

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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OFFICE OF NUCLEAR MATERIAL SAFETY AND SAFEGUARDS
Carl J. Paperiello, DirectorOFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

In the Matter of

MCGEAN-ROHCO, INC.
(Cleveland, Ohio)

Docket No. 040-08724

(10 CFR 2.206)

DIRECTOR'S DECISION UNDER 10 CFR 2.206I. INTRODUCTION

By letter dated January 6, 1989, Dr. Klaus R. Romer, on behalf of McGean-Rohco, Inc. (Petitioner or McGean), requested that the U.S. Nuclear Regulatory Commission (NRC) take action pursuant to 10 CFR 2.206 with respect to Chemetron Corporation (Chemetron), an NRC licensee. McGean requested that NRC exercise its enforcement powers to compel Chemetron, at the time a subsidiary of Allegheny International, Inc. (Allegheny), to immediately commence decontamination of its facilities at 2910 Harvard Avenue, Cuyahoga Heights, Ohio, (the Harvard Avenue site) under the terms agreed to by Allegheny in its Confirmation of Commitment dated November 14, 1988. The Petitioner also requested the NRC to impose sanctions upon Chemetron for its failure to carry out the decontamination of the Harvard Avenue site. McGean alleged the following bases for its requests:

- 1) On November 14, 1988, Chemetron committed to begin decontamination of the Harvard Avenue site immediately and complete the job by March 17, 1989;

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- 2) The NRC had stated that the March completion deadline would be relaxed only if Chemetron made a compelling showing of diligent efforts to clean up the site and good cause;
- 3) Chemetron's letter to the NRC of December 12, 1988, which requests an extension of the deadline for good cause, fails to make a compelling showing of good cause; and
- 4) Chemetron has not made a good faith effort to decontaminate the site.

On March 22, 1989, the Director of the Office of Nuclear Material Safety and Safeguards, formally acknowledged receipt of the Petition and informed Petitioner that its request was being treated pursuant to 10 CFR 2.206 of the NRC's regulations. A notice of the receipt of the Petition was published in the Federal Register notice on March 28, 1989 (54 FR 12698). In the March 22, 1989, letter, the Director denied the Petitioner's request for immediate relief because NRC considered that Chemetron's actions demonstrated minimally sufficient progress towards decontamination. However, the Director deferred a decision on the remainder of the Petition.

II. BACKGROUND

In 1965, pursuant to 10 CFR Part 40, the Atomic Energy Commission issued Source Material License No. SUB-852 to Chemetron, which through its McGean Unit of the Inorganic Chemical Division, manufactured catalysts containing depleted uranium. These operations were carried out between 1965 and 1972 in facilities located at the Harvard Avenue site. By February 1972, manufacture of the catalysts had been terminated, and in December 1973, the License was

amended to authorize storage only for the remaining depleted uranium. No activities involving source material, other than decontamination, have been conducted at the site since the termination of the catalyst production by Chemetron in 1972.

In 1975, the McGean Chemical Company, Inc., the predecessor to McGean-Rohco, Inc., purchased the Harvard Avenue site. The Chemetron Corporation, however, retained the License and responsibility for the depleted uranium remaining at the facility. In late 1977, the Licensee was acquired by Allegheny-Ludlum Industries. In 1979, the Licensee obtained a new NRC License, No. SUB-1357, to authorize the possession of depleted uranium contamination at the Harvard Avenue site and its remediation. License SUB-1357 superseded SUB-852. The License was last renewed, pursuant to 10 CFR 40.42(a), on January 10, 1990, and is continuing in effect.

Remediation activities at the Harvard Avenue site under License SUB-1357 began in 1979, with the expectation that the project would be completed in about six months. However, those activities were not completed within the term of the License. The NRC renewed the License five times between 1979 and 1984. As renewed on July 18, 1984, the Licensee included a condition requiring, within one year, the completion of decontamination, a final radiological survey, and a request for license termination. But again, these activities were not completed within the required timeframe.

