exist on or prior to the Effective Date, any "sufficient cause" defense asserted by such Respondent under 42 U.S.C. §§ 9606(a) and 9607(c)(3). The absence of a response by EPA to the Notice required by this Section shall not be deemed to be acceptance of any Respondent's assertions. Failure of any Respondent to provide such Notice within this time period shall, as of the Effective Date, be treated as a violation by such Respondent of the Order, as modified by this Amendment No. 3.

IV. RESERVATION OF RIGHTS

Except as provided herein, nothing in this Amendment No. 3 shall diminish or excuse any of Respondents' obligations under the Order. In addition to all rights reserved by EPA in Section XVIII (Reservation of Rights) of the Order, EPA reserves its rights to increase or modify Respondents' obligation for financial assurance to ensure completion of the Work required under the Order.

IT IS SO ORDERED:

PAUL LEONARD Digitally signed by PAUL LEONARD
Date: 2022.05.16 23:22:32 -04'00'

Electronic Signature and Date

PAUL LEONARD

Director

Superfund & Emergency Management Division

U.S. Environmental Protection Agency - Region 3

Four Penn Center

1600 John F. Kennedy Boulevard

Philadelphia, PA 19103