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SUPPLEMENTARY INFORMATION:

The Design for the Environment (DfE) Lithography Project is a voluntary, cooperative partnership between the EPA and the printing industry to develop a comparative assessment of blanket washes used by lithographers. The partnership has completed the comparative analysis of 37 blanket wash formulations entitled "Cleaner Technologies Substitutes Assessment (CTSA): Lithographic Blanket Washes." The CTSA contains information that helps lithographers in making decisions that incorporate environmental concerns along with cost and performance information when purchasing these chemicals. The full report is intended for technical audiences, formulators and suppliers, and environmental health personnel.

To convey better the results of the assessment to small business printers, the DfE Lithography Project created a summary document entitled "Solutions for Lithographic Printers: An Evaluation of Substitute Blanket Washes." This booklet is designed to help printers evaluate their current blanket wash and compare it to substitute washes. How safe are they to use? How do they perform? How much do they cost to use? What are their environmental risks? This booklet tells how to answer these questions in a direct, easy to understand style for small business printers and press operators.

Dated: February 17, 1998.

William H. Sanders, III,

Director, Office of Pollution Prevention and Toxics

[FR Doc. 98-4813 Filed 2-24-98; 8:45 am]

BILLING CODE 6560-50-F

ENVIRONMENTAL PROTECTION AGENCY

[FRL-5970-5]

Superfund Program; Revisions to Model CERCLA RD/RA Consent Decree

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: The Agency is today publishing revisions to selected provisions of the Model CERCLA RD/RA Consent Decree. The revisions, which will supersede counterpart provisions in the previously effective version of the Model published in 1995, have been jointly adopted by EPA and the Department of Justice. The primary

effect of the revisions is to amend or supplement language in the Model dealing principally with the subjects of access to Superfund site property and "institutional controls" designed to restrict land/water use on such properties. By publishing these revisions to Model language EPA seeks to broadly inform affected members of the public of changes in the government's policy with respect to settlements for the performance of remedial design/remedial action (RD/RA).

FOR FURTHER INFORMATION CONTACT:

Steve Botts, Mail Code 2272-A, Office of Enforcement and Compliance Assurance, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, (202)564-4217.

Steven A. Herman,

Assistant Administrator, Office of Enforcement and Compliance Assurance.

Memorandum

Subject: Revisions to the Access and Institutional Control Provisions of the Model CERCLA RD/RA Consent Decree

From: Steven A. Herman, Assistant Administrator; Lois J. Schiffer, Assistant Attorney General, Environment and Natural Resources Division, U.S. Department of Justice.

To: EPA Regional Administrators, Regions I-X.

We herewith transmit to you final language revising selected provisions of the Model CERCLA RD/RA Consent Decree published in the July 28, 1995 **Federal Register** (60 Fed. Reg. 38,817). The attached language is designed to completely supplant that now appearing in (1) the definition of "Future Response Costs" contained in Section IV of the 1995 Model, (2) Paragraph 9 of the 1995 Model (entitled "Notice of Obligations to Successors-in-Title") and (3) Section IX of the 1995 Model (entitled "Access [and Institutional Controls]"). The new Model language has been developed over the last two years by an Institutional Controls Workgroup comprised of representatives from the Department of Justice and EPA Headquarters and Regional offices. A draft of the new Model language has been subjected to review and comment by all interested offices.

One important impetus behind the development of this revised Model language has been EPA's continued heavy reliance on Superfund remedies which are designed to contain discovered contamination on-site. At sites where the remedial strategy is to consolidate wastes on-site or contain

them in place, it is particularly important to develop effective means of preventing the public from coming into contact with contaminated wastes or disturbing important features of the remedial technology. The revisions to the access and institutional control provisions of the Model have accordingly been drafted to provide the government with a broader range of options and more efficacious mechanisms for ensuring not only that government representatives and responsible private parties performing remedial work will have continuing access to sites as necessary to implement, operate, and maintain remedies, but also that needed restrictions on land and water use at Superfund site properties can be enforced against all persons, including subsequent purchasers of contaminated site property.

