

Toxics Assessment Group

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TO: Mark Johnson, RWQCB - 510/286-3981

FROM: Jody Sparks, TAG - 707/785-3192 (ph); and 707/785-3024 (fax)

DATE: 1/26/98

PAGES: 13

SUBJECT: Transmittal of Revised Document; Sherwin-Williams Site; Comments on two documents: 1.) Report titled *Work Plan for Site Investigation, The Sherwin-Williams Facility, 1450 Sherwin Avenue, Emeryville, California, Levine●Fricke●Recon, 6/2/97*; and 2.) RWQCB document titled *Tentative Order, Adoption of Site Cleanup Requirements and Rescission of Cleanup and Abatement Order No. 97-047, For: Sherwin Williams Company for the Property Primarily Located at: 1450 Sherwin Avenue, Emeryville, Alameda County, undated*

COMMENTS: After I faxed you the comments earlier today I noted two minor changes. When I went into the system to correct them, the pagination totally changed -- so please replace this copy with the one previously faxed to you.

Please confirm receipt of this fax.

Hard copy will follow in mail.

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January 26, 1998

Mark Johnson
Regional Water Quality Control Board/San Francisco Bay
2101 Webster Street, Suite 500
Oakland, California 94612

VIA FAX TRANSMITTAL

RE: Sherwin-Williams Site; Comments on two documents: 1.) Report titled *Work Plan for Site Investigation, The Sherwin-Williams Facility, 1450 Sherwin Avenue, Emeryville, California, Levine●Fricke●Recon, 6/2/97*; and 2.) RWQCB document titled *Tentative Order, Adoption of Site Cleanup Requirements and Rescission of Cleanup and Abatement Order No. 97-047, For: Sherwin Williams Company for the Property Primarily Located at: 1450 Sherwin Avenue, Emeryville, Alameda County, undated*

Dear Mr. Johnson,

The Toxics Assessment Group (TAG), on behalf of the 45th Street Artists' Cooperative, offers the following comments regarding the above referenced documents. TAG has also attempted to incorporate comments communicated to us formally and informally by individual Coop residents, who may also choose to submit their own comments. We have organized the comments beginning with general observations and questions, followed by specific comments, if necessary, for each of the documents referenced above.

- 1) *Work Plan for Site Investigation, The Sherwin-Williams Facility, 1450 Sherwin Avenue, Emeryville, California, Levine●Fricke●Recon, 6/2/97*

GENERAL OBSERVATIONS AND QUESTIONS:

- TAG first requested a copy of the document titled *Work Plan for Site Investigation, The Sherwin-Williams Facility, 1450 Sherwin Avenue, Emeryville, California, Levine●Fricke●Recon, dated 6/2/97*, hereafter referenced as the Work Plan, at the pre-Consultative Workgroup meeting that was held at the Regional Water Quality Control Board (RWQCB) in September 1997. TAG again requested a copy of the Work Plan at the January 1998 Consultative Workgroup meeting. TAG received the

document on January 12, 1998, as did a number of other participants in the Consultative Workgroup. It is unfortunate that many of us did not have the document before us prior to the January Consultative Workgroup meeting and had been given the opportunity to request clarification as to the proposed investigation. TAG's cursory review of the document indicates that the document is woefully inadequate. Given the time limitations that are before us, TAG's comments on the Work Plan are necessary limited to those questions and observations that TAG would have raised during the Consultative Workgroup meeting had we had the document prior to the meeting.

