UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2

IN THE MATTER OF THE NEW CASSEL/HICKSVILLE GROUNDWATER CONTAMINATION SUPERFUND SITE 101 Frost Street, LP, 570 Properties, Inc., Arkwin Industries, Inc., Atlas Graphics, Inc., Barouh Eaton Allen Corp., Grand Machinery Exchange, Inc., HDP Printing Industries, Corp., IMC Eastern Corp. (f/k/a IMC Magnetics Corp.), Island Transportation Corp., Nest Equities, Inc., Next Millennium Realty, LLC, Patel Trust July 29, 1977, Tishcon Corporation, Utility Manufacturing Co., Inc., and William Gross, Respondents. Proceeding under Section 106(a) of the Comprehensive Environmental Response, Compensation, and Liability Act, of 1980, as amended, 42 U.S.C. §9606(a).	Index No: CERCLA-02-2018-2015

UNILATERAL ADMINISTRATIVE ORDER FOR REMEDIAL DESIGN

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I. JURISDICTION AND GENERAL PROVISIONS

1. This Administrative Order ("Order") is issued under the authority vested in the President of the United States by Section 106(a) of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. § 9606(a). This authority was delegated to the Administrator of the United States Environmental Protection Agency ("EPA") by Executive Order No. 12580, 52 Fed. Reg. 2923 (Jan. 23, 1987), and further delegated to the Regional Administrators by EPA Delegation Nos. 14-14-A and 14-14-B. This authority was further redelegated by the Regional Administrator of EPA Region 2 to the Director of the Emergency and Remedial Response Division by EPA Region 2 Delegation No. 14-14-B on January 19, 2017.

2. This Order pertains to the New Cassel/Hicksville Groundwater Contamination Superfund Site (the "Site"), which is an approximately 6.5 square mile area of groundwater contamination within the Towns of North Hempstead, Hempstead, and Oyster Bay, Nassau County, New York, and associated source areas. This Order directs Respondents to perform the remedial design ("RD") including pre-design investigations ("PDIs") for the designated Operable Unit 1 ("OU1") at the Site that is described in the September 30, 2013 OU1 Record of Decision ("OU1 ROD") for the Site. OU1 is an area located primarily in Salisbury, an unincorporated area of the Town of Hempstead, and within the Hamlet of New Cassel in the Town of North Hempstead, Nassau County, New York.

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

II. PARTIES BOUND

4. This Order applies to and is binding upon Respondents and their successors and assigns. Any change in ownership or control of the Site or change in corporate or partnership status of a Respondent, including, but not limited to, any transfer of assets or real or personal property, shall not alter a Respondent's responsibilities under this Order.

5. Respondents are jointly and severally liable for implementing the Common Work Elements required by this Order and as further delineated in the OU1 Statement of Work ("OU1 SOW"), which is attached as Appendix 1 and incorporated hereto. Each of the Eastern Plume Group Respondents, the Central Plume Group Respondents, and the Western Plume Group Respondents, respectively, is also, within its respective Plume Group, jointly and severally liable for implementing the activities required of each Plume Group as set forth in this Order and as further delineated in the OU1 SOW. Compliance or noncompliance by one or more Respondents with any provision of this Order shall not excuse or justify noncompliance by any other Respondent. No Respondent shall interfere in any way with the performance of Work required as set forth in this Order by any other Respondent. In the event of the insolvency or failure of any one or more Respondents to implement their respective Work obligations under this Order, the remaining Relevant Respondents shall complete all such requirements.

6. Respondents shall provide a copy of this Order to each contractor hired to perform the Work required by this Order and to each person representing any Respondents or

group of Respondents with respect to the Site or the Work, and Respondents shall condition all contracts entered into hereunder upon performance of the Work in conformity with the terms of this Order. Respondents or their contractors shall provide written notice of this Order to all subcontractors hired to perform any portion of the Work required by this Order. Respondents shall nonetheless be responsible for ensuring that their contractors and subcontractors perform the Work in accordance with the terms of this Order.

III. DEFINITIONS

7. Unless otherwise expressly provided in this Order, terms used in this Order that are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Order or in its appendices, the following definitions shall apply solely for the purposes of this Order:

"Affected Property" shall mean all real property at the Site and any other real property where EPA determines, at any time, that access is needed to implement the Remedial Design.

"Central Plume" shall mean the area of groundwater contamination identified on Appendix 2 as Central Plume and all areas to which contamination has migrated therefrom within the limits of OU1, as set forth on Appendix 2.

"Central Plume Group Respondents" shall mean the Respondents Arkwin Industries, Inc., Grand Machinery Exchange, Inc., Patel Trust July 29, 1977, Tishcon Corp., and William Gross.

"CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. §§ 9601-9675.

"Common Work Elements" shall mean those activities associated with the Work that are required to be performed by all Respondents to this Order as set forth in the OU1 SOW. Common Work Elements include, but are not limited to, the coordination of the Respondents in submitting coordinated, combined, comprehensive, and cohesive deliverables for all deliverable required to be submitted as Common Work Elements under this Order.

"Day" or "day" shall mean a calendar day. In computing any period of time under this Order, where the last day would fall on a Saturday, Sunday, or federal or State holiday, the period shall run until the close of business of the next working day.

"Eastern Plume" shall mean the area of groundwater contamination identified on Appendix 2 as Eastern Plume and all areas to which contamination has migrated therefrom within the limits of OU1, as set forth on Appendix 2.

"Eastern Plume Group Respondents" shall mean Respondents Nest Equities, Inc., Next Millennium Realty, LLC, 101 Frost Street, LP, and Utility Manufacturing Co., Inc.

"Effective Date" shall mean the effective date of this Order as provided in Section VIII.

"EPA" shall mean the United States Environmental Protection Agency and any successor departments, agencies, or instrumentalities.

"EPA Hazardous Substance Superfund" shall mean the Hazardous Substance Superfund established by the Internal Revenue Code, 26 U.S.C. § 9507.

"National Contingency Plan" or "NCP" shall mean the National Oil and Hazardous Substances Pollution Contingency Plan promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, codified at 40 C.F.R. Part 300, and any amendments thereto.

"New Cassel Industrial Area ("NCIA") Properties" shall mean 299 Main Street, 570 Main Street, 567 Main Street, 648-656 and 662-670 Main Street/ 66 Brooklyn Avenue, 700 Main Street, 770 Main Street, 118-130 Swalm Street, 125 State Street, 29 New York Avenue, 30-36 New York Avenue/30-33 Brooklyn Avenue, 62 Kinkel Street, 36 Sylvester Street, 89 Frost Street, and 101 Frost Street in Westbury, New York.

"Non-Respondent Owner" shall mean any person, other than a Respondent, that owns or controls any Affected Property. The phrase "Non-Respondent Owner's Affected Property" means Affected Property owned or controlled by a Non-Respondent Owner.

"NYSDEC" shall mean the New York State Department of Environmental Conservation and any successor departments or agencies of the State.

"Operable Unit 1" or "OU1" shall mean the area of groundwater contamination hydrologically downgradient and south of Old Country Road, which is impacted by the NCIA Properties, and which is located primarily in Salisbury, an unincorporated area of the Town of Hempstead, and within the Hamlet of New Cassel in the Town of North Hempstead. OU1 is depicted generally on the map attached as Appendix 2.

"Operable Unit 1 Statement of Work" or "OU1 SOW" shall mean the statement of work for implementation of the RD for OU1 at the Site that is attached hereto as Appendix 1 to this Order and any modifications made thereto in accordance with this Order.

"Order" shall mean this Administrative Order, Index No: CERCLA-02-2018-2015, and all appendices attached hereto. In the event of conflict between this Order and any appendix, this Order shall control.

"Owner Respondent" shall mean any Respondent that owns or controls any Affected Property. The clause "Owner Respondent's Affected Property" means Affected Property owned or controlled by an Owner Respondent.

"Paragraph" shall mean a portion of this Order identified by an Arabic numeral or an upper or lower case letter.

"Parties" shall mean EPA and Respondents.

"Performance Standards" shall mean the cleanup standards and other measures of achievement of the goals of the remedial action objectives, as set forth in the OU1 ROD.

"Plume Group" shall mean the identified group of Respondents associated with either the Central Plume, the Eastern Plume, or the Western Plume, respectively, as those terms and groups are defined in this Section.

