

General Chemical Events Relating to CUP Hearing and Audit
Tom Butt
January 16, 2002

I am having trouble assimilating the events related to the General Chemical investigation. My recollection was that I wrote a resolution directing the Planning Commission to undertake a review of CUP 95-4 and that it was passed unanimously by the City Council on December 11, 2001. The West County Times, on December 13 reported:

After passing an industrial safety ordinance, the City Council decided to take advantage of an existing regulatory weapon Tuesday night, directing the Planning Commission to look into revoking or changing the company's operating permit ... The panel will consider the item at its Jan. 3 meeting.

Imagine my surprise when I read in the January 15 *West County Times* that:

General Chemical Corp. agreed Monday to pay for a comprehensive audit into the company's safety procedures and management practices following a pair of caustic releases late last year. In response, Richmond officials abandoned plans to conduct a revocation-modification hearing to re-evaluate General Chemical's operating permit.

I was surprised because I was under the impression that the mayor and city manager could not reverse what the entire City Council had ordained. However, when I checked the City Council Minutes for December 11, there was no mention of the resolution passing:

In the matter directing the Planning Commission to hold a revocation/modification hearing for CUP 95-44, General Chemical. Vice Mayor Butt gave an overview of the item. The following individuals spoke on the matter: Supervisor John Gioia. The City Council requested staff to submit a report that includes information regarding the number of Richmond residents that are employed by the company. Mayor Anderson reported that a Town Hall meeting will be held Monday, December 17, 2001, 6:30 p.m., City Council Chamber.

I still believe the resolution passed, and I am requesting the city clerk to review the tapes and re-check the item.

At the City Council meeting of January 15, 2002, there was complete confusion about the Planning Commission CUP hearing. Ultimately, the mayor stated that it would be placed on the January 22 agenda.

What I am requesting is that when the audit is performed, either the auditing consultant or another qualified consultant also review the CUP to make a compliance determination. I am also requesting a compliance review of the

February 5, 1996 “Settlement Agreement and Release Concerning General Chemical Corporation Richmond Oleum Risk Reduction Project” entered into by General Chemical Corporation, Communities for a Better Environment, West County Toxics Coalition and Contra Costa Building and Construction Trades Council.

I have no objection to a delay and possible cancellation of the actual Planning Commission CUP hearing, depending on the compliance report rendered. In any event, the Planning Commission would have to have a staff report prepared prior to a hearing, and due to the technical nature of the subject, the staff report would likely have to be prepared by a qualified consultant.

The problem with an audit is that it is intended to address only the cause of a specific incident. Furthermore, since undergoing the audit is voluntary for General Chemical, it is possible that they or other “stakeholders” may manipulate it to determine or limit its scope. The review of the Conditional Use Permit is a much broader undertaking that may reveal potential problems other than the one specific incident, and it requires no consent from General Chemical.

The pertinent resolution, newspaper articles and excerpts from the City Council Minutes follow:

Resolution on the December 11, 2001, City Council Agenda:

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
RICHMOND, CALIFORNIA, DIRECTING THE PLANNING
COMMISSION TO HOLD A REVOCATION/MODIFICATION
HEARING FOR CUP 95-4.**

WHEREAS, in 1995, General Chemical applied for and received Conditional Use Permit 95-4 "to allow acid manufacture use in a M-3, Heavy Industrial District for electronic grade sulfuric acid pursuant to RMC 15.04.140.A.39.a," and,

WHEREAS, there is evidence that some of the conditions of the permit have not been met, including the requirement for annual reviews by the Planning Commission of the permit, and,

WHEREAS, there have been at least three incidents at general Chemical since 1995 when toxic emissions have been released over the City of Richmond; and,

WHEREAS, such releases have constituted a nuisance, causing shut-downs of transportation and businesses, reported physical harm to individuals, and fear and concern of citizens, and

WHEREAS, RMC 15.04.990.010 990 establishes the requirements and procedure for the revocation or modification of any permit or variance granted under RMC Chapter 15.04 (Zoning) and provides that a permit or variance may be revoked or modified for cause, including the imposition of new conditions upon a finding that:

1. The permit or variance was issued on the basis of erroneous or misleading information, misrepresentation, or fraud.
2. A term of one or more of the conditions of approval of the permit or variance has been violated or relevant other laws or regulations have been violated.
3. The use or facility for which the permit was granted is so conducted or maintained so as to be detrimental to the public health, welfare, or safety so as to be deemed a nuisance.

THEREFORE BE IT RESOLVED, that the Richmond City Council directs the Planning Commission to undertake a review of each condition of CUP 95-4 to determine:

1. If the permit or variance was issued on the basis of erroneous or misleading information, misrepresentation, or fraud.
2. If a term of one or more of the conditions of approval of the permit or variance has been violated or relevant other laws or regulations have been violated.
3. If the use or facility for which the permit was granted is so conducted or maintained so as to be detrimental to the public health, welfare, or safety so as to be deemed a nuisance.

If the Planning Commission finds that any of the above have occurred, the Planning Commission shall consider revocation of the permit or appropriate modifications.

I certify that the foregoing Resolution was passed and adopted by the Members of the City Council of the City of Richmond at a regular meeting held on _____ by the following vote:

AYES:

NOES:

ABSTENTIONS:

ABSENT:

Clerk of the City of Richmond

Approved:

Mayor

Approved as to form:

City Attorney

***West County Times* article December 13, 2001:**

RICHMOND PLANT'S FATE UP IN THE AIR

Peter Felsenfeld, Times Staff Writer

RICHMOND - Looking back on a year marred by toxic releases, city leaders are seriously re-evaluating whether they want to keep General Chemical as an industrial neighbor.