From 1985 through 1989, the NRC continued to take actions intended to lead to decontamination of the Harvard Avenue site. These actions included (1) amending the License on October 1, 1987, to require completion of decontamination by October 1, 1988; (2) issuing a Demand for Information on June 13, 1988; and (3) requesting a Confirmation of Commitment to complete the

Harvard Avenue decontamination by March 17, 1989. While Chemetron performed some survey and decontamination work during this time, Chemetron did not then complete decontamination of the Harvard Avenue site. Chemetron's parent, Allegheny International, entered bankruptcy on February 20, 1988, and Chemetron then stopped spending money for decontamination until the Bankruptcy Court authorized such expenditures on March 9, 1989. This was one of several factors Chemetron claimed prevented completion of decontamination according to the required schedules. Some of Chemetron's claimed reasons for failing to meet the schedules had merit, but some did not.

Shortly after the Bankruptcy Court's authorization, Chemetron resumed decontamination activities at the Harvard Avenue site. Chemetron soon discovered, however, that it had significantly underestimated the amount of contamination at the site due to an inadequate characterization of that contamination. From 1989 to 1992, including Allegheny's emergence from bankruptcy in 1990 (Allegheny was reorganized as Sunbeam/Oster Company, Inc. (Sunbeam)), the NRC sought Chemetron's commitment to characterize and remediate the Harvard Avenue site. To that end, concurrent with the NRC's approval of a transfer of control over the License to Sunbeam through the reorganization, the NRC sought Chemetron's commitment to complete a revised remediation plan for the Harvard Avenue site, based on adequate site characterization. On August 31, 1990, Chemetron proposed to complete a revised remediation plan by March 1, 1991, and the NRC approved this schedule and the transfer of control of the License on September 11, 1990.

Chemetron, however, again failed to meet its schedule, and failed to meet subsequent revised schedules showing completion of site characterization by March 1, 1991, and completion of a revised remediation plan by

August 16, 1991. While some characterization data had been obtained, the site characterization report submitted on July 28, 1991, was inadequate, and, consequently, Chemetron's August 16, 1991, remediation plan was also inadequate. Accordingly, the NRC sought to compel Chemetron to characterize the site. As a result, on May 5, 1992, the NRC and Chemetron entered into a Consent Order that established June 15, 1992, as the submittal date for the Final Site Characterization Report for the Harvard Avenue site. Chemetron met this date, and on January 8, 1993, the NRC approved the Final Site Characterization Report as an acceptable basis for developing a remediation plan.

After NRC acceptance of the Final Site Characterization Report, Chemetron, by License Condition, established October 1, 1993, as the submittal date for the remediation plan. Chemetron submitted a remediation plan on this date that was incomplete. Accordingly, the NRC issued a Confirmatory Order to Chemetron on October 26, 1993, which required, *inter alia*, that all required portions of the remediation plan be submitted by November 15, 1993. Chemetron complied with this order.

On February 28, 1995, Chemetron submitted Revision 1 to its site remediation plan, which incorporated modifications as requested by the NRC. On June 7, 1996, the NRC approved Chemetron's revised remediation plan for the Harvard Avenue site and amended the License to authorize remediation of the site in accordance with the plan.

III. DISCUSSION

Since the Petition was submitted to NRC, NRC staff and inspectors have made numerous site visits and inspections of the Harvard Avenue site. The inspections included routine safety inspections, which involved observing the status of site physical security provisions, verifying compliance with 10 CFR Part 20 radiation protection requirements, and observing the condition of tarpaulins securing soil piles. In April 1992, NRC inspectors installed air sampling devices and thermoluminescent detectors to measure radioactivity levels at the Harvard Avenue site and verify Chemetron measurements. These monitoring efforts were discontinued in 1993 because the results indicated radioactivity was at background levels consistent with the continuing Chemetron monitoring results. The NRC inspections, site visits, and monitoring have ensured that public health and safety have been adequately protected.

As set forth above, Chemetron made progress (except for some time while in bankruptcy) towards remediating the Harvard Avenue site, but this progress was very slow. One major impediment to remediating the site was the lack of an adequate site characterization. The NRC's frustration with the slow progress towards adequate characterization of the site resulted in the NRC's entering into the Consent Order of May 5, 1992, which compelled Chemetron to submit an adequate Final Site Characterization Report on June 15, 1992. The characterization report was acceptable because it provided information on: (1) depleted uranium concentration levels not only on the surface, but also at depth; (2) depleted uranium concentration levels in soil piles; and (3) groundwater monitoring results. The NRC then required Chemetron, through a

license condition, to submit a remediation plan for the Harvard Avenue site by October 1, 1993.