- Given the inadequacies of the Work Plan, it is extremely problematic to comment on RWQCB document titled *Tentative Order, Adoption of Site Cleanup Requirements and Rescission of Cleanup and Abatement Order No. 97-047, For: Sherwin Williams Company for the property primarily located at: 1450 Sherwin Avenue, Emeryville, Alameda County* (Tentative Order), currently before use for review and comment, since the apparent purpose of the Tentative Order is to implement the Work Plan. The Work Plan references various work plans prepared in March, April, and May 1997. The Appendix B of the Workplan includes a document titled *Soil Investigation in the Vicinity of the Southern Rifkin Property* dated 6/2/97. Appendix C of the Workplan includes a document titled *Revised Work Plan for Additional Soil and Ground Water Investigations, Rifkin Property, 3/28/97* and Appendix D includes a document titled *Work Plan for Expansion of Existing Groundwater Remedial System, dated 11/7/96*. With the exception of the possibility of the 3/28/97 document being the March 1997 referenced above, those documents have not been provided to TAG, and TAG assumes some participants of the Consultative Workgroup also have not been provided with the documents. This makes the review of this Workplan as well as commenting on the adequacy of the Tentative Order even more problematic. Please provide copies to TAG of all workplans that have been submitted to the RWQCB relative to the investigation and characterization of the "Site".
- It is unclear to TAG if this document has been officially approved by the RWQCB; since TAG has not been provided with correspondence from the RWQCB indicating their approval of the Work Plan. Because of the inadequacies of the document in putting forth a credible and step wise process for investigating and characterizing the complete vertical and lateral contamination in all media on the properties in question, TAG will have to assume that the Work Plan has not been approved and that there is an opportunity to correct the inadequacies of the Work Plan.
- Based on TAG's review of the Work Plan and the definition of the "Site", it appears that some properties adjacent to the Sherwin-Williams facility are not being investigated to determine if contamination has migrated to those properties. How was it decided to limit the investigation to the Southwest

for the "Site", in the direction of Barbary Coast Steel and Myers Container Corporation? Perhaps there is a good reason but the document is not clear as to how the "Site" was delineated.

- The cover letter transmitting the Workplan dated 6/2/97 states:

As indicated in the enclosed schedule, we hope to get approval for the Work Plan from the RWQCB by June 23, 1997. Once we received RWQCB approval, the work will proceed in accordance with the schedule.

TAG notes that the Distribution List accompanying the document does not include the 45th Street Artists' Cooperative, though I am sure that it was subsequently provided to them. Were comments on the Work Plan solicited from other interested parties? What was the time period provide for the submittal of comments? Were the comments other than those from Chiron, considered and responded to? Were any changes to the Work Plan made based on comments received? Are there any addenda to the Work Plan? Please provide TAG with copies of all comments received by the RWQCB on the Work Plan and all responses to those comments. In addition, please provide TAG with copies of any addenda to the Work Plan.

- The second paragraph of the Introduction references Cleanup and Abatement Order 97-047 and states:

Task 1 of the Order was addressed by various work plans prepared in March, April, and May 1997 as discussed in Section 3.3 herein. Tasks 2 and 3 of the Order state that Sherwin-Williams will investigate...The existence of natural and human-made preferential pathways and lateral and vertical conduits for migration of pollution at the Site...The extent of the soil and groundwater pollution, outside the existing slurry wall, in the on-and off-site areas.

Relative to Task 1 of the Order, to the best of TAG's knowledge, TAG has never received a copy of the Workplan or any addenda. Relative to Tasks 2 and 3, the statement is incorrect. Task 3 of Cleanup and Abatement Order 97-047 states:

By May 12, 1997, submit a workplan acceptable to the Executive officer to fully define the extent of the soil and groundwater pollution, outside the existing slurry wall, in the on-site and off-site areas.

Therefore, the difference is that Cleanup and Abatement Order 97-047 requires that the Workplan *fully define the extent of soil and groundwater pollution* not just *investigate the extent of the soil and groundwater pollution*. "Fully define" requires characterization of the vertical and lateral extent of the contamination, while "investigate" does not.

- The Work Plan does not include a component directed at defining the chemicals and other substances that were handled at the site historically,

nor does the Workplan include provisions for the identification of chemical and hazardous substances that are currently used at the facility.

What were the various chemicals or substances that were utilized in the coating products manufacturing process? How were those chemicals or substances handled at the Sherwin-Williams site during the coating production process? How were the spent chemicals or substances disposed of during this time period? Do documents exist that discuss the handling of chemicals or substances at the site during this time period, including documents that were prepared for worker safety? Do diagrams, blueprints, and other schematics identifying the process lines at Sherwin-Williams during this time period that can be helpful in better defining the chemical handling practices at the site? Were any of the adjacent properties leased or utilized for the transportation, storage, or disposal of chemicals? Were dry wells utilized for disposal of wastes? What buildings were utilized in the production of coatings? Do all the historical buildings still exist? Were the coating products packaged for transportation or were they bulk transferred?

