

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION II

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IN THE MATTER OF:)
)
Liberty Industrial Finishing Site,)
New York)
)
Beazer East, Inc.)
Coltec Industries, Inc.)
Koch Engineering Company, Inc.)
)
Respondents, and)
)
U.S. Department of Defense)
U.S. General Services Administration,)
)
Federal Respondents,)
)
Proceeding Under Sections 104 and 122)
of the Comprehensive Environmental)
Response, Compensation, and Liability)
Act of 1980, as amended,)
(42 U.S.C §§ 9604, 9622).)
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Index No. II CERCLA-97-0203

ADMINISTRATIVE ORDER ON CONSENT
FOR CONTINUED REMEDIAL INVESTIGATION/FEASIBILITY STUDY
Operable Unit II

I. INTRODUCTION

1. This Administrative Order on Consent ("Consent Order" or "Order") is entered into by the United States Environmental Protection Agency ("EPA") and the above-captioned Respondents and Federal Respondents (hereinafter collectively referred to as "CRI/FS Respondents"). The Consent Order concerns the performance of the Continued Remedial Investigation and Feasibility Study ("CRI/FS"), which has been designated as Operable Unit II ("OU II"), for the Liberty Industrial Finishing Site (hereinafter, the "Site"), located in Farmingdale, Nassau County, New York. This Consent Order also concerns reimbursement by CRI/FS Respondents to EPA for costs, as specified in section XX. below, which will be incurred by EPA in connection with the Site.

II. JURISDICTION

2. This Consent Order is issued to CRI/FS Respondents under the authority vested in the President of the United States by Sections 104, 122(a) and 122(d)(3) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, ("CERCLA") 42 U.S.C. §§ 9604, 9622(a), 9622(d)(3). This authority was delegated to the Administrator of EPA on January 23, 1987, by Executive Order 12580, 52 Fed. Reg. 2926 (1987), and further delegated to Regional Administrators on September 13, 1987, by EPA Delegation No. 14-14-C.

3. The CRI/FS Respondents agree to undertake all actions required by the terms and conditions of this Consent Order. In any action by EPA or the United States to enforce the terms of this Consent Order, CRI/FS Respondents consent to and agree not to contest the authority or jurisdiction of the Regional Administrator to issue or enforce this Consent Order, and agree not to contest the validity of this Order or its terms. CRI/FS Respondents' execution of and participation in this Consent Order shall not constitute or be construed as an admission of liability or of EPA's Findings of Fact and Conclusions of Law or determinations contained in this Consent Order.

III. PARTIES BOUND

4. This Consent Order shall apply to and be binding upon EPA and shall be binding upon the CRI/FS Respondents and their agents, successors and assigns. Respondents agree that their officers, directors, employees, and agents involved in the performance of the Work required by this Order shall take all necessary steps to accomplish the performance of said Work in

accordance with this Order. The signatories to this Consent Order certify that they are authorized to execute and legally bind the parties they represent to this Consent Order. No change in the ownership or corporate status of the Respondents or in ownership of the Site shall alter Respondents' responsibilities under this Consent Order.

5. The Respondents shall provide a copy of this Order to any successors or assigns prior to transfer of ownership rights. Respondents shall provide a copy of this Order to all contractors, subcontractors, laboratories, and consultants which are retained to conduct any work performed under this Order, within 14 days after the effective date of this Order or the date of retaining their services, whichever is later. Respondents shall condition any such contracts upon satisfactory compliance with this Consent Order. Notwithstanding the terms of any contract, Respondents are responsible for compliance with this Order and for ensuring that their subsidiaries, employees, contractors, consultants, subcontractors, and agents comply with this Order.

6. Until the completion of the Work required by this Order, Respondents shall provide a copy of this Order to any prospective owners or successors before a controlling interest in Respondents' assets, property rights, or stock is transferred to a prospective owner or successor.

IV. STATEMENT OF PURPOSE

7. In entering into this Consent Order, the objectives of EPA, and the CRI/FS Respondents are:

a. to determine the nature and extent of contamination and any threat to the public health, welfare, or the environment caused by the release or threatened release of hazardous substances, pollutants or contaminants at or from the Site by conducting the CRI/FS (as described herein);

b. to determine and evaluate alternatives, through the conduct of a feasibility study ("FS"), to prevent, mitigate or otherwise respond to or remedy such releases;

c. to provide for reimbursement to EPA of certain response costs incurred by EPA with respect to the Site prior to the effective date of this Consent Order; and

d. to provide for reimbursement to EPA of response and oversight costs incurred by EPA with respect to this Consent Order.

8. The activities conducted under this Consent Order are subject to approval by EPA and shall provide all appropriate, necessary

information for the CRI/FS, and for a record of decision that is consistent with CERCLA and the National Contingency Plan ("NCP"), 40 C.F.R. Part 300. The activities conducted under this Consent Order shall be conducted in compliance with all applicable EPA guidances, policies, and procedures.

V. EPA'S FINDINGS OF FACT AND CONCLUSIONS OF LAW

9. The Site includes approximately 30 acres of property known as 55 Motor Avenue and designated on the Nassau County tax map as Lots 326 and 327 of Block 518, Section 48 (Lots 326 and 327 are hereinafter referred to as the "Property"). The Site also includes a plume of groundwater contaminated with hazardous substances that is presently estimated to extend 8000 feet south of the Property. The lateral and vertical extent of the contaminant plume has not yet been fully defined.

10. The Site is situated on the outwash plain of Long Island. The uppermost aquifer, the Upper Glacial, is estimated to be 85 feet thick beneath the Site. The depth to the water table is approximately 21 feet below grade. The saturated portion of the Upper Glacial aquifer, with a thickness of approximately 64 feet, begins at the water table and extends down to 85 feet below grade. The Upper Glacial aquifer is underlain by the Magothy aquifer, which is approximately 700 feet thick in the vicinity of the Site.

11. The Site is located approximately one mile south of Bethpage State Park. The Massapequa Creek originates to the south within one-half mile of the Site. Massapequa Creek, which is part of the Massapequa Preserve, flows into South Oyster Bay, located approximately five (5) miles south of the Site. The Massapequa Creek and its associated stream channel are designated as a protected preserve and are used for recreational purposes.

12. The Site is surrounded by suburban residential areas that include several small commercial establishments. The Site is generally bordered on the north by railroad tracks, on the east by Main Street, and on the south by Motor Avenue, and on the west by a Town of Oyster Bay park (Ellsworth-Allen Park). Two maps depicting the Site are attached hereto as Attachments I & II.

13. Lot 327 is approximately fifteen acres of undeveloped land which abuts Ellsworth-Allen Park. Lot 326 (generally to the east) currently includes approximately ten buildings, which are leased to a variety of tenants engaged in warehousing, automobile parts salvaging operations, and product distribution. Foundations and other features of several demolished buildings used in past industrial operations are present throughout the Property.

14. Beginning in approximately 1940, industrial operations at

the Site included aircraft parts manufacturing and associated metal finishing processes such as anodizing, plating, and painting. In the late 1950s, the Site was converted into an industrial park and was owned by several different real estate partnerships over the next 25 years, during which time aircraft parts manufacturing was discontinued and a variety of other operations were conducted by tenants at the Site. Since the Site has included an industrial park, operations have included metal plating and finishing operations, fiberglass product manufacturing, furniture manufacturing, and warehousing.

15. Materials used in Site operations included volatile organic compounds ("VOCs") such as trichloroethene, benzene, and acetone, inorganics such as cadmium, chromium, and cyanide, as well as other materials such as caustics and acids. Throughout much of the period of industrial operation, wastes containing these materials were discharged untreated into below-grade sumps, underground leaching chambers, and unlined groundwater recharge basins or lagoons.

16. The Site includes a "facility" within the meaning of Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

17. The Site is on the National Priorities List, 40 CFR Part 300, Appendix B, which list of hazardous substance facilities was promulgated by EPA pursuant to Section 105(a)(8)(B) of CERCLA, 42 U.S.C. § 9605(a)(8)(B).

18. 55 Motor Avenue Company is a New York partnership. Beazer East, Inc. (hereinafter, "Beazer") is a corporation organized and existing under the laws of the state of Delaware. Coltec Industries, Inc. (hereinafter, "Coltec") is a corporation organized and existing under the laws of the Commonwealth of Pennsylvania. Cubbies Properties, Inc. (hereinafter, "Cubbies") is a subchapter S corporation organized and existing under the laws of the State of New York. Liberty Industrial Finishing Corp. (hereinafter, "Liberty Finishing") is a corporation organized and existing under the laws of the State of New York. Jefry Rosmarin, J. Jay Tanenbaum, William Heller, Jan Burman and Jerome Lazarus are individuals. Grumman Corporation ("Grumman") is a corporation organized and existing under the laws of the State of New York. The Department of Defense and General Services Administration (hereinafter collectively referred to as, "Federal Respondents") are entities within the executive branch of the United States Government. Koch Engineering Company, Inc. (hereinafter, "Koch") is a corporation organized and existing under the laws of the state of Kansas. Liberty Aero, Inc. (hereinafter, "Liberty Aero") is a corporation organized and existing under the laws of the state of New York. Liberty Associates is a New Jersey limited partnership.