As described above, Chemetron did not meet its schedule for submitting an adequate remediation plan for the Harvard Avenue site, which resulted in the NRC issuing the Confirmatory Order of October 26, 1993. The Confirmatory Order led to the NRC's June 7, 1996, approval of Chemetron's site remediation plan. The NRC staff concluded that this remediation plan, unlike the previous ones submitted by Chemetron, is adequate because (1) it is based on a comprehensive site characterization; (2) adequately describes the decommissioning activities; (3) provides acceptable radiological controls to protect workers and the public; (4) provides an adequate plan for conducting a final survey; and (5) provides an acceptable decommissioning cost estimate. By authorizing Chemetron to proceed, NRC staff is confident that Chemetron can safely and successfully complete the remediation within the one-year schedule proposed. In the NRC review of the Harvard Avenue remediation plan, NRC staff considered the radiological controls that Chemetron would use during the remediation and the health and safety impacts of the proposed onsite disposal cell. Accordingly, NRC has now received adequate assurance from the Licensee that it has produced a final remediation plan that will lead to the ultimate decontamination of the Harvard Avenue site by the end of 1997.

In accordance with Commission policy, the Petitioner's request to impose sanctions was not granted as requested. On April 10, 1992, the Commission approved the "Action Plan to Ensure Timely Cleanup of Site Decommissioning Management Plan Sites." The Action Plan discussed the imposition of civil penalties for sites listed in NRC's Site Decommissioning Management Plan (SDMP). (Chemetron's Harvard Avenue site is one of the SDMP listed sites.)

The Action Plan provides that civil penalties should be limited to two situations. Specifically, the Action Plan provides that "the NRC will consider civil penalties where (1) the licensee or responsible party fails to comply with an order compelling payment into an escrow account; or (2) the licensee or responsible party fails to comply with a requirement or an order compelling cleanup when there is already sufficient decommissioning funding."

The clear intent of the Action Plan is to take into account the financial impact of a civil penalty on achieving decommissioning. In the staff's view, for schedular violations, the test should be the reasonableness of the Licensee's efforts to achieve decommissioning in a timely manner. It is not the intent of NRC staff to impose civil penalties where such penalties adversely affect the financial ability of the Licensee to properly complete decommissioning.

On May 11, 1994, NRC staff issued a Notice of Violation and Proposed Civil Penalty of \$10,000 to Chemetron for submitting an incomplete remediation plan on the date established for the plan submittal set under a License Condition (i.e., October 1, 1993). The base civil penalty of \$5,000 was escalated because NRC identified the violation and because of the Licensee's limited corrective action. The civil penalty reflected the poor progress that had been made at that time by the Licensee in the decommissioning. The NRC deferred imposition of the civil penalty until a final waste disposal option for both the Harvard Avenue site and Chemetron's Bert Avenue site is approved, to ensure that sufficient funds have been set aside to carry out the decommissioning.

As set forth above, based on the Commission's guidance in the Action Plan, NRC has not imposed sanctions as requested by the Petitioner. However,

NRC staff has taken appropriate enforcement actions where the Licensee did not achieve decommissioning milestones set out in the License.

Based on the above, the NRC staff has taken appropriate actions to ensure the decontamination of the Harvard Avenue site. The most significant actions include the issuance of a License Amendment (dated May 25, 1993) and two Orders (dated May 5, 1992, and October 26, 1993) to establish schedules for the submittal of documents key to the Harvard Avenue site remediation and the issuance of a License Amendment on June 7, 1996, authorizing Chemetron to proceed with the remediation. Further, based on a review of the Licensee's actions regarding this decontamination effort, the NRC staff has concluded that the Licensee has made adequate progress towards this end. Therefore, for all practical purposes, the Petitioner's request to compel the remediation of the Harvard Avenue site has been granted to the extent that this is required by the License Amendments of May 25, 1993, and June 7, 1996, and the Orders of May 5, 1992, and October 26, 1993. However, NRC staff does not consider that the imposition of sanctions, beyond those proposed on May 11, 1994, is needed to compel completion of the Harvard Avenue site remediation. Therefore, we are denying the Petitioner's request to impose further sanctions. Finally, the staff has concluded that no additional NRC actions are warranted concerning these requests. Should Chemetron fail to meet its one-year schedule for decontamination of the Harvard Avenue site, NRC staff will take appropriate action at that time.