"Pre-Design Investigation Work Plan," "PDI Work Plan," shall mean the work plan attached to the OU1 SOW as Attachment 1, and any amendments thereto.

"RCRA" shall mean the Resource Conservation and Recovery Act, also known as the Solid Waste Disposal Act, 42 U.S.C. §§ 6901-6992.

"Record of Decision" or "ROD" or "OU1 ROD" shall mean the EPA Record of Decision relating to the remedy selected for Operable Unit 1 at the Site signed on September 30, 2013 by the Director of the Emergency and Remedial Response Division, EPA Region 2, and all attachments thereto. The OU1 ROD is attached as Appendix 3.

"Relevant Respondents" shall mean the relevant Eastern Plume Group, Central Plume Group, and/or Western Plume Group Respondents, as applicable to the circumstances, that are responsible for performing particular work under the OU1 SOW and this Order. Relevant Respondents can mean two or more Plume Groups, if applicable to the circumstances.

"Remedial Action" or "RA" shall mean the remedial action selected in the OU1 ROD.

"Remedial Design" or "RD" shall mean those activities to be undertaken by Respondents to develop the final plans and specifications for the design of the Remedial Action for OU1 in accordance with the PDI Work Plan and the RD Work Plan.

"Remedial Design Work Plan" or "RD Work Plan" shall mean the plan required to be developed in accordance Section 3.2 of the OU1 SOW.

"Respondents" shall mean 101 Frost Street, LP, 570 Properties, Inc., Arkwin Industries, Inc., Atlas Graphics, Inc., Barouh Eaton Allen, Corp., Grand Machinery Exchange, Inc., HDP Printing Industries, Corp., IMC Eastern Corp. (f/k/a IMC Magnetics, Corp.), Island Transportation Corp., Nest Equities, Inc., Next Millennium Realty, LLC, Patel Trust July 29, 1977, Tishcon Corp., Utility Manufacturing Co., Inc., and William Gross.

"Section" shall mean a portion of this Order identified by a Roman numeral.

"Site" shall mean the New Cassel/Hicksville Groundwater Contamination Superfund Site, which is an approximately 6.5 square mile area of groundwater contamination within the Towns of North Hempstead, Hempstead, and Oyster Bay, Nassau County, New York, and associated source areas. The Site is depicted generally on the map attached as Appendix 4.

"State" shall mean the State of New York.

"Supervising Contractor" shall mean the principal contractor retained by Respondents to supervise and direct the implementation of the Work under this Order and to ensure the submission of coordinated, combined, comprehensive, and cohesive deliverables.

"United States" shall mean the United States of America and each department, agency, and instrumentality of the United States, including EPA.

"Waste Material" shall mean: (a) any "hazardous substance" under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); (b) any pollutant or contaminant under Section 101(33) of CERCLA, 42 U.S.C. § 9601(33); and (c) any "solid waste" under Section 1004(27) of RCRA, 42 U.S.C. § 6903(27).

"Western Plume" shall mean the area of groundwater contamination identified on Appendix 2 as Western Plume and all areas to which contamination has migrated therefrom within the limits of OU1, as set forth on Appendix 2.

"Western Plume Group Respondents" shall mean Respondents 570 Properties, Inc., Atlas Graphics, Inc., Barouh Eaton Allen Corp., HDP Printing Industries, Corp., IMC Eastern Corp. (f/k/a IMC Magnetics Corp.), and Island Transportation Corp.

"Work" shall mean all activities that Respondents are required to perform under this Order. While not all Respondents are required to perform all activities under this Order, all Respondents shall perform the Common Work Elements and the Work required of their respective Plume Group. Work does not include activities required by Section XI (Record Retention).

IV. FINDINGS OF FACT

8. The Site comprises a widespread area of groundwater contamination within the Towns of North Hempstead, Hempstead, and Oyster Bay, Nassau County, New York, and associated source areas. The Site is estimated to include approximately 6.5 square miles that have been characterized by volatile organic compound ("VOC") groundwater contamination that has impacted eleven public supply wells, including four Town of Hempstead wells (Bowling Green 1 and 2, Roosevelt Field 10, and Levittown 2A), six Hicksville wells (4-2, 5-2, 5-3, 8-1, 8-3, and 9-3), and one Village of Westbury well (11).

9. Three aquifers comprise the Nassau-Suffolk Aquifer System. The three aquifers are Class GA meaning the groundwater is designated by the State as a potable drinking water source. The three aquifers are also considered sole source aquifers under the Federal Safe Drinking Water Act because they supply at least fifty percent of drinking water consumed in the area. The eleven public supply wells provide drinking water to an estimated population of 38,624.

10. The Towns of North Hempstead, Hempstead, and Oyster Bay encompass residential, commercial and industrial areas.

11. The area comprising OU1 of the Site includes approximately 211 acres and consists of residential properties, as well as some commercial areas. A part of the Site, upgradient of and a source of contamination to OU1, is the NCIA, which encompasses approximately 170 acres of industrial and commercial property and is bounded by the Long Island Railroad, Frost Street, Old Country Road, and Grand Boulevard in North Hempstead, Nassau County, New York.

12. The NCIA was developed for industrial use during the 1950s through the 1970s and currently has an estimated 200 industrial and commercial properties. On-property leach pools and/or dry wells were generally used for disposal of wastewater until sewer lines were installed by the mid-1980s.

13. In 1986, as part of a county-wide groundwater investigation, the Nassau County Department of Health ("NCDOH") identified extensive groundwater contamination throughout the NCIA. Six groundwater monitoring wells revealed concentrations of total VOCs above 1,000 micrograms per liter ("ug/L"), with a maximum concentration of nearly 10,000 ug/L. Results of sampling of upgradient groundwater monitoring wells appeared to isolate the NCIA as the principal source. Sampling of deeper groundwater monitoring wells in and downgradient of the NCIA also indicated that contamination had migrated into the Magothy Aquifer to at least 260 feet below ground surface ("bgs").

14. In 1988, NYSDEC listed the NCIA as a Class 2 site in the New York State Registry of Inactive Hazardous Waste Disposal Sites ("State Registry").

15. In 1990, the Town of Hempstead commenced the installation of a granular activated carbon ("GAC") groundwater treatment system at the location of the two Bowling Green Water District water supply wells, which is directly hydrologically downgradient of the NCIA. In 1993, the NCDOH approved the GAC system for full operation. The GAC system commenced operations, and it has remained in operation since that time. In 1995, to supplement the GAC system, construction began for an air stripper tower as an additional method of treating groundwater. Construction of the air stripper tower was completed in 1997, and the air stripper tower is operated when the Bowling Green wells are pumping.

16. From 1994 to 1999, NYSDEC conducted preliminary site assessments and field investigations to identify the sources of contamination within the NCIA. Based on the findings of these assessments and investigations, 17 individual facilities within the NCIA were identified and listed as Class 2 sites on the State Registry between May 1995 and September 1999.

17. To address conditions at the 17 facilities within the NCIA, NYSDEC, under New York State authority, selected nine remedies relating to soil contamination, four remedies relating to groundwater contamination, and eight remedies addressing both groundwater and soil contamination.

18. Meanwhile, from 1995 to 2000, NYSDEC conducted groundwater sampling at locations south of the NCIA, Old Country Road, and Grand Boulevard. In September 2000, NYSDEC issued a Remedial Investigation/Feasibility Study Report under New York State authority for the geographic area corresponding with EPA's OU1, which NYSDEC referred to as

the "New Cassel Industrial Area Off-site Groundwater." NYSDEC determined that tetrachloroethylene ("PCE"), trichloroethylene ("TCE"), and 1,1,1-Trichloroethane ("1,1,1-TCA"), all VOCs, were present above New York State standards, criteria, and guidance, in the groundwater downgradient of the NCIA.

19. Based on NYSDEC's investigations of the area it referred to as the "New Cassel Industrial Area Off-site Groundwater," NYSDEC determined that VOCs released from facilities in the NCIA had migrated in groundwater to areas downgradient of the NCIA. In 2003, NYSDEC selected a remedy under its state authorities to address the "New Cassel Industrial Area Off-site Groundwater," which consisted of remediation of the upper and deep portion of the aquifer (to a depth of 225 feet bgs) with in-well vapor stripping/localized vapor treatment. NYSDEC's remedy included a contingency plan to utilize ex-situ extraction and treatment if pilot testing determined that in-well vapor stripping/localized vapor treatment proved to be less practical for engineering or economic reasons. That NYSDEC remedy covered a portion of the area that EPA has designated as OU1.

