

7528-153

UNOCAL

3/23/92

BEFORE THE KANSAS DEPARTMENT OF HEALTH AND ENVIRONMENT
Landon Building - Ninth and Jackson
Suite 904
Topeka, Kansas 66612

IN THE MATTER OF:)	
)	CONSENT ORDER
POLLUTION AT THE UNOCAL)	FOR REMEDIAL INVESTIGATION
CHEMICALS DIVISION)	AND FEASIBILITY STUDY
DISTRIBUTION FACILITY -)	
WICHITA, KANSAS)	Case No. 91-E-206

PRELIMINARY STATEMENT

The parties hereto, the Kansas Department of Health and Environment (KDHE), and Respondent the Unocal Chemicals Division (hereinafter "Respondent"), having agreed that settlement of this matter is in the best interests of all parties and the public, hereby represent and state as follows:

1. KDHE is a duly authorized agency of the State of Kansas, created by act of the legislature.

2. KDHE has general jurisdiction of matters involving hazardous substance and hazardous substance cleanups under the authority of the Kansas Environmental Response Act (K.S.A. 65-3452a. et seq.), as well as hazardous waste and its clean-up (K.S.A. 65-3430 et seq.) and has general authority and responsibility to protect the waters and soils of the state under the authority of K.S.A. 65-161, et seq.

3. The Respondent agrees to undertake all actions required by the terms and conditions of this Consent Order. In any action by KDHE to enforce the terms of this Consent Order, the Respondent agrees not to contest the authority or jurisdiction of the Secretary of Health and Environment to issue this Consent Order.

4. This Consent Order shall apply to and be binding upon KDHE and the Respondent, its agents, successors, and assigns. The signatories to this Consent Order certify that they are authorized to execute and legally bind the parties they represent to this Consent Order. No change in the ownership or corporate status of the Respondent shall alter its responsibilities under this Consent Order.

5. The Respondent shall provide a copy of this Consent Order to any subsequent owners or successors before ownership rights are transferred. The Respondent shall provide a copy of this Consent Order to all contractors, sub-contractors, laboratories, and consultants which are retained to conduct any work performed under this Consent Order, within 14 days after the effective date of this Consent Order or the date of retaining their services. Notwithstanding the terms of any contract, Respondent is responsible for compliance with this Consent Order and for ensuring that its contractors and agents comply with this Consent Order.

6. The activities conducted under this Consent Order are subject to approval by KDHE and shall be undertaken in a manner that is consistent with the National Contingency Plan (NCP), 40 CFR Part 300.

7. While the Respondent to this Consent Order does not admit liability for the contamination at the Unocal Chemicals Division Distribution Facility and the surrounding environment, nevertheless it agrees to enter into this Consent Order to prepare a Work Plan

as described in paragraph 24 below, to be attached hereto marked Exhibit 2 and incorporated herein upon approval by KDHE.

FINDINGS OF FACT

8. The Unocal Chemicals Division Distribution Facility "Unocal" is located at 2100 East 37th Street in Wichita, Kansas. The site is also described as being in the Southeast quarter of the Southwest quarter of Section 27, Township 26 South, Range 1 East.

9. Operations at Unocal generally include receiving bulk shipments of liquid chemicals, storage of liquid chemicals and distribution of liquid chemicals. The Unocal facility was originally constructed in 1953. Unocal handles a variety of chemicals which include, but are not limited to: toluene, methyl ethyl ketone, xylene, trichloroethylene and tetrachloroethylene.

10. On November 3, 1989, an accidental release of approximately 150 gallons of tetrachloroethylene was reported to KDHE. Unocal initially contracted O. H. Materials to excavate the contaminated soil. However, it was determined that excavation operations would not completely remediate the area of contaminated soil.

11. Unocal contracted Woodward Clyde Consultants to install a vapor extraction system in the contaminated area. The system was put into operation on November 22, 1989.

12. In March of 1990 a preliminary site characterization was conducted to identify and assess potential environmental concerns at Unocal. The conclusions of this investigation indicated that volatile organic chemicals "VOCs" are present in groundwater and soil beneath the site.

13. A second investigation was conducted at the Unocal facility on July 29 through August 6, 1991 to supplement data presented in the initial report. The conclusions of this investigation confirmed that VOCs were present in groundwater and soil beneath the Unocal site.

