NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

In the Matter of the
Implementation of a Remedial
Response Program for the
Cantor Brothers, Inc. Site by

AGREEMENT
INDEX NUMBER: W1-0830-98-10

LJM Associates, LLC

Volunteer

Site # 1-52-021

DEFINITIONS

For purposes of this Agreement, the following terms have the following definitions:

A. "Contemplated Use": Volunteer intends to use the Site as a base of operations for a trucking, delivery and warehouse business.

B. The Site's "Covered Contamination": the concentrations of Existing Contamination to which the Existing Contamination shall have been remediated in accordance with the requirements of the Work Plan.

C. "ECL": the Environmental Conservation Law.

D. "Day": a calendar day unless otherwise specified.

E. "Department": the New York State Department of Environmental Conservation.

F. The Site's "Existing Contamination": organic solvents, creosote, and fuel oils as well as high concentrations of tetrachloroethylene (PCE) at 2,600 ppb, dichloroethylene at 1,900 ppb, 1,1,2-trichloroethylene (TCE) at 470 ppb and polyaromatic hydrocarbons (PAHs). The Existing Contamination is more fully set forth in the NYSDEC Phase I Report (September 1984) prepared by Woodard-Clyde Consultants, Inc. for the Department, the NYSDEC Phase II Report (April 1994) prepared for the Department by Gibbs & Hill, Inc., and the Interim Remedial Measure Report (February 1997) prepared for Cantor Brothers, Inc. by Handex of New York, Inc. The term also includes contamination encountered during the course of the Work Plan's implementation, the nature and extent of which were unknown or inadequately characterized at the time the Work Plan was submitted to the Department for approval but shall have been fully characterized to the Department's satisfaction.

G. "Professional engineer": an individual registered as a professional engineer in accordance with Article 145 of the New York State Education Law. If such individual is a member of a firm, that firm must be authorized to offer professional engineering services in

the State of New York in accordance with Article 145 of the New York State Education Law.

H. "Site": that property which is located at 50 Engineers Lane, Village of Farmingdale, Suffolk County, New York, with County Tax Map Identifier Number of Section 007, Block 01, Lot 25. Exhibit "A" of this Agreement is a map of the Site showing its general location.

I. "Trustee": the Trustee of New York State's natural resources.

J. "Volunteer": LJM Associates is a Limited Liability Company (L.L.C.) formed in New York State, which is located at 50 Engineers Lane, Village of Farmingdale, Suffolk County, New York. Cantor Brothers, Inc. formerly operated a chemical repackaging and handling facility at the Site, which consisted of a building with drum storage areas, and sixteen (16) underground tanks.

K. "Work Plan": the Department-approved remedial work plan pertaining to the Site that Volunteer shall implement and that is attached to this Agreement as Exhibit "B", as may be modified under the terms of this Agreement and, as a result , may appear in such other identified exhibit in this Agreement as this Agreement may provide, and is an enforceable part of this Agreement.

CONSIDERING

1. The Department is responsible for enforcement of the ECL. This Agreement is entered into pursuant to the Department's authority under that law and constitutes an administrative settlement for purposes of 42 USC 9613(f).

2. Volunteer represents, and for the purposes of this Agreement, the Department relies on those representations, that Volunteer's involvement with the Site and with the facility on that Site is limited to the following: Volunteer purchased the building and Site property on October 5, 1998 pursuant to a successful bid at a foreclosure sale. Volunteer has not previously owned or operated at the Site.

3. The Department has the power, *inter alia*, to provide for the prevention and abatement of all water, land, and air pollution. ECL 3-0301.1.i.

4. A. The Department alleges that the Site is an inactive hazardous waste disposal site, as that term is defined at ECL 27-1301.2.

B. ECL 27-1313.3 provides that the Department shall be responsible for inactive hazardous waste disposal site remedial programs, except as provided in Section 1389-b of the Public Health Law. ECL 27-1313.3.a provides that whenever the Commissioner of

Environmental Conservation finds that hazardous wastes at an inactive hazardous waste disposal site constitute a significant threat to the environment, he may order the owner of such site and/or any person responsible for the disposal of hazardous wastes at such site

1. to develop an inactive hazardous waste disposal site remedial program, subject to the approval of the Department, at such site, and

2. to implement such program within reasonable time limits specified in the order.

C. The regulations implementing ECL Article 27, Title 13 authorize at 6 NYCRR 375-1.2(e)(2)(ii) the proponents of any activity to demonstrate to the Department that such activity will not have the effect described in 6 NYCRR 375-1.2(e)(2)(i) by such demonstration as the Department may find acceptable.

D. Volunteer wishes to enter into this Agreement in order to ensure, and the Department hereby determines that this Agreement constitutes a demonstration, that the response action undertaken under this Agreement will be in compliance with the ECL and will not:

1. prevent or interfere significantly with any proposed, ongoing or completed remedial program at the Site, or

2. expose the public health or the environment to a significantly increased threat of harm or damage.

5. Navigation Law §173 prohibits the unpermitted "discharge" of "petroleum" as those terms are defined under Article 12 of the Navigation Law, and fuel oils have been observed leaking from drums and storage tanks at the Site.

6. Navigation Law §176 permits, upon approval by the Commissioner, any person to clean up and remove a discharge of petroleum without admission of responsibility for such discharge.

7. A. Volunteer also wishes to enter into this Agreement in order to resolve Volunteer's potential liability for remediating the Existing Contamination as an operator and owner under ECL Article 27, Title 13 and the Navigation Law. The Department finds that such resolution, undertaken in accordance with the terms of this Agreement, is in the public interest.

B. Volunteer, desirous of implementing a remedial program acceptable to the Department sufficient to allow Volunteer to proceed with Volunteer's plans to use the Site for the Contemplated Use, consents to the terms and conditions of this Agreement.

8. On December 2, 1997, United States Bankruptcy Judge Dorothy Eisenberg issued a Final Agreement and Stipulated Order (In re Cantor Bros., Inc. v. State of New York, Bankruptcy Case No. 893-80853-478; Adversary Proceedings No. 894-8182-478), which directed the remedial work that is to be conducted at the Site. A copy of this Final Agreement and Stipulated Order, which is hereinafter referred to as the "Bankruptcy Order," is attached as Exhibit "C." The Department published a Fact Sheet for the Site in January 1998, which solicited comments from the public and from local governments on the soil vapor extraction (SVE) system and storm drain remediation at the Site. The Department received no comments.

9. Under the Bankruptcy Order, an escrow account in the amount of Two Hundred Thousand ($200,000) Dollars was established for the installation and implementation of the SVE system. It was anticipated that the SVE system would operate for approximately one (1) year and that the escrowed money was sufficient to install and operate the system through the successful remediation of the Site. However, based upon recent data from the Site, it is reasonably anticipated that the SVE system will continue to operate for several years. Volunteer's commitment under this Agreement is to ensure the continued operation of the SVE system until the cleanup levels are achieved.

10. The Department and Volunteer agree that the goals of this Agreement are:

A. for Volunteer to,

1. Complete the implementation of the Work Plan already begun by the previous property owner; and

2. reimburse the State's administrative costs as provided in this Agreement, and

B. for the Department and the Trustee to release Volunteer and its successors and assigns, under the conditions set forth in this Agreement, from any and all claims, actions, suits, and proceedings by the Department or by the Trustee, which may arise under any applicable law as a result of the Covered Contamination.

11. Volunteer agrees to be bound by the terms of this Agreement. Volunteer consents to and agrees not to contest the authority or jurisdiction of the Department to enter into or enforce this Agreement, and agrees not to contest the validity of this Agreement or its terms.

IN CONSIDERATION OF AND IN EXCHANGE FOR THE DEPARTMENT'S RELEASE AND COVENANT NOT TO SUE SET FORTH IN THIS AGREEMENT AND FOR THE MUTUAL COVENANTS AND PROMISES CONTAINED HEREIN, VOLUNTEER AGREES TO THE FOLLOWING:

I. Performance and Reporting of the Work Plan

A. Upon the effective date of this Agreement, Volunteer shall continue operation of the soil vapor extraction (SVE) system as outlined in the Work Plan.

B. 1. Volunteer shall carry out the Work Plan in accordance with its terms.

2. The parties agree that the Work Plan will be modified in the event that contamination previously unknown or inadequately characterized is encountered during the Work Plan's implementation and that such modification(s) shall appear in Exhibit "B-1" and all references to "Work Plan" in this Agreement shall refer to the one contained in Exhibit "B-1." However, if after goodfaith negotiations, Volunteer and the Department cannot agree upon revisions to the Work Plan, then, except with respect to

i. Volunteer's obligations under Paragraphs VI and VIII of this Agreement; and

ii. Volunteer's obligation, here incurred, to ensure that it does not leave the Site in a condition, from the perspective of human health and environmental protection, worse than that which prevailed before any remedial activities were commenced; and

iii. the Department's right to enforce the obligations described in Subparagraphs I.B.2.i and I.B.2.ii of this Agreement under Paragraph IV of this Agreement,

this Agreement shall terminate effective the date of the Department's written notification to Volunteer that negotiations have failed to develop an acceptable modification to the Work Plan; and both parties retain whatever rights they may have had respecting each other as they had before the effective date of this Agreement.

3. Volunteer shall notify the Department of any significant difficulties that may be encountered in implementing the Work Plan, any Department-approved modification to the Work Plan, or any Department-approved detail, document, or specification prepared by or on behalf of Volunteer pursuant thereto and shall not modify any obligation unless first approved by the Department.

C. During the operation of the soil vapor extraction (SVE) system, Volunteer shall have a representative at the Site who is qualified to operate the SVE system.

D. 1. In accordance with the schedule contained in the Work Plan, as may be modified by agreement in writing between the Department and Volunteer, Volunteer shall submit to the Department a final engineering report that shall include "as-built" drawings showing all changes made during construction, to the extent necessary; and a

certification that all activities were completed in full accordance with the Work Plan, any Department-approved modification to the Work Plan, any Department-approved detail, document, or specification prepared by or on behalf of Volunteer pursuant thereto, and this Agreement.

2. Respondent shall submit a detailed post-remedial operation, maintenance, and monitoring plan ("IRM O&M Plan"), along with the final engineering report.

3. A professional engineer must prepare, sign, and seal the O&M Plan, "as built" drawings, final engineering report, and certification.

E. Upon the Department's approval of the O&M Plan, Volunteer shall implement the O&M Plan in accordance with the schedule and requirements of the Department-approved O&M Plan.

F. 1. i. Within 60 days after receipt of the final engineering report, the Department shall notify Volunteer in writing whether the Department is satisfied with the implementation of the Work Plan, any Department-approved modification to the Work Plan, any Department-approved detail, document, or specification prepared by or on behalf of Volunteer pursuant thereto, and this Agreement.

ii. Within 60 days after completion of the Department-approved O&M Plan, if any, Volunteer shall submit to the Department a final engineering report and certification that the post-remedial construction operation and maintenance activities identified in the Department-approved O&M Plan were implemented in accordance with that plan. The Department shall notify Volunteer whether it is satisfied with the O&M Plan's implementation.

2. Upon being satisfied that the Site-specific cleanup levels identified in, or to be identified in accordance with, the Work Plan have been reached, the Department shall notify Volunteer in writing of its satisfaction and, except for the reservations identified below, the Department and the Trustee release, covenant not to sue, and shall forbear from bringing any action, proceeding, or suit against, Volunteer for the further investigation and remediation of the Site, and for natural resource damages, based upon the release or threatened release of any Covered Contamination, provided that (a) timely payments of the amounts specified in Paragraph VI of this Agreement continue to be or have been made to the Department, (b) appropriate notices and deed restrictions have been recorded in accordance with Paragraphs IX and X of this Agreement, and (c) Volunteer and/or Volunteer's lessees, sublessees, successors, or assigns promptly commence and diligently pursue to completion the Department-approved O&M Plan. Nonetheless, the Department and the Trustee hereby reserve all of their respective rights

concerning, and such release, covenant not to sue, and forbearance shall not extend to any further investigation or remedial action the Department deems necessary:

i. due to the off-Site presence of petroleum that may have migrated off-Site from an on-Site source, irrespective of whether the information available to Volunteer and the Department at the time of the development of the Work Plan disclosed the existence or potential existence of such off-Site presence;

ii. due to environmental conditions related to the Site that were unknown to the Department at the time of its approval of the Work Plan which indicate that Site conditions are not sufficiently protective of human health and the environment for the Contemplated Use;

iii. due to information received, in whole or in part, after the Department's approval of the final engineering report, which indicates that the activities carried out in accordance with the Work Plan are not sufficiently protective of human health and the environment for the Contemplated Use;

iv. due to Volunteer's failure to implement this Agreement to the Department's satisfaction; or

v. due to fraud committed, or mistake made, by Volunteer in demonstrating that the Site-specific cleanup levels identified in, or to be identified in accordance with, the Work Plan were reached.

Additionally, the Department and the Trustee hereby reserve all of their respective rights concerning, and any such release, covenant not to sue, and forbearance shall not extend to Volunteer if Volunteer causes a, or suffers the, release or threat of release, at the Site of any hazardous substance (as that term is defined at 42 USC 9601[14]) or petroleum (as that term is defined in Navigation Law § 172[15]), other than Covered Contamination; or if Volunteer causes a, or suffers the use of the Site to, change from the Contemplated Use to one requiring a lower level of residual contamination before that use can be implemented with sufficient protection of human health and the environment; nor to any of Volunteer's lessees, sublessees, successors, or assigns who causes a, or suffers the, release or threat of release, at the Site of any hazardous substance (as that term is defined at 42 USC 9601[14]) or petroleum (as that term is defined in Navigation Law § 172[15]), other than Covered Contamination, after the effective date of this Agreement; who causes a, or suffers the use of the Site to, change from the Contemplated Use to one requiring a lower level of residual contamination before that use can be implemented with sufficient protection of human health and the environment; or who is otherwise a party responsible under law for the remediation of the Existing Contamination independent of any obligation that party may have respecting same established resulting solely from this Agreement's execution.

3. Notwithstanding any other provision in this Agreement, if with respect to the Site there exists or may exist a claim of any kind or nature on the part of the New York State Environmental Protection and Spill Compensation Fund against any party, nothing in this Agreement shall be construed, or deemed, to preclude the State of New York from recovering such claim.

G. If the Department is satisfied with the implementation of the Work Plan, any Department-approved modification to the Work Plan, and Department-approved details, documents, and specifications prepared by or on behalf of Volunteer pursuant thereto, the Department shall provide Volunteer with a written "no further action" letter substantially similar to the model letter attached to this Agreement and incorporated in this Agreement as Exhibit "D;"

H. 1. Notwithstanding any other provision of this Agreement, with respect to any claim or cause of action asserted by the Department or the Trustee, the one seeking the benefit of the forbearance, covenant not to sue, or release set forth in Subparagraph I.F or in a "no further action" letter issued under Subparagraph I.G of this Agreement shall bear the burden of proving that the claim or cause of action, or any part thereof, is attributable solely to Covered Contamination.

2. Except as above provided in Subparagraph I.F of this Agreement and in the "no further action" letter issued under Subparagraph I.G of this Agreement, nothing in this Agreement is intended as a release, forbearance, or covenant not to sue for any claim or cause of action, administrative or judicial, civil or criminal, past or future, in law or in equity, which the Department, the Trustee, or the State of New York may have against any person, firm, corporation, or other entity not a party to this Agreement. In addition, notwithstanding any other provision in this Paragraph I of this Agreement, the forbearance, covenant not to sue, and release described in Subparagraph I.F and in the "no further action" letter issued under Subparagraph I.G of this Agreement shall not extend to parties (other than Volunteer) that were responsible under law before the effective date of this Agreement to address the Existing Contamination.

II. Progress Reports

A. Volunteer shall submit to the parties identified in Subparagraph XI.A.1 in the numbers specified in that Subparagraph copies of written monthly progress reports that:

1. describe the actions which have been taken toward achieving compliance with this Agreement during the previous month;

2. include all results of sampling and tests and all other data received or generated by Volunteer or Volunteer's contractors or agents in the previous month, including quality assurance/quality control information, whether conducted pursuant to this Agreement or conducted independently by Volunteer;

3. identify all work plans, reports, and other deliverables required by this Agreement that were completed and submitted during the previous month;

4. describe all actions, including, but not limited to, data collection and implementation of the Work Plan, that are scheduled for the next month and provide other information relating to the progress at the Site;

5. include information regarding percentage of completion, unresolved delays encountered or anticipated that may affect the future schedule for implementation of Volunteer's obligations under this Agreement, and efforts made to mitigate those delays or anticipated delays; and

6. include any modifications to the Work Plan that Volunteer has proposed to the Department and any that the Department has approved.

B. Volunteer shall submit these progress reports to the Department by the tenth day of every month following the effective date of this Agreement; and Volunteer's obligation to submit the progress reports shall terminate upon its receipt of the written satisfaction notification identified in Subparagraph I.F.2 of this Agreement approving Volunteer's final engineering report concerning the Work Plan's implementation. However, Volunteer shall continue to submit reports concerning the implementation of any O&M Plan that may be required under this Agreement, in accordance with that Plan's requirements.

C. Volunteer also shall allow the Department to attend, and shall provide the Department at least five days advance notice of, any of the following: prebid meetings, job progress meetings, substantial completion meeting and inspection, and final inspection and meeting.

III. Review of Submittals

A. 1. The Department shall review each of the submittals Volunteer makes pursuant to this Agreement to determine whether it was prepared, and whether the work done to generate the data and other information in the submittal was done, in accordance with this Agreement and with generally accepted technical and scientific principles. The Department shall notify Volunteer in writing of its approval or disapproval of the submittal. All Department-approved submittals shall be incorporated into and become an enforceable part of this Agreement.

2. i. If the Department disapproves a submittal, it shall so notify Volunteer in writing and shall specify the reasons for its disapproval within 30 days (60 days, in the case of the final engineering report) after its receipt of the submittal and may request Volunteer to modify or expand the submittal; provided, however, that the matters to be addressed by such modification or expansion are within the specific scope of work as described in the Work Plan. Within 30 days after receiving written notice that Volunteer's submittal has been disapproved, Volunteer shall make a revised submittal to the Department which endeavors to address and resolve all of the Department's stated reasons for disapproving the first submittal.

ii. After receipt of the revised submittal, the Department shall notify Volunteer in writing within 30 days of its approval or disapproval. If the Department disapproves the revised submittal, the Department and Volunteer may pursue whatever remedies at law or in equity (by declaratory relief) that may be available to them, without prejudice to either's right to contest the same. If the Department approves the revised submittal, it shall be incorporated into and become an enforceable part of this Agreement.

B. Within 30 days after the Department's approval of the final engineering report, Volunteer shall submit to the Department one microfilm copy (16 millimeter roll film M type cartridge) of that report and all other Department-approved drawings and submittals. Such submission shall be made to:

Director, Division of Environmental Remediation
New York State Department of Environmental Conservation
50 Wolf Road
Albany, New York 12233-7010

IV. Enforcement

A. This Agreement shall be enforceable as a contractual agreement under the laws of the State of New York.

B. Volunteer shall not suffer any penalty under this Agreement or be subject to any proceeding or action if it cannot comply with any requirement of this Agreement because of fire, lightning, earthquake, flood, adverse weather conditions, strike, shortages of labor and materials, war, riot, obstruction or interference by adjoining landowners, or any other fact or circumstance beyond Volunteer's reasonable control ("*force majeure* event"). Volunteer shall, within five working days of when it obtains knowledge of any such *force majeure* event, notify the Department in writing. Volunteer shall include in such notice the measures taken and to be taken by Volunteer to prevent or minimize any delays and shall request an appropriate extension or modification of this Agreement.

Volunteer shall have the burden of proving by a preponderance of the evidence that an event is a defense to compliance with this Agreement pursuant to this Subparagraph IV.B of this Agreement.

V. Entry upon Site

Volunteer hereby consents to the entry upon the Site or areas in the vicinity of the Site which may be under the control of Volunteer by any duly designated employee, consultant, contractor, or agent of the Department or any State agency having jurisdiction with respect to the matters addressed in the Work Plan for purposes of inspection, sampling, and testing and to ensure Volunteer's compliance with this Agreement. The Department shall abide by the health and safety rules in effect for work performed at the Site under the terms of this Agreement. Upon request, Volunteer shall provide the Department with access to a telephone, and shall permit the Department full access to all records relating to matters addressed by this Agreement and to job meetings.

VI. Payment of State Costs

A. Within thirty days after receipt of an itemized invoice from the Department, Volunteer shall pay to the Department a sum of money which shall represent reimbursement for the State's expenses including, but not limited to, direct labor, fringe benefits, indirect costs, travel, analytical costs, and contractor costs incurred by the State of New York for negotiating this Agreement, reviewing and revising submittals made pursuant to this Agreement, overseeing activities conducted pursuant to this Agreement, collecting and analyzing samples, and administrative costs associated with this Agreement, but not including the State's expenses incurred after the Department's notification identified in Subparagraph I.F.2 of this Agreement of its approval of the final engineering report pertaining to the implementation of the Work Plan or, if any, of the Department-approved O&M Plan, whichever is later. Each such payment shall be made by certified check payable to the Department of Environmental Conservation and shall be sent to:

Bureau of Program Management
Division of Environmental Remediation
New York State Department of Environmental Conservation
50 Wolf Road
Albany, NY 12233-7010

Personal service costs shall be documented by reports of Direct Personal Service, which shall identify the employee name, title, biweekly salary, and time spent (in hours) on the project during the billing period, as identified by an assigned time and activity code. Approved agency fringe benefit and indirect cost rates shall be applied. Non-personal service costs shall be summarized by category of expense (*e.g.*, supplies, materials, travel, contractual) and shall be documented by expenditure reports.

B. The United States Bankruptcy Court for the Eastern District of New York Final Agreement and Stipulated Order ("Bankruptcy Order") at Exhibit "C" provides in Paragraphs 16 and 17 that the sum of Two Hundred Thousand ($200,000.00) Dollars be put aside into an escrow account, which is dedicated solely toward remediation of the Site until completion of the remedial work required by said Bankruptcy Order. State costs shall be reimbursed utilizing the escrow account until the funds therein are exhausted. Volunteer agrees to pay the Department any State costs not reimbursed to the Department by the escrow account.

VII. Department Reservation of Rights

A. Except as provided in Subparagraph I.F.2 of this Agreement and in any "no further action" letter issued under Subparagraph I.G of this Agreement, nothing contained in this Agreement shall be construed as barring, diminishing, adjudicating, or in any way affecting any of the Department's or Trustee's rights (including, but not limited to, nor exemplified by, the right to recover natural resources damages) with respect to any party, including Volunteer.

B. Nothing contained in this Agreement shall prejudice any rights of the Department or Trustee to take any investigatory or remedial action it may deem necessary.

C. Nothing contained in this Agreement shall be construed to prohibit the Commissioner or his duly authorized representative from exercising any summary abatement powers.

D. Nothing contained in this Agreement shall be construed to affect the Department's right to terminate this Agreement at any time during its implementation if Volunteer fails to comply substantially with this Agreement's terms and conditions.

E. Except as otherwise provided in this Agreement, Volunteer specifically reserves all defenses Volunteer may have under applicable law respecting any Departmental assertion of remedial liability against Volunteer; and reserves all rights Volunteer may have respecting the enforcement of this Agreement, including the rights to notice, to be heard, to appeal, and to any other due process. The existence of this Agreement or Volunteer's compliance with this Agreement shall not be construed as an admission of liability, fault, or wrongdoing by Volunteer, and shall not give rise to any presumption of law or finding of fact which shall inure to the benefit of any third party.

VIII. Indemnification

Volunteer shall indemnify and hold the Department, the Trustee, the State of New York, and their representatives and employees harmless for all claims, suits, actions,

damages, and costs of every name and description arising out of or resulting from the fulfillment or attempted fulfillment of this Agreement by Volunteer and/or any of Volunteer's directors, officers, employees, servants, agents, successors, and assigns.

IX. Notice of Sale or Conveyance

A. Within 30 days after the effective date of this Agreement, Volunteer shall

1. file the Notice of Agreement, which is attached to this Agreement as Exhibit "E," with the Suffolk County Clerk to give all parties who may acquire any interest in the Site notice of this Agreement and

2. provide the Department with evidence of such filing.

Volunteer may terminate the Notice when the Department notifies Volunteer in writing pursuant to Subparagraph I.F.2 of this Agreement that the Department is satisfied that the Site-specific cleanup levels identified in, or to be identified in accordance with, the Work Plan have been reached and that the O&M Plan has been successfully implemented.

B. If Volunteer proposes to convey the whole or any part of Volunteer's ownership interest in the Site, Volunteer shall, not fewer than 60 days before the date of conveyance, notify the Department in writing of the identity of the transferee and of the nature and proposed date of the conveyance and shall notify the transferee in writing, with a copy to the Department, of the applicability of this Agreement.

X. Deed Restriction

A. Within 30 days of Volunteer's receipt of the Department's notification pursuant to Subparagraph I.F.2 of this Agreement approving Volunteer's final engineering report concerning the Work Plan, Volunteer shall record an instrument with the Suffolk County Clerk, to run with the land, that:

1. shall prohibit the Site from ever being used for purposes other than for the Contemplated Use without the express written waiver of such prohibition by the Department, or if at such time the Department shall no longer exist, any New York State department, bureau, or other entity replacing the Department;

2. shall prohibit the use of the groundwater underlying the Site without treatment rendering it safe for drinking water or industrial purposes, as appropriate, unless the user first obtains permission to do so from the Department, or if at such time the Department shall no longer exist, any New York State department, bureau, or other entity replacing the Department; and

3. shall provide that Volunteer, on behalf of itself and its successors and assigns, hereby consents to the enforcement by the Department, or if at such time the Department shall no longer exist, any New York State department, bureau, or other entity replacing the Department, of the prohibitions and restrictions that this Paragraph X requires to be recorded, and hereby covenants not to contest such enforcement.

B. Within 30 days after Volunteer's receipt of the Department's notification pursuant to Subparagraph I.F.2 of this Agreement approving Volunteer's final engineering report concerning the Work Plan, Volunteer shall provide the Department with a copy of such instrument certified by the Suffolk County Clerk to be a true and faithful copy of the instrument as recorded in the Office of the Suffolk County Clerk.

XI. Communications

A. All written communications required by this Agreement shall be transmitted by United States Postal Service, by private courier service, or hand delivered.

1. Communication from Volunteer shall be sent to:

Susan McCormick, P.E.
New York State Department of Environmental Conservation
Division of Environmental Remediation
Bureau of Eastern Remedial Action
Remedial Section B
50 Wolf Road
Albany, New York 12233-7010

with copies to:

G. Anders Carlson, Ph.D.
Director, Bureau of Environmental Exposure Investigation
New York State Department of Health
2 University Place
Albany, New York 12203

John F. Byrne, Esq.
Eastern Field Unit
Division of Environmental Enforcement
New York State Department of Environmental Conservation
200 White Plains Road
5th. Floor
Tarrytown, New York 10591-5805

Copies of work plans and reports shall be submitted as follows:

- Four copies (one unbound) to:

Susan McCormick, P.E.
New York State Department of Environmental Conservation
Division of Environmental Remediation
Bureau of Eastern Remedial Action
Remedial Section B
50 Wolf Road
Albany, New York 12233-7010

- Two copies to:

G. Anders Carlson, Ph.D.
Director, Bureau of Environmental Exposure Investigation
New York State Department of Health
2 University Place
Albany, New York 12203

2. Communication to be made from the Department to Volunteer shall be sent to:

Joseph Montgomery
LJM Associates, LLC
50 Engineers Lane
Farmingdale, New York 11735

William McLaughlin, Esq.
O'Brien, McLaughlin & Kenny
81 Hempstead Avenue
Lynbrook, New York 11563

B. The Department and Volunteer reserve the right to designate additional or different addressees for communication on written notice to the other given in accordance with this Paragraph XI.

XII. Miscellaneous

A. 1. By entering into this Agreement, Volunteer certifies that Volunteer has fully and accurately disclosed to the Department all information known to Volunteer and all information in the possession or control of Volunteer's members, partners, employees, contractors, and agents which relates in any way to the contamination existing on the effective date of this Agreement, and to any past or potential future release of hazardous substances, pollutants, or contaminants, at or from the Site and to their application for this Agreement. Volunteer also certifies that Volunteer has not caused or contributed to a release or threat of release of hazardous substances or pollutants or contaminants at, or from, the Site.

2. If the Department determines that information Volunteer provided and certifications made are not materially accurate and complete, this Agreement, within the sole discretion of the Department, shall be null and void *ab initio* except with respect to the provisions of Paragraphs VI and VIII and except with respect to the Department's right to enforce those obligations under this Agreement, and the Department shall reserve all rights that it may have.

B. Volunteer shall retain professional consultants, contractors, laboratories, quality assurance/quality control personnel, and data validators acceptable to the Department to perform the technical, engineering, and analytical obligations required by this Agreement. The responsibility for the performance of the professionals retained by Volunteer shall rest solely with Volunteer.

C. The Department shall have the right to obtain split samples, duplicate samples, or both, of all substances and materials sampled by Volunteer, and the Department also shall have the right to take its own samples. Volunteer shall make available to the Department the results of all sampling and/or tests or other data generated by Volunteer with respect to implementation of this Agreement and shall submit these results in the progress reports required by this Agreement.

D. Volunteer shall notify the Department at least five working days in advance of any field activities to be conducted pursuant to this Agreement.

E. 1. Subject to Subparagraph XII.E.2 of this Agreement, Volunteer shall obtain all permits, easements, rights-of-way, rights-of-entry, approvals, or authorizations necessary to perform Volunteer's obligations under this Agreement.

2. In carrying out the activities identified in the Work Plan, the Department may exempt Volunteer from the requirement to obtain any Department permit for any activity that is conducted on the Site and that the Department determines satisfies

all substantive technical requirements applicable to like activity conducted pursuant to a permit.

F. Volunteer, Volunteer's members, partners, managers, agents, servants, and employees (in the performance of their designated duties on behalf of Volunteer), and Volunteer's lessees, sublessees, successors, and assigns shall be bound by this Agreement. Any change in ownership or corporate status of Volunteer including, but not limited to, any transfer of assets or real or personal property, shall in no way alter Volunteer's responsibilities under this Agreement. Volunteer's members, partners, managers, employees, servants, and agents shall be obliged to comply with the relevant provisions of this Agreement in the performance of their designated duties on behalf of Volunteer.

G. Volunteer shall provide a copy of this Agreement to each contractor hired to perform work required by this Agreement and to each person representing Volunteer with respect to the Site and shall condition all contracts entered into in order to carry out the obligations identified in this Agreement upon performance in conformity with the terms of this Agreement. Volunteer or Volunteer's contractors shall provide written notice of this Agreement to all subcontractors hired to perform any portion of the work required by this Agreement. Volunteer shall nonetheless be responsible for ensuring that Volunteer's contractors and subcontractors perform the work in satisfaction of the requirements of this Agreement.

H. The paragraph headings set forth in this Agreement are included for convenience of reference only and shall be disregarded in the construction and interpretation of any of the provisions of this Agreement.

I. 1. No term, condition, understanding, or agreement purporting to modify or vary any term of this Agreement shall be binding unless made in writing and subscribed by the party to be bound. No informal advice, guidance, suggestion, or comment by the Department regarding any report, proposal, plan, specification, schedule, or any other submittal shall be construed as relieving Volunteer of Volunteer's obligation to obtain such formal approvals as may be required by this Agreement.

2. If Volunteer desires that any provision of this Agreement be changed, Volunteer shall make timely written application, signed by the Volunteer, to the Commissioner setting forth reasonable grounds for the relief sought. Copies of such written application shall be delivered or mailed to:

Susan McCormick, P.E.
New York State Department of Environmental Conservation
Division of Environmental Remediation
Bureau of Eastern Remedial Action
Remedial Section B
50 Wolf Road
Albany, New York 12233-7010

John F. Byrne, Esq.
Eastern Field Unit
Division of Environmental Enforcement
New York State Department of Environmental Conservation
200 White Plains Road
5th. Floor
Tarrytown, New York 10591-5805

J. The Department as lead agency determined on December 2, 1998, pursuant to 6 NYCRR Part 617 of the Implementing Regulations of Article 8 of the New York State Environmental Conservation Law, State Environmental Quality Review Act (SEQRA), that the proposed action will not have a significant effect on the environment. Therefore, a negative declaration has been prepared.

K. In undertaking the work required under this Agreement, Volunteer and its partners, members, employees, representatives, agents, contractors and subcontractors are deemed for the purpose of ECL 27-1321.3 and any other similar provision of state or federal law, to be performing services related to cleanup or restorative work which is conducted pursuant to a contract with the Department.

L. The provisions of this Agreement do not constitute and shall not be deemed a waiver of any right Volunteer otherwise may have to seek and obtain contribution and/or indemnification from other potentially responsible parties or their insurers, or Volunteer's insurers, for payments made previously or in the future for response costs. In relation to Existing Contamination consisting of contaminants other than petroleum or petroleum constituents, to the extent authorized under 42 U.S.C. 9613 and other applicable law, Volunteer shall not be liable for any claim, now or in the future, in the nature of contribution by potentially responsible parties concerning the Existing Contamination. In any further action brought by Volunteer against a potentially responsible party under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, the provision of 42 U.S.C. 9613(f)(3) shall apply.