Legal research suggests that in most jurisdictions the most powerful tool available to government for guaranteeing site access and restricting site activities on a long-term basis is acquisition of a property interest (generally an easement or restrictive covenant) running with the land. Thus, the revised Model language contains procedures pursuant to which owners of contaminated site property can effectively convey to the United States (or other responsible entities) a right of access and a right to enforce needed land/water use restrictions that run with the land. It should be emphasized here that State law generally governs the conveyance of real property interests. It is therefore important that Regional offices be alert to the possible need to modify or supplement Model language regarding any such conveyance as necessary to comport with the requirements of applicable State law.

We also wish to remind the Regions that whenever EPA acquires an interest in real property in order to effectuate remedial action at a Superfund site (as, for example, in the case where EPA is granted an easement including access rights or the right to enforce land/water use restrictions on certain property), EPA must comply with the requirements of CERCLA Section 104(j) and the federal land acquisition regulations. Section 104(j) requires that the State in which the property is located agree in advance to accept transfer of any property interest held by EPA upon completion of the remedial action. The federal land acquisition regulations impose additional requirements designed to ensure the United States obtains a valid property interest. The Regions should consult with EPA's Office of General Counsel

regarding the requirements of CERCLA Section 104(j) and the land acquisition regulations whenever they are considering acquiring an interest in property.

The attached revisions to Model language will become effective upon the date of this memorandum. To the extent the revised Model language applies to the circumstances of any particular settlement, the responsible government negotiation team should incorporate it into both future consent decrees and those under negotiation on the date of this memorandum.

If you have any questions regarding these revisions to the Model CERCLA RD/RA Consent Decree, please contact Donald Frankel, Environmental Enforcement Section, Environment and Natural Resources Division, Department of Justice, (617) 450-0442, or Steve Botts, Regional Support Division, Office of Site Remediation Enforcement, Environmental Protection Agency, (202) 564-4217.

Proposed Revisions to Access & Institutional Controls Language for RD/RA CDs

"Future Response Costs" shall mean all costs, including, but not limited to, direct and indirect costs, that the United States incurs in reviewing or developing plans, reports and other items pursuant to this Consent Decree, verifying the Work, or otherwise implementing, overseeing, or enforcing this Consent Decree, including, but not limited to, payroll costs, contractor costs, travel costs, laboratory costs, the costs incurred pursuant to Sections VII, IX (including, but not limited to, the cost of attorney time and any monies paid to secure access and/or to secure or implement institutional controls including, but not limited to, the amount of just compensation), XV, and Paragraph 85 of Section XXI. Future Response Costs shall also include all Interim Response Costs, and all Interest on the Past Response Costs that has accrued pursuant to 42 U.S.C. § 9607(a) during the period from [insert the date identified in the Past Response Costs definition] to the date of entry of this Consent Decree.

[**Note:** For Consent Decrees in which there is an Owner Settling Defendant, add Paragraph 9, below. Paragraph 9(a) may be deleted if an easement will be recorded pursuant to Paragraph 26(c).]

9. Notice to Successors-in-Title.

a. With respect to any property owned or controlled by the Owner Settling Defendant(s) that is located within the Site, within 15 days after the entry of this Consent Decree, the Owner Settling

Defendant(s) shall submit to EPA for review and approval a notice to be filed with the Recorder's Office [or Registry of Deeds or other appropriate office],

_____ County, State of _____, which shall provide notice to all successors-in-title that the property is part of the Site, that EPA selected a remedy for the Site on _____, and that potentially responsible parties have entered into a Consent Decree requiring implementation of the remedy. Such notice(s) shall identify the United States District Court in which the Consent Decree was filed, the name and civil action number of this case, and the date the Consent Decree was entered by the Court. The Owner Settling Defendant(s) shall record the notice(s) within 10 days of EPA's approval of the notice(s). The Owner Settling Defendant(s) shall provide EPA with a certified copy of the recorded notice(s) within 10 days of recording such notice(s).