What are "lead-arsenate pesticides"? What do they include? Are they known by other names? What chemicals or substances are utilized in the production of lead-arsenate pesticides? Were other heavy metals utilized in the production of lead-arsenate? What buildings were utilized for the production of lead-arsenate pesticides? How were the lead-arsenate pesticides packaged for transportation? Were any other pesticides, fungicides, or rodenticides produced, in whole or in part at the facility? Were any other pesticides, fungicides, or rodenticides packaged at the facility?

Did the historical waste handling practices at the facility include any form of thermal treatment or thermal destruction? Did the facility utilize incineration, boilers, or do opening burning utilizing waste materials, packaging, or the like?

Have the historical releases at the site included any fires or explosions?

- According to the Workplan, in 1987, when Sherwin-Williams changed their manufacturing operations, they closed and dismantled the oil tank storage facility, the solvent tank storage facilities, the alkyd resin manufacturing facility, the lacquer manufacturing facility, and the former pesticide manufacturing area. What regulatory agency was involved in the oversight of the dismantling of these facilities? Where did the residual waste material go? Where did the equipment and tanks go? Did the dismantling of the facilities include the removal of any process lines?
- Now that Sherwin-Williams is only manufacturing water-based products, are they no longer utilizing solvents, oils, or other chemicals? If chemicals

such as solvents, oils, and other chemicals continue to be utilized, only now they are no longer in underground tanks, those chemicals, their storage and handling practices must still be identified.

- The Workplan discusses evaluation of human-made conduits. The evaluation appears to be limited to: 1) underground utilities, including sewer lines; 2) abandoned and lost water wells; and 3) out falls. The list should also include underground pipelines, sumps, tanks, dry wells, and production lines.
- The Workplan discusses the proposed investigation in the "Southern Area." The area is described as including a manufacturing building, three warehouses, two tank storage buildings, a treatment system, a storage building, two factories and so forth. The "Objectives" for this section include:

Assessing potential sources of contamination through selective sampling of soil and groundwater and Evaluate the extent of contaminants, if present, in the vadose zone and shallow groundwater.

The Workplan should include information about the historical buildings that existed, their use, the chemicals utilized, the chemical handling practices, the waste handling practices, location of production lines, and so forth. This information should then be utilized in determining the appropriate sampling locations in order to adequately investigate and characterize the site.

- The Workplan discusses the proposed investigation inside the slurry wall. The Workplan states "The area enclosed is approximately 165,000 square feet. Currently, this area is mainly unoccupied or used for parking."

The "Objectives" for this portion of the investigation limit the investigation to only defining and characterizing the water table within the slurry wall and defining and characterizing the groundwater potential differences across the slurry wall, while the "Scope of Work" for this portion of the investigation only includes the installation of ten piezometers. The Workplan should include information relative to the historical usage of the property, as it relates to buildings, manufacturing, chemical usage, waste disposal, and so forth. One would hope the RWQCB is not considering allowing the slurry wall to stand as being the final remediation of the area within the "Site".

- Though, the Workplan including Appendix E titled "Standard Operating Procedures," it is unclear if this section is suppose to act as a substitute for the quality assurance and health and safety component of the project. Where in the document is there discussion of data quality objectives, quality assurance and so forth? Has a Health and Safety Plan been prepared for the work proposed in the Workplan?

- TAG is unclear about the movement and dynamics of the groundwater contained within the slurry wall. Does the groundwater move within the "contained" area. Dependent on the variables, could the level of contaminants concentrate in portions of the property and groundwater or is it assumed that the concentration of the contaminants are constant throughout the area? Are there conduits in the slurry wall area that could facilitate the movement of the contaminants from one area within the unit to another?
 - The Workplan contains a section referred to as the "Risk Management Plan". TAG has a number of problems with this section that we do not have the time to highlight at this time. However, TAG expects that once the site has been investigated, and the site has been characterized in all media using data that are appropriate for use in a health risk assessment, that a Baseline Health Risk Assessment will be prepared and made available for public review and comment. In conjunction with the development of a Feasibility Study, TAG assumes that a Public Health Evaluation of Remedial Alternatives or an equivalent document, which assesses the risks associated with the various remedy alternatives, will also be prepared and available for public review and comment. In addition, if the investigation and characterization of the area surrounding Tesmescal Creek indicates impact on the environment, it is expected that an Ecological Risk Assessment will be prepared and will be available for public review and comment.
- 2) RWQCB document titled *Tentative Order, Adoption of Site Cleanup Requirements and Rescission of Cleanup and Abatement Order No. 97-047, For: Sherwin Williams Company for the property primarily located at: 1450 Sherwin Avenue, Emeryville, Alameda County, undated*

