

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION II

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IN THE MATTER OF THE ANCHOR :
CHEMICAL SITE :
 :
K.B. Co., :
 :
Respondent. : ADMINISTRATIVE ORDER
 :
 : Index Number
Proceeding under Section 106(a) of : II-CERCLA-95-0209
the Comprehensive Environmental :
Response, Compensation, and Liability :
Act, as amended, 42 U.S.C. § 9606(a). :
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I. JURISDICTION AND GENERAL PROVISIONS

1. This Administrative Order ("Order") is issued to the above-captioned Respondent (hereinafter referred to as "Respondent") and provides for the performance of a removal action by Respondent at the Anchor Chemical Site ("Site"), which is located at 500 West John Street Hicksville, Nassau County, New York. This Order requires Respondent to conduct the removal action described herein to abate an imminent and substantial endangerment to the public health, welfare, or the environment that may be presented by the actual or threatened release of hazardous substances at or from the Site.

2. This Order is issued pursuant to the authority vested in the President of the United States by Section 106(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. § 9606(a), and delegated to the Administrator of EPA on January 23, 1987, by Executive Order No. 12580 (52 Federal Register 2926, January 29, 1987) and further delegated to the EPA Regional Administrators.

3. EPA has notified the New York State Department of Environmental Conservation ("NYSDEC") of this Order pursuant to Section 106(a) of CERCLA, 42 U.S.C. § 9606(a).

II. DEFINITIONS

4. Unless otherwise expressly provided herein, terms used in this Order which are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or its implementing regulations. Whenever terms listed below are used in this Order or in an attachment to this Order, the following definitions shall apply:

a. "Day" means a calendar day unless otherwise expressly stated. "Working day" shall mean a day other than a Saturday, Sunday, or Federal holiday. In computing any period of time under this Order, where the last day would fall on a Saturday, Sunday, or Federal Holiday, the period shall run until the close of business on the next working day.

b. "Hazardous substance" shall have the meaning provided in Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

c. "Party" or "Parties" means the United States Environmental Protection Agency and/or Respondent K.B. Co.

d. "Waste" means (1) any "hazardous substance" under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); (2) any "pollutant or contaminant" under Section 101(33) of CERCLA, 42 U.S.C. § 9601(33); (3) any "solid waste" under Section 1004(27) of the Resource Conservation and Recovery Act, 42 U.S.C. § 6903(27); and (4) any mixture containing any of the constituents noted in (1), (2) or (3), above.

e. "Work" means all work and other activities required by and pursuant to this Order.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

5. The Anchor Chemical Corporation site ("Site") includes the former Anchor Chemical Corporation facility ("Facility") which is approximately 1.5 acres in size and is located at 500 West John Street in Hicksville, Nassau County, New York. The Facility constitutes a facility, as defined in Section 101(9) of CERCLA, 42 U.S.C. § 9601(9). The Site includes a building where chemical blending and packaging operations were conducted.

6. Respondent is a "person" within the meaning of Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

7. The Site is included on the National Priorities List ("NPL") of known or threatened releases of hazardous substances, codified at 40 C.F.R. Part 300, Appendix B, as established pursuant to Section 105(a)(8)(B) of CERCLA, 42 U.S.C. § 9605(a)(8)(B).

8. The Site is currently owned by K.B. Co., a New York partnership, and was formerly owned by Kobar Construction, Inc. ("Kobar"), a corporation which was organized and existing by virtue of the laws of the State of New York.

9. Anchor/Lith-Kem Ko, Inc., a Delaware corporation, is a successor corporation to its predecessor of the same name, Anchor/Lith Kem-ko, Inc., a New York corporation. Earlier predecessor corporations include Chessco Industries and Anchor Chemical Corporation (all of which are hereinafter collectively

referred to as "Anchor"). Between the years of 1964 and 1984, Anchor was the only lessee and operator at the Site and engaged in the blending and packaging of chemicals for the graphic arts industry. Such activity involved the storage and/or disposal of hazardous substances.

10. In December of 1990, Anchor/Lith-Kem Ko, Inc. was purchased by International Paper Company, a New York corporation. Anchor/Lith-Kem Ko, Inc. continues to exist as a subsidiary of its parent, International Paper Company.

11. Documentation from inspections conducted at the Site in 1977 by the Nassau County Department of Health ("NCDH"), as well as meetings between Anchor and NCDH, indicate that during the production, mixing, and deliveries of chemicals, spillage occurred which contaminated drywells at the Site. Samples taken on July 27, 1977 from a drywell at the north end of the Facility contained concentrations of 1,1,1-trichloroethane at 2,500 parts per billion ("ppb"), trichloroethylene at 15,000 ppb, and tetrachloroethylene at 20,000 ppb.

12. On August 6, 1981, in response to a notice of violation issued by the office of the Nassau County Fire Marshal ("NCFM") in May of 1981, fourteen of the seventeen underground storage tanks at the Site were tested using the "air over product" procedure. The aforementioned storage tanks have storage capacities ranging from 550 to 4000 gallons and are buried two feet below grade within the Facility at the Site. The results of the tests indicated that five of the fourteen tanks tested were leaking. Since that date, EPA has overseen work confirming the decommissioning of all tanks at the facility, and subsequent sampling has confirmed that the releases which occurred from the tanks do not pose an unacceptable risk. Also, sampling of dry wells located at the Site have revealed elevated levels of chromium, lead and organic compounds. Various drywells were installed at the Facility between 1964 and 1968. Four dry wells at the Site which have been identified as requiring action and are the subject of this Order.

