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August 14, 2001

HAND DELIVERY

Stephen B. Hammond, P.E.
Director
Division of Solid & Hazardous Waste Materials
NYS Department of Environmental Conservation
625 Broadway
Albany, New York 12233-7250

Re: Remediation of the Praxair Site in Tonawanda

Dear Steve:

On behalf of Praxair, Inc., I want to thank you, Carl and the other DEC representatives for taking the time to meet with us on August 10, 2001. We appreciated the opportunity to discuss our concerns regarding the impact that Regulation 380 will have on Praxair's ability to redevelop its site and thereby expand in Western New York. In order to avoid any further misunderstandings and to achieve a solution that allows Praxair to redevelop its site, we thought it best to set forth in writing our understanding of the following key points:

- For the purposes of moving forward, Praxair agrees that the regulation is not interfering with the Corps' clean-up efforts.
- Praxair also agrees with the general proposition that the issues raised by the regulation would be mitigated if the Corps is able to attain a clean-up level that is consistent with DOH's requirements. Praxair will continue to work with the Corps and with all other parties -- including local officials and DEC -- to achieve such a result in a constructive manner. Praxair also is considering your suggestion that it initiate a program to monitor the results of the Corps' effort.
- As you stated on multiple occasions at the meeting, DEC interprets the regulation as not applying to the movement of materials within the site on the grounds that such movement of material constitutes neither "disposal" nor "discharge" of

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August 15, 2001

Page 2

material within the meaning of the regulation. This clarified prior conversations in which there had been suggestions that allowing soil particles to become airborne or waterborne might trigger the need to obtain a discharge and/or disposal permit. Clearly, such an interpretation would be contrary to the plain meaning of the terms "discharge" and "dispose" and would create an impossible compliance problem for Praxair. Thus, your comments at our meeting have clarified that redevelopment requiring movement of materials on site will not be restricted by the regulation.

- Even with these steps forward, Praxair remains concerned that the regulation could effectively block redevelopment of the site by imposing costly disposal requirements. As you know, the Western New York site must compete against other alternative sites for investment dollars. Thus it is incumbent on Praxair's local management and DEC to do everything possible to insure that the cost of redevelopment is as low as possible in a manner that is consistent with legitimate public health and environmental concerns. As you know, at the meeting in Tonawanda, David Dooley, Barbara Youngberg and Dr. Karmin Ramawi discussed a compromise solution. Because DOH's jurisdiction is invoked at the .05% of the uranium plus thorium level, and Regulation 380, as it is currently proposed, defines the restricted material by source, thus including even background levels up to .05%, the parties discussed amending the regulation to establish a threshold level at which the restrictions would be triggered. Although DEC subsequently indicated that it had concerns with such an approach, Praxair continues to believe that this approach offers the best solution to the problem. An appropriate threshold consistent with DOH guidelines does not create a public health issue and would provide Praxair the certainty that it needs. Accordingly, unless DEC has a different solution to propose, we respectfully request that DEC adopt the approach that all parties agreed to in Buffalo.

As we have indicated, the Tonawanda site is vying with other Praxair sites for redevelopment monies, and the significant cost of shipping materials out of state would almost certainly make Tonawanda uncompetitive. We are confident that a solution exists that provides a safe harbor and also is consistent with existing DOH guidelines.

August 15, 2001

Page 3

We hope to schedule a follow-up meeting during the week of September 4th in Albany to discuss this approach or any other proposals DEC might make. Please let us know of a convenient time.

Very truly yours,

COUCH WHITE, LLP



Harold N. Iselin

HNI/NLF/lst

cc: Mr. Dennis Conroy

Mr. David Grant

Mr. Richard Tisch, Esq.

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