19. Each of the entities described in paragraph 18, above, that

is a Respondent is a "person" as that term is defined in Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

20. Each CRI/FS Respondent is or was, at relevant periods, an "owner or operator" and/or a person who "arranged for disposal" within the meaning of Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), and is thus a responsible party under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a).

21. Since approximately September 1990, EPA has been the lead agency for the Site within the meaning of the NCP, and has been conducting a Remedial Investigation ("RI") to determine the nature and extent of contamination at the Site. In January 1994, EPA issued an RI Report which describes the investigation conducted to date. This investigation is designated for purposes of this Consent Order, the Operable Unit I ("OU I") RI.

22. The RI Report documents hazardous substances in soils on Lot 327 of the Property, in underground features including chambers, drains and leaching fields throughout the Property, and in the shallow aquifer, both on-Property and off-Property.

23. The contaminants found at the Site include "hazardous substance(s)" within the meaning of Section 101(14) of CERCLA, 42 U.S.C. § 9601(14). These hazardous substances include, but are not limited to, polychlorinated biphenyls ("PCBs"), VOCs such as trichloroethene ("TCE"), benzene, 1,2-dichloroethene ("total 1,2-DCE"), and acetone, as well as inorganics, such as cadmium, chromium, cyanide, and lead.

24. Maximum concentrations (expressed as parts per million ("ppm") or parts per billion ("ppb")) of hazardous substances detected in soils/sludges, groundwater, and Massapequa Creek surface water and sediments, during the OU I RI include, but are not limited to, the following:

a. **Soils/Sludges** - PCBs (200 ppm), TCE (1,700 ppm), total 1,2-DCE (1,100 ppm), cadmium (1,180 ppm), total chromium (43,300 ppm), and cyanide (1,220 ppm).

b. **Groundwater** - TCE (1,700 ppb), total 1,2-dichloroethene (900 ppb), cadmium (609 ppb), and total chromium (888 ppb).

c. **Massapequa Creek surface waters** - cadmium (10.8 ppb) and total chromium (44.9 ppb).

d. **Massapequa Creek Sediments** - cadmium (5.3 ppm) and total chromium (44.1 ppm).

25. A Baseline Human Health Risk Assessment conducted as part of the OU I RI concluded that the hazardous substances present at the Site posed current use risks to trespassers who may regularly

visit contaminated areas, particularly transformer areas contaminated with PCBs. The Baseline Risk Assessment also identified potential risks associated with residential use in the event that the Site was developed for such use without any cleanup. In addition, the Baseline Risk Assessment identified potential risks to wildlife, aquatic species and plants in Massapequa Creek over the long term.

26. Based on the results of the RI Report, EPA conducted a Removal Site Evaluation during late 1993 and early 1994 and subsequently determined that several localized areas, particularly transformer areas contaminated with PCBs, posed an immediate risk to persons who may come in contact with these areas. On August 30, 1994, EPA entered into Administrative Order on Consent, Index No. II CERCLA-94-0211 with nine potentially responsible parties ("PRPs"), and unilaterally issued Administrative Order, Index No. II CERCLA-94-0217 (the "Removal Orders"), to six PRPs for the removal of PCB-contaminated soils and transformer carcasses, the contents of 8 underground storage tanks, and 16 drums and their contents. (hereinafter, "Removal Action"). Twelve of the PRPs performed the Removal Action and all field work was completed in the Fall of 1995. In particular, this action eliminated most of the current-use risks at the Site which were due to the presence of PCBs in the transformer areas.

27. While much of the contamination at the Site was defined in the OU I RI effort, the nature and extent of groundwater contamination in the Magothy Aquifer and soil contamination on the eastern portion of the Property has not been adequately defined. The two samples collected from the upper portion of the Magothy Aquifer (which underlies the Upper Glacial Aquifer) revealed significantly elevated concentrations of TCE (760 ppb and 1,300 ppb). Cyanide was detected in one of the chambers of the eastern leaching chamber field. Areas which still warrant investigation include, but are not limited to, on-Property soils, predominantly on Lot 326, underground features (most notably two industrial waste leaching chambers under Building W), surface water and sediments of Massapequa Creek, and groundwater in the deeper Magothy aquifer. At the time of an inspection conducted by EPA, Building W contained approximately one million pounds of PCB-contaminated shredded auto parts ("shredder fluff") that had been abandoned by a recent tenant. This material was situated in such a way that it would interfere with the CRI/FS investigation including hindering access to the industrial waste leaching chambers. In addition, due to the observed presence of standing water from rainfall and the presence of floor drains in this Building, the PCB-contaminated material may pose a threat to the underlying groundwater.

28. As described above, the Baseline Human Health Risk Assessment was conducted as part of the OU I RI and evaluated the potential human health and environmental impacts associated with

the Liberty Site, considering both the current commercial-industrial land use and the future residential land use scenarios. A Baseline Risk Assessment Addendum was conducted subsequent to the completion of the RI and the Removal Action, as described above, and evaluated potential human health risks under a commercial-industrial land use and recreational land use scenarios, for both current and future conditions in place of the future residential land use scenario evaluated in the OU I RI risk assessment. The Baseline Risk Assessment Addendum also identified risks associated with commercial-industrial and recreational use in the event that the Site was developed for those purposes without any cleanup.

29. EPA's contractor, Roy F. Weston, Inc., has prepared plans to implement the remaining investigatory work at the Site entitled, "Draft Final Work Plan For The Liberty Industrial Finishing Site, Farmingdale, New York, Continued Remedial Investigation/Feasibility Study" (the "CRI/FS Work Plan") (Attached as Appendix A), and "Draft Final Sampling and Analysis Plan For The Liberty Industrial Finishing Site, Farmingdale, New York, Continued Remedial Investigation/Feasibility Study" (the "SAP") (Attached as Appendix B) (hereinafter collectively referred to as the "CRI/FS Implementation Plans").

30. The CRI/FS Implementation Plans were approved by EPA on October 2, 1995.

31. The actions required by this Consent Order are necessary to protect the public health or welfare or the environment, are in the public interest, 42 U.S.C. § 9622(a), are consistent with CERCLA and the NCP, 42 U.S.C. §§ 9604(a)(1), 9622(a), and are expected to expedite effective remedial action and minimize litigation, 42 U.S.C. § 9622(a).

32. CRI/FS Respondents have been given an opportunity to discuss with EPA the basis for issuance of this Consent Order and its terms.

VI. NOTICE

33. By providing a copy of this Consent Order to the New York State Department of Environmental Conservation ("NYSDEC"), EPA is notifying the State of New York that this Order is being issued and that EPA is the lead agency for coordinating, overseeing, and enforcing the response action required by the Order.

VII. WORK TO BE PERFORMED

34. All work performed under this Consent Order shall be under the direction and supervision of qualified personnel. Within 14 days of the effective date of this Order, and before the work outlined below begins, the Respondents shall notify EPA in writing of the names, titles, and qualifications of the

personnel, including contractors, subcontractors, consultants and laboratories to be used in carrying out such work. The qualifications of the persons undertaking the work for Respondents shall be subject to EPA's review, for verification that such persons meet minimum technical background and experience requirements. This Order is contingent on Respondents' demonstration to EPA's satisfaction that Respondents are qualified to perform properly and promptly the actions set forth in this Consent Order. If EPA disapproves in writing of any person's technical qualifications, Respondents shall notify EPA of the identity and qualifications of the replacement(s) within 30 days of the written notice. If EPA subsequently disapproves of the replacements, EPA reserves the right to terminate this Order and to conduct the CRI/FS, and to seek reimbursement for costs and penalties from Respondents. During the course of the CRI/FS, Respondents shall notify EPA in writing of any changes or additions in the personnel used to carry out such work, providing their names, titles, and qualifications. EPA shall have the same right to approve changes and additions to personnel as it has hereunder regarding the initial notification.

35. a. Respondents shall conduct activities and submit deliverables as provided below and in the attached CRI/FS Implementation Plans. Federal Respondents shall provide funding for the work under this Order in accordance with a separate agreement among Respondents and Federal Respondents. The CRI/FS Implementation Plans are incorporated into, and made an enforceable part of, this Consent Order. All work performed under this Consent Order shall be conducted in accordance with CERCLA, the NCP, and EPA guidances including, but not limited to, the "Interim Final Guidance for Conducting Remedial Investigations and Feasibility Studies under CERCLA" (OSWER Directive # 9355.3-01) (hereinafter, the "RI/FS Guidance"), guidances referenced therein, and guidances referenced in the CRI/FS Implementation Plans, as may be amended or modified by EPA. All work performed under this Consent Order shall be in accordance with the schedule of activities contained in Figure 5-2 of the CRI/FS Work Plan, and in full accordance with the standards, specifications, and other requirements of the CRI/FS Implementation Plans and this Order, as may be amended or modified by EPA from time to time. For the purposes of this Consent Order, day means calendar day unless otherwise noted in this Consent Order. In the event of conflict between this Consent Order and the CRI/FS Implementation Plans, this Consent Order shall control.

b. CRI/FS Respondents shall make best efforts to coordinate in the performance of the work required by this Consent Order with any person not a party to this Consent Order who is directed by EPA and who offers to perform or, in lieu of performance to pay for, in whole or in part, the work required by this Consent Order. Best efforts to coordinate shall include, at a minimum:

i. Replying in writing within a reasonable period of time to offers to perform or pay for the work required by this Consent Order;

ii. engaging in good-faith negotiations with any person not a party to this Consent Order who offers to perform or pay for, the work required by this Consent Order; and

iii. good-faith consideration of good-faith offers to perform or pay for the work required by this Consent Order.

c. On request of EPA and subject to any claims of applicable privileges(s), CRI/FS Respondents shall submit to EPA (1) any offer to perform or pay for, or (2) all documentation relating to the performance of or payment for, the work required by this Consent Order by any respondent or non-respondent to this Consent Order.