13. Records available to EPA depicting the chemical storage tanks at the Site as of 1965 and as of February 4, 1975 indicate that 1,1,1-trichloroethane was stored in one of the five tanks which were identified as leaking during the NCFM tests conducted on August 6, 1981.

14. In 1982, Anchor retained Lockwood, Kessler and Bartlett, Inc. ("LKB"), a consulting engineering firm, to install three monitoring wells and conduct periodic groundwater monitoring of said wells at the Site. Soil samples collected during the well installation and analyzed by NCDH indicated the presence of methylene chloride and 1,1,1-trichloroethane in the soil.

15. Sampling and analysis of the groundwater from the three monitoring wells was performed by the NCDH in September 1982. NCDH's analysis of samples from monitoring well #1 ("MW#1"), located in the northeast corner of the Facility, indicated the following compounds above 5 ppb in concentration: (a) methylene chloride, (b) 1,1-dichloroethylene, (c) 1,1-dichloroethane, (d) 1,1,1-trichloroethane, (e) trichloroethylene, and (f) tetrachloroethylene. NCDH's analysis of samples from monitoring well #2 ("MW#2"), located in the southeast corner of the Facility, and monitoring well #3 ("MW#3"), located in the southwest corner of the Facility, indicated the same compounds as stated above, also at concentrations in excess of 5 ppb. In addition, they indicated 1,2-dichloroethylene, chloroform, and 1,2-dichloroethane in concentrations above 5 ppb. Concentrations of 1,1,1-trichloroethane as high as 11,000 ppb were indicated in analyses of samples from MW#3. These levels were confirmed during a second round of sampling by NCDH which was conducted on December 14, 1982.

16. LKB analyzed groundwater samples from MW#1, MW#2, and MW#3 on several occasions, including December 1982, June 1983, January, July, and November of 1984, and February 1985. The December 1982 analyses confirmed the NCDH sampling results. Sampling results subsequent to the December 1982 have indicated that contaminant concentrations recorded from the three wells at the Site have decreased over time.

17. The New York State Department of Health adopted 5 ppb as the drinking water standard for principal organic contaminants ("POCs"). Such compounds, as identified in Paragraph 15, with the exception of chloroform, are POCs and have been found to be present at the Site at levels which exceed 5 ppb. In addition, NYSDEC has established groundwater standards for 1,1,1-trichloroethane (50 ppb), tetrachloroethylene (0.7 ppb), trichloroethylene (10 ppb), 1,1-dichloroethylene (0.07 ppb), 1,1-dichloroethane (50 ppb), 1,2-dichloroethylene (50 ppb), and 1,2-dichloroethane (0.8 ppb), all of which have been exceeded at the Site. Furthermore, several of the compounds which are or have been found to be present at the Site exceed maximum contaminant levels ("MCLs"), promulgated pursuant to the Safe Drinking Water Act, 42 U.S.C. §§ 300f-300j-11. These contaminants are 1,1,1-trichloroethane (MCL 200 ppb), trichloroethylene (MCL 5 ppb), 1,1-dichloroethylene (MCL 7 ppb) and 1,2-dichloroethane (MCL 5 ppb).

18. Compounds found to have been present in sampling conducted at the Site, including, tetrachloroethylene, 1,1,1-trichloroethane, and trichloroethylene, are hazardous substances within the meaning of Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

19. The presence of hazardous substances at the Site as indicated in sampling data referred to in this Order constitutes

a "release" within the meaning of Section 101(22) of CERCLA, 42 U.S.C. § 9601(22).

20. Respondent is the "owner" of the facility, as defined by Section 101(20) of CERCLA, 42 U.S.C. § 9601(20), and Section 107(a)(1) of CERCLA, 42 U.S.C. § 9607(a)(1)(a).

21. Anchor/Lith-Kem Ko, Inc. and Chessco Industries are former "operators" of the facility, as defined by Section 101(20) of CERCLA, 42 U.S.C. § 9601(20), and Section 107(a)(1) of CERCLA, 42 U.S.C. § 9607(a)(1).

22. On June 2, 1989, the Acting Regional Administrator of Region II of EPA issued Administrative Order on Consent, Index Number II CERCLA-90208, to K.B. Co. with respect to this Site. That Consent Order required that K.B. Co. undertake a Remedial Investigation and Feasibility Study ("RI/FS") at the Site.

23. On August 3, 1989, the Acting Regional Administrator of Region II of EPA issued Administrative Order, Index Number II CERCLA-90215, to Chessco Industries, Inc., requiring it to participate and cooperate in the RI/FS being performed at the Site. That order was issued unilaterally pursuant to Section 106 of the CERCLA, 42 U.S.C. § 9606.

