

NM1 - 3

ENFORCEMENT

DATE:

1990

1 MR. BRITTON: Yes, sir, it is.

2 THE COURT: And what is the plea of Unichem?

3 MR. BRITTON: Guilty.

4 THE COURT: Does the government have any proffer
5 it would like to make in support of the --

6 MS. ORTIZ: Yes, sir. With your permission, we
7 would like to incorporate the affidavit of probable cause
8 in the complaint as well as the facts that are set forth in
9 the introduction to the information as the proffer.

10 THE COURT: Mr. Harold has done most of the work.
11 You have done most of the work concerning putting that
12 complaint together, I suspect.

13 MR. HAROLD: Yes, sir.

14 THE COURT: And there is attached to the complaint
15 attachment B. Is that the probable cause statement?

16 MS. ORTIZ: Yes, sir, it is.

17 THE COURT: Mr. Shea, has Mr. Britton had an
18 opportunity to review attachment B to the complaint?

19 MR. SHEA: Yes, Your Honor, he has.

20 THE COURT: And have you discussed that matter
21 with him?

22 MR. SHEA: Yes, Your Honor, we have discussed it,
23 and it's our view that if the trial were had in the case,
24 the government could at the very least prima facie
25 establish the facts that are recited in attachment B to the

1 complaint, and it is my view on behalf of the corporation
2 that that constitutes a sufficient factual basis under Rule
3 11(d) for the acceptance of the plea by the court.

4 THE COURT: Do you agree, Mr. Britton?

5 MR. BRITTON: Yes, sir, I do.

6 THE COURT: Have you discussed this matter fully
7 with your attorneys, Mr. Shea and Mr. Rosenthal?

8 MR. BRITTON: Yes, sir, we have.

9 THE COURT: You are satisfied with their
10 representation of you in this matter?

11 MR. BRITTON: Yes, sir, I am.

12 THE COURT: Ms. Ortiz, can you think of any
13 further inquiries that should be directed to the defendant
14 in this case?

15 MS. ORTIZ: No, Your Honor.

16 THE COURT: The court makes these findings: that
17 Unichem International, Incorporated appears here before
18 this court in the presence of its counsel, Mr. Shea and Mr.
19 Rosenthal, and through its president, Mr. Britton, who is
20 an officer of the corporation and a member of the board of
21 directors. The court finds that the board of directors is
22 empowered to authorize Mr. Britton to enter pleas of guilty
23 to the three charges contained in the information that have
24 been filed by this court. The court finds that a valid
25 resolution has been entered into in support of the plea of

1 guilty to the charges before the court and it finds that
2 the corporation is financially able to pay a substantial
3 fine that could be imposed by the court to the charge
4 involved in the plea of guilty. In saying this, the court
5 notes that the parties have agreed at this point to a cash
6 fine of \$1,250,000 to be paid for the violations of this
7 case.

8 The court finds that the pleas of guilty that have
9 been offered by this court have been made after advice as
10 to the direct consequences of the pleas. The pleas have
11 been made voluntarily and have not been coerced by threats
12 or violence.

13 The pleas are the product of a plea agreement
14 which appears not to violate any public policy and to be
15 consistent with the provisions of law and the policies
16 behind the Resource Conservation and Recovery Act.

17 The court finds that there is a factual basis that
18 has been adopted in support of the pleas of guilty to Count
19 1, 2 and 3 of this information. A factual basis may be
20 found in this case as Exhibit B to the complaint filed in
21 this court and signed by Mr. Harold, a special agent of the
22 Federal Bureau of Investigation who is in charge of this
23 case investigation as well as contained in the information
24 that has been filed here before this court under the title
25 Introduction and contains approximately 12 -- does contain

1 12 separate paragraphs.

2 The pleas are accepted and the court adjudges
3 Unichem International, Incorporated to be guilty of the
4 offenses charged subject to the plea agreement which will
5 permit the defendant to withdraw the pleas of guilty in the
6 event that the court finds that it is unable to accept or
7 to go along with the plea agreement after the presentence
8 report.

9 Mr. Britton, I direct that a written presentence
10 report be prepared by a probation officer to assist me in
11 arriving at appropriate disposition of this case. You will
12 be required and the corporation will be required through
13 its officers and managers to give information for this
14 presentence report. And, Mr. Shea, Mr. Rosenthal, of
15 course, may be present during those times.

16 The representative and the corporation's counsel
17 shall be afforded the opportunity to speak on behalf of the
18 corporation at the time of sentencing, probably, although
19 sentencing is not under the sentence guidelines, have an
20 opportunity to fully review the presentence report with the
21 court.

22 I am not setting a time for sentencing at this
23 point because I haven't had an opportunity to coordinate
24 those matters with the probation officer who will be
25 preparing the report. However, as soon as that report is

FILED
DISTRICT OF WYOMING
MAY 21 1990

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF WYOMING

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 vs.)
)
 UNICHEM INTERNATIONAL, INC.,)
)
 Defendant.)

No. CR 90-057

I N F O R M A T I O N

THE UNITED STATES ATTORNEY CHARGES THAT:

Introduction

1. At all times material to this Information, the Resource Conservation and Recovery Act ("RCRA"), Title 42, United States Code, Sections 6901 through 6987, prohibited the treatment, storage and disposal of any listed or identified hazardous waste without a permit or without interim status authorization.

2. At all times material to this Information, the Resource Conservation and Recovery Act, Title 42, United States Code, Sections 6901 through 6987, prohibited the transportation of any listed or identified hazardous waste to a facility which did not have a permit or was without interim status authorization.

Blumberg No. 513
**PLAINTIFF'S
EXHIBIT**
9

3. At all times material to this Information, the Resource Conservation and Recovery Act, Title 42, United States Code, Sections 6901 through 6987, prohibited the transportation of any listed or identified hazardous waste without a manifest. A manifest is the form used for identifying the quantity, composition, and the origin, routing, and destination of hazardous waste during its transportation from the point of generation to the point of disposal, treatment, or storage.

4. As used in this Information, the term "hazardous waste" refers to substances and materials listed or identified in Title 40, Code of Federal Regulations, Part 261.

5. At all times material herein, UNICHEM INTERNATIONAL, INC., Defendant herein, was a corporation, incorporated under the laws of the State of New Mexico, engaged in, among other things, the blending of chemicals which are sold to oil field operators.

6. At all times material herein, UNICHEM INTERNATIONAL, INC., Defendant herein, had blending plants at 7040 Salt Creek Road, Casper, Wyoming; at 707 North Leech Street, Hobbs, New Mexico; and at Route 1, Box 300, Highway 699 West, Maurice, Louisiana.

7. At all times material herein, UNICHEM INTERNATIONAL, INC., Defendant herein, during the course of its operations at its

plant in Casper, Wyoming, generated hazardous waste which its employees commonly called "slop" or "slop oil". Among the hazardous chemicals contained in the "slop" were acetone, carbon disulfide, ethylbenzene, methanol, toluene, 1,1,1-trichloroethane and xylene.

8. At all times material herein, UNICHEM INTERNATIONAL, INC., Defendant herein, routinely stored the "slop" at its Casper, Wyoming, plant in fifty-five (55) gallon drums.

9. On or about July 16, 1985, April 22, 1986, July 22, 1986, and July 21, 1987, UNICHEM INTERNATIONAL, INC., Defendant herein, shipped drums of "slop" to its plant in Hobbs, New Mexico, without manifests.

10. On or about October 14, 1985, November 11, 1985, March 7, 1986, May 12, 1986, June 20, 1986, and July 24, 1987, UNICHEM INTERNATIONAL, INC., Defendant herein, shipped the "slop" to Eunice, New Mexico, without manifests. UNICHEM INTERNATIONAL, INC., Defendant herein, thereafter disposed of the "slop" in surface impoundments at its wholly-owned subsidiary, Parabo, Inc.

11. Between July 21, 1987, and July 27, 1988, UNICHEM INTERNATIONAL, INC., Defendant herein, treated and disposed of approximately fifteen (15) to twenty (20) fifty-five (55) gallon drums of "slop" by directing an employees of Jim's Water Service,

a waste water hauler, to vacuum the "slop" into a waste water truck, which waste water was disposed of at Don's Draw, north of Douglas, Wyoming, a facility not permitted to receive such hazardous waste.

12. At no time material to this Information did Defendant UNICHEM INTERNATIONAL, INC., have a permit or interim status authorization, pursuant to Title 42, United States Code, Sections 6925 or 6926, to store, treat or dispose of hazardous wastes, known by its employees as "slop", at any of its facilities referred to above.

COUNT ONE

Between on or about May 30, 1985, to on or about July 27, 1988, in the District of Wyoming, UNICHEM INTERNATIONAL, INC., Defendant herein, did knowingly store and cause to be stored hazardous waste; namely, ignitable waste containing, among other chemicals, acetone, carbon disulfide, ethylbenzene, methanol, toluene, 1,1,1-trichloroethane and xylene, at its facility in Casper, Wyoming, a facility which did not have a permit or interim status authorization under Title 42, United States Code, Section 6925;

In violation of 42 U.S.C. § 6928(d)(2)(A).

COUNT TWO

On or about July 16, 1985, April 22, 1986, July 22, 1986, and July 21, 1987, UNICHEM INTERNATIONAL, INC., Defendant herein, beginning in the District of Wyoming and continuing into the District of New Mexico, did knowingly transport and cause to be transported hazardous waste; namely, ignitable waste containing, among other chemicals, acetone, carbon disulfide, ethylbenzene, methanol, toluene, 1,1,1-trichloroethane and xylene, to its facility in Hobbs, New Mexico, a facility which did not have a permit or interim status authorization under Title 42, United States Code, Sections 6925 or 6926;

In violation of 42 U.S.C. § 6928(d)(1).

COUNT THREE

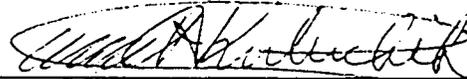
Between July 21, 1987 and July 27, 1988, in the District of Wyoming, UNICHEM INTERNATIONAL, INC., Defendant herein, did knowingly treat and dispose of and cause to be treated and disposed of hazardous waste; namely, ignitable waste containing, among other chemicals, acetone, carbon disulfide, ethylbenzene, methanol, toluene, 1,1,1-trichloroethane and xylene, by directing an employee of Jim's Water Service to vacuum drums of hazardous waste into its waste water truck, which waste water was disposed of at Don's Draw,

north of Douglas, Wyoming, without a permit or interim status authorization under Title 42, United States Code, Section 6925;

In violation of 42 U.S.C. § 6928(d)(2)(A).

RICHARD A. STACY
United States Attorney

By:



DAVID A. KUBICHEK
Assistant United States Attorney



CRISELDA ORTIZ
Attorney
Environmental Crimes Section
Environment & Natural Resources Div.
U.S. Department of Justice
Washington, DC

Betty A. Griss

Clerk

United States District Court

Michelle Reed
Deputy Clerk

FOR THE DISTRICT OF WYOMING

UNITED STATES OF AMERICA

v.

CRIMINAL COMPLAINT

UNICHEM INTERNATIONAL, INC.

CASE NUMBER: DC 90-064 J

(Name and Address of Defendant)

I, the undersigned complainant being duly sworn state the following is true and correct to the best of my knowledge and belief.