b. At least 30 days prior to the conveyance of any interest in property located within the Site including, but not limited to, fee interests, leasehold interests, and mortgage interests, the Owner Settling Defendant(s) conveying the interest shall give the grantee written notice of (i) this Consent Decree, (ii) any instrument by which an interest in real property has been conveyed that confers a right of access to the Site (hereinafter referred to as "access easements") pursuant to Section IX (Access and Institutional Controls), and (iii) any instrument by which an interest in real property has been conveyed that confers a right to enforce restrictions on the use of such property (hereinafter referred to as "restrictive easements") pursuant to Section IX (Access and Institutional Controls). At least 30 days prior to such conveyance, the Owner Settling Defendant(s) conveying the interest shall also give written notice to EPA and the State of the proposed conveyance, including the name and address of the grantee, and the date on which notice of the Consent Decree, access easements, and/or restrictive easements was given to the grantee.

c. In the event of any such conveyance, the Owner Settling Defendant's obligations under this Consent Decree, including, but not limited to, its obligation to provide or secure access and institutional controls, as well as to abide by such institutional controls, pursuant to Section IX (Access and Institutional Controls) of this Consent Decree, shall continue to be met by the Owner Settling Defendant(s). In no event shall the conveyance release or otherwise affect the liability of the Owner Settling Defendant(s) to comply with all provisions of this Consent

Decree, absent the prior written consent of EPA. If the United States approves, the grantee may perform some or all of the Work under this Consent Decree.

IX. Access and Institutional Controls

[**Note:** Subparagraphs 26(a) and 27(a) should routinely be included in consent decrees. Subparagraphs 26(b) and 27(b) should be included where EPA determines that land/water use restrictions are needed on property owned by settling or non-settling landowners to ensure the integrity or protectiveness of the remedial action. Subparagraphs 26(c) and 27(c) should be included where EPA determines that a property interest running with the land (granting either a right of access or a right to enforce land/water use restrictions) should be acquired by EPA or another grantee from settling or non-settling landowners.]

26. If the Site, or any other property where access and/or land/water use restrictions are needed to implement this Consent Decree, is owned or controlled by any of the Settling Defendants, such Settling Defendants shall:

a. commencing on the date of lodging of this Consent Decree, provide the United States[, the State,] and its [their] representatives, including EPA and its contractors, with access at all reasonable times to the Site, or such other property, for the purpose of conducting any activity related to this Consent Decree including, but not limited to, the following activities:

- i. Monitoring the Work;
- ii. Verifying any data or information submitted to the United States [or the State];
- iii. Conducting investigations relating to contamination at or near the Site;
- iv. Obtaining samples;
- v. Assessing the need for, planning, or implementing additional response actions at or near the Site;
- vi. Implementing the Work pursuant to the conditions set forth in Paragraph 85 of this Consent Decree;
- vii. Inspecting and copying records, operating logs, contracts, or other documents maintained or generated by Settling Defendants or their agents, consistent with Section XXIV (Access to Information);
- viii. Assessing Settling Defendants' compliance with this Consent Decree; and

ix. Determining whether the Site or other property is being used in a manner that is prohibited or restricted, or that may need to be prohibited or restricted, by or pursuant to this Consent Decree;

b. commencing on the date of lodging of this Consent Decree, refrain from using the Site, or such other property, in any manner that would interfere with or adversely affect the integrity or

protectiveness of the remedial measures to be implemented pursuant to this Consent Decree. Such restrictions include, but are not limited to, [LIST SPECIFIC RESTRICTIONS]; and

c. execute and record in the Recorder's Office [or Registry of Deeds or other appropriate land records office] of _____ County, State of _____,