20. NYSDEC consultants conducted pre-design investigations subsequent to the selection of its 2003 remedy. However, NYSDEC never implemented the remedy selected in 2003 for the "New Cassel Industrial Area Off-site Groundwater."

21. By letter dated December 27, 2010, NYSDEC requested of EPA that the Site be nominated for inclusion on the National Priorities List.

22. Pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, EPA included the Site on the National Priorities List ("NPL"), set forth at 40 C.F.R. Part 300, Appendix B, by publication in the Federal Register on September 16, 2011.

23. On July 19, 2013, EPA issued a Supplemental Remedial Investigation Memorandum which, among other things, summarized the groundwater data collected by NYSDEC through 2011 in the area designated by EPA as OU1. EPA determined that three groundwater plumes exist at OU1 (designated as the Eastern, Central, and Western plumes). These plumes are characterized by chlorinated VOCs, primarily PCE, 1,1,1-TCA, and TCE. In the Eastern Plume, the highest concentrations of PCE (16,000 ug/L) and TCE (1,800 ug/L) were observed during NYSDEC's April 2011 pre-design investigation sampling. In the Central Plume, the highest concentrations of 1,1,1-TCA (1,400 ug/L), PCE (330 ug/L), and TCE (1,800 ug/L) were observed during NYSDEC's 2008 pre-design investigation sampling. In the Western Plume, the highest concentrations of PCE (3,700 ug/L) and TCE (5,100 ug/L) were observed during NYSDEC's 2008 pre-design investigation sampling. Other contaminants found in the groundwater at OU1 include, but are not limited to, vinyl chloride, chloroform, cis-1,2-dichloroethene, 1,1-dichloroethene, 1,1,-dichloroethane, and 1,1,2,2-tetrachloroethane.

24. EPA conducted a Human Health Risk Assessment, which it concluded in May 2013, in which it determined that there are unacceptable future noncancer and cancer risks to human health based on the presence of VOCs in the groundwater at OU1 at the Site.

25. Pursuant to Section 117 of CERCLA, 42 U.S.C. §9617, EPA published notice of the completion of the Supplemental Remedial Investigation and Feasibility Study and

availability for review of the proposed plan for a remedial action for OU1 on July 26, 2013, and the public was provided an opportunity for public comment on the proposed remedial action during a 30-day public comment period. Upon request, EPA extended the public comment period on the proposed remedial action from late August to September 24, 2013.

26. Based on the results of the Supplemental Remedial Investigation and Feasibility Study for OU1, dated July 23, 2013, EPA issued the ROD for OU1 on September 30, 2013, in which it selected a remedy for OU1 at the Site. A purpose of the OU1 remedy is to establish containment and effectuate removal of contaminant mass where concentrations of total VOCs are greater than 100 µg/L. The OU1 remedy, includes, but is not limited to the following: (1) a combination of in-situ treatment of groundwater via in-well vapor stripping and extraction of groundwater via pumping and ex-situ treatment of extracted groundwater prior to discharge to a POTW or reinjection to the groundwater (to be determined during design).; (2) in-situ chemical treatment of high concentration contaminant areas, as appropriate; (3) implementation of long-term monitoring of groundwater in OU1 to ensure the Remedial Action objectives are achieved; (4) development of a Site Management Plan to ensure proper management of the remedy post-construction; and (5) institutional controls consisting of maintaining any existing local requirements to prevent installation of drinking water wells and issuing informational devices to limit exposure to contaminated groundwater.

27. Exposure to high levels of VOCs, such as PCE, 1,1,1-TCA, and TCE can cause a variety of adverse human health effects, including, but not limited to, damage to the nervous system, liver, kidneys, and reproductive system. VOCs may also be harmful to unborn children and are considered possible carcinogens.

28. The NCIA Properties are properties hydrologically upgradient of OU1, where it has been determined that hazardous substances have been deposited, stored, disposed of, placed, or otherwise come to be located.

29. Respondent 101 Frost Street, LP, a limited partnership organized under the laws of the State of New York, is the current owner of a facility located at 101 Frost Street, Westbury, New York at which, among other things, TCE and PCE were disposed, and thus it is a responsible party within the meaning of Section 107(a)(1) of CERCLA, 42 U.S.C. § 9607(a)(1).

30. Respondent 570 Properties, Inc., a corporation organized under the laws of the State of New York, is the current owner of a facility located at 570 Main Street, Westbury, New York at which, among other things, PCE and 1,1,1-TCA were disposed, and thus it is a responsible party within the meaning of Section 107(a)(1) of CERCLA, 42 U.S.C. § 9607(a)(1).

31. Respondent Arkwin Industries, Inc., a corporation organized under the laws of the State of New York, is the current owner of a facility located at 648-656, 662-670 Main Street and 66 Brooklyn Avenue, Westbury, New York, and it was the owner and operator of that facility at the time of disposal of, among other things, 1,1,1-TCA and PCE, and thus it is a responsible party within the meaning of Sections 107(a)(1) and (2) of CERCLA, 42 U.S.C. § 9607(a)(1) and (2).

32. Respondent Atlas Graphics, Inc., a corporation organized under the laws of the State of New York, disposed of TCE while operating a facility located at 567 Main Street, and it was the owner of that facility at the time of disposal of TCE, and thus it is a responsible party within the meaning of Section 107(a)(2) of CERCLA, 42 U.S.C. § 9607(a)(2).

33. Respondent Barouh Eaton Allen Corp., a corporation organized under the laws of the State of New York, is the current owner of a facility located at 118-130 Swalm Street, Westbury, New York, and it was the owner of that facility at the time of disposal of PCE, and thus it is a responsible party within the meaning of Sections 107(a)(1) and (2) of CERCLA, 42 U.S.C. § 9607(a)(1) and (2).

34. Respondent Grand Machinery Exchange, Inc., a corporation organized under the laws of the State of New York, is the current owner of a facility located at 36 Sylvester Street, Westbury, New York, and it was the owner of that facility at the time of disposal of 1,1,1-TCA, and thus it is a responsible party within the meaning of Sections 107(a)(1) and (2) of CERCLA, 42 U.S.C. § 9607(a)(1) and (2).

35. Respondent HDP Printing Industries, Corp., a corporation organized under the laws of the State of New York, is the current owner of a facility located at 567 Main Street, Westbury, New York, at which TCE was disposed, and thus it is a responsible party within the meaning of Section 107(a)(1) of CERCLA, 42 U.S.C. § 9607(a)(1).

36. Respondent IMC Eastern Corp. (f/k/a IMC Magnetics Corporation), a corporation which was organized under the laws of the State of New York, disposed of, among other things, PCE and 1,1,1-TCA while operating a facility located at 570 Main Street, Westbury, New York and thus it is a responsible party within the meaning of Section 107(a)(2) of CERCLA, 42 U.S.C. § 9607(a)(2).

37. Respondent Island Transportation Corporation, a corporation organized under the laws of the State of New York, disposed of TCE while operating a facility located at 299 Main Street, Westbury, New York, and thus it is a responsible party within the meaning of Section 107(a)(2) of CERCLA, 42 U.S.C. § 9607(a)(2).

38. Respondent Nest Equities, Inc., a corporation organized under the laws of the State of New York, is the current owner of a facility located at 700 Main Street, Westbury, New York, at which, among other things, PCE was disposed, and thus it is a responsible party within the meaning of Section 107(a)(1) of CERCLA, 42 U.S.C. § 9607(a)(1).

39. Respondent Next Millennium Realty, LLC, a limited liability company organized under the laws of the State of New York, is the current owner of facilities located at 89 Frost Street, Westbury, New York, and 770 Main Street, Westbury, New York, at which PCE and TCE were disposed, respectively, and thus it is a responsible party within the meaning of Section 107(a)(1) of CERCLA, 42 U.S.C. § 9607(a)(1).