Between on or about May 30, 1985, to on or about July 27, 1988, in the District of Wyoming, Defendant did

knowingly store and cause to be stored hazardous waste; namely, ignitable waste containing, among other chemicals, acetone, carbon disulfide, ethylbenzene, methanol, toluene, 1,1,1-trichloroethane and xylene, at its facility in Casper, Wyoming, a facility which did not have a permit or interim status authorization under 42 U.S.C. § 6925.

in violation of Title 42 United States Code, Section(s) 6928(d)(2)(A)

I further state that I am a(n) FBI/Special Agent and that this complaint is based on the following

facts: Affiant, Merlyn J. Herold, being duly sworn, deposes and states that I am a Special Agent of the Federal Bureau of Investigation ("FBI") assigned to the Casper, Wyoming resident agency which is a part of the Denver Office of the FBI. Affiant has been a Special Agent with the FBI for the past 21-1/2 years.

UNICHEM INTERNATIONAL, INC. is located at 7040 Salt Creek Road, Casper, Wyoming. Its corporate headquarters and main blending plant is at 707 North Leech Street, Hobbs, New Mexico. Their foreign parent is Simon Engineering PLC, Stockport, Cheshire, England.

(Continued Attachment "B".)

Continued on the attached sheet and made a part hereof: Yes No



Merlyn J. Herold
Signature of Complainant **MERLYN J. HEROLD**

Sworn to before me and subscribed in my presence,

May 22, 1990
Date

Casper, Wyoming
City and State

Alan B. Johnson, U.S. District Judge
Name & Title of Judicial Officer

Alan B. Johnson
Signature of Judicial Officer

ATTACHMENT "A"

COUNT TWO

On or about July 16, 1985, April 22, 1986, July 22, 1986, and July 21, 1987, UNICHEM INTERNATIONAL, INC., Defendant herein, beginning in the District of Wyoming and continuing into the District of New Mexico, did knowingly transport and cause to be transported hazardous waste; namely, ignitable waste containing, among other chemicals, acetone, carbon disulfide, ethylbenzene, methanol, toluene, 1,1,1-trichloroethane and xylene, to its facility in Hobbs, New Mexico, a facility which did not have a permit or interim status authorization under Title 42, United States Code, Sections 6925 or 6926;

In violation of 42 U.S.C. § 6928(d)(1).

COUNT THREE

Between July 21, 1987 and July 27, 1988, in the District of Wyoming, UNICHEM INTERNATIONAL, INC., Defendant herein, did knowingly treat and dispose of and cause to be treated and disposed of hazardous waste; namely, ignitable waste containing, among other chemicals, acetone, carbon disulfide, ethylbenzene, methanol, toluene, 1,1,1-trichloroethane and xylene, by directing an employee of Jim's Water Service to vacuum drums of hazardous waste into its waste water truck, which waste was disposed of at Don's Draw, north

of Douglas, Wyoming, without a permit or interim status
authorization under Title 42, United States Code, Section 6925;

In violation of 42 U.S.C. § 6928(d)(2)(A).

///

ATTACHMENT "B"

On July 27, 1988, Affiant served a Search Warrant on Asif Majeed, Plant Manager of UNICHEM INTERNATIONAL, INC. ("UNICHEM"). Assisting in the service of the Search Warrant were other Special Agents of the FBI, United States Environmental Protection Agency ("U.S. EPA") Inspector Robert L. Stone ("Inspector Stone"), and U.S. EPA Sampling Technicians. Twenty-eight (28) samples were taken by the U.S. EPA sampling team which included samples of waste and of the environment to be tested at the U.S. EPA Laboratory, Denver, Colorado. Two (2) boxes (12" x 15" x 10") of records were taken for review by Affiant. During the search it was noted there were thirty (30) fifty-five (55) gallon drums labeled by spray paint with the word "SLOP", and one (1) drum labeled "BAD". Interviews of most of UNICHEM's employees were also conducted by Special Agents of the FBI.

James Clore ("Clore"), job title of Blender, UNICHEM, was interviewed during the search and also on February 15, 1990. Clore stated his job was to blend the various chemical products sold by UNICHEM in one of three large vats, depending on the product. The oil-based chemicals are mixed in a 1,300 gallon vat. The excess oil-based chemicals mixed, from 1977 to some time in 1984, were drained into the floor drain to be mixed with the waste water in the underground storage tank. This waste water was first disposed

of at the Natrona County Land Fill and then at the Mills, Wyoming Evaporation Pond. In 1984 Clore was told to place the excess oil-based chemicals into a fifty-five (55) gallon drum next to the mixing vat. When the drum was filled with various oil-based chemicals he would seal the drum, paint the word "SLOP" on the drum with spray paint and move it outside the building on the east side of the lot. Two (2) to five (5) fifty-five (55) gallon drums were collected each month. Some of these drums were then shipped to UNICHEM, Hobbs, New Mexico on UNICHEM trucks that had brought various raw chemicals to UNICHEM, Casper, Wyoming. Clore never prepared a Hazardous Waste Manifest for any of these shipments. He did prepare these drums by painting over the word "SLOP" with some other word, not recalled, and he would also place a Department of Transportation ("DOT") label, "FLAMMABLE", on these drums. In mid-1987, when UNICHEM, Hobbs, New Mexico told UNICHEM, Casper, Wyoming, that no more drums of "SLOP" could be shipped to UNICHEM, Hobbs, New Mexico, Lyle Hove ("Hove"), the UNICHEM Area Manager, told Clore to have the Jim's Water Service ("JWS") truck driver pump a few drums of "SLOP" into the load of waste water when the waste water was collected. Clore estimated fifteen (15) to twenty (20) fifty-five (55) gallon drums were disposed of in this fashion. Drums of "SLOP" not shipped to UNICHEM, Hobbs, New Mexico or taken by JWS were stored on the UNICHEM Casper plant yard.

Clore stated the water-based chemicals were mixed in the 1,000 gallon vat. The excess water-based chemicals were washed down the floor drain into the underground storage tank. Two or three washings of this vat were also washed into the underground storage tank. The last washing was drained out of the building to a drainage ditch next to UNICHEM's property.

Asif Majeed, Plant Manager, UNICHEM, Casper, Wyoming, stated to Affiant, on February 8, 1990, that he (Majeed) had been employed by UNICHEM since 1976. From 1976 to about 1978 all the waste water generated by UNICHEM was spread over a leach field near the plant. Since the field was not working very well UNICHEM decided to put in an underground storage tank which was emptied at the Natrona County Land Fill. About 1980 the Natrona County Land Fill refused to accept liquid waste and UNICHEM started sending the waste water to the Town of Mills Evaporation Pond. After a couple of years the Town of Mills refused the waste water and UNICHEM contracted for Kissack Oil Field Service, Gillette, Wyoming, to haul the waste water away. In late 1986, JWS was contracted to haul the waste water away to their disposal ponds at Don's Draw. This waste water consisted of the excess water-based chemicals and the wash water of the water-based chemical vat, along with other waste water that would be washed down the floor drain due to cleaning the floor.

Prior to 1983 or 1984 the excess oil-based chemicals were also included with the water-based chemicals.

In 1983 or 1984, the excess oil-based chemicals were saved in fifty-five (55) gallon drums and labeled "SLOP". They were stored on the east side of the plant yard until they could be shipped to UNICHEM, Hobbs, New Mexico. UNICHEM, Casper generated between two (2) to three (3) of these drums a month. He (Majeed) recalled that UNICHEM, Casper, had to ask for permission to ship the drums to UNICHEM, Hobbs. They (UNICHEM Casper) were told to place the DOT label "FLAMMABLE" on the drums before shipping them.

In mid-1987, Hove, UNICHEM, Casper, Wyoming Area Manager, was told by UNICHEM, Hobbs, New Mexico, not to ship any more of the oil-based excess chemicals. Hove then instructed Clore to have the JWS truck driver take some of the "SLOP" drums with him when he picked up the waste water from the underground tank.

On November 16, 1988, Affiant completed the review of the documents and papers seized during the search of UNICHEM, Casper, Wyoming, on July 27, 1988, and of documents received as the result of a District of Wyoming Grand Jury Subpoena served on UNICHEM, Hobbs, New Mexico, on August 9, 1988. Documents from both sources show UNICHEM, Casper, Wyoming shipped, without proper Hazardous Waste Manifests, to UNICHEM, Hobbs, New Mexico, barrels of "SLOP" on the following days and following amounts:

<u>DATES SHIPPED</u>	<u>NUMBER SHIPPED</u>
November 12, 1984	5 drums
December 17, 1984	7 drums
May 21 1985	19 drums
July 16 1985	18 drums
April 22, 1986	31 drums
July 22, 1986	10 drums
July 21, 1987	295 gallons of "SLOP" to be dumped

These documents further show shipments of "SLOP" from UNICHEM, Hobbs, New Mexico, to its wholly-owned subsidiary, Parabo, Incorporated, Eunice, New Mexico, on the following days in the following amounts:

<u>DATES SHIPPED</u>	<u>AMOUNT SHIPPED</u>
October 14, 1985	1,300 gallons
November 11, 1985	1,100 gallons
March 7, 1986	1,200 gallons
May 12, 1986	2,400 gallons
June 20, 1986	1,000 gallons
July 24, 1987	1,200 gallons

None of the above shipments had the proper Hazardous Waste Manifests. Parabo, Inc., where the above-listed "SLOP" shipments

were disposed of in surface impoundments, is not permitted to receive such hazardous waste pursuant to 42 U.S.C. §§ 6925 or 6926.

These documents also show JWS hauled waste water from UNICHEM, Casper, Wyoming, to Don's Draw Disposal pond, which is permitted to receive only oil well-produced water, on the following days and in the following amounts:

<u>DATES SHIPPED</u>	<u>AMOUNT SHIPPED</u>
December 15, 1986	153 barrels
February 4, 1987	160 barrels
March 25, 1987	160 barrels
May 20, 1987	130 barrels
June 24, 1987	160 barrel
July 20, 1987	130 barrels
July 24, 1987	30 barrels
August 27, 1987	130 barrels
October 14, 1987	100 barrels
November 17, 1987	160 barrels
January 13, 1988	150 barrels
February 16, 1988	150 barrels
March 7, 1988	160 barrels
March 29, 1988	160 barrels
April 26, 1988	160 barrels
May 29, 1988	120 barrels

June 8, 1988	160 barrels
July 5, 1988	130 barrels
July 20, 1988	130 barrels

By U.S. EPA Laboratory Reports, Affiant was informed that the samples taken from fifty-five (55) gallon drums labeled "SLOP" exhibited the hazardous waste characteristic of ignitability. In addition, the following hazardous chemicals were identified in the samples taken from drums and waste water: acetone, carbon disulfate, ethylbenzene, toluene, 1,1,1-trichloroethane, trichloroethene, xylene and methanol.

Finally, as noted above, Affiant has been informed by EPA Inspector Stone that UNICHEM has never had a permit or interim authorization pursuant to 42 U.S.C. §§ 6925 and 6926, to store, treat, or dispose of hazardous waste at either of its blending plants in Casper, Wyoming, or Hobbs, New Mexico, or at its wholly-owned subsidiary, Parabo, Inc., in Eunice, New Mexico.