an easement, running with the land, that (i) grants a right of access for the purpose of conducting any activity related to this Consent Decree including, but not limited to, those activities listed in Paragraph 26(a) of this Consent Decree, and (ii) grants the right to enforce the land/water use restrictions listed in Paragraph 26(b) of this Consent Decree, or other restrictions that EPA determines are necessary to implement, ensure non-interference with, or ensure the protectiveness of the remedial measures to be performed pursuant to this Consent Decree. Such Settling Defendants shall grant the access rights and the rights to enforce the land/water use restrictions to [(i) the United States, on behalf of EPA, and its representatives, (ii) the State and its representatives, (iii) the other Settling defendants and their representatives, and/or (iv) other appropriate grantees].¹ Such Settling Defendants shall, within 45 days of entry of this Consent Decree,² submit to EPA for review and approval with respect to such property:

i. A draft easement, in substantially the form attached hereto as Appendix _____, that is enforceable under the laws of the State of _____, free and clear of all prior liens and encumbrances (except as approved by EPA), and acceptable under the Attorney General's Title Regulations promulgated pursuant to 40 U.S.C. § 255; and

ii. a current title commitment or report prepared in accordance with the U.S. Department of Justice *Standards for the Preparation of Title Evidence in Land Acquisitions by the United States* (1970) (the "Standards").

Within 15 days of EPA's approval and acceptance of the easement, such Settling Defendants shall update the

¹ If, at the time that a consent decree is being negotiated, EPA is not able to determine which persons should be the grantees of the easement, Paragraph 26(c) should be redrafted to insert the phrase "one or more of the following persons, as determined by EPA," prior to the bracketed list of potential grantees.

² If, at the time that a consent decree is being negotiated, EPA is unable to determine whether it wants to obtain an easement that runs with the land, but believes that it might want to obtain such an interest in the future, Paragraph 26(c) should be redrafted to insert the phrase "if EPA so requests," at the beginning of the subparagraph, and the Settling Defendants should be required to submit the draft easement a certain number of days from the date of EPA's request.

title search and, if it is determined that nothing has occurred since the effective date of the commitment or report to affect the title adversely, record the easement with the Recorder's Office [or Registry of Deeds or other appropriate office] of _____ County. Within 30 days of recording the easement, such Settling Defendants shall provide EPA with final title evidence acceptable under the Standards, and a certified copy of the original recorded easement showing the clerk's recording stamps.

27. If the Site, or any other property where access and/or land/water use restrictions are needed to implement this Consent Decree, is owned or controlled by persons other than any of the Settling Defendants, Settling Defendants shall use best efforts to secure from such persons:

a. an agreement to provide access thereto for Settling Defendants, as well as for the United States on behalf of EPA, and the State, as well as their representatives (including contractors), for the purpose of conducting any activity related to this Consent Decree including, but not limited to, those activities listed in Paragraph 26(a) of this Consent Decree;

b. an agreement, enforceable by the Settling Defendants and the United States, to abide by the obligations and restrictions established by Paragraph 26(b) of this Consent Decree, or that are otherwise necessary to implement, ensure non-interference with, or ensure the protectiveness of the remedial measures to be performed pursuant to this Consent Decree; and

c. the execution and recordation in the Recorder's Office [or Registry of Deeds or other appropriate land records office] of _____ County, State of _____, of an easement, running with the land, that (i) grants a right of access for the purpose of conducting any activity related to this Consent Decree including, but not limited to, those activities listed in Paragraph 26(a) of this Consent Decree, and (ii) grants the right to enforce the land/water use restrictions listed in Paragraph 26(b) of this Consent Decree, or other restrictions that EPA determines are necessary to implement, ensure non-interference with, or ensure the protectiveness of the remedial measures to be performed pursuant to this Consent Decree. The access rights and/or rights to enforce land/water use restrictions shall be granted to [(i) the United States, on behalf of EPA, and its representatives, (ii) the State and its representatives, (iii) the other Settling defendants and their representatives,