40. Respondent Patel Trust July 29, 1977 is the current owner of a facility located at 30-36 New York Avenue/30-33 Brooklyn Avenue, Westbury, New York, at which 1,1,1-TCA was disposed, and thus it is a responsible party within the meaning of Section 107(a)(1) of CERCLA, 42 U.S.C. § 9607(a)(1).

41. Respondent Tishcon Corporation, a corporation organized under the laws of the State of New York, disposed of 1,1,1-TCA while operating facilities located at 125 State Street, 30-36 New York Avenue, 30-33 Brooklyn Avenue, and 29 New York Avenue, all in Westbury, New York, and thus it is a responsible party within the meaning of Section 107(a)(2) of CERCLA, 42 U.S.C. § 9607(a)(2).

42. Respondent Utility Manufacturing Co., Inc., a corporation organized under the laws of the State of New York, disposed of, among other things, PCE while operating a facility located at 700 Main Street, Westbury, New York, and thus it is a responsible party within the meaning of Section 107(a)(2) of CERCLA, 42 U.S.C. § 9607(a)(2).

43. Respondent William Gross is the surviving partner of the general partnership C&O Realty Co., which was the owner of 125 State Street, Westbury, New York, at the time of disposal of methylene chloride and 1,1,1-TCA, and thus it is a responsible party within the meaning of Sections 107(a)(2) of CERCLA, 42 U.S.C. § 9607(a) (2).

V. CONCLUSIONS OF LAW AND DETERMINATIONS

44. Based on the Findings of Fact set forth above and the administrative record, EPA has determined that:

a. Each NCIA Property is a "facility" as defined in Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

b. The OU1 area of the Site, where releases at the NCIA Properties have come to be located, is a "facility" within the meaning of Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

c. Each Respondent is a "person" as defined by Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

d. Respondents are responsible parties within the meaning of Section 107(a)(1) and/or (2) of CERCLA, 42 U.S.C. § 9607(a)(1) and/or (2), because they are owners of facilities at the Site, and/or they owned and/or operated facilities at the Site at the time of disposal from which hazardous substances were released.

e. The contamination found at the Site, as identified in the Findings of Fact above, includes TCE, PCE, and 1,1,1-TCA, all of which are hazardous substances as defined in Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

f. The conditions described in the Findings of Fact above constitute instances of actual and/or threatened "release" of a hazardous substance from the facility as defined by Section 101(22) of CERCLA, 42 U.S.C.§ 9601(22).

g. The conditions at the Site may constitute a threat to public health or welfare or the environment, as set forth in a determination in the OU1 ROD.

h. Solely for purposes of Section 113(j) of CERCLA, 42 U.S.C. § 9613(j), the remedy set forth in the OU1 ROD and the Work to be performed by Respondents shall constitute a response action taken or ordered by the President for which judicial review shall be limited to the administrative record.

i. The conditions described in the Findings of Fact above may constitute an imminent and substantial endangerment to the public health or welfare or the environment because of an actual or threatened release of a hazardous substance from the facility within the meaning of Section 106(a) of CERCLA, 42 U.S.C. § 9606(a).

j. The actions required by this Order are necessary to protect the public health, welfare, or the environment.

VI. ORDER

45. Based on the Findings of Fact, Conclusions of Law, and Determinations set forth above, and the administrative record, Respondents are hereby ordered to comply with this Order and any modifications to this Order, including, but not limited to, all appendices and all documents incorporated by reference into this Order.

VII. OPPORTUNITY TO CONFER

46. No later than 10 days after this Order is signed by the Director of the Emergency and Remedial Response Division or his delegatee, Respondents may, in writing, (a) request a conference with EPA to discuss this Order, including its applicability, the factual findings and the determinations upon which it is based, the appropriateness of any actions Respondents are ordered to take, or any other relevant and material issues or contentions that Respondents may have regarding this Order, or (b) notify EPA that they intend to submit written comments or a statement of position in lieu of requesting a conference.

47. If a conference is requested, Respondents may appear in person or by an attorney or other representative. Any such conference shall be held no later than 5 days after the conference is requested unless otherwise mutually agreed to by the Parties. Any written comments or statements of position on any matter pertinent to this Order must be submitted no later than 5 days after the conference or 15 days after this Order is signed if Respondents do not request a conference. Any such conference is not an evidentiary hearing, does not constitute a proceeding to challenge this Order, and does not give Respondents a right to seek review of this Order. Any request for a conference or written comments or statements should be submitted to:

Sharon Kivowitz
Office of Regional Counsel
U.S. Environmental Protection Agency, Region2
290 Broadway, 17th Floor
New York, NY 10007
212-637-3183
Kivowitz.sharon@epa.gov

VIII. EFFECTIVE DATE

48. This Order shall be effective 10 days after this Order is signed by the Director of the Emergency and Remedial Response Division or his delegate unless a conference is requested or notice is given that written materials will be submitted in lieu of a conference in accordance with Section VII (Opportunity to Confer). If a conference is requested or EPA is notified of an intention to submit written comments, this Order shall be effective on the 10th day after the day of the conference, or, if no conference is requested, on the 10th day after written materials, if any, are submitted, unless EPA determines that this Order should be modified or withdrawn based on matters raised at the conference or in written materials. If multiple requests or notifications are received, EPA will, in its sole discretion, determine the Effective Date of this Order (unless it determines to modify or withdraw this Order) and notify Respondents as such, but in no instance shall it become effective in fewer than 10 days after a timely conference or receipt of a timely submission of written materials. If this Order is modified or withdrawn, EPA will notify Respondents that this Order is to be modified or has been withdrawn.

IX. NOTICE OF INTENT TO COMPLY

49. Within 3 days of the Effective Date, each Respondent shall notify EPA in writing of that Respondent's intent with regard to compliance with this Order. Such written notice shall be sent to EPA to the addressee provided in Paragraph 47.

50. Each Respondent's written notice shall describe, using facts that exist as of such notification, any "sufficient cause" defenses asserted by such Respondent under Sections 106(b) and 107(c)(3) of CERCLA, 42 U.S.C. §§ 9606(a) and 9607(c)(3). An absence of a response from EPA to the notice required pursuant to this Section shall not be deemed to be acceptance of any Respondent's assertions. Failure of any Respondent to provide such notice of intent to comply within this time period shall be treated as a violation of this Order by such Respondent.

X. PERFORMANCE OF THE WORK

51. **Compliance with Applicable Law**. Nothing in this Order limits Respondents' obligations to comply with the requirements of all applicable federal and state laws and regulations. Respondents must also comply with all applicable or relevant and appropriate requirements of all federal and state environmental laws as set forth in the OU1 ROD and the OU1 SOW.

52. **Permits**

a. As provided in Section 121(e) of CERCLA, 42 U.S.C. § 9621(e), and Section 300.400(e) of the NCP, no permit shall be required for any portion of the Work conducted entirely on-site (i.e., within the areal extent of contamination or in very close proximity to the contamination and necessary for implementation of the Work). Where any portion of the Work that is not on-site requires a federal or state permit or approval, Relevant Respondents shall submit timely and complete applications and take all other actions necessary to obtain all such permits or approvals.

b. This Order is not, and shall not be construed to be, a permit issued pursuant to any federal or state statute or regulation.

53. **Coordination and Supervision**

a. **Project Coordinators**

(1) Respondents' Project Coordinator must have sufficient technical expertise to coordinate the Work. Respondents' Project Coordinator may not be an attorney representing any Respondent in this matter and may not act as the Supervising Contractor. Respondents' Project Coordinator may assign other representatives, including other contractors, to assist in coordinating the Work. Respondents' Project Coordinator shall be responsible on behalf of Respondents for oversight of the implementation of the Work required under this Order, including coordination amongst the various contractors in the event that more than one contractor is retained by Respondents, and Respondents' Project Coordinator must coordinate the submittal of combined, comprehensive, and cohesive documents required of all Respondents to EPA.

(2) EPA shall designate and notify Respondents of EPA's Remedial Project Manager ("RPM"). EPA may designate other representatives, which may include its employees, contractors, and/or consultants, to oversee the Work. EPA's RPM will have the same authority as a remedial project manager and/or an on-scene coordinator, as described in the NCP. This includes the authority to halt the Work and/or to conduct or direct any necessary response action when he or she determines that conditions at the Site constitute an emergency or may present an immediate threat to public health or welfare or the environment because of a release or threatened release of Waste Material.