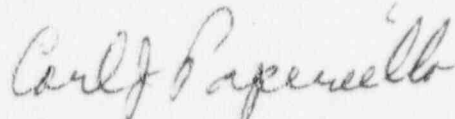
IV. CONCLUSION

For the reasons discussed above, Petitioner's request that NRC compel Chemetron to commence action to decontaminate the Harvard Avenue site has been granted to the extent this is required by the License Amendments of May 25, 1993, and June 7, 1996, and the Orders dated May 5, 1992, and October 26, 1993. However, to the extent these actions were not taken in the time originally specified by Petitioner, the request is denied. Petitioner's second request that NRC impose sanctions against Chemetron for failing to comply with its November 14, 1988, Confirmation of Commitment to decontaminate the Harvard Avenue site, as requested by the Petitioner, has been denied. Further, no substantial public health and safety concerns currently exist that warrant additional NRC action concerning these requests.

As provided by 10 CFR 2.206(c), a copy of this Decision will be filed with the Secretary of the Commission for the Commission's review. The Decision will become a final action of the Commission twenty-five (25) days after issuance unless the Commission on its own motion institutes review of the Decision within that time.

Dated at Rockville, Maryland,
this 3 day of July 1996.

FOR THE NUCLEAR REGULATORY COMMISSION



Carl J. Paperiello, Director
Office of Nuclear Material Safety
and Safeguards

DOCKETED
USNRC



1250 Terminal Tower, Cleveland, Ohio 44113-2251 216/621-8425

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OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

January 6, 1989

Executive Director for Operations
U.S. Nuclear Regulatory Commission
Washington, DC 20555

SUBJECT: Requests under 10CFR §2.206

Gentlemen:

Enclosed herewith is a Request for Action filed under provisions of 10CFR §2.206, asking for the NRC to compel Allegheny International to comply with the terms of a Confirmation of Commitment dated 14th November, 1988 and to impose full sanctions for failure to do so.

Because of the compelling needs of McGean-Rohco to use the Harvard Avenue site, an expedited action on this Request is respectfully requested.

Very truly yours,

A handwritten signature in cursive script that reads "James A. Lucas".

James A. Lucas
Vice President & General Counsel

JAL/jdo

Enclosure: Request for Action

cc: Ivy V. Schram, Esq. Buchanan Ingersoll

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1250 Terminal Tower, Cleveland, Ohio 44113-2251 216/621-6425

January 6, 1989

Executive Director for Operations
U.S. Nuclear Regulatory Commission
Washington, DC 20555

SUBJECT: Request under 10CFR §2.206

Gentlemen:

McGean-Rohco, Inc. (hereinafter referred to as McGean) herewith submits a Request to the NRC to exercise its enforcement powers to compel Chemetron Corporation, a subsidiary of Allegheny International (hereinafter collectively referred to as Allegheny) to immediately commence decontamination of the Harvard Avenue plant site under the terms agreed to by Allegheny in its Confirmation of Commitment dated November 14, 1988.

The history surrounding the efforts to decontaminate the plant site on Harvard Avenue in Cleveland, Ohio is long and detailed, and is complicated by conveyances of the property, bankruptcy of Allegheny and other factors too numerous to mention. After innumerable delays, Allegheny submitted a Remediation Work Plan in July, 1988 prepared by Remcor, Inc., a company which was (and we presume still is) prepared to commence decontamination upon NRC approval of the Plan. Thereafter, Allegheny had finally agreed, in a Confirmation of Commitment, to commence final decontamination of the Harvard Avenue site, only to then immediately repudiate its agreement, outlining numerous reasons why it could not carry out its commitment. Those reasons are enumerated in a six (6) page letter from Allegheny's Steve Wilner to Mr. Leland Rouse of the NRC. The Confirmation of Commitment dated November 14, 1988 and the letter dated December 12, 1988 are appended to this Request as Exhibits A and B, respectively.

McGean respectfully requests that the NRC quickly and decisively take whatever steps it deems necessary to compel Allegheny to carry out the decontamination of the Harvard Avenue site. The compelling reason for instituting an enforcement action against Allegheny is that Allegheny is basing its reasons for delay on factors which should not, in fact, prevent Remcor from immediately starting decontamination. Undoubtedly, the winter weather could cause some delays in the implementation of the entire plan, just as unusual weather at any time of the year can cause unanticipated construction and cleanup delays. Yet, winter weather is not sufficient justification to further delay the entire project.