14. The contamination of the groundwater beneath the Unocal Chemicals Division Distribution Facility and adjacent areas is causing or threatens to cause pollution of the waters of the State or is or threatens to become a hazard to persons, public health, or safety.

CONCLUSIONS OF LAW

15. Respondent is a "person" within the meaning of K.S.A. 65-164, et seq., K.S.A. 65-3430, et seq., and K.S.A. 65-3452a, et seq.

16. The presence of the contaminants identified in the groundwater underlying the site constitutes "pollution" as defined by K.S.A. 65-171d.

17. Some of the contaminants identified in the groundwater underlying the site, are "hazardous substances" as defined by K.S.A. 65-3453 and "hazardous wastes" as defined by K.S.A. 65-3430.

18. The area defined in paragraph 8 and identified as Unocal Chemicals Division Distribution Facility constitutes a "site" within the meaning of K.S.A. 65-3453.

19. The facts above constitute:

a) the discharge, abandonment, or disposal of hazardous substances or hazardous wastes or;

b) the pollution of the land or waters of the state or the threat of pollution of the land or waters of the state or;

c) a hazard to persons, property or public health or threatens to become a hazard to persons, property or public health.

20. Under the facts as shown above, the Kansas Department of Health and Environment has concluded, and the Secretary has confirmed, that there is a need for a response action to prevent a continuing release or threat or release of hazardous substances and remove the pollution or hazard.

21. The clean up of such discharges is necessary to remove the pollution or hazard and to protect the public health and safety and the environment, giving rise to the authority of the Kansas Department of Health and Environment to enter this agreement. A necessary part of this clean up is an investigation of the nature and extent of the threat to the public health or welfare or the

environment caused by the release or threatened release of hazardous substances, pollutants, or contaminants on or from the site, an evaluation of alternatives for the appropriate extent of remedial action to prevent or mitigate the migration of the release or threatened release of hazardous substances, pollutants, or contaminants from the site, a selection of a remedial alternative and implementation of that alternative.

22. The Kansas Department of Health and Environment has authority to enter the agreement herein, and to make the findings of fact and conclusions of law herein stated.

23. The Secretary of Health and Environment is authorized by K.S.A. 65-3453, K.S.A. 65-164, et seq., K.S.A. 65-3430, et seq. and the regulations issued pursuant thereto to enter an order confirming the agreement of the parties, and ordering that the actions and obligations required by the foregoing findings of fact and conclusions of law, the parties hereto agree to the following activities and the commitments.

ORDER

24. Within 60 days of the effective date of this Consent Order, Respondent shall submit a draft Work Plan for KDHE approval which is consistent with the Statement of Work attached hereto, marked Exhibit 1. KDHE will provide comments on the draft Work Plan. Within 30 days of receipt of KDHE's comments, Respondent shall submit for final approval a revised Work Plan that addresses

KDHE's comments. Upon KDHE approval, the Work Plan shall become incorporated into this Consent Order and a part thereof as Exhibit 2.

25. Within 30 days from date of KDHE approval of the Work Plan, Respondent shall commence the schedule of work and thereafter implement the tasks detailed in the Work Plan. The work shall be conducted in accordance with the EPA Remedial Investigation and Feasibility Study guidance documents including but not limited to the "Interim Final Guidance for Conducting Remedial Investigations and Feasibility Studies" under CERCLA (OSWER Directive 9355.3-01) and with the standards and specifications contained in the Work Plan.

26. Respondent shall provide preliminary and final reports to KDHE according to the Implementation Schedule contained in Exhibit 2 in a form responsive to KDHE's comments.

27. After KDHE reviews the preliminary reports and after KDHE reviews the final reports, KDHE shall notify Respondent in writing, of KDHE's approval or disapproval of these reports or any part thereof. KDHE may also notify Respondent in writing of KDHE disapproval of Respondent's implementation of the approved Work Plan.

28. In the event of any KDHE disapproval of a submitted report or disapproval of Respondent's implementation of the approved Work Plan, KDHE shall send Respondent a Notice of Disapproval delineating the deficiencies, requiring revisions to the reports or modified work to cure the deficiencies in the work

and setting a schedule for response by Respondent, provided however that any such requirements are consistent with the objectives of the Work Plan and Consent Order.