36. Site Health and Safety Plan. Within 30 days of the effective date of this Order, Respondents shall submit to EPA a Site Health and Safety Plan ("HASP") which is consistent with the original Health and Safety Plan used during the OU I RI effort and the Health and Safety Plan Amendment in the SAP, both of which are included as part of Appendix B of this Consent Order. If EPA disapproves of, or requires revisions to, the HASP, in whole or in part, which disapproval or required revisions shall be provided in writing with reasons for the disapproval or directions for revisions to make the submittal approvable, Respondents shall amend and submit to EPA a revised HASP which is responsive to the directions in all EPA comments, within 21 days of receiving EPA's comments.

37. Site Characterization. Within 14 days of EPA approval of the HASP, Respondents shall begin field implementation of the CRI/FS Implementation Plans and this Consent Order for site characterization.

38. Specific modifications and/or clarifications to the CRI/FS Implementation Plans with regard to site characterization are as follows:

a. PCB-2 Monitoring Well. Respondents shall propose to EPA for review and approval a monitoring well location for purposes of monitoring the groundwater quality downgradient of the PCB-2 area (which was the subject of response action under the Removal Orders and is depicted on Attachment II) during the OU II RI. Specifically, Respondents shall investigate the potential location of this monitoring well as part of the Drivepoint Groundwater Screening program required by this Order and, based on the screening results,

shall propose to EPA the location of the confirmatory monitoring well. The confirmatory monitoring well shall be sampled in accordance with the CRI/FS Implementation Plans and included in both rounds of groundwater sampling to be conducted pursuant to this Order. Additional requirements for the proposed screening locations and installation of this monitoring well are provided in paragraphs 38.b. and 38.c, below.

b. Sampling Locations. Within 30 days of the effective date of this Order, Respondents shall submit figures depicting detailed locations of all samples to be collected for the activities contained in Tables 3-1 and 3-2 of the CRI/FS Work Plan. If EPA disapproves of, or requires revisions to, such figures, in whole or in part, which disapproval or required revision shall be provided in writing with reasons for the disapproval or directions for revisions to make the submittal approvable, Respondents shall amend and submit to EPA revised figures which are responsive to the directions in all EPA comments, within 7 days of receiving EPA's comments.

c. Monitoring Well Locations Based on Groundwater Drivepoint Screening. Within 14 days of Respondents' receipt of the groundwater drivepoint screening results, Respondents shall propose final monitoring well locations to EPA for review and approval. If EPA disapproves of, or requires revisions to, such well locations, in whole or in part, which disapproval or required revision shall be provided in writing with reasons for the disapproval or directions for revisions to make the submittal approvable, Respondents shall amend and submit to EPA revised locations, which are responsive to the directions in all EPA comments, within 10 days of receiving EPA's comments.

d. Resource Conservation and Recovery Act, 42 U.S.C. §§6901-6992 ("RCRA") Characteristics (ignitability, corrosivity, and reactivity, based on Toxicity Characteristic Leaching Procedure ("TCLP")). At least 40% of the samples collected for the following investigatory activities contained in Table 3-1 of the CRI/FS Work Plan shall be analyzed for RCRA Characteristics:

- i. exterior subsurface features;
- ii. features beneath buildings;
- iii. Building D basement; and
- iv. soil borings east end.

Samples chosen for RCRA Characteristics shall be based on field screening, including, but not limited to, visual inspection, HNu and/or OVA analysis.

e. Investigations in and under Building W. Pursuant to the

access provisions of this Order, it is contemplated that with regard to the shredder fluff, preparation of Building W prior to investigation will be performed by the current owners of the Site, the generators and/or the transporters of such fluff.

f. Sewer Connections at the Property. As part of the OU II RI/FS, Respondents shall investigate and fully document the extent to which the Property is connected to the municipal sewer system. Respondents shall also investigate and fully document the extent to which existing drains, sumps, leaching chambers, and septic systems that are not connected to the municipal system are utilized by current tenants or other occupants at the Property.

39. Respondents shall complete site characterization (i.e., CRI field work) within six (6) months of EPA approval of the HASP. Respondents shall provide EPA with a validated analytical data package (including raw laboratory data and QA/QC documentation), and a form showing the location, medium and results, within 80 days of each sampling activity. Within 7 days of completion of all CRI field activities, Respondents shall notify EPA in writing.

40. Within 45 days of the completion of all field sampling, analysis, and validation activities, Respondents shall submit to EPA a Preliminary Site Characterization Summary Report ("PSCSR").

41. Human Health Risk Assessment. The CRI/FS Work Plan is hereby modified and/or clarified with regard to the human health risk assessment, as follows:

a. Actual and potential risks to human health shall be identified and characterized in accordance with CERCLA, the NCP, and EPA guidances including, but not limited to, the RI/FS Guidance, "Land Use in the CERCLA Remedy Selection Process" and the definitions and provisions of "Risk Assessment Guidance for Superfund," Volume 1, "Human Health Evaluation Manual," (October 1989) (OSWER Directive No. 9285.7-01a).

b. Representative contaminants and associated concentrations in groundwater for the OU II human health risk assessment shall be determined utilizing all of the groundwater analytical data from the 1994 OU I RI and groundwater data generated during the current CRI/FS effort. Contaminants concentrations in soils/sludges and features for the OU II shall be determined using the analytical data from the 1994 OU I RI pertaining to Lot 326 and the current CRI/FS effort.

c. All Post-Removal Action residual PCB data and any additional PCB data generated during the current CRI/FS effort shall be considered in the evaluation of human health risks associated with eastern soils/sludges and features located on Lot 326.

d. A List of Hazardous Substances Present and Proposed Contaminants of Concern shall be included with the PSCSR summary report. The PSCSR shall list the hazardous substances present in groundwater, in soils/sludges and features on Lot 326, and in off-property media, and the contaminants of concern ("COCs") as described in the Risk Assessment Guidance for Superfund. If EPA disapproves of or requires revisions to the PSCSR, in whole or in part, which disapproval or required revision shall be provided in writing with reasons for the disapproval or directions for revisions to make the submittal approvable, Respondents shall amend and submit to EPA a revised PSCSR which is responsive to the directions in all EPA comments, within 14 days of receiving EPA's comments.

e. Memorandum on Exposure Scenarios and Assumption. Within 28 days of submitting the revised PSCSR, Respondents shall submit a memorandum describing the exposure scenarios and assumptions, taking into account for the baseline human health risk assessment the present and reasonably anticipated future use of Lot 326. If EPA disapproves of or requires revisions to the memorandum, in whole or in part, which disapproval or required revisions shall be provided in writing with reasons for the disapproval or directions for revisions to make the submittal approvable, Respondents shall amend and submit to EPA a revised memorandum which is responsive to the directions in all EPA comments, within 14 days of receiving EPA's comments.

f. Toxicological and Epidemiological Studies Memorandum. Within 28 days of submitting the PSCSR, Respondents shall submit a list of the toxicological and epidemiological studies that will be used to perform the toxicity assessment for chemicals lacking EPA toxicity values. If EPA disapproves of or requires revisions to the toxicological and epidemiological studies memorandum, in whole or in part, which disapproval or required revisions shall be provided in writing with reasons for the disapproval or directions for revisions to make the submittal approvable, Respondents shall amend and submit to EPA a revised memorandum which is responsive to the directions in all EPA comments, within 14 days of receiving EPA's comments. Respondents shall repeat the toxicity assessment for all COCs in the event that any changes in toxicity factors, or other similar changes, have occurred since the OU I Baseline Risk Assessment was prepared.

g. Baseline Human Health Risk Assessment Section of the OU II RI Report. Within 45 days of submitting the revised or EPA-approved memoranda on exposure scenarios and assumptions and models, and toxicological and epidemiological studies, Respondents shall submit to EPA an OU II baseline human health risk assessment section for inclusion in the OU II RI report. If EPA disapproves of or requires revisions to the section, in whole or in part, which disapproval or required revision shall be provided in writing with reasons for the disapproval or directions for revisions to make the submittal approvable, Respondents shall amend and submit to EPA a revised report which is responsive to the directions in all EPA comments, within 30 days of receiving EPA's comments. The approved baseline report shall be incorporated into the OU II RI report.

h. Fate and Transport Model Memorandum. Within 45 days of the effective date of this Order, Respondents shall submit a memorandum on fate and transport models. This memorandum shall detail how a three dimensional (3-D) groundwater flow and contaminant transport model will be developed to depict effects of site contaminants within the groundwater flow regime downgradient of the Property. If EPA disapproves of or requires revisions to the memorandum, in whole or in part, Respondents shall amend and submit to EPA a revised memorandum which is responsive to the directions in all EPA comments, within 14 days of receiving EPA's comments. The results of this modelling effort shall be included in the OU II CRI/FS Report.