24. In March of 1992, the Regional Administrator of Region II of EPA issued Administrative Order, Index Number II CERCLA-20205, to Anchor/Lith-Kem Ko, Inc. directing it to participate and cooperate in the performance of the RI/FS being performed at the Site. That order was issued unilaterally pursuant to Section 106 of the CERCLA, 42 U.S.C. § 9606.

25. Consistent with the administrative orders, a Remedial Investigation and Feasibility Study ("RI/FS") was conducted in order to determine the nature and extent of the release or threatened release of hazardous substances at and from the Site and to evaluate remedial alternatives for the Site. During the RI/FS, the underground storage tanks at the Site were decommissioned.

26. Anchor/Lith-Kem Ko, Inc. and Chessco Industries have consented to the issuance of an administrative order, Index Number II CERCLA-94-0220, regarding the removal of sediments from certain of the drywells at the Site which are the subject of this Order. The consent order is being issued concurrently with the issuance of this Order.

27. As set forth in paragraph 15, and as indicated in the sediment and groundwater sample data obtained during the RI, drywell contamination exists at the Site and it is a potential source of continuing contamination to the groundwater. Analyses of sediment samples, which were collected during the RI, revealed

levels of lead, chromium and 1,1,1-trichloroethane (1,1,1-TCA) at 1,620 parts per million ("ppm"), 463 ppm, and 3.3 ppm, respectively, in Drywells 2, 3, 6, and 8. Analyses of groundwater samples, also collected during the RI, revealed concentrations of lead, chromium and 1,1,1-TCA at 240 ppb, 1440 ppb and 29 ppb, respectively, in monitoring wells 1D, 2, 3, 5S and 5D. These levels exceed the federal action level for lead (15 ppb) and New York State's maximum contaminant levels for chromium (50 ppb) and 111-TCA (5 ppb). These exceedences are the subject of this removal action.

28. Respondent has been given the opportunity to discuss with EPA the basis for issuance of this Order and its terms.

IV. DETERMINATIONS

29. The conditions present at the Site constitute a threat to public health, welfare, or the environment based upon factors set forth in Section 300.415(b)(2) of the National Oil and Hazardous Substances Pollution Contingency Plan ("NCP").

30. The actual or threatened release of hazardous substances from the Site may present an imminent and substantial endangerment to the public health, welfare, or the environment within the meaning of Section 106(a) of CERCLA, 42 U.S.C. § 9606(a).

31. The actions required by this Order are necessary to protect the public health or welfare or the environment, are in the public interest, and are not inconsistent with CERCLA or the NCP.

V. ORDER

32. Based upon the foregoing Findings of Fact, Conclusions of Law, Determinations, and other information available to EPA, it is hereby ordered and agreed that Respondent shall undertake a response action at the Site in accordance with the requirements specified below. All activities specified below shall be initiated and completed as soon as possible even though maximum time periods for their completion are specified herein.

Designation of Contractor and Project Coordinator

33. Within five (5) days after the effective date of this Order, Respondent shall propose a Project Coordinator who shall be responsible for administration of all Respondent's actions required by the Order. Respondent shall submit the proposed Project Coordinator's name, address, telephone number, and qualifications to EPA. To the greatest extent possible, the Project Coordinator shall be present on Site or readily available during Site work. EPA retains the right to disapprove of any Project Coordinator proposed by Respondent. If EPA disapproves

of a proposed Project Coordinator, Respondent shall propose a different Project Coordinator and shall notify EPA of that person's name, address, telephone number, and qualifications within five (5) working days following EPA's disapproval. Receipt by Respondent's approved Project Coordinator of any notice or communication from EPA relating to this Order shall constitute receipt by Respondent. Respondent may change its designated Project Coordinator, subject to approval by EPA as set forth in this paragraph. Respondent shall notify EPA seven (7) working days before such a change is made. The initial notification may be made orally but it shall be promptly followed by a written notice.

34. Respondent shall perform the work required by this Order or retain a contractor to perform the work. If that contractor is not the same individual as the Project Coordinator, Respondent shall notify EPA of the name and qualifications of the proposed contractor within five (5) working days of the effective date of this Order. Respondent shall also notify EPA of the name and qualifications of any other contractor or subcontractor proposed to perform work under this Order at least ten (10) days prior to commencement of such work.

35. EPA retains the right to disapprove of any of the contractors and/or subcontractors proposed by Respondent to conduct the work. If EPA disapproves of Respondent's proposed contractor to conduct the work, Respondent shall propose a different contractor within five (5) working days of EPA's disapproval.

36. a. Respondent shall provide a copy of this Order to each contractor and subcontractor approved and retained to perform the work required by this Order. Respondent shall include in all contracts or subcontracts entered into for work required under this Order provisions stating that such contractors or subcontractors, including its agents and employees, shall perform activities required by such contracts or subcontracts in compliance with this Order and all applicable laws and regulations. Respondent shall be responsible for ensuring that its contractors and subcontractors perform the work contemplated herein in accordance with this Order.

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

i. replying in writing within a reasonable period to offers to perform or pay for the Work required by this Order;

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

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

37. All activities required of Respondents under the terms of this Order shall be performed only by well-qualified persons possessing all necessary permits, licenses, and other authorizations required by federal, state, and local governments, and all work conducted pursuant to this Order shall be performed in accordance with prevailing professional standards.