29. Thereafter, Respondent shall amend and submit to KDHE revised reports to cure the deficiencies in the reports in accordance with KDHE's requirements.

30. KDHE may determine that additional tasks are necessary consistent with the approved Work Plan and this Consent Order in addition to the approved Work Plan tasks including reports, which have been completed pursuant to this Consent Order. KDHE may request Respondent to implement any such additional tasks within a timeframe specified by KDHE. Failure by Respondent to implement additional tasks as requested by KDHE, shall be considered a violation of this Consent Order.

31. All work performed pursuant to this Consent Order shall be under the direction and supervision of a professional engineer or geologist with expertise in hazardous waste site investigations and remediation. Within 30 days of the effective date of this Consent Order, Respondent shall notify KDHE in writing of the name, title, and qualification of the engineer or geologist, and of any contractors or subcontractors and their personnel to be used in carrying out the terms of this Consent Order.

32. Any reports, plans, specifications, schedules and attachments required by this Consent Order are, upon approval by KDHE, incorporated into this Consent Order. Any non-compliance with such approved reports, plans, specifications, schedules, and

attachments shall be considered a violation of this Consent Order.

33. No informal advice, guidance, suggestions, or comments by KDHE regarding reports, plans, specifications, and any other writing submitted to Respondent will be construed as relieving Respondent of its obligation to obtain written approval, if and when required by this Consent Order.

QUALITY ASSURANCE

34. All samples analyzed pursuant to this Consent Order shall be analyzed by a laboratory which participates in a quality assurance/quality control program equivalent to that specified in the document entitled "USEPA Contract Laboratory Program Statement of Work for Organic Analysis" and USEPA Contract Laboratory Program Statement of Work for Metals Analysis" (1988) ("Contract Lab Statement of Work") and is approved by KDHE.

35. All sample collection and analysis shall be performed in compliance with EPA-approved methods, including timing of analyses, documentation of sample collection, handling and analysis, as described in the following documents:

- a. "NEIC Manual for Ground Water/Subsurface Investigations at Hazardous Waste Sites," Document No. EPA/330/9-81-002; and
- b. Contract Lab Statement of Work.

36. Laboratory deliverables as specified in the Contract Lab Statement of Work shall be submitted to KDHE for all analytical

work performed pursuant to this Consent Order. Any deviations from the procedures and methods set forth in these documents must be approved in writing by KDHE prior to use.

37. Respondent shall use the quality assurance, quality control, and chain of custody procedures specified in the Quality Assurance Project Plan, which is part of the Work Plan, for all sample collection and analysis performed pursuant to this Consent Order.

38. All contracts for field work and laboratory analysis shall provide that KDHE representatives are allowed access, for auditing and evaluation purposes, at reasonable times upon reasonable request, to all laboratories and personnel utilized by Respondent for sample collection and analysis and other field work. Upon request by KDHE, the laboratories shall perform analysis of a reasonable number of known samples provided by KDHE to demonstrate the quality of the analytical data.

REPORTING

39. Respondent shall provide KDHE with written progress reports quarterly, pursuant to the effective date of this Consent Order. At a minimum, these progress reports shall: (1) describe the actions, progress, and status of projects which have been taken toward achieving compliance with this Consent Order, as well as the actions which are scheduled for the next quarter; (2) identify any requirements under this Consent Order that were not completed as

provided and any problem areas and anticipated problem areas in complying with this Consent Order; and (3) include all results of sampling, tests, data, and conclusions drawn from data generated pursuant to the Work Plan(s).

ACCESS

40. KDHE and any of its agents or contractors is authorized by Respondent to enter and freely move about all property at the site for the purposes of, inter alia; interviewing site personnel and contractors; inspecting records, operating logs, and contracts related to the activities set out in the Work Plan; reviewing the progress of Respondent in carrying out the terms of this Consent Order; conducting such sampling and tests as KDHE deems necessary; using a camera, sound recording, or other documentary type equipment; and verifying the reports and data submitted to KDHE by Respondent. All such activities of KDHE shall be limited to the work contemplated by the Consent Order. Respondent shall permit such persons to inspect and copy all records, files, photographs, documents, and other writings, including all sampling and monitoring data, that pertain to work undertaken pursuant to this paragraph. During such activities, KDHE agrees to follow established safety standards.