42. Ecological Risk Assessment. The CRI/FS Work Plan is modified and/or clarified with regard to the ecological risk assessment, as follows: An update to the ecological assessment that was conducted as part of the OU I RI effort will not be necessary unless EPA notifies Respondents in writing that an update is warranted based on the analytical results from surface water/sediment samples to be collected from the Massapequa Creek pursuant to this Consent Order. If EPA so notifies, Respondents shall update the ecological assessment conducted as part of the OU I RI, in accordance with EPA guidances, including, but not limited to, "Risk Assessment Guidance for Superfund, Volume 2, Environmental Evaluation Manual," (March 1989) (OSWER Directive No. 9285.7-02). Respondents shall submit the update to EPA within 45 days of receipt of such notice by EPA. If EPA disapproves of or requires revisions to the updated ecological assessment, in whole or in part, which disapproval or required revisions shall be provided in writing with reasons for the disapproval or directions for revisions to make the submittal approvable, Respondents shall amend and submit to EPA a revised, updated ecological assessment which is responsive to the directions in all EPA comments, within 21 days of receiving EPA's comments.

43. Community Relations. Upon request by EPA, Respondents shall provide information and assistance supporting EPA's community relations programs.

44. Treatability Studies. Respondents shall conduct treatability studies, except where Respondents can demonstrate to EPA's satisfaction that they are not needed. Major components of the treatability studies include determination of the need for and scope of studies, the design of the studies, and the completion of the studies. During treatability studies, Respondents shall provide EPA with the following deliverables:

a. Identification of Candidate Technologies Memorandum.

This memorandum shall be submitted within 45 days of Respondents' receipt of all validated analytical results. If EPA disapproves of or requires revisions to the technical memorandum identifying candidate technologies, in whole or in part, which disapproval or required revision shall be provided in writing with reasons for the disapproval or directions for revisions to make the submittal approvable, Respondents shall amend and submit to EPA a revised technical memorandum identifying candidate technologies which is responsive to the directions in all EPA comments, within 14 days of receiving EPA's comments.

b. Treatability Testing Statement of Work. If EPA determines that treatability testing is required, within 30 days of Respondents' receipt of notification from EPA, Respondents shall submit a treatability testing statement of work.

c. Treatability Testing Work Plan. Within 30 days of submission of the treatability testing statement of work, Respondents shall submit a treatability testing work plan, including a schedule. If EPA disapproves of or requires revisions to the work plan, in whole or in part, which disapproval or required revisions shall be provided in writing with reasons for the disapproval or directions for revisions to make the submittal approvable, Respondents shall amend and submit to EPA a revised work plan which is responsive to the directions in all EPA comments, within 14 days of receiving EPA's comments.

d. Treatability Study Sampling and Analysis Plan. Within 14 days of submission the Treatability Testing Work Plan, Respondents shall submit a revised SAP or HASP as appropriate. If EPA disapproves of or requires revisions to the revised SAP or HASP, in whole or in part, which disapproval or required revision shall be provided in writing with reasons for the disapproval or directions for revisions to make the submittal approvable, Respondents shall amend and submit to EPA a revised SAP or HASP which is

responsive to the directions in all EPA comments, within 14 days of receiving EPA's comments.

e. Treatability Study Evaluation Report. In accordance with the time schedule set forth in the approved Treatability Testing Work Plan, Respondents shall submit a treatability study evaluation report to EPA. If EPA disapproves of or requires revisions to the report, in whole or in part, which disapproval or required revisions shall be provided in writing with reasons for the disapproval or directions for revisions to make the submittal approvable, Respondents shall amend and submit to EPA a revised report which is responsive to the directions in all EPA comments, within 21 days of receiving EPA's comments.

45. Draft OU II RI Report. Within 45 days of submitting the revised or EPA-approved memoranda on exposure scenarios and assumptions and models, and toxicological and epidemiological studies, Respondents shall submit a draft OU II RI Report consistent with the CRI/FS Implementation Plans, the RI/FS Guidance, the NCP, and CERCLA. The OU II baseline human health risk assessment report shall be included with this OU II RI Report. If EPA disapproves of or requires revisions to the Report, in whole or in part, which disapproval or required revision shall be provided in writing with reasons for the disapproval or directions for revisions to make the submittal approvable, Respondents shall amend and submit to EPA a revised Report which is responsive to the directions in all EPA comments, within 30 days of receiving EPA's comments.

46. Development, Screening, and Detailed Analysis of Alternatives. Respondents shall develop an appropriate range of remediation options that will be evaluated through the development, screening, and detailed analysis of alternatives, in accordance with CERCLA, the NCP, and EPA guidances, including, but not limited to, the RI/FS Guidance. Within 45 days of RI submission, Respondents shall make a presentation to EPA during which Respondents shall summarize the preliminary findings of the OU II RI, identify the remedial action objectives, summarize the development and preliminary screening of remedial alternatives, and summarize the detailed analysis of alternatives. Respondents shall address any comments made by EPA during this presentation in the either the draft OU II RI report or the draft FS report, as appropriate.

47. Draft OU II Feasibility Study Report. Within 45 days of the presentation to EPA pursuant to paragraph 46., above, Respondents shall submit a draft OU II FS Report. Respondents shall refer to Table 6-5 of the RI/FS Guidance for FS Report content and format. If EPA disapproves of or requires revisions to the draft FS Report in whole or in part, which disapproval or required revisions shall be provided in writing with reasons for the disapproval or directions for revisions to make the submittal

approvable, Respondents shall amend and submit to EPA a revised FS Report which is responsive to the directions in all EPA comments, within 30 days of receiving EPA's comments. The FS Report, as amended, and the administrative record shall provide the basis for the proposed plan under CERCLA §§ 113(k) and 117(a) by EPA, and shall document the development and analysis of remedial alternatives.

48. EPA reserves the right to comment on, modify and direct changes for all deliverables. At EPA's discretion, Respondents must fully correct all deficiencies and incorporate and integrate all information and comments supplied in writing by EPA either in subsequent or resubmitted deliverables.

49. Respondents shall not proceed further with any subsequent activities or tasks until receiving EPA approval for the following: the HASP, sampling locations pursuant to paragraph 38.b., monitoring well locations pursuant to paragraph 38.c., and baseline risk assessment section of the OU II RI Report. While awaiting EPA approval on these deliverables, Respondents shall proceed with all other tasks and activities which may be conducted independently of these deliverables, in accordance with the schedule set forth in the CRI/FS Implementation Plans and this Consent Order.

50. For all remaining deliverables not enumerated in paragraph 49., above, Respondents shall proceed with all subsequent tasks, activities and deliverables without awaiting EPA approval on the submitted deliverable. EPA reserves the right to stop Respondents from proceeding further, either temporarily or permanently, on any task, activity or deliverable at any point during the CRI/FS.

51. In the event that Respondents amend or revise a report, plan or other submittal upon receipt of EPA comments, if EPA in its sole discretion subsequently disapproves of the revised submittal, or if subsequent submittals do not fully reflect EPA's directions for changes, EPA retains the right in its sole discretion to seek stipulated or statutory penalties; perform its own studies, complete the CRI/FS (or any portion of the CRI/FS) under CERCLA and the NCP. EPA also retains the right to seek reimbursement from the Respondents for its costs; and/or seek any other appropriate relief.

52. In the event that EPA takes over some of the tasks, but not the preparation of the OU II RI and FS Reports, Respondents shall incorporate and integrate information supplied by EPA into the final OU II RI and FS Reports.

53. Neither the failure of EPA to expressly approve or disapprove of Respondents' submissions, nor the absence of comments, shall be construed as approval by EPA. Whether or not

EPA gives express approval for Respondents' deliverables, Respondents are responsible for preparing deliverables that are in accordance with CERCLA, the NCP, and EPA guidances, including, but not limited to, the RI/FS Guidance.

54. Respondents shall, at least 7 days prior to any off-site shipment of hazardous substances from the Site to an out-of-state waste management facility, provide written notification to the appropriate state environmental official in the receiving state and to EPA's Designated Project Coordinator specified below of such shipment of hazardous substances. However, the notification of shipments shall not apply to any such off-site shipments when the total volume of such shipments will not exceed 10 cubic yards.

a. The notification shall be in writing, and shall include the following information, where available:

i. the name and location of the facility to which the hazardous substances are to be shipped;

ii. the type and quantity of the hazardous substances to be shipped;

iii. the expected schedule for the shipment of the hazardous substances; and

iv. the method of transportation.

Respondents shall notify the receiving state of major changes in the shipment plan, such as a decision to ship the hazardous substances to another facility within the same state, or to a facility in another state.

b. The identity of the receiving facility and state will be determined by Respondents following the award of the contract for the CRI/FS. Respondents shall provide all relevant information, including information under the categories noted in subparagraph a. above, on the off-site shipments, as soon as practical after the award of the contract and before the hazardous substances are actually shipped.