M. Volunteer and Volunteer's employees, servants, agents, lessees, sublessees, successors, and assigns hereby affirmatively waive any right they had, have, or may have to make a claim pursuant to Article 12 of the Navigation Law with respect to the Site, and further release and hold harmless the New York State Environmental Protection and Spill Compensation Fund from any and all legal or equitable claims, suits, causes of action, or demands whatsoever that any of same has or may have as a result of Volunteer's entering into or fulfilling the terms of this Agreement with respect to the Site.

N. The effective date of this Agreement shall be the date it is signed by the Commissioner or his designee.

DATED: 3/3/99

JOHN P. CAHILL, COMMISSIONER
NEW YORK STATE DEPARTMENT OF
ENVIRONMENTAL CONSERVATION AND TRUSTEE
OF THE STATE'S NATURAL RESOURCES

CONSENT BY VOLUNTEER

LJM Associates, LLC

Volunteer hereby consents to the issuing and entering of this Agreement, waives Volunteer's right to a hearing herein as provided by law, and agrees to be bound by this Agreement.

By: Joseph Montgomery

Date: 1/25/99

STATE OF NEW YORK)
) s.s.:
COUNTY OF Nassau)

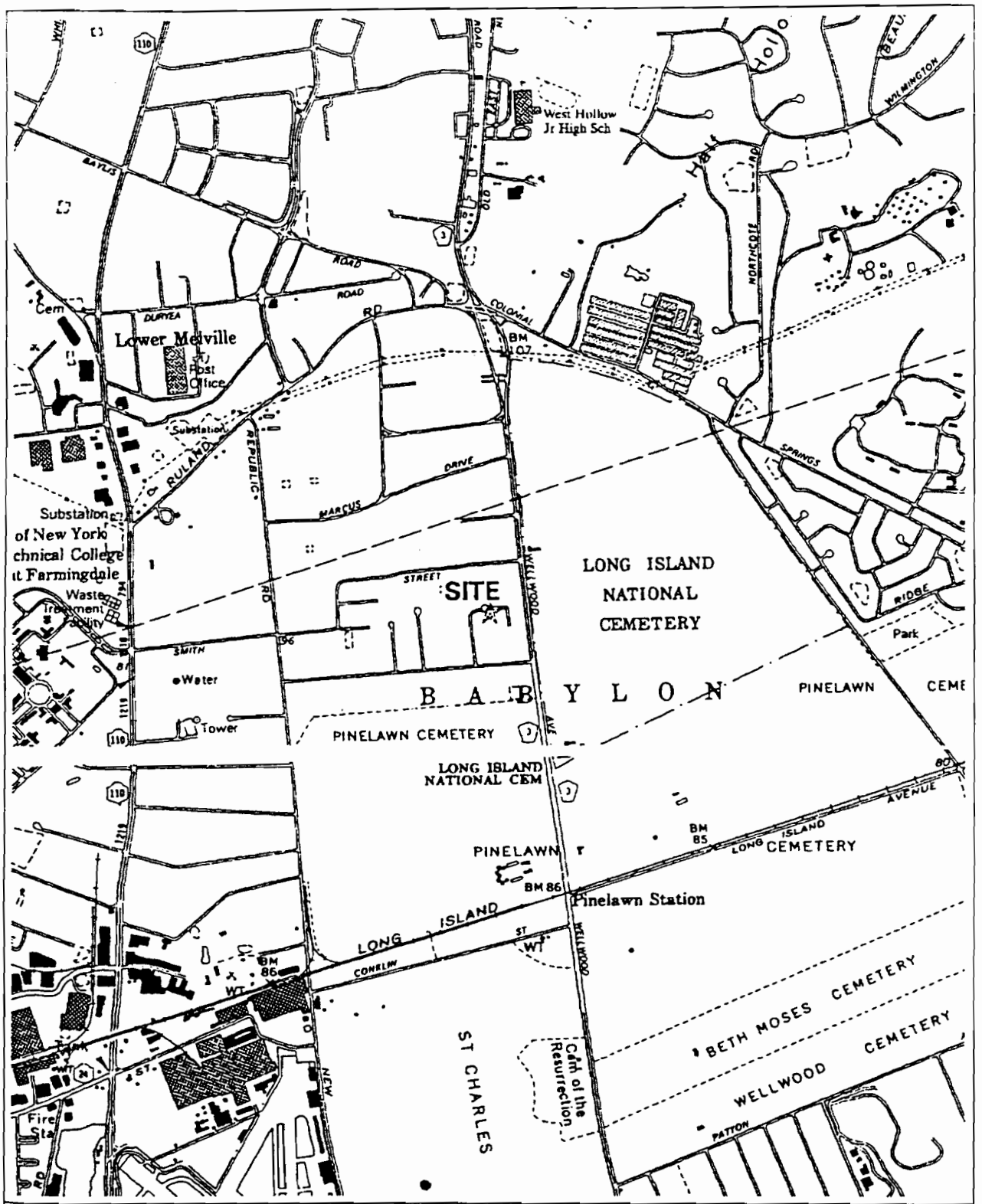
On this 25th day of January, 1999, before me personally came Joseph Montgomery, to me known, who being duly sworn, did depose and say that Joseph Montgomery resides in Lynbrook, NY; that Joseph Montgomery is a member and/or officer of the Limited Liability Company described in and which executed the foregoing instrument; and that Joseph Montgomery signed his name on behalf of LJM Associates, LLC and was authorized to do so by LJM Associates, LLC.

William J. McLaughlin
Notary Public

WILLIAM J. MCLAUGHLIN
Notary Public, State of New York
No. 4806469
Qualified in Nassau County
Commission Expires April 30, 2000

EXHIBIT "A"

Map of Site



Site Location Map

152021 Cantor Brothers, Inc.

NYSDOT Planimetric Quadrangle(s):
HUNTINGTON, AMITYVILLE

N

0 500 1000 1500 2000
FEET

Scale 1:24,000

EXHIBIT "B"

Department-Approved Work Plan

EXHIBIT "C"

Final Agreement and Stipulated Order
In re Cantor Bros., Inc. v. State of New York
United States Bankruptcy Court- Eastern District of New York
Bankruptcy Case No. 893-80853-478
Adversary Proceedings No. 894-8182-478

RECEIVED
JAN - 5 1998
Bureau of Eastern Remedial Action

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK

	In Proceedings for a Reorganization Under Chapter 11
In re Cantor Bros., Inc., Debtor.	Bankruptcy Case No. 893-80853-478
	Judge Eisenberg

State of New York and Michael D. Zagata as Commissioner of Environmental Conservation, Plaintiffs,	
-against-	Adversary Proceedings No. 894-8182-478
Cantor Bros., Inc., Defendant.	

FINAL AGREEMENT AND STIPULATED ORDER

WHEREAS, Cantor Bros., Inc. (the "Debtor"), conducted business and commercial activities from on or before 1975 to April 1993 on property located at 50 Engineers Lane, Farmingdale, New York (the "Site");

WHEREAS, the Site has been listed in the Registry of Inactive Hazardous Waste Disposal Sites in New York State (the "Registry") as site number 1-52-021, and is classified by the New York State Department of Environmental Conservation ("NYSDEC" or "Department") as a class "2" site.

WHEREAS, Cantor Bros. consented to the entry of an order by the New York State Commissioner of Environmental

Conservation, dated March 25, 1992 ("Administrative Order"), requiring the Debtor to develop and implement a remedial investigation and feasibility study ("RI/FS") and appropriate interim remedial measures with respect to the contamination at the Site;

WHEREAS, Cantor Bros. filed a petition under Chapter 11 of the Bankruptcy Code on February 16, 1993, in the United States Bankruptcy Court for the Eastern District of New York;

WHEREAS, the NYSDEC filed an administrative proof of claim (the "NYSDEC Administrative claim") on March 7, 1994, asserting that the costs incurred and to be incurred by the Debtor in discharging its responsibilities and obligations under the Administrative Order and/or statutes relating to the protection of the environment, including the costs of implementing the final cleanup remedy for the Site selected by the NYSDEC, and the costs incurred or to be incurred by the NYSDEC for purposes of oversight or as a consequence of the Debtor's failure to comply with its obligations under the Administrative Order or applicable environmental statutes, including the obligation to implement the remedy, are entitled to administrative expense status and priority;

WHEREAS, the State of New York filed an adversary proceeding (the "Adversary Complaint") against the Debtor on April 19, 1994, adversary proceeding number 894-8182-478, in which New York State seeks, inter alia, the entry of a judgment directing the Debtor to comply with the Administrative Order and,

in addition, New York seeks the entry of a judgment declaring that the costs of compliance with the Administrative Order, including costs incurred by the State of New York, are entitled to administrative status and priority;

WHEREAS, the Debtor filed an Answer to New York State's Adversary Complaint asserting, inter alia, that the NYSDEC holds an unliquidated contingent claim that has not been classified as an administrative claim and that the Debtor cannot be compelled to comply with the Administrative Order until there is an order from the Bankruptcy Court authorizing and directing it to comply; that if the Administrative Order is deemed to be an administrative claim, it must be treated pari passu with any and all administrative claims; and that compliance with the Administrative Order cannot be an administrative expense unless the Site poses an imminent and identifiable danger to the public safety;

WHEREAS, it is the position of the State of New York that, inter alia, the Debtor is obligated to comply with the terms of the Administrative Order and that its failure to comply subjects the Debtor to civil and criminal sanctions and penalties under the New York Environmental Conservation Law;

WHEREAS, in order to advance the resolution of these matters and thereby minimize litigation costs, the parties negotiated and entered into an interim agreement and stipulated order (the "Interim Agreement and Order"), which the Court approved on June 26, 1996, which provided, inter alia, that

Debtor retain a contractor, Handex of New York, Inc. ("Handex"), to implement the following work items required under the Administrative Order, in accordance with the terms and conditions of performance in the Interim Agreement and Order: soil borings and laboratory analysis; groundwater sampling; data validation; waste management; preparation of a report summarizing Handex's investigation pursuant to the Interim Agreement and Order (the "Handex Report"); site structure investigation; and site history;

WHEREAS, NYSDEC accepts the Handex Report as providing sufficient information to enable the design of appropriate remedial measures sufficient to resolve the NYSDEC's claims against the Debtor in this adversary proceeding if the remedial measures are implemented;

WHEREAS, the Handex Report indicates that the soil beneath the former factory area of the Site is contaminated with volatile organic compounds, including, but not limited to, total xylene, toluene, and tetrachloroethylene ("PCE"), for which the most appropriate remedial technology would be a soil vapor extraction ("SVE") system, and the sediments in the storm drains are contaminated with semi-volatile organic compounds, which would most appropriately be remediated through removal and disposal of the liquids and the sediments in the storm drains;

WHEREAS, based on the Handex Report and the other information now known to it (and barring the discovery of contrary information), NYSDEC has concluded that this adversarial proceeding can be resolved if Debtor: (1) pursuant to approved

Work and Design Plans, installs and operates an SVE system to decrease the levels of contaminants in the ground beneath the former factory area to levels that meet the criteria in NYSDEC Technical Assistance and Guidance Memorandum ("TAGM") No. 4046 (a copy of which is annexed hereto as Exhibit A); (2) without the necessity of having an approved Work or Design Plan, cleans storm drains 1 through 10 by removing and appropriately disposing of the liquids and the sediments contained therein; and (3) seals the four monitoring wells associated with the underground storage tank area with grout;

WHEREAS, the parties to this agreement and stipulated order ("Agreement and Order") desire to advance the resolution of these matters and thereby avoid additional litigation costs;

WHEREAS, it is the intention of the parties that the work required under this Agreement and Order will remediate the Site to the point where it can be de-listed from the Registry, and the work has been planned to achieve that goal;

WHEREAS, the parties agree that nothing in this Order shall be construed to limit the right of the Debtor or any other party to file a petition with the Commissioner pursuant to ECL Section 27-1305(4)(b) and 6 NYCRR Section 375-1.9 to de-list the site from the Registry or to change its classification; and

WHEREAS, notwithstanding Debtor's agreement to carry out the terms of this Agreement and Order, Debtor does not admit or acknowledge any liability, fault, or wrongdoing or violation

of law, regulation or permit of any kind whatsoever in any way related to the Site.

NOW, THEREFORE, upon the consent and agreement of the parties by their attorneys, it is hereby ORDERED:

1. The Debtor shall retain a qualified contractor or contractors who shall complete the remedial work ("Remedial Work") and other obligations set forth below, in accordance with the terms and conditions herein. (For purposes of simplicity, the term "Debtor" shall hereinafter be read to encompass the Debtor's contractor or contractors.)

REMEDIAL WORK

Former Factory Area and Grouting of Monitoring Wells

2. The Debtor shall develop a work plan for the SVE system and grouting of the monitoring wells (the "Work Plan") and submit the Work Plan to NYSDEC within fifteen (15) days of approval of this Agreement and Order by the Court. The Work Plan shall include, but need not be limited to:

(a) A general description of the scope of work to install, test, operate and maintain the SVE system;

(b) the Site Quality Assurance Project Plan contained in the Handex Report with any modifications necessary for the SVE Work Plan;

(c) the Health and Safety Plan contained in the Handex Report with any modifications necessary for the SVE Work Plan;

(d) a description of the scope of work to grout the four (4) existing poly-vinyl chloride (PVC) monitoring wells associated with the underground storage tank area (as depicted on the Site map attached hereto as Exhibit B); and

(e) a chronological description of the anticipated remedial activities, together with a schedule for the performance of these activities.

3. The NYSDEC shall notify Debtor in writing of its approval or disapproval of the Work Plan, and, if disapproving, provide written comments explaining the reasons for disapproval.

4. If Debtor requires clarification of any of the reasons specified by the Department for its disapproval, or disagrees with the stated basis for disapproval, Debtor shall request clarification in writing, or request reconsideration of the denial for reasons stated by Debtor in writing, within ten (10) days after receiving written notice that Debtor's submittal has been disapproved. Within fifteen (15) days after receiving written notice that Debtor's submittal has been disapproved, or fifteen (15) days after receiving the Department's response to a timely request for clarification or reconsideration, Debtor shall make a revised submittal to the NYSDEC that addresses and resolves all of the NYSDEC's stated reasons for disapproving the first submittal. After receipt of any revised Work Plan submittal, the NYSDEC shall notify Debtor in writing of its approval or disapproval. If the NYSDEC disapproves the revised Work Plan, Debtor shall be in violation of this Agreement and

Order and the NYSDEC may take any action or pursue whatever rights it has pursuant to any provision of statutory or common law, or under the terms of the Stipulation and Order. (Pursuant to Paragraph 22, NYSDEC's approval or disapproval shall be final and binding, subject only to challenge as arbitrary and capricious by motion upon proper notice.)

5. Within thirty (30) days of receipt of written notification that the Work Plan has been approved, Debtor shall submit a design plan and specifications (the "Design Plan") for the SVE system which shall include:

(a) a minimum of two (2) vapor extraction wells that will capture volatile organic contamination from the area under the chemical manufacturing area and extending to the trash dumpster area, as depicted on Exhibit B hereto;

(b) an SVE operation and maintenance (O & M) plan that provides for:

(1) remediation of the soil in this area until it meets the criteria set forth in TAGM 4046;

(2) operation of the SVE system until extraction well air samples are non-detect or asymptotic through pulsing; and

(3) a sampling program that verifies the results of the SVE system operation including, but not necessarily limited to, confirmatory soil sampling and SVE system effluent testing.

6. The Design Plan shall be prepared and certified by a professional engineer licensed to practice by the State of New York.

7. The NYSDEC shall notify Debtor in writing of its approval or disapproval of the Design Plan, and, if disapproving, provide written comments explaining the reasons for disapproval.

8. If Debtor requires clarification of any of the reasons specified by the NYSDEC for its disapproval, or disagrees with the stated basis for disapproval, Debtor shall request clarification in writing, or request reconsideration of the denial for reasons stated by Debtor in writing, within ten (10) days after receiving written notice that Debtor's submittal has been disapproved. Within fifteen (15) days after receiving written notice that Debtor's submittal has been disapproved, or fifteen (15) days after receiving the Department's response to a timely request for clarification or reconsideration, Debtor shall make a revised submittal to the NYSDEC that addresses and resolves all of the NYSDEC's stated reasons for disapproving the first submittal. After receipt of any revised Design Plan submittal, the NYSDEC shall notify Debtor in writing of its approval or disapproval. If the NYSDEC disapproves the revised Design Plan, Debtor shall be in violation of this Agreement and Order and the NYSDEC may take any action or pursue whatever rights it has pursuant to any provision of statutory or common law, or under the terms of the Stipulation and Order. (Pursuant to Paragraph 22, NYSDEC's approval or disapproval shall be final

and binding, subject only to challenge as arbitrary and capricious by motion upon proper notice.)

9. Debtor shall commence implementation of the approved Work and Design Plans within fifteen (15) days of receiving written notification of NYSDEC's approval of the Design Plan, and shall implement the Plans in accordance with their terms until the remediation objectives specified therein are achieved.

10. Should circumstances warrant, Debtor may apply, in writing, to NYSDEC for permission to deviate from the approved Work and Design Plans. Debtor must obtain prior written approval from NYSDEC prior to deviating from the approved Plans in any material way. The NYSDEC shall respond to the request to deviate from the approved Plans within a reasonable amount of time. The period during which Debtor is required to complete the task which is the subject of the request to deviate shall be extended by the amount of time the NYSDEC takes to approve or disapprove the requested deviation. NYSDEC shall not unreasonably withhold its approval.

11. Within 30 days after completion of the Site remediation specified in the approved Plans, Debtor shall submit written notification to the NYSDEC that the Site remediation has been completed in accordance with the approved Plans. This written notification shall be certified by a professional engineer licensed to practice by the State of New York, and shall describe any changes to the SVE system design or other deviations

from the approved Work and Design Plans during construction and remediation.

Storm Drains

12. Debtor shall remove, sample and appropriately dispose of the water in the storm drains. Debtor shall remove the sediments and any other material in storm drains 1 through 10 to the base of the concrete drainage structure, and sample the removed material with the Toxicity Characteristic Leaching Procedure ("TCLP") to determine proper disposal. Debtor shall then dispose of the removed material as required by applicable rules and regulations and the TCLP results.

13. Debtor shall commence the storm drain remediation no later than thirty (30) days from the creation and funding of the escrow account referred to in Paragraph 17 below.

14. All manifests and analytic results generated in connection with the testing and removal of material from the storm drains shall be submitted to NYSDEC in report form.

15. Debtor shall backfill storm drains 1 through 10 to maintain structural integrity, with clean porous sand and/or gravel.

PAYMENT FOR CLEANUP WORK AND DISTRIBUTION OF REMAINING FUNDS

16. The total cost of performing the work required by this Agreement and Order will not exceed the sum of two hundred thousand dollars ($200,000). The $200,000 cost figure referred to above is derived from cost estimates obtained by the Debtor from its prospective contractor, EEA, Inc. ("EEA"), with an

allocation for contingencies added to the estimated cost of completing the work.

17. Upon approval of this Agreement and Order by the Court, the Debtor shall place the sum of $200,000 into an escrow account which shall be dedicated solely toward remediation of the Site until completion of the Remedial Work required hereunder, and thereafter distributed in accordance with the orders and directives of the Court. The law firm of Platzer, Swergold, Karlin, Levine, Goldberg & Jaslow, LLP shall be the escrow agent ("Escrow Agent"). This Agreement and Order shall be provided to the Escrow Agent and Paragraphs 17 through 21 incorporated by reference into, and made part of, the escrow agreement. Upon execution of the contract between the Debtor and EEA (the "EEA Contract"), the Escrow Agent shall pay to EEA an initial payment toward removal of the soil and liquids from the drainage structures in the sum of thirteen thousand dollars ($13,000). Upon receipt of written notice from NYSDEC that NYSDEC has approved the Design Plan, the Escrow Agent shall pay to EEA an initial payment of $16,000 toward construction of the SVE system. NYSDEC shall, simultaneously with notifying EEA that the Design Plan has been approved, notify the Escrow Agent that NYSDEC has approved the Design Plan.

18. In addition to the initial payments referenced in Paragraph 17, EEA shall receive progress payments ("Progress Payments") from the Escrow Agent as EEA completes various items of the Remedial Work, in accordance with the schedule of Progress

Payments set forth in Exhibit C hereto. The Escrow Agent shall withhold 5% retainage from Progress Payments pending completion of the Remedial Work.

19. The EEA Contract shall provide that payment will be made to EEA in accordance with Paragraphs 17 through 20 herein, including Exhibit C hereto.

20. The EEA contract shall additionally provide that:

a. EEA shall submit invoices for Progress Payments to the Escrow Agent, with simultaneous copies to NYSDEC and the other signatory parties hereto. NYSDEC shall determine whether payment of the Progress Payment is proper in accordance with the terms of this Agreement and Order, including Exhibit C hereto, and approve or disapprove the Progress Payment accordingly. If NYSDEC approves the Progress Payment, it shall notify the Escrow Agent, EEA and other parties hereto in writing. The Escrow Agent shall then pay EEA the approved Progress Payment amount.

b. If NYSDEC disapproves an invoiced Progress Payment, NYSDEC shall provide written notice of its reasons for such determination, specifying what EEA must do to complete the work item for which EEA is seeking a Progress Payment.

c. EEA shall have the right to seek a revision of the schedule of Progress Payments, including an upward revision of the amount due for a particular item of

Remedial Work and the total amount due to EEA under the EEA Contract, for good cause shown. Good cause shall mean due to unexpected and unforeseen occurrences necessitating additional costs to complete the Remedial Work required under the EEA Contract. Known additional costs for which payment will be made include the cost of electricity and the cost of replacing and properly disposing of carbon filters.

d. If both the Debtor and NYSDEC determine that EEA has shown good cause, the requested revision of the EEA Contract will be approved, and the Escrow Agent so instructed.

e. Unless otherwise approved by NYSDEC, all equipment dedicated for use in the Remedial Work shall be new. Equipment used solely in the construction process, such as tools, shall not be considered dedicated for use in the Remedial Work.

21. After NYSDEC has approved the work required hereunder as complete, and EEA has been fully paid for that work, including retainage, the Escrow Agent shall distribute any remaining funds in the escrow account in accordance with the orders and directives of the Court.

TERMS AND CONDITIONS FOR THE PERFORMANCE OF THE REMEDIAL WORK

22. All Remedial Work required hereunder shall be subject to NYSDEC supervision and approval. In the event that the Debtor and the NYSDEC disagree, then the determination of the

NYSDEC shall be final and binding, provided that the determination of the NYSDEC does not require the total expenditures for the work performed pursuant to this Agreement and Order to exceed $200,000. Debtor and creditor Apple Bank For Savings ("Apple") reserve the right to challenge, by motion upon proper notice, any determination by the NYSDEC that is arbitrary and capricious. The filing of a motion by the Debtor or creditor Apple challenging a NYSDEC determination shall not stay or delay the expeditious implementation of the disputed work item by the Debtor, unless such delay is agreed to by the NYSDEC in writing, or implementation of the disputed work item is stayed by a court pending its determination whether the item is "arbitrary and capricious."

23. The Debtor shall provide the NYSDEC with written notice of all fieldwork. Such written notice shall be delivered to the NYSDEC no less than five days prior to the start of the fieldwork referred to in the notice.

24. Following consultation with Debtor, the NYSDEC may require Debtor to modify and/or amplify and expand the work required under the approved Work and Design Plans if the NYSDEC determines, as a result of reviewing data generated by an activity required under this Agreement and Order, or as a result of reviewing any other data or facts, that such modification, amplification and/or expansion is necessary, unless the modification, amplification and/or expansion will cause the total cost of performing the Remedial Work required to implement this

Agreement and Order to exceed the $200,000 sum approved by the Court for implementation.

25. Debtor shall retain professional consultants, contractors, laboratories, quality assurance/quality control personnel and data validators acceptable to the NYSDEC to perform the technical, engineering and analytical obligations required by this Agreement and Order (collectively "Debtor's consultant(s)"). The experience, capabilities and qualifications of the firms or individuals selected by Debtor shall be submitted to the NYSDEC upon entry of this Agreement and Order (although nothing herein shall preclude Debtor from making this submission prior to entry of this Agreement and Order).

26. The NYSDEC shall have the right to obtain split samples, duplicate samples, or both, of all substances and materials sampled by Debtor, and the NYSDEC also shall have the right to take its own samples. Debtor shall make available to the NYSDEC the results of all sampling and/or tests or other data generated by Debtor with respect to implementation of this Agreement and Order and shall submit these results in the progress reports required by this Agreement and Order. The NYSDEC shall make available to Debtor the results of all samples and/or tests or other data generated by the NYSDEC with respect to the site which is the subject of this Agreement and Order.

27. Debtor shall obtain whatever permits, easements, rights-of-way, rights-of-entry, approvals, or authorizations are necessary to perform Debtor's obligations under this Agreement

and Order. If, after Debtor's documented, good faith best efforts, Debtor fails to obtain these authorizations, the NYSDEC may take any appropriate action necessary to secure these authorizations.

28. Debtor and its successors and assigns shall be bound by this Agreement and Order. Debtor, through its officers, directors, agents, servants, employees, successors and assigns, shall be responsible for implementing the terms of this Agreement and Order. Any change in ownership or corporate status of Debtor including, but not limited to, any transfer of assets or real or personal property shall in no way alter Debtor's responsibilities under this Agreement and Order.

29. Debtor shall provide a copy of this Agreement and Order to each contractor hired to perform work required by this Agreement and Order and to each person representing Debtor with respect to the Site and shall condition all contracts entered into hereunder upon performance in conformity with the terms of this Agreement and Order. Debtor or Debtor's contractor(s) shall provide written notice of this Agreement and Order to all subcontractors hired to perform any portion of the work required by this Agreement and Order. Debtor shall be responsible for ensuring that Debtor's contractors and subcontractors perform the work to be done under this Agreement and Order in accordance herewith.

CONVERSION TO A VOLUNTARY CLEANUP WORK PLAN

30. If Apple or any third party who qualifies for "volunteer" status (the "Volunteer") under the NYSDEC's Voluntary Cleanup Program (the "Program") applies for and is accepted as a volunteer to cleanup the Site for industrial use under the Program, NYSDEC shall, consistent with its legal authority, accept this Agreement and Order and any approved Work and Design Plans submitted to NYSDEC by the Debtor pursuant to this Agreement and Order as an approved work plan for inclusion in a voluntary third party cleanup agreement for the Site between the Volunteer and the NYSDEC.

31. In the event that a party qualifies and is subsequently approved as a Volunteer for cleanup of the Site under the Program, the EEA Contract shall be assigned by the Debtor, at the option of the Volunteer, to the Volunteer, who shall have all of the rights and obligations of the assignor under the EEA Contract. In the event of an assignment to a Volunteer, the escrow fund established hereunder shall remain dedicated to the cleanup of the Site until the cleanup is complete, as provided herein.

PETITION TO DE-LIST

32. Upon achievement of the cleanup goals of this Agreement, NYSDEC will, consistent with its legal authority, begin the process necessary to reclassify or de-list the Site from the Registry, unless Debtor or any other party has already begun the process. Any costs attributable to the

reclassification or de-listing process will not be paid by the Debtor or from the escrow account.

MISCELLANEOUS

33. This Agreement and Order shall supplement, and not supersede the Interim Agreement and Order. However, the terms of this Agreement and Order, including any previous orders, stipulations or agreements incorporated herein, shall constitute the complete and entire Agreement and Order between Debtor and the NYSDEC concerning implementation of the Site remediation required hereunder. No term, condition, understanding, or agreement purporting to modify or vary any term of this Agreement and Order shall be binding unless made in writing and subscribed by the party to be bound. No informal advice, guidance, suggestion, or comment by the NYSDEC regarding any report, proposal, plan, specification, schedule, or any other submittal by Debtor shall be construed as relieving Debtor of its obligation to obtain such formal approvals as may be required by this Agreement and Order.

34. The caption of the State's adversary proceeding shall be changed to substitute as a party plaintiff the current NYSDEC Commissioner by deleting "Michael D. Zagata as Commissioner of the New York State Department of Environmental Conservation" and inserting in its place "John P. Cahill as Commissioner of the New York State Department of Environmental Conservation."

35. All references to "professional engineer" in this Agreement and Order are to an individual registered as a professional engineer in accordance with Article 145 of the New York State Education Law.

36. All references to "days" in this Agreement and Order are to calendar days unless otherwise specified.

37. The section headings set forth in this Agreement and Order are included for convenience of reference only and shall be disregarded in the construction and interpretation of any of the provisions of this Agreement and Order.

38. This Agreement and Order is subject to the approval of the United States Bankruptcy Court.

39. Any notices or reports required to be provided herein shall be in writing and sent by regular mail, or by hand delivery addressed as follows:

If to the Debtor:

Platzer, Swergold, Karlin, Levine, Goldberg
& Jaslow, LLP
150 East 52nd Street
New York, New York 10016
Attention: Michele K. Jaspan, Esq.

-and-

Martin Cantor
16 Foothill Road
East Northport, NY 11731

-and-

Cahn Wishod & Lamb, LLP
534 Broadhollow Road
Melville, New York 11747-9034
Attention: Frederick Eisenbud, Esq.

If to Apple:

Apple Bank For Savings
277 Park Avenue
New York, New York 10172
Attention: Michael B. Greene

With a copy to:

Baer Marks & Upham LLP
805 Third Avenue
New York, NY 10022
Attention: Jay L. Gottlieb, Esq.

If to the State:

New York State Department of Law
120 Broadway
New York, New York 10271
Attention: Andrew J. Gershon, Esq.

-and-

New York State Department of Environmental Conservation/DER
50 Wolf Road
Albany, New York 12233-7010
Attention: Steven M. Scharf, P.E.

-and-

New York State Department of Environmental Conservation/DEE
200 White Plains Road, 5th Fl.
Tarrytown, New York 10591-5805
Attention: Edward Devine, Esq.

40. In addition to the notices and reports that must be provided to Apple pursuant to Paragraph 39, copies of any correspondence between and among the Escrow Agent, Debtor and NYSDEC concerning implementation of this Agreement and Order shall be provided to Apple. In the event such correspondence includes lengthy exhibits or attachments, the party initiating the correspondence may omit such exhibits or attachments,

provided this omission is noted and Apple is provided with copies if it so requests.

41. This Agreement and Order shall survive dismissal of this case. The parties consent to the exclusive jurisdiction of the New York State Supreme Court for the County of New York, or, if a federal cause of action arises, of the United States District Court for the Southern District of New York, to decide any case or controversy arising out of this Agreement and Order.

42. This Agreement and Order is in full and final settlement of this adversary proceeding, and any and all claims filed in connection therewith by the NYSDEC and Apple.

SO AGREED:

Dated: New York, New York
October 31, 1997

DENNIS C. VACCO, ATTORNEY GENERAL FOR THE STATE OF NEW YORK
ATTORNEY FOR PLAINTIFFS

By: Andrew J. Gershon
ANDREW J. GERSHON (AG/5141)
Assistant Attorney General
120 Broadway
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By: _____
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SO ORDERED, this 2
day of ~~October~~ December, 1997

_____
UNITED STATES BANKRUPTCY JUDGE

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Exhibit A

New York State Department of Environmental Conservation

MEMORANDUM

TO: Regional Haz. Waste Remediation Engineers, Bureau Dirs. & Section Chiefs
FROM: Michael J. O'Toole, Jr., Director, Div. of Hazardous Waste Remediation
SUBJECT: DIVISION TECHNICAL AND ADMINISTRATIVE GUIDANCE MEMORANDUM: DETERMINATION OF SOIL CLEANUP OBJECTIVES AND CLEANUP LEVELS
DATE: JAN 24 1994

The cleanup goal of the Department is to restore inactive hazardous waste sites to predisposal conditions, to the extent feasible and authorized by law. However, it is recognized that restoration to predisposal conditions will not always be feasible.

1. INTRODUCTION:

This TAGM provides a basis and procedure to determine soil cleanup levels at individual Federal Superfund, State Superfund, 1986 EQBA Title 3 and Responsible Party (RP) sites, when the Director of the DHWR determines that cleanup of a site to predisposal conditions is not possible or feasible.

The process starts with development of soil cleanup objectives by the Technology Section for the contaminants identified by the Project Managers. The Technology Section uses the procedure described in this TAGM to develop soil cleanup objectives. Attainment of these generic soil cleanup objectives will, at a minimum, eliminate all significant threats to human health and/or the environment posed by the inactive hazardous waste site. Project Managers should use these cleanup objectives in selecting alternatives in the Feasibility Study (FS). Based on the proposed selected remedial technology (outcome of FS), final site specific soil cleanup levels are established in the Record of Decision (ROD) for these sites.

It should be noted that even after soil cleanup levels are established in the ROD, these levels may prove to be unattainable when remedial construction begins. In that event, alternative remedial actions or institutional controls may be necessary to protect the environment.

2. BASIS FOR SOIL CLEANUP OBJECTIVES:

The following alternative bases are used to determine soil cleanup objectives:

(a) Human health based levels that correspond to excess lifetime

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cancer risks of one in a million for Class A[1] and B[2] carcinogens, or one in 100,000 for Class C[3] carcinogens. These levels are contained in USEPA's Health Effects Assessment Summary Tables (HEASTs) which are compiled and updated quarterly by the NYSDEC's Division of Hazardous Substances Regulation;

(b) Human health based levels for systemic toxicants, calculated from Reference Doses (RfDs). RfDs are an estimate of the daily exposure an individual (including sensitive individuals) can experience without appreciable risk of health effects during a lifetime. An average scenario of exposure in which children ages one to six (who exhibit the greatest tendency to ingest soil) is assumed. An intake rate of 0.2 gram/day for a five-year exposure period for a 16-kg child is assumed. These levels are contained in USEPA's Health Effects Assessment Summary Tables (HEASTs) which are compiled and updated quarterly by the NYSDEC's Division of Hazardous Substances Regulation;

(c) Environmental concentrations which are protective of groundwater/drinking water quality; based on promulgated or proposed New York State Standards;

(d) Background values for contaminants; and

(e) Detection limits.