///

[1] Miller environmental firm. It's dated August the 27th,
 [2] 1992. I want you to read this paragraph on Page 21,
 [3] because it mentions your name in the first line. Just
 [4] read that to yourself, please. All right?
 [5] Do you recall being interviewed by Mr. Polter,
 [6] who wrote this report?
 [7] A: Vaguely.
 [8] Q: Where did that interview occur?
 [9] A: Probably at the Parabo office.
 [10] Q: Do you remember him actually coming down to the
 [11] site?
 [12] A: Yes.
 [13] Q: Do you know if he talked to any employees other
 [14] than you?
 [15] A: I believe he did.
 [16] Q: Do you know who he talked with?
 [17] A: No.
 [18] Q: This attributes to you a statement that you
 [19] recall receiving bulk chemicals from the Hobbs facility
 [20] and that these chemicals were either placed into the oil
 [21] recovery process or into the BS pit. Do you recall making
 [22] a statement of that kind to Mr. Polter?
 [23] A: I don't recall it.
 [24] Q: Do you recall receiving bulk chemicals from
 [25] Unichem at Hobbs?

[1] A: Yes.
 [2] Q: And when were such chemicals received?
 [3] A: I don't remember when.
 [4] Q: Would this have been after you built the bulk
 [5] storage?
 [6] A: I just don't know.
 [7] Q: Well, what would bulk chemicals have been used
 [8] for before you built the bulk storage, if you know?
 [9] A: We wouldn't have used them, probably.
 [10] Q: Would not have used bulk chemicals?
 [11] A: (Witness shakes head.)
 [12] Q: Do you know whether this reference is to new
 [13] chemical or used chemical?
 [14] A: I'm not sure.
 [15] Q: The second sentence here is that these chemicals
 [16] were either placed into the oil recovery process or into
 [17] the BS pit. Do you remember where the bulk chemicals were
 [18] placed when they were received?
 [19] A: Some of them were put in the pit.
 [20] Q: Into the pit. The - this says the "BS" pit.
 [21] Does that mean BS&W?
 [22] A: Yes.
 [23] Q: Would that be Pit 4?
 [24] A: Pit 4.
 [25] Q: What bulk chemicals would have been put into

[1] Pit 4?
 [2] A: Well, it would be something that they'd brought.
 [3] Q: Would this be waste material?
 [4] MR. LOFTIN: Let me object to the question
 [5] to the extent it's vague as to what you mean by "waste."
 [6] You can go ahead and answer, if you can.
 [7] THE WITNESS: I don't know.
 [8] Q: (By Mr. Thayer) Well, was it material that was
 [9] thrown in there to get rid of it?
 [10] A: Yes.
 [11] Q: So this was not used in the reclamation
 [12] operation, then?
 [13] A: No.
 [14] Q: Do you know what these chemicals were?
 [15] A: No.
 [16] Q: To the extent that bulk chemicals were used in
 [17] the oil recovery process, were those the surfactants and
 [18] emulsifiers that you mentioned?
 [19] A: Yes.
 [20] Q: Would there be any others?
 [21] A: Yes.
 [22] Q: What other chemicals can you remember?
 [23] A: Well, we used some chemicals that they brought
 [24] in drums that we used.
 [25] Q: Well, I'm, of course, referring to this

[1] environmental audit. What other bulk chemicals, if any,
 [2] were brought down?
 [3] A: Not that I know of.
 [4] Q: Do you know what kind of chemicals were disposed
 [5] of in this BS&W pit?
 [6] A: No.
 [7] Q: Do you have any way of knowing what that stuff
 [8] was?
 [9] A: No.
 [10] Q: Okay. Before I put away this report, let me ask
 [11] you a couple of other questions about it. On Page 22,
 [12] under the heading of "Historical Waste Management" - and
 [13] I'll show you this in a minute, but let me read it.
 [14] "Shipments of waste consisting of SLOP oil, waste
 [15] chemicals and blending process washdown water may have
 [16] been disposed of at the Parabo facility."
 [17] That's the first sentence here under "Historical
 [18] Waste Management." Just review that, please.
 [19] Now, from your knowledge of the operations, do
 [20] you agree with that statement?
 [21] A: Yes.
 [22] Q: Do you have any knowledge of what these waste
 [23] chemicals were?
 [24] A: No.
 [25] Q: By name or content or anything?

Page 52

[1] Q: And could those deliveries occur when no one
[2] from Parabo was on site?

[3] A: Yes.

[4] Q: So again, you would just take the word of the -
[5] that the trucker would leave a record?

[6] A: Right.

[7] Q: And that would be your only knowledge?

[8] A: (Witness nods head.)

[9] Q: Okay. Has anybody ever told you that refinery
[10] waste was disposed of at Parabo?

[11] A: No.

[12] Q: Did you ever suspect that such a thing had
[13] occurred?

[14] A: No.

[15] Q: Were refinery wastes accepted at Parabo before
[16] Rule 711?

[17] A: They would have been.

[18] Q: They would have been?

[19] A: Uh-huh.

[20] Q: What kind of wastes?

[21] A: Well, it's according to what they were.

[22] Q: Well, I mean, I don't know what a refinery
[23] produces. Could you tell me?

[24] A: I don't know, either.

[25] Q: Would they all be tank bottoms, or would there

Page 53

[1] be some other stuff?

[2] A: I don't know.

[3] Q: But before Rule 711, then, are you saying that
[4] it was the business practice at Parabo to accept refinery
[5] waste?

[6] A: Yes.

[7] Q: Do you know how many years that practice was
[8] allowed?

[9] A: I'm not sure, probably '87 or '88, somewhere
[10] along in there; '89, maybe.

[11] Q: The years preceding Rule 711?

[12] A: Yes.

[13] Q: Do you remember an actual change occurring in
[14] your operating practices?

[15] A: Yes.

[16] Q: That is, did somebody come out and give you new
[17] instructions?

[18] A: Yes.

[19] Q: Who gave you those instructions?

[20] A: Jim Britton.

[21] Q: And what were the instructions?

[22] A: That's when 711 come in, and we started closing
[23] and changed our paperwork and locking the gates at night.

[24] Q: Okay. Now, do you know what kind of business
[25] operation Unichem carried on in Casper, Wyoming?

Page 54

[1] A: No.

[2] Q: Do you know whether or not any material from
[3] Casper, Wyoming, was ever brought down to Unichem at
[4] Hobbs?

[5] A: No.

[6] Q: Did you ever hear anything about that?

[7] A: No.

[8] Q: Did you ever hear that Unichem had been charged
[9] with crimes in Wyoming?

[10] A: Yes.

[11] Q: What did you hear about that?

[12] A: I just heard that they had dumped some stuff
[13] into disposal.

[14] Q: Into an arroyo up there?

[15] A: I don't know where it was at. I just heard it
[16] was a disposal.

[17] Q: A disposal?

[18] A: Yes.

[19] Q: Was that disposal out on the ground or what?

[20] A: I don't know.

[21] Q: Did anybody ever give you any detail?

[22] A: No, no.

[23] Q: Were you told that any waste chemical from
[24] Wyoming was transported down to New Mexico?

[25] A: No.

Page 55

[1] Q: And to your knowledge, was any waste chemical
[2] from Wyoming transported and disposed of at Parabo?

[3] A: No.

[4] Q: Did an FBI agent ever interview you about that
[5] Wyoming prosecution?

[6] A: Yes.

[7] Q: What was his name?

[8] A: I don't remember.

[9] Q: Did he come down to the Parabo site?

[10] A: Yes.

[11] Q: What did he ask you?

[12] A: I don't remember.

[13] Q: Do you remember if his name was Merlyn Herold?

[14] A: I don't recall.

[15] Q: I'm going to show you a copy - and this is an
[16] exhibit that I don't remember the number right now - of
[17] the criminal complaint that was filed in Wyoming. And
[18] this was filed by the FBI agent. At the bottom of page
[19] iv - this is a small Roman numeral, i-v - it says,
[20] "Documents from both sources," meaning Casper and Hobbs,
[21] "show that Unichem Casper, Wyoming, shipped, without
[22] proper hazardous waste manifest, to Unichem, Hobbs, New
[23] Mexico, barrels of SLOP on the following days and in the
[24] following amounts." And then it gives a list of dates and
[25] amounts.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF WYOMING

FILED
DISTRICT OF WYOMING
MAY 31 1990
WILLIAM C. DEAMAN

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
vs.)
)
UNICHEM INTERNATIONAL, INC.,)
)
Defendant.)

Case No. DC-90-064J

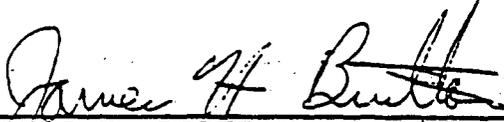
CR 90 - 057

PLEA AGREEMENT

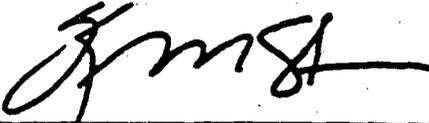
1. Defendant Unichem International, Inc. agrees to waive indictment, agrees to the filing of charges by Information, and to enter guilty pleas to: (a) Counts One and Three of the Information, a copy of which is attached and incorporated herein by reference, which charge violations of the Resource Conservation and Recovery Act, 42 U.S.C. § 6928(d)(2)(A); and (b) Count Two of the Information, which charges a violation of the Resource Conservation and Recovery Act, 42 U.S.C. § 6928(d)(1).
2. Defendant Unichem International, Inc. agrees to waive any claims that any of the counts as charged in the Information are duplicitous, that is, that they join more than one offense in one count.
3. Defendant Unichem International, Inc. understands that: (a) the Resource Conservation and Recovery Act, 42 U.S.C. § 6928(d)(2)(A), a violation of which is charged in Count One of the Information, provides for a maximum possible fine of fifty thousand dollars (\$50,000.00) for each day on which a violation is charged; and (b) 18 U.S.C. § 3571(c)(3), and its predecessor statute, 18 U.S.C. § 3623(b)(3), provide for a fine of five hundred thousand dollars (\$500,000.00) for a violation of 42 U.S.C. §§ 6928(d)(1) and (d)(2)(A), violations of which are charged in Counts Two and Three, respectively, of the Information. Defendant is also subject to a mandatory Special Assessment of two hundred dollars (\$200.00) on each of the three counts charged in the Information, pursuant to the provisions of 18 U.S.C. § 3013(a)(2)(B).

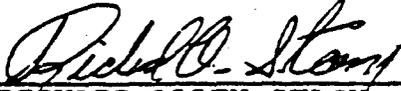
6. This agreement concerning disposition of Counts One through Three is material to both parties to this Plea Agreement. Should the Court choose to reject the agreed-upon disposition of Counts One through Three, both parties reserve the right, pursuant to Rule 11, Federal Rules of Criminal Procedure, to withdraw from this Plea Agreement.
7. Both parties reserve the right of allocution, pursuant to Rule 32(a)(1), Federal Rules of Criminal Procedure, and to provide to the Court and to the United States Probation Office a full statement of facts relating to the conduct of Defendant Unichem International, Inc.
8. The above-stated terms and conditions complete the entire agreement between the United States and Defendant Unichem International, Inc., and its attorneys Kevin M. Shea and Michael Rosenthal.

DATED this 31st day of May, 1990.

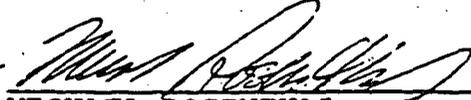

 JAMES H. BRITTON, President
 Unichem International, Inc.