(3) Respondents' Project Coordinator shall meet with EPA's RPM in person or via conference call at major milestones in the RD process, as is determined to be necessary by EPA.

(4) **Supervising Contractors**. Relevant Respondents' proposed Supervising Contractors must have sufficient technical expertise to supervise the Work and a quality assurance system that complies with ASQ/ANSI E4:2014, "Quality management systems for environmental information and technology programs - Requirements with guidance for use" (American Society for Quality, February 2014).

b. **Procedures for Disapproval/Notice to Proceed**

(1) Respondents shall designate, and notify EPA, within 10 days after the Effective Date, of the name, title, contact information, and qualifications of (a) Respondents' proposed Project Coordinator, and (b) Respondents' proposed Supervising Contractor(s) (who may be designated by Relevant Respondents for a Plume Group or groups). The qualifications of the Respondents' Project Coordinator and any Supervising Contractor(s) shall be subject to EPA's review

for verification based on objective assessment criteria (e.g., experience, capacity, technical expertise) and a determination that they do not have a conflict of interest with respect to the project.

(2) EPA shall issue notices of authorizations to proceed and/or disapprovals regarding the proposed Project Coordinator and Supervising Contractor(s), as applicable. If EPA issues a notice or notices of disapproval, Respondents shall, within 30 days, submit to EPA a list of supplemental proposed Project Coordinators and/or Supervising Contractors, as applicable, including a description of the qualifications of each. EPA shall issue a notice of disapproval or authorization to proceed regarding each supplemental proposed coordinator and/or contractor. Respondents may select any coordinator and/or contractor(s) covered by an authorization to proceed and shall, within 21 days, notify EPA of Respondents' selection.

(3) Respondents may change their Project Coordinator and Supervising Contractor(s), as applicable, by following the procedures of Paragraphs 53.b(1) and 53.b(2).

54. **Performance of Work in Accordance with OU1 SOW.**

a. Respondents shall (a) perform a Pre-Design Investigation in accordance with the PDI Work Plan and (b) develop a Remedial Design, both in accordance with the OU1 SOW and all EPA-approved, conditionally-approved, or modified deliverables as required by the OU1 SOW. All deliverables required to be submitted for approval under this Order or OU1 SOW shall be subject to approval by EPA in accordance with Paragraph 5.6 (Approval of Deliverables) of the OU1 SOW. Respondents are jointly and severally liable for performance of the Common Work Elements as set forth in the OU1 SOW and this Order and for all other general obligations under this Order, including, but not limited to, any necessary emergency response notifications, and the preparation and submittal of monthly progress reports.

b. In addition to the requirements of Paragraph 54.a., the Eastern Plume Group Respondents are also jointly and severally responsible for the performance of the Work required of the Eastern Plume Group Respondents as set forth in the OU1 SOW and under this Order.

c. In addition to the requirements of Paragraph 54.a., the Central Plume Group Respondents are also jointly and severally responsible for the performance of the Work required of the Central Plume Group Respondents as set forth in the OU1 SOW and under this Order.

d. In addition to the requirements of Paragraph 54.a., the Western Plume Group Respondents are also jointly and severally responsible for the performance of the Work required of the Western Plume Group Respondents as set forth in the OU1 SOW and under this Order.

e. Notwithstanding the assignment of specific Work obligations as set forth above, Respondents shall coordinate their respective obligations in such a manner so as to

provide only one coordinated, combined, comprehensive, and cohesive submission for each required submission under this Order unless EPA determines that separate submittals are appropriate for technical reasons.

55. **Emergencies and Releases**. Respondents shall comply with the emergency and release response and reporting requirements under Paragraph 4.3(b) (Emergency Response and Reporting) of the OU1 SOW.

56. **Community Involvement**. If requested by EPA, Respondents shall conduct community involvement activities under EPA's oversight as provided for in, and in accordance with, Section **2** (Community Involvement) of the OU1 SOW. Such activities may include, but are not limited to, designation of a Community Involvement Coordinator.

57. **Off-Site Shipments.**

a. Relevant Respondents may ship hazardous substances, pollutants, and contaminants from the Site to an off-Site facility only if they comply with Section 121(d)(3) of CERCLA, 42 U.S.C. § 9621(d)(3), and 40 C.F.R. § 300.440. Relevant Respondents will be deemed to be in compliance with CERCLA § 121(d)(3) and 40 C.F.R. § 300.440 regarding a shipment if Relevant Respondents obtain a prior determination from EPA that the proposed receiving facility for such shipment is acceptable under the criteria of 40 C.F.R. § 300.440(b).

b. Relevant Respondents may ship Waste Material from the Site to an out-of-state waste management facility only if, prior to any shipment, notice is provided to the appropriate state environmental official in the receiving facility's state and to the EPA Remedial Project Manager. Such notice is not required for any off-Site shipment when the total quantity of all such shipments does not exceed 10 cubic yards. The notice must include the following information, if available: (1) the name and location of the receiving facility; (2) the type and quantity of Waste Material to be shipped; (3) the schedule for the shipment; and (4) the method of transportation. Relevant Respondents also shall notify the state environmental official referenced above and the EPA Remedial Project Manager of any major changes in a shipment plan, such as a decision to ship the Waste Material to a different out-of-state facility. Relevant Respondents shall provide the notice after the award of the contract and before the Waste Material is shipped.

c. Relevant Respondents may ship Investigation Derived Waste ("IDW") from the Site to an off-Site facility only if the shipment is in compliance with Section 121(d)(3) of CERCLA, 42 U.S.C. § 9621(d)(3), 40 C.F.R. § 300.440, EPA's Guide to Management of Investigation Derived Waste, OSWER 9345.3-03FS (Jan. 1992). If wastes are shipped off-Site to a laboratory for characterization or if RCRA hazardous wastes that meet the requirements for an exemption from RCRA under 40 CFR § 261.4(e) are shipped off-site for treatability studies, they are not subject to 40 C.F.R. § 300.440.

58. **Modification**

a. Respondents and/or Relevant Respondents, acting through the approved Project Coordinator, may submit written requests to modify the PDI Work Plan which is Attachment 1 of the OU1 SOW, and/or any other deliverable developed under the OU1 SOW. If

EPA approves the request in writing, the modification shall be effective upon the date of such approval or as otherwise specified in the approval. Respondents and/or Relevant Respondents shall modify the OU1 SOW and/or related deliverables in accordance with EPA's approval.

b. No informal advice, guidance, suggestion, or comment provided by the EPA RPM or other EPA representatives regarding reports, plans, specifications, schedules, or any other writing submitted by Respondents shall relieve Respondents of their obligations to obtain any formal approval required under this Order, or to comply with all requirements of this Order, unless this Order is formally modified.

c. Nothing in this Order, (including the attached OU1 SOW, any deliverable required under the OU1 SOW, or any approval by EPA) constitutes a warranty or representation of any kind by EPA that compliance with the Work requirements set forth in the OU1 SOW or related deliverable will achieve the Performance Standards.

XI. SITE ACCESS

59. If any Respondent owns, controls, or is in possession of any part of the Site where access is needed to implement this Order, such Respondent shall, commencing on the Effective Date, provide EPA and its representatives, including its contractors, with access at all reasonable times to such part of the Site to conduct any activity related to implementing the Work under this Order. Such Respondent shall, at least 30 days prior to the conveyance of any interest in real property at the Site, (a) provide written notice to the proposed transferee that the property is subject to this Order and (b) provide written notice to EPA of the proposed conveyance, including the name and address of the proposed transferee.

60. Where any action under this Order is to be performed in areas owned by, controlled by, or in possession of, someone other than a Respondent, Relevant Respondents shall use their best efforts to obtain all necessary access agreements to such property for performance of Work that necessitates the access within 45 days after the Effective Date, or within 30 days that the need for access arises, whichever is later, or as otherwise specified in writing by EPA. Relevant Respondents shall immediately notify EPA if, after using their best efforts, they are unable to obtain such agreements. For purposes of this Paragraph, "best efforts" includes the payment of reasonable sums of money in consideration of access. Relevant Respondents shall describe in writing their efforts to obtain access. EPA may in its sole discretion assist such Respondents in gaining access, to the extent necessary to effectuate the response actions described herein, using such means as EPA deems appropriate.