38. Respondents shall direct all submissions required by this Order to the EPA On-Scene Coordinator by certified mail at the address provided in paragraph 45, below.

Description of Work

39. Within thirty (30) days of the effective date of this Order, Respondents shall submit to EPA for review and approval a detailed work plan ("Work Plan") containing, at a minimum, the plans and information specified below.

a. A Removal Plan describing the procedures that Respondents shall utilize to accomplish the Work in compliance with this Order, including:

i. removal of any liquid, sediments, and soils from the bottom of dry wells 2, 3, 6, and 8;

ii. excavation of sediments and soils to a depth of two (2) feet below the bottom edge of the concrete rings and obtaining a representative sample from the remaining soils in each dry well. The excavation can be terminated should slumping soil conditions prohibit completing the excavation; and

iii. securing the completed excavations by backfilling with clean fill material (e.g. washed pea gravel).

b. a Work Plan organization identifying who will be performing the required tasks;

c. a plan for the removal, containerization, staging, and disposal of excavated materials;

d. a plan for mapping dry wells 2, 3, 6 and 8, on-Site work and safety zones and sample locations;

e. a Decontamination Plan;

- f. project management and coordination;
- g. a detailed Implementation Schedule;
- h. progress and final reporting;
- i. a Sampling and Analysis Plan;

j. a Site Health and Safety Plan ("HASP") which will address all Site activities for the protection of on-site workers and the nearby population. The HASP shall conform with both the Occupational Safety and Health Administration regulations, 29 CFR 1910, and EPA guidance document entitled "Standard Safety Guide", OSWER Directive 9285.1-03, dated June 1992.

k. a Site specific quality assurance/quality control ("QA/QC") plan for the performance of sampling and analysis. The QA/QC plan shall be in conformance with the EPA publication entitled "Test Methods for Evaluating Solid Waste (SW-846), 3rd ed.", and the EPA document entitled "Interim Guidelines and Specifications for Preparing Quality Assurance Project Plans" (QAMS -005/80). Sampling and analysis shall also conform to QA/QC protocols, including EPA guidance document entitled "Quality Assurance/Quality Control Guidance for Removal Activities: Sampling QA/QC Plan and Data Validation Procedures", OSWER Directive No. 9360.4-01, April 1990.

40. EPA may approve, disapprove, require revisions to, or modify the Work Plan. If EPA requires revisions, Respondents shall submit a revised draft Work Plan within ten (10) days of receipt of EPA's notification of the required revisions. Respondents shall implement the Work Plan as finally approved in writing by EPA in accordance with the schedule approved by EPA.

41. If, during the performance of any phase of the approved Work Plan, EPA or Respondent deems it necessary to alter the tasks specified in the Work Plan, Respondent shall submit to EPA for review and approval any proposed amendments to the Work Plan prior to performing the Work.

42. Within ten (10) days after EPA's approval of the Work Plan, Respondent shall commence implementation of the Work Plan in accordance with the terms and schedule therein and in accordance with this Order.

43. Respondent shall allow EPA or its authorized representatives to take split and/or duplicate samples of any samples collected by Respondent while performing work under this Order. Respondent shall notify EPA not less than ten (10) days in advance of any sample collection activity, unless EPA expressly authorizes to the contrary. EPA or its authorized representatives shall have

the right to take any additional samples that they deem necessary.

Reporting

44. The Work Plan, Work Plan amendments, the Removal Report as described in paragraph 46, below, and other documents submitted by Respondent to EPA which purport to document Respondent's compliance with the terms of this Order shall be signed by a responsible official of Respondent. For purposes of this Order, a responsible official is an official who is in charge of a principal business function.

45. The Work Plan, Work Plan amendments, the Removal Report, and other documents required to be submitted to EPA under this Order shall be sent to the following addressees:

2 copies to:

Removal Action Branch
United States Environmental Protection Agency
2890 Woodbridge Avenue, Building 209
Edison, New Jersey 08837

Attn: Anchor Chemical OSC

1 copy to:

Chief, New York/Caribbean Superfund Branch II
United States Environmental Protection Agency
290 Broadway, 20th Floor
New York, New York 10007-1866

Attention: Anchor Chemical Project Manager

1 copy to:

Chief, New York/Caribbean Superfund Branch
Office of Regional Counsel
United States Environmental Protection Agency
290 Broadway, 17th Floor
New York, New York 10007-1866

Attention: Anchor Chemical Site Attorney

2 copies to:

Michael O'Toole, P.E.
Director, Hazardous Waste Remediation
New York State Department of Environmental
Conservation
50 Wolf Road, Room 212
Albany, New York 12233-7010

Attention: Anchor Chemical Site

46. Within thirty (30) days of completion of all field activities, Respondent shall submit to EPA for review and approval a Removal Report summarizing the actions taken to comply with this Order. The Removal Report shall conform, at a minimum, with the requirements set forth in Section 300.165 of the NCP entitled "OSC Reports." Within thirty (30) days after EPA's receipt of the Removal Report, Respondent shall submit to EPA a Removal Report Addendum which will include all QA/QC documentation, including chain of custody and data validation records. The Removal Report shall include:

- a. a synopsis of all work performed under this Order;
- b. a detailed description of any EPA-approved modifications to the Work Plan which occurred during Respondent's performance of the Work required under this Order;
- c. a listing of quantities and types of materials removed from the Site or handled on-Site;
- d. a discussion of removal and disposal options considered for those materials;
- e. a listing of the ultimate destination of those materials;
- f. a presentation of the analytical results of all sampling and analyses performed, and
- g. accompanying appendices containing all relevant documentation generated during the work (e.g., manifests, invoices, bills, contracts, and permits).