 WILLIAM D. WALTON
 Vice President
 Unichem International, Inc.


 KEVIN MICHAEL SHEA
 Attorney for Defendant
 Unichem International, Inc.
 HOLME ROBERTS & OWEN
 1700 Lincoln St., Ste. 4100
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 (303) 861-7000


 RICHARD ALLEN STACY
 United States Attorney


 CRISELDA ORTIZ
 Attorney
 Environmental Crimes Sect.
 Environment & Natural
 Resources Division
 U.S. Department of Justice
 Washington, DC


 MICHAEL ROSENTHAL
 Attorney for Defendant
 Unichem International, Inc.
 HATHAWAY, SPEIGHT, KUNZ,
 TRAUTWEIN AND BARRETT
 P.O. Box 1208
 Cheyenne, WY 82001

3. At all times material to this Information, the Resource Conservation and Recovery Act, Title 42, United States Code, Sections 6901 through 6987, prohibited the transportation of any listed or identified hazardous waste without a manifest. A manifest is the form used for identifying the quantity, composition, and the origin, routing, and destination of hazardous waste during its transportation from the point of generation to the point of disposal, treatment, or storage.

4. As used in this Information, the term "hazardous waste" refers to substances and materials listed or identified in Title 40, Code of Federal Regulations, Part 261.

5. At all times material herein, UNICHEM INTERNATIONAL, INC., Defendant herein, was a corporation, incorporated under the laws of the State of New Mexico, engaged in, among other things, the blending of chemicals which are sold to oil field operators.

6. At all times material herein, UNICHEM INTERNATIONAL, INC., Defendant herein, had blending plants at 7040 Salt Creek Road, Casper, Wyoming; at 707 North Leech Street, Hobbs, New Mexico; and at Route 1, Box 300, Highway 699 West, Maurice, Louisiana.

7. At all times material herein, UNICHEM INTERNATIONAL, INC., Defendant herein, during the course of its operations at its

a waste water hauler, to vacuum the "slop" into a waste water truck, which waste water was disposed of at Don's Draw, north of Douglas, Wyoming, a facility not permitted to receive such hazardous waste.

12. At no time material to this Information did Defendant UNICHEM INTERNATIONAL, INC., have a permit or interim status authorization, pursuant to Title 42, United States Code, Sections 6925 or 6926, to store, treat or dispose of hazardous wastes, known by its employees as "slop", at any of its facilities referred to above.

COUNT ONE

Between on or about May 30, 1985, to on or about July 27, 1988, in the District of Wyoming, UNICHEM INTERNATIONAL, INC., Defendant herein, did knowingly store and cause to be stored hazardous waste; namely, ignitable waste containing, among other chemicals, acetone, carbon disulfide, ethylbenzene, methanol, toluene, 1,1,1-trichloroethane and xylene, at its facility in Casper, Wyoming, a facility which did not have a permit or interim status authorization under Title 42, United States Code, Section 6925;

In violation of 42 U.S.C. § 6928(d)(2)(A).

north of, Douglas, Wyoming, without a permit or interim status authorization under Title 42, United States Code, Section 6925;

In violation of 42 U.S.C. § 6928(d)(2)(A).

RICHARD A. STACY
United States Attorney

By:

DAVID A. KUBICHEK
Assistant United States Attorney

CRISELDA ORTIZ
Attorney
Environmental Crimes Section
Environment & Natural Resources Div.
U.S. Department of Justice
Washington, DC

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF WYOMING

UNITED STATES OF AMERICA,
Plaintiff,

v.

Criminal No. DC-90-064J

UNICHEM INTERNATIONAL,
Defendant.

COPY

TRANSCRIPT OF HEARING PROCEEDINGS

Transcript of Hearing Proceedings on the above-entitled case before the Honorable Alan Johnson on the 31st day of May 1990, at Jackson, Wyoming.

Court Reporter: Mr. John E. Walz, RPR, CM
Deputy Official Court Reporter
District of Wyoming
111 South Wolcott
Casper, Wyoming 82601

1 people's knees lock up during an arraignment and I have
2 seen people faint. So don't let that happen to yourself.

3 I will be taking testimony from you and your
4 testimony will be under oath and subject to all of the
5 penalties provided by law where you could be prosecuted for
6 making a false statement or perjury in the event that you
7 do not testify truthfully.

8 Do you understand that?

9 MR. BRITTON: Yes.

10 THE COURT: Would you raise your right hand and be
11 sworn?

12 (Mr. Britton sworn.)

13 THE COURT: Would you please state your name?

14 MR. BRITTON: James H. Britton.

15 THE COURT: Your age, Mr. Britton?

16 MR. BRITTON: 42.

17 THE COURT: And what is your status, your
18 relationship to the corporation, Unichem?

19 MR. BRITTON: I'm president of the company.

20 THE COURT: How long have you occupied that
21 position?

22 MR. BRITTON: For five and a half years.

23 THE COURT: Tell me a little about your
24 background.

25 MR. BRITTON: Let's see. I was born in

1 MR. SHEA: Yes, Your Honor, it's my signature.

2 THE COURT: And Mr. Britton, have you identified
3 the signatures on the plea agreement?

4 MR. BRITTON: Yes, sir.

5 THE COURT: That plea agreement appears to contain
6 these elements. It is a three-page document with eight
7 separate paragraphs. The defendant, Unichem International,
8 Incorporated, agrees to waive indictment -- and we will
9 spend some time going through the significance of what the
10 significance of that might be -- and agrees to the filing
11 of charges by information with the idea that it will enter
12 pleas of guilty to Counts 1 and 3 of the information which
13 charge violations of the Resource Conservation and Recovery
14 Act, Title 42, United States Code, Section 6928
15 subparagraph (D)(II)(A) and Count 2 of the information
16 charging that violation of the same act but a different
17 paragraph, Section 6928 subparagraph (d)(I).

18 The defendant agrees to waive any claims that any
19 of the counts as charged in the information are
20 duplicitous; that is, that they join more than one offense
21 in one document.

22 Paragraph 3 contains the maximum sentence that can
23 be imposed by this court for violation of these laws. And
24 as to Counts 1 and 3, a violation can result in a maximum
25 possible fine of \$50,000 for each day on which violation is

1 MR. BRITTON: Yes, sir, it is.

2 THE COURT: And what is the plea of Unichem?

3 MR. BRITTON: Guilty.

4 THE COURT: Does the government have any proffer
5 it would like to make in support of the --

6 MS. ORTIZ: Yes, sir. With your permission, we
7 would like to incorporate the affidavit of probable cause
8 in the complaint as well as the facts that are set forth in
9 the introduction to the information as the proffer.

10 THE COURT: Mr. Harold has done most of the work.
11 You have done most of the work concerning putting that
12 complaint together, I suspect.

13 MR. HAROLD: Yes, sir.

14 THE COURT: And there is attached to the complaint
15 attachment B. Is that the probable cause statement?

16 MS. ORTIZ: Yes, sir, it is.

17 THE COURT: Mr. Shea, has Mr. Britton had an
18 opportunity to review attachment B to the complaint?

19 MR. SHEA: Yes, Your Honor, he has.

20 THE COURT: And have you discussed that matter
21 with him?

22 MR. SHEA: Yes, Your Honor, we have discussed it,
23 and it's our view that if the trial were had in the case,
24 the government could at the very least prima facie
25 establish the facts that are recited in attachment B to the

1 complaint, and it is my view on behalf of the corporation
2 that that constitutes a sufficient factual basis under Rule
3 11(d) for the acceptance of the plea by the court.

4 THE COURT: Do you agree, Mr. Britton?

5 MR. BRITTON: Yes, sir, I do.

6 THE COURT: Have you discussed this matter fully
7 with your attorneys, Mr. Shea and Mr. Rosenthal?

8 MR. BRITTON: Yes, sir, we have.

9 THE COURT: You are satisfied with their
10 representation of you in this matter?

11 MR. BRITTON: Yes, sir, I am.

12 THE COURT: Ms. Ortiz, can you think of any
13 further inquiries that should be directed to the defendant
14 in this case?

15 MS. ORTIZ: No, Your Honor.

16 THE COURT: The court makes these findings: that
17 Unichem International, Incorporated appears here before
18 this court in the presence of its counsel, Mr. Shea and Mr.
19 Rosenthal, and through its president, Mr. Britton, who is
20 an officer of the corporation and a member of the board of
21 directors. The court finds that the board of directors is
22 empowered to authorize Mr. Britton to enter pleas of guilty
23 to the three charges contained in the information that have
24 been filed by this court. The court finds that a valid
25 resolution has been entered into in support of the plea of

DAVID EDWARD POLTER, Volume II January 16, 1996

PAGE 234 TO PAGE 500

Ken Owen & Associates

(512) 472-0880

**CONDENSED TRANSCRIPT AND CONCORDANCE
PREPARED BY:**

*Ken Owen & Associates
801 West Avenue
Austin, TX 78701
Phone: (512) 472-0880
FAX: (512) 472-6030*

- (1) findings.
- (2) Q. It wouldn't?
- (3) A. Correct.
- (4) Q. How much did Geraghty & Miller get paid to do this audit?
- (5) A. I don't recall the exact amount.
- (6) Q. Wasn't it fifty or sixty thousand dollars?
- (7) Does that sound about right?
- (8) A. Uh-huh.
- (9) Q. Let me ask you, Mr. Polter, if you would, say 'yes' or 'no' so she can take that down.
- (10) 'Uh-huhs' don't come out. Do you understand?
- (11) A. Yes.
- (12) Q. I know you know that, as a lawyer.
- (13) A. Yes.
- (14) Q. All right, sir. Let's go through - well, let me go at it this way, try to do this quickly. On these various bills of lading that Norm Thayer asked you about that only have designations 'NA,' those are Department of Transportation designations, correct?
- (15) A. Yes.
- (16) Q. So the book doesn't tell you anything about that formula book?
- (17) A. Correct.
- (18) Q. Same is true with designations such that

- (1) '95.
- (2) All right, sir. We were talking about
- (3) Exhibit 25. Right?
- (4) A. Yes.
- (5) Q. And it has a designation -
- (6) A. TC420B.
- (7) Q. What's the Bates number on that? Eighty
- (8) what?
- (9) A. Five.
- (10) Q. All right, sir. Now, it says that 500
- (11) gallons of TC420B weighing 4,105 pounds went to
- (12) Parabo from Unichem Hobbs. Correct?
- (13) A. Yes.
- (14) Q. What, according to the formula book, does
- (15) TC 420 B have in it?
- (16) A. It contains a hazardous substance and other
- (17) ingredients.
- (18) Q. What hazardous substance does it contain?
- (19) A. Methanol.
- (20) Q. Any other hazardous substance?
- (21) A. Not that I recognize.
- (22) Q. Does it contain any of the hazardous
- (23) substances that the United States government charged
- (24) against Unichem in the criminal matter in Wyoming?
- (25) A. Methanol.