GENERAL OBSERVATIONS AND QUESTIONS

- As previously stated, TAG finds it problematic to comment on the Tentative Order, since the intent of the Tentative Order is to implement the document titled *Work Plan for Site Investigation, The Sherwin-Williams Facility, 1450 Sherwin Avenue, Emeryville, California, Levine●Fricke●Recon, dated 6/2/97*, which TAG finds to be inadequate. We incorporate by reference our comments on the Work Plan.
- It is unclear to TAG why the Tentative Order does not include the language found in SWRCB Amended Resolution No. 92-49 "Policies and Procedures for Investigation and Cleanup and Abatement Under Section 13304 of the Water Code" relative to investigations, and cleanup and abatement activities. This SWRCB policy and procedures states:

These policies and procedures apply to all investigations and cleanup and abatement activities, for all types of discharges subject to Section 13304 of the WC.

1. The Regional Water Board shall apply the following procedures in determining whether a person shall be required to investigate a discharge under WC Section 13267, or to clean up waste and abate the effects of a discharge or a threat of a discharge under WC Section 13304. The Regional Water Board shall:

- A. Use any relevant evidence, whether direct or circumstantial, including, but not limited to, evidence in the following categories:
 1. Documentation of historical or current activities, waste characteristics, chemical use, storage or disposal information, as documented by public record, responses to questionnaires, or other sources of information;...
 4. Industry-wide operational practices that historically have led to discharges, such as leakage of pollutants from wastewater collection and conveyance systems, sumps, storage tanks, landfills, and clarifiers;
 5. Evidence of poor management of materials or wastes, such as improper storage practices or inability to reconcile inventories;
 6. Lack of documentation of responsible management of materials or wastes, such as lack of manifests or lack of documentation of proper disposal;...

- Need to meet Data Quality Objectives: Recently Cal/EPA distributed a document titled *Environmental Data Quality Report*, by the Environmental Quality Team, dated September 4, 1997, given the task of reviewing *...current environmental data generation and evaluation practices and to make recommendations to improve the processes to obtain reliable and legally defensible environmental data in a cost effective manner.* We incorporate by reference the above mentioned document and expect the RWQCB and DTSC to utilize the document as guidance when reviewing the adequacy of the data quality objectives for this project. The document references USEPA guidance documents regarding data quality objectives that have been in place for some time. TAG requests assurances clarification for the administrative record that the data quality objectives, according to current guidance, have been met on all previous work associated with this project.

Though the some sampling associated with the "Site" has been completed, assurances must be given by RWQCB staff that the sampling plan utilized for the "Site" has met the following requirements:

1. Proposed sampling has met and will meet all data quality objectives;
2. All sampling detection limits have been and will be adequate and appropriate for risk assessment purposes, including the human health screening evaluation and the ecological screening evaluation;
3. Sampling locations have been and will be appropriate and adequate to actually find what is being looked for;
4. The number of samples taken for a specific location has been and will be sufficient to address the possible contamination of the given area;
5. Given the location of the waterway in relationship to the "Site",

assurances must be given that the sampling parameters took into account those substances that are sensitive to plants, sediments and biota, since aquatic organisms can be sensitive to certain chemicals at lower levels than are of concern for humans; and

6. All data analysis information shall be reviewed for conformance with the standards for quality assurance and quality control.
- Will a Conceptual Model associate with exposure pathways be developed in conjunction with the risk assessment process? How will the chemicals of interest or concern be determined relative to the risk assessment?
 - Have any environmental assessments or Preliminary Endangerment Assessment been prepared for Sherwin-Williams facility prior or subsequent to the RWQCB's involvement in the investigation of the site? If so, this information should be forward to the RWQCB and DTSC and made available to the public.
 - Has a Sampling and Analysis Workplan been prepared that describes the activities proposed to characterize soil and groundwater contamination associated with the "Site"? A Health and Safety Plan should also be prepared for the "Site", as well as a Quality Assurance/Quality Control Plan.
 - It remains unclear, based on TAG's review of the documents that have been distributed to us, if all appropriate USEPA and state guidance documents and policies and procedures have been followed to date on this project. The Tentative Order must clearly identify this requirement for all future work on the "Site".