41. To the extent that work required by the Work Plan must be done on property not owned or controlled by Respondent, Respondent shall use its best efforts to obtain site access

agreements from the present owner(s) of such property within thirty (30) days of the effective date of this Consent Order. Best efforts includes, but is not limited to, reasonable payment of monies to the property owner. Any such access agreement shall be incorporated by reference into this Consent Order. In the event that agreements for site access are not obtained within thirty (30) days of the effective date of this Consent Order, Respondent shall notify KDHE regarding both the lack of and its failure to obtain such agreements within seven (7) days thereafter. In the event that KDHE obtains access for Respondent, all reasonable costs incurred by KDHE shall be reimbursed by Respondent. Upon KDHE's obtaining access for Respondent, Respondent shall undertake approved work on such property. KDHE shall not be responsible for any injury or damage to persons or property caused by the negligent or willful acts or omissions of Respondent, its officers, employees, agents, successors, assigns, contractors, or any other person acting on Respondent's behalf in carrying out any activities pursuant to the terms of this Consent Order.

DISPUTE RESOLUTION

42. If Respondent disagrees, in whole or in part, with any approval or other decision by KDHE made pursuant to this Agreement, Respondent shall notify KDHE within fourteen (14) calendar days of receipt of the disapproval. Respondent and KDHE shall then have an additional thirty (30) working days to attempt to resolve the

dispute. If agreement is reached, the resolution shall be reduced to writing, signed by each party and incorporated thereupon into this Agreement. If agreement is not reached, the KDHE shall issue its final decision on the dispute, in writing, to inform the Respondent of the decision of KDHE.

43. Respondent reserves their right to appeal any decision of the KDHE, which is not consistent with law or which is arbitrary or capricious concerning a dispute under this Agreement, to an administrative body with applicable jurisdiction and thereafter in compliance with the Kansas Administrative Procedures Act. The final decision or resolution of such authority shall be incorporated as a part of this Agreement. For purposes of this Agreement, final order or decision shall mean an order or decision from which no appeal may be taken. The parties agree to only utilize the dispute resolution process in good faith and not as a delay tactic, and agree to resolve the dispute and to expedite to the extent possible the dispute resolution process whenever it is used.

SAMPLING AND DATA/DOCUMENT AVAILABILITY

44. Respondent shall make available to KDHE all results of sampling, tests, or other data generated by or on its behalf with respect to the implementation of this Consent Order. Respondent shall submit these results in the progress reports described in the "Reporting" Section of this Consent Order. KDHE will make sampling

results and other data available to Respondent.

45. Respondent shall notify KDHE at least seven (7) days before conducting any well drilling, installation of equipment, or sampling. At the request of KDHE, Respondent shall provide or allow KDHE or its authorized representatives to take split samples of all samples collected by Respondent pursuant to this Consent Order. Similarly, at the request of Respondent KDHE shall allow Respondent or its authorized representatives to take split or duplicate samples of all samples collected by KDHE under this Consent Order. KDHE shall notify Respondent at least seven (7) days before conducting any sampling under this Consent Order, provided, however, that if 7 days notice of sample collection activity is not possible, KDHE and Respondent shall give such advance notice to enable each party to have a representative present during said sample collection activity.

RECORD PRESERVATION

46. Respondent agrees that it shall preserve, during the pendency of this Consent Order and for a minimum of six (6) years after its termination, all records and documents which have not previously been provided to KDHE in its possession or in the possession of divisions, employees, agents or consultants or contractors which relate in any way to this Consent Order or to hazardous substance and waste management and disposal at the site. At the conclusion of six (6) years, Respondent shall then make such

OTHER CLAIMS AND PARTIES

50. Nothing in this Consent Order shall constitute or be construed as a release for any claim, cause of action or demand in law or equity against any person, firm, partnership, or corporation not a signatory to this Consent Order for any liability it may have arising out of or relating in any way to the generation, storage, treatment, handling, transportation, release, or disposal of any hazardous constituents, hazardous substances, hazardous wastes, pollutants, or contaminants found at, taken to, or taken from the facility.

OTHER APPLICABLE LAWS

51. All actions required to be taken pursuant to this Consent Order shall be undertaken in accordance with the substantive requirements of all applicable local, state, and federal laws and regulations.