A recommendation on the appropriate cleanup objective is based on the criterion that produces the most stringent cleanup level using criteria a, b, and c for organic chemicals, and criteria a, b, and d for heavy metals. If criteria a and/or b are below criterion d for a contaminant, its background value should be used as the cleanup objective. However, cleanup objectives developed using this approach must be, at a minimum, above the method detection limit (MDL) and it is preferable to have the soil cleanup objectives above the Contract Required Quantitation Limit (CRQL) as defined by NYSDEC. If the cleanup objective of a compound is "non-detectable", it should mean that it is not detected at the MDL. Efforts should be made to obtain the best MDL detection possible when selecting a laboratory and analytical protocol.

The water/soil partitioning theory is used to determine soil cleanup objectives which would be protective of groundwater/drinking water quality for its best use. This theory is conservative in nature and assumes that contaminated soil and groundwater are in direct contact. This theory is based upon the ability of organic matter in soil to adsorb organic chemicals. The approach predicts the maximum amount of contamination that may remain in soil so that leachate from the contaminated soil will not violate groundwater and/or drinking water

standards.

(1) Class A are proved human carcinogens
(2) Class B are probable human carcinogens
(3) Class C are possible human carcinogens

This approach is not used for heavy metals, which do not partition appreciably into soil organic matter. For heavy metals, eastern USA or New York State soil background values may be used as soil cleanup objectives. A list of values that have been tabulated is attached. Soil background data near the site, if available, is preferable and should be used as the cleanup objective for such metals. Background samples should be free from the influences of this site and any other source of contaminants. Ideal background samples may be obtained from uncontaminated upgradient and upwind locations.

3. DETERMINATION OF SOIL CLEANUP GOALS FOR ORGANICS IN SOIL FOR PROTECTION OF WATER QUALITY

Protection of water quality from contaminated soil is a two-part problem. The first is predicting the amount of contamination that will leave the contaminated media as leachate. The second part of the problem is to determine how much of that contamination will actually contribute to a violation of groundwater standards upon reaching and dispersing into groundwater. Some of the contamination which initially leaches out of soil will be absorbed by other soil before it reaches groundwater. Some portion will be reduced through natural attenuation or other mechanism.

PART A: PARTITION THEORY MODEL

There are many test and theoretical models which are used to predict leachate quality given a known value of soil contamination. The Water-Soil Equilibrium Partition Theory is used as a basis to determine soil standard or contamination limit for protection of water quality by most of the models currently in use. It is based on the ability of organic carbon in soil to adsorb contamination. Using a water quality value which may not be exceeded in leachate and the partition coefficient method, the equilibrium concentration (Cs) will be expressed in the same units as the water standards. The following expression is used:

Allowable Soil Concentration $Cs = f \times Koc \times Cw$ . . . . (1)

Where: f = fraction of organic carbon of the natural soil medium.

Koc = partition coefficient between water and soil media. Koc can be estimated by the following equation:

log Koc = 3.64 - 0.55 log S

S = water solubility in ppm
Cw = appropriate water quality value from TOGS 1.1.1

Most Koc and S values are listed in the Exhibit A-1 of the USEPA Superfund Public Health Evaluation Manual (EPA/540/1-86/060). The Koc values listed in this manual should be used for the purpose. If the Koc value for a contaminant is not listed, it should be estimated using the above mentioned equation.

PART B: PROCEDURE FOR DETERMINATION OF SOIL CLEANUP OBJECTIVES

When the contaminated soil is in the unsaturated zone above the water table, many mechanisms are at work that prevent all of the contamination that would leave the contaminated soil from impacting groundwater. These mechanisms occur during transport and may work simultaneously. They include the following: (1) volatility, (2) sorption and desorption, (3) leaching and diffusion, (4) transformation and degradation, and (5) change in concentration of contaminants after reaching and/or mixing with the groundwater surface. To account for these mechanisms, a correction factor of 100 is used to establish soil cleanup objectives. This value of 100 for the correction is consistent with the logic used by EPA in its Dilution Attenuation Factor (DAF) approach for EP Toxicity and TCLP. (Federal Register/Vol. 55, No. 61, March 29, 1990/Pages 11826-27). Soil cleanup objectives are calculated by multiplying the allowable soil concentration by the correction factor. If the contaminated soil is very close (<3' - 5') to the groundwater table or in the groundwater, extreme caution should be exercised when using the correction factor of 100 (one hundred) as this may not give conservative cleanup objectives. For such situations the Technology Section should be consulted for site-specific cleanup objectives.

Soil cleanup objectives are limited to the following maximum values. These values are consistent with the approach promulgated by the States of Washington and Michigan.

1) Total VOCs $\leq$ 10 ppm.
2) Total Semi VOCs $\leq$ 500 ppm.
3) Individual Semi VOCs $\leq$ 50 ppm.
4) Total Pesticides $\leq$ 10 ppm.

One concern regarding the semi-volatile compounds is that some of these compounds are so insoluble that their Cs values are fairly large. Experience (Draft TOGS on Petroleum

Contaminated Soil Guidance) has shown that soil containing some of these insoluble substances at high concentrations can exhibit a distinct odor even though the substance will not leach from the soil. Hence any time a soil exhibits a discernible odor nuisance, it shall not be considered clean even if it has met the numerical criteria.

4. DETERMINATION OF FINAL CLEANUP LEVELS:

Recommended soil cleanup objectives should be utilized in the development of final cleanup levels through the Feasibility Study (FS) process. During the FS, various alternative remedial actions developed during the Remedial Investigation (RI) are initially screened and narrowed down to the list of potential alternative remedial actions that will be evaluated in detail. These alternative remedial actions are evaluated using the criteria discussed in TAGM 4030, Selection of Remedial Actions at Inactive Hazardous Waste Sites, revised May 15, 1990, and the preferred remedial action will be selected. After the detailed evaluation of the preferred remedial action, the final cleanup levels which can be actually achieved using the preferred remedial action must be established. Remedy selection, which will include final cleanup levels, is the subject of TAGM 4030.

Recommended soil cleanup objectives that have been calculated by the Technology Section are presented in Appendix A. These objectives are based on a soil organic carbon content of 1% (0.01) and should be adjusted for the actual organic carbon content if it is known. For determining soil organic carbon content, use attached USEPA method (Appendix B). Please contact the Technology Section, Bureau of Program Management for soil cleanup objectives not included in Appendix A.

Attachments

cc: T. Jorling
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Regional Engineers
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Regional Citizen Participation Spec.

APPENDIX A

TABLE 1

Recommended soil cleanup objectives (mg/kg or ppm)

Volatile Organic Contaminants

Contaminant	Partition coefficient Koc	Groundwater Standards/ Criteria Cw ug/l or ppb.	a Allowable Soil conc. ppm. Cs	b ** Soil Cleanup objectives to Protect GW Quality (ppm)	USEPA Health Based (ppm) Carcinogens	Systemic Toxicants	CRQL (ppb)	*** Rec.soil Cleanup Ob (ppm
Acetone	2.2	50	0.0011	0.11	N/A	8,000	10	0.2
Benzene	83	0.7	0.0006	0.06	24	N/A	5	0.0
Benzoic Acid	54*	50	0.027	2.7	N/A	300,000	5	2.7
2-Butanone	4.5*	50	0.003	0.3	N/A	4,000	10	0.3
Carbon Disulfide	54*	50	0.027	2.7	N/A	8,000	5	2.7
Carbon Tetrachloride	110*	5	0.006	0.6	5.4	60	5	0.6
Chlorobenzene	330	5	0.017	1.7	N/A	2,000	5	1.7
Chloroethane	37*	50	0.019	1.9	N/A	N/A	10	1.9
Chloroform	31	7	0.003	0.30	114	800	5	0.3
Dibromochloromethane	N/A	50	N/A	N/A	N/A	N/A	5	N/A
1,2-Dichlorobenzene	1,700	4.7	0.079	7.9	N/A	N/A	330	7.9
1,3-Dichlorobenzene	310 *	5	0.0155	1.55	N/A	N/A	330	1.5
1,4-Dichlorobenzene	1,700	5	0.085	8.5	N/A	N/A	330	8.5
1,1-Dichloroethane	30	5	0.002	0.2	N/A	N/A	5	0.2
1,2-Dichloroethane	14	5	0.001	0.1	7.7	N/A	5	0.1
1,1-Dichloroethene	65	5	0.004	0.4	12	700	5	0.4
1,2-Dichloroethene(trans)	59	5	0.003	0.3	N/A	2,000	5	0.3
1,3-dichloropropane	51	5	0.003	0.3	N/A	N/A	5	0.3
Ethylbenzene	1,100	5	0.055	5.5	N/A	8,000	5	5.5
113 Freon(1,1,2 Trichloro-1,2,2 Trifluoroethane)	1,230*	5	0.060	6.0	N/A	200,000	5	6.0
Methylene chloride	21	5	0.001	0.1	93	5,000	5	0.1
4-Methyl-2-Pentanone	19*	50	0.01	1.0	N/A	N/A	10	1.0
Tetrachloroethene	277	5	0.014	1.4	14	800	5	1.4
1,1,1-Trichloroethane	152	5	0.0076	0.76	N/A	7,000	5	0.8
1,1,2,2-Tetrachloroethane	118	5	0.006	0.6	35	N/A	5	0.6
1,2,3-trichloropropane	68	5	0.0034	0.34	N/A	80	5	0.4
1,2,4-Trichlorobenzene	670 *	5	0.034	3.4	N/A	N/A	330	3.4
Toluene	300	5	0.015	1.5	N/A	20,000	5	1.5
Trichloroethene	126	5	0.007	0.70	64	N/A	5	0.7
Vinyl chloride	57	2	0.0012	0.12	N/A	N/A	10	0.1
Xylenes	240	5	0.012	1.2	N/A	200,000	___	1.2

a. Allowable Soil Concentration Cs = f x Cw x Koc

b. Soil cleanup objective = Cs x Correction Factor (CF)

N/A is not available

* Partition coefficient is calculated by using the following equation:
log Koc = -0.55 log S + 3.64, where S is solubility in water in ppm.
All other Koc values are experimental values.

** Correction Factor (CF) of 100 is used as per TAGM #4046

*** As per TAGM #4046, Total VOCs < 10 ppm.

Note: Soil cleanup objectives are developed for soil organic carbon content (f) of 1% , and should be adjusted for the actual soil organic carbon content if it is known.

APPENDIX A (cont.)

TABLE 2

Recommended Soil Cleanup Objectives (mg/kg or ppm)

Semi-Volatile Organic Contaminants

Contaminant	Partition coefficient Koc	Groundwater Standards/ Criteria Cw ug/l or ppb.	a Allowable Soil conc. ppm. Cs	b ** Soil Cleanup objectives to Protect GW Quality (ppm)	USEPA Health Based (ppm) Carcinogens	USEPA Health Based (ppm) Systemic Toxicants	CRQL (ppb)	Rec.soil Clnup Objc (ppm)
Acenaphthene	4,600	20	0.9	90.0	N/A	5,000	330	50.0**
Acenaphthylene	2,056*	20	0.41	41.0	N/A	N/A	330	41.0
Aniline	13.8	5	0.001	0.1	123	N/A	330	0.1
Anthracene	14,000	50	7.00	700.0	N/A	20,000	330	50.0**
Benzo(a)anthracene	1,380,000	0.002	0.03	3.0	0.224	N/A	330	0.224 or
Benzo(a)pyrene	5,500,000	0.002(ND)	0.110	11.0	0.0609	N/A	330	0.061 or
Benzo(b)fluoranthene	550,000	0.002	0.011	1.1	N/A	N/A	330	1.1
Benzo(g,h,i)perylene	1,600,000	5	8.0	800	N/A	N/A	330	50.0**
Benzo(k)fluoranthene	550,000	0.002	0.011	1.1	N/A	N/A	330	1.1
bis(2-ethylhexyl)phthalate	8,706*	50	4.35	435.0	50	2,000	330	50.0**
Butylbenzylphthlate	2,430	50	1.215	122.0	N/A	20,000	330	50.0**
Chrysene	200,000	0.002	0.004	0.4	N/A	N/A	330	0.4
4-Chloroaniline	43 ****	5	0.0022	0.22	200	300	330	0.220 or
4-Chloro-3-methylphenol	47	5	0.0024	0.24	N/A	N/A	330	0.240 or
2-Chlorophenol	15*	50	0.008	0.8	N/A	400	330	0.8
Dibenzofuran	1,230*	5	0.062	6.2	N/A	N/A	330	6.2
Dibenzo(a,h)anthracene	33,000,000	50	1,650	165,000	0.0143	N/A	330	0.014 or
3,3'-Dichlorobenzidine	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
2,4-Dichlorophenol	380	1	0.004	0.4	N/A	200	330	0.4
2,4-Dinitrophenol	38	5	0.002	0.2	N/A	200	1,600	0.200 or
2,6 Dinitrotoluene	198*	5	0.01	1.0	1.03	N/A	330	1.0
Diethylphthlate	142	50	0.071	7.1	N/A	60,000	330	7.1
Dimethylphthlate	40	50	0.020	2.0	N/A	80,000	330	2.0
Di-n-butyl phthalate	162*	50	0.081	8.1	N/A	8,000	330	8.1
Di-n-octyl phthlate	2,346*	50	1.2	120.0	N/A	2,000	330	50.0**
Fluoranthene	38,000	50	19	1900.0	N/A	3,000	330	50.0**
Fluorene	7,300	50	3.5	350.0	N/A	3,000	330	50.0**
Hexachlorobenzene	3,900	0.35	0.014	1.4	0.41	60	330	0.41
Indeno(1,2,3-cd)pyrene	1,600,000	0.002	0.032	3.2	N/A	N/A	330	3.2
Isophorone	88.31*	50	0.044	4.40	1,707	20,000	330	4.40
2-methylnaphthalene	727*	50	0.364	36.4	N/A	N/A	330	36.4
2-Methylphenol	15	5	0.001	0.1	N/A	N/A	330	0.100 or
4-Methylphenol	17	50	0.009	0.9	N/A	4,000	330	0.9
Naphthalene	1,300	10	0.130	13.0	N/A	300	330	13.0
Nitrobenzene	36	5	0.002	0.2	N/A	40	330	0.200 or
2-Nitroaniline	86	5	0.0043	0.43	N/A	N/A	1,600	0.430 or
2-Nitrophenol	65	5	0.0033	0.33	N/A	N/A	330	0.330 or
4-Nitrophenol	21	5	0.001	0.1	N/A	N/A	1,600	0.100 or
3-Nitroaniline	93	5	0.005	0.5	N/A	N/A	1,600	0.500 or
Pentachlorophenol	1,022	1	0.01	1.0	N/A	2,000	1,600	1.0 or ND
Phenanthrene	4,365*	50	2.20	220.0	N/A	N/A	330	50.0**
Phenol	27	1	0.0003	0.03	N/A	50,000	330	0.03 or ND
Pyrene	13,295*	50	6.65	665.0	N/A	2,000	330	50.0**
2,4,5-Trichlorophenol	89*	1	0.001	0.1	N/A	8,000	330	0.1

a. Allowable Soil Concentration Cs = f x Cw x Koc
b. Soil cleanup objective = Cs x Correction Factor (CF)

N/A is not available
MDL is Method Detection Limit

* Partition coefficient is calculated by using the following equation:
log Koc = -0.55 log S + 3.64, where S is solubility in water in ppm. Other Koc values are experimental values.

** Correction Factor (CF) of 100 is used as per TAGM #4046

*** As per TAGM #4046, Total VOCs < 10 ppm., Total Semi-VOCs < 500 ppm. and Individual Semi-VOCs < 50 ppm.

**** Koc is derived from the correlation Koc = 0.63 Kow (Determining Soil Response Action Levels..... EPA/540/2-89/057). Kow is obtained from the USEPA computer database 'MAIN'.

Note: Soil cleanup objectives are developed for soil organic carbon content (f) of 1%, and should be adjusted for the actual soil organic carbon content if it is known.

APPENDIX A (cont.)

TABLE 3

Recommended soil cleanup objectives (mg/kg or ppm)

Organic Pesticides / Herbicides and PCBs

Contaminant	Partition coefficient Koc	Groundwater Standards/ Criteria Cw ug/l or ppb.	a Allowable Soil conc. ppm. Cs	b ** Soil Cleanup objectives to Protect GW Quality (ppm)	USEPA Health Based (ppm) Carcinogens	Systemic Toxicants	CRQL (ppb)	*** Rec.soil Cleup Obj (ppm)
Aldrin	96,000	ND(<0.01)	0.005	0.5	0.041	2	8	0.04
alpha - BHC	3,800	ND(<0.05)	0.002	0.2	0.111	N/A	8	0.1
beta - BHC	3,800	ND(<0.05)	0.002	0.2	3.89	N/A	8	0.2
delta - BHC	6,600	ND(<0.05)	0.003	0.3	N/A	N/A	8	0.3
Chlordane	21,305*	0.1	0.02	2.0	0.54	50	80	0.54
2,4-D	104*	4.4	0.005	0.5	N/A	800	800	0.5
4,4'-DDD	770,000*	ND(<0.01)	0.077	7.7	2.9	N/A	16	2.9
4,4'-DDE	440,000*	ND(<0.01)	0.0440	4.4	2.1	N/A	16	2.1
4,4'-DDT	243,000*	ND(<0.01)	0.025	2.5	2.1	40	16	2.1
Dibenzo-P-dioxins(PCDD)								
2,3,7,8 TCDD	1709800	0.000035	0.0006	0.06	N/A	N/A	N/A	N/A
Dieldrin	10,700*	ND(<0.01)	0.0010	0.1	0.044	4	16	0.04
Endosulfan I	8,168*	0.1	0.009	0.9	N/A	N/A	16	0.9
Endosulfan II	8,031*	0.1	0.009	0.9	N/A	N/A	16	0.9
Endosulfan Sulfate	10,038*	0.1	0.01	1.0	N/A	N/A	16	1.0
Endrin	9,157*	ND(<0.01)	0.001	0.1	N/A	20	8	0.10
Endrin keytone	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
gamma - BHC (Lindane)	1,080	ND(<0.05)	0.0006	0.06	5.4	20	8	0.06
gamma - chlordane	140,000	0.1	0.14	14.0	0.54	5	80	0.54
Heptachlor	12,000	ND(<0.01)	0.0010	0.1	0.16	40	8	0.10
Heptachlor epoxide	220	ND(<0.01)	0.0002	0.02	0.077	0.8	8	0.02
Methoxychlor	25,637	35.0	9.0	900	N/A	400	80	***
Mitotane	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Parathion	760	1.5	0.012	1.2	N/A	500	8	1.2
PCBs	17,510*	0.1	0.1	10.0	1.0	N/A	160	1.0(Surfa 10(sub-s
Polychlorinated dibenzo-furans(PCDF)	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Silvex	2,600	0.26	0.007	0.7	N/A	600	330	0.7
2,4,5-T	53	35	0.019	1.9	N/A	200	330	1.9

a. Allowable Soil Concentration Cs = f x Cw x Koc

b. Soil cleanup objective = Cs x Correction Factor (CF)

N/A is not available

* Partition coefficient is calculated by using the following equation:
log Koc = -0.55 log S + 3.64, where S is solubility in water in ppm.
All other Koc values are experimental values.

** Correction Factor (CF) of 100 is used as per TAGM #4046

*** As per TAGM #4046, Total Pesticides < 10 ppm.

Note: Soil cleanup objectives are developed for soil organic carbon content (f) of 1% (5% for PCBs as per PCB guidance document), and should be adjusted for the actual soil organic Carbon content if it is known.

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TABLE 4

Recommended Soil Cleanup Objectives (mg/kg or ppm) for Heavy Metals

Contaminants	Protect Water Quality ppm	Eastern USA Background ppm	CRDL * mg/kg or ppm	Rec.soil Cleanup Objct. ***** (ppm)
Aluminum	N/A	33,000	2.0	SB
Antimony	N/A	N/A	0.6	SB
Arsenic	N/A	3-12 **	0.1	7.5 or SB
Barium	N/A	15-600	2.0	300 or SB
Beryllium	N/A	0-1.75	0.05	0.16(HEAST) or SB
Cadmium	N/A	0.1-1	0.05	1 or SB
Calcium	N/A	130 - 35,000 **	50.0	SB
Chromium	N/A	1.5-40 **	0.1	10 or SB
Cobalt	N/A	2.5-60 **	0.5	30 or SB
Copper	N/A	1-50	0.25	25 or SB
Cyanide	N/A	N/A	0.1	***
Iron	N/A	2,000 - 550,000	1.0	2,000 or SB
Lead	N/A	****	0.03	SB****
Magnesium	N/A	100 - 5,000	50.0	SB
Manganese	N/A	50 - 5,000	0.15	SB
Mercury	N/A	0.001-0.2	0.002	0.1
Nickel	N/A	0.5-25	0.4	13 or SB
Potassium	N/A	8,500 - 43,000 **	50.0	SB
Selenium	N/A	0.1-3.9	0.05	2 or SB
Silver	N/A	N/A	0.1	SB
Sodium	N/A	6,000 - 8,000	50.0	SB
Thallium	N/A	N/A	0.1	SB
Vanadium	N/A	1-300	0.5	150 or SB
Zinc	N/A	9-50	0.2	20 or SB

Note: Some forms of metal salts such as Aluminum Phosphide, Calcium Cyanide, Potassium Cyanide, Copper cyanide, Silver cyanide, Sodium cyanide, Zinc phosphide, Thallium salts, Vanadium pentoxide, and Chromium (VI) compounds are more toxic in nature. Please refer to the USEPA HEASTs database to find cleanup objectives if such metal salts are present in soil.

SB is site background
N/A is not available

* CRDL is contract required detection limit which is approx. 10 times the CRDL for water.

** New York State backgrond

*** Some forms of Cyanide are complex and very stable while other forms are pH dependent and hence are very unstable. Site-specific form(s) of Cyanide should be taken into consideration when establishing soil cleanup objective.

**** Background levels for lead vary widely. Average levels in undeveloped, rural areas may range from 4-61 ppm. Average background levels in metropolitan or suburban areas or near highways are much higher and typically range from 200-500 ppm.

***** Recommended soil cleanup objectives are average background concentrations as reported in a 1984 survey of reference material by E. Carol McGovern, NYSDEC.

TOTAL ORGANIC CARBON (TOC)

USE AND LIMITATIONS

Total organic carbon is a measure of the total amount of nonvolatile, volatile, partially volatile, and particulate organic compounds in a sample. Total organic carbon is independent of the oxidation state of the organic compounds and is not a measure of the organically bound and inorganic elements that can contribute to the biochemical and chemical oxygen demand tests.

Because inorganic carbon (e.g., carbonates, bicarbonates, free CO_2) will interfere with total organic carbon determinations, samples should be treated to remove inorganic carbon before being analyzed.

FIELD PROCEDURES

Collection

Samples can be collected in glass or plastic containers. A minimum sample size of 25 g is recommended. If unrepresentative material is to be removed from the sample, it should be removed in the field under the supervision of the chief scientist and noted on the field log sheet.

Processing

Samples should be stored frozen and can be held for up to 6 mo under that condition. Excessive temperatures should not be used to thaw samples.

LABORATORY PROCEDURES

Analytical Procedures

- Equipment
  - Induction furnace
    e.g., Leco WR-12, Dohrmann DC-50, Coleman CH analyzer, Perkin Elmer 240 elemental analyzer, Carlo-Erba 1106
  - Analytical balance
    0.1 mg accuracy
  - Desiccator
  - Combustion boats
  - 10 percent hydrochloric acid (HCl)
  - Cupric oxide fines (or equivalent material)
  - Benzoic acid or other carbon source as a standard.

- Equipment preparation
  - Clean combustion boats by placing them in the induction furnace at 950° C. After being cleaned, combustion boats should not be touched with bare hands.
  - Cool boats to room temperature in a desiccator.
  - Weigh each boat to the nearest 0.1 mg.

- Sample preparation
  - Allow frozen samples to warm to room temperature.
  - Homogenize each sample mechanically, incorporating any overlying water.
  - Transfer a representative aliquot (5-10 g) to a clean container.

- Analytical procedures
  - Dry samples to constant weight at 70 ± 2° C. The drying temperature is relatively low to minimize loss of volatile organic compounds.
  - Cool dried samples to room temperature in a desiccator.
  - Grind sample using a mortar and pestle to break up aggregates.
  - Transfer a representative aliquot (0.2-0.5 g) to a clean, preweighed combustion boat.
  - Determine sample weight to the nearest 0.1 mg.
  - Add several drops of HCl to the dried sample to remove carbonates. Wait until the effervescing is completed and add more acid. Continue this process until the incremental addition of acid causes no further effervescence. Do not add too much acid at one time as this may cause loss of sample due to frothing. Exposure of small samples (i.e., 1-10 mg) having less than 50 percent carbonate to an HCl atmosphere for 24-48 h has been shown to be an effective means of removing carbonates (Hedges and Stern 1984). If this method is used for sample sizes greater than 10 mg, its effectiveness should be demonstrated by the user.
  - Dry the HCl-treated sample to constant weight at 70 ± 2° C.
  - Cool to room temperature in a desiccator.
  - Add previously ashed cupric oxide fines or equivalent material (e.g., alumina oxide) to the sample in the combustion boat.
  - Combust the sample in an induction furnace at a minimum temperature of 950 ± 10° C.

- Calculations
  - If an ascarite-filled tube is used to capture CO_2, the carbon content of the sample can be calculated as follows:

$$\text{Percent carbon} = \frac{A(0.2729)(100)}{B}$$

Where:

A = the weight (g) of CO_2 determined by weighing the ascarite tube before and after combustion
B = dry weight (g) of the unacidified sample in the combustion boat
0.2729 = the ratio of the molecular weight of carbon to the molecular weight of carbon dioxide

A silica gel trap should be placed before the ascarite tube to catch any moisture driven off during sample combustion. Additional silica gel should be placed at the exit end of the ascarite tube to trap any water that might be formed by reaction of the trapped CO_2 with the NaOH in the ascarite.

If an elemental analyzer is used, the amount of CO_2 will be measured by a thermal conductivity detector. The instrument should be calibrated daily using an empty boat blank as the zero point and at least two standards. Standards should bracket the expected range of carbon concentrations in the samples.

QA/QC Procedures

It is critical that each sample be thoroughly homogenized in the laboratory before a subsample is taken for analysis. Laboratory homogenization should be conducted even if samples were homogenized in the field.

Dried samples should be cooled in a desiccator and held there until they are weighed. If a desiccator is not used, the sediment will accumulate ambient moisture and the sample weight will be overestimated. A color-indicating desiccant is recommended so that spent desiccant can be detected easily. Also, the seal on the desiccator should be checked periodically and, if necessary, the ground glass rims should be greased or the "O" rings should be replaced.

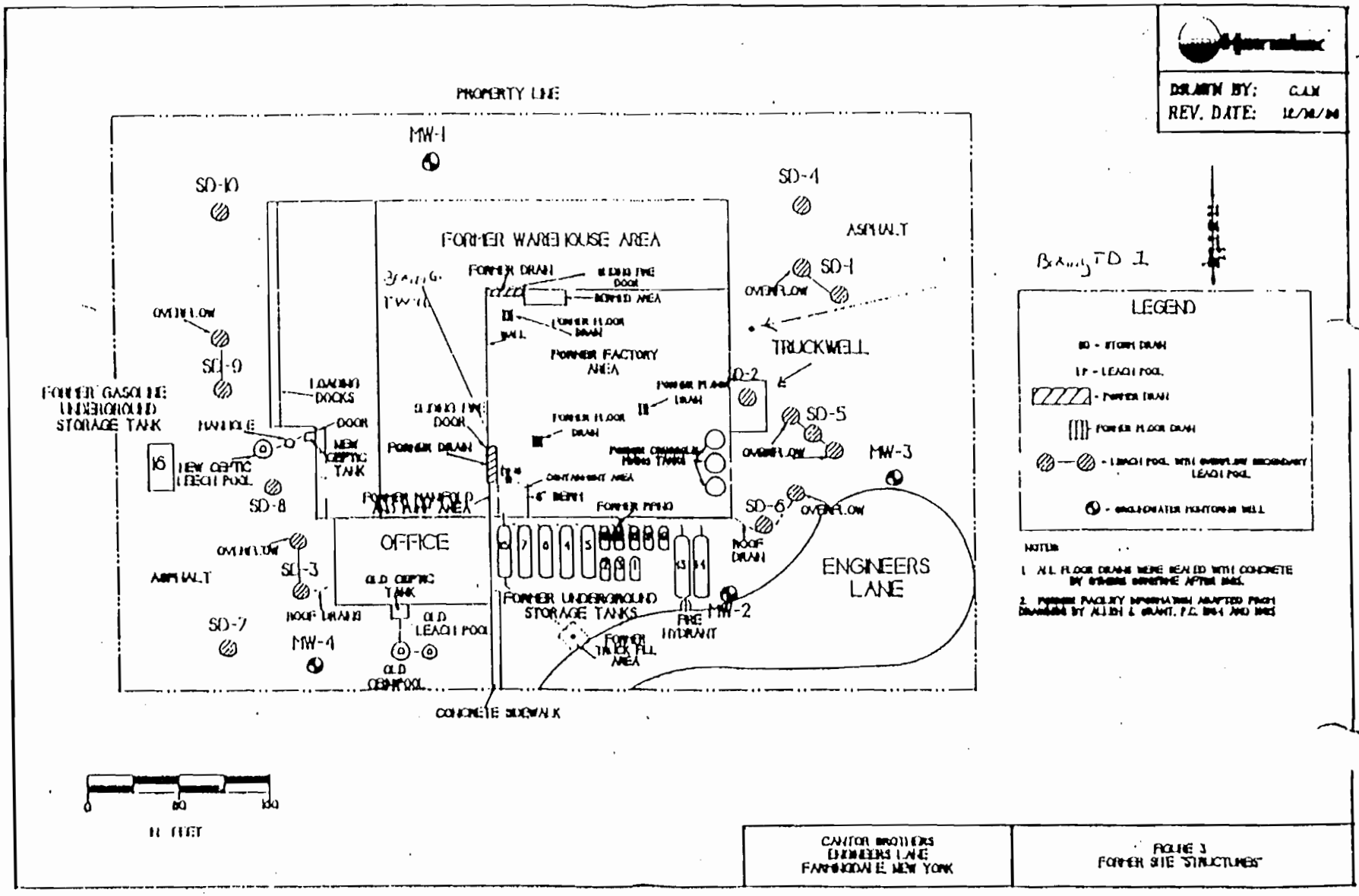
It is recommended that triplicate analyses be conducted on one of every 20 samples, or on one sample per batch if less than 20 samples are analyzed. A method blank should be analyzed at the same frequency as the triplicate analyses. The analytical balance should be inspected daily and calibrated at least once per week. The carbon analyzer should be calibrated daily with freshly prepared standards. A standard reference material should be analyzed at least once for each major survey.

DATA REPORTING REQUIREMENTS

Total organic carbon should be reported as a percentage of the dry weight of the unacidified sample to the nearest 0.1 unit. The laboratory should report the results of all samples (including QA replicates, method

blanks, and standard reference measurements) and should note any problems that may have influenced sample quality. The laboratory should also provide a summary of the calibration procedure and results (e.g., range covered, regression equation, coefficient of determination).