VIII. NOTIFICATION AND REPORTING REQUIREMENTS

55. All reports and other documents submitted by Respondents to EPA (other than the monthly progress reports referred to below) which purport to document Respondents' compliance with the terms of this Order shall be signed by an individual who will certify that he/she has been fully authorized by Respondents to submit such a document and to legally bind all Respondents thereto.

56. Until the termination of this Order, Respondents shall prepare and provide EPA with written monthly progress reports which: (1) describe the actions which have been taken toward achieving compliance with this Order during the previous month; (2) include all results of sampling, tests, modelling and all other data (including raw data) received or generated by or on behalf of Respondents during the previous month in the implementation of the work required hereunder (unless that data has already been submitted by Respondents to EPA pursuant to section VII., above); (3) describe all actions, data and plans which are scheduled for the next two months and provide other information relating to the progress of work as is customary in the industry; (4) include information regarding percentage of completion, all delays encountered or anticipated that may affect the future schedule for completion of the work required hereunder, and a description of all efforts made to mitigate those delays or anticipated delays. These progress reports shall be submitted to EPA by Respondents by the tenth (10th) day of every month following the effective date of this Order.

57. Upon the occurrence of any event during performance of the work required hereunder which event, pursuant to Section 103 of CERCLA, requires reporting to the National Response Center, Respondents shall, within twenty-four (24) hours, orally notify the EPA Project Coordinator (or, in the event of the unavailability of the EPA Project Coordinator, the Chief of the Eastern New York Remediation Section of the Emergency and Remedial Response Division of EPA Region II), in addition to the reporting required by paragraph 96. Within twenty (20) days of the onset of such an event, Respondents shall furnish EPA with a written report setting forth the events which occurred and the measures taken, and to be taken, in response thereto.

58. All reports, studies, notices and other documents required to be submitted to EPA under this Order shall be sent by certified mail, return receipt requested, by overnight delivery or by courier to the following addressees:

7 copies: Chief, NY Remediation Branch
(including Emergency and Remedial Response Division
1 un-bound United States Environmental Protection Agency
copy) 290 Broadway, 20th Floor
New York, New York 10007

Attention: Liberty Site, Remedial Project Manager

1 copy: Chief, New York/Caribbean Superfund Branch
Office of Regional Counsel
United States Environmental Protection Agency
290 Broadway, 17th Floor
New York, New York 10007

Attention: Liberty Site Attorney

5 copies: New York State Department of Environmental
Conservation
50 Wolf Road
Albany, New York 12233-7010

Attention: Liberty Site Manager

59. Respondents shall include with the submission of the draft OU II RI and FS Reports, a computer diskette containing electronic copies of these reports in a format compatible with EPA software.

60. Respondents shall give EPA at least 14 days advance notice of all field work or field activities to be performed by Respondents pursuant to this Order.

IX. MODIFICATION OF THE WORK PLAN

61. If at any time during the CRI/FS process, Respondents identify a need for additional data, a memorandum documenting the need for additional data shall be submitted to the EPA Project Coordinator within 20 days of identification. EPA in its discretion will determine whether the additional data will be collected by Respondents and whether it will be incorporated into reports and deliverables.

62. In the event of conditions posing an immediate threat to human health or welfare or the environment, Respondents shall notify EPA and NYSDEC immediately. In the event of unanticipated or changed circumstances at the Site, which may interfere with or delay Respondents' performance hereunder, Respondents shall notify the EPA Project Coordinator (or, in the event of the unavailability of the EPA Project Coordinator, the Chief of the Eastern New York Remediation Section of the Emergency and Remedial Response Division of EPA Region II) by telephone within 24 hours of discovery of the unanticipated or changed circumstances. In addition to the authorities in the NCP, in the event that EPA determines that the immediate threat or the unanticipated or changed circumstances warrant changes in any of the CRI/FS Implementation Plans, EPA will modify or amend such Plans in writing accordingly or direct Respondents to do so. Respondents shall perform the work plan as modified or amended.

63. EPA may determine that in addition to tasks defined in the CRI/FS Work Plan, other work may be necessary to accomplish the objectives of the CRI/FS as set forth in the CRI/FS Work Plan and this Order. EPA may require that the Respondents perform these response actions in addition to those required by the CRI/FS Work Plan and this Order, including any approved modifications, if it determines that such actions are necessary for a complete CRI/FS.

Respondents shall confirm their willingness to perform the additional work in writing to EPA within 7 days of receipt of the EPA request or Respondents shall invoke dispute resolution. Subject to EPA resolution of any dispute, Respondents shall implement the additional tasks which EPA determines are necessary. The additional work shall be completed according to the standards, specifications, and schedule set forth or approved by EPA in a written modification to the CRI/FS Work Plan or written CRI/FS Work Plan supplement. EPA reserves the right to conduct the work itself at any point, to seek reimbursement from Respondents, and/or to seek any other appropriate relief.

X. FINAL CRI/FS, PROPOSED PLAN, PUBLIC COMMENT, RECORD OF DECISION, ADMINISTRATIVE RECORD

64. EPA retains the responsibility for the release to the public of the OU II RI and FS Reports. EPA retains responsibility for the preparation and release to the public of the proposed plan and record of decision in accordance with CERCLA and the NCP.

65. EPA shall provide Respondents with the final OU II RI and FS reports (to the extent that Respondents do not already have these reports), proposed plan and record of decision.

66. EPA will determine the contents of the administrative record file for selection of the remedial action. Respondents must submit to EPA documents developed during the course of the CRI/FS upon which selection of the response action may be based. Respondents shall provide copies of plans, task memoranda including documentation of field modifications, recommendations for further action, quality assurance memoranda and audits, raw data, field notes, laboratory analytical reports and other reports. Respondents must additionally submit any previous studies conducted under state, local or other federal authorities relating to selection of the response action, and all communications between Respondents and state, local or other federal authorities concerning selection of the response action. At EPA's discretion, Respondents may establish a community information repository at or near the Site, to house one copy of the administrative record.

XI. PROJECT COORDINATORS, OTHER PERSONNEL

67. EPA has designated the following individual as its Project Coordinator with respect to the Site:

Lorenzo Thantu
New York Remediation Branch
Emergency and Remedial Response Division
U.S. Environmental Protection Agency
290 Broadway, 20th Floor
New York, NY 10007

68. Not later than seven days after the effective date of this Consent Order, Respondents shall select their own Project Coordinator and shall notify EPA in writing of the name, address, qualifications, job title and telephone number of that Project Coordinator. He or she shall have technical expertise sufficient to adequately oversee all aspects of the work contemplated by this Consent Order. Respondents' Project Coordinator shall be responsible for overseeing the implementation of this Consent Order and shall help coordinate communications between EPA and Respondents. EPA and the Respondents each have the right to change their respective Project Coordinator. Such a change shall be accomplished by notifying the other party in writing at least ten (10) days prior to the change.

69. EPA's Project Coordinator shall have the authority lawfully vested in a Remedial Project Manager and On-Scene Coordinator by the NCP. In addition, EPA's Project Coordinator shall have the authority consistent with the NCP, to halt any work required by this Consent Order, and to take any necessary response action when s/he determines that conditions at the Site may present an immediate endangerment to public health or welfare or the environment. The absence of the EPA Project Coordinator from the area under study pursuant to this Consent Order shall not be cause for the stoppage or delay of work.

70. All activities required of Respondents under the terms of the Consent Order shall be performed only by qualified persons possessing all necessary permits, licenses, and other authorizations required by applicable law.

XII. OVERSIGHT

71. During the implementation of the requirements of this Order, Respondents and their contractors and subcontractors shall be available for such conferences and inspections with EPA as EPA may reasonably determine are necessary for EPA to adequately oversee the work being carried out and/or to be carried out.

72. Respondents and their employees, agents, contractors and consultants shall cooperate with EPA in its efforts to oversee Respondents' implementation of this Order.

XIII. SAMPLING, ACCESS, AND DATA AVAILABILITY/ADMISSIBILITY

73. All results of sampling, tests, modeling or other data (including raw data) generated by Respondents, or on Respondents' behalf, during implementation of this Consent Order, shall be submitted to EPA in the subsequent monthly progress report as described in section VIII. of this Order. EPA will make available to the Respondents validated data generated by EPA unless it is exempt from disclosure by any federal or state law or regulation.

74. Respondents will verbally notify EPA at least 14 days prior to conducting significant field events as described in the CRI/FS Implementation Plans or other deliverable approved by EPA pursuant to this Order. At EPA's verbal or written request, or the request of EPA's oversight assistant, Respondents shall allow split or duplicate samples to be taken by EPA (and its authorized representatives) of any samples collected by the Respondents in implementing this Consent Order. All split samples of Respondents shall be analyzed by the methods identified in the CRI/FS Implementation Plans or in other submittals approved pursuant to this Order. EPA will transmit copies of the validated results to the Respondents.