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Executive Director for Operations
January 6, 1989

There is no indication in the Remcor report that the normal seasonal weather would be a factor in the decontamination of the Harvard Avenue site. If weather were so significant, why would this not have been mentioned in the report or cover letter in order to "encourage" the NRC to expedite its review. We have to believe that Allegheny was not eager to take any measures to speed up the process. They were content to remain quiet about climatic conditions and their adverse effect on the project perhaps hoping to gain another few months of additional time before having to pay the costs of doing what they were obligated to do all along. In other words, Allegheny's silence appears to represent a conscious effort at delay.

This, of course, is conjecture. What is not conjecture is the belief of McGean-Rohco that the eleven points covered in Steve Wilner's letter, taken individually and collectively, do not prevent Remcor from immediately commencing decontamination of the site.

Listed below are the reasons cited by Mr. Wilner for alleging impossibility of performance followed by comments concerning the validity of these reasons.

REASON

- (1) The "guided excavation" methodology which was approved will be difficult, if not impossible, to implement in winter conditions;
- (3) Frozen soils may present excavation problems due to a higher level of difficulty for soil handling and separation of contaminated and uncontaminated materials;
- (4) Excavation work with hand tools and heavy equipment in winter conditions will be slower and may even have to be stopped for long periods, exposing partly excavated areas to the winter elements.

COMMENT

This project requires the use of hand tools, a front-end loader and backhoe, not sophisticated remote controlled devices able to excavate to close tolerances and to separate contaminated from uncontaminated material on a micro-level.

Executive Director for Operations
January 6, 1989

The use of this type of equipment is not seriously affected by normal winter weather which is experienced in Cleveland. This equipment can break through frozen crusts and remove soil at sub-freezing temperatures. The accuracy and efficiency of this equipment will not be seriously hampered by the winter conditions. Discussions with the Ohio Department of Transportation and with construction companies reveal that grading and earth removal is a twelve month a year operation in the State of Ohio.

REASON

- (2) The accuracy of the measuring instruments to be used will be drastically reduced due to wet weather interference;
- (10) Verification testing will be impossible due to the usual heavy snow cover in Ohio and high humidity problems with instrument accuracy, as mentioned in (2) above;

COMMENT

These detection instruments use scintillation crystals which are hygroscopic and therefore are hermetically sealed to protect them from moisture. Thus, moisture should pose no problem. The gamma emissions being measured have fairly high energies ranging from 185 Kev for U235 to 2.6 Mev for Th228 and can be measured by a detector in direct contact with the ground. Furthermore, the electronics are relatively stable over a wide range of operating temperatures. All that would be required is the removal of snow from the areas to be measured. This should pose no problem. Furthermore, it should be noted that the winter humidity is invariably lower than the humidity in the spring and summer. Thus, verification testing and instrument accuracy should not be adversely affected by the wintertime humidity.

REASON

- (5) The winter rain and snow will add a substantial amount of free water to the contaminated soil;
- (6) The potential for increased soil migration both around the site and off-site is higher due to increased water and wind transport during winter weather conditions;

COMMENT

It can be seen from Exhibit C that the wet season is in the spring, not the winter. When mesne temperatures get above freezing, moisture can create more of a problem than it does in the winter for the simple reason that moisture in the form of snow can be readily removed from the "hot spots" resulting in very low levels of retained moisture. Therefore, the moisture content of the contaminated soil is likely to be less in the winter than in the spring and the migration of soil that is frozen is not likely to be substantial.

REASON

- (11) Restoration and closure of the site will be more difficult in winter conditions.
- (7) Worker safety at the site during winter conditions will be substantially worsened as work in the cold increases the potential for accidents.

COMMENT

By the time the project reaches closure, the worst of the winter weather will be over and this should present no problem.

The safety of workers is always a concern of ours. Realistically, the type of work that is involved in this decontamination can be carried out at any time of the year with minor changes in strategy to accommodate for climatic factors. Additional, care will be required in winter, but the problems are not insurmountable. Statistics available from the Ohio Industrial Commission do not show any noticable increase in the rate of industrial injury and accident claims in the winter months versus the remainder of the year.