Exhibit B



DRAWN BY: C.A.M
REV. DATE:
PROPERTY LINE
MW-1
SD-10
SD-4
ASPHALT
FORMER WAREHOUSE AREA
FORMER DRAIN
SLIDING FIRE DOOR
BERMED AREA
FORMER FLOOR DRAIN
WALL
FORMER FACTORY AREA
SD-1
OVERFLOW
TRUCKWELL
SD-9
FORMER GASOLINE UNDERGROUND STORAGE TANK
LOADING DOCKS
MANHOLE
DOOR
NEW CEPTIC TANK
NEW CEPTIC LEACH POOL
SD-8
SLIDING FIRE DOOR
FORMER DRAIN
FORMER MANIFOLD AND PUMP AREA
CONTAINMENT AREA
6" BERM
FORMER PIPING
SD-2
SD-5
MW-3
SD-6
OVERFLOW
ROOF DRAIN
OFFICE
OVERFLOW
SD-3
ASPHALT
OLD CEPTIC TANK
ROOF DRAINS
OLD LEACH POOL
SD-7
MW-4
OLD CESSPOOL
FORMER UNDERGROUND STORAGE TANKS
FORMER TRUCK FILL AREA
FIRE HYDRANT
MW-2
ENGINEERS LANE
CONCRETE SIDEWALK
0
50
100
IN FEET
LEGEND
SD - STORM DRAIN
LP - LEACH POOL
- FORMER DRAIN
FORMER FLOOR DRAIN
- LEACH POOL WITH OVERFLOW SECONDARY LEACH POOL
- GROUNDWATER MONITORING WELL
NOTES
1. ALL FLOOR DRAINS WERE SEALED WITH CONCRETE BY OTHERS SOMETIME AFTER 1985.
2. FORMER FACILITY INFORMATION ADAPTED FROM DRAWINGS BY ALLEN & GRANT, P.C. 1984 AND 1985
CANTOR BROTHERS
ENGINEERS LANE
FARMINGDALE, NEW YORK
FIGURE 3
FORMER SITE "STRUCTURES"

Exhibit C

EXHIBIT C

SCHEDULE OF PROGRESS PAYMENT

Work Item	When Progress Payment Due	Amount Due
Costs of removal of additional soil from drainage structures not covered by the $10,500 Initial Payment.	Upon presentation of weight tickets to NYSDEC demonstrating removal, NYSDEC shall notify Escrow Agent that payment is due. If the Escrow Agent does not receive approval of payment from the NYSDEC within seven (7) days, payment shall be deemed approved by NYSDEC.	$70 per ton of soil removed above 150 tons.
Removal and disposal of liquids from drainage structures not covered by the $2,500 Initial Payment.	Upon presentation to NYSDEC of documentation demonstrating that the liquids have been removed, NYSDEC shall notify Escrow Agent that payment is due. If the Escrow Agent does not receive approval of payment from the NYSDEC within seven (7) days, payment shall be deemed approved by NYSDEC.	$350/1000 gallons above 22,000 gallons.
Completion of remediation of drainage structures.	Within thirty (30) days of inspection and approval of the drainage structure remediation by NYSDEC.	$21,625
Payment when SVE system becomes operational	Upon inspection and approval of the SVE system as operational by NYSDEC, NYSDEC shall simultaneously notify EEA and Escrow Agent of its approval.	$16,000

Work Item	When Progress Payment Due	Amount Due
Third SVE well, if necessary.	Upon inspection and approval of the SVE system as operational by NYSDEC. NYSDEC shall simultaneously notify EEA and Escrow Agent of its approval..	$ 3,000
Reasonable and necessary monthly operating costs, including electricity.	Upon review and approval by NYSDEC of the monthly charges for operating costs as reasonable and necessary, NYSDEC shall notify Escrow Agent that payment is due. Monthly operating costs consistent with the cost estimates in the EEA letters of September 4, 1997, and August 29, 1997 to Frederick Eisenbud, Esq., which letters are annexed hereto, shall be presumed reasonable and necessary.	Electricity cost plus invoiced charges for other operating costs approved as reasonable and necessary by NYSDEC.

EEA Inc.
Environmental Consultants
To Industry And Government

55 Hilton Avenue
Garden City, New York 11530
Telephone (516) 746-4400
(212) 227-3200

August 29, 1997

Mr. Frederick Eisenbud
Cahn Wishod & Lamb, LLP
Attorneys at Law
534 Broadhollow Road
CS 9034
Melville, New York 11747-9034

Re: Scope of Services and Revised Cost Estimate
for Remediation of Contaminated Soil Within
Stormwater Drainage Structures and Installation
and Operation of a Soil Vapor Extraction System at:
Canter Bros. Inc., 50 Engineers Lane,
Farmingdale, New York

Dear Mr. Eisenbud:

Since the submittal of our original proposal, we have received additional bids for the items outlined in our cost estimate contained in our letter proposal of July 28th. I would, therefore, like to correct the following items outlined in the cost estimate.

- Removal of liquids from the drainage structures estimated to contain a volume of 20,000 to 22,000 gallons of non-contaminated liquid and to be disposed of at approved waste water treatment plant is $2,500.00. Based upon the disposal costs of $350.00 per 3,000 gallon truckload, the $7,000 cost is reduced to $2,500.00.

- Laboratory analysis of soils for disposal approval is $1,000. The cost in our proposal was for confirmation of endpoint samples, as well as laboratory analysis for disposal approval. By deleting the endpoint sampling, the costs have been reduced from $5,250.00 to $1,000.00.

  Both items represent an $8,750.00 reduction in costs.

- The cost for the third well was $3,000.00 which included the current design and installation price of $32,000.00.

- The cost for the closure and closure report to the DEC of the four existing monitoring wells has been included in the construction-related services for which a total price of $10,000.00 was delineated in the proposal. The cost of closing the wells is $2,000.00.

- The original cost contained in our proposal for the disposal of the non-hazardous soils was $85.00 per ton. This has been reduced to $70.00 per ton. Thus, the cost of disposal for 175 tons is $12,250.00 as opposed to the $14,875.00. This represents a cost reduction of $2,625.00.

The monthly operational cost of $3,450.00 for the SVE system was derived as follows:

• Monthly on-site air testing and laboratory analysis	$450.00
• Monthly estimated activated carbon usage and disposal and labor	$1,000.00
• Monthly operations and maintenance including system repair, calibration, and optimization	$1,500.00
• Monthly DEC reporting and updates	$500.00
Total	$3,450.00

- The additional costs for performing three soil borings within the building and one at the dumpster area (the depth of each boring will be 40 feet), including laboratory testing for confirmatory closure sampling is $4,500.00

Very truly yours,

Allen Serper

Allen Serper, P.E.
Vice President

AS:dv

EEA Inc.
Environmental Consultants
to Industry And Government

55 Hilton Avenue
Garden City, New York 11530

Telephone (516) 746-4400
(212) 227-3200

September 4, 1997

Mr. Frederick Eisenbud
Cahn Wishod & Lamb, LLP
Attorneys at Law
534 Broadhollow Road
CS 9034
Melville, New York 11747-9034

Re: Remediation at: Cantor Brothers, Inc.
50 Engineers Lane, Farmingdale, New York

Dear Mr. Eisenbud:

In regard to the remediation of the Cantor Brothers, Inc. property, the following is a schedule of costs to perform the tasks as outlined in EEA's proposal of July 28, 1997, and subsequent update letter dated August 29, 1997.

- Prior to the removal and disposal of the liquid and contaminated soils in the ten drainage structures, partial payment will be required. The cost of soil disposal, as per our proposal, will be $70.00 per ton. It is estimated that 200 tons of soil will be removed. Thus, the estimated disposal cost will be $14,000.00. EEA will expect the Estate of Cantor Brothers to pay 75 percent, or $10,500, immediately. Upon receipt of the landfill weight tickets, etc., the balance will be due to EEA (within five days). Depending upon the amount of soil actually removed, this is anticipated to be $3,500.00. If more than 200 tons is disposed of, the additional cost will be at the $70.00 per ton price.

- A $2,500.00 payment will also be required at the time the 22,000 gallons of liquid are removed and disposed of, which will occur prior to the soil excavation from the drywells.

- Within thirty days of completion of the construction services, the additional funds will be due EEA.

–	Construction-related costs	$10,000.00
–	Clean backfill	$ 2,625.00
–	Laboratory analysis	$ 1,000.00
•	EEA's fee as defined in the July 28th proposal letter	$ 8,000.00
	Total	$21,625.00

• Soil Gas Venting

Upon approval of the Work Plan and Design by the New York State Department of Environmental Conservation, an initial payment of $16,000.00 will be required prior to the ordering of equipment and subsequent installation of the soil gas venting system. After the system becomes operational, an additional $16,000.00 will be required, and the additional costs for the third extraction well, if required.

Operating costs will be billed monthly and are anticipated to be $3,000.00 plus electricity, which is estimated to cost approximately $1,000.00 per month.

The following is an anticipated schedule of payments:

Notice to start (approximately October 15th).

		Date
•	Initial payment for soil and liquid disposal $13,000.00	Oct. 15
•	Upon receipt of landfill weight ticket $3,500.00	Oct. 21
•	Construction costs and EEA's fee $21,625.00	Nov. 15
•	Soil gas venting system. Initial approval received from DEC prior to ordering equipment $16,000.00	Nov. 15
•	System becomes operational $16,000.00	Dec. 15

Should you have any questions, please do not hesitate to contact me.

Very truly yours,

Jeffrey B. Shelley for

Allen Serper, P.E.
Vice President

AS:dv

EXHIBIT "D"

Assignable Release and Covenant Not To Sue

[On Department Letterhead]

[Insert Date]

[name and address of Volunteer's contact]

Unless otherwise specified in this letter, all terms used in this letter shall have the meaning assigned to them under the terms of the Voluntary Agreement entered into between the New York State Department of Environmental Conservation (the "Department") and **LJM Associates, LLC** ("Volunteer"), Index No. W1-0830-98-10 (the "Agreement").

The Department is pleased to report that the Department is satisfied that the Agreement's Work Plan, covering the remediation of the Site, located at 50 Engineers Lane in the Village of Farmingdale, Suffolk County, New York, with **Tax Map Parcel No./Tax Section 007, Block 01, and Lot No 25**, has been successfully implemented.

The Department and the Trustee of New York State's natural resources ("Trustee"), therefore, hereby release, covenant not to sue, and shall forbear from bringing any action, proceeding, or suit against Volunteer and Volunteer's lessees and sublessees and Volunteer's successors and assigns and their respective secured creditors, for the further investigation and remediation of the Site, and for natural resources damages, based upon the release or threatened release of Covered Contamination, provided that (a) timely payments of the amounts specified in Paragraph VI of the Agreement continue to be or have been made to the Department, (b) appropriate notices and deed restrictions have been recorded in accordance with Paragraphs IX and X of the Agreement, and (c) Volunteer and/or Volunteer's lessees, sublessees, successors, or assigns promptly commence and diligently pursue to completion the Department-approved O&M Plan, if any. Nonetheless, the Department and the Trustee hereby reserve all of their respective rights concerning, and such release, covenant not to sue, and forbearance shall not extend to any further investigation or remedial action the Department deems necessary:

- due to off-Site migration of petroleum, irrespective of whether the information available to Volunteer and the Department at the time of the development of the Work Plan disclosed the existence or potential existence of such off-Site migration;

- due to environmental conditions related to the Site that were unknown to the Department at the time of its approval of the Work Plan which indicate that Site

conditions are not sufficiently protective of human health and the environment for the Contemplated Use;

- due to information received, in whole or in part, after the Department's approval of the final engineering report, which indicates that the activities carried out in accordance with the Work Plan are not sufficiently protective of human health and the environment for the Contemplated Use;

- due to Volunteer's failure to implement the Agreement to the Department's satisfaction; or

- due to fraud committed, or mistake made, by Volunteer in demonstrating that the Site-specific cleanup levels identified in, or to be identified in accordance with, the Work Plan were reached.

Additionally, the Department and the Trustee hereby reserve all of their respective rights concerning, and any such release, covenant not to sue, and forbearance shall not extend to:

- Volunteer if Volunteer causes a, or suffers the, release or threat of release, at the Site of any hazardous substance (as that term is defined at 42 USC 9601[14]) or petroleum (as that term is defined in Navigation Law § 172[15]), other than Covered Contamination; or if Volunteer causes a, or suffers the use of the Site to, change from the Contemplated Use to one requiring a lower level of residual contamination before that use can be implemented with sufficient protection of human health and the environment; nor to

- any of Volunteer's lessees, sublessees, successors, or assigns who causes a, or suffers the, release or threat of release, at the Site of any hazardous substance (as that term is defined at 42 USC 9601[14]) or petroleum (as that term is defined in Navigation Law § 172[15]), other than Covered Contamination, after the effective date of the Agreement; who causes a, or suffers the use of the Site to, change from the Contemplated Use to one requiring a lower level of residual contamination before that use can be implemented with sufficient protection of human health and the environment; or who is otherwise a party responsible under law for the remediation of the Existing Contamination independent of any obligation that party may have respecting same established resulting solely from the Agreement's execution.

Notwithstanding the above, however, with respect to any claim or cause of action asserted by the Department, the one seeking the benefit of this release, covenant not to sue, and forbearance shall bear the burden of proving that the claim or cause of action, or any part thereof, is attributable solely to Covered Contamination.

Notwithstanding any other provision in this release, covenant not to sue, and forbearance,

- if with respect to the Site there exists or may exist a claim of any kind or nature on the part of the New York State Environmental Protection and Spill Compensation Fund against any party, nothing in this release shall be construed, or deemed, to preclude the State of New York from recovering such claim.

- except as provided in Subparagraph I.F of the Agreement and in this letter, nothing contained in the Agreement or in this letter shall be construed as barring, diminishing, adjudicating, or in any way affecting any of the Department's or Trustee's rights (including, but not limited to, nor exemplified by, the right to recover natural resources damages) with respect to any party, including Volunteer.

- nothing contained in this letter shall prejudice any rights of the Department or Trustee to take any investigatory or remedial action it may deem necessary if Volunteer fails to comply with the Agreement or if contamination other than Existing Contamination or Covered Contamination is encountered at the Site.

- nothing contained in this letter shall be construed to prohibit the Commissioner or his duly authorized representative from exercising any summary abatement powers.

- nothing contained in this letter shall be construed to affect the Department's right to terminate the Agreement at any time during its implementation if Volunteer fails to comply substantially with the Agreement's terms and conditions.

In conclusion, the Department is pleased to be part of this effort to return the Site to productive use of benefit to the entire community.

NEW YORK STATE DEPARTMENT OF
ENVIRONMENTAL CONSERVATION AND
TRUSTEE OF NEW YORK STATE'S
NATURAL RESOURCES

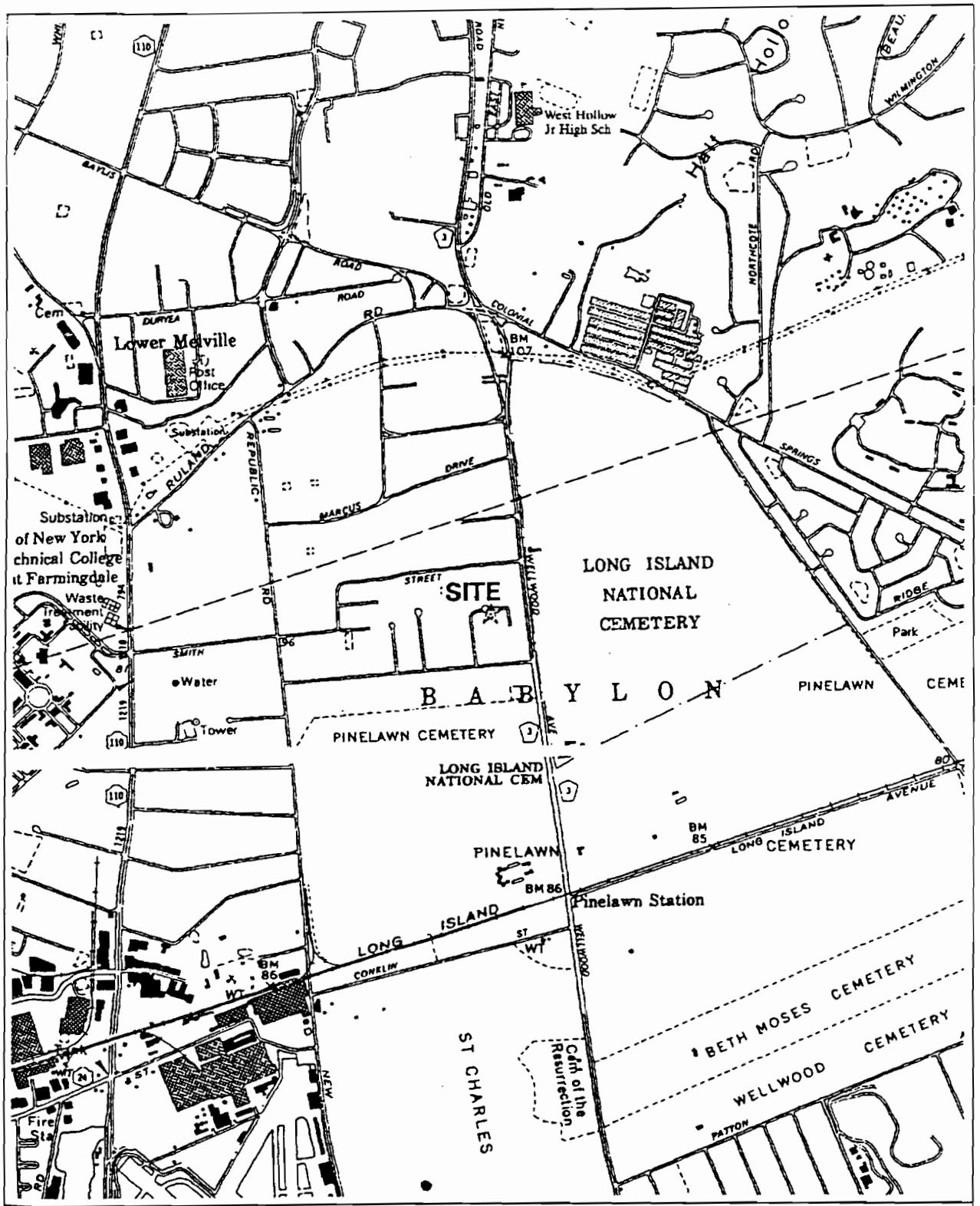
By:_____

Its:_____

Appendix "A"

(to Exhibit "D")

Map of the Site



Site Location Map

152021 Cantor Brothers, Inc.

NYSDOT Planimetric Quadrangle(s):
HUNTINGTON, AMITYVILLE

N

0 500 1000 1500 2000
FEET

Scale 1:24,000

Exhibit "E"

NOTICE OF AGREEMENT

This Notice is made as of the _____ day of _____, 199 by **LJM Associates, LLC**, the fee owner of a parcel of real property located at **50 Engineers Lane, Village of Farmingdale, Suffolk County, New York, with Tax Map Parcel No./Tax Section 007, Block 01, and Lot No 25,** as more particularly described on Appendix "A" attached hereto (the "Property"); and

WHEREAS, LJM Associates, LLC, by authorized signature, entered into an agreement with the Department, Index # W1-0830-98-10 (the "Agreement"), concerning the remediation of contamination present on the Property, which Agreement was signed by the Commissioner of Environmental Conservation on _____; and

WHEREAS, in return for the remediation of the Property pursuant to the Agreement to the satisfaction of the Department, the Department will provide **LJM Associates, LLC** and Volunteer's lessees and sublessees and Volunteer's successors and assigns, including their respective secured creditors, with a release, covenant not to sue, and forbearance from bringing any action, proceeding, or suit related to the Site's further investigation or remediation, subject to certain reservations set forth in the Agreement; and

WHEREAS, pursuant to the Agreement, **LJM Associates, LLC** agreed that it would give notice of the Agreement to all parties who may acquire any interest in the Property by filing this Notice with the Suffolk County Clerk,

NOW, THEREFORE, LJM Associates, LLC, for itself and for its successors and assigns, declares that:

1. This Notice of the Agreement is hereby given to all parties who may acquire any interest in the Property; and that

2. This Notice shall terminate upon the filing by **LJM Associates LLC**, or its successors and assigns, of a termination of notice of Agreement after having first received approval to do so from the New York State Department of Environmental Conservation.

IN WITNESS WHEREOF, LJM Associates, LLC has executed this Notice of Agreement by its duly authorized representative.

LJM Associates, LLC

Dated:

By: _____

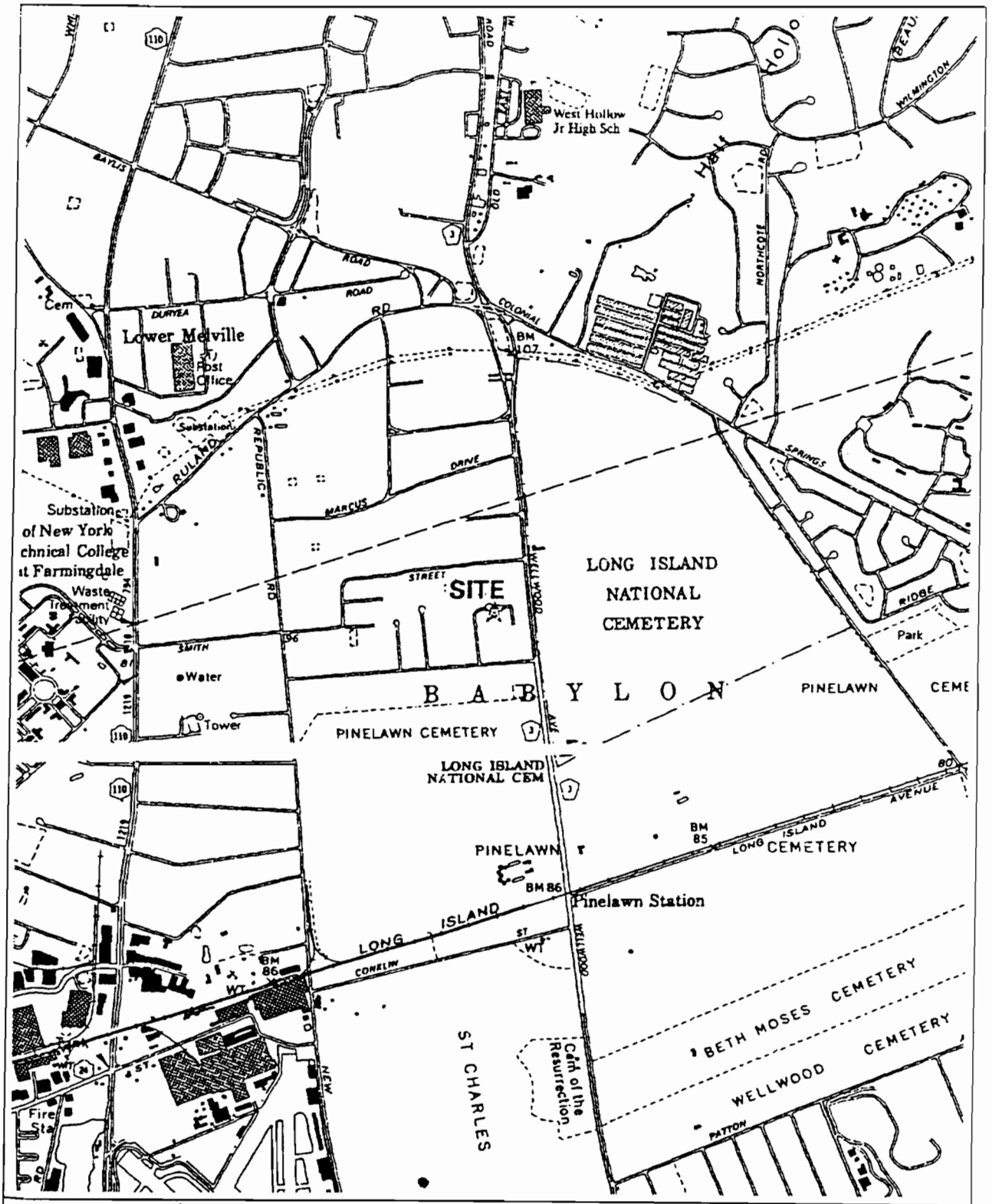
Its: _____

[acknowledgment]

Appendix "A"

(to Exhibit "E")

Map of the Property



Site Location Map

152021 Cantor Brothers, Inc.

NYSDOT Planimetric Quadrangle(s):
HUNTINGTON, AMITYVILLE

RECEIVED
JAN - 5 1998
Bureau of Eastern Remedial Action

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK

	In Proceedings for a Reorganization Under Chapter 11
In re Cantor Bros., Inc., Debtor.	Bankruptcy Case No. 893-80853-478
	Judge Eisenberg
State of New York and Michael D. Zagata as Commissioner of Environmental Conservation, Plaintiffs, -against- Cantor Bros., Inc., Defendant.	Adversary Proceedings No. 894-8182-478

FINAL AGREEMENT AND STIPULATED ORDER

WHEREAS, Cantor Bros., Inc. (the "Debtor"), conducted business and commercial activities from on or before 1975 to April 1993 on property located at 50 Engineers Lane, Farmingdale, New York (the "Site");

WHEREAS, the Site has been listed in the Registry of Inactive Hazardous Waste Disposal Sites in New York State (the "Registry") as site number 1-52-021, and is classified by the New York State Department of Environmental Conservation ("NYSDEC" or "Department") as a class "2" site.

WHEREAS, Cantor Bros. consented to the entry of an order by the New York State Commissioner of Environmental

Conservation, dated March 25, 1992 ("Administrative Order"), requiring the Debtor to develop and implement a remedial investigation and feasibility study ("RI/FS") and appropriate interim remedial measures with respect to the contamination at the Site;

WHEREAS, Cantor Bros. filed a petition under Chapter 11 of the Bankruptcy Code on February 16, 1993, in the United States Bankruptcy Court for the Eastern District of New York;

WHEREAS, the NYSDEC filed an administrative proof of claim (the "NYSDEC Administrative claim") on March 7, 1994, asserting that the costs incurred and to be incurred by the Debtor in discharging its responsibilities and obligations under the Administrative Order and/or statutes relating to the protection of the environment, including the costs of implementing the final cleanup remedy for the Site selected by the NYSDEC, and the costs incurred or to be incurred by the NYSDEC for purposes of oversight or as a consequence of the Debtor's failure to comply with its obligations under the Administrative Order or applicable environmental statutes, including the obligation to implement the remedy, are entitled to administrative expense status and priority;

WHEREAS, the State of New York filed an adversary proceeding (the "Adversary Complaint") against the Debtor on April 19, 1994, adversary proceeding number 894-8182-478, in which New York State seeks, inter alia, the entry of a judgment directing the Debtor to comply with the Administrative Order and,

in addition, New York seeks the entry of a judgment declaring that the costs of compliance with the Administrative Order, including costs incurred by the State of New York, are entitled to administrative status and priority;

WHEREAS, the Debtor filed an Answer to New York State's Adversary Complaint asserting, inter alia, that the NYSDEC holds an unliquidated contingent claim that has not been classified as an administrative claim and that the Debtor cannot be compelled to comply with the Administrative Order until there is an order from the Bankruptcy Court authorizing and directing it to comply; that if the Administrative Order is deemed to be an administrative claim, it must be treated pari passu with any and all administrative claims; and that compliance with the Administrative Order cannot be an administrative expense unless the Site poses an imminent and identifiable danger to the public safety;

WHEREAS, it is the position of the State of New York that, inter alia, the Debtor is obligated to comply with the terms of the Administrative Order and that its failure to comply subjects the Debtor to civil and criminal sanctions and penalties under the New York Environmental Conservation Law;

WHEREAS, in order to advance the resolution of these matters and thereby minimize litigation costs, the parties negotiated and entered into an interim agreement and stipulated order (the "Interim Agreement and Order"), which the Court approved on June 26, 1996, which provided, inter alia, that

Debtor retain a contractor, Handex of New York, Inc. ("Handex"), to implement the following work items required under the Administrative Order, in accordance with the terms and conditions of performance in the Interim Agreement and Order: soil borings and laboratory analysis; groundwater sampling; data validation; waste management; preparation of a report summarizing Handex's investigation pursuant to the Interim Agreement and Order (the "Handex Report"); site structure investigation; and site history;

WHEREAS, NYSDEC accepts the Handex Report as providing sufficient information to enable the design of appropriate remedial measures sufficient to resolve the NYSDEC's claims against the Debtor in this adversary proceeding if the remedial measures are implemented;

WHEREAS, the Handex Report indicates that the soil beneath the former factory area of the Site is contaminated with volatile organic compounds, including, but not limited to, total xylene, toluene, and tetrachloroethylene ("PCE"), for which the most appropriate remedial technology would be a soil vapor extraction ("SVE") system, and the sediments in the storm drains are contaminated with semi-volatile organic compounds, which would most appropriately be remediated through removal and disposal of the liquids and the sediments in the storm drains;

WHEREAS, based on the Handex Report and the other information now known to it (and barring the discovery of contrary information), NYSDEC has concluded that this adversarial proceeding can be resolved if Debtor: (1) pursuant to approved

Work and Design Plans, installs and operates an SVE system to decrease the levels of contaminants in the ground beneath the former factory area to levels that meet the criteria in NYSDEC Technical Assistance and Guidance Memorandum ("TAGM") No. 4046 (a copy of which is annexed hereto as Exhibit A); (2) without the necessity of having an approved Work or Design Plan, cleans storm drains 1 through 10 by removing and appropriately disposing of the liquids and the sediments contained therein; and (3) seals the four monitoring wells associated with the underground storage tank area with grout;

WHEREAS, the parties to this agreement and stipulated order ("Agreement and Order") desire to advance the resolution of these matters and thereby avoid additional litigation costs;

WHEREAS, it is the intention of the parties that the work required under this Agreement and Order will remediate the Site to the point where it can be de-listed from the Registry, and the work has been planned to achieve that goal;

WHEREAS, the parties agree that nothing in this Order shall be construed to limit the right of the Debtor or any other party to file a petition with the Commissioner pursuant to ECL Section 27-1305(4)(b) and 6 NYCRR Section 375-1.9 to de-list the site from the Registry or to change its classification; and

WHEREAS, notwithstanding Debtor's agreement to carry out the terms of this Agreement and Order, Debtor does not admit or acknowledge any liability, fault, or wrongdoing or violation

of law, regulation or permit of any kind whatsoever in any way related to the Site.

NOW, THEREFORE, upon the consent and agreement of the parties by their attorneys, it is hereby ORDERED:

1. The Debtor shall retain a qualified contractor or contractors who shall complete the remedial work ("Remedial Work") and other obligations set forth below, in accordance with the terms and conditions herein. (For purposes of simplicity, the term "Debtor" shall hereinafter be read to encompass the Debtor's contractor or contractors.)

REMEDIAL WORK

Former Factory Area and Grouting of Monitoring Wells

2. The Debtor shall develop a work plan for the SVE system and grouting of the monitoring wells (the "Work Plan") and submit the Work Plan to NYSDEC within fifteen (15) days of approval of this Agreement and Order by the Court. The Work Plan shall include, but need not be limited to:

(a) A general description of the scope of work to install, test, operate and maintain the SVE system;

(b) the Site Quality Assurance Project Plan contained in the Handex Report with any modifications necessary for the SVE Work Plan;

(c) the Health and Safety Plan contained in the Handex Report with any modifications necessary for the SVE Work Plan;

(d) a description of the scope of work to grout the four (4) existing poly-vinyl chloride (PVC) monitoring wells associated with the underground storage tank area (as depicted on the Site map attached hereto as Exhibit B); and

(e) a chronological description of the anticipated remedial activities, together with a schedule for the performance of these activities.

3. The NYSDEC shall notify Debtor in writing of its approval or disapproval of the Work Plan, and, if disapproving, provide written comments explaining the reasons for disapproval.

4. If Debtor requires clarification of any of the reasons specified by the Department for its disapproval, or disagrees with the stated basis for disapproval, Debtor shall request clarification in writing, or request reconsideration of the denial for reasons stated by Debtor in writing, within ten (10) days after receiving written notice that Debtor's submittal has been disapproved. Within fifteen (15) days after receiving written notice that Debtor's submittal has been disapproved, or fifteen (15) days after receiving the Department's response to a timely request for clarification or reconsideration, Debtor shall make a revised submittal to the NYSDEC that addresses and resolves all of the NYSDEC's stated reasons for disapproving the first submittal. After receipt of any revised Work Plan submittal, the NYSDEC shall notify Debtor in writing of its approval or disapproval. If the NYSDEC disapproves the revised Work Plan, Debtor shall be in violation of this Agreement and

Order and the NYSDEC may take any action or pursue whatever rights it has pursuant to any provision of statutory or common law, or under the terms of the Stipulation and Order. (Pursuant to Paragraph 22, NYSDEC's approval or disapproval shall be final and binding, subject only to challenge as arbitrary and capricious by motion upon proper notice.)

5. Within thirty (30) days of receipt of written notification that the Work Plan has been approved, Debtor shall submit a design plan and specifications (the "Design Plan") for the SVE system which shall include:

(a) a minimum of two (2) vapor extraction wells that will capture volatile organic contamination from the area under the chemical manufacturing area and extending to the trash dumpster area, as depicted on Exhibit B hereto;

(b) an SVE operation and maintenance (O & M) plan that provides for:

(1) remediation of the soil in this area until it meets the criteria set forth in TAGM 4046;

(2) operation of the SVE system until extraction well air samples are non-detect or asymptotic through pulsing; and

(3) a sampling program that verifies the results of the SVE system operation including, but not necessarily limited to, confirmatory soil sampling and SVE system effluent testing.

6. The Design Plan shall be prepared and certified by a professional engineer licensed to practice by the State of New York.

7. The NYSDEC shall notify Debtor in writing of its approval or disapproval of the Design Plan, and, if disapproving, provide written comments explaining the reasons for disapproval.

8. If Debtor requires clarification of any of the reasons specified by the NYSDEC for its disapproval, or disagrees with the stated basis for disapproval, Debtor shall request clarification in writing, or request reconsideration of the denial for reasons stated by Debtor in writing, within ten (10) days after receiving written notice that Debtor's submittal has been disapproved. Within fifteen (15) days after receiving written notice that Debtor's submittal has been disapproved, or fifteen (15) days after receiving the Department's response to a timely request for clarification or reconsideration, Debtor shall make a revised submittal to the NYSDEC that addresses and resolves all of the NYSDEC's stated reasons for disapproving the first submittal. After receipt of any revised Design Plan submittal, the NYSDEC shall notify Debtor in writing of its approval or disapproval. If the NYSDEC disapproves the revised Design Plan, Debtor shall be in violation of this Agreement and Order and the NYSDEC may take any action or pursue whatever rights it has pursuant to any provision of statutory or common law, or under the terms of the Stipulation and Order. (Pursuant to Paragraph 22, NYSDEC's approval or disapproval shall be final

and binding, subject only to challenge as arbitrary and capricious by motion upon proper notice.)

9. Debtor shall commence implementation of the approved Work and Design Plans within fifteen (15) days of receiving written notification of NYSDEC's approval of the Design Plan, and shall implement the Plans in accordance with their terms until the remediation objectives specified therein are achieved.