SPECIFIC COMMENTS

- Site Location: The description of what area comprise the "Site" needs clarification. Does the "Site" include all properties that have been acquired by Sherwin-Williams, but may have been utilized by the previous owners for the handling of hazardous substances? How was the delineation of the "Site" determined?
- Site History: TAG's cursory review of the document titled *Work Plan for Site Investigation, The Sherwin-Williams Facility, 1450 Sherwin Avenue, Emeryville, California*, Levine●Fricke●Recon, dated 6/2/97, could not find a reference to an "acid plant". Where was the acid plant? What types of acids were stored and utilized at the acid plant? Were there process lines associated with the acid plant? What were the waste handling practices associated with the acid plant?

Site History also states "The site histories for Sherwin-Williams and other nearby properties will be evaluated as part of the site investigation." It is unclear to TAG what is meant by "site histories". What is needed is

information relative to the chemicals and substances that were used in the areas of concern, the location of the process lines associated with those chemicals and substances, and the waste handling practices associated with those chemicals and substances.

- **Regulatory Status:** The document needs to reflect the formation of the Consultative Workgroup and the representation on that group. In addition, whether in this document or in another subsequent document, the agreement must be formalized that Sherwin-Williams would fund the cost and expenses associated with the parties that are participants on the Consultative Workgroup and the mechanism for reimbursement of those costs must be defined. Also the Tentative Order should include reference to the distribution of documents on the project to those members of the Consultative Workgroup. The Tentative Order should also reference the purpose of going through the AB 2061 process for lead agency determination and that it is the intent of the RWQCB to ensure that the needs of the other regulatory agencies that participate on the Consultative Workgroup are met.
- **Remedial Investigation:** The Tentative Order states "Sherwin-Williams submitted a workplan, dated June 2, 1997, with amendments and clarifications dated September 10, 1997,..."

Accompanying the document titled *Work Plan for Site Investigation, The Sherwin-Williams Facility, 1450 Sherwin Avenue, Emeryville, California, Levine●Fricke●Recon*, dated 6/2/97 received by TAG on 1/12/98, TAG received a bound document titled *Correspondence from Mark Knox, Levine●Fricke●Recon, to Mark Johnson, RWQCB, 9/10/97 regarding Response to Chiron Comments for the Site Investigation Workplan, Sherwin-Williams Facility, Emeryville, California*. Is the response to Chiron's comments seen as "amendments and clarifications"? Where within the document are the amendments to the document listed? Were these amendments and points of clarification accepted by the RWQCB?

- **Preliminary Cleanup Goals:** How are "background concentrations" going to be determined?
- **CEQA:** The definition of the "Site" appears to include properties that are on the Cortese List. Given that some of the properties that are a component of the "Site" appear to be on the Cortese List, it would seem more appropriate to either use the blanket exemption allowed for investigatory work or prepare a negative declaration for the project. Since the Department of Toxic Substances Control is a participant on the Consultative Workgroup, TAG suggests that the RWQCB work with DTSC regional staff and DTSC CEQA staff in order to determine the appropriate approach to this matter and ensuring that all Cal/EPA regulatory bodies are handling this type of CEQA issue in a consistent manner.