- (1) start with 'UN'?
- (2) A. Correct.
- (3) Q. Those are Department of Transportation,
- (4) also?
- (5) A. (Witness nodded).
- (6) Q. All right, sir. Then the first one I see in
- (7) what was marked this morning is Exhibit 25, and that
- (8) looks like a bill of lading dated May 4, '87. Is
- (9) this one you looked at during the course of the
- (10) audit?
- (11) A. Can I look at it?
- (12) Q. Sure.
- (13) A. I don't recall, specifically.
- (14) Q. You didn't make a list of those you looked
- (15) at anywhere?
- (16) A. It would be in my inspection notes.
- (17) Q. Do we have those?
- (18) A. That would be in the transcription. I
- (19) thought they were in this - in these files. If
- (20) they're not, they would be in another Unichem file.
- (21) Q. All right, sir. Let me ask you, if you
- (22) would, when we take a break, see if you could find
- (23) those. I saw some transcripts, but I didn't read
- (24) them to be in connection with this audit. I
- (25) understood them to be later, like in '93 or '94 or

- (1) Q. Besides methanol?
- (2) A. No.
- (3) Q. That's the only one?
- (4) A. Yes.
- (5) Q. It doesn't have acetone, carbon disulfate,
- (6) ethylbenzene, toluene, 1,1,1-trichloroethane,
- (7) xylene. It doesn't have any of those?
- (8) A. That's correct.
- (9) Q. Does it have an amount of methanol?
- (10) A. Yes.
- (11) Q. And what's that?
- (12) A. It's 20 percent.
- (13) Q. Now, as an expert in this area, what does
- (14) that tell you? Is that a hazardous substance in that
- (15) quantity?
- (16) A. The presence of methanol in a chemical blend
- (17) would indicate that the chemical blend contains a
- (18) hazardous substance.
- (19) Q. Mr. Polter, let me ask you. Understand, I
- (20) know virtually nothing about this, and I'm going to
- (21) assume that nobody on the jury does, either, so
- (22) please try to make it as simple as you can.
- (23) A. If it was a simple statute, I would do that.
- (24) Q. Well, I understand. But I mean as simple as
- (25) you can make it. Now, does that mean, then, if we

- (1) had 500 gallons of Unichem product TC420B that 100
- (2) gallons of it, by percentage, was methanol?
- (3) A. Yes.
- (4) Q. Is that what that means in English?
- (5) A. I believe so.
- (6) Q. All right. Now, does that mean that that
- (7) would be a hazardous substance if it was not under
- (8) the oil field exemption. Is that correct?
- (9) A. It would contain a hazardous substance, yes.
- (10) Q. Does that make it a hazardous substance
- (11) under - is it RCRA?
- (12) A. No.
- (13) Q. CERCLA?
- (14) A. Under CERCLA, yes.
- (15) Q. All right. What about the next item on
- (16) Exhibit 25, the bill of lading dated 5/4/87, which is
- (17) TB100B?
- (18) A. Contains two hazardous substances and
- (19) various other ingredients, nonhazardous.
- (20) Q. And what are the hazardous substances in
- (21) TB100B?
- (22) A. It would be xylene and cumene.
- (23) Q. Xylene is x-y-l-e-n-e?
- (24) A. Yes.
- (25) Q. And how much xylene does it have in it?

- (1) MS. KILLIAN: He can just give
- (2) proximate amounts, since these are formulas.
- (3) THE WITNESS: Approximately 5 percent.
- (4) Q. And what was the other chemical?
- (5) A. Cumene.
- (6) Q. How do you spell that?
- (7) A. C-u-m-e-n-e.
- (8) Q. All right. And how much of that was in it?
- (9) A. Approximately 4 percent.
- (10) Q. So between the two, approximately 9 percent
- (11) of TB100 would be a hazardous substance under CERCLA?
- (12) A. Let me modify that. I think there's also
- (13) one other chemical in there that may be hazardous.
- (14) Q. And what's that?
- (15) A. That would be the dichlorobenzene sulfonic
- (16) acid.
- (17) Q. And what percent of that is in there?
- (18) A. Approximately 16 percent.
- (19) Q. And 16 and 9 is what, 25?
- (20) A. Yes.
- (21) Q. Roughly 25 percent of TB100B contains
- (22) hazardous substances as defined in CERCLA?
- (23) A. That's right.
- (24) Q. And if it was not under the oil field
- (25) exemption, then it would be a violation for that to

- (1) be dumped at Parabo. Am I right?
- (2) A. If it was not an exempt oil and gas waste it
- (3) would not be authorized for disposal there.
- (4) Q. It would be a violation of, what, CERCLA?
- (5) RCRA?
- (6) A. No.
- (7) Q. What would it be a violation of?
- (8) A. Of the facility's permit.
- (9) Q. All right, sir. Now, when you did this
- (10) audit, did you do what we just went through?
- (11) A. Yes.
- (12) Q. On this invoice?
- (13) A. I don't recall on this specific invoice.
- (14) Q. Well, we're going to go through all these.
- (15) And you did it on all of them, I guess, that you
- (16) saw.
- (17) A. All that I reviewed, I suspect I did, yeah.
- (18) Q. Did you make a list of those?
- (19) A. I don't recall.
- (20) Q. Wouldn't that be something that would be
- (21) kind of important in doing this audit?
- (22) A. Making a list?
- (23) Q. Yes.
- (24) A. I don't know that making a list would be
- (25) significant.

- (1) Q. Who was supposed to get this audit?
- (2) A. Holme Roberts & Owen, and the Department of
- (3) Justice.
- (4) Q. Was it supposed to be given to anybody else?
- (5) A. I'm not sure what the ultimate distribution
- (6) or the intended ultimate distribution was.
- (7) Q. Well, what did they tell you it was?
- (8) A. It was being done pursuant to a Criminal
- (9) Plea Agreement.
- (10) Q. Do you think that the Department of Justice
- (11) would be interested or the EPA would be interested in
- (12) what we just went through?
- (13) A. I think none of this information really
- (14) answers the question of whether hazardous waste was
- (15) disposed at the site.
- (16) Q. It doesn't?
- (17) A. No.
- (18) Q. For you to be satisfied, would you have to
- (19) be standing there to see it go in the pit yourself?
- (20) A. I would have to see corroborated information
- (21) indicating that it had gone there.
- (22) Q. Well, let me go at it this way, Mr. Polter.
- (23) Number one, you knew that the federal government
- (24) charged Unichem with violations of these various
- (25) environmental laws before you finished the audit.

SEE NO EVIL
HEAR NO EVIL
SPEAK NO EVIL

In The Matter Of:

*ERSI, Inc. v.
Parabo, Inc.*

*Deposition of R. Winslow White
February 1, 1996*

*Lois Fields
Carol Davis Reporting, Records & Video, Inc.
7715 Westview
Houston, TX 77055-5099
(713) 461-3804 FAX: (713) 682-8528*

Original File ww020196.v1, 195 Pages

Word Index included with this Min-U-Script®

(1) plea agreement entered into in the Wyoming
 (2) criminal matter?
 (3) A: Yes.
 (4) Q: Did Mr. Britton tell you why the decision was
 (5) made to plead guilty to what was pled guilty
 (6) to?
 (7) A: To the best of my recollection, what I was
 (8) told by, I think, both Britton and by the
 (9) Brits at one time or another, it was an
 (10) agreement that protected the people who were
 (11) involved, the three or four people who were
 (12) specifically named, and that plea agreement,
 (13) plea bargain, resulted in a fine and a
 (14) probation, but no jail time for any people.
 (15) Q: All right. When you say the Brits, you
 (16) mean — you are referring to the British Simon
 (17) Engineering?
 (18) A: The British Simon people who really were
 (19) controlling — as I understand it, who were
 (20) controlling those decisions.
 (21) Q: All right, sir. And that was Mr. Wood and
 (22) Mr. Cook?
 (23) A: No, Mr. Wood was probably not directly
 (24) involved at that time, but —
 (25) Q: Cook?

Page 47

(1) A: Yeah, it was actually a million two fifty.
 (2) Q: Right. The million two fifty was paid?
 (3) A: Was paid.
 (4) Q: I'm still trying to get an answer to my
 (5) question. Did you deal directly with Geraghty
 (6) and Miller, as far as when they were doing the
 (7) audit and asking questions about —
 (8) A: No, I did not.
 (9) Q: Was that primarily because the relevant time
 (10) period they were interested in was before you
 (11) became president of Unichem?
 (12) A: That was one reason. The other reason was I
 (13) was running the company from Houston.
 (14) Q: I'm sure after the audit by Geraghty and
 (15) Miller was finished, you reviewed it?
 (16) A: I'm not sure I ever really read all of the
 (17) audits in their entirety. The executive
 (18) summaries, I clearly read. We had had them
 (19) reviewed by various people, both legally and
 (20) our environmental guys.
 (21) MS. KILLIAN: Tom, can we
 (22) take a restroom break —
 (23) MR. SIMS: Sure.
 (24) MS. KILLIAN: — before you
 (25) get into that?

Page 50

(1) A: Cook.
 (2) Q: And who told you this? Mr. Britton?
 (3) A: Yes, Britton, Wood, and Cook all at various
 (4) times.
 (5) Q: Told you that?
 (6) A: Basically, the same story.
 (7) Q: All right, sir. So the plea agreement was
 (8) entered into basically to avoid some of the
 (9) Unichem people going to jail?
 (10) A: As I understand it.
 (11) Q: All right.
 (12) A: Or the risk of them going to jail.
 (13) Q: Yes, sir. And this is what Mr. Britton, Cook,
 (14) and Wood, at various times while you were at
 (15) Unichem, told you?
 (16) A: Yes.
 (17) Q: All right. I take it that you never, as the
 (18) president of Unichem, got into trying to
 (19) determine the facts surrounding the
 (20) allegations that were made in the criminal
 (21) matter? Or did you?
 (22) A: I never tried to dispute the facts, if that's
 (23) what you meant, no.
 (24) Q: Did anyone at Unichem dispute them?
 (25) A: Essentially, no, to the best of my

Page 48

(1) MR. SIMS: Sure.
 (2) (Break.)
 (3) Q: (By Mr. Sims) Mr. White, let me show you
 (4) what's been marked as Exhibit 45 to these
 (5) depositions. I believe that's a copy of the
 (6) remediation contract signed March 29, 1993
 (7) between ERSI and Parabo, correct?
 (8) A: Uh-huh.
 (9) Q: Is that correct?
 (10) A: Yeah, that's correct.
 (11) Q: Okay. Is that your signature as president of
 (12) Parabo?
 (13) A: Yes.
 (14) Q: Did you sign that here in Houston? Or was
 (15) that out in New Mexico?
 (16) A: I suspect this was in New Mexico.
 (17) Q: The notary, apparently, was. Do you see that
 (18) on the last page?
 (19) A: I don't have a last page.
 (20) Q: Oh, I'm sorry.
 (21) A: But if the notary was in New Mexico, that's
 (22) probably where we did it.
 (23) Q: All right. The copy I have here does show
 (24) that I can't read the — do you remember
 (25) where it was signed?

Page 51

(1) recollection.
 (2) Q: Now, I take it, I believe, from what you said
 (3) a few minutes ago, that you — you were not
 (4) directly involved in dealing with the Geraghty
 (5) and Miller people when they did the audit, as
 (6) far as answering questions about anything
 (7) having to do with Parabo or Unichem Hobbs, or
 (8) were you?
 (9) A: No. My instructions to the Unichem people,
 (10) the whole — all of the Unichem people for the
 (11) Geraghty and Miller audit — the Simon
 (12) Environmental Services audit was to cooperate
 (13) in any way you can, give the answers if they
 (14) ask the questions.
 (15) Q: I understand. What I'm asking you is —
 (16) A: We had — and one of the reasons we did
 (17) that — there were several. That was probably
 (18) the appropriate thing to do. But the clear
 (19) instructions from Watson and Shea were that we
 (20) had a one time absolution facing us, and as a
 (21) result of this plea agreement, anything we
 (22) found, we could clean up with no penalty
 (23) involved beyond the penalties that were
 (24) already —
 (25) Q: The million and a half dollar fine?