10. Should circumstances warrant, Debtor may apply, in writing, to NYSDEC for permission to deviate from the approved Work and Design Plans. Debtor must obtain prior written approval from NYSDEC prior to deviating from the approved Plans in any material way. The NYSDEC shall respond to the request to deviate from the approved Plans within a reasonable amount of time. The period during which Debtor is required to complete the task which is the subject of the request to deviate shall be extended by the amount of time the NYSDEC takes to approve or disapprove the requested deviation. NYSDEC shall not unreasonably withhold its approval.

11. Within 30 days after completion of the Site remediation specified in the approved Plans, Debtor shall submit written notification to the NYSDEC that the Site remediation has been completed in accordance with the approved Plans. This written notification shall be certified by a professional engineer licensed to practice by the State of New York, and shall describe any changes to the SVE system design or other deviations

from the approved Work and Design Plans during construction and remediation.

Storm Drains

12. Debtor shall remove, sample and appropriately dispose of the water in the storm drains. Debtor shall remove the sediments and any other material in storm drains 1 through 10 to the base of the concrete drainage structure, and sample the removed material with the Toxicity Characteristic Leaching Procedure ("TCLP") to determine proper disposal. Debtor shall then dispose of the removed material as required by applicable rules and regulations and the TCLP results.

13. Debtor shall commence the storm drain remediation no later than thirty (30) days from the creation and funding of the escrow account referred to in Paragraph 17 below.

14. All manifests and analytic results generated in connection with the testing and removal of material from the storm drains shall be submitted to NYSDEC in report form.

15. Debtor shall backfill storm drains 1 through 10 to maintain structural integrity, with clean porous sand and/or gravel.

PAYMENT FOR CLEANUP WORK AND DISTRIBUTION OF REMAINING FUNDS

16. The total cost of performing the work required by this Agreement and Order will not exceed the sum of two hundred thousand dollars ($200,000). The $200,000 cost figure referred to above is derived from cost estimates obtained by the Debtor from its prospective contractor, EEA, Inc. ("EEA"), with an

allocation for contingencies added to the estimated cost of completing the work.

17. Upon approval of this Agreement and Order by the Court, the Debtor shall place the sum of $200,000 into an escrow account which shall be dedicated solely toward remediation of the Site until completion of the Remedial Work required hereunder, and thereafter distributed in accordance with the orders and directives of the Court. The law firm of Platzer, Swergold, Karlin, Levine, Goldberg & Jaslow, LLP shall be the escrow agent ("Escrow Agent"). This Agreement and Order shall be provided to the Escrow Agent and Paragraphs 17 through 21 incorporated by reference into, and made part of, the escrow agreement. Upon execution of the contract between the Debtor and EEA (the "EEA Contract"), the Escrow Agent shall pay to EEA an initial payment toward removal of the soil and liquids from the drainage structures in the sum of thirteen thousand dollars ($13,000). Upon receipt of written notice from NYSDEC that NYSDEC has approved the Design Plan, the Escrow Agent shall pay to EEA an initial payment of $16,000 toward construction of the SVE system. NYSDEC shall, simultaneously with notifying EEA that the Design Plan has been approved, notify the Escrow Agent that NYSDEC has approved the Design Plan.

18. In addition to the initial payments referenced in Paragraph 17, EEA shall receive progress payments ("Progress Payments") from the Escrow Agent as EEA completes various items of the Remedial Work, in accordance with the schedule of Progress

Payments set forth in Exhibit C hereto. The Escrow Agent shall withhold 5% retainage from Progress Payments pending completion of the Remedial Work.

19. The EEA Contract shall provide that payment will be made to EEA in accordance with Paragraphs 17 through 20 herein, including Exhibit C hereto.

20. The EEA contract shall additionally provide that:

a. EEA shall submit invoices for Progress Payments to the Escrow Agent, with simultaneous copies to NYSDEC and the other signatory parties hereto. NYSDEC shall determine whether payment of the Progress Payment is proper in accordance with the terms of this Agreement and Order, including Exhibit C hereto, and approve or disapprove the Progress Payment accordingly. If NYSDEC approves the Progress Payment, it shall notify the Escrow Agent, EEA and other parties hereto in writing. The Escrow Agent shall then pay EEA the approved Progress Payment amount.

b. If NYSDEC disapproves an invoiced Progress Payment, NYSDEC shall provide written notice of its reasons for such determination, specifying what EEA must do to complete the work item for which EEA is seeking a Progress Payment.

c. EEA shall have the right to seek a revision of the schedule of Progress Payments, including an upward revision of the amount due for a particular item of

Remedial Work and the total amount due to EEA under the EEA Contract, for good cause shown. Good cause shall mean due to unexpected and unforeseen occurrences necessitating additional costs to complete the Remedial Work required under the EEA Contract. Known additional costs for which payment will be made include the cost of electricity and the cost of replacing and properly disposing of carbon filters.

d. If both the Debtor and NYSDEC determine that EEA has shown good cause, the requested revision of the EEA Contract will be approved, and the Escrow Agent so instructed.

e. Unless otherwise approved by NYSDEC, all equipment dedicated for use in the Remedial Work shall be new. Equipment used solely in the construction process, such as tools, shall not be considered dedicated for use in the Remedial Work.

21. After NYSDEC has approved the work required hereunder as complete, and EEA has been fully paid for that work, including retainage, the Escrow Agent shall distribute any remaining funds in the escrow account in accordance with the orders and directives of the Court.

TERMS AND CONDITIONS FOR THE PERFORMANCE OF THE REMEDIAL WORK

22. All Remedial Work required hereunder shall be subject to NYSDEC supervision and approval. In the event that the Debtor and the NYSDEC disagree, then the determination of the

NYSDEC shall be final and binding, provided that the determination of the NYSDEC does not require the total expenditures for the work performed pursuant to this Agreement and Order to exceed $200,000. Debtor and creditor Apple Bank For Savings ("Apple") reserve the right to challenge, by motion upon proper notice, any determination by the NYSDEC that is arbitrary and capricious. The filing of a motion by the Debtor or creditor Apple challenging a NYSDEC determination shall not stay or delay the expeditious implementation of the disputed work item by the Debtor, unless such delay is agreed to by the NYSDEC in writing, or implementation of the disputed work item is stayed by a court pending its determination whether the item is "arbitrary and capricious."

23. The Debtor shall provide the NYSDEC with written notice of all fieldwork. Such written notice shall be delivered to the NYSDEC no less than five days prior to the start of the fieldwork referred to in the notice.

24. Following consultation with Debtor, the NYSDEC may require Debtor to modify and/or amplify and expand the work required under the approved Work and Design Plans if the NYSDEC determines, as a result of reviewing data generated by an activity required under this Agreement and Order, or as a result of reviewing any other data or facts, that such modification, amplification and/or expansion is necessary, unless the modification, amplification and/or expansion will cause the total cost of performing the Remedial Work required to implement this

Agreement and Order to exceed the $200,000 sum approved by the Court for implementation.

25. Debtor shall retain professional consultants, contractors, laboratories, quality assurance/quality control personnel and data validators acceptable to the NYSDEC to perform the technical, engineering and analytical obligations required by this Agreement and Order (collectively "Debtor's consultant(s)"). The experience, capabilities and qualifications of the firms or individuals selected by Debtor shall be submitted to the NYSDEC upon entry of this Agreement and Order (although nothing herein shall preclude Debtor from making this submission prior to entry of this Agreement and Order).

26. The NYSDEC shall have the right to obtain split samples, duplicate samples, or both, of all substances and materials sampled by Debtor, and the NYSDEC also shall have the right to take its own samples. Debtor shall make available to the NYSDEC the results of all sampling and/or tests or other data generated by Debtor with respect to implementation of this Agreement and Order and shall submit these results in the progress reports required by this Agreement and Order. The NYSDEC shall make available to Debtor the results of all samples and/or tests or other data generated by the NYSDEC with respect to the site which is the subject of this Agreement and Order.

27. Debtor shall obtain whatever permits, easements, rights-of-way, rights-of-entry, approvals, or authorizations are necessary to perform Debtor's obligations under this Agreement

and Order. If, after Debtor's documented, good faith best efforts, Debtor fails to obtain these authorizations, the NYSDEC may take any appropriate action necessary to secure these authorizations.

28. Debtor and its successors and assigns shall be bound by this Agreement and Order. Debtor, through its officers, directors, agents, servants, employees, successors and assigns, shall be responsible for implementing the terms of this Agreement and Order. Any change in ownership or corporate status of Debtor including, but not limited to, any transfer of assets or real or personal property shall in no way alter Debtor's responsibilities under this Agreement and Order.

29. Debtor shall provide a copy of this Agreement and Order to each contractor hired to perform work required by this Agreement and Order and to each person representing Debtor with respect to the Site and shall condition all contracts entered into hereunder upon performance in conformity with the terms of this Agreement and Order. Debtor or Debtor's contractor(s) shall provide written notice of this Agreement and Order to all subcontractors hired to perform any portion of the work required by this Agreement and Order. Debtor shall be responsible for ensuring that Debtor's contractors and subcontractors perform the work to be done under this Agreement and Order in accordance herewith.

CONVERSION TO A VOLUNTARY CLEANUP WORK PLAN

30. If Apple or any third party who qualifies for "volunteer" status (the "Volunteer") under the NYSDEC's Voluntary Cleanup Program (the "Program") applies for and is accepted as a volunteer to cleanup the Site for industrial use under the Program, NYSDEC shall, consistent with its legal authority, accept this Agreement and Order and any approved Work and Design Plans submitted to NYSDEC by the Debtor pursuant to this Agreement and Order as an approved work plan for inclusion in a voluntary third party cleanup agreement for the Site between the Volunteer and the NYSDEC.

31. In the event that a party qualifies and is subsequently approved as a Volunteer for cleanup of the Site under the Program, the EEA Contract shall be assigned by the Debtor, at the option of the Volunteer, to the Volunteer, who shall have all of the rights and obligations of the assignor under the EEA Contract. In the event of an assignment to a Volunteer, the escrow fund established hereunder shall remain dedicated to the cleanup of the Site until the cleanup is complete, as provided herein.

PETITION TO DE-LIST

32. Upon achievement of the cleanup goals of this Agreement, NYSDEC will, consistent with its legal authority, begin the process necessary to reclassify or de-list the Site from the Registry, unless Debtor or any other party has already begun the process. Any costs attributable to the

reclassification or de-listing process will not be paid by the Debtor or from the escrow account.

MISCELLANEOUS

33. This Agreement and Order shall supplement, and not supersede the Interim Agreement and Order. However, the terms of this Agreement and Order, including any previous orders, stipulations or agreements incorporated herein, shall constitute the complete and entire Agreement and Order between Debtor and the NYSDEC concerning implementation of the Site remediation required hereunder. No term, condition, understanding, or agreement purporting to modify or vary any term of this Agreement and Order shall be binding unless made in writing and subscribed by the party to be bound. No informal advice, guidance, suggestion, or comment by the NYSDEC regarding any report, proposal, plan, specification, schedule, or any other submittal by Debtor shall be construed as relieving Debtor of its obligation to obtain such formal approvals as may be required by this Agreement and Order.

34. The caption of the State's adversary proceeding shall be changed to substitute as a party plaintiff the current NYSDEC Commissioner by deleting "Michael D. Zagata as Commissioner of the New York State Department of Environmental Conservation" and inserting in its place "John P. Cahill as Commissioner of the New York State Department of Environmental Conservation."

35. All references to "professional engineer" in this Agreement and Order are to an individual registered as a professional engineer in accordance with Article 145 of the New York State Education Law.

36. All references to "days" in this Agreement and Order are to calendar days unless otherwise specified.

37. The section headings set forth in this Agreement and Order are included for convenience of reference only and shall be disregarded in the construction and interpretation of any of the provisions of this Agreement and Order.

38. This Agreement and Order is subject to the approval of the United States Bankruptcy Court.

39. Any notices or reports required to be provided herein shall be in writing and sent by regular mail, or by hand delivery addressed as follows:

If to the Debtor:

Platzer, Swergold, Karlin, Levine, Goldberg
& Jaslow, LLP
150 East 52nd Street
New York, New York 10016
Attention: Michele K. Jaspan, Esq.

-and-

Martin Cantor
16 Foothill Road
East Northport, NY 11731

-and-

Cahn Wishod & Lamb, LLP
534 Broadhollow Road
Melville, New York 11747-9034
Attention: Frederick Eisenbud, Esq.

If to Apple:

Apple Bank For Savings
277 Park Avenue
New York, New York 10172
Attention: Michael B. Greene

With a copy to:

Baer Marks & Upham LLP
805 Third Avenue
New York, NY 10022
Attention: Jay L. Gottlieb, Esq.

If to the State:

New York State Department of Law
120 Broadway
New York, New York 10271
Attention: Andrew J. Gershon, Esq.

-and-

New York State Department of Environmental Conservation/DER
50 Wolf Road
Albany, New York 12233-7010
Attention: Steven M. Scharf, P.E.

-and-

New York State Department of Environmental Conservation/DEE
200 White Plains Road, 5th Fl.
Tarrytown, New York 10591-5805
Attention: Edward Devine, Esq.

40. In addition to the notices and reports that must be provided to Apple pursuant to Paragraph 39, copies of any correspondence between and among the Escrow Agent, Debtor and NYSDEC concerning implementation of this Agreement and Order shall be provided to Apple. In the event such correspondence includes lengthy exhibits or attachments, the party initiating the correspondence may omit such exhibits or attachments,

provided this omission is noted and Apple is provided with copies if it so requests.

41. This Agreement and Order shall survive dismissal of this case. The parties consent to the exclusive jurisdiction of the New York State Supreme Court for the County of New York, or, if a federal cause of action arises, of the United States District Court for the Southern District of New York, to decide any case or controversy arising out of this Agreement and Order.

42. This Agreement and Order is in full and final settlement of this adversary proceeding, and any and all claims filed in connection therewith by the NYSDEC and Apple.

SO AGREED:

Dated: New York, New York
October 31, 1997

DENNIS C. VACCO, ATTORNEY GENERAL FOR THE STATE OF NEW YORK
ATTORNEY FOR PLAINTIFFS

By: Andrew J. Gershon
ANDREW J. GERSHON (AG/6141)
Assistant Attorney General
120 Broadway
New York, New York 10271
(212) 416-8474

PLATZER, SWERGOLD, KARLIN, LEVINE, GOLDBERG & JASLOW, LLP
ATTORNEYS FOR DEBTOR

By: Michele K. Jaspan
MICHELE K. JASPAN (MK/1737)
For The Firm
150 East 52nd Street
New York, New York 10022
(212) 593-3000

Dated: New York, New York
October November 3, 1997

BAER MARKS & UPHAM LLP
ATTORNEYS FOR APPLE BANK
FOR SAVINGS

By: _____
JAY GOTTLIEB (JG/9733)
A Member of the Firm
805 Third Avenue
New York, New York 10022
(212) 702-5700

SO ORDERED, this 2
day of October November, 1997

_____
UNITED STATES BANKRUPTCY JUDGE

cant\stip.7

EXHIBIT C

SCHEDULE OF PROGRESS PAYMENT

Work Item	When Progress Payment Due	Amount Due
Costs of removal of additional soil from drainage structures not covered by the $10,500 Initial Payment.	Upon presentation of weight tickets to NYSDEC demonstrating removal, NYSDEC shall notify Escrow Agent that payment is due. If the Escrow Agent does not receive approval of payment from the NYSDEC within seven (7) days, payment shall be deemed approved by NYSDEC.	$70 per ton of soil removed above 150 tons.
Removal and disposal of liquids from drainage structures not covered by the $2,500 Initial Payment.	Upon presentation to NYSDEC of documentation demonstrating that the liquids have been removed, NYSDEC shall notify Escrow Agent that payment is due. If the Escrow Agent does not receive approval of payment from the NYSDEC within seven (7) days, payment shall be deemed approved by NYSDEC.	$350/1000 gallons above 22,000 gallons.
Completion of remediation of drainage structures.	Within thirty (30) days of inspection and approval of the drainage structure remediation by NYSDEC.	$21,625
Payment when SVE system becomes operational	Upon inspection and approval of the SVE system as operational by NYSDEC, NYSDEC shall simultaneously notify EEA and Escrow Agent of its approval.	$16,000

Work Item	When Progress Payment Due	Amount Due
Third SVE well, if necessary.	Upon inspection and approval of the SVE system as operational by NYSDEC. NYSDEC shall simultaneously notify EEA and Escrow Agent of its approval.	$ 3,000
Reasonable and necessary monthly operating costs, including electricity.	Upon review and approval by NYSDEC of the monthly charges for operating costs as reasonable and necessary, NYSDEC shall notify Escrow Agent that payment is due. Monthly operating costs consistent with the cost estimates in the EEA letters of September 4, 1997, and August 29, 1997 to Frederick Eisenbud, Esq., which letters are annexed hereto, shall be presumed reasonable and necessary.	Electricity cost plus invoiced charges for other operating costs approved as reasonable and necessary by NYSDEC.

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK

	In Proceedings for a Reorganization Under Chapter 11
In re Cantor Bros., Inc., Debtor.	Bankruptcy Case No. 893-80853-478
	Judge Eisenberg

State of New York and Michael D. Zagata as Commissioner of Environmental Conservation, Plaintiffs,	
-against-	Adversary Proceedings No. 894-8182-478
Cantor Bros., Inc., Defendant.	

FINAL AGREEMENT AND STIPULATED ORDER

WHEREAS, Cantor Bros., Inc. (the "Debtor"), conducted business and commercial activities from on or before 1975 to April 1993 on property located at 50 Engineers Lane, Farmingdale, New York (the "Site");

WHEREAS, the Site has been listed in the Registry of Inactive Hazardous Waste Disposal Sites in New York State (the "Registry") as site number 1-52-021, and is classified by the New York State Department of Environmental Conservation ("NYSDEC" or "Department") as a class "2" site.

WHEREAS, Cantor Bros. consented to the entry of an order by the New York State Commissioner of Environmental

Conservation, dated March 25, 1992 ("Administrative Order"), requiring the Debtor to develop and implement a remedial investigation and feasibility study ("RI/FS") and appropriate interim remedial measures with respect to the contamination at the Site;

WHEREAS, Cantor Bros. filed a petition under Chapter 11 of the Bankruptcy Code on February 16, 1993, in the United States Bankruptcy Court for the Eastern District of New York;

WHEREAS, the NYSDEC filed an administrative proof of claim (the "NYSDEC Administrative claim") on March 7, 1994, asserting that the costs incurred and to be incurred by the Debtor in discharging its responsibilities and obligations under the Administrative Order and/or statutes relating to the protection of the environment, including the costs of implementing the final cleanup remedy for the Site selected by the NYSDEC, and the costs incurred or to be incurred by the NYSDEC for purposes of oversight or as a consequence of the Debtor's failure to comply with its obligations under the Administrative Order or applicable environmental statutes, including the obligation to implement the remedy, are entitled to administrative expense status and priority;

WHEREAS, the State of New York filed an adversary proceeding (the "Adversary Complaint") against the Debtor on April 19, 1994, adversary proceeding number 894-8182-478, in which New York State seeks, inter alia, the entry of a judgment directing the Debtor to comply with the Administrative Order and,

in addition, New York seeks the entry of a judgment declaring that the costs of compliance with the Administrative Order, including costs incurred by the State of New York, are entitled to administrative status and priority;

WHEREAS, the Debtor filed an Answer to New York State's Adversary Complaint asserting, inter alia, that the NYSDEC holds an unliquidated contingent claim that has not been classified as an administrative claim and that the Debtor cannot be compelled to comply with the Administrative Order until there is an order from the Bankruptcy Court authorizing and directing it to comply; that if the Administrative Order is deemed to be an administrative claim, it must be treated pari passu with any and all administrative claims; and that compliance with the Administrative Order cannot be an administrative expense unless the Site poses an imminent and identifiable danger to the public safety;

WHEREAS, it is the position of the State of New York that, inter alia, the Debtor is obligated to comply with the terms of the Administrative Order and that its failure to comply subjects the Debtor to civil and criminal sanctions and penalties under the New York Environmental Conservation Law;

WHEREAS, in order to advance the resolution of these matters and thereby minimize litigation costs, the parties negotiated and entered into an interim agreement and stipulated order (the "Interim Agreement and Order"), which the Court approved on June 26, 1996, which provided, inter alia, that

Debtor retain a contractor, Handex of New York, Inc. ("Handex"), to implement the following work items required under the Administrative Order, in accordance with the terms and conditions of performance in the Interim Agreement and Order: soil borings and laboratory analysis; groundwater sampling; data validation; waste management; preparation of a report summarizing Handex's investigation pursuant to the Interim Agreement and Order (the "Handex Report"); site structure investigation; and site history;

WHEREAS, NYSDEC accepts the Handex Report as providing sufficient information to enable the design of appropriate remedial measures sufficient to resolve the NYSDEC's claims against the Debtor in this adversary proceeding if the remedial measures are implemented;

WHEREAS, the Handex Report indicates that the soil beneath the former factory area of the Site is contaminated with volatile organic compounds, including, but not limited to, total xylene, toluene, and tetrachloroethylene ("PCE"), for which the most appropriate remedial technology would be a soil vapor extraction ("SVE") system, and the sediments in the storm drains are contaminated with semi-volatile organic compounds, which would most appropriately be remediated through removal and disposal of the liquids and the sediments in the storm drains;

WHEREAS, based on the Handex Report and the other information now known to it (and barring the discovery of contrary information), NYSDEC has concluded that this adversarial proceeding can be resolved if Debtor: (1) pursuant to approved

Work and Design Plans, installs and operates an SVE system to decrease the levels of contaminants in the ground beneath the former factory area to levels that meet the criteria in NYSDEC Technical Assistance and Guidance Memorandum ("TAGM") No. 4046 (a copy of which is annexed hereto as Exhibit A); (2) without the necessity of having an approved Work or Design Plan, cleans storm drains 1 through 10 by removing and appropriately disposing of the liquids and the sediments contained therein; and (3) seals the four monitoring wells associated with the underground storage tank area with grout;

WHEREAS, the parties to this agreement and stipulated order ("Agreement and Order") desire to advance the resolution of these matters and thereby avoid additional litigation costs;

WHEREAS, it is the intention of the parties that the work required under this Agreement and Order will remediate the Site to the point where it can be de-listed from the Registry, and the work has been planned to achieve that goal;

WHEREAS, the parties agree that nothing in this Order shall be construed to limit the right of the Debtor or any other party to file a petition with the Commissioner pursuant to ECL Section 27-1305(4)(b) and 6 NYCRR Section 375-1.9 to de-list the site from the Registry or to change its classification; and

WHEREAS, notwithstanding Debtor's agreement to carry out the terms of this Agreement and Order, Debtor does not admit or acknowledge any liability, fault, or wrongdoing or violation

of law, regulation or permit of any kind whatsoever in any way related to the Site.

NOW, THEREFORE, upon the consent and agreement of the parties by their attorneys, it is hereby ORDERED:

1. The Debtor shall retain a qualified contractor or contractors who shall complete the remedial work ("Remedial Work") and other obligations set forth below, in accordance with the terms and conditions herein. (For purposes of simplicity, the term "Debtor" shall hereinafter be read to encompass the Debtor's contractor or contractors.)

REMEDIAL WORK

Former Factory Area and Grouting of Monitoring Wells

2. The Debtor shall develop a work plan for the SVE system and grouting of the monitoring wells (the "Work Plan") and submit the Work Plan to NYSDEC within fifteen (15) days of approval of this Agreement and Order by the Court. The Work Plan shall include, but need not be limited to:

(a) A general description of the scope of work to install, test, operate and maintain the SVE system;

(b) the Site Quality Assurance Project Plan contained in the Handex Report with any modifications necessary for the SVE Work Plan;

(c) the Health and Safety Plan contained in the Handex Report with any modifications necessary for the SVE Work Plan;

(d) a description of the scope of work to grout the four (4) existing poly-vinyl chloride (PVC) monitoring wells associated with the underground storage tank area (as depicted on the Site map attached hereto as Exhibit B); and

(e) a chronological description of the anticipated remedial activities, together with a schedule for the performance of these activities.

3. The NYSDEC shall notify Debtor in writing of its approval or disapproval of the Work Plan, and, if disapproving, provide written comments explaining the reasons for disapproval.

4. If Debtor requires clarification of any of the reasons specified by the Department for its disapproval, or disagrees with the stated basis for disapproval, Debtor shall request clarification in writing, or request reconsideration of the denial for reasons stated by Debtor in writing, within ten (10) days after receiving written notice that Debtor's submittal has been disapproved. Within fifteen (15) days after receiving written notice that Debtor's submittal has been disapproved, or fifteen (15) days after receiving the Department's response to a timely request for clarification or reconsideration, Debtor shall make a revised submittal to the NYSDEC that addresses and resolves all of the NYSDEC's stated reasons for disapproving the first submittal. After receipt of any revised Work Plan submittal, the NYSDEC shall notify Debtor in writing of its approval or disapproval. If the NYSDEC disapproves the revised Work Plan, Debtor shall be in violation of this Agreement and

Order and the NYSDEC may take any action or pursue whatever rights it has pursuant to any provision of statutory or common law, or under the terms of the Stipulation and Order. (Pursuant to Paragraph 22, NYSDEC's approval or disapproval shall be final and binding, subject only to challenge as arbitrary and capricious by motion upon proper notice.)

5. Within thirty (30) days of receipt of written notification that the Work Plan has been approved, Debtor shall submit a design plan and specifications (the "Design Plan") for the SVE system which shall include:

(a) a minimum of two (2) vapor extraction wells that will capture volatile organic contamination from the area under the chemical manufacturing area and extending to the trash dumpster area, as depicted on Exhibit B hereto;

(b) an SVE operation and maintenance (O & M) plan that provides for:

(1) remediation of the soil in this area until it meets the criteria set forth in TAGM 4046;

(2) operation of the SVE system until extraction well air samples are non-detect or asymptotic through pulsing; and

(3) a sampling program that verifies the results of the SVE system operation including, but not necessarily limited to, confirmatory soil sampling and SVE system effluent testing.

6. The Design Plan shall be prepared and certified by a professional engineer licensed to practice by the State of New York.

7. The NYSDEC shall notify Debtor in writing of its approval or disapproval of the Design Plan, and, if disapproving, provide written comments explaining the reasons for disapproval.

8. If Debtor requires clarification of any of the reasons specified by the NYSDEC for its disapproval, or disagrees with the stated basis for disapproval, Debtor shall request clarification in writing, or request reconsideration of the denial for reasons stated by Debtor in writing, within ten (10) days after receiving written notice that Debtor's submittal has been disapproved. Within fifteen (15) days after receiving written notice that Debtor's submittal has been disapproved, or fifteen (15) days after receiving the Department's response to a timely request for clarification or reconsideration, Debtor shall make a revised submittal to the NYSDEC that addresses and resolves all of the NYSDEC's stated reasons for disapproving the first submittal. After receipt of any revised Design Plan submittal, the NYSDEC shall notify Debtor in writing of its approval or disapproval. If the NYSDEC disapproves the revised Design Plan, Debtor shall be in violation of this Agreement and Order and the NYSDEC may take any action or pursue whatever rights it has pursuant to any provision of statutory or common law, or under the terms of the Stipulation and Order. (Pursuant to Paragraph 22, NYSDEC's approval or disapproval shall be final

and binding, subject only to challenge as arbitrary and capricious by motion upon proper notice.)

9. Debtor shall commence implementation of the approved Work and Design Plans within fifteen (15) days of receiving written notification of NYSDEC's approval of the Design Plan, and shall implement the Plans in accordance with their terms until the remediation objectives specified therein are achieved.

10. Should circumstances warrant, Debtor may apply, in writing, to NYSDEC for permission to deviate from the approved Work and Design Plans. Debtor must obtain prior written approval from NYSDEC prior to deviating from the approved Plans in any material way. The NYSDEC shall respond to the request to deviate from the approved Plans within a reasonable amount of time. The period during which Debtor is required to complete the task which is the subject of the request to deviate shall be extended by the amount of time the NYSDEC takes to approve or disapprove the requested deviation. NYSDEC shall not unreasonably withhold its approval.

11. Within 30 days after completion of the Site remediation specified in the approved Plans, Debtor shall submit written notification to the NYSDEC that the Site remediation has been completed in accordance with the approved Plans. This written notification shall be certified by a professional engineer licensed to practice by the State of New York, and shall describe any changes to the SVE system design or other deviations

from the approved Work and Design Plans during construction and remediation.

Storm Drains

12. Debtor shall remove, sample and appropriately dispose of the water in the storm drains. Debtor shall remove the sediments and any other material in storm drains 1 through 10 to the base of the concrete drainage structure, and sample the removed material with the Toxicity Characteristic Leaching Procedure ("TCLP") to determine proper disposal. Debtor shall then dispose of the removed material as required by applicable rules and regulations and the TCLP results.

13. Debtor shall commence the storm drain remediation no later than thirty (30) days from the creation and funding of the escrow account referred to in Paragraph 17 below.

14. All manifests and analytic results generated in connection with the testing and removal of material from the storm drains shall be submitted to NYSDEC in report form.

15. Debtor shall backfill storm drains 1 through 10 to maintain structural integrity, with clean porous sand and/or gravel.

PAYMENT FOR CLEANUP WORK AND DISTRIBUTION OF REMAINING FUNDS

16. The total cost of performing the work required by this Agreement and Order will not exceed the sum of two hundred thousand dollars ($200,000). The $200,000 cost figure referred to above is derived from cost estimates obtained by the Debtor from its prospective contractor, EEA, Inc. ("EEA"), with an

allocation for contingencies added to the estimated cost of completing the work.

17. Upon approval of this Agreement and Order by the Court, the Debtor shall place the sum of $200,000 into an escrow account which shall be dedicated solely toward remediation of the Site until completion of the Remedial Work required hereunder, and thereafter distributed in accordance with the orders and directives of the Court. The law firm of Platzer, Swergold, Karlin, Levine, Goldberg & Jaslow, LLP shall be the escrow agent ("Escrow Agent"). This Agreement and Order shall be provided to the Escrow Agent and Paragraphs 17 through 21 incorporated by reference into, and made part of, the escrow agreement. Upon execution of the contract between the Debtor and EEA (the "EEA Contract"), the Escrow Agent shall pay to EEA an initial payment toward removal of the soil and liquids from the drainage structures in the sum of thirteen thousand dollars ($13,000). Upon receipt of written notice from NYSDEC that NYSDEC has approved the Design Plan, the Escrow Agent shall pay to EEA an initial payment of $16,000 toward construction of the SVE system. NYSDEC shall, simultaneously with notifying EEA that the Design Plan has been approved, notify the Escrow Agent that NYSDEC has approved the Design Plan.

18. In addition to the initial payments referenced in Paragraph 17, EEA shall receive progress payments ("Progress Payments") from the Escrow Agent as EEA completes various items of the Remedial Work, in accordance with the schedule of Progress

Payments set forth in Exhibit C hereto. The Escrow Agent shall withhold 5% retainage from Progress Payments pending completion of the Remedial Work.

19. The EEA Contract shall provide that payment will be made to EEA in accordance with Paragraphs 17 through 20 herein, including Exhibit C hereto.

20. The EEA contract shall additionally provide that:

a. EEA shall submit invoices for Progress Payments to the Escrow Agent, with simultaneous copies to NYSDEC and the other signatory parties hereto. NYSDEC shall determine whether payment of the Progress Payment is proper in accordance with the terms of this Agreement and Order, including Exhibit C hereto, and approve or disapprove the Progress Payment accordingly. If NYSDEC approves the Progress Payment, it shall notify the Escrow Agent, EEA and other parties hereto in writing. The Escrow Agent shall then pay EEA the approved Progress Payment amount.

b. If NYSDEC disapproves an invoiced Progress Payment, NYSDEC shall provide written notice of its reasons for such determination, specifying what EEA must do to complete the work item for which EEA is seeking a Progress Payment.

c. EEA shall have the right to seek a revision of the schedule of Progress Payments, including an upward revision of the amount due for a particular item of

Remedial Work and the total amount due to EEA under the EEA Contract, for good cause shown. Good cause shall mean due to unexpected and unforeseen occurrences necessitating additional costs to complete the Remedial Work required under the EEA Contract. Known additional costs for which payment will be made include the cost of electricity and the cost of replacing and properly disposing of carbon filters.

d. If both the Debtor and NYSDEC determine that EEA has shown good cause, the requested revision of the EEA Contract will be approved, and the Escrow Agent so instructed.

e. Unless otherwise approved by NYSDEC, all equipment dedicated for use in the Remedial Work shall be new. Equipment used solely in the construction process, such as tools, shall not be considered dedicated for use in the Remedial Work.

21. After NYSDEC has approved the work required hereunder as complete, and EEA has been fully paid for that work, including retainage, the Escrow Agent shall distribute any remaining funds in the escrow account in accordance with the orders and directives of the Court.

TERMS AND CONDITIONS FOR THE PERFORMANCE OF THE REMEDIAL WORK

22. All Remedial Work required hereunder shall be subject to NYSDEC supervision and approval. In the event that the Debtor and the NYSDEC disagree, then the determination of the

NYSDEC shall be final and binding, provided that the determination of the NYSDEC does not require the total expenditures for the work performed pursuant to this Agreement and Order to exceed $200,000. Debtor and creditor Apple Bank For Savings ("Apple") reserve the right to challenge, by motion upon proper notice, any determination by the NYSDEC that is arbitrary and capricious. The filing of a motion by the Debtor or creditor Apple challenging a NYSDEC determination shall not stay or delay the expeditious implementation of the disputed work item by the Debtor, unless such delay is agreed to by the NYSDEC in writing, or implementation of the disputed work item is stayed by a court pending its determination whether the item is "arbitrary and capricious."