75. At all reasonable times, EPA and its authorized representatives shall have the authority to enter and freely move about all property at the Site and off-site areas where work, if any, is being performed, for the purposes of inspecting conditions, activities, the results of activities, records, operating logs, and contracts related to the Site or Respondents and their contractor pursuant to this Order; reviewing the progress of the Respondents in carrying out the terms of this Consent Order; conducting tests as EPA or its authorized representatives deem necessary; using a camera, sound recording device or other documentary type equipment; and verifying the data submitted to EPA by the Respondents. The Respondents shall allow these persons to inspect and copy all records, files, photographs, documents, sampling and monitoring data, and other writings related to work undertaken in carrying out this Consent Order. Nothing herein shall be interpreted as limiting or affecting EPA's right of entry or inspection authority under federal law. All parties with access to the Site under this paragraph shall comply with all approved health and safety plans.

76. The Respondents may assert a claim of business confidentiality covering part or all of the information submitted to EPA pursuant to the terms of this Consent Order under 40 C.F.R. §2.203, provided such claim is allowed by Section 104(e)(7) of CERCLA, 42 U.S.C. §9604(e)(7). This claim shall be asserted in the manner described by 40 C.F.R. §2.203(b) and substantiated at the time the claim is made. Information determined to be confidential by EPA will be given the protection specified in 40 C.F.R. Part 2. If no such claim accompanies the information when it is submitted to EPA, it may be made available to the public by EPA or the state without further notice to the Respondents. Respondents agree not to assert confidentiality claims with respect to any data related to site conditions, sampling, or monitoring.

77. In entering into this Order, Respondents waive any objections to any data gathered, generated, or evaluated by EPA, the state or Respondents in the performance or oversight of the

work that has been verified according to the quality assurance/quality control (QA/QC) procedures required by the Consent Order or any EPA-approved work plans or sampling and analysis plans. If Respondents object to any other data relating to the CRI/FS, Respondents shall submit to EPA a report that identifies and explains their objections, describes the acceptable uses of the data, if any, and identifies any limitations to the use of the data. The report must be submitted to EPA within 15 days of the monthly progress report containing the data.

78. If any area to which access is necessary to perform work under this Consent Order, is owned in whole or in part by parties other than those bound by this Consent Order, Respondents will obtain, or use their best efforts to obtain, site access agreements from the present owner(s) within 30 days of the effective date of this Consent Order. Such agreements shall provide access for EPA, its contractors and oversight officials, the state and its contractors, and the Respondents or their authorized representatives, and such agreements shall specify that Respondents are implementing work pursuant to this Consent Order but they are not EPA's representative with respect to liability associated with Site activities. Copies of such agreements shall be provided to EPA prior to Respondents' initiation of field activities. Respondents' best efforts shall include providing reasonable compensation to any off-site property owner. If access agreements are not obtained within the time referenced above, Respondents shall immediately notify EPA of their failure to obtain access. EPA may obtain access for the Respondents, perform those tasks or activities with EPA contractors, or terminate the Consent Order in the event that Respondents cannot obtain access agreements. In the event that EPA performs those tasks or activities with EPA contractors and does not terminate the Consent Order, Respondents shall perform all other activities not requiring access to that Site, and shall reimburse EPA for all costs incurred in performing such activities. Respondents additionally shall integrate the results of any such tasks undertaken by EPA into their reports and deliverables. Furthermore, the Respondents agree to indemnify the United States as specified in section XXIV. of this Order. Respondents also shall reimburse EPA for all costs and attorney fees incurred by the United States to obtain access for the Respondents pursuant to this paragraph. Nothing in this paragraph shall be construed as an agreement by Respondents to pay any such costs incurred by any agency, department or instrumentality of the United States in its capacity as a PRP for the Site.

79. Notwithstanding any other provision of this Consent Order, EPA hereby retains all of its information-gathering, access and inspection authority under CERCLA, RCRA, and any other applicable statute or regulation.

XIV. OTHER APPLICABLE LAWS

80. Respondents shall comply with all laws that are applicable when performing the CRI/FS. No local, state, or federal permit shall be required for any portion of any action conducted entirely on-site, including studies, where such action is selected and carried out in compliance with Section 121 of CERCLA. For any work performed pursuant to this Consent Order which is not "on-site", as defined in Sections 300.5 and 300.400(e) of the NCP, Respondents shall obtain all permits necessary under applicable laws and shall submit timely applications and requests for any such permits. This Consent Order is not, nor shall it act as, a permit issued pursuant to any federal or state statute or regulation.

XV. RECORD PRESERVATION

81. All records and documents in Respondents' possession that relate in any way to the Site shall be preserved during the conduct of this Consent Order and for a minimum of 10 years after commencement of construction of any remedial action. The Respondents shall acquire and retain copies of all documents that relate to the Site and are in the possession of their employees, agents, accountants, contractors, or attorneys. After this 10 year period, the Respondents shall notify EPA at least 90 days before the documents are scheduled to be destroyed. If EPA requests that the documents be saved, the Respondents shall, at no cost to EPA, give EPA the documents or copies of the documents.

XVI. COMMUNITY RELATIONS

82. Respondents shall cooperate with EPA in providing information relating to the work required hereunder to the public. To the extent requested by EPA, Respondents shall participate in the preparation of all appropriate information disseminated to the public and make presentations at, and participate in, public meetings which may be held or sponsored by EPA to explain activities at or concerning the Site.

XVII. DISPUTE RESOLUTION

83. Any disputes concerning activities or deliverables required under this Order, for which dispute resolution has been expressly provided for, shall be resolved as follows: If the Respondents object to any EPA notice of disapproval or requirement made pursuant to this Consent Order, Respondents shall notify EPA's Project Coordinator in writing of their objections within 14 days of receipt of the disapproval notice or requirement. Respondents' written objections shall define the dispute, state the basis of Respondents' objections, and be sent certified mail, return receipt requested. EPA and the Respondents then have an

additional 14 days to reach agreement. If an agreement is not reached within 14 days, Respondents may request a determination by the Chief of EPA's New York Remediation Branch. The Branch Chief's determination is EPA's final decision. Respondents shall proceed in accordance with EPA's final decision regarding the matter in dispute, regardless of whether Respondents agree with the decision. If the Respondents do not agree to perform or do not actually perform the work in accordance with EPA's final decision, EPA reserves the right in its sole discretion to conduct the work itself, to seek reimbursement from the Respondents, to seek enforcement of the decision, to seek stipulated penalties, and/or to seek any other appropriate relief.

84. Respondents are not relieved of their obligations to perform and conduct activities and submit deliverables on the schedule set forth in the CRI/FS Implementation Plans, while a matter is pending in dispute resolution. The invocation of dispute resolution does not stay stipulated penalties under this Order.

XVIII. DELAY IN PERFORMANCE/STIPULATED PENALTIES

85. Each Respondent is jointly and severally responsible for the implementation of the work required by this Order and for compliance with all provisions of this Order. Compliance or noncompliance by one or more Respondent with any provision of this Order shall not excuse or justify noncompliance by any other Respondents. The absence of Federal Respondents from this section shall not be construed to affect the liability of any party hereto under CERCLA.

86. For each day that the Respondents fail to complete a deliverable in a timely manner or fails to produce a deliverable of acceptable quality, or otherwise fails to perform in accordance with the requirements of this Order, Respondents shall be liable for stipulated penalties. Penalties begin to accrue on the day that performance is due or a violation occurs, and extend through the period of correction. Where a revised submission by Respondents is required, stipulated penalties shall continue to accrue until a satisfactory deliverable is produced. EPA will provide written notice for violations that are not based on timeliness; nevertheless, penalties shall accrue from the day a violation commences. Payment shall be due within 30 days of receipt of a demand letter from EPA. EPA may, in its enforcement discretion, waive any portion of stipulated penalties that have accrued pursuant to this Order.

87. Respondents shall pay interest on the unpaid balance, which shall begin to accrue at the end of the 30-day period, at the rate established by the Department of Treasury pursuant to 30 U.S.C. §3717. Respondents shall further pay a handling charge of 1 percent, to be assessed at the end of each 31 day period, and a

6 percent per annum penalty charge, to be assessed if the penalty is not paid in full within 90 days after it is due.

88. Respondents shall make all payments by forwarding a cashier's or certified check to:

EPA - Region 2
Attn: Superfund Accounting
P.O. Box 360188M
Pittsburgh, PA 15251

Checks should identify the name of the Site, the site identification number, the account number, and the index number of this Order. A copy of the check and/or transmittal letter shall be sent to the first two addressees listed in paragraph 58 above.

89. If Respondents fail to comply with any of the requirements of the Consent Order related to the following (including, submission and, if requested, revision and resubmission of deliverables), stipulated penalties shall accrue in the amount of \$750 per day, per violation, for the first seven days of noncompliance; \$1000 per day, per violation, for the 8th through 14th day of noncompliance; \$3000 per day, per violation, for the 15th day through the 30th day; and \$4000 per day per violation for all violations lasting beyond 30 days.

- a. the baseline risk assessment section of the CRI Report.
- b. the ecological risk assessment, if required.
- c. the CRI report.
- d. Implementation of the CRI/FS Implementation Plans, in accordance with the schedule approved by EPA for such work.
- e. the feasibility study report.