PROJECT COORDINATORS

52. On or before the effective date of this Consent Order, KDHE and Respondent shall each designate a Project Coordinator. Each Project Coordinator shall be responsible for overseeing the

implementation of this Consent Order. The KDHE Project Coordinator will be KDHE's designated representative. To the maximum extent possible, all communications between Respondent and KDHE and all documents, reports, approvals, and other correspondence concerning the activities performed pursuant to the terms and conditions of this Consent Order, shall be directed through the Project Coordinator. The parties agree to provide at least seven (7) days written notice prior to changing Project Coordinators. The absence of the KDHE Project Coordinator from the Site shall not be cause for the stoppage of work.

NOTIFICATION

53. Unless otherwise specified, reports, notice or other submissions required under this Consent Order shall be in writing and shall be sent to:

- a. For KDHE
Rick Bean, Environmental Geologist
Kansas Department of Health and Environment
Forbes Field, Bldg. 740
Topeka, Kansas 66620
- b. For Respondent:
Daryl W. Dierwechter
Manager of Environmental Affairs
Unocal Corporation
Unocal Chemicals and Mineral Division
1700 East Golf Road
Shamburg, Illinois 60173

REIMBURSEMENT OF COSTS

54. a. Six months after the effective date of this Consent Order and semiannually thereafter, KDHE shall submit to Respondent an accounting of all oversight costs incurred by KDHE with respect to this Consent Order during the previous fiscal year.

b. KDHE shall submit to Respondent an accounting for the cost of performing the Baseline Risk Assessment. Upon receipt of such accounting, Respondent agrees to reimburse KDHE for such reasonable amounts. KDHE agrees to use a qualified contractor to perform such Baseline Risk Assessment.

c. KDHE shall submit to Respondent an accounting for the reasonable cost of development of a Plan for Community Relations, and implementation of such Plan. Upon receipt of such accounting, Respondent agrees to reimburse KDHE for such amount. KDHE agrees to perform such work itself or use a qualified contractor to develop and implement such Plan.

d. KDHE shall submit to Respondent the cost of preparing and maintaining the Administrative Record, including but not limited to photocopying, assembling, mailing, updating, storage and other maintenance services. Upon receipt of such accounting, Respondent agrees to reimburse KDHE for such reasonable amounts.

55. Respondent shall, within thirty (30) calendar days from receipt of said accounting, remit a check for the amount of those

costs made payable to the Secretary of Health and Environment. Checks should specifically reference the identity of this site, and should be addressed to:

Secretary of Health and Environment
Landon Building - Ninth and Jackson
Suite 904
Topeka, Kansas 66612

A copy of the check and transmittal letter shall be sent to the KDHE contact specified herein. Respondent shall remit a check for the full amount of those costs.

EFFECTIVE DATE AND SUBSEQUENT MODIFICATION

56. This Consent Order shall become effective when signed by the Secretary of the Department of Health and Environment.

57. This Consent Order may be amended by mutual agreement of KDHE and Respondent. Such amendments shall be in writing, shall have as their effective date the date, on which they are signed by both parties, and shall be incorporated into this Consent Order. Nothing herein shall limit KDHE's ability to require additional tasks as set forth in Paragraph 32 herein.

TERMINATION

58. The provisions of this Consent Order shall terminate upon Respondent's receipt of written notice from KDHE that Respondent has demonstrated that the terms of this Consent Order, including

any additional tasks which KDHE has determined to be necessary have been satisfactorily completed.

IN WITNESS WHEREOF, the parties have affixed their signatures below:

RESPONDENT:

Daryl W. Dierwechter
Daryl W. Dierwechter, Manager
Unocal Corporation

Date: 3/9/92

STATE OF KANSAS:

Robert Eye
Robert Eye, General Counsel
Kansas Department of Health &
Environment

Date: 3/22/92

Azzie Young
Azzie Young, Ph.D.
Secretary of Health and Environment

Date: 3/23/92

CERTIFICATE OF MAILING

I hereby certify that on this 24th day of March, 1992, I deposited a true and correct copy of the above and foregoing Consent Order For Remedial Investigation and Feasibility Study in the United States Mail, postage prepaid, and addressed to:

Daryl W. Dierwechter
Manager, Environmental Affairs
Unocal Chemicals & Minerals Division
Unocal Corporation
1700 East Golf Road
Schaumburg, Illinois 60173-5862

Alice L. Henning
Staff Person