23. The Debtor shall provide the NYSDEC with written notice of all fieldwork. Such written notice shall be delivered to the NYSDEC no less than five days prior to the start of the fieldwork referred to in the notice.

24. Following consultation with Debtor, the NYSDEC may require Debtor to modify and/or amplify and expand the work required under the approved Work and Design Plans if the NYSDEC determines, as a result of reviewing data generated by an activity required under this Agreement and Order, or as a result of reviewing any other data or facts, that such modification, amplification and/or expansion is necessary, unless the modification, amplification and/or expansion will cause the total cost of performing the Remedial Work required to implement this

Agreement and Order to exceed the $200,000 sum approved by the Court for implementation.

25. Debtor shall retain professional consultants, contractors, laboratories, quality assurance/quality control personnel and data validators acceptable to the NYSDEC to perform the technical, engineering and analytical obligations required by this Agreement and Order (collectively "Debtor's consultant(s)"). The experience, capabilities and qualifications of the firms or individuals selected by Debtor shall be submitted to the NYSDEC upon entry of this Agreement and Order (although nothing herein shall preclude Debtor from making this submission prior to entry of this Agreement and Order).

26. The NYSDEC shall have the right to obtain split samples, duplicate samples, or both, of all substances and materials sampled by Debtor, and the NYSDEC also shall have the right to take its own samples. Debtor shall make available to the NYSDEC the results of all sampling and/or tests or other data generated by Debtor with respect to implementation of this Agreement and Order and shall submit these results in the progress reports required by this Agreement and Order. The NYSDEC shall make available to Debtor the results of all samples and/or tests or other data generated by the NYSDEC with respect to the site which is the subject of this Agreement and Order.

27. Debtor shall obtain whatever permits, easements, rights-of-way, rights-of-entry, approvals, or authorizations are necessary to perform Debtor's obligations under this Agreement

and Order. If, after Debtor's documented, good faith best efforts, Debtor fails to obtain these authorizations, the NYSDEC may take any appropriate action necessary to secure these authorizations.

28. Debtor and its successors and assigns shall be bound by this Agreement and Order. Debtor, through its officers, directors, agents, servants, employees, successors and assigns, shall be responsible for implementing the terms of this Agreement and Order. Any change in ownership or corporate status of Debtor including, but not limited to, any transfer of assets or real or personal property shall in no way alter Debtor's responsibilities under this Agreement and Order.

29. Debtor shall provide a copy of this Agreement and Order to each contractor hired to perform work required by this Agreement and Order and to each person representing Debtor with respect to the Site and shall condition all contracts entered into hereunder upon performance in conformity with the terms of this Agreement and Order. Debtor or Debtor's contractor(s) shall provide written notice of this Agreement and Order to all subcontractors hired to perform any portion of the work required by this Agreement and Order. Debtor shall be responsible for ensuring that Debtor's contractors and subcontractors perform the work to be done under this Agreement and Order in accordance herewith.

CONVERSION TO A VOLUNTARY CLEANUP WORK PLAN

30. If Apple or any third party who qualifies for "volunteer" status (the "Volunteer") under the NYSDEC's Voluntary Cleanup Program (the "Program") applies for and is accepted as a volunteer to cleanup the Site for industrial use under the Program, NYSDEC shall, consistent with its legal authority, accept this Agreement and Order and any approved Work and Design Plans submitted to NYSDEC by the Debtor pursuant to this Agreement and Order as an approved work plan for inclusion in a voluntary third party cleanup agreement for the Site between the Volunteer and the NYSDEC.

31. In the event that a party qualifies and is subsequently approved as a Volunteer for cleanup of the Site under the Program, the EEA Contract shall be assigned by the Debtor, at the option of the Volunteer, to the Volunteer, who shall have all of the rights and obligations of the assignor under the EEA Contract. In the event of an assignment to a Volunteer, the escrow fund established hereunder shall remain dedicated to the cleanup of the Site until the cleanup is complete, as provided herein.

PETITION TO DE-LIST

32. Upon achievement of the cleanup goals of this Agreement, NYSDEC will, consistent with its legal authority, begin the process necessary to reclassify or de-list the Site from the Registry, unless Debtor or any other party has already begun the process. Any costs attributable to the

reclassification or de-listing process will not be paid by the Debtor or from the escrow account.

MISCELLANEOUS

33. This Agreement and Order shall supplement, and not supersede the Interim Agreement and Order. However, the terms of this Agreement and Order, including any previous orders, stipulations or agreements incorporated herein, shall constitute the complete and entire Agreement and Order between Debtor and the NYSDEC concerning implementation of the Site remediation required hereunder. No term, condition, understanding, or agreement purporting to modify or vary any term of this Agreement and Order shall be binding unless made in writing and subscribed by the party to be bound. No informal advice, guidance, suggestion, or comment by the NYSDEC regarding any report, proposal, plan, specification, schedule, or any other submittal by Debtor shall be construed as relieving Debtor of its obligation to obtain such formal approvals as may be required by this Agreement and Order.

34. The caption of the State's adversary proceeding shall be changed to substitute as a party plaintiff the current NYSDEC Commissioner by deleting "Michael D. Zagata as Commissioner of the New York State Department of Environmental Conservation" and inserting in its place "John P. Cahill as Commissioner of the New York State Department of Environmental Conservation."

35. All references to "professional engineer" in this Agreement and Order are to an individual registered as a professional engineer in accordance with Article 145 of the New York State Education Law.

36. All references to "days" in this Agreement and Order are to calendar days unless otherwise specified.

37. The section headings set forth in this Agreement and Order are included for convenience of reference only and shall be disregarded in the construction and interpretation of any of the provisions of this Agreement and Order.

38. This Agreement and Order is subject to the approval of the United States Bankruptcy Court.

39. Any notices or reports required to be provided herein shall be in writing and sent by regular mail, or by hand delivery addressed as follows:

If to the Debtor:

Platzer, Swergold, Karlin, Levine, Goldberg & Jaslow, LLP
150 East 52nd Street
New York, New York 10016
Attention: Michele K. Jaspan, Esq.

-and-

Martin Cantor
16 Foothill Road
East Northport, NY 11731

-and-

Cahn Wishod & Lamb, LLP
534 Broadhollow Road
Melville, New York 11747-9034
Attention: Frederick Eisenbud, Esq.

If to Apple:

Apple Bank For Savings
277 Park Avenue
New York, New York 10172
Attention: Michael B. Greene

With a copy to:

Baer Marks & Upham LLP
605 Third Avenue
New York, NY 10022
Attention: Jay L. Gottlieb, Esq.

If to the State:

New York State Department of Law
120 Broadway
New York, New York 10271
Attention: Andrew J. Gershon, Esq.

-and-

New York State Department of Environmental Conservation/DER
50 Wolf Road
Albany, New York 12233-7010
Attention: Steven M. Scharf, P.E.

-and-

New York State Department of Environmental Conservation/DEE
200 White Plains Road, 5th Fl.
Tarrytown, New York 10591-5805
Attention: Edward Devine, Esq.

40. In addition to the notices and reports that must be provided to Apple pursuant to Paragraph 39, copies of any correspondence between and among the Escrow Agent, Debtor and NYSDEC concerning implementation of this Agreement and Order shall be provided to Apple. In the event such correspondence includes lengthy exhibits or attachments, the party initiating the correspondence may omit such exhibits or attachments,

provided this omission is noted and Apple is provided with copies if it so requests.

41. This Agreement and Order shall survive dismissal of this case. The parties consent to the exclusive jurisdiction of the New York State Supreme Court for the County of New York, or, if a federal cause of action arises, of the United States District Court for the Southern District of New York, to decide any case or controversy arising out of this Agreement and Order.

42. This Agreement and Order is in full and final settlement of this adversary proceeding, and any and all claims filed in connection therewith by the NYSDEC and Apple.

SO AGREED:

Dated: New York, New York
October 31, 1997

DENNIS C. VACCO, ATTORNEY GENERAL FOR THE STATE OF NEW YORK
ATTORNEY FOR PLAINTIFFS

By: Andrew J. Gershon
ANDREW J. GERSHON (AG/6141)
Assistant Attorney General
120 Broadway
New York, New York 10271
(212) 416-8474

PLATZER, SWERGOLD, KARLIN, LEVINE, GOLDBERG & JASLOW, LLP
ATTORNEYS FOR DEBTOR

By: Michele K. Jaspan
MICHELE K. JASPAN (MK/1737)
For The Firm
150 East 52nd Street
New York, New York 10022
(212) 593-3000

Dated: New York, New York
October ~~3~~ November, 1997

BAER MARKS & UPHAM LLP
ATTORNEYS FOR APPLE BANK
FOR SAVINGS

By: _____
JAY GOTTLIEB (JG/9733)
A Member of the Firm
805 Third Avenue
New York, New York 10022
(212) 702-5700

SO ORDERED, this 2
day of ~~October~~ December, 1997

_____
UNITED STATES BANKRUPTCY JUDGE

cmt\stip.7

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK

	In Proceedings for a Reorganization Under Chapter 11
In re Cantor Bros., Inc., Debtor.	Bankruptcy Case No. 893-80853-478
	Judge Eisenberg
State of New York and Langdon Marsh as Acting Commissioner of Environmental Conservation, Plaintiffs, -against- Cantor Bros., Inc., Defendant.	Adversary Proceedings No. 894-8182-478

file #152021 available

INTERIM AGREEMENT AND STIPULATED ORDER

WHEREAS, Cantor Bros., Inc., (the "Debtor" or "Cantor Bros.") conducted business and commercial activities from on or before 1975 to April 1993 on property located at 50 Engineers Lane, Farmingdale, New York (the "Site");

WHEREAS, the Site has been listed in the Registry of Inactive Hazardous Waste Disposal Sites in New York State as site number 1-52-021, and is classified by the New York State Department of Environmental Conservation ("NYSDEC") as a class "2" site.

WHEREAS, Cantor Bros. consented to the entry of an order by the New York State Commissioner of Environmental Conservation, dated March 25, 1992 ("Administrative Order"), requiring the

Debtor to develop and implement a remedial investigation and feasibility study ("RI/FS") and appropriate interim remedial measures with respect to the contamination at the Site;

WHEREAS, Cantor Bros. filed a petition under Chapter 11 of the Bankruptcy Code on February 16, 1993, in the United States Bankruptcy Court for the Eastern District of New York;

WHEREAS, the NYSDEC filed an administrative proof of claim (the "NYSDEC Administrative claim") on March 7, 1994, asserting that the costs incurred and to be incurred by the Debtor in discharging its responsibilities and obligations under the Administrative Order and/or statutes relating to the protection of the environment, including the costs of implementing the final cleanup remedy for the Site selected by the NYSDEC, and the costs incurred or to be incurred by the NYSDEC for purposes of oversight or as a consequence of the Debtor's failure to comply with its obligations under the Administrative Order or applicable environmental statutes, including the obligation to implement the remedy, are entitled to administrative expense status and priority;

WHEREAS, the State of New York filed an adversary proceeding (the "Adversary Complaint") against the Debtor on April 19, 1994, adversary proceeding number 894-8182-478, in which New York State seeks, inter alia, the entry of a judgment directing the Debtor to comply with the Administrative Order and, in addition, New York seeks the entry of a judgment declaring that the costs of compliance with the Administrative Order, including costs

incurred by the State of New York, are entitled to administrative status and priority;

WHEREAS, the Debtor filed an Answer to New York State's Adversary Complaint asserting, inter alia, that the NYSDEC holds an unliquidated contingent claim that has not been classified as an administrative claim and that the Debtor cannot be compelled to comply with the Administrative Order until there is an order from the Bankruptcy Court authorizing and directing it to comply; that if the Administrative Order is deemed to be an administrative claim, it must be treated pari passu with any and all administrative claims; and that compliance with the Administrative Order cannot be an administrative expense unless the Site poses an imminent and identifiable danger to the public safety;

WHEREAS, it is the position of the State of New York that, inter alia, the Debtor is obligated to comply with the terms of the Administrative Order and that its failure to comply subjects the Debtor to civil and criminal sanctions and penalties under the New York Environmental Conservation Law;

WHEREAS, the parties to this interim agreement and stipulated order desire to advance the resolution of these matters and thereby avoid the additional litigation costs.

NOW, THEREFORE, upon the consent and agreement of the parties by their attorneys, it is hereby ORDERED:

1. The Debtor shall undertake the remedial work and other obligations set forth below.

2. The Debtor, by its contractor Handex of New York, Inc. ("Handex"), shall implement as part of the RI/FS and the Interim Remedial Measures required by the Administrative Order, the following work items:

REMEDIAL WORK

Soil Borings and Laboratory Analysis

A. Handex shall drill a total of 23 soil borings in areas potentially impacted by such structures as former underground storage tanks, trash dumpsters, leaching pools and storm drains. One (1) soil boring, at location TW-16, shall be drilled using a hollow stem auger or Cone Penetrometer. All other borings shall utilize a hollow stem auger. The approximate locations of the soil borings are indicated on the map attached hereto as appendix A.

B. Soil samples shall be collected from each boring starting at the base of the structure, e.g., storm drain/leaching pool, and continuing in five feet intervals until the water table is encountered approximately forty feet below land surface. The samples will be screened every five feet for Target Compound List volatile organic compounds ("VOCs") with a portable gas chromatograph ("GC"). Based on the portable GC results two (2) soil samples will be submitted to a New York State Department of Health ("NYSDOH") ELAP certified laboratory using Contract Laboratory Protocols ("CLP") for analysis of target compound list

volatile organic compounds ("VOCs") and target compound list semi-volatile organic compounds ("Semi-VOCs"). The samples submitted for laboratory analysis shall be selected using the following criteria:

i. If the portable GC results for VOC analysis are non-detect ("ND"), the sample just below the structure, e.g., storm drain/leach pool, will be analyzed for Semi-VOCs and the sample just above the water table will be analyzed for VOCs.

ii. If VOC's are detected then the sample with the highest GC results will be analyzed for VOC and Semi-VOC compounds. A second sample will be collected and analyzed for VOCs and Semi-VOCs in order to document the depth at which the VOC's are no longer present at detectable levels or, in the event that VOCs are detected to the water table, to determine the concentration in soil just above the water table.

C. The results of the soil boring program will be utilized in determining the need for additional work to delineate the areal extent of soil contamination as well as the number and location of such additional borings. Handex shall take and analyze such additional soil borings as may be necessary to determine the areal extent of the soil contamination. The additional soil borings shall be undertaken as part of the obligations arising under this agreement and order.

Groundwater Sampling

D. In addition to the soil samples collected in the borings installed inside the building, see appendix "A", one groundwater

sample shall be collected approximately five feet below the water table from the soil boring drilled at location TW-16, using a hollow stem auger or Cone Penetrometer. Handex shall submit the groundwater sample to the laboratory for Target Compound List VOC analysis.

E. Handex shall drill one (1) temporary groundwater well point at an off-site location south of the Site. Selection of the off-site location is subject to the approval of the DEC. The well point will be installed using a Hydro-punch/Cone Penetrometer Technology ("CPT") or hollow stem auger method. It is anticipated that groundwater will be encountered at approximately forty feet below land surface. The first sample shall be collected at ten feet below the water table followed by sample collections at ten feet intervals until two groundwater samples are non-detect using the portable GC.

F. The water samples collected shall be screened on site with a portable GC for VOCs. Based upon the GC screening the two samples with the highest GC results for VOCs shall be submitted to the laboratory for VOC analysis.

G. Handex shall collect groundwater samples from the four (4) existing monitoring wells (MW-1 through MW-4) for VOC and Semi-VOC analysis. This task shall include collecting the appropriate QA/QC blanks for analysis. Handex may install and sample additional groundwater monitoring wells subject to the approval of DEC as provided in paragraph 3.

Data Validation

H. All samples collected under this agreement and order may be split and analyzed by the NYSDEC. NYSDEC Analytical Services

Protocols 91-1 and 91-2 with category B deliverables shall be utilized. This agreement and order does not establish data validation requirements. However, based upon its review of the QA/QC submittal, NYSDEC may require data validation which Handex shall perform, subject to the provisions of paragraph 3 below.

Waste Management

I. Drill cuttings, generated during the boring program and water generated from steam cleaning and purging of wells during groundwater sampling, shall be collected in 55 gallon drums and staged on-site. Upon receipt of the waste classification analysis, Handex shall contract with a transporter and a disposal facility for removal of the waste from the site.

Report Preparation

J. A report summarizing the investigation shall be prepared by Handex and submitted to the NYSDEC and counsel for the Debtor, the Apple Bank for Savings ("Apple") and the State. The report will include recommendations for additional work as and if necessary.

Site Structure Investigation

K. Upon completion of the field investigation work, Handex shall provide the NYSDEC, Apple and the Debtor, with a drawing based upon visual observations of all floor drains, cesspools, septic systems and leaching pools, and associated piping, referred to herein collectively as "structures", located on the Site.

L. Handex will make a concerted effort to locate structures identified in the as-built drawings but which could not be field verified during the site visit conducted on October 12, 1994. Handex will inspect each structure to determine its size and identify piping entering and exiting the structure. When possible, Handex will conduct dye testing and snaking, if required, to confirm use of the structures. Samples of relevant media will be collected and analyzed as and if appropriate. Please note, Handex is assuming no floor/wall destruction or excavation will be required to access and inspect these structures. This inspection will focus on accessible structures which appear to be active and are not permanently closed. Procedures for sampling of these structures can not be addressed at this time as conditions can not be anticipated.

M. The Site Plan, which is attached as Figure 2, "General Site Map", to the Draft Interim Remedial Measures, shall be updated, as necessary, to show the true location of all structures, including those identified in the architectural and/or as-built drawings. The update of the Site Plan shall be prepared after inspection by Handex of the structures. The Site Plan figures shall include bar scales.

Site History

N. Within sixty days from the date that this agreement and order is entered, Debtor shall provide the NYSDEC and Apple with a written statement describing in detail:

i. All business activities conducted on the Site;

ii. All chemical substances shipped to the Site;

iii. All chemical substances transported from the Site; and

iv. Storage, mixing and packaging of chemical substances at the site.

TERMS AND CONDITIONS FOR THE PERFORMANCE OF THE REMEDIAL WORK

3. Except as is otherwise explicitly provided in paragraph 2 above, all work required hereunder shall be performed in compliance with and under the terms set forth in the Administrative Order, attached hereto as appendix B, including but not limited to the provision that all work performed must be done subject to NYSDEC supervision and approval. In the event that the Debtor by its contractor and the NYSDEC disagree, then the determination of the NYSDEC shall be final and binding provided that the determination of the NYSDEC does not require the total expenditures for the work performed pursuant to this agreement and order to exceed the total cost established pursuant to paragraph 5. Debtor and Apple reserve the right to challenge by motion upon proper notice, any determination by the NYSDEC that is arbitrary and capricious. The filing of a motion by the Debtor or Apple challenging a NYSDEC determination shall not stay or delay the expeditious implementation of the disputed work item by the Debtor or Handex.

4. The fieldwork required by this agreement and order shall begin within thirty days of the entry of this agreement and order and substantially all work shall be completed within one hundred

and twenty days of the entry of this order. All reports and data submissions required pursuant to this agreement and order shall be delivered to the NYSDEC, the Debtor and Apple on or before sixty days after the completion of the fieldwork.

5. The total cost of performing the work required by this interim agreement and stipulated order shall not exceed the sum of one hundred twenty-five thousand dollars ($125,000.00) except upon application to and the approval of the Court. The $125,000 cost figure referred to above is derived from cost estimates submitted by Handex. The Debtor by its contractor Handex shall notify the State of New York and Apple in writing when costs totalling ~~one hundred~~ seventy thousand dollars (~~$100,000.00~~ $70,000.00) have been incurred. Such notice shall itemize the work that has yet to be done and the anticipated costs of such work.

6. The Debtor by its contractor Handex shall provide the NYSDEC with written notice of all fieldwork. Such written notice shall be delivered to the NYSDEC no less than five days prior to the start of the fieldwork referred to in the notice.

RESERVATION OF CLAIMS AND DEFENSES

7. This Interim Agreement and Stipulated Order obligates the Debtor to perform the remedial work and other obligations set forth herein. Following the completion of the work required under this agreement and order including the submission to the NYSDEC of the requisite reports, the NYSDEC may select a remedy for the Site. The Debtor's obligation, if any, to implement the selected remedy is not addressed by this agreement and

stipulation. With respect to the Debtor's obligation to implement the selected remedy and with respect to all other claims and obligations that are not explicitly addressed herein, including, but not limited to, additional sampling and the implementation of interim remedial measures, the parties reserve all of their rights and defenses for subsequent resolution either by agreement or litigation.

MISCELLANEOUS

8. The caption of the State's adversary proceeding shall be changed to substitute as a party plaintiff, the current NYSDEC Commissioner by deleting "Langdon Marsh as Acting Commissioner of Environmental Conservation" and inserting in its place "Michael D. Zagata as Commissioner of the New York State Department of Environmental Conservation."

9. This Interim Agreement and Stipulation Order is subject to the approval of the United States Bankruptcy Court.

10. Any notices or reports required to be provided herein shall be in writing and sent by regular mail, or by hand delivery addressed as follows:

If to the Debtor:

Platzer, Fineberg & Swergold
150 East 52nd Street
New York, New York 10016
Attention: Michele K. Jaspan

-and-

Martin Cantor
16 Foothill Road
East Northport, NY 11731

If to Handex:

Handex of New York, Inc.
61 C Carolyn Boulevard
Farmingdale, New York 11735
Attention: Carol Karp

If to Apple Bank for Savings:

Baer Marks & Upham, LLP
805 Third Avenue
New York, NY 10022
Attention: Jay L. Gottlieb, Esq.

If to the State:

New York State Department of Law
120 Broadway
New York, New York 10271
Attention: Norman Spiegel, Esq.

-and-

New York State Department of Environmental Conservation/DHWR
50 Wolf Road
Albany, New York 12233
Attention: Susan McCormick, P.E.

-and-

New York State Department of Environmental Conservation/DEE
200 White Plains Road, 5th Fl.
Tarrytown, New York 10591-5805
Attention: Samara Swanston, Esq.

SO AGREED:

Dated: Morganville, New Jersey
April , 1996

HANDEX OF NEW JERSEY, INC. d/b/a
HANDEX OF NEW YORK

By: _____
JOHN ST. JAMES (JJ/)
Chief Financial Officer
500 Campus Drive
Morganville, NJ 07751

SO AGREED:

Dated: New York, New York
April 15, 1996

DENNIS C. VACCO, ATTORNEY GENERAL
FOR THE STATE OF NEW YORK
ATTORNEY FOR PLAINTIFFS

By: _____
NORMAN SPIEGEL (NS/5619)
Assistant Attorney General
120 Broadway
New York, New York 10271
(212) 416-8454

Dated: New York, New York
April , 1996

PLATZER, FINEBERG & SWERGOLD
ATTORNEYS FOR DEBTOR

By: _____
MICHELE K. JASPAN (MK/1737)
For The Firm
150 East 52nd Street
New York, New York 10022
(212) 593-3000

Dated: New York, New York
April 16, 1996

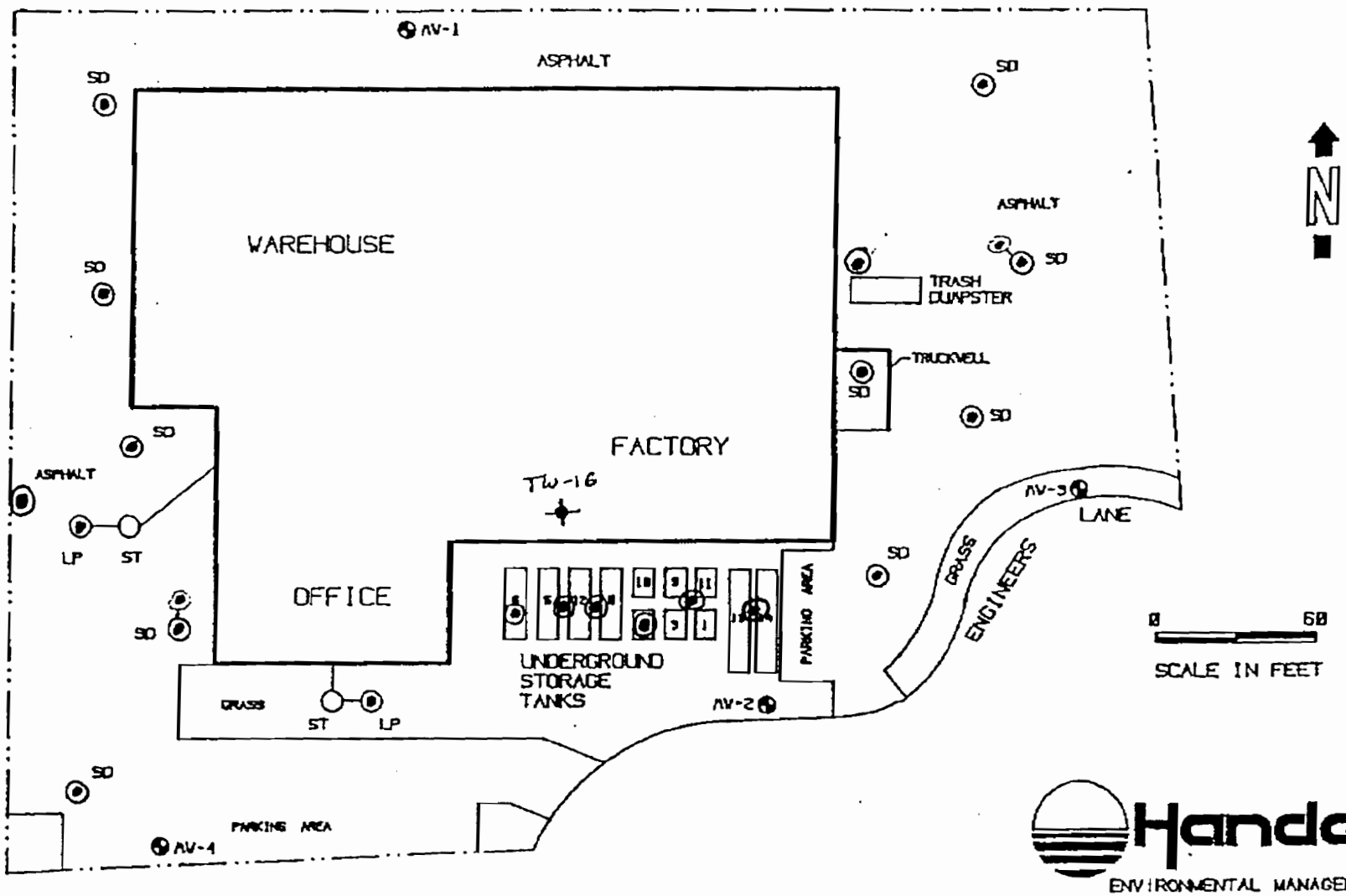
BAER, MARKS & UPHAM, LLP
ATTORNEYS FOR APPLE BANK
FOR SAVINGS

By: _____
JAY GOTTLIEB (JG/9733)
805 Third Avenue
New York, New York 10022
(212) 702-5700

SO ORDERED, this 26
day of June 1996

_____
UNITED STATES BANKRUPTCY JUDGE

no.1\spiegel\cantstp.10



SD = STORM DRAIN
ST = SETTLING TANK
LP = LEACHING POOL

NOTE: MONITORING WELL LOCATIONS ARE APPROXIMATE

⊙ Soil boring

✦ Soil boring/gw sample location

Handex
ENVIRONMENTAL MANAGEMENT

FIGURE 2

GENERAL SITE MAP

CANTOR BROTHERS
ENGINEERS LANE
FARMINGDALE, NEW YORK

2-10

Exhibit A

STATE OF NEW YORK: DEPARTMENT OF ENVIRONMENTAL CONSERVATION

In the Matter of the
Development and Implementation
of a Remedial Investigation/Feasibility
Study for an Inactive Hazardous Waste
Disposal Site, Under Article 27, Title 13,
and Article 71, Title 27 of the
Environmental Conservation Law
of the State of New York by

CANTOR BROTHERS, INC.,

Respondent.

ORDER
ON
CONSENT

INDEX #
W1-0570-91-12

Site Code # 1-52-021

WHEREAS,

1. The New York State Department of Environmental Conservation (the "Department") is responsible for enforcement of Article 27, Title 13 of the Environmental Conservation Law of the State of New York ("ECL"), entitled "Inactive Hazardous Waste Disposal Sites." This Order is entered into pursuant to the Department's authority under ECL Article 27, Title 13 and ECL Section 3-0301.

2. Cantor Brothers, Inc. ("Respondent"), is a corporation organized and existing under the laws of the State of New York. The site is located on Engineers Lane, Farmingdale, New York 11735, and is in the Town of Babylon. The owner of the site is Anman Realty Corp., Engineers Lane, P.O. Box 126, Farmingdale, New York 11735. Anman Realty Corp. is a wholly owned subsidiary of Cantor Bros., Inc. Cantor Bros., Inc. was incorporated in 1934. Emanuel Cantor owns 50%

Exhibit B

of the shares of the corporation and Martin Cantor has effective control of the remaining 50% of the shares. The Closing for the purchase of the site was on August 21, 1964. A map of the site is attached hereto and is incorporated into this Order as Appendix "A."

3. The Department maintains that the Site is an inactive hazardous waste disposal site, as that term is defined at ECL Section 27-1301(2), and presents a significant threat to the public health or environment. The Site has been listed in the Registry of Inactive Hazardous Waste Disposal Sites in New York State as Site Number 1-52-021. The Department has classified the Site as a "2" pursuant to ECL Section 27-1305(4)(b).

4. A. Pursuant to ECL Section 27-1313(3)(a), whenever the Commissioner of Environmental Conservation (the "Commissioner") "finds that hazardous wastes at an inactive hazardous waste disposal site constitute a significant threat to the environment, he may order the owner of such site and/or any person responsible for the disposal of hazardous wastes at such site (i) to develop an inactive hazardous waste disposal site remedial program, subject to the approval of the Department, at such site, and (ii) to implement such program within reasonable time limits specified in the order."

B. Any person under order pursuant to ECL Section 27-1313(3)(a) has a duty imposed by ECL Article 27, Title 13 to carry out the remedial program committed to

under order. ECL Section 71-2705 provides that any person who fails to perform any duty imposed by ECL Article 27, Title 13 shall be liable for civil, administrative and/or criminal sanctions.

C. The Department also has the power, inter alia, to provide for the prevention and abatement of all water, land, and air pollution. ECL Section 3-0301(1)(i).

5. The Department and Respondent agree that the goals of this Order are for Respondent to (i) develop and implement a Remedial Investigation/Feasibility Study ("RI/FS") for the Site.

6. Respondent, having waived Respondent's right to a hearing herein as provided by law, and having consented to the issuance and entry of this Order, agrees to be bound by its terms. Respondent consents to and agrees not to contest the authority or jurisdiction of the Department to issue or enforce this Order, and agrees not to contest the validity of this Order or its terms.

7. Nothing in this Order shall be construed to limit Respondent's right to file a petition with the Commissioner pursuant to ECL Section 27-1305(4)(b) to de-list the site from the Registry or to change its classification.

8. Notwithstanding Respondent's agreement to carry out the terms of this Order, Respondent does not admit or acknowledge any liability, fault or wrongdoing or violation of

law, regulation or permit of any kind whatsoever in any way related to the Site.

NOW, having considered this matter and being duly advised, IT IS ORDERED THAT:

I. Within 30 days after the effective date of this Order, Respondent shall submit to the Department all data within Respondent's possession or control regarding environmental conditions on-Site and off-Site, and other information described below, unless the Department advises the Respondent that such data have previously been provided to the Department. Unless already contained in the Phase I and Phase II reports previously prepared for the Department, the data and other information shall include:

A. A brief history and description of the Site, including the types, quantities, physical state, location, and dates of disposal of hazardous waste including methods of disposal and spillage of such wastes;

B. A concise summary of information held by Respondent and Respondent's attorneys and consultants with respect to all other PRPs responsible for such disposal of hazardous wastes, including but not limited to names, addresses, dates of disposal and any proof linking each such person responsible with hazardous wastes identified pursuant to subparagraph I(A); and

C. A comprehensive list and copies of all existing relevant reports with titles, authors, and subject matter, as well as a description of the results of all previous investigations of the Site and areas in the vicinity of the Site, including copies of all available topographic and property surveys, engineering studies and aerial photographs.

II. RI/FS Work Plan Contents and Submittals

A. Unless a longer period of time is agreed to in writing by the Department, Respondent shall submit to the Department, within 30 days after the effective date of this Order, a detailed work plan describing the methods and procedures to be implemented in performing an RI/FS for the Site ("RI/FS Work Plan").

B. (1) The RI/FS Work Plan shall include, but not be limited to, the following:

a. A chronological description of the anticipated RI/FS activities together with a schedule for the performance of these activities.

b. A Sampling and Analysis Plan that shall include:

(i) A quality assurance project plan that describes the quality assurance and quality control protocols necessary to achieve the initial data quality objectives. This plan shall designate a data validation expert and must describe such individual's qualifications and experience.