Page 49

(1) A: No.
 (2) Q: All right. Were you involved —
 (3) A: Yeah, I know the notary.
 (4) Q: Who was that?
 (5) A: Marlene Moore, who is or was and still may be
 (6) an employee of Unichem.
 (7) Q: Okay. In Hobbs?
 (8) A: In Hobbs.
 (9) Q: All right, sir. When did you first have any
 (10) discussions with anyone at ERSI that led up to
 (11) the signing of Exhibit 45, do you recall?
 (12) A: No. It was sometime before this, but I don't
 (13) recall.
 (14) Q: Do you recall any of the discussions that you
 (15) had with anyone on the ERSI side prior to
 (16) Exhibit 45 being signed?
 (17) A: Specifically, no.
 (18) Q: Okay.
 (19) A: Generally, I think I had some discussions with
 (20) Kelly Buster and some discussions with —
 (21) whoever it was that was running ERSI at that
 (22) time.
 (23) Q: Bill Bowman?
 (24) A: Bill Bowman. And I think some time before
 (25) this was signed and we were negotiating

Page 52

[1] oil and gas people. And Watson presented the
[2] data and said here is the criminal indictment,
[3] you are well aware of that, or the criminal
[4] agreement. We are clearly on — Unichem is on
[5] probation. We have had this audit done. We
[6] can't — the analyses don't show any
[7] indication of hazardous materials. We would
[8] like your permission, ED and OCD, to open up
[9] pit four again. A month later, they sent us a
[10] letter, which I don't have, but I think is in
[11] the Parabo files, that said that pit four was
[12] approved, or whatever the wording was, for
[13] use. So we opened pit four at that point and
[14] began to reclaim oil from it. And that was
[15] the basis of my feeling that this report was
[16] indicative — we couldn't prove that anything
[17] had been put down there, we couldn't prove
[18] that it had. In other words, the
[19] determination couldn't be made.

[20] Q: Well, you read in the audit, did you not,
[21] Mr. White, that there were various bills of
[22] lading, delivery tickets, some of which are
[23] itemized in there?

[24] A: Yes.

[25] Q: That —

Page 77

[1] A: And they are itemized in the criminal —
[2] Q: Yes, sir.

[3] A: — agreement.

[4] Q: That indicates that slop oil and chemicals
[5] that do contain hazardous substances that are
[6] not exempt —

[7] A: I didn't see that part.

[8] Q: Well, let me finish — were shipped to Parabo?

[9] A: Yes, there were materials shipped to Parabo.

[10] Q: Have you read Mr. Polter's deposition in this
[11] case?

[12] A: No, sir.

[13] Q: Has Ms. Killian told you, in essence, what his
[14] testimony was?

[15] A: No, she mentioned that he was deposed.

[16] Q: All I'm trying to get to is — or let me go at

[17] it this way. If you were on the ERSI side of

[18] this contract, the remediation agreement,

[19] Exhibit 45, would you want to know about the

[20] criminal case and the Geraghty and Miller

[21] audit prior to signing the contract?

[22] A: I presume, but —

[23] Q: Well, Mr. White, seriously, isn't that

[24] something you would like to know about before

[25] you signed the contract?

Page 78

[1] A: I would like to know about it.

[2] Q: And I believe you told me earlier that nobody,

[3] to your knowledge, on the Parabo Unichem side

[4] of this contract gave that information to ERSI

[5] or Quest?

[6] A: I don't know that anybody did. I did not.

[7] Q: If they did, you don't know about it as you

[8] sit here today on February 1, 1996 —

[9] A: That is correct.

[10] Q: — A.D., correct?

[11] A: That is correct.

[12] Q: And I believe as part of one of your answers

[13] earlier today, you said that — and correct me

[14] if I'm wrong — that, in essence, the reason

[15] you didn't give it to them — give it, meaning

[16] the audit and the criminal complaint and the

[17] plea agreement — was because it was a public

[18] record; is that — is that right?

[19] A: No, I don't — it is a public record.

[20] Q: Yes.

[21] A: I think from — from a — from my standpoint,

[22] what I recall was that whether it was ERSI or

[23] one of several others who wanted to — who

[24] came to Parabo or Unichem and wanted to take a

[25] look at reclaiming oil, we basically told

Page 79

[1] people they could take samples and do whatever
[2] they needed to do to decide whether they
[3] wanted to proceed or not.

[4] Q: Well, what I'm trying to understand,
[5] Mr. White, is there — do you know of any
[6] reason why you, as the president of Unichem
[7] and the president of Parabo, did not give a
[8] copy of the Geraghty and Miller audit and the
[9] plea agreement to either ERSI or Quest?

[10] A: No, we had no reason not to, or to. I mean,
[11] they were agreements that were in the record,
[12] and I don't think we deliberately kept them
[13] from anybody. They were there.

[14] Q: But you didn't give them to them?

[15] A: Not to the best of my knowledge.

[16] Q: And you didn't tell them about them?

[17] A: I didn't tell them about them.

[18] Q: And if anybody else did, you don't know about

[19] that?

[20] A: I don't know that.

[21] Q: All right, sir. So your testimony is, in your

[22] opinion, the Geraghty and Miller audit does

[23] not give any indication of hazardous

[24] substances being in the Parabo pits? Is that

[25] your testimony?

Page 80

[1] A: No, my answer was, I think, the Geraghty and
[2] Miller audit report states that that
[3] determination of whether hazardous substances
[4] went into the pit cannot be made.

[5] Q: Mr. White, what does the word "indication"
[6] mean to you?

[7] A: I would take indication as meaning it is more
[8] likely than unlikely that something would
[9] happen.

[10] Q: Would you agree with me that indication is
[11] like a clue, that it's a possibility?

[12] A: It's a possibility, certainly a possibility.

[13] Q: All right. Would you agree with me that the

[14] Geraghty and Miller audit says that there is a

[15] possibility that hazardous substances were

[16] disposed of at Parabo?

[17] A: I think I would agree with that.

[18] Q: So if we change the word, indication, to

[19] possibility, you would agree with that?

[20] A: Yeah.

[21] Q: All right, sir. Then what about the criminal

[22] complaint and the plea agreement, would you

[23] agree with me that the allegations in the

[24] criminal complaint and what's in the plea

[25] agreement and the criminal information

Page 81

[1] certainly raise the possibility that hazardous
[2] substances were disposed of at Parabo?

[3] A: The possibility, yes.

[4] MS. KILLIAN: Do you need to

[5] review that.

[6] THE WITNESS: Yeah, I need to

[7] review that. I'm not sure what it

[8] says specifically.

[9] Q: (By Mr. Sims) All right, sir. Well, let's get

[10] it out and talk about it. Now, you reviewed

[11] the plea agreement and the criminal complaint

[12] as part of your preparation for this

[13] deposition; is that correct?

[14] A: The plea agreement, for sure.

[15] Q: And for the record, the plea agreement is

[16] Exhibit 18 to these depositions. Tell me when

[17] you're ready, Mr. White.

[18] A: I'm ready.

[19] Q: All right, sir. Have you had a chance to look

[20] at the criminal complaint, which is marked,

[21] for the record, as Exhibit 17, and the plea

[22] agreement, which is marked as Exhibit 18 to

[23] these depositions?

[24] A: Yes, sir.

[25] Q: All right, sir. Now, I'm not going to go

Page 82

(1) through the whole thing unless, I guess, I
 (2) need to, but the complaint and as it's
 (3) marked — it has Bates numbers down at the
 (4) bottom. Do you see those?
 (5) A: Yes.
 (6) Q: They start with D-1 through —
 (7) A: Mine is 16.
 (8) Q: I think that's right. Now, you, of course, at
 (9) whatever point in time it was, prior to the
 (10) remediation agreement, Exhibit 45 being signed
 (11) with ERSI, had reviewed Exhibit 17, the
 (12) criminal complaint, correct?
 (13) A: I had seen it when I joined Unichem, some time
 (14) after I joined Unichem.
 (15) Q: Yes, sir. But you had seen it prior to
 (16) signing the remediation agreement?
 (17) A: Yes, sir.
 (18) Q: Now, did you understand, from reading the
 (19) complaint, Mr. White, that Merlan Harold of
 (20) the FBI was swearing to what's in this
 (21) complaint?
 (22) A: Yes.
 (23) Q: Did you have any reason to question what
 (24) Mr. Harold was swearing to in the complaint?
 (25) A: No, sir.

Page 83

(1) Q: And I believe you told me earlier that none of
 (2) the people at Unichem or Parabo denied what
 (3) was in — what was being alleged in the
 (4) criminal matter?
 (5) A: Yes, that's correct, to the best of my
 (6) knowledge.
 (7) Q: They never denied it to you, anyway?
 (8) A: Not to me.
 (9) Q: So you had no reason to not take as true what
 (10) Agent Harold of the FBI was saying; is that
 (11) correct?
 (12) A: That's correct.
 (13) Q: All right, sir. If you will look over here at
 (14) Bates stamped page 8 —
 (15) A: Yes, sir.
 (16) Q: — of the complaint, right in the middle of
 (17) the page, do you see where Mr. Harold or
 (18) Agent Harold is saying that what's called
 (19) slop, do you see that, which is more
 (20) specifically defined in the complaint, was
 (21) shipped from Unichem Hobbs to Parabo? And
 (22) they have the dates and the amounts shipped.
 (23) Do you see that?
 (24) A: Yes, sir.
 (25) Q: And that none of these shipments had the

Page 84

(1) proper hazardous waste manifests. Do you see
 (2) that?
 (3) A: Yes, sir.
 (4) Q: And then the next sentence, starting at the
 (5) bottom of Bates stamped page D-8, Agent Harold
 (6) says that Parabo, Inc., where the above listed
 (7) slop shipments were disposed of in surface
 (8) impoundments — I take it that means pits?
 (9) A: Pits.
 (10) Q: Is that what you would —
 (11) A: That's how I would refer to it.
 (12) Q: — is not permitted to receive these such
 (13) hazardous wastes pursuant to the 42 U.S.C.,
 (14) sections 6925 or 6926, correct?
 (15) A: That's correct.
 (16) Q: Now, reading this complaint, and as you just
 (17) told me, you had no reason to take what Agent
 (18) Harold was saying in the complaint as being
 (19) anything but true, coupled with the fact that
 (20) none of the Unichem Parabo people denied what
 (21) was alleged in the complaint, would that give
 (22) you an indication that hazardous wastes had
 (23) been disposed of at Parabo?
 (24) A: If you change that to possibly disposed of, I
 (25) would agree.