and/or (iv) other appropriate grantees].³ Within 45 days of entry of this Consent Decree,⁴ Settling Defendants shall submit to EPA for review and approval with respect to such property:

i. A draft easement, in substantially the form attached hereto as Appendix _____, that is enforceable under the laws of the State of _____, free and clear of all prior liens and encumbrances (except as approved by EPA), and acceptable under the Attorney General's Title Regulations promulgated pursuant to 40 U.S.C. § 255; and

ii. a current title commitment or report prepared in accordance with the U.S. Department of Justice *Standards for the Preparation of Title Evidence in Land Acquisitions by the United States* (1970) (the "Standards").

Within 15 days of EPA's approval and acceptance of the easement, Settling Defendants shall update the title search and, if it is determined that nothing has occurred since the effective date of the commitment or report to affect the title adversely, the easement shall be recorded with the Recorder's Office [or Registry of Deeds or other appropriate office] of _____ County. Within 30 days of the recording of the easement, Settling Defendants shall provide EPA with final title evidence acceptable under the Standards, and a certified copy of the original recorded easement showing the clerk's recording stamps.

28. For purposes of Paragraph 27 of this Consent Decree, "best efforts" includes the payment of reasonable sums of money in consideration of access, access easements, land/water use restrictions, and/or restrictive easements.

Note: It may be appropriate to delete the preceding sentence if the property where access or land/water use restrictions are needed is owned by a non-settling party who EPA determines is a PRP. (See guidance entitled "Model RD/RA Consent Decree: Acceptable Modifications to Model Language (Directive No. 2)," March 25, 1992)]

If any access or land/water use restriction agreements required by Paragraphs 27(a) or 27(b) of this Consent Decree are not obtained within 45 days

³ If, at the time that a consent decree is being negotiated, EPA is not able to determine which persons should be the grantees of the easement, Paragraph 27(c) should be redrafted to insert the phrase "one or more of the following persons, as determined by EPA," prior to the bracketed list of potential grantees.

⁴ If, at the time that a consent decree is being negotiated, EPA is unable to determine whether it wants to obtain an easement that runs with the land, but believes that it might want to obtain such an interest in the future, Paragraph 27(c) should be redrafted to begin with the phrase "if EPA so requests," and the Settling Defendants should be required to submit the draft easement within a certain number of days from the date of EPA's request.

of the date of entry of this Consent Decree, or any access easements or restrictive easements required by Paragraph 27(c) of this Consent Decree are not submitted to EPA in draft form within 45 days of the date of entry of this Consent Decree,⁵ Settling Defendants shall promptly notify the United States in writing, and shall include in that notification a summary of the steps that Settling Defendants have taken to attempt to comply with Paragraph 27 of this Consent Decree. The United States may, as it deems appropriate, assist Settling Defendants in obtaining access or land/water use restrictions, either in the form of contractual agreements or in the form of easements running with the land. Settling Defendants shall reimburse the United States in accordance with the procedures in Section XVI (Reimbursement of Response Costs), for all costs incurred, direct or indirect, by the United States in obtaining such access and/or land/water use restrictions including, but not limited to, the cost of attorney time and the amount of monetary consideration paid or just compensation.

29. If EPA determines that land/water use restrictions in the form of state or local laws, regulations, ordinances or other governmental controls are needed to implement the remedy selected in the ROD, ensure the integrity and protectiveness thereof, or ensure non-interference therewith, Settling Defendants shall cooperate with EPA's [and the State's] efforts to secure such governmental controls.

30. Notwithstanding any provision of this Consent Decree, the United States [and the State] retain[s] all of its access authorities and rights, as well as all of its [their] rights to require land/water use restrictions, including enforcement authorities related thereto, under CERCLA, RCRA and any other applicable statute or regulations.