47. The Removal Report shall also include the following certification signed by a person who supervised or directed the preparation of that report:

"Under penalty of law, I certify that to the best of my knowledge, after appropriate inquiries of all relevant persons involved in the preparation of the report, the information submitted is true, accurate, and complete. I am

aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

48. At the time of completion of all activities required by this Order, demobilization shall include sampling if deemed necessary by EPA, and proper disposal or decontamination of protective clothing, remaining laboratory samples taken pursuant to this Order, and any equipment or structures constructed to facilitate the cleanup.

On-scene Coordinator, Other Personnel, and Modifications
to EPA-Approved Work Plan

49. All activities required of Respondent under the terms of this Order shall be performed only by qualified persons possessing all necessary permits, licenses, and other authorizations required by federal, state, and local governments, and all work conducted pursuant to this Order shall be performed in accordance with prevailing professional standards.

50. The current EPA On-Scene Coordinator ("OSC") for the Site is Akhil Verma, Removal Action Branch, Emergency and Remedial Response Division, U.S. Environmental Protection Agency, 2890 Woodbridge Avenue, Building 209 (MS-211), Edison, N.J. 08837, (908) 321-4459. EPA will notify the Project Coordinator if EPA's On-Scene Coordinator should change.

51. EPA, including the OSC, will conduct oversight of the implementation of this Order. The OSC shall have the authority vested in an OSC by the NCP, including the authority to halt, conduct, or direct any work required by this Order, or to direct any other response action undertaken by EPA or Respondent at the Site consistent with the objectives of paragraph 39 of this Order. Absence of the OSC from the Site shall not be cause for stoppage of work unless specifically directed by the OSC.

52. As appropriate during the course of implementation of the actions required of Respondent pursuant to this Order, Respondent or its contractors or subcontractors, acting through the Project Coordinator, may confer with EPA concerning the required actions. Based upon new circumstances or new information not in the possession of EPA on the date of this Order, the Project Coordinator may request, in writing, EPA approval of modification(s) to the EPA-approved Work Plan. Only modifications approved by EPA in writing shall be deemed effective. Upon approval by EPA, such modifications shall be deemed incorporated in this Order and shall be implemented by Respondent.

Plans and Reports Requiring EPA Approval

53. If EPA disapproves or otherwise requires any modifications to any plan, report, or other item required to be submitted to EPA for approval pursuant to this Order, Respondent shall have fourteen (14) days from the receipt of notice of such disapproval or the required modifications to correct any deficiencies and resubmit the plan, report, or other written document to EPA for approval, unless a shorter or longer period is specified in the notice. Any notice of disapproval will include an explanation of why the plan, report, or other item is being disapproved. Respondent shall address each of the comments and resubmit the plan, report, or other item with the required changes as stated above. At such time as EPA determines that the plan, report, or other item is acceptable, EPA will transmit to Respondent a written statement to that effect.

54. If any plan, report, or other item required to be submitted to EPA for approval pursuant to this Order is disapproved by EPA, including a resubmittal following Respondent's receipt of EPA's comments on the initial submittal, Respondent may be deemed to be out of compliance with this Order. If any resubmitted plan, report, or other item, or portion thereof, is disapproved by EPA, EPA may again direct Respondent to make the necessary modifications thereto, and/or EPA may amend or develop the item(s) and recover the costs from Respondent of doing so. Respondent shall implement any such item(s) as amended or developed by EPA.

55. EPA shall be the final arbiter in any dispute regarding the sufficiency or acceptability of all documents submitted and all activities performed pursuant to this Order. EPA may unilaterally modify those documents and/or perform or require the performance of additional work consistent with the objectives of paragraph 39 of this Order.

56. All plans, reports and other submittals required to be submitted to EPA pursuant to this Order, upon approval by EPA, shall be deemed incorporated into and an enforceable part of this Order.

Oversight

57. During the implementation of the requirements of this Order, Respondent and its contractor(s) and subcontractors shall be available for such conferences with EPA and inspections by EPA or its authorized representatives as EPA may determine are necessary to adequately oversee the work being carried out or to be carried out by Respondent, including inspections at the Site and at laboratories where analytical work is being performed hereunder.

58. Respondent and its employees, agents, contractor(s) and subcontractors shall cooperate with EPA in its efforts to oversee Respondent's implementation of this Order.