61. Notwithstanding any provision of this Order, EPA retains all of its access authorities and rights, including enforcement authorities related thereto, under CERCLA, RCRA, and any other applicable statutes or regulations.

62. If Relevant Respondents cannot obtain the necessary access for any particular task or activity, EPA may perform those tasks or activities. If EPA performs those tasks or activities, Relevant Respondents shall perform all other activities not requiring access to such property and shall integrate the results of any such tasks undertaken by EPA into its reports and deliverables.

XII. FINANCIAL ASSURANCE

63. In order to ensure the successful completion of the Work, Respondents shall provide financial assurance. The financial assurance shall be composed of four elements, three to provide financial assurance for the Work required to be performed by Relevant Respondents for each of the three Plume Groups and the fourth relating to the Work required for the Common Work Elements. The Eastern Plume Group Respondents shall provide financial assurance in the amount of $1,215,000 to secure the work in the Eastern Plume. The Central Plume Group Respondents shall provide financial assurance in the amount of $971,000 to secure the work in the Central Plume. The Western Plume Group Respondents shall provide financial assurance in the amount of $1,348,000 to secure the work in the Western Plume. Respondents shall also collectively provide financial assurance in the amount of $320,000 to secure the work required for the Common Work Elements. The total amount of the four elements of financial assurance to be provided is hereinafter referred to as the "Estimated Cost of the Work." The financial assurance must be provided in the form of one or more of the mechanisms listed below, in a form substantially identical to the relevant sample documents available from EPA or under the "Financial Assurance - Orders" category on the Cleanup Enforcement Model Language and Sample Documents Database found at https://cfpub.epa.gov/compliance/models/, subject to approval by EPA. Relevant Respondents for each Plume Group, and Respondents as related to financial assurance for the Common Work Elements, may use more than one of the mechanisms listed below if they are limited to trust funds, surety bonds guaranteeing payment, and/or letters of credit. The mechanisms are as follows:

a. A trust fund (1) established to ensure that funds will be available as and when needed for performance of the Work, (2) administered by a trustee that has the authority to act as a trustee and whose trust operations are regulated and examined by a federal or state agency, and (3) governed by an agreement that requires the trustee to make payments from the fund only when the Director of the Emergency and Remedial Response Division advises the trustee in writing that (i) payments are necessary to fulfill each Plume Group's obligations under this Order, and/or Respondents' obligations as they relate to financial assurance for the Common Work Elements , or (ii) funds held in trust are in excess of the funds that are necessary to complete the performance of Work in accordance with this Order, and that such excess portion may be disbursed;

b. A surety bond, issued by a surety company among those listed as acceptable sureties on federal bonds as set forth in Circular 570 of the U.S. Department of the Treasury, guaranteeing payment or performance in accordance with Paragraph 69 (Access to Financial Assurance);

c. An irrevocable letter of credit, issued by an entity that has the authority to issue letters of credit and whose letter-of-credit operations are regulated and examined by a federal or state agency, guaranteeing payment in accordance with Paragraph 69 (Access to Financial Assurance);

d. A demonstration by a Respondent that it meets the relevant financial test criteria of Paragraph 66; or

e. A guarantee to fund or perform the Work executed by a company that (1) is a direct or indirect parent company of a Respondent or has a "substantial business relationship" (as defined in 40 C.F.R. § 264.141(h)) with a Respondent and (2) can demonstrate to EPA's satisfaction that it meets the financial test criteria of Paragraph 66.

64. **Standby Trust**. If Relevant Respondents for each Plume Group, and/or Respondents as related to financial assurance for the Common Work Elements, seek to establish financial assurance by using a surety bond, a letter of credit, or a corporate guarantee, Relevant Respondents, and/or Respondents as related to financial assurance for the Common Work Elements, shall at the same time establish and thereafter maintain a standby trust fund, which must meet the requirements specified in Paragraph 63.a, and into which payments from the other financial assurance mechanism can be deposited if the financial assurance provider is directed to do so by EPA pursuant to Paragraph 69 (Access to Financial Assurance). An originally signed duplicate of the standby trust agreement must be submitted to EPA, with the other financial mechanism, in accordance with Paragraph 65. Until the standby trust fund is funded pursuant to Paragraph 69 (Access to Financial Assurance), neither payments into the standby trust fund nor annual valuations are required.

65. Within 30 days after the Effective Date, Respondents shall submit to EPA the proposed financial assurance mechanisms in draft form in accordance with Paragraph 63 for EPA's review. Within 60 days after the Effective Date, or 30 days after EPA's approval of the form and substance of Relevant Respondents' or Respondents' financial assurance, whichever is later, Respondents shall secure all executed and/or otherwise finalized mechanisms or other documents consistent with the EPA-approved form of financial assurance and shall submit such mechanisms and documents to Chief, Resource Management/Cost Recovery Section, Emergency and Remedial Response Division, U.S. EPA Region 2, 290 Broadway, 18th Floor, New York, NY 10007-1866.

66. Respondents seeking to provide financial assurance by means of a demonstration or guarantee under Paragraph 63.d or 63.e, above, must,

a. Demonstrate that:

(1) the affected Respondent or guarantor has:

i. Two of the following three ratios: a ratio of total liabilities to net worth less than 2.0; a ratio of the sum of net income plus depreciation, depletion, and amortization to total liabilities greater than 0.1; and a ratio of current assets to current liabilities greater than 1.5; and

ii. Net working capital and tangible net worth each at least six times the sum of the Estimated Cost of the Work and the amounts, if any, of other federal, state, or tribal environmental obligations financially assured through the use of a financial test or guarantee; and

iii. Tangible net worth of at least $10 million; and

iv. Assets located in the United States amounting to at least 90 percent of total assets or at least six times the sum of the Estimated Cost of the Work and the amounts, if any, of other federal, state, or tribal environmental obligations financially assured through the use of a financial test or guarantee; or

(2) The affected Respondent or guarantor has:

i. A current rating for its senior unsecured debt of AAA, AA, A, or BBB as issued by Standard and Poor's or Aaa, Aa, A or Baa as issued by Moody's; and

ii. Tangible net worth at least six times the sum of the Estimated Cost of the Work and the amounts, if any, of other federal, state, or tribal environmental obligations financially assured through the use of a financial test or guarantee; and

iii. Tangible net worth of at least $10 million; and

iv. Assets located in the United States amounting to at least 90 percent of total assets or at least six times the sum of the Estimated Cost of the Work and the amounts, if any, of other federal, state, or tribal environmental obligations financially assured through the use of a financial test or guarantee; and

b. Submit to EPA for the affected Respondent(s) or the guarantor (1) a copy of an independent certified public accountant's report of the entity's financial statements for the latest completed fiscal year, which must not express an adverse opinion or disclaimer of opinion, and (2) a letter from its chief financial officer and a report from an independent certified public accountant substantially identical to the sample letter and reports available from EPA or under the "Financial Assurance – Orders" subject list category on the Cleanup Enforcement Model Language and Sample Documents Database found at https://cfpub.epa.gov/compliance/models/.

67. Relevant Respondents for each Plume Group, and/or Respondents as related to financial assurance for the Common Work Elements, shall diligently monitor the adequacy of the financial assurance. If Relevant Respondents, and/or Respondents as related to financial assurance for the Common Work Elements, become aware of any information indicating that the financial assurance provided under this Section is inadequate or otherwise no longer satisfies the requirements of this Section, such Relevant Respondents, and/or Respondents as related to financial assurance for the Common Work Elements, shall notify EPA of such information within 30 days. If EPA determines that the financial assurance provided under this Section is inadequate or otherwise no longer satisfies the requirements of this Section, EPA will notify the affected Relevant Respondents, and/or Respondents as related to financial assurance for the Common Work Elements, of such a determination. Relevant Respondents, and/or Respondents as related to financial assurance for the Common Work Elements, shall, within 30 days after

notifying EPA of the inadequate mechanism or receiving notice from EPA under this Paragraph, secure and submit to EPA for approval a proposal for a revised or alternative financial assurance mechanism that satisfies the requirements of this Section. Relevant Respondents, and/or Respondents as related to financial assurance for the Common Work Elements, shall follow the procedures set forth in Paragraph 70 (Modification of Amount, Form, or Terms of Financial Assurance) in seeking approval of, and submitting documentation for, the revised or alternative financial assurance mechanism. Relevant Respondents' inability to secure financial assurance in accordance with this Section, and/or Respondents inability as related to financial assurance for the Common Work Elements, does not excuse performance of any other obligation under this Order.