[FR Doc. 98-4820 Filed 2-24-98; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[OPPT-59363; FRL-5773-3]

Certain Chemicals; Approval of a Test Marketing Exemption

AGENCY: Environmental Protection Agency (EPA).

⁵If the obligation to obtain an easement pursuant to Paragraph 27(c) runs from the date of EPA's request for such an easement, as opposed to from the date of entry of the consent decree, this language should be revised accordingly.

ACTION: Notice.

SUMMARY: This notice announces EPA's approval of an application for test marketing exemption (TME) under section 5(h)(1) of the Toxic Substances Control Act (TSCA) and 40 CFR 720.38. EPA has designated this application as TME-97-10. The test marketing conditions are described below.

DATES: This notice becomes effective February 13, 1998. Written comments will be received until March 12, 1998.

ADDRESSES: Written comments, identified by the docket control number [OPPT-59363] and the specific TME number should be sent to: TSCA Nonconfidential Information Center (NCIC), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. NEB-607 (7407), 401 M Street, SW., Washington, DC 20460. (202) 554-1404, TDD (202) 554-0551.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: oppt.ncic@epamail.epa.gov. Comments and data will also be accepted on disks in WordPerfect in 5.1/6.1 file format or ASCII file format. All comments and data in electronic form must be identified by [OPPT-59363]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic comments on this notice may be filed online at many Federal Depository Libraries.

FOR FURTHER INFORMATION CONTACT: Geraldine Hilton, New Chemicals Notice Management Branch, Chemical Control Division (7405), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E-435, 401 M St. SW., Washington, DC 20460; (202) 260-3992. email address: Hilton.geraldine@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: Section 5(h)(1) of TSCA authorizes EPA to exempt persons from premanufacture notification (PMN) requirements and permit them to manufacture or import new chemical substances for test marketing purposes if the Agency finds that the manufacture, processing, distribution in commerce, use, and disposal of the substances for test marketing purposes will not present an unreasonable risk of injury to human health or the environment. EPA may impose restrictions on test marketing activities and may modify or revoke a test marketing exemption upon receipt of new information which casts significant doubt on its finding that the test marketing activity will not present an unreasonable risk of injury.

EPA hereby approves TME-97-10. EPA has determined that test marketing

of these new chemical substances described below, under the conditions set out in the TME applications, and for the time period and restrictions specified below, will not present an unreasonable risk of injury to human health or the environment. Production volume, use, and the number of customers must not exceed that specified in the application. All other conditions and restrictions described in the application and in this notice must be met.

The following additional restrictions apply to TME-97-10. A bill of lading accompanying each shipment must state that the use of the substance is restricted to that approved in the TME. In addition, the applicant shall maintain the following records until 5 years after the date they are created, and shall make them available for inspection or copying in accordance with section 11 of TSCA:

1. Records of the quantity of the TME substance produced and the date of manufacture.
2. Records of dates of the shipments to each customer and the quantities supplied in each shipment.
3. Copies of the bill of lading that accompanies each shipment of the TME substance.

TME-97-10

Date of Receipt: July 29, 1997.
Notice of Receipt: October 1, 1998 (62 FR 51527).

Applicant: Reichhold Chemicals, Inc.
Chemical: (G) Polyurethane Adhesive.
Use: (G) Hot melt adhesive for paper, wood, vinyl, etc.

Production Volume: Confidential.
Number of Customers: Confidential.
Test Marketing Period: Confidential, commencing on first day of commercial manufacture.

The Agency reserves the right to rescind approval or modify the conditions and restrictions of an exemption should any new information that comes to its attention cast significant doubt on its finding that the test marketing activities will not present any unreasonable risk of injury to human health or the environment.

List of Subjects

Environmental protection, Test marketing exemptions.

Dated: February 13, 1998.

Flora Chow,

Chief, New Chemicals Notice Management Branch, Office of Pollution Prevention and Toxics.

[FR Doc. 98-4806 Filed 2-24-98; 8:45 am]

BILLING CODE 6560-50-F