Page 85

(1) Q: All right, sir. Do you understand in the
 (2) English language, Mr. White, that indication
 (3) and possibility are synonymous?
 (4) A: I'll accept your characterization.
 (5) Q: Well, you obviously have a problem with the
 (6) word indication.
 (7) A: I personally prefer possibility, but that's
 (8) fine.
 (9) Q: All right. I'm not asking you about what I
 (10) think, okay? I'm asking you what you think.
 (11) Do you believe, as an MIT graduate and a
 (12) Ph.D., that the terms indication and
 (13) possibility are synonymous?
 (14) A: I'll accept that.
 (15) Q: All right. Now, did you ever have any
 (16) conversations with anyone at Unichem or Parabo
 (17) about the allegations in this complaint with
 (18) respect to these shipments of hazardous
 (19) substances going into the Parabo pits?
 (20) A: Yes. And in those conversations that I
 (21) recall, John Watson was also involved.
 (22) Q: Does that mean you are going to claim they are
 (23) privileged?
 (24) A: No.
 (25) MS. KILLIAN: Yes.

Page 86

(1) A: No, no, I'm not claiming —
 (2) MS. KILLIAN: Well, you
 (3) can't — I would rather you not talk
 (4) about things that you talked about
 (5) with your attorney.
 (6) THE WITNESS: Okay.
 (7) MS. KILLIAN: So yes.
 (8) Q: (By Mr. Sims) Well, let me explain that to
 (9) you, Mr. White, so we're all on the same
 (10) page. You know what the attorney-client
 (11) privilege is?
 (12) A: Yes.
 (13) Q: Generally?
 (14) A: Yes.
 (15) Q: And you understand that it is the client's
 (16) privilege to waive —
 (17) A: And I'm not the client in this case, I don't
 (18) think.
 (19) Q: Well —
 (20) A: The client was Unichem or Parabo.
 (21) Q: Yes.
 (22) MR. SIMS: Are you going to
 (23) invoke the privilege?
 (24) MS. KILLIAN: Yes.
 (25) Q: (By Mr. Sims) All right, sir. Did you have

Page 87

(1) any discussions without some lawyer being
 (2) there?
 (3) A: Yes.
 (4) Q: With whom?
 (5) A: Britton and Brakey.
 (6) Q: And what did they tell you?
 (7) A: Paraphrasing, that the issue really was that
 (8) we couldn't — we, Unichem, Parabo, couldn't
 (9) prove that none of the materials that were put
 (10) in the pits were hazardous. We couldn't prove
 (11) that they were not hazardous because we had no
 (12) analyses.
 (13) Q: You had no what?
 (14) A: Analyses, and there was no record that they
 (15) were hazardous because there were no analyses
 (16) so. We were at a point where we were waiting
 (17) for the Geraghty and Miller audit so we could
 (18) go up to New Mexico, Santa Fe, and get
 (19) approval to open pit four. It's sort of a
 (20) circular argument, but from my perspective
 (21) coming in well after the fact, I wanted to
 (22) reopen that pit. I wanted the commercial
 (23) value of that pit to be realized. And I
 (24) hadn't been there through the horror days,
 (25) let's call it.

Page 88

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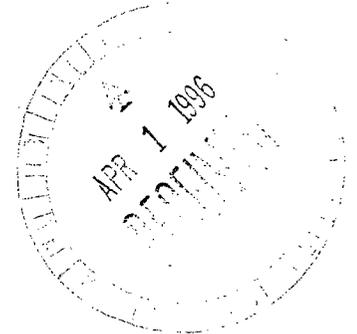
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March 29, 1996



Ms. Carol S. Leach
General Counsel
New Mexico Energy, Minerals
and Natural Resources Dept.
2040 South Pacheco Street
Santa Fe, New Mexico 87505

ERSI, Inc.

Dear Ms. Leach:

In behalf of ERSI, Inc. and Quest Petrochemical Company, I want to thank you for meeting with Kelly Buster and myself on March 26, 1996, together with Roger Anderson and Chris Eustice. Let me reiterate that our purpose in requesting the meeting was to bring Mr. Anderson up to date on additional facts we have learned during the course of our pending lawsuit against Parabo, Inc., Unichem International and Simon Engineering. In earlier contacts with the Oil Conservation Division, a much more limited set of facts was presented. It is our belief that the defendants in the litigation intend to call Mr. Anderson as a witness at the trial to express opinions and conclusions based on those limited facts. For that reason, we thought it was important to set the factual record straight.

We enclose a copy of the criminal complaint, criminal information, plea agreement and a transcript of the plea hearing in U.S. v. Unichem International, No. DC 064J, and CR 90-057, U.S. District Court, District of Wyoming, in which Unichem International was convicted of three felony violations of federal environmental laws. The charges in the criminal complaint involved hazardous waste, not hazardous substances, i.e., the material was waste to be disposed of, not recoverable material to be reused or reprocessed. Count Two of the criminal complaint charged illegal transportation of hazardous waste from Wyoming to Hobbs, New Mexico. Because the criminal charge, as opposed to

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Ms. Carol S. Leach
March 29, 1996
Page Two

the allegations of the pleadings, did not charge actual disposal of hazardous waste at Parabo, the various Unichem and Parabo witnesses have all claimed that they did not plead guilty to illegal disposal of hazardous waste at Parabo. As a consequence, most third parties, including the environmental auditor, and including Roger Anderson and Kathy Brown of the Oil Conservation Division have so far indulged the assumption that, in the absence of categorical proof of illegal disposal, then illegal disposal has not occurred at Parabo. We have referred to this analytical method as "see no evil, hear no evil, speak no evil". One naturally wonders what the Unichem/Hobbs plant did with all that hazardous waste, and whether some of it might have been dumped at a disposal facility only 20 miles away owned by the same company.

No officer or employee of either Unichem or Parabo has denied that hazardous waste was disposed of at Parabo. The most they have said is that they don't know, but can neither admit nor deny.

The language of Attachment B to the criminal complaint makes it clear that the waste in question was chemical waste, not exempt oil field waste. Unichem pled guilty to the illegal disposal of this waste in Wyoming. What was illegal in Wyoming is also illegal in New Mexico. Considering that Unichem conducted the same business in Hobbs, New Mexico that it was prosecuted for conducting in Wyoming, why should there be any presumption that hazardous waste generated at Hobbs, New Mexico was not illegally disposed of as it was in Wyoming?

Pages v and vi of the criminal complaint allege six specific occasions when "slop" was disposed of illegally at the Parabo facility. As a matter of law, that disposal could not have been illegal unless the material (a) was hazardous, (b) was non-exempt, and (c) was disposed of at Parabo.

Turning to the Plea Agreement enclosed, it was signed by officers of Unichem, who happened also to be officers of Parabo at the same time. Three felony charges were admitted. The charges are described in the criminal information attached to the Plea Agreement. (My understanding is that the criminal complaint was filed by the FBI agent, and the criminal information was filed by the U.S. Department of Justice.) Although the specific charges in the criminal information did not include illegal disposal at Parabo, paragraph 10 of the criminal information specifically alleges the illegal disposal of "slop" at Parabo. The Plea Agreement admits all three charges, and contains no denial of the

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Ms. Carol S. Leach
March 29, 1996
Page Three

allegations of paragraph 10 or any other supporting factual allegations.

Turning to the transcript of the hearing at which the Plea Agreement was filed and the guilty plea made, we enclose pages 5, 9 and 25-26 of that transcript. Jim Britton, president of Unichem, and also president of Parabo at that time, entered the plea of guilty for the corporation. The court explained the Plea Agreement. On pp. 25-26, the United States Attorney asked to make the affidavit of probable cause as well as the facts set forth in the introduction to the criminal information a part of the record of the plea bargain. The affidavit in question is the criminal complaint filed by the FBI agent which contains the allegations of illegal dumping at Parabo. The introduction to the criminal information includes paragraph 10 discussed above alleging illegal dumping at Parabo. These facts were a part of the proceedings.

The transcript reveals that Mr. Britton had reviewed Attachment B which was the probable cause affidavit. Kevin Shea, the attorney representing Unichem admitted that the government "could at the very least prima facie establish the facts recited in Attachment B to the complaint". The court then asked Mr. Britton whether he agreed and he replied: "Yes, sir, I do". This statement constituted an admission in behalf of Unichem International that the allegations of illegal disposal of hazardous waste at Parabo were true. Even if Mr. Britton should deny his understanding that illegal dumping at Parabo was admitted, it cannot be said that the attorney, Kevin Shea was under any misapprehension as to exactly what was happening.

The environmental audit ordered as a condition of the Plea Agreement was performed by the firm of Geraghty and Miller, specifically by David Polter, an environmental engineer. When Mr. Polter was deposed, he testified that he examined certain bills of lading from Unichem-Hobbs to Parabo as consignee. Polter testified at pages 398-404 (enclosed) that the bills of lading reflected the shipment of materials containing listed hazardous substances, which, if disposed of at Parabo, would violate federal law and the oil field exemption. When this conclusion is placed beside the admissions made by Mr. Britton and Unichem's attorney at the plea hearing, we think this constitutes expert testimony that the operation of the Parabo facility was outside the scope of its oil field exemption and was illegal under federal and state environmental laws.

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Ms. Carol S. Leach
March 29, 1996
Page Four

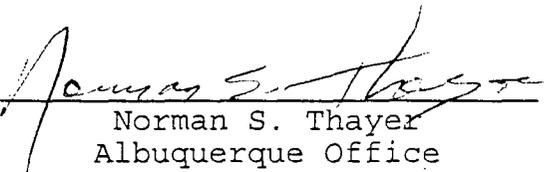
Winslow White, who succeeded Mr. Britton as president of Unichem, and who executed the remediation contract with ERSI, testified in his deposition that no one at Unichem disputed the facts alleged in the criminal case. Though he was not involved personally, he conceded the possibility that hazardous waste had been disposed of at Parabo. Enclosed are pages 48 and 80-86 of Mr. White's deposition.

James Britton, president of Unichem who signed the Plea Agreement and entered the guilty plea, was deposed two weeks ago in Hobbs. His deposition is not yet transcribed, but I can assure you that he confirmed the accuracy of the transcript of the plea hearing above. The "see no evil, hear no evil, speak no evil" approach will no longer do. We believe it is established by the foregoing admissions that non-exempt hazardous waste has been disposed of at the Parabo facility in violation of federal and state environmental laws, and in violation of the oil field exemption under which Parabo was supposed to be operating. If Mr. Anderson or other representatives of the Oil Conservation Division should be subpoenaed as witnesses at the trial, we hope that their testimony, conclusions and opinions will be informed by all of the facts, rather than the limited facts that were made available at earlier meetings in late 1993 and early 1994.

If additional information is required, please advise. We have, of course, the entire transcripts of the depositions of David Polter and Winslow White, and will soon have the full transcript of the deposition of James Britton. Our copy of the pleadings in the criminal case is certified under the seal of the court, and Mr. Britton himself has authenticated the transcript of the plea hearing.

Very truly yours,

SUTIN, THAYER & BROWNE
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By 
Norman S. Thayer
Albuquerque Office

NST:amw
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Enclosures

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Ms. Carol S. Leach
March 29, 1996
Page Five

cc: Tom Sims
Kelly Buster
Brett Bozeman

United States District Court

FOR THE DISTRICT OF WYOMING

UNITED STATES OF AMERICA
V.

CRIMINAL COMPLAINT

UNICHEM INTERNATIONAL, INC.

CASE NUMBER: DC-90-064J

(Name and Address of Defendant)

I, the undersigned complainant being duly sworn state the following is true and correct to the best of my knowledge and belief.