Community Relations

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

Access to Property and Information

60. EPA, and its designated representatives, including, but not limited to, employees, agents, contractor(s) and subcontractors thereof, shall be permitted to observe the Work carried out pursuant to this Order. Respondent shall at all times permit EPA, its designated representatives, and NYSDEC full access to and freedom of movement at the Site and any other premises where Work under this Order is to be performed for purposes of inspecting or observing Respondent's progress in implementing the requirements of this Order, verifying the information submitted to EPA by Respondent, conducting investigations relating to contamination at the Site, or for any other purpose EPA determines to be reasonably related to EPA oversight of the implementation of this Order.

61. In the event that action under this Order is to be performed in areas owned by or in possession of someone other than Respondent, Respondent shall use its best efforts to obtain access agreements from the present owners for purposes of implementing the requirements of this Order. Such agreements shall provide access not only for Respondent, but also for EPA and its designated representatives or agents, as well as NYSDEC and its designated representatives or agents. Such agreements shall specify that Respondent is not EPA's representatives with respect to liability associated with Site activities. If such access agreements are not obtained by Respondent such that the work cannot be performed on schedule, Respondent shall immediately notify EPA of its failure to obtain access and include in that notification a summary of the steps Respondent has taken to attempt to obtain access. Subject to the United States' non-reviewable discretion, EPA may use its legal authorities to obtain access for Respondent, may perform those response actions with EPA contractors at the property in question, or may terminate the Order if Respondent cannot obtain access agreements. If EPA performs those tasks or activities with EPA contractors and does not terminate the Order, Respondent shall perform all other activities not requiring access to that

property. Respondent shall integrate the results of any such tasks undertaken by EPA into its reports and deliverables.

62. All data, information, and records created, maintained, or received by Respondent or its contractor(s) or subcontractors in connection with implementation of the Work under this Order, including, contractual documents, invoices, receipts, work orders and disposal records shall be made available to EPA upon request, subject to the attorney-client or work product privilege. EPA shall be permitted to copy all such documents. Respondent shall submit to EPA upon receipt the results of all sampling or tests and all other technical data generated by Respondent or its contractor(s), or on the Respondent's behalf, in connection with the implementation of this Order.

63. Upon request by EPA, Respondent shall provide EPA or its designated representatives with duplicate and/or split samples of any material sampled in connection with the implementation of this Order.

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

Record Retention, Documentation, Availability of Information

65. Respondent shall preserve all documents and information relating to Work performed under this Order, or relating to the hazardous substances found on or released from the Site, for six years after completion of the Work required by this Order. At the end of the six year period, Respondent shall notify EPA at least thirty (30) days before any such document or information is destroyed that such document or information is available for inspection. Upon request, Respondent shall provide EPA with the originals or copies of such documents and information.

66. All documents submitted to EPA by Respondent in the course of implementing this Order shall be available to the public unless identified as confidential by Respondent pursuant to 40 CFR Part 2, Subpart B, and determined by EPA to merit treatment as confidential business information in accordance with applicable law. In addition, EPA may release all such documents to NYSDEC, and NYSDEC may likewise make those documents available to the public unless Respondent conforms with applicable New York law and regulations regarding confidentiality. Respondent shall not assert a claim of confidentiality regarding any monitoring or hydrogeologic data, any information specified under Section 104(e)(7)(F) of CERCLA, or any other chemical, scientific or engineering data relating to the Work performed hereunder.

Off-Site Shipments

67. All hazardous substances, pollutants, or contaminants removed from the Site pursuant to this Order for off-site treatment, storage, or disposal shall be treated, stored, or disposed of in compliance with (a) Section 121(d)(3) of CERCLA, 42 U.S.C. § 9621(d)(3), (b) the EPA "Revised Procedures for Implementing Off-Site Response Actions," OSWER Directive Number 9834.11, November 13, 1987, (c) the EPA "Superfund Removal Procedures" (OSWER 1988), (d) RCRA, (e) the Toxic Substances Control Act ("TSCA"), 15 U.S.C. § 2601-2625, and (f) all other applicable federal and state requirements.

68. If hazardous substances from the Site are to be shipped outside of New York State, Respondent shall provide prior notification of such out-of-state waste shipments in accordance with OSWER Directive 9330.2-07. At least five (5) working days prior to out-of-state waste shipments, Respondent shall notify the environmental agency of the accepting state of the following: (a) the name and location of the facility to which the wastes are to be shipped; (b) the type and quantity of waste to be shipped; (c) the expected schedule for the waste shipments; (d) the method of transportation and name of transporter; and (e) the treatment and/or disposal method of the waste streams.

69. Certificates of destruction must be provided to EPA upon Respondent's receipt of such. These certificates must be included in the biweekly progress reports or, if not received in a timely manner, the Removal Report.

Compliance With Other Laws

70. All actions required pursuant to this Order shall be performed in accordance with all applicable local, state, and federal laws and regulations except as provided in CERCLA 121(e)(1) of CERCLA, 42 U.S.C. § 9621(e)(1), and 40 CFR § 300.415(i). In accordance with 40 CFR § 300.415(i), all on-Site actions required pursuant to this Order shall, to the extent practicable, as determined by EPA, considering the exigencies of the situation, attain applicable or relevant and appropriate requirements ("ARARs") under federal environmental or state environmental or facility siting laws. (See "Superfund Removal Procedures: Guidance on the Consideration of ARARs During Removal Actions," OSWER Directive No. 9360.3-02, August 1991).