68. Relevant Respondents' provision, and/or Respondents' provision as related to financial assurance for the Common Work Elements, of financial assurance by means of a demonstration or guarantee under Paragraph 63.d or 63.e must also:

a. Annually resubmit the documents described in Paragraph 66.b within 90 days after the close of the affected Relevant Respondent's, and/or Respondents as related to financial assurance for the Common Work Elements, or fiscal year of the guarantor(s);

b. Notify EPA within 30 days after the affected Relevant Respondent, and/or Respondents as related to financial assurance for the Common Work Elements, or the guarantor(s) determines that it no longer satisfies the relevant financial test criteria and requirements set forth in this Section; and

c. Provide to EPA, within 30 days of EPA's request, reports of the financial condition of the affected Relevant Respondent, and/or Respondents as related to financial assurance for the Common Work Elements, or the guarantor in addition to those specified in Paragraph 66.b. EPA may make such a request at any time based on a belief that the affected Relevant Respondent(s), and/or Respondents as related to financial assurance for the Common Work Elements, or the guarantor(s) may no longer meet the financial test requirements of this Section.

69. **Access to Financial Assurance**

a. If EPA determines that Relevant Respondents, and/or Respondents as related to financial assurance for the Common Work Elements, (1) have ceased implementation of any portion of the Work, (2) are seriously or repeatedly deficient or late in their performance of the Work, or (3) are implementing the Work in a manner that may cause an endangerment to human health or the environment, EPA may issue a written notice ("Performance Failure Notice") to both the Relevant Respondents, and/or Respondents as related to financial assurance for the Common Work Elements, and the financial assurance provider regarding the affected Relevant Respondents' failure to perform, and/or Respondents' failure as related to financial assurance for the Common Work Elements. Any Performance Failure Notice issued by EPA will specify the grounds upon which such notice was issued and will provide Relevant Respondents, and/or Respondents as related to financial assurance for the Common Work Elements, a period of 10 days within which to cure or remedy the circumstances giving rise to EPA's issuance of such notice. If, after expiration of the 10-day period specified in this

Paragraph, Relevant Respondents, and/or Respondents as related to financial assurance for the Common Work Elements, have not cured or remedied to EPA's satisfaction the circumstances giving rise to EPA's issuance of the relevant Performance Failure Notice, then, in accordance with any applicable financial assurance mechanism, EPA may at any time thereafter direct the financial assurance provider to immediately deposit any funds assured pursuant to this Section into the standby trust fund.

b. If EPA is notified by any Respondent or the provider of a financial assurance mechanism that it intends to cancel the mechanism, and the affected Relevant Respondents, and/or Respondents as related to financial assurance for the Common Work Elements, fail to provide an alternative financial assurance mechanism in accordance with this Section at least 30 days prior to the cancellation date, EPA may, prior to cancellation, direct the financial assurance provider to deposit any funds guaranteed under such a mechanism into the standby trust fund for use consistent with this Section.

70. **Modification of Amount, Form, or Terms of Financial Assurance**. Any Respondent may submit on any anniversary of the Effective Date or following such request for, and EPA's approval of, another date, a request to reduce the amount or change the form or terms of the financial assurance mechanism for its respective Plume Group or for the Common Work Elements. Any such request must be submitted to the EPA individual referenced in Paragraph 65, and the request must include an estimate of the cost of the remaining Work associated with that Plume Group or the Common Work Elements, an explanation of the bases for the cost calculation, a description of the proposed changes, if any, to the form or terms of the financial assurance, and any newly proposed financial assurance documentation in accordance with the requirements of Paragraphs 63 and 64 (Standby Trust). EPA will notify the requesting Respondent, and/or Respondents as related to financial assurance for the Common Work Elements, of its decision to approve or disapprove a requested reduction or change. The requesting Respondents, and/or Respondents as related to financial assurance for the Common Work Elements, may reduce the amount or change the form or terms of the financial assurance only in accordance with EPA's approval. Within 30 days after receipt of EPA's approval of the requested modifications pursuant to this Paragraph, Relevant Respondents, and/or Respondents as related to financial assurance for the Common Work Elements, shall submit to the EPA individual referenced in Paragraph 65 all executed and/or otherwise finalized documentation relating to the amended, reduced, or alternative financial assurance mechanism. Upon EPA's approval, the Estimated Cost of the Work shall be deemed to be the estimate of the cost of the remaining Work as set forth in the approved proposal.

71. **Release, Cancellation, or Discontinuation of Financial Assurance**. Relevant Respondents, and/or Respondents as related to financial assurance for the Common Work Elements, may release, cancel, or discontinue any financial assurance provided under this Section only (a) after receipt of the Notice of Completion of Work under Paragraph 82 of this Order or (b) after notification to EPA and in accordance with EPA's written approval of such release, cancellation, or discontinuation.

XIII. INSURANCE

72. No later than 15 days before commencing any Work, Respondents shall secure, and shall maintain until the first anniversary after EPA issuance of the Notice of Completion of Work under Paragraph 82 of this Order, commercial general liability insurance with limits of liability of $1 million per occurrence, and automobile insurance with limits of liability of $1 million per accident, and umbrella liability insurance with limits of liability of $5 million in excess of the required commercial general liability and automobile liability limits, naming the United States as an additional insured with respect to all liability arising out of the activities performed by or on behalf of Respondents pursuant to this Order. In addition, for the duration of this Order, Respondents shall satisfy, or shall ensure that their contractors or subcontractors satisfy, all applicable laws and regulations regarding the provision of worker's compensation insurance for all persons performing Work on behalf of Respondents in furtherance of this Order. Within the same time period, Respondents shall provide EPA with certificates of such insurance and a copy of each insurance policy. Respondents shall submit such certificate and copies of policies each year on the anniversary of the Effective Date. If Respondents demonstrate by evidence satisfactory to EPA that any contractor or subcontractor maintains insurance equivalent to that described above, or insurance covering some or all of the same risks but in a lesser amount, then, with respect to that contractor or subcontractor, Respondents need provide only that portion of the insurance described above that is not maintained by the contractor or subcontractor. Respondents shall ensure that all submittals to EPA under this Paragraph identify the New Cassel/Hicksville Groundwater Contamination Site, Nassau County, New York, and the EPA docket number for this action.

XIV. DELAY IN PERFORMANCE

73. Respondents shall notify EPA of any delay or anticipated delay in performing any Common Work Element required by this Order, and Relevant Respondents shall notify EPA of any delay or anticipated delay in performing any Work required of such Relevant Respondents by this Order. Such notification shall be made by telephone and email to the EPA RPM within 48 hours after Respondents and/or Relevant Respondents first knew or should have known that a delay might occur. Respondents and/or Relevant Respondents shall adopt all reasonable measures to avoid or minimize any such delay. Within seven days after notifying EPA by telephone and email, Respondents and/or Relevant Respondents shall provide to EPA written notification fully describing the nature of the delay, the anticipated duration of the delay, any justification for the delay, all actions taken or to be taken to prevent or minimize the delay or the effect of the delay, a schedule for implementation of any measures to be taken to mitigate the effect of the delay, and any reason why Respondents and/or Relevant Respondents should not be held strictly accountable for failing to comply with any relevant requirements of this Order. Increased costs or expenses associated with implementation of the activities called for in this Order is not a justification for any delay in performance.

74. Any delay in performance of this Order that, in EPA's judgment, is not properly justified by Respondents and/or Relevant Respondents, as applicable, under the terms of Paragraph 73 shall be considered a violation of this Order. Any delay in performance of this Order shall not affect Respondents' and/or Relevant Respondents' obligations to fully perform all obligations under the terms and conditions of this Order.