REASON

- (8) The current agreement with the Barnwell disposal site expires December 31, 1988;
- (9) Neither Barnwell nor any other disposal site will accept rain or ice-saturated soil;

Executive Director for Operations
January 6, 1989

COMMENT

If Remcor and Allegheny are planning to carry out the decontamination in 1989, they have undoubtedly selected a disposal site for the radioactive debris. If they have selected Barnwell, it is likely that they are planning to renew or extend the Agreement which expired December 31, 1988. If another site has been selected, disposal is probably subject to the signing of a standard disposal site agreement, certainly a minor and insignificant obstacle.

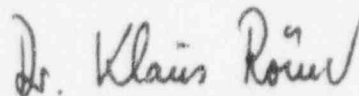
Furthermore, the contaminated debris which is shipped to the disposal site in winter is likely to have less moisture than debris which is shipped later in the spring.

CONCLUSION

By signing the Confirmation of Commitment in November, 1988, Allegheny indicated that it intended to carry out a good faith effort to decontaminate the Harvard Avenue site in an expeditious manner. The subsequent maneuvering shows a strident departure from this good faith effort, based upon a number of highly conjectural and unsupportable arguments.

To reiterate, we respectfully call upon the enforcement authority of the NRC, through this \$2.206 Request, to compel Allegheny to immediately and diligently undertake the activity to which it is committed.

Respectfully submitted,



Klaus R. Romer
President

KRR/jdo

Attachment: Exhibit A, B, and C

E X H I B I T "A"

U.S. Nuclear Regulatory Commission
ATTN: Leland C. Rouse, Chief
Fuel Cycle Safety Branch
Division of Industrial and
Medical Nuclear Safety
Office of Nuclear Material Safety
and Safeguards
Washington, DC 20555

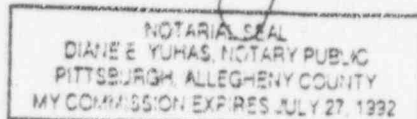
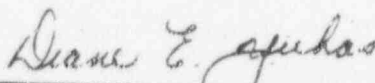
CONFIRMATION OF COMMITMENT

Chemetron Corporation, the holder of License SUB-1357, hereby agrees immediately to commence whatever action is necessary to complete decontamination of the Harvard Avenue site by November 17, 1988. This letter confirms Chemetron's commitment to decontaminate the Harvard Avenue site by March 17, 1989, and responds to the letter from the U.S. Nuclear Regulatory Commission dated November 2, 1988.

Signed



Sworn this 14th day of November, 1988, at
PITTSBURGH, ALLEGHENY COUNTY, PENNSYLVANIA



Member, Pennsylvania Association of Notaries

E X H I B I T "B"

December 12, 1988

Mr. Leland C. Rouse
Chief - Fuel Cycle Safety Branch
Division of Industrial and
Medical Nuclear Safety
Office of Nuclear Material
Safety Safeguards
U.S. Nuclear Regulatory Commission
Washington, DC 20555

RE: License SUB-1357

Dear Mr. Rouse:

Thank you for your letter of November 2, 1988 which contained NRC approval of our remedial work plan for cleanup of the Harvard Avenue site. As you requested, we are submitting under separate cover our responses and answers to the six comments about the plan which were sent with your letter.

By a previous transmittal, on November 15, 1988, I signed and submitted, on behalf of Chemetron Corporation, a Confirmation of Commitment ("Commitment") to begin action which would result in the decontamination of the Harvard Avenue site. This was to be completed by March 17, 1989.

I signed the Commitment based on what I and my colleagues believed was an achievable course of action and as agreed to in the Commitment, I started to initiate the preliminary actions for commencement of decontamination of the Harvard Avenue site. I was informed by our consultants and other environmental and construction personnel, that the work plan as originally proposed would be virtually impossible to implement during this time of year. As a result, I was told the decontamination could not be completed by the date to which the Company had committed.

In drafting the proposed remedial work plan, our consultant based the work schedule and the methodology for excavation and decontamination on the assumption that decontamination of the site would occur during the regular

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construction season. It was, indeed, based upon and planned that all excavation would be completed and all material shipped to the disposal site before the end of December, 1988.