90. If Respondents fail to comply with any of the requirements of the Consent Order related to the following (including, submission and, if requested, revision and resubmission of deliverables), stipulated penalties shall accrue in the amount of \$500 per day, per violation, for the first week of noncompliance; \$750 per day, per violation, for the 8th through 14th day of noncompliance; \$1500 per day, per violation, for the 15th day through the 30th day of noncompliance; and \$2000 per day per violation for all violations lasting beyond 30 days.

- a. notification to EPA of names, titles and qualifications of personnel pursuant to paragraph 34.

- b. notification to EPA of proposed Project Coordinator pursuant to paragraph 68.
- c. the Site Health and Safety Plan.
- d. the Sampling Location figures report.
- e. the Final monitoring location Report.
- f. the Preliminary site characterization summary.
- g. the Summary identifying contaminants and list of proposed indicator chemicals.
- h. Memoranda on exposure scenarios and fate and transport models.
- i. the Toxicological and epidemiological studies memorandum.
- j. the Identification of candidate technologies memorandum, if required.
- k. the Treatability testing statement of work, if required.
- l. the treatability testing work plan, if required.
- m. the treatability study sampling and analysis plan, if required.
- n. the Treatability study evaluation report, if required.
- o. Memoranda on development and preliminary screening of alternatives, assembled alternatives screening results, and final screening,

91. If the Respondents fail to comply with the requirements set forth in paragraph 56 above regarding monthly progress reports, stipulated penalties shall accrue in the amount of \$150 per day, per violation, for the first week of noncompliance; \$250 per day, per violation, for the 8th through 14th day of noncompliance; \$550 per day, per violation, for the 15th day through the 30th day; and \$750 per day, per violation, for all violations lasting beyond 30 days.

92. Respondents may dispute EPA's right to the stated amount of penalties by invoking the dispute resolution procedures under section XVII. herein. Penalties shall accrue but need not be paid during the dispute resolution period. If Respondents do not prevail upon resolution, all penalties shall be due to EPA within 30 days of resolution of the dispute. If Respondents prevail

upon resolution, no penalties shall be paid.

93. In the event that EPA provides for corrections to be reflected in the next deliverable and does not require resubmission of that deliverable, stipulated penalties for that interim deliverable shall cease to accrue on the date of such decision by EPA.

94. The stipulated penalties provisions do not preclude EPA from pursuing any other remedies or sanctions which are available to EPA because of the Respondents' failure to comply with this Consent Order, including but not limited to conduct of all or part of the CRI/FS by EPA. Payment of stipulated penalties does not alter Respondents' obligation to complete performance under this Consent Order.

XIX. FORCE MAJEURE

95. "Force majeure", for purposes of this Consent Order, is defined as any event arising from causes entirely beyond the control of the Respondents and of any entity controlled by Respondents, including their contractors and subcontractors, that delays the timely performance of any obligation under this Consent Order notwithstanding Respondents' best efforts to avoid the delay. The requirement that the Respondents exercise "best efforts to avoid the delay" includes using best efforts to anticipate any potential force majeure event and best efforts to address the effects of any potential force majeure event

- a. as it is occurring and
- b. following the potential force majeure event, such that the delay is minimized to the greatest extent practicable.

Examples of events that are not force majeure events include, but are not limited to, increased costs or expenses of any work to be performed under this Order or the financial difficulty of Respondents to perform such work.

96. If any event occurs or has occurred that may delay the performance of any obligation under this Order, whether or not caused by a force majeure event, Respondents shall notify by telephone the EPA Project Coordinator or, in his or her absence, the Chief of New York Remediation Branch, EPA Region II, within 48 hours of when the Respondents knew or should have known that the event might cause a delay. Within five business days thereafter, Respondents shall provide in writing the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to mitigate the effect of the delay; and a statement as to whether, in the opinion of Respondents, such event may cause or contribute to an

endangerment to public health, welfare or the environment. Respondents shall exercise best efforts to avoid or minimize any delay and any effects of a delay. Failure to comply with the above requirements shall preclude Respondents from asserting any claim of force majeure.

97. If EPA agrees that the delay or anticipated delay is attributable to force majeure, the time for performance of the obligations under this Order that are directly affected by the force majeure event shall be extended by agreement of the parties, pursuant to section XVIII. of this Order, for a period of time not to exceed the actual duration of the delay caused by the force majeure event. An extension of the time for performance of the obligation directly affected by the force majeure event shall not, of itself, extend the time for performance of any subsequent obligation.

98. If EPA does not agree that the delay or anticipated delay has been or will be caused by a force majeure event, or does not agree with Respondents on the length of the extension, the issue shall be subject to the dispute resolution procedures set forth in section XVII. of this Order. In any such proceeding, to qualify for a force majeure defense, Respondents shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a force majeure event, that the duration of the delay was or will be warranted under the circumstances, that Respondents did exercise or are exercising due diligence by using their best efforts to avoid and mitigate the effects of the delay, and that Respondents complied with the requirements of paragraph 96.

99. Should Respondents carry the burden set forth in paragraph 98, the delay at issue shall be deemed not to be a violation of the affected obligation of this Consent Order.

XX. REIMBURSEMENT

100. a. Respondents hereby agree to reimburse EPA for all response costs, including oversight costs, incurred by EPA with respect to the CRI/FS after the effective date of this Order. Federal Respondents shall provide funding for such reimbursement in accordance with a separate agreement among Respondents and Federal Respondents. EPA will periodically send billings to Respondents for the costs incurred by EPA. Those billings will be accompanied by a printout of cost data in EPA's financial management system and by a calculation of EPA's indirect costs. EPA's costs may include, but are not limited to, costs incurred by EPA in overseeing Respondents' implementation of the requirements of this Consent Order, and activities performed by the government as part of the CRI/FS and community relations, including any costs incurred while obtaining access. Such

costs will include both direct and indirect costs, including, but not limited to, time and travel costs of EPA personnel and associated indirect costs, contractor costs, cooperative agreement costs, compliance monitoring, including the collection and analysis of split samples, inspection of CRI/FS activities, Site visits, discussions regarding disputes that may arise as a result of this Consent Order, review and approval or disapproval of reports, and costs of redoing any of Respondents' tasks.

Respondents shall, within 30 days of receipt of each such billing, remit a certified or cashier's check for the amount of those costs, made payable to the "Hazardous Substance Superfund," unless such billing is challenged as provided for in subparagraph b. of this paragraph.

b. Respondents may invoke the Dispute Resolution procedures of section XVII. of this Order with respect to payment demands submitted to Respondents by EPA under subparagraph a., above. However, Respondents agree to limit any disputes concerning costs to mathematical errors and the inclusion of costs outside the scope of this Consent Order or inconsistent with the NCP. Respondents shall identify any contested costs and the basis of their objection. All undisputed costs shall be remitted by Respondents in accordance with the schedule set forth above. Disputed costs shall be paid by Respondents into an escrow account while the dispute is pending. Respondents bears the burden of establishing an EPA mathematical error or the inclusion of costs outside the scope of this Consent Order or inconsistent with the NCP.

101. Each of the payments that Respondents are required to pay shall be mailed to the following address:

EPA - Region II
Attn: Superfund Accounting
P.O. Box 360188M
Pittsburgh, PA 15251

Checks should include the name of the Site, the site identification number, and the index number of this Consent Order. A copy of the transmittal letter and check should simultaneously be sent to the first two addressees listed in paragraph 58 above.

102. CRI/FS Respondents shall pay interest on any amounts overdue under paragraph 100, above. Such interest shall begin to accrue on the first date that the respective payment is overdue. Interest shall accrue at the rate of interest on investments of the Hazardous Substances Superfund, in accordance with Section 107(a) of CERCLA.

XXI. RESERVATIONS OF RIGHTS AND REIMBURSEMENT OF OTHER COSTS

103. EPA reserves the right to bring an action against Respondents under Section 107 of CERCLA for recovery of all response costs including oversight costs, incurred by EPA at the Site that are not reimbursed by the CRI/FS Respondents, any costs incurred in the event that EPA performs the CRI/FS or any part thereof, and any future costs incurred by the United States in connection with response activities conducted under CERCLA at this Site. The absence of Federal Respondents from this section shall not be construed to affect the liability of any party hereto under CERCLA.

104. EPA reserves the right to bring an action against Respondents to enforce the response and oversight cost reimbursement requirements of this Consent Order, to collect stipulated penalties assessed pursuant to section XVIII. of this Consent Order, and to seek penalties pursuant to Section 109 of CERCLA, 42 U.S.C. § 9609. The absence of Federal Respondents from this section shall not be construed to affect the liability of any party hereto under CERCLA.

105. Except as expressly provided in this Order, each party reserves all rights and defenses it may have. Nothing in this Consent Order shall affect EPA's removal authority or EPA's response or enforcement authorities including, but not limited to, the right to seek injunctive relief, stipulated penalties, statutory penalties, and/or punitive damages.

106. Any requirement for the payment or obligation of funds by Federal Respondents established by the terms of this Consent Order shall be subject to the availability of appropriated funds, and no provision herein shall be interpreted to require the payment or obligation of funds in violation of the Anti-Deficiency Act, 31 U.S.C. §1341.