XV. ACCESS TO INFORMATION

75. Respondents shall provide to EPA, upon request, copies of all records, reports, documents, and other information (including records, reports, documents, and other information in electronic form) (hereinafter referred to as "Records") within Respondents' possession or control or that of their contractors or agents relating to activities at the Site or to the implementation of this Order, including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information regarding the Work. Respondents shall also make available to EPA, for purposes of investigation, information gathering, or testimony, their employees, agents, or representatives with knowledge of relevant facts concerning the performance of the Work.

76. **Privileged and Protected Claims**

a. Respondents may assert that all or part of a Record requested by EPA is privileged or protected as provided under federal law, in lieu of providing the Record, provided Respondents comply with Paragraph 76.b, and except as provided in Paragraph 76.c.

b. If Respondents assert a claim of privilege or protection, they shall provide EPA with the following information regarding such Record: its title; its date; the name, title, affiliation (e.g., company or firm), and address of the author, of each addressee, and of each recipient; a description of the Record's contents; and the privilege or protection asserted. If a claim of privilege or protection applies only to a portion of a Record, Respondents shall provide the Record to EPA in redacted form to mask the privileged or protected portion only. Respondents shall retain all Records that they claim to be privileged or protected until EPA has had a reasonable opportunity to dispute the privilege or protection claim and any such dispute has been resolved in the Respondents' favor.

c. Respondents may make no claim of privilege or protection regarding (1) any data regarding the Site, including, but not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, radiological, or engineering data, or the portion of any other Record that evidences conditions at or around the Site, or (2) the portion of any Record that Respondents are required to create or generate pursuant to this Order.

77. **Business Confidential Claims**. Respondents may assert that all or part of a Record provided to EPA under this Section or Section XVI (Record Retention) is business confidential to the extent permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. § 2.203(b). Respondents shall segregate and clearly identify all Records or parts thereof submitted under this Order for which Respondents assert business confidentiality claims. Records claimed as confidential business information will be afforded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentially accompanies Records when they are submitted to EPA, or if EPA has notified Respondents that it has determined that the Records are not confidential under the standards of CERCLA § 104(e)(7) or 40 C.F.R. Part 2, Subpart B, the public may be given access to such Records without further notice to Respondents in accordance with applicable law.

XVI. RECORD RETENTION

78. During the pendency of this Order and for a minimum of 10 years after EPA provides Notice of Completion of Work under Paragraph 82 of this Order each Respondent shall preserve and retain all non-identical copies of Records (including Records in electronic form) now in its possession or control or that come into its possession or control that relate in any manner to its liability under CERCLA with respect to the Site, provided, however, that Respondents who are potentially liable as owners or operators of the Site must retain, in addition, all Records that relate to the liability of any other person under CERCLA with respect to the Site. NoticeEach of the above record retention requirements shall apply regardless of any corporate retention policy to the contrary.

79. At the conclusion of this document retention period, Respondents shall notify EPA at least 90 days prior to the destruction of any such Records, and, upon request by EPA, and except as provided in Paragraph 76, Respondents shall deliver any such Records to EPA.

80. Within 30 days after the Effective Date, each Respondent shall submit a written certification to EPA's RPM that, to the best of its knowledge and belief, after thorough inquiry, it has not altered, mutilated, discarded, destroyed, or otherwise disposed of any Records (other than identical copies) relating to its potential liability regarding the Site since notification of potential liability by the United States or the State and that it has fully complied with any and all EPA requests for information regarding the Site pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e), and Section 3007 of RCRA, 42 U.S.C. § 6927, and state law. Any Respondent unable to so certify shall submit a modified certification that explains in detail why it is unable to certify in full with regard to all Records.

XVII. ENFORCEMENT/WORK TAKEOVER

81. Any willful violation, or failure or refusal of a Respondent to comply with any provision of this Order, may subject such Respondent to civil penalties of up to $53,907 per violation per day, as provided in Section 106(b)(1) of CERCLA, 42 U.S.C. § 9606(b)(1), and the Civil Monetary Penalty Inflation Adjustment Rule, 81 Fed. Reg. 43,091, 40 C.F.R Part 19.4. In the event of such willful violation, or failure or refusal to comply, 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. In addition, nothing in this Order shall limit EPA's authority under Section XII (Financial Assurance). Such Respondent may also be subject to punitive damages in an amount up to three times the amount of any cost incurred by the United States as a result of such failure to comply, as provided in Section 107(c)(3) of CERCLA, 42 U.S.C. § 9607(c)(3).

XVIII. NOTICE OF COMPLETION

82. When EPA determines, after EPA's review of the Final 100% RD Report required to be submitted pursuant to Section 3.8 of the OU1 SOW, that all Work has been fully performed in accordance with the other requirements of this Order, with the exception of any continuing obligations required by this Order, including Site Access under Section XI and Record Retention under Section VI, EPA will provide written notice of completion to Respondents. If EPA determines that any such Work has not been completed in accordance with this Order, EPA will notify

Respondents, provide a list of the deficiencies, and require that Respondents modify the RD Work Plan, or take other action as appropriate to correct such deficiencies. Respondents shall implement the modified and approved RD Work Plan and shall submit the required deliverables. Failure by Respondents to implement the approved modified RD Work Plan shall be a violation of this Order.

XIX. RESERVATIONS OF RIGHTS

83. Nothing in this Order limits the rights and authorities of EPA and the United States:

a. To take, direct, or order all actions necessary, including to seek a court order, to protect public health, welfare, or the environment or to respond to an actual or threatened release of Waste Material on, at, or from the Site;

b. To select further response actions for the Site in accordance with CERCLA and the NCP;

c. To seek legal or equitable relief to enforce the terms of this Order;

d. To take other legal or equitable action as they deem appropriate and necessary, or to require Respondents in the future to perform additional activities pursuant to CERCLA or any other applicable law;

e. To bring an action against Respondents under Section 107 of CERCLA, 42 U.S.C.§ 9607, for recovery of any costs incurred by EPA or the United States regarding this Order or the Site;

f. Regarding access to, and to require land, water, or other resource use restrictions and/or Institutional Controls regarding the Site under CERCLA, RCRA, or other applicable statutes and regulations; or

g. To obtain information and perform inspections in accordance with CERCLA, RCRA, and any other applicable statutes or regulations.

XX. OTHER CLAIMS

84. 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 Respondents. The United States or EPA shall not be deemed a party to any contract entered into by Respondents or their directors, officers, employees, agents, successors, representatives, assigns, contractors, or consultants in carrying out actions pursuant to this Order.

85. Nothing in this Order constitutes a satisfaction of or release from any claim or cause of action against Respondents or any person not a party to this Order for any liability such person may have under CERCLA, other statutes, or common law, including but not limited to any claims of the United States under Sections 106 and 107 of CERCLA, 42 U.S.C. §§ 9606 and 9607.

86. Nothing in this Order shall be deemed to constitute preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or C.F.R. § 300.700(d).

87. No action or decision by EPA pursuant to this Order shall give rise to any right to judicial review, except as set forth in Section 113(h) of CERCLA, 42 U.S.C. § 9613(h).

XXI. ADMINISTRATIVE RECORD

88. EPA has established an administrative record that contains the documents that form the basis for the issuance of this Order, including, but not limited to, the documents upon which EPA based the selection of the Remedial Action selected in the OU1 ROD. EPA will make the administrative record available for review by appointment on weekdays between the hours of 9:00 am and 5:00 pm at the EPA offices at 290 Broadway, New York, New York. Persons may request an appointment to review the administrative record by contacting Thomas Mongelli at 212-637-4256 or mongelli.thomas@epa.gov. A copy of the administrative record is also available for viewing at Island Trees Public Library, 38 Farmedge Road, Levittown, NY.

XXII. APPENDICES

89. The following appendices are attached to and incorporated into this Order:

"Appendix 1" is the OU1 SOW.
"Appendix 2" is the Map of OU1.
"Appendix 3" is the OU1 ROD.
"Appendix 4" is the Map of the Site.

XXIII. SEVERABILITY

90. If a court issues an order that invalidates any provision of this Order or finds that a Respondent or Respondents have sufficient cause not to comply with one or more provisions of this Order, Respondents shall remain bound to comply with all provisions of this Order not invalidated or determined to be subject to a sufficient cause defense by the court's order.

It is so ORDERED.

BY: _____ DATE: MAR 22 2018

John B. Prince
Acting Director
Emergency and Remedial Response Division
Region 2
U.S. Environmental Protection Agency