We were not aware of this assumption when I signed the Commitment. I have been informed now that the consulting engineering firm's assumption, which was factored into the schedule and the plan, was that the NRC review cycle would be shorter than was ultimately the case. It was assumed that the review cycle would take no longer than 48 days. Thus, the assumed last date for start of construction was September 15. This start date would have allowed excavation and decontamination to proceed and to be completed before December 15, which is the end of the construction season in Ohio. Because the review cycle took 96 days the approval was not received until November 7, and we were informed that the site work cannot be done during the Ohio construction season. We are also told that the approved schedule can no longer be feasibly implemented as proposed and that decontamination cannot be completed by March 17, 1989.

As reasons for this impossibility of performance, we were informed of the following:

- (1) The "guided excavation" methodology which was approved will be difficult, if not impossible, to implement in winter conditions;
- (2) The accuracy of the measuring instruments to be used will be drastically reduced due to wet weather interference;
- (3) Frozen soils may present excavation problems due to a higher level of difficulty for soil handling and separation of contaminated and uncontaminated materials;
- (4) Excavation work with hand tools and heavy equipment in winter conditions will be slower and may even have to be stopped for long periods, exposing partly excavated areas to the winter elements;
- (5) The winter rain and snow will add a substantial amount of free water to the contaminated soil;
- (6) The potential for increased soil migration both around the site and off-site is higher due to increased water and wind transport during winter weather conditions;

- (7) Worker safety at the site during winter conditions will be substantially worsened as work in the cold increases the potential for accidents;
- (8) The current agreement with the Barnwell disposal site expires December 31, 1988;
- (9) Neither Barnwell nor any other disposal site will accept rain or ice-saturated soil;
- (10) Verification testing will be impossible due to the usual heavy snow cover in Ohio and high humidity problems with instrument accuracy, as mentioned in (2) above;
- (11) Restoration and closure of the site will be more difficult in winter conditions.

As a result of the foregoing, Chemetron has no choice but to withdraw its Commitment to decontaminating the Harvard Avenue site by March 17, 1989 and to respectfully request an extension of time for completion of the decontamination work.

We note that you have stated in your November 2, 1988 letter:

"The NRC does not intend to consider any further extension to you to complete the decontamination unless you make a compelling showing of diligent efforts to decontaminate and good cause for any requested extension".
[emphasis added.]

We believe that both a "compelling showing of diligent efforts" as well as "good cause" for the requested extension can be made.

The facts presented by our consultants concerning the problems associated with decontamination work being done through the winter season in Cleveland, Ohio, offer good cause for an extension. In addition, the average winter precipitation, average winter temperature, and average winter wind pattern will obviously have an impact on site work. Please see Attachment I which presents the climatic data.

A major environmental concern is the spread of contaminated material throughout the site as well as off-site through air and water media. This dispersion after the soil is disturbed would appear more likely, due to the increased severe winter weather and its impacts on unconsolidated soil.

The addition of water to the excavated material both through the water frozen in soil as well as the cold rainwater adhering to the soil will create more problems for packaging, shipment, and disposal.

The regulations clearly encourage dry disposal of nuclear waste. In 10 CFR §61.56(a) the NRC gives minimum requirements for waste which are intended to facilitate the handling of waste and provide protection of worker health and safety at the disposal site:

"(3) Solid waste containing liquid shall contain as little free standing and noncorrosive liquid as is reasonably achievable, but in no case shall the liquid exceed 1% of the volume."

At the excavation site, the handling of the waste as well as the health and safety of personnel are also an issue. During the winter, there is no doubt that additional free liquid will become intermingled with the waste and thus make handling more difficult and less safe.

Another factor arguing against starting at once is the transport of the waste during the winter months; there is an increased chance of transportation accidents.

In order to work safely on the site, following acceptable safety and environmental practices, quality data will need to be gathered for the "guided" excavation. As suggested above, accuracy of the measuring instruments may be suspect, so proper excavation may be difficult. In addition, confirmatory data which will need to be gathered following excavation and evaluated by NRC consultants will be more problematic. In heavy snow cover, it may be impossible.

Although we would strongly prefer meeting the March 17, 1989 deadline, based on the foregoing, we believe it will be impossible. Thus, we propose to take the following actions which we believe shows our intent to diligently pursue decontamination. Consistent with the approved REMCOR work plan's schedule on page 4 - 2, we plan to notify the contractor at once that we shall require that their work begin on the first day of the construction season (March 15, 1989).