(ii) A field sampling plan that defines sampling and data gathering methods in a manner consistent with the "Compendium of Superfund Field Operations Method" (EPA/540/P-87/001, OSWER Directive 9355.0-14, December 1987) as supplemented by the Department.

c. A health and safety plan to protect persons at and in the vicinity of the Site during the performance of the RI/FS which shall be prepared in accordance with 29 C.F.R. 1910 and all other applicable standards by a certified health and safety professional. Respondent shall add supplemental items to this plan necessary to ensure the health and safety of all persons at or in the vicinity of the Site during the performance of any work pursuant to this Order.

d. A citizen participation plan that is, at a minimum, consistent with the Department's publication, "New York State Inactive Hazardous Waste Site Citizen Participation Plan," dated August 30, 1988, and any subsequent revisions thereto.

(2) The RI/FS Work Plan shall incorporate all elements of a RI/FS as set forth in the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA") [42 U.S.C. 9601 et seq.], as amended, the National Contingency Plan ("NCP") of March 8, 1990 [40 CFR Part 300], the USEPA guidance document entitled "Guidance for Conducting Remedial Investigations and Feasibility Studies

under CERCLA," dated October 1988, and any subsequent revisions to that guidance document in effect at the time the RI/FS Work Plan is submitted, and appropriate USEPA and Department technical and administrative guidance documents.

III. Performance and Reporting of Remedial Investigation

A. Within 30 days after the Department's approval of the RI/FS Work Plan, Respondent shall commence the Remedial Investigation.

B. Respondent shall perform the Remedial Investigation in accordance with the Department-approved RI/FS Work Plan.

C. During the performance of the Remedial Investigation, Respondent shall have on-Site a full-time representative who is qualified to supervise the work done.

D. Within the time frame set forth in the RI/FS Work Plan, Respondent shall prepare a Remedial Investigation Report that shall:

(1) include all data generated and all other information obtained during the Remedial Investigation:

(2) provide all of the assessments and evaluations set forth in CERCLA, the NCP, and the guidance documents identified in Subparagraph II(B)(2);

(3) identify any additional data that must be collected; and

(4) include a certification by the individual or firm with primary responsibility for the day to day

performance of the Remedial Investigation that all activities that comprised the Remedial Investigation were performed in full accordance with the Department-approved RI/FS Work Plan.

IV. Feasibility Study

A. Within 30 days after receipt of the Department's approval of the Remedial Investigation Report, Respondent shall perform, prepare, and submit a Feasibility Study evaluating on-Site remedial actions to eliminate, to the maximum extent practicable, all health and environmental hazards and potential hazards attributable to hazardous waste disposal at the Site. The Feasibility Study shall be prepared by and have the signature and seal of a professional engineer who shall certify that the Feasibility Study was prepared in accordance with this Order. The Department does not release the Respondent from any liability the Respondent may have for the off-Site migration of hazardous substances.

B. Respondent shall perform and prepare the Feasibility Study in accordance with the Department-approved RI/FS Work Plan and in a manner consistent with CERCLA, the NCP, and the guidance documents identified in Subparagraph II(B)(2).

C. Within 30 days after the Department's approval of the Feasibility Study, Respondent shall cooperate and assist the Department in soliciting public comment on the RI/FS and the proposed remedial action plan identified therein, in accordance with CERCLA, the NCP, the guidance

documents identified in Subparagraph II(B)(2), and with any Department policy and guidance documents in effect at the time the public comment period is initiated. After the close of the public comment period, the Department shall select a final remedial alternative for the site in a Record of Decision ("ROD").

V. Interim Remedial Measures

Before the effective date of the ROD, Respondent or the Department may propose interim remedial measures ("IRMs") for the Site on an as-needed basis. In proposing each IRM, Respondent shall submit to the Department a work plan which includes time frames for the completion of the IRM. Upon the Department's determination that the proposal is an appropriate interim remedial measure and its approval of such work plan, the work plan shall be incorporated into and become an enforceable part of this Order. Respondent shall then carry out such IRM in accordance with the requirements of the approved work plan and this Order.

VI. Progress Reports

Respondent shall submit to the parties set forth in paragraph XIII copies of written monthly progress reports that: (i) describe the actions which have been taken toward achieving compliance with this Order during the previous month; (ii) include all results of sampling and tests and all other data received or generated by Respondent or Respondent's contractors or agents in the previous month, including quality

assurance/quality control information, whether conducted pursuant to this Order or conducted independently by Respondent; (iii) identify all work plans, reports, and other deliverables required by this Order that were completed and submitted during the previous month; (iv) describe all actions, including, but not limited to, data collection and implementation of work plans, that are scheduled for the next month and provide other information relating to the progress at the Site; (v) include information regarding percentage of completion, unresolved delays encountered or anticipated that may affect the future schedule for implementation of the Respondent's obligations under the Order, and efforts made to mitigate those delays or anticipated delays; (vi) include any modifications to any work plans that Respondent has proposed to the Department or that the Department has approved; and (vii) describe all activities undertaken in support of the Citizen Participation Plan during the previous month and those to be undertaken in the next month. Respondent shall submit these progress reports to the Department by the tenth day of every month following the effective date of this Order.

VII. Review of Submittals

A. (1) The Department shall review each of the submittals Respondent makes pursuant to this Order to determine whether it was prepared, and whether the work done to generate the data and other information in the submittal was done, in accordance with this Order and generally accepted

technical and scientific principles. The Department shall notify Respondent in writing of its approval or disapproval of the submittal, except for the submittal discussed in Paragraph II(B)(1)(c). All Department-approved submittals shall be incorporated into and become an enforceable part of this Order.

(2) (a) If the Department disapproves a submittal, it shall so notify Respondent in writing and shall specify the reasons for its disapproval. Within 30 days after receiving written notice that Respondent's submittal has been disapproved, Respondent shall make a revised submittal to the Department that addresses and resolves all of the Department's stated reasons for disapproving the first submittal.

(b) After receipt of the revised submittal, the Department shall notify Respondent in writing of its approval or disapproval. If the Department disapproves the revised submittal, Respondent shall be in violation of this Order and the Department may take any action or pursue whatever rights it has pursuant to any provision of statutory or common law. If the Department approves the revised submittal, it shall be incorporated into and become an enforceable part of this Order.

B. Following consultation with Respondent, the Department may require Respondent to modify and/or amplify and expand a submittal if the Department determines, as a result of reviewing data generated by an activity required under this

Order or as a result of reviewing any other data or facts, that further work is necessary.

VIII. Penalties

A. (1) Respondent's failure to comply with any term of this Order may be deemed by the Department to be a violation of this Order and the ECL.

B. Respondent shall not suffer any penalty under this Order or be subject to any proceeding or action if it cannot comply with any requirement hereof because of war, riot, or an unforeseeable disaster arising exclusively from natural causes which the exercise of ordinary human prudence could not have prevented. Respondent shall, within five days of when it obtains knowledge of any such condition, notify the Department in writing. Respondent shall include in such notice the measures taken and to be taken by Respondent to prevent or minimize any delays and shall request an appropriate extension or modification of this Order. Failure to give such notice within such five-day period constitutes a waiver of any claim that a delay is not subject to penalties. Respondent shall have the burden of proving that an event is a defense to compliance with this Order pursuant to subparagraph VIII(B).

IX. Entry upon Site

Respondent hereby consents to the entry upon the Site or areas in the vicinity of the Site which may be under the control of the Respondent by any duly designated employee, consultant, contractor, or agent of the Department or any

State agency for purposes of inspection, sampling, and testing and to ensure Respondent's compliance with this Order.

X. Department's Reservation of Rights

A. Nothing contained in this Order shall be construed as barring, diminishing, adjudicating, or in any way affecting any of the Department's rights including, but not limited to nor exemplified by, the following:

1. the Department's right to bring any action or proceeding against anyone other than Respondent and/or any of Respondent's directors, officers, employees, servants, agents, successors, and assigns;

2. the Department's right to enforce this Order against Respondent and/or any of Respondent's directors, officers, employees, servants, agents, successors, and assigns if Respondent fails to satisfy any of the terms of this Order;

3. the Department's right to bring any action or proceeding against Respondent and/or any of Respondent's directors, officers, employees, servants, agents, successors, and assigns with respect to claims for natural resources damages as a result of the release or threatened release of hazardous substances or constituents at or from the Site;

4. the Department's right to bring any action or proceeding against Respondent and/or any of Respondent's directors, officers, employees, servants, agents, successors, and assigns with respect to hazardous substances that are present at the Site or that have migrated from the Site;

5. the Department's right to require Respondent and/or any of Respondent's directors, officers, employees, servants, agents, successors, and assigns to develop and implement IRMs for the Site; and

6. the Department's right to gather information and enter and inspect property and premises.

7. the Department's right to recover a sum of money which shall represent reimbursement for the Department's expenses including, but not limited to, direct labor, overhead, travel, analytical costs, and contractor costs incurred by the State of New York for work performed at the Site to date, as well as for negotiating this Order, reviewing and revising submittals made pursuant to this Order, overseeing activities conducted pursuant to this Order, and collecting and analyzing samples. Itemization of the costs shall include an accounting of personal services indicating the employee name, title, biweekly salary, and time spent (in hours) on the project during the billing period. The Department's approved fringe benefit and indirect cost rates shall be applied. Non-personal service costs shall be summarized by category of expense (e.g., supplies, materials, travel, contractual).

B. Nothing contained in this Order shall be construed to prohibit the Commissioner or his duly authorized representative from exercising any summary abatement powers.

XI. Indemnification

Respondent shall indemnify and hold the Department, the State of New York, and their representatives and employees harmless for all claims, suits, actions, damages, and costs of every name and description arising out of or resulting from the fulfillment or attempted fulfillment of this Order by Respondent, and/or Respondent's directors, officers, employees, servants, agents, successors, and assigns.

XII. Public Notice

A. After the effective date of this Order, Respondent shall file a Declaration of Covenants and Restrictions with the Suffolk County Clerk to give all parties who may acquire any interest in the Site notice of this Order.

B. If Respondent proposes to convey the whole or any part of Respondent's ownership interest in the Site, Respondent shall, not fewer than 60 days before the date of conveyance, notify the Department in writing of the identity of the transferee and of the nature and proposed date of the conveyance and shall notify the transferee in writing, with a copy to the Department, of the applicability of this Order.

XIII. Communications

A. All written communications required by this Order shall be transmitted by United States Postal Service, by private courier service, or hand delivered as follows:

Communication from Respondent shall be sent to:

1. Peter Bleiweiss
   Division of Environmental Enforcement
   NYS Dept. of Environmental Conservation
   202 Mamaroneck Avenue Room 304
   White Plains, NY 10601-5381

2. John Conover
   NYS Dept. of Environmental Conservation
   SUNY Building # 40
   Stony Brook, NY 11790-2356

3. Director, Bureau of Environmental
   Exposure Investigation
   New York State Department of Health
   2 University Place
   Albany, New York 12203

4. Raymond Cowen, Director, Region 1
   NYS Dept. of Environmental Conservation
   SUNY Building # 40
   Stony Brook, NY 11790-2356

5. Louis P. Oliva, Esq.
   Division of Environmental Enforcement
   NYS Dept. of Environmental Conservation
   202 Mamaroneck Avenue Room 304
   White Plains, NY 10601-5381

B. Copies of work plans and reports shall be submitted as follows:

1. Four copies (one unbound) to:

   Anthony Candela, P.E.
   NYS Dept. of Environmental Conservation
   SUNY Building # 40
   Stony Brook, NY 11790-2356

2. Two copies to:

   The Director
   NYS Department of Health
   Bureau of Env. Exposure Investigation
   2 University Place Room 205
   Albany, NY 12203

3. One copy to:

Michael O'Toole, P.E.
Division of Hazardous Waste Remediation
NYS Dept. of Environmental Conservation
50 Wolf Road
Albany, NY 12233-7010

4. One copy to:

Louis P. Oliva, Esq.
Division of Environmental Enforcement
NYS Dept. of Environmental Conservation
202 Mamaroneck Avenue Room 304
White Plains, NY 10601-5381

B. Within 30 days of the Department's approval of any report submitted pursuant to this Order, Respondent shall submit to Anthony Candela, a computer readable magnetic media copy of the approved report in American Standard Code for Information Interchange (ASCII) format.

C. Communication to be made from the Department to the Respondent shall be sent to:

Frederick Eisenbud, Esq.
Cahn Wishod Wishod & Lamb
534 Broadhollow Road
CS 9034
Melville, NY 11747-9034

D. The Department and Respondent reserve the right to designate additional or different addressees for communication or written notice to the other.

XV. Miscellaneous

A. All activities and submittals required by this Order shall address on-Site contamination resulting from the disposal of hazardous waste at the Site. The Department does

not release the Respondent from any liability the Respondent may have for the off-Site migration of hazardous substances.

B. Respondent shall retain professional consultants, contractors, laboratories, quality assurance/quality control personnel and data validators acceptable to the Department to perform the technical, engineering and analytical obligations required by this Order. The experience, capabilities and qualifications of the firms or individuals selected by Respondent shall be submitted to the Department within 30 days after the effective date of this Order. The Department's approval of these firms or individuals shall be obtained prior to initiation of any activities for which the Respondent and such firms or individuals will be responsible.

C. The Department shall have the right to obtain split samples, duplicate samples, or both, of all substances and materials sampled by Respondent, and the Department also shall have the right to take its own samples. Respondent shall make available to the Department the results of all sampling and/or tests or other data generated by Respondent with respect to implementation of this Order and shall submit these results in the progress reports required by this Order. The Department shall make available to Respondent the results of all samples and/or tests or other data generated by the Department with respect to the site which is the subject of this Order.

D. Respondent shall notify the Department at least 10 working days in advance of any field activities to be conducted pursuant to this Order.

E. Respondent shall obtain whatever permits, easements, rights-of-way, rights-of-entry, approvals, or authorizations are necessary to perform Respondent's obligations under this Order. If after Respondent's documented, good faith best efforts, Respondent fails to obtain these authorizations, the Department may take any appropriate action necessary to secure these authorizations.

F. Respondent and its successors and assigns shall be bound by this Order. Respondent, through its officers, directors, agents, servants, employees, successors and assigns, shall be responsible for implementing the terms of this Order. Any change in ownership or corporate status of Respondent including, but not limited to, any transfer of assets or real or personal property shall in no way alter Respondent's responsibilities under this Order.

G. Respondent shall provide a copy of this Order to each contractor hired to perform work required by this Order and to each person representing Respondent with respect to the Site and shall condition all contracts entered into hereunder upon performance in conformity with the terms of this Order. Respondent or Respondent's contractors shall provide written notice of this Order to all subcontractors hired to perform any portion of the work required by this

Order. Respondent shall nonetheless be responsible for ensuring that Respondent's contractors and subcontractors perform the work to be done under this Order in accordance with this Order.

H. All references to "professional engineer" in this Order are to an individual registered as a professional engineer in accordance with Article 145 of the New York State Education Law.

I. All references to "days" in this Order are to calendar days unless otherwise specified.

J. The section headings set forth in this Order are included for convenience of reference only and shall be disregarded in the construction and interpretation of any of the provisions of this Order.

K. (1) The terms of this Order shall constitute the complete and entire Order between Respondent and the Department concerning the Site. No term, condition, understanding, or agreement purporting to modify or vary any term of this Order shall be binding unless made in writing and subscribed by the party to be bound. No informal advice, guidance, suggestion, or comment by the Department regarding any report, proposal, plan, specification, schedule, or any other submittal shall be construed as relieving Respondent of Respondent's obligation to obtain such formal approvals as may be required by this Order.

(2) If Respondent desires that any provision of this Order be changed, Respondent shall make timely written application, signed by the Respondent, for the Commissioner's consideration setting forth reasonable grounds for the relief sought. Such written application shall be delivered or mailed to:

1. Louis P. Oliva, Esq.
Division of Environmental Enforcement
NYS Dept. of Environmental Conservation
202 Mamaroneck Avenue Room 304
White Plains, NY 10601-5381

2. Peter Bleiweiss
Division of Environmental Enforcement
NYS Dept. of Environmental Conservation
202 Mamaroneck Avenue Room 304
White Plains, NY 10601-5381

3. Anthony Candela, P.E.
NYS Dept. of Environmental Conservation
SUNY Building # 40
Stony Brook, NY 11790-2356

L. The effective date of this Order shall be the date it is signed by the Commissioner or his designee.

DATED: 3/25, New York
, 1992

THOMAS C. JORLING
Commissioner
New York State Department
of Environmental Conservation

by: Edward O. Sullivan
Deputy Commissioner
New York State Department
of Environmental Conservation

CONSENT BY RESPONDENT

CANTOR BROTHERS, INC.

Respondent hereby consents to the issuing and entering of this Order, waives Respondent's right to a hearing herein as provided by law, and agrees to be bound by this Order.

By: Matthew Miller
Matthew Miller

Title: Treasurer and General Manager

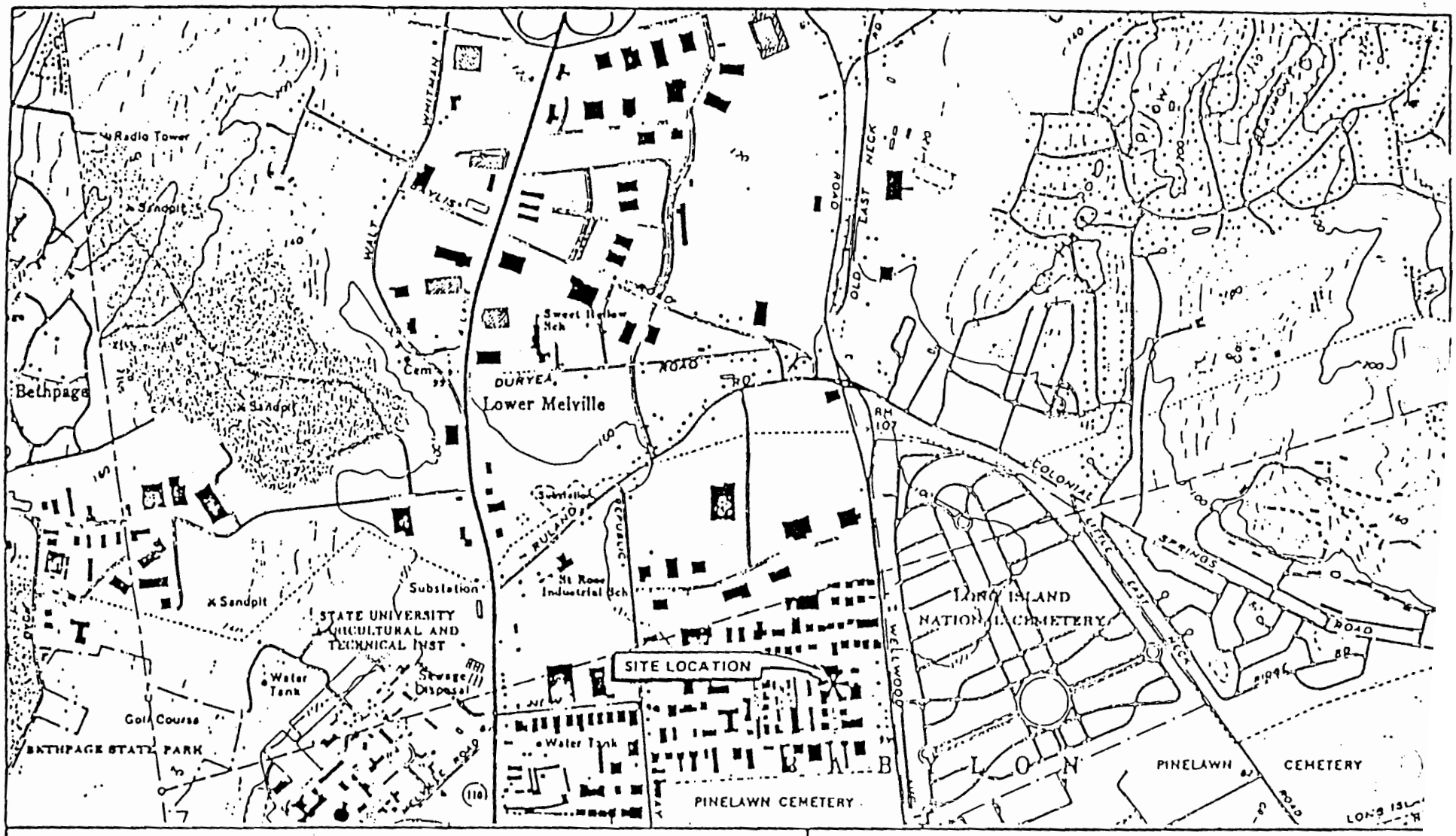
Date: March 9, 1992

STATE OF NEW YORK)
) s.s.:
COUNTY OF Suffolk)

On this 9th day of March, 1992, before me personally came MATTHEW MILLER, to me known, who being duly sworn, did depose and say that he resides in HUNTINGTON STATION NY; that he is the TREASURER & GENERAL MANAGER of the Cantor Bros., Inc., the corporation described in and which executed the foregoing instrument; that he knew the seal of the corporation; that the seal affixed to this instrument was such corporate seal; that it was so affixed by the order of the Board of Directors of the corporation and that he signed his name pursuant to a resolution of the Board of Directors.

Lilli Schlindra
Notary Public

LILLI SCHLINDRA
Notary Public, State of New York
No. 30-4680958
Qualified in Nassau County
Commission Expires November 30, 19 92

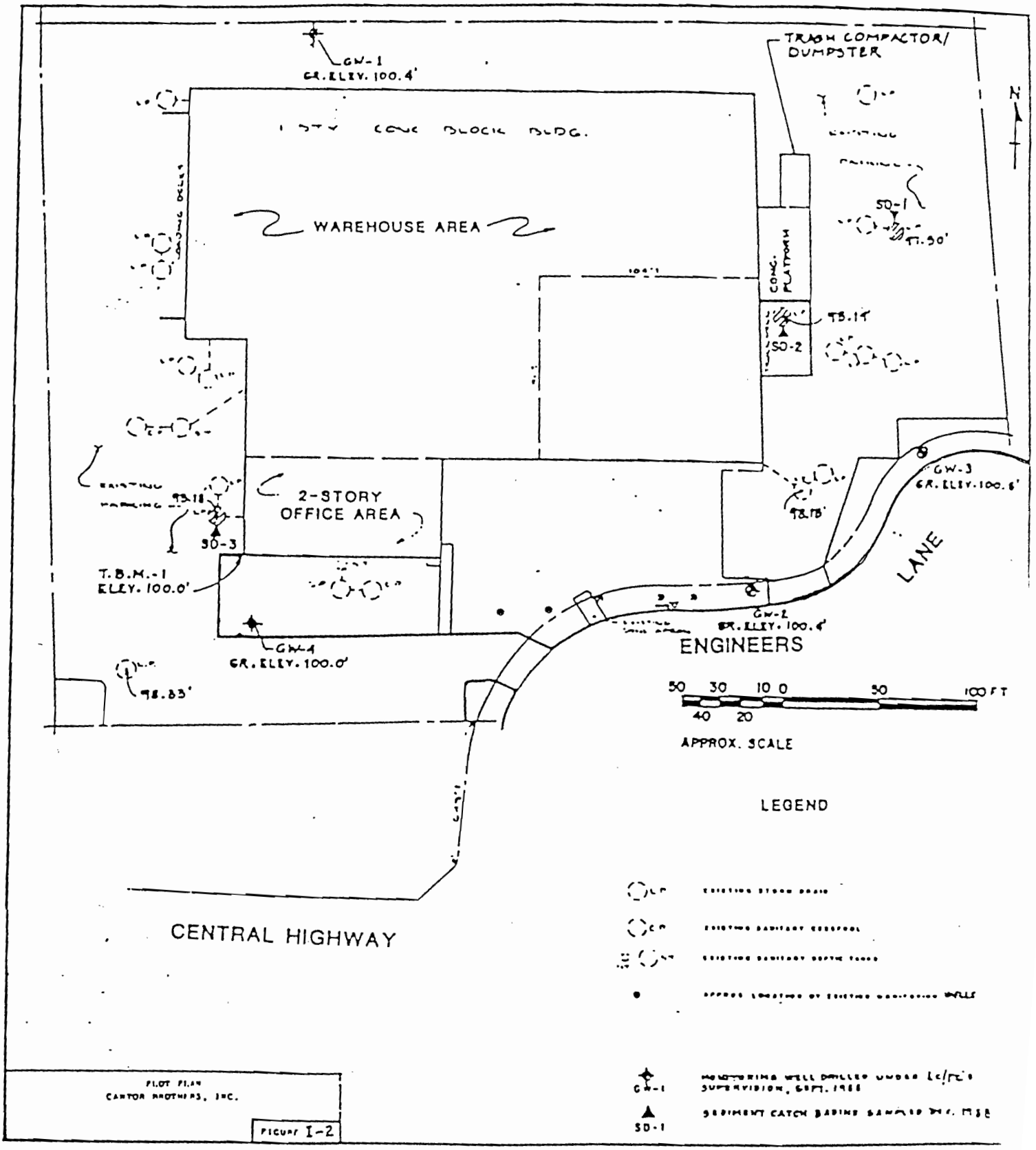


NOTE: BASE MAP FROM USGS, HUNTINGTON QUAD, 1979

SITE LOCATION MAP
CANTOR BROTHERS, INC.

WOODWARD—CLYDE CONSULTANTS
CONSULTING ENGINEERS, GEOLOGISTS AND ENVIRONMENTAL SCIENTISTS
WAYNE, NEW JERSEY

DR. BY:	CIG	SCALE: 1 IN. = 2000 FT	PROJ. NO.: 82C4648
CK'D. BY:	AJS	DATE: 31 AUGUST 1983	FIG. NO.: 1



PLOT PLAN
CANTOR BROTHERS, INC.

FIGURE I-2

STATE OF NEW YORK: DEPARTMENT OF ENVIRONMENTAL CONSERVATION

In the Matter of the
Development and Implementation
of a Remedial Investigation/Feasibility
Study for an Inactive Hazardous Waste
Disposal Site, Under Article 27, Title 13,
and Article 71, Title 27 of the
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ORDER
ON
CONSENT

INDEX #
W1-0570-91-12

CANTOR BROTHERS, INC.,

Site Code # 1-52-021

Respondent.

STATE OF NEW YORK: DEPARTMENT OF ENVIRONMENTAL CONSERVATION

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2. Cantor Brothers, Inc. ("Respondent"), is a corporation organized and existing under the laws of the Sta of New York. The site is located on Engineers Lane, Farmingdale, New York 11735, and is in the Town of Babylor The owner of the site is Anman Realty Corp., Engineers La P.O. Box 126, Farmingdale, New York 11735. Anman Realty is a wholly owned subsidiary of Cantor Bros., Inc. Can Bros., Inc. was incorporated in 1934. Emanuel Cantor

of the shares of the corporation and Martin Cantor has effective control of the remaining 50% of the shares. The Closing for the purchase of the site was on August 21, 1964. A map of the site is attached hereto and is incorporated into this Order as Appendix "A."

3. The Department maintains that the Site is an inactive hazardous waste disposal site, as that term is defined at ECL Section 27-1301(2), and presents a significant threat to the public health or environment. The Site has been listed in the Registry of Inactive Hazardous Waste Disposal Sites in New York State as Site Number 1-52-021. The Department has classified the Site as a "2" pursuant to ECL Section 27-1305(4)(b).

4. A. Pursuant to ECL Section 27-1313(3)(a), whenever the Commissioner of Environmental Conservation (the "Commissioner") "finds that hazardous wastes at an inactive hazardous waste disposal site constitute a significant threat to the environment, he may order the owner of such site and/or any person responsible for the disposal of hazardous wastes at such site (i) to develop an inactive hazardous waste disposal site remedial program, subject to the approval of the Department, at such site, and (ii) to implement such program within reasonable time limits specified in the order."

B. Any person under order pursuant to ECL Section 27-1313(3)(a) has a duty imposed by ECL Article 27, Title 13 to carry out the remedial program committed to

under order. ECL Section 71-2705 provides that any person who fails to perform any duty imposed by ECL Article 27, Title 13 shall be liable for civil, administrative and/or criminal sanctions.

C. The Department also has the power, inter alia, to provide for the prevention and abatement of all water, land, and air pollution. ECL Section 3-0301(1)(i).

5. The Department and Respondent agree that the goals of this Order are for Respondent to (i) develop and implement a Remedial Investigation/Feasibility Study ("RI/FS") for the Site.

6. Respondent, having waived Respondent's right to a hearing herein as provided by law, and having consented to the issuance and entry of this Order, agrees to be bound by its terms. Respondent consents to and agrees not to contest the authority or jurisdiction of the Department to issue or enforce this Order, and agrees not to contest the validity of this Order or its terms.

7. Nothing in this Order shall be construed to limit Respondent's right to file a petition with the Commissioner pursuant to ECL Section 27-1305(4)(b) to de-list the site from the Registry or to change its classification.

8. Notwithstanding Respondent's agreement to carry out the terms of this Order, Respondent does not admit or acknowledge any liability, fault or wrongdoing or violation of

law, regulation or permit of any kind whatsoever in any way related to the Site.

NOW, having considered this matter and being duly advised, IT IS ORDERED THAT:

I. Within 30 days after the effective date of this Order, Respondent shall submit to the Department all data within Respondent's possession or control regarding environmental conditions on-Site and off-Site, and other information described below, unless the Department advises the Respondent that such data have previously been provided to the Department. Unless already contained in the Phase I and Phase II reports previously prepared for the Department, the data and other information shall include:

A. A brief history and description of the Site, including the types, quantities, physical state, location, and dates of disposal of hazardous waste including methods of disposal and spillage of such wastes;

B. A concise summary of information held by Respondent and Respondent's attorneys and consultants with respect to all other PRPs responsible for such disposal of hazardous wastes, including but not limited to names, addresses, dates of disposal and any proof linking each such person responsible with hazardous wastes identified pursuant to subparagraph I(A); and

C. A comprehensive list and copies of all existing relevant reports with titles, authors, and subject matter, as well as a description of the results of all previous investigations of the Site and areas in the vicinity of the Site, including copies of all available topographic and property surveys, engineering studies and aerial photographs.

II. RI/FS Work Plan Contents and Submittals

A. Unless a longer period of time is agreed to in writing by the Department, Respondent shall submit to the Department, within 30 days after the effective date of this Order, a detailed work plan describing the methods and procedures to be implemented in performing an RI/FS for the Site ("RI/FS Work Plan").

B. (1) The RI/FS Work Plan shall include, but not be limited to, the following:

a. A chronological description of the anticipated RI/FS activities together with a schedule for the performance of these activities.

b. A Sampling and Analysis Plan that shall include:

(i) A quality assurance project plan that describes the quality assurance and quality control protocols necessary to achieve the initial data quality objectives. This plan shall designate a data validation expert and must describe such individual's qualifications and experience.

(ii) A field sampling plan that defines sampling and data gathering methods in a manner consistent with the "Compendium of Superfund Field Operations Method" (EPA/540/P-87/001, OSWER Directive 9355.0-14, December 1987) as supplemented by the Department.

c. A health and safety plan to protect persons at and in the vicinity of the Site during the performance of the RI/FS which shall be prepared in accordance with 29 C.F.R. 1910 and all other applicable standards by a certified health and safety professional. Respondent shall add supplemental items to this plan necessary to ensure the health and safety of all persons at or in the vicinity of the Site during the performance of any work pursuant to this Order.

d. A citizen participation plan that is, at a minimum, consistent with the Department's publication, "New York State Inactive Hazardous Waste Site Citizen Participation Plan," dated August 30, 1988, and any subsequent revisions thereto.

(2) The RI/FS Work Plan shall incorporate all elements of a RI/FS as set forth in the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA") [42 U.S.C. 9601 et seq.], as amended, the National Contingency Plan ("NCP") of March 8, 1990 [40 CFR Part 300], the USEPA guidance document entitled "Guidance for Conducting Remedial Investigations and Feasibility Studies

under CERCLA," dated October 1988, and any subsequent revisions to that guidance document in effect at the time the RI/FS Work Plan is submitted, and appropriate USEPA and Department technical and administrative guidance documents.

III. Performance and Reporting of Remedial Investigation

A. Within 30 days after the Department's approval of the RI/FS Work Plan, Respondent shall commence the Remedial Investigation.

B. Respondent shall perform the Remedial Investigation in accordance with the Department-approved RI/FS Work Plan.

C. During the performance of the Remedial Investigation, Respondent shall have on-Site a full-time representative who is qualified to supervise the work done.

D. Within the time frame set forth in the RI/FS Work Plan, Respondent shall prepare a Remedial Investigation Report that shall:

(1) include all data generated and all other information obtained during the Remedial Investigation:

(2) provide all of the assessments and evaluations set forth in CERCLA, the NCP, and the guidance documents identified in Subparagraph II(B)(2);

(3) identify any additional data that must be collected; and

(4) include a certification by the individual or firm with primary responsibility for the day to day

performance of the Remedial Investigation that all activities that comprised the Remedial Investigation were performed in full accordance with the Department-approved RI/FS Work Plan.

IV. Feasibility Study

A. Within 30 days after receipt of the Department's approval of the Remedial Investigation Report, Respondent shall perform, prepare, and submit a Feasibility Study evaluating on-Site remedial actions to eliminate, to the maximum extent practicable, all health and environmental hazards and potential hazards attributable to hazardous waste disposal at the Site. The Feasibility Study shall be prepared by and have the signature and seal of a professional engineer who shall certify that the Feasibility Study was prepared in accordance with this Order. The Department does not release the Respondent from any liability the Respondent may have for the off-Site migration of hazardous substances.

B. Respondent shall perform and prepare the Feasibility Study in accordance with the Department-approved RI/FS Work Plan and in a manner consistent with CERCLA, the NCP, and the guidance documents identified in Subparagraph II(B)(2).