After passing an industrial safety ordinance, the City Council decided to take advantage of an existing regulatory weapon Tuesday night, directing the Planning Commission to look into revoking or changing the company's operating permit.

Next, Councilman Nat Bates requested financial information so the council could determine whether General Chemical's tax contribution justifies the health risks posed by the plant.

"I don't think we can just close them down without some in-depth analysis," Bates said. "I'm hoping the results will show General Chemical is not much of a financial contributor, especially when compared to the potential problems our citizens face every day."

After reviewing the financial data, Bates said he would urge his colleagues to insist that General Chemical change the plant function from sulfuric acid production to nontoxic manufacturing.

General Chemical officials did not return calls Wednesday.

Anna Vega, Richmond's director of financial services, said General Chemical has 36 employees and is the city's 87th top sales tax generator. The company is one of six chemical firms, which generate a combined total of \$92,377 in sales tax per year, Vega said.

Richmond's total sales tax revenue from October 2000 through September 2001 was \$12.2 million, Vega said.

The company also pays small amounts in other fees and taxes to the city. The community emergency notification system has been activated twice this year after sulfur dioxide and sulfur trioxide releases from the General Chemical stacks.

Richmond's new industrial safety ordinance, which could go into effect next week after a second reading, outlines strategies to prevent accidents and gives the City Council authority to require corrective measures after a serious release.

Councilman Tom Butt, who called for the revocation/modification hearing, said conditional use permits also provide a potent opportunity for regulation. "If there's a violation of a condition, you can simply jerk the permit and then you put them out of business," Butt said. "It's probably more powerful than the entire industrial safety ordinance."

Richmond's municipal code states that a conditional use permit can be challenged when a facility is "conducted or maintained so as to be detrimental to the public health, welfare or safety so as to be deemed a nuisance."

At the very least, Butt said he wanted the Planning Commission to enforce a previously ignored permit provision requiring annual plant inspections by commissioners. **The panel will consider the item at its Jan. 3 meeting.**

Last month's serious toxic release, followed by a scary but benign release the next day, rekindled deep-rooted community fears in areas downwind from the Chevron refinery and the General Chemical plant, said Henry Clark, executive director of the West County Toxics Coalition.

Residents applaud the council's commitment to safety, Clark said, but remain skeptical about consistent enforcement over time.

"We can't help wondering when the next big one is going to occur," Clark said. "If the industrial safety ordinance is adhered to, it should reduce chemical accidents, and that's ultimately what we want."

Peter Felsenfeld covers Richmond. Reach him at 510-262-2725 or pfelsenfeld@cctimes.com.

West county Times article January 15, 2001

GENERAL CHEMICAL WILL PAY FOR SAFETY AUDIT

TWO GAS LEAKS DURING NOVEMBER PROMPTED RICHMOND OFFICIALS TO CALL FOR THE ACTION

By Peter Felsenfeld
CONTRA COSTA TIMES

RICHMOND -- General Chemical Corp. agreed Monday to pay for a comprehensive audit into the company's safety procedures and management practices following a pair of caustic releases late last year.

In response, Richmond officials abandoned plans to conduct a revocation-modification hearing to re-evaluate General Chemical's operating permit.

The agreement was reached during an afternoon meeting at Richmond City Hall involving Contra Costa County and city officials and high-ranking company representatives.

Richmond leaders questioned General Chemical's safety commitment and demanded the audit after two serious sulfur trioxide releases in November prompted community shelter-in-place warnings.

Though the company investigated the Nov. 29 incident and reported sweeping corrective measures, some City Council members advocated forcing General Chemical to close its Richmond plant.

The audit will go a long way toward mending community relations, said City Manager Isiah Turner.

"We appreciate the company stepping up to the plate," Turner said. "We want our citizens to be respected and protected. The approach we've agreed on is responsive to our concerns and to our residents' safety."

The entire audit is expected to cost between \$60,000 and \$80,000 and will cover several aspects of plant operations, with special emphasis on training and employees' attitudes regarding safety, said county Supervisor John Gioia.

Every worker at the plant will be interviewed during the procedure, he said.

"We're looking to examine not only what management says and what procedures state in writing, but to get to the heart of whether policies are being implemented," Gioia said. City and county officials will host public meetings before and after the audit, and insist on a follow-up report to ensure General Chemical has implemented recommended safety modifications, Gioia said.

General Chemical's Richmond facility manufactures sulfuric acid, a chemical used in the production of gasoline, fertilizer and computer chips. Most of the facility's output is pumped to the neighboring Chevron refinery.

Billie S. Flaherty, General Chemical's vice president of environmental health and safety, said her company saw the audit as an opportunity to improve an already strong safety record.

"We came to the meeting with an idea for the audit, as did Richmond," she said. "We were very much in the same ballpark as to what the audit ought to look like. We spent the majority of the meeting agreeing."

County officials plan to model the review on a similar investigation conducted three years ago at the Tosco refinery in Martinez. That procedure included two follow-up audits for the large refinery and cost around \$150,000.

General Chemical and Richmond officials agreed an auditing firm would be chosen by the Contra Costa County Health Department following guidelines established by a committee comprised of county, city, community, industry and union representatives.

The audit is expected to start within 90 days and last two months.
Peter Felsenfeld covers Richmond. Reach him at 510-262-2725 or pfelsenfeld@cctimes.com