Between on or about May 30, 1985, to on or about July 27, 1988, in the District of Wyoming, Defendant did

knowingly store and cause to be stored hazardous waste; namely, ignitable waste containing, among other chemicals, acetone, carbon disulfide, ethylbenzene, methanol, toluene, 1,1,1-trichloroethane and xylene, at its facility in Casper, Wyoming, a facility which did not have a permit or interim status authorization under 42 U.S.C. § 6925.

in violation of Title 42 United States Code, Section(s) 6928(d)(2)(A)

I further state that I am a(n) FBI/Special Agent and that this complaint is based on the following

facts: Affiant, Merlyn J. Herold, being duly sworn, deposes and states that I am a Special Agent of the Federal Bureau of Investigation ("FBI") assigned to the Casper, Wyoming resident agency which is a part of the Denver Office of the FBI. Affiant has been a Special Agent with the FBI for the past 21-1/2 years.

UNICHEM INTERNATIONAL, INC. is located at 7040 Salt Creek Road, Casper, Wyoming. Its corporate headquarters and main blending plant is at 707 North Leech Street, Hobbs, New Mexico. Their foreign parent is Simon Engineering PLC, Stockport, Cheshire, England.

(Continued Attachment "B".)

Continued on the attached sheet and made a part hereof:

Yes No

WILLIAM C. BEAMAN
Clerk

Merlyn M. Herold
Deputy Clerk

Merlyn J. Herold
Signature of Complainant MERLYN J. HEROLD

Sworn to before me and subscribed in my presence,

May 22 1990 at

Casper, Wyoming
City and State

Alan B. Johnson, U.S. District Judge

Name & Title of Judicial Officer

Alan B. Johnson
Signature of Judicial Officer

ATTACHMENT "A"

COUNT TWO

On or about July 16, 1985, April 22, 1986, July 22, 1986, and July 21, 1987, UNICHEM INTERNATIONAL, INC., Defendant herein, beginning in the District of Wyoming and continuing into the District of New Mexico, did knowingly transport and cause to be transported hazardous waste; namely, ignitable waste containing, among other chemicals, acetone, carbon disulfide, ethylbenzene, methanol, toluene, 1,1,1-trichloroethane and xylene, to its facility in Hobbs, New Mexico, a facility which did not have a permit or interim status authorization under Title 42, United States Code, Sections 6925 or 6926;

In violation of 42 U.S.C. § 6928(d)(1).

COUNT THREE

Between July 21, 1987 and July 27, 1988, in the District of Wyoming, UNICHEM INTERNATIONAL, INC., Defendant herein, did knowingly treat and dispose of and cause to be treated and disposed of hazardous waste; namely, ignitable waste containing, among other chemicals, acetone, carbon disulfide, ethylbenzene, methanol, toluene, 1,1,1-trichloroethane and xylene, by directing an employee of Jim's Water Service to vacuum drums of hazardous waste into its waste water truck, which waste was disposed of at Don's Draw, north

of Douglas, Wyoming, without a permit or interim status
authorization under Title 42, United States Code, Section 6925;

In violation of 42 U.S.C. § 6928(d)(2)(A).

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ATTACHMENT "B"

On July 27, 1988, Affiant served a Search Warrant on Asif Majeed, Plant Manager of UNICHEM INTERNATIONAL, INC. ("UNICHEM"). Assisting in the service of the Search Warrant were other Special Agents of the FBI, United States Environmental Protection Agency ("U.S. EPA") Inspector Robert L. Stone ("Inspector Stone"), and U.S. EPA Sampling Technicians. Twenty-eight (28) samples were taken by the U.S. EPA sampling team which included samples of waste and of the environment to be tested at the U.S. EPA Laboratory, Denver, Colorado. Two (2) boxes (12" x 15" x 10") of records were taken for review by Affiant. During the search it was noted there were thirty (30) fifty-five (55) gallon drums labeled by spray paint with the word "SLOP", and one (1) drum labeled "BAD". Interviews of most of UNICHEM's employees were also conducted by Special Agents of the FBI.

James Clore ("Clore"), job title of Blender, UNICHEM, was interviewed during the search and also on February 15, 1990. Clore stated his job was to blend the various chemical products sold by UNICHEM in one of three large vats, depending on the product. The oil-based chemicals are mixed in a 1,300 gallon vat. The excess oil-based chemicals mixed, from 1977 to some time in 1984, were drained into the floor drain to be mixed with the waste water in the underground storage tank. This waste water was first disposed

of at the Natrona County Land Fill and then at the Mills, Wyoming Evaporation Pond. In 1984 Clore was told to place the excess oil-based chemicals into a fifty-five (55) gallon drum next to the mixing vat. When the drum was filled with various oil-based chemicals he would seal the drum, paint the word "SLOP" on the drum with spray paint and move it outside the building on the east side of the lot. Two (2) to five (5) fifty-five (55) gallon drums were collected each month. Some of these drums were then shipped to UNICHEM, Hobbs, New Mexico on UNICHEM trucks that had brought various raw chemicals to UNICHEM, Casper, Wyoming. Clore never prepared a Hazardous Waste Manifest for any of these shipments. He did prepare these drums by painting over the word "SLOP" with some other word, not recalled, and he would also place a Department of Transportation ("DOT") label, "FLAMMABLE", on these drums. In mid-1987, when UNICHEM, Hobbs, New Mexico told UNICHEM, Casper, Wyoming, that no more drums of "SLOP" could be shipped to UNICHEM, Hobbs, New Mexico, Lyle Hove ("Hove"), the UNICHEM Area Manager, told Clore to have the Jim's Water Service ("JWS") truck driver pump a few drums of "SLOP" into the load of waste water when the waste water was collected. Clore estimated fifteen (15) to twenty (20) fifty-five (55) gallon drums were disposed of in this fashion. Drums of "SLOP" not shipped to UNICHEM, Hobbs, New Mexico or taken by JWS were stored on the UNICHEM Casper plant yard.

Clore stated the water-based chemicals were mixed in the 1,000 gallon vat. The excess water-based chemicals were washed down the floor drain into the underground storage tank. Two or three washings of this vat were also washed into the underground storage tank. The last washing was drained out of the building to a drainage ditch next to UNICHEM's property.

Asif Majeed, Plant Manager, UNICHEM, Casper, Wyoming, stated to Affiant, on February 8, 1990, that he (Majeed) had been employed by UNICHEM since 1976. From 1976 to about 1978 all the waste water generated by UNICHEM was spread over a leach field near the plant. Since the field was not working very well UNICHEM decided to put in an underground storage tank which was emptied at the Natrona County Land Fill. About 1980 the Natrona County Land Fill refused to accept liquid waste and UNICHEM started sending the waste water to the Town of Mills Evaporation Pond. After a couple of years the Town of Mills refused the waste water and UNICHEM contracted for Kissack Oil Field Service, Gillette, Wyoming, to haul the waste water away. In late 1986, JWS was contracted to haul the waste water away to their disposal ponds at Don's Draw. This waste water consisted of the excess water-based chemicals and the wash water of the water-based chemical vat, along with other waste water that would be washed down the floor drain due to cleaning the floor.

Prior to 1983 or 1984 the excess oil-based chemicals were also included with the water-based chemicals.

In 1983 or 1984, the excess oil-based chemicals were saved in fifty-five (55) gallon drums and labeled "SLOP". They were stored on the east side of the plant yard until they could be shipped to UNICHEM, Hobbs, New Mexico. UNICHEM, Casper generated between two (2) to three (3) of these drums a month. He (Majeed) recalled that UNICHEM, Casper, had to ask for permission to ship the drums to UNICHEM, Hobbs. They (UNICHEM Casper) were told to place the DOT label "FLAMMABLE" on the drums before shipping them.

In mid-1987, Hove, UNICHEM, Casper, Wyoming Area Manager, was told by UNICHEM, Hobbs, New Mexico, not to ship any more of the oil-based excess chemicals. Hove then instructed Clore to have the JWS truck driver take some of the "SLOP" drums with him when he picked up the waste water from the underground tank.

On November 16, 1988, Affiant completed the review of the documents and papers seized during the search of UNICHEM, Casper, Wyoming, on July 27, 1988, and of documents received as the result of a District of Wyoming Grand Jury Subpoena served on UNICHEM, Hobbs, New Mexico, on August 9, 1988. Documents from both sources show UNICHEM, Casper, Wyoming shipped, without proper Hazardous Waste Manifests, to UNICHEM, Hobbs, New Mexico, barrels of "SLOP" on the following days and following amounts:

DATES SHIPPED

NUMBER SHIPPED

November 12, 1984	5 drums
December 17, 1984	7 drums
May 21 1985	19 drums
July 16 1985	18 drums
April 22, 1986	31 drums
July 22, 1986	10 drums
July 21, 1987	295 gallons of "SLOP" to be dumped

These documents further show shipments of "SLOP" from UNICHEM, Hobbs, New Mexico, to its wholly-owned subsidiary, Parabo, Incorporated, Eunice, New Mexico, on the following days in the following amounts:

DATES SHIPPED

AMOUNT SHIPPED

October 14, 1985	1,300 gallons
November 11, 1985	1,100 gallons
March 7, 1986	1,200 gallons
May 12, 1986	2,400 gallons
June 20, 1986	1,000 gallons
July 24, 1987	1,200 gallons

None of the above shipments had the proper Hazardous Waste Manifests. Parabo, Inc., where the above-listed "SLOP" shipments

were disposed of in surface impoundments, is not permitted to receive such hazardous waste pursuant to 42 U.S.C. §§ 6925 or 6926.

These documents also show JWS hauled waste water from ~~UNICHEM~~, Casper, Wyoming, to Don's Draw Disposal pond, which is permitted to receive only oil well-produced water, on the following days and in the following amounts:

<u>DATES SHIPPED</u>	<u>AMOUNT SHIPPED</u>
December 15, 1986	153 barrels
February 4, 1987	160 barrels
March 25, 1987	160 barrels
May 20, 1987	130 barrels
June 24, 1987	160 barrel
July 20, 1987	130 barrels
July 24, 1987	30 barrels
August 27, 1987	130 barrels
October 14, 1987	100 barrels
November 17, 1987	160 barrels
January 13, 1988	150 barrels
February 16, 1988	150 barrels
March 7, 1988	160 barrels
March 29, 1988	160 barrels
April 26, 1988	160 barrels
May 29, 1988	120 barrels

June 8, 1988	160 barrels
July 5, 1988	130 barrels
July 20, 1988	130 barrels

By U.S. EPA Laboratory Reports, Affiant was informed that the samples taken from fifty-five (55) gallon drums labeled "SLOP" exhibited the hazardous waste characteristic of ignitability. In addition, the following hazardous chemicals were identified in the samples taken from drums and waste water: acetone, carbon disulfate, ethylbenzene, toluene, 1,1,1-trichloroethane, trichloroethene, xylene and methanol.

Finally, as noted above, Affiant has been informed by EPA Inspector Stone that UNICHEM has never had a permit or interim authorization pursuant to 42 U.S.C. §§ 6925 and 6926, to store, treat, or dispose of hazardous waste at either of its blending plants in Casper, Wyoming, or Hobbs, New Mexico, or at its wholly-owned subsidiary, Parabo, Inc., in Eunice, New Mexico.

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