71. Except as provided in Section 121(e)(1) of CERCLA, 42 U.S.C. § 9621(e)(1), and the NCP, no permit shall be required for any portion of the Work required hereunder that is conducted entirely on-Site. Where any portion of the Work requires a federal or state permit or approval, Respondent shall submit timely applications and shall take all other actions necessary to obtain and to comply with all such permits or approvals. This Order is

not, nor shall it be construed to be, a permit issued pursuant to any federal or state statute or regulation.

Emergency Response and Notification of Releases

72. Upon the occurrence of any event during performance of the Work required hereunder which, pursuant to Section 103 of CERCLA, 42 U.S.C. § 9603, requires reporting to the National Response Center [(800) 424-8802], Respondent shall immediately orally notify the Chief of the Removal Action Branch of the Emergency and Remedial Response Division of EPA, Region II, at (908) 321-6621, or the EPA Region II Emergency 24-hour Hot Line at (908) 548-8730, of the incident or Site conditions. Respondent shall also submit a written report to EPA within seven (7) days after the onset of such an event, setting forth the events that occurred and the measures taken or to be taken, if any, to mitigate any release or endangerment caused or threatened by the release and to prevent the reoccurrence of such a release. The reporting requirements of this paragraph are in addition to, not in lieu of, reporting under Section 103 of CERCLA, 42 U.S.C. § 9603, and Section 304 of the Emergency Planning and Community Right-To-Know Act of 1986, 42 U.S.C. § 11004.

73. In the event of any action or occurrence during Respondent's performance of the requirements of this Order which causes or threatens to cause a release of a hazardous substance or which may present an immediate threat to public health or welfare or the environment, Respondent shall immediately take all appropriate action to prevent, abate, or minimize the threat and shall immediately notify EPA as provided in the preceding paragraph. Respondent shall take such action in accordance with applicable provisions of this Order, including the Health and Safety Plan. In the event that EPA determines that (a) the activities performed pursuant to this Order, (b) significant changes in conditions at the Site, or (c) emergency circumstances occurring at the Site pose a threat to human health or the environment, EPA may direct Respondent to stop further implementation of any actions pursuant to this Order or to take other and further actions reasonably necessary to abate the threat.

74. Nothing in the preceding paragraph shall be deemed to limit any authority of the United States to take, direct, or order all appropriate action to protect human health and the environment or to prevent, abate, or minimize an actual or threatened release of hazardous substances on, at, or from the Site.

General Provisions

75. This Order applies to and is binding upon Respondent and its successors and assigns. Any change in the ownership or corporate status of Respondent, including any transfer of assets of real or

personal property, shall not alter the responsibilities that Respondent has under this Order.

76. Respondent is jointly and severally responsible for carrying out the activities as required by this Order. Compliance or noncompliance by another party to an order related to response activities at the Site shall not excuse or justify noncompliance by Respondent to this Order.

77. Respondent shall provide a copy of this Order to any prospective owners or successors before a controlling interest in Respondent's assets, property rights, or stock are transferred to such a prospective owner or successor.

78. No informal advice, guidance, suggestion, or comment by EPA regarding reports, plans, specifications, schedules, or any other writing submitted by the Respondent shall relieve Respondent of its obligation to obtain such formal approval as may be required by this Order and to comply with all requirements of this Order unless it is formally modified.

79. Any delay by Respondent in performance of this Order that, in EPA's judgment, is not properly justified under the terms of paragraph 80, below, shall be considered a violation of this Order. Any delay in performance of this Order shall not affect Respondent's obligations to perform all obligations fully under the terms and conditions of this Order.

80. Respondent shall notify EPA of any delay or anticipated delay in performing any requirement of this Order. Such notification shall be made by telephone to EPA's OSC within forty-eight (48) hours after Respondent first knew or should have known that a delay might occur. Respondent shall adopt all reasonable measures to avoid or minimize any such delay. Within five (5) business days after notifying EPA by telephone, Respondent shall provide written notification fully describing the nature of the delay, any justification for the delay, any reason why Respondent should not be held strictly accountable for failing to comply with any relevant requirements of this Order, the measures planned and taken to minimize the delay, and a schedule for implementing the measures that have been or will be taken to mitigate the effect of the delay. Increased cost or expense associated with the implementation of the activities called for in this Order is not a justification for any delay in performance.

Enforcement and Reservation of Rights

81. Notwithstanding any other provision of this Order, failure to comply with any provision of this Order may subject Respondent to civil penalties of up to twenty-five thousand dollars (\$25,000) per violation per day, as provided in Section 106(b)(1)

of CERCLA, 42 U.S.C. § 9606(b)(1). Respondent may also be subject to punitive damages in an amount at least equal to and not more than three times the amount of any costs incurred by the United States as a result of such failure to comply with this Order, as provided in Section 107(c)(3) of CERCLA, 42 U.S.C. § 9607(c)(3). Should Respondent violate this Order or any portion thereof, EPA may carry out the required actions unilaterally, pursuant to Section 104 of CERCLA, 42 U.S.C. § 9604, and/or may seek judicial enforcement of this Order pursuant to Section 106 of CERCLA, 42 U.S.C. § 9606.