107. Following satisfaction of the requirements of this Consent Order, CRI/FS Respondents shall have resolved their liability to EPA for the work performed by Respondents pursuant to this Consent Order. CRI/FS Respondents are not released from liability, if any, for any response actions taken beyond the scope of this Order regarding removals, other operable units, remedial design/remedial action of this operable unit, or activities arising pursuant to Section 121(c) of CERCLA.

XXII. DISCLAIMER

108. By signing this Consent Order and taking actions under this Order, the CRI/FS Respondents do not necessarily agree with EPA's Findings of Fact and Conclusions of Law. The Respondents are performing this work in an effort to reduce site costs, transaction costs, and to cooperate with EPA. Furthermore, the

participation of the CRI/FS Respondents in this Order shall not be considered an admission of liability and is not admissible in evidence against the CRI/FS Respondents in any judicial or administrative proceeding other than a proceeding by the United States on behalf of EPA, to enforce this Consent Order or a judgment relating to it. CRI/FS Respondents retain their rights to assert claims against other potentially responsible parties at the Site. However, the CRI/FS Respondents agree not to contest the validity or terms of this Order, or the procedures underlying or relating to it in any action brought by the United States on behalf of EPA, to enforce its terms.

XXIII. OTHER CLAIMS

109. In entering into this Order, CRI/FS Respondents waive any right to seek reimbursement under Section 106(b) of CERCLA. CRI/FS Respondents also waive any right to present a claim under Section 111 or 112 of CERCLA. This Order does not constitute any decision on preauthorization of funds under Section 111(a)(2) of CERCLA. Respondents further waive all other statutory and common law claims against EPA, including, but not limited to, contribution and counterclaims, relating to or arising out of conduct of the CRI/FS. Nothing in this paragraph shall be construed as a waiver of any such claims against any agency, department or instrumentality of the United States in its capacity as a PRP for the Site.

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

111. CRI/FS Respondents shall bear their own attorneys fees.

XXIV. FINANCIAL ASSURANCE, INSURANCE, AND INDEMNIFICATION

112. Within 15 days after the effective date of this Consent Order, Respondents shall provide EPA with financial information which demonstrates that one or more of the Respondents meets the requirements of 40 C.F.R. §264.143(f) and is therefore financially capable of performing the work and any other obligations required under this Consent Order, including a margin for cost overruns.

113. If EPA determines that the financial assurances provided by the Respondents are inadequate, EPA will so notify Respondents. Respondents shall then have fifteen (15) days to obtain and provide EPA with further financial assurances which demonstrate

Respondents' ability to perform the work and other obligations required under this Order, including a margin for cost overruns.

114. a. Prior to commencement of any work under this Order, Respondents shall provide evidence to EPA demonstrating that one or more of the Respondents passes the financial test described in 40 C.F.R. §264.147(f) corresponding to liability coverage in the amount of ten million dollars.

b. For the duration of this Consent Order, Respondents shall satisfy, and shall insure that their contractors or subcontractors satisfy, all applicable laws and regulations regarding the provision of employee's liability insurance and workmen's compensation insurance for all persons performing work on behalf of Respondents, in furtherance of this Consent Order.

c. Prior to commencement of any work under this Order, and annually thereafter on the anniversary of the effective date of this Order, Respondents shall provide to EPA certificates of such insurance and a copy of each insurance policy.

115. Respondents agree to indemnify, save and hold harmless EPA, its agents, employees, and representatives from any and all claims or causes of action (a) arising from, or on account of, acts or omissions of Respondents, Respondents' officers, heirs, directors, employees, agents, contractors, subcontractors, receivers, trustees, successors or assignees, in carrying out actions pursuant to this Consent Order, and (b) for damages or reimbursement arising from or on account of any contract, agreement, or arrangement between Respondents and any person for performance of work on or relating to the Site, including claims on account of construction delays. Nothing in this paragraph shall be construed so as to indemnify, save or hold harmless any agency, department or instrumentality of the United States in its capacity as a potentially responsible party for the Site. EPA shall not be held as a party to any contract entered into by Respondents in carrying out activities under this Consent Order.

XXV. EFFECTIVE DATE AND SUBSEQUENT MODIFICATION

116. The effective date of this Consent Order shall be the date it is signed by EPA.

117. This Consent Order may be amended by mutual agreement of EPA and CRI/FS Respondents. Amendments shall be in writing and shall be effective when signed by EPA. EPA Project Coordinators do not have the authority to sign amendments to the Consent Order.

118. No informal advice, guidance, suggestions, or comments by EPA regarding reports, plans, specifications, schedules, and any


other writing submitted by the Respondents will be construed as relieving the Respondents of their obligation to obtain such formal approval as may be required by this Order. Any deliverables, plans, technical memoranda, reports (other than progress reports), specifications, schedules and attachments required by this Consent Order are, upon approval by EPA, incorporated into this Order.

XXVI. TERMINATION AND SATISFACTION

119. This Consent Order shall terminate when Respondents demonstrate in writing and certify to the satisfaction of EPA that all activities required under this Consent Order, including any additional work, payment of past costs, response and oversight costs, and any stipulated penalties demanded by EPA, have been performed and EPA has approved the certification. This notice shall not, however, terminate Respondents' obligation to comply with section XV. and CRI/FS Respondents' obligation to comply with section XX. of this Consent Order.

120. The certification shall be signed by a responsible official representing each Respondent. Each representative shall make the following attestation: "I certify that the information contained in or accompanying this certification is true, accurate, and complete."

BY:



Jeanne M Fox
Regional Administrator
U.S. Environmental Protection Agency
Region II

DATE:

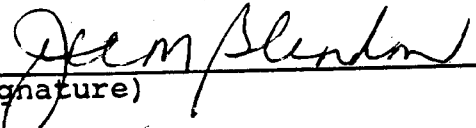
1/24/52

CONSENT
EPA Order Index No. II CERCLA-97-0203

The CRI/FS Respondent identified below has had an opportunity to confer with EPA regarding this Consent Order. Respondent hereby consents to the issuance of this Consent Order and to its terms. The individual executing this consent Order on Behalf of Respondent certifies under penalty of perjury that he or she is fully and legally authorized to agree to the terms and conditions of this Consent Order and to bind CRI/FS Respondent thereto.

Beazer East, Inc.
NAME OF RESPONDENT

10/17/96
DATE


(signature)

Jill M. Blundon
(typed name of signatory)

Vice President, General Counsel & Secretary
(title of signatory)

CONSENT
EPA Order Index No. II CERCLA-97-0203

The CRI/FS Respondent identified below has had an opportunity to confer with EPA regarding this Consent Order. Respondent hereby consents to the issuance of this Consent Order and to its terms. The individual executing this consent Order on Behalf of Respondent certifies under penalty of perjury that he or she is fully and legally authorized to agree to the terms and conditions of this Consent Order and to bind CRI/FS Respondent thereto.

Coltec Industries Inc
NAME OF RESPONDENT

10/18/96
DATE

John R. Mayo
(signature)

John R. Mayo
(typed name of signatory)

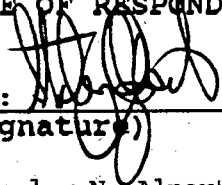
Assistant General Counsel
(title of signatory)

CONSENT
EPA Order Index No. II CERCLA -97-0203

The CRI/FS Respondent identified below has had an opportunity to confer with EPA regarding this Consent Order. Respondent hereby consents to the issuance of this Consent Order and to its terms. The individual executing this consent Order on Behalf of Respondent certifies under penalty of perjury that he or she is fully and legally authorized to agree to the terms and conditions of this Consent Order and to bind CRI/FS Respondent thereto.

United States; General Services Administration
NAME OF RESPONDENT and Department of Defense

December 10, 1996
DATE

By: 
(signature)

Stanley N. Alpert
(typed name of signatory)

Assistant U.S. Attorney
(title of signatory)

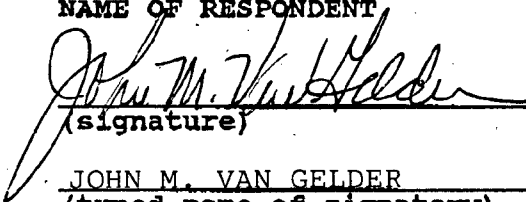
ZACHARY W. CARTER
United States Attorney
One Pierrepont Plaza, 14th Floor
Brooklyn, New York 11201

CONSENT
EPA Order Index No. II CERCLA-97-0203

The CRI/FS Respondent identified below has had an opportunity to confer with EPA regarding this Consent Order. Respondent hereby consents to the issuance of this Consent Order and to its terms. The individual executing this consent Order on Behalf of Respondent certifies under penalty of perjury that he or she is fully and legally authorized to agree to the terms and conditions of this Consent Order and to bind CRI/FS Respondent thereto.

KOCH ENGINEERING COMPANY, INC.
NAME OF RESPONDENT

December 18, 1996
DATE


(signature)

JOHN M. VAN GELDER
(typed name of signatory)

CHAIRMAN
(title of signatory)



**FIGURE 2-1 SITE LOCATION MAP, LIBERTY INDUSTRIAL FINISHING SITE,
FARMINGDALE, NEW YORK**