In addition, because Chemetron went into bankruptcy on February 20, 1988, we will go to court immediately to ask that the money for the remediation work be set aside. Following the approved NRC schedule of 135 days, this would result in all work being completed by July 28, 1989. This early (December, 1988) notice to the contractor would enable it to have all necessary

personnel and equipment mobilized in advance and to be able to perform as soon as the construction season begins. We suggest that the work will then proceed in an expeditious fashion as well as a more environmentally and industrially safe manner. The work will be accomplished in the NRC approved 135-day time frame.

During the months from December, 1988 through March, 1989, the property will remain inaccessible to the public, and secure.

Chemetron, as you know, has performed work at the site which has resulted in expenditures of over two million dollars. It is anxious to complete the decontamination of the Harvard Avenue site quickly but is quite concerned about the human and environmental risk which decontamination during a harsh winter pose.

In your letter of November 2 you stated that Condition 12 of our license required us to have completed decontamination of the Harvard Avenue site by October 1, 1988. While neither admitting nor denying this, it does appear that we have both been placed in a rather awkward position. Chemetron went into bankruptcy in February, 1988 which had a major impact on its ability to hire a consultant to draft a plan. In addition, Chemetron was not able to proceed to commence any remediation until NRC approval was received and the NRC's approval was delayed due to its heavy work load. As a result, we were unable to begin work until after that October date had passed. We respectfully request the NRC to continue to exercise its discretion, with respect to Condition 12. We request that you continue to recommend that any enforcement action be postponed until July 29, 1989. We also request that you refrain from citing Chemetron for any alleged violation of its license. We believe that we will be able to decontaminate the site by July 28, 1989 and are ready to commit to taking all necessary measures to effectuate that plan.

To summarize, Chemetron: (1) withdraws its November 15, 1988 Confirmation of Commitment; (2) requests an extension of the decontamination completion date from March 17, 1989 to July 28, 1989; and (3) requests that the NRC continue to refrain from citing Chemetron for any alleged violations of its license.

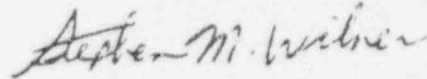
Our joint program goal at Harvard Avenue is the safe, complete and expeditiously accomplished decontamination of the site consistently with all environmental, nuclear, and safety statutory and regulatory requirements. We are confident that the NRC will agree with Chemetron that to protect human health and the environment using the approved work plan, expediency should not overrule caution.

Mr. Leland C. Rouse
December 12, 1988
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Thank you for your prompt consideration and attention to Chemetron's requests. For any further information or documentation the NRC may require, please give me a call at (412) 562-5016.

Thank you.

Sincerely yours,

A handwritten signature in cursive script that reads "Stephen M. Wilner".

Stephen M. Wilner

SMW:las

EXHIBIT "C"

ATTACHMENT 1

CLIMATIC DATA FOR CLEVELAND, OHIO - NOVEMBER TO MARCH

Month	Temperature ¹ °F			Precipitation (inches)		Wind ² (mph)	
	Avg. High	Avg. Low	Avg. Daily	Avg. Snow	Avg. Total	Avg. Spd	Avg. Dir.
Dec.	37.7	24.7	31.2	11.3	2.69	12.2	S
Jan.	33.7	19.5	26.6	11.0	2.51	12.4	SW
Feb.	36.1	21.1	28.6	11.1	2.31	12.0	SW
Mar.	44.7	28.5	36.7	10.4	2.96	12.4	W
Apr.	58.4	38.7	48.5	2.1	3.36	11.8	S
May	68.9	48.2	58.6	.1	3.35	10.2	S
Jun.	78.9	58.0	68.5	.0	3.47	9.4	S
Jul.	82.4	61.7	72.1	.0	3.32	8.7	S

1.U.S. Soil Conservation Service - Cleveland, verbally reported climatic data (216-524-6580)

2.Wind speeds and directions, verbally reported by National Climatic Data Center, Ashville, NC(704-259-0682)

- note wind speeds and direction are only reported as averages. Snowfalls are usually produced, in mass, by NW or N winds (about 8% in true figuring)