- **Completion of Evaluation of Current Site Conditions, Site Use History and Human-made Conduits:** The technical document should be made available to the public for comment and the RWQCB should consider those comments.
- **Public Participation Plan:** The Draft of this document should be made available to the public for comment and the RWQCB should consider those comments and incorporate changes prior to the finalization of the document. The Public Participation Plan must include provisions for updating the document so that it remains current and usable. The language in the Tentative Order should specifically reference the Public Participation Plan Guidance document and the statutory authority on which it is based.
- **Completion of Remedial Investigation:** The technical document should be made available for public comment and the RWQCB should consider those comments.
- **Evaluation of Existing and Additional Interim Remedial Measures:** The technical document should be made available for public comment and the RWQCB should consider those comments.
- **Completion of Interim Remedial Actions:** The document should be made available for public comment and the RWQCB should consider those comments.
- **Proposed Final Remedial Actions and Cleanup Standards:** This section lacks specificity. It would seem appropriate to clearly define the submittals and step wise process that are required with the Remedial Investigation/Feasibility Study Process, which would include: 1) Draft and Final Remedial Investigation Report; 2) Draft and Final Health Risk Assessment; 3) Draft and Final Feasibility Study; 4) Draft and Final Remedial Action Plan; 5) CEQA compliance; 6) Remedial Design and Implementation Plan; and 7) Implementation of the Final Remedial Action Plan.

The Feasibility Study should include a list all applicable federal, state, and local statutes, regulations, ordinances relative to the proposed remedial alternatives associated with the remediation of the "Site."

TAG has concerns regarding the proposed risk assessment. According to the Tentative Order, the technical report will include a "...Risk assessment for the current and post-cleanup exposures, as well as risk associated with the implementation of the proposed remedy..." The Health Risk Assessment that is prepared should be consistent with USEPA Risk Assessment Guidance for Superfund and DTSC Supplemental Guidance for Human Health Multimedia Risk Assessments of Hazardous Waste Sites and Permitted Facilities. In addition, along with the Feasibility Study, a Public

Health Evaluation of Remedial Alternatives or equivalent document should be prepared, which would evaluate the risk associated with each of the remedial alternatives. It is unclear to TAG what is meant by the term "post-cleanup exposures" since any final remedy would certainly be based on the fact that the range of risks has been determined to be acceptable, given the information known at this time. Clarification is needed.

Any risk assessment prepared for the project must include language that stipulates what a risk assessment does not evaluate when considering the impacts on human health, in order to enable the public to understand the further limitations of a health risk assessment. The following points help demonstrate what a health risk assessment does not evaluate:

- 1) Risk assessors preparing the health risk assessment often know little about subtle chronic effects, such as endocrine disruption, or the long term effects of chemicals present in low concentrations;
- 2) Health risk assessments do not address genetic differences that predispose an individual to risk;
- 3) Health risk assessments do not address variability associated with gender, age, diet, preexisting disease conditions, impacts on embryos and infants, or exposure to mixtures of chemicals;
- 4) Health risk assessments do not address teratogens, neurotoxicity, reproductive health and fertility, immune suppressants, or immune-compromised people; and
- 5) Health risk assessments do not address the cumulative or synergistic effects of chemicals on the body.

TAG also requests that any risk assessment be reviewed by a toxicologist knowledgeable in risk assessments through a contractual agreement with either the Department of Toxic Substances Control/Human and Ecological Risk Division or by the Office of Environmental Health Hazardous Assessment. Provisions must be included for adequate funding within the contract that will enable the toxicologist to work with the Responsible Party to ensure that an appropriate and defensible risk assessment is prepared.

- **Document Distribution:** The list must include all members of the Consultative Workgroup. In addition, the 45th Street Artists' Cooperative will receive two copies of the document, one to the Cooperative and one will be sent directly to TAG, consultants to the 45th Street Artist Cooperative.
- **Report of Hazardous Substance Release:** This section must be augmented to reflect the current requirements of DTSC associated with releases or threatened releases and any requirements that the City of Emeryville or the County of Alameda might have. In addition, all future releases or threatened releases, must be documented in writing to at least the RWQCB

and DTSC. The public must be advised in a timely fashion of any release or threatened release.

Thank you for the opportunity to comment on these documents. Please contact me if you have any questions or concerns regarding these comments.

Cordially,



Jody Sparks
President

cc: 45th Street Artists' Cooperative Members
Consultative Workgroup Members
Betsy Jennings, SWRCB/OLC
Bonnie Holmes, Sierra Club
Gary Patton, Planning and Conservation League
Jane Williams, California Communities Against Toxics
Denny Larson, Communities for a Better Environment