82. Nothing herein shall limit the power and authority of EPA or the United States to take, direct, or order all actions necessary to protect public health, welfare, or the environment or to prevent, abate, or minimize an actual or threatened release of hazardous substances, pollutants or contaminants, or hazardous or solid waste on, at, or from the Site. Further, nothing herein shall prevent EPA from seeking legal or equitable relief to enforce the terms of this Order, from taking other legal or equitable action as it deems appropriate, or from requiring Respondent in the future to perform additional activities pursuant to CERCLA or any other applicable law. EPA reserves the right to bring an action against Respondent under Section 107 of CERCLA, 42 U.S.C. § 9607, for recovery of any response costs incurred by the United States related to this Order or the Site.

Other Claims

83. By issuance of this Order, the United States and EPA assume no liability for injuries or damages to persons or property resulting from any acts or omissions of Respondent or its employees, agents, contractors, or subcontractors in carrying out any action or activity pursuant to this Order. The United States or EPA shall not be held out as or deemed a party to any contract entered into by Respondent or its directors, officers, employees, agents, successors, representatives, assigns, contractors, or subcontractors in carrying out actions pursuant to this Order.

84. Nothing in this Order constitutes or shall be construed as a satisfaction of or release from any claim or cause of action against Respondent or any person not a party to this Order for any liability that Respondent or other persons may have under CERCLA, other statutes, or common law, including any claims of the United States for injunctive relief, costs, damages, and interest under Sections 106(a) and 107 of CERCLA, 42 U.S.C. §§ 9606(a) and 9607. Nothing herein shall constitute a finding that Respondent is the only responsible party with respect to the release or threatened release of hazardous substances at and from the Site.

85. Nothing in this Order shall affect any right, claim, interest, defense, or cause of action of any party hereto with respect to third parties.

86. Nothing in this Order shall be construed to constitute preauthorization under Section 111(a)(2) of CERCLA, 42 U.S.C. § 9611(a)(2), and 40 CFR § 300.700(d).

Insurance

87. At least seven (7) days prior to commencing any Work at the Site, Respondent shall submit to EPA a certification that Respondent or its contractors and subcontractors have adequate insurance coverage or have indemnification for liabilities for injuries or damages to persons or property which may result from the activities to be conducted by or on behalf of Respondent pursuant to this Order. Respondent shall ensure that such insurance or indemnification is maintained for the duration of the Work required by this Order.

Termination and Satisfaction

88. Following EPA's receipt of the Removal Report referred to in paragraph 46, above, EPA will make a determination as to whether that the Work required pursuant to this Order has been fully carried out in accordance with this Order, EPA will so notify Respondent as to that determination in writing.

Opportunity to Confer, Effective Date

89. This Order shall be effective six (6) days after receipt by Respondent, unless a conference is requested pursuant to paragraph 90, below. If such conference is timely requested, this Order shall become effective three (3) days following the date the conference is held unless otherwise modified by EPA. All times for performance of ordered activities shall be calculated from this effective date.

90. Respondent may, within five (5) days after receipt of this Order, request a conference with EPA to discuss this Order. If requested, the conference shall occur within five (5) days of Respondent's request for a conference unless otherwise approved by EPA.

91. The purpose and scope of the conference shall be limited to issues involving the implementation of the work required by this Order and the extent to which Respondent intends to comply with this Order. This conference is not an evidentiary hearing and does not constitute a proceeding to challenge this Order. Respondent may not seek review of this Order or seek resolution of potential liability, and no official stenographic record of

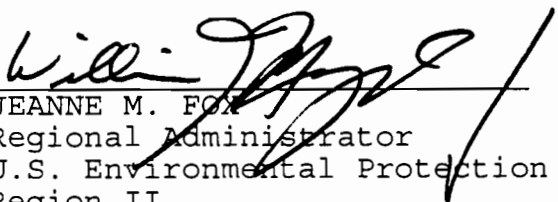
the conference will be made. At any conference held pursuant to Respondent's request, Respondent may appear in person or by an attorney or other representative.

92. A request for a conference must be made by telephone to James Doyle, Assistant Regional Counsel, Office of Regional Counsel, EPA Region II, telephone (212) 637-3165, followed by written confirmation mailed to Mr. Doyle and the OSC at the addresses set forth in paragraph 45 of this Order.

Notice of Intent to Comply

93. Respondent shall provide, not later than five (5) days after the effective date of this Order, written notice to EPA stating whether it will comply with the terms of this Order. If Respondent does not unequivocally commit to perform the work required by this Order, it shall be deemed to have violated this Order and to have failed or refused to comply with this Order. Respondent's written notice shall describe detailing any "sufficient cause" defenses asserted by Respondent under Sections 106(b) and 107(c)(3) of CERCLA. The absence of a response by EPA to the notice required by this paragraph shall not be deemed to be an acceptance of Respondent's assertions.

U.S. ENVIRONMENTAL PROTECTION AGENCY


JEANNE M. FOX
Regional Administrator
U.S. Environmental Protection Agency
Region II

8/25/55
Date of Issuance