C. Within 30 days after the Department's approval of the Feasibility Study, Respondent shall cooperate and assist the Department in soliciting public comment on the RI/FS and the proposed remedial action plan identified therein, in accordance with CERCLA, the NCP, the guidance

documents identified in Subparagraph II(B)(2), and with any Department policy and guidance documents in effect at the time the public comment period is initiated. After the close of the public comment period, the Department shall select a final remedial alternative for the site in a Record of Decision ("ROD").

V. Interim Remedial Measures

Before the effective date of the ROD, Respondent or the Department may propose interim remedial measures ("IRMs") for the Site on an as-needed basis. In proposing each IRM, Respondent shall submit to the Department a work plan which includes time frames for the completion of the IRM. Upon the Department's determination that the proposal is an appropriate interim remedial measure and its approval of such work plan, the work plan shall be incorporated into and become an enforceable part of this Order. Respondent shall then carry out such IRM in accordance with the requirements of the approved work plan and this Order.

VI. Progress Reports

Respondent shall submit to the parties set forth in paragraph XIII copies of written monthly progress reports that: (i) describe the actions which have been taken toward achieving compliance with this Order during the previous month; (ii) include all results of sampling and tests and all other data received or generated by Respondent or Respondent's contractors or agents in the previous month, including quality

assurance/quality control information, whether conducted pursuant to this Order or conducted independently by Respondent; (iii) identify all work plans, reports, and other deliverables required by this Order that were completed and submitted during the previous month; (iv) describe all actions, including, but not limited to, data collection and implementation of work plans, that are scheduled for the next month and provide other information relating to the progress at the Site; (v) include information regarding percentage of completion, unresolved delays encountered or anticipated that may affect the future schedule for implementation of the Respondent's obligations under the Order, and efforts made to mitigate those delays or anticipated delays; (vi) include any modifications to any work plans that Respondent has proposed to the Department or that the Department has approved; and (vii) describe all activities undertaken in support of the Citizen Participation Plan during the previous month and those to be undertaken in the next month. Respondent shall submit these progress reports to the Department by the tenth day of every month following the effective date of this Order.

VII. Review of Submittals

A. (1) The Department shall review each of the submittals Respondent makes pursuant to this Order to determine whether it was prepared, and whether the work done to generate the data and other information in the submittal was done, in accordance with this Order and generally accepted

technical and scientific principles. The Department shall notify Respondent in writing of its approval or disapproval of the submittal, except for the submittal discussed in Paragraph II(B)(1)(c). All Department-approved submittals shall be incorporated into and become an enforceable part of this Order.

(2) (a) If the Department disapproves a submittal, it shall so notify Respondent in writing and shall specify the reasons for its disapproval. Within 30 days after receiving written notice that Respondent's submittal has been disapproved, Respondent shall make a revised submittal to the Department that addresses and resolves all of the Department's stated reasons for disapproving the first submittal.

(b) After receipt of the revised submittal, the Department shall notify Respondent in writing of its approval or disapproval. If the Department disapproves the revised submittal, Respondent shall be in violation of this Order and the Department may take any action or pursue whatever rights it has pursuant to any provision of statutory or common law. If the Department approves the revised submittal, it shall be incorporated into and become an enforceable part of this Order.

B. Following consultation with Respondent, the Department may require Respondent to modify and/or amplify and expand a submittal if the Department determines, as a result of reviewing data generated by an activity required under this

Order or as a result of reviewing any other data or facts, that further work is necessary.

VIII. Penalties

A. (1) Respondent's failure to comply with any term of this Order may be deemed by the Department to be a violation of this Order and the ECL.

B. Respondent shall not suffer any penalty under this Order or be subject to any proceeding or action if it cannot comply with any requirement hereof because of war, riot, or an unforeseeable disaster arising exclusively from natural causes which the exercise of ordinary human prudence could not have prevented. Respondent shall, within five days of when it obtains knowledge of any such condition, notify the Department in writing. Respondent shall include in such notice the measures taken and to be taken by Respondent to prevent or minimize any delays and shall request an appropriate extension or modification of this Order. Failure to give such notice within such five-day period constitutes a waiver of any claim that a delay is not subject to penalties. Respondent shall have the burden of proving that an event is a defense to compliance with this Order pursuant to subparagraph VIII(B).

IX. Entry upon Site

Respondent hereby consents to the entry upon the Site or areas in the vicinity of the Site which may be under the control of the Respondent by any duly designated employee, consultant, contractor, or agent of the Department or any

State agency for purposes of inspection, sampling, and testing and to ensure Respondent's compliance with this Order.

X. Department's Reservation of Rights

A. Nothing contained in this Order shall be construed as barring, diminishing, adjudicating, or in any way affecting any of the Department's rights including, but not limited to nor exemplified by, the following:

1. the Department's right to bring any action or proceeding against anyone other than Respondent and/or any of Respondent's directors, officers, employees, servants, agents, successors, and assigns;

2. the Department's right to enforce this Order against Respondent and/or any of Respondent's directors, officers, employees, servants, agents, successors, and assigns if Respondent fails to satisfy any of the terms of this Order;

3. the Department's right to bring any action or proceeding against Respondent and/or any of Respondent's directors, officers, employees, servants, agents, successors, and assigns with respect to claims for natural resources damages as a result of the release or threatened release of hazardous substances or constituents at or from the Site;

4. the Department's right to bring any action or proceeding against Respondent and/or any of Respondent's directors, officers, employees, servants, agents, successors, and assigns with respect to hazardous substances that are present at the Site or that have migrated from the Site;

5. the Department's right to require Respondent and/or any of Respondent's directors, officers, employees, servants, agents, successors, and assigns to develop and implement IRMs for the Site; and

6. the Department's right to gather information and enter and inspect property and premises.

7. the Department's right to recover a sum of money which shall represent reimbursement for the Department's expenses including, but not limited to, direct labor, overhead, travel, analytical costs, and contractor costs incurred by the State of New York for work performed at the Site to date, as well as for negotiating this Order, reviewing and revising submittals made pursuant to this Order, overseeing activities conducted pursuant to this Order, and collecting and analyzing samples. Itemization of the costs shall include an accounting of personal services indicating the employee name, title, biweekly salary, and time spent (in hours) on the project during the billing period. The Department's approved fringe benefit and indirect cost rates shall be applied. Non-personal service costs shall be summarized by category of expense (e.g., supplies, materials, travel, contractual).

B. Nothing contained in this Order shall be construed to prohibit the Commissioner or his duly authorized representative from exercising any summary abatement powers.

XI. Indemnification

Respondent shall indemnify and hold the Department, the State of New York, and their representatives and employees harmless for all claims, suits, actions, damages, and costs of every name and description arising out of or resulting from the fulfillment or attempted fulfillment of this Order by Respondent, and/or Respondent's directors, officers, employees, servants, agents, successors, and assigns.

XII. Public Notice

A. After the effective date of this Order, Respondent shall file a Declaration of Covenants and Restrictions with the Suffolk County Clerk to give all parties who may acquire any interest in the Site notice of this Order.

B. If Respondent proposes to convey the whole or any part of Respondent's ownership interest in the Site, Respondent shall, not fewer than 60 days before the date of conveyance, notify the Department in writing of the identity of the transferee and of the nature and proposed date of the conveyance and shall notify the transferee in writing, with a copy to the Department, of the applicability of this Order.

XIII. Communications

A. All written communications required by this Order shall be transmitted by United States Postal Service, by private courier service, or hand delivered as follows:

Communication from Respondent shall be sent to:

1. Peter Bleiweiss
   Division of Environmental Enforcement
   NYS Dept. of Environmental Conservation
   202 Mamaroneck Avenue Room 304
   White Plains, NY 10601-5381

2. John Conover
   NYS Dept. of Environmental Conservation
   SUNY Building # 40
   Stony Brook, NY 11790-2356

3. Director, Bureau of Environmental
   Exposure Investigation
   New York State Department of Health
   2 University Place
   Albany, New York 12203

4. Raymond Cowen, Director, Region 1
   NYS Dept. of Environmental Conservation
   SUNY Building # 40
   Stony Brook, NY 11790-2356

5. Louis P. Oliva, Esq.
   Division of Environmental Enforcement
   NYS Dept. of Environmental Conservation
   202 Mamaroneck Avenue Room 304
   White Plains, NY 10601-5381

B. Copies of work plans and reports shall be submitted as follows:

1. Four copies (one unbound) to:

   Anthony Candela, P.E.
   NYS Dept. of Environmental Conservation
   SUNY Building # 40
   Stony Brook, NY 11790-2356

2. Two copies to:

   The Director
   NYS Department of Health
   Bureau of Env. Exposure Investigation
   2 University Place Room 205
   Albany, NY 12203

3. One copy to:

Michael O'Toole, P.E.
Division of Hazardous Waste Remediation
NYS Dept. of Environmental Conservation
50 Wolf Road
Albany, NY 12233-7010

4. One copy to:

Louis P. Oliva, Esq.
Division of Environmental Enforcement
NYS Dept. of Environmental Conservation
202 Mamaroneck Avenue Room 304
White Plains, NY 10601-5381

B. Within 30 days of the Department's approval of any report submitted pursuant to this Order, Respondent shall submit to Anthony Candela, a computer readable magnetic media copy of the approved report in American Standard Code for Information Interchange (ASCII) format.

C. Communication to be made from the Department to the Respondent shall be sent to:

Frederick Eisenbud, Esq.
Cahn Wishod Wishod & Lamb
534 Broadhollow Road
CS 9034
Melville, NY 11747-9034

D. The Department and Respondent reserve the right to designate additional or different addressees for communication or written notice to the other.

XV. Miscellaneous

A. All activities and submittals required by this Order shall address on-Site contamination resulting from the disposal of hazardous waste at the Site. The Department does

not release the Respondent from any liability the Respondent may have for the off-Site migration of hazardous substances.

B. Respondent shall retain professional consultants, contractors, laboratories, quality assurance/quality control personnel and data validators acceptable to the Department to perform the technical, engineering and analytical obligations required by this Order. The experience, capabilities and qualifications of the firms or individuals selected by Respondent shall be submitted to the Department within 30 days after the effective date of this Order. The Department's approval of these firms or individuals shall be obtained prior to initiation of any activities for which the Respondent and such firms or individuals will be responsible.

C. The Department shall have the right to obtain split samples, duplicate samples, or both, of all substances and materials sampled by Respondent, and the Department also shall have the right to take its own samples. Respondent shall make available to the Department the results of all sampling and/or tests or other data generated by Respondent with respect to implementation of this Order and shall submit these results in the progress reports required by this Order. The Department shall make available to Respondent the results of all samples and/or tests or other data generated by the Department with respect to the site which is the subject of this Order.

D. Respondent shall notify the Department at least 10 working days in advance of any field activities to be conducted pursuant to this Order.

E. Respondent shall obtain whatever permits, easements, rights-of-way, rights-of-entry, approvals, or authorizations are necessary to perform Respondent's obligations under this Order. If after Respondent's documented, good faith best efforts, Respondent fails to obtain these authorizations, the Department may take any appropriate action necessary to secure these authorizations.

F. Respondent and its successors and assigns shall be bound by this Order. Respondent, through its officers, directors, agents, servants, employees, successors and assigns, shall be responsible for implementing the terms of this Order. Any change in ownership or corporate status of Respondent including, but not limited to, any transfer of assets or real or personal property shall in no way alter Respondent's responsibilities under this Order.

G. Respondent shall provide a copy of this Order to each contractor hired to perform work required by this Order and to each person representing Respondent with respect to the Site and shall condition all contracts entered into hereunder upon performance in conformity with the terms of this Order. Respondent or Respondent's contractors shall provide written notice of this Order to all subcontractors hired to perform any portion of the work required by this

Order. Respondent shall nonetheless be responsible for ensuring that Respondent's contractors and subcontractors perform the work to be done under this Order in accordance with this Order.

H. All references to "professional engineer" in this Order are to an individual registered as a professional engineer in accordance with Article 145 of the New York State Education Law.

I. All references to "days" in this Order are to calendar days unless otherwise specified.

J. The section headings set forth in this Order are included for convenience of reference only and shall be disregarded in the construction and interpretation of any of the provisions of this Order.

K. (1) The terms of this Order shall constitute the complete and entire Order between Respondent and the Department concerning the Site. No term, condition, understanding, or agreement purporting to modify or vary any term of this Order shall be binding unless made in writing and subscribed by the party to be bound. No informal advice, guidance, suggestion, or comment by the Department regarding any report, proposal, plan, specification, schedule, or any other submittal shall be construed as relieving Respondent of Respondent's obligation to obtain such formal approvals as may be required by this Order.

(2) If Respondent desires that any provision of this Order be changed, Respondent shall make timely written application, signed by the Respondent, for the Commissioner's consideration setting forth reasonable grounds for the relief sought. Such written application shall be delivered or mailed to:

1. Louis P. Oliva, Esq.
   Division of Environmental Enforcement
   NYS Dept. of Environmental Conservation
   202 Mamaroneck Avenue Room 304
   White Plains, NY 10601-5381

2. Peter Bleiweiss
   Division of Environmental Enforcement
   NYS Dept. of Environmental Conservation
   202 Mamaroneck Avenue Room 304
   White Plains, NY 10601-5381

3. Anthony Candela, P.E.
   NYS Dept. of Environmental Conservation
   SUNY Building # 40
   Stony Brook, NY 11790-2356

L. The effective date of this Order shall be the date it is signed by the Commissioner or his designee.

DATED: 3/25, New York
, 1992

THOMAS C. JORLING
Commissioner
New York State Department
of Environmental Conservation

by: Edward O. Sullivan
Deputy Commissioner
New York State Department
of Environmental Conservation

CONSENT BY RESPONDENT

CANTOR BROTHERS, INC.

Respondent hereby consents to the issuing and entering of this Order, waives Respondent's right to a hearing herein as provided by law, and agrees to be bound by this Order.

By: Matthew Miller
Matthew Miller

Title: Treasurer and General Manager

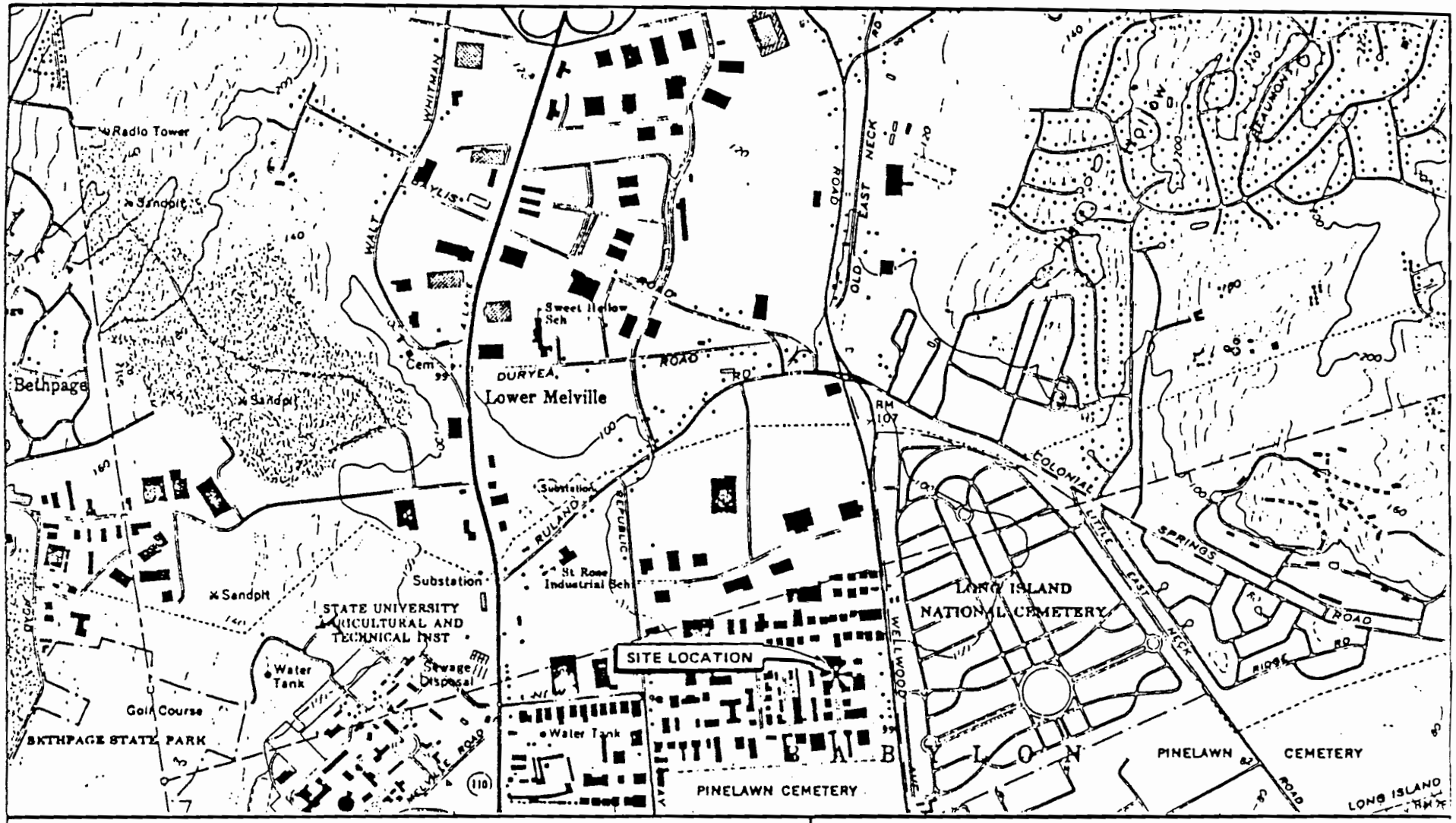
Date: March 9, 1992

STATE OF NEW YORK)
) s.s.:
COUNTY OF Suffolk)

On this 9th day of March, 1992, before me personally came MATTHEW MILLER, to me known, who being duly sworn, did depose and say that he resides in HUNTINGTON STATION NY; that he is the TREASURER & GENERAL MANAGER of the Cantor Bros., Inc., the corporation described in and which executed the foregoing instrument; that he knew the seal of the corporation; that the seal affixed to this instrument was such corporate seal; that it was so affixed by the order of the Board of Directors of the corporation and that he signed his name pursuant to a resolution of the Board of Directors.

Lilli Schlindra
Notary Public

LILLI SCHLINDRA
Notary Public, State of New York
No. 30-4680958
Qualified in Nassau County
Commission Expires November 30, 1992



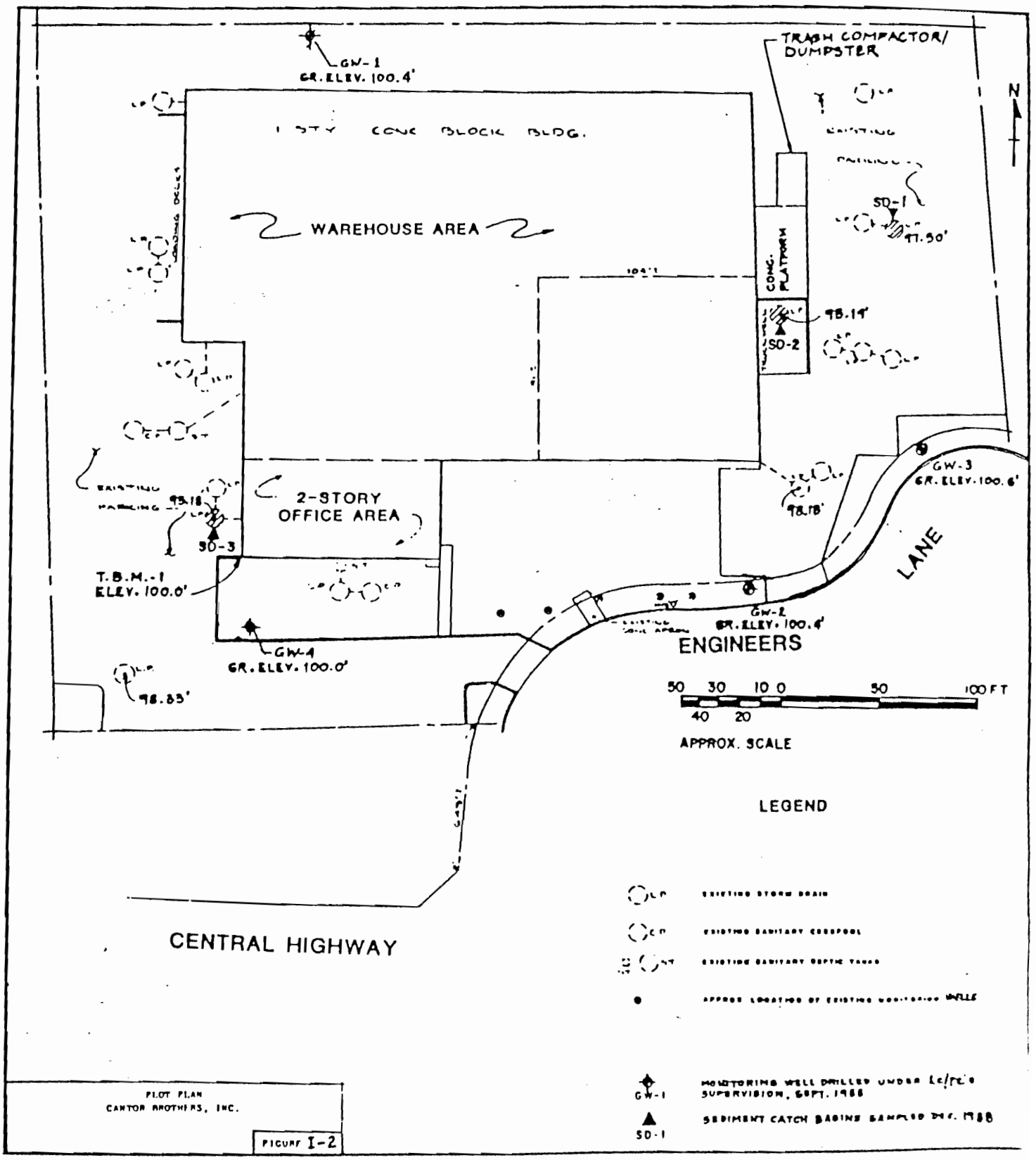
NOTE: BASE MAP FROM USGS, HUNTINGTON QUAD, 1979

SITE LOCATION MAP
CANTOR BROTHERS, INC.

WOODWARD—CLYDE CONSULTANTS

CONSULTING ENGINEERS, GEOLOGISTS AND ENVIRONMENTAL SCIENTISTS
WAYNE, NEW JERSEY

DR. BY: CIG	SCALE: 1 IN. = 2000 FT	PROJ. NO.: 82C4548-14	
CK'D. BY: AJS	DATE: 31 AUGUST 1983	FIG. NO.: 1	



PLOT PLAN
CANTOR BROTHERS, INC.

FIGURE I-2

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK

	In Proceedings for a Reorganization Under Chapter 11
In re Cantor Bros., Inc., Debtor.	Bankruptcy Case No. 893-80853-478
	Judge Eisenberg
State of New York and Michael D. Zagata as Commissioner of Environmental Conservation, Plaintiffs, -against-	Adversary Proceedings No. 894-8182-478
Cantor Bros., Inc., Defendant.	

FINAL AGREEMENT AND STIPULATED ORDER

WHEREAS, Cantor Bros., Inc. (the "Debtor"), conducted business and commercial activities from on or before 1975 to April 1993 on property located at 50 Engineers Lane, Farmingdale, New York (the "Site");

WHEREAS, the Site has been listed in the Registry of Inactive Hazardous Waste Disposal Sites in New York State (the "Registry") as site number 1-52-021, and is classified by the New York State Department of Environmental Conservation ("NYSDEC" or "Department") as a class "2" site.

WHEREAS, Cantor Bros. consented to the entry of an order by the New York State Commissioner of Environmental

Conservation, dated March 25, 1992 ("Administrative Order"), requiring the Debtor to develop and implement a remedial investigation and feasibility study ("RI/FS") and appropriate interim remedial measures with respect to the contamination at the Site;

WHEREAS, Cantor Bros. filed a petition under Chapter 11 of the Bankruptcy Code on February 16, 1993, in the United States Bankruptcy Court for the Eastern District of New York;

WHEREAS, the NYSDEC filed an administrative proof of claim (the "NYSDEC Administrative claim") on March 7, 1994, asserting that the costs incurred and to be incurred by the Debtor in discharging its responsibilities and obligations under the Administrative Order and/or statutes relating to the protection of the environment, including the costs of implementing the final cleanup remedy for the Site selected by the NYSDEC, and the costs incurred or to be incurred by the NYSDEC for purposes of oversight or as a consequence of the Debtor's failure to comply with its obligations under the Administrative Order or applicable environmental statutes, including the obligation to implement the remedy, are entitled to administrative expense status and priority;

WHEREAS, the State of New York filed an adversary proceeding (the "Adversary Complaint") against the Debtor on April 19, 1994, adversary proceeding number 894-8182-478, in which New York State seeks, inter alia, the entry of a judgment directing the Debtor to comply with the Administrative Order and,

in addition, New York seeks the entry of a judgment declaring that the costs of compliance with the Administrative Order, including costs incurred by the State of New York, are entitled to administrative status and priority;

WHEREAS, the Debtor filed an Answer to New York State's Adversary Complaint asserting, inter alia, that the NYSDEC holds an unliquidated contingent claim that has not been classified as an administrative claim and that the Debtor cannot be compelled to comply with the Administrative Order until there is an order from the Bankruptcy Court authorizing and directing it to comply; that if the Administrative Order is deemed to be an administrative claim, it must be treated pari passu with any and all administrative claims; and that compliance with the Administrative Order cannot be an administrative expense unless the Site poses an imminent and identifiable danger to the public safety;

WHEREAS, it is the position of the State of New York that, inter alia, the Debtor is obligated to comply with the terms of the Administrative Order and that its failure to comply subjects the Debtor to civil and criminal sanctions and penalties under the New York Environmental Conservation Law;

WHEREAS, in order to advance the resolution of these matters and thereby minimize litigation costs, the parties negotiated and entered into an interim agreement and stipulated order (the "Interim Agreement and Order"), which the Court approved on June 26, 1996, which provided, inter alia, that

Debtor retain a contractor, Handex of New York, Inc. ("Handex"), to implement the following work items required under the Administrative Order, in accordance with the terms and conditions of performance in the Interim Agreement and Order: soil borings and laboratory analysis; groundwater sampling; data validation; waste management; preparation of a report summarizing Handex's investigation pursuant to the Interim Agreement and Order (the "Handex Report"); site structure investigation; and site history;

WHEREAS, NYSDEC accepts the Handex Report as providing sufficient information to enable the design of appropriate remedial measures sufficient to resolve the NYSDEC's claims against the Debtor in this adversary proceeding if the remedial measures are implemented;

WHEREAS, the Handex Report indicates that the soil beneath the former factory area of the Site is contaminated with volatile organic compounds, including, but not limited to, total xylene, toluene, and tetrachloroethylene ("PCE"), for which the most appropriate remedial technology would be a soil vapor extraction ("SVE") system, and the sediments in the storm drains are contaminated with semi-volatile organic compounds, which would most appropriately be remediated through removal and disposal of the liquids and the sediments in the storm drains;

WHEREAS, based on the Handex Report and the other information now known to it (and barring the discovery of contrary information), NYSDEC has concluded that this adversarial proceeding can be resolved if Debtor: (1) pursuant to approved

Work and Design Plans, installs and operates an SVE system to decrease the levels of contaminants in the ground beneath the former factory area to levels that meet the criteria in NYSDEC Technical Assistance and Guidance Memorandum ("TAGM") No. 4046 (a copy of which is annexed hereto as Exhibit A); (2) without the necessity of having an approved Work or Design Plan, cleans storm drains 1 through 10 by removing and appropriately disposing of the liquids and the sediments contained therein; and (3) seals the four monitoring wells associated with the underground storage tank area with grout;

WHEREAS, the parties to this agreement and stipulated order ("Agreement and Order") desire to advance the resolution of these matters and thereby avoid additional litigation costs;

WHEREAS, it is the intention of the parties that the work required under this Agreement and Order will remediate the Site to the point where it can be de-listed from the Registry, and the work has been planned to achieve that goal;

WHEREAS, the parties agree that nothing in this Order shall be construed to limit the right of the Debtor or any other party to file a petition with the Commissioner pursuant to ECL Section 27-1305(4)(b) and 6 NYCRR Section 375-1.9 to de-list the site from the Registry or to change its classification; and

WHEREAS, notwithstanding Debtor's agreement to carry out the terms of this Agreement and Order, Debtor does not admit or acknowledge any liability, fault, or wrongdoing or violation

of law, regulation or permit of any kind whatsoever in any way related to the Site.

NOW, THEREFORE, upon the consent and agreement of the parties by their attorneys, it is hereby ORDERED:

1. The Debtor shall retain a qualified contractor or contractors who shall complete the remedial work ("Remedial Work") and other obligations set forth below, in accordance with the terms and conditions herein. (For purposes of simplicity, the term "Debtor" shall hereinafter be read to encompass the Debtor's contractor or contractors.)

REMEDIAL WORK

Former Factory Area and Grouting of Monitoring Wells

2. The Debtor shall develop a work plan for the SVE system and grouting of the monitoring wells (the "Work Plan") and submit the Work Plan to NYSDEC within fifteen (15) days of approval of this Agreement and Order by the Court. The Work Plan shall include, but need not be limited to:

(a) A general description of the scope of work to install, test, operate and maintain the SVE system;

(b) the Site Quality Assurance Project Plan contained in the Handex Report with any modifications necessary for the SVE Work Plan;

(c) the Health and Safety Plan contained in the Handex Report with any modifications necessary for the SVE Work Plan;

(d) a description of the scope of work to grout the four (4) existing poly-vinyl chloride (PVC) monitoring wells associated with the underground storage tank area (as depicted on the Site map attached hereto as Exhibit B); and

(e) a chronological description of the anticipated remedial activities, together with a schedule for the performance of these activities.

3. The NYSDEC shall notify Debtor in writing of its approval or disapproval of the Work Plan, and, if disapproving, provide written comments explaining the reasons for disapproval.

4. If Debtor requires clarification of any of the reasons specified by the Department for its disapproval, or disagrees with the stated basis for disapproval, Debtor shall request clarification in writing, or request reconsideration of the denial for reasons stated by Debtor in writing, within ten (10) days after receiving written notice that Debtor's submittal has been disapproved. Within fifteen (15) days after receiving written notice that Debtor's submittal has been disapproved, or fifteen (15) days after receiving the Department's response to a timely request for clarification or reconsideration, Debtor shall make a revised submittal to the NYSDEC that addresses and resolves all of the NYSDEC's stated reasons for disapproving the first submittal. After receipt of any revised Work Plan submittal, the NYSDEC shall notify Debtor in writing of its approval or disapproval. If the NYSDEC disapproves the revised Work Plan, Debtor shall be in violation of this Agreement and

Order and the NYSDEC may take any action or pursue whatever rights it has pursuant to any provision of statutory or common law, or under the terms of the Stipulation and Order. (Pursuant to Paragraph 22, NYSDEC's approval or disapproval shall be final and binding, subject only to challenge as arbitrary and capricious by motion upon proper notice.)

5. Within thirty (30) days of receipt of written notification that the Work Plan has been approved, Debtor shall submit a design plan and specifications (the "Design Plan") for the SVE system which shall include:

(a) a minimum of two (2) vapor extraction wells that will capture volatile organic contamination from the area under the chemical manufacturing area and extending to the trash dumpster area, as depicted on Exhibit B hereto;

(b) an SVE operation and maintenance (O & M) plan that provides for:

(1) remediation of the soil in this area until it meets the criteria set forth in TAGM 4046;

(2) operation of the SVE system until extraction well air samples are non-detect or asymptotic through pulsing; and

(3) a sampling program that verifies the results of the SVE system operation including, but not necessarily limited to, confirmatory soil sampling and SVE system effluent testing.

6. The Design Plan shall be prepared and certified by a professional engineer licensed to practice by the State of New York.

7. The NYSDEC shall notify Debtor in writing of its approval or disapproval of the Design Plan, and, if disapproving, provide written comments explaining the reasons for disapproval.

8. If Debtor requires clarification of any of the reasons specified by the NYSDEC for its disapproval, or disagrees with the stated basis for disapproval, Debtor shall request clarification in writing, or request reconsideration of the denial for reasons stated by Debtor in writing, within ten (10) days after receiving written notice that Debtor's submittal has been disapproved. Within fifteen (15) days after receiving written notice that Debtor's submittal has been disapproved, or fifteen (15) days after receiving the Department's response to a timely request for clarification or reconsideration, Debtor shall make a revised submittal to the NYSDEC that addresses and resolves all of the NYSDEC's stated reasons for disapproving the first submittal. After receipt of any revised Design Plan submittal, the NYSDEC shall notify Debtor in writing of its approval or disapproval. If the NYSDEC disapproves the revised Design Plan, Debtor shall be in violation of this Agreement and Order and the NYSDEC may take any action or pursue whatever rights it has pursuant to any provision of statutory or common law, or under the terms of the Stipulation and Order. (Pursuant to Paragraph 22, NYSDEC's approval or disapproval shall be final

and binding, subject only to challenge as arbitrary and capricious by motion upon proper notice.)

9. Debtor shall commence implementation of the approved Work and Design Plans within fifteen (15) days of receiving written notification of NYSDEC's approval of the Design Plan, and shall implement the Plans in accordance with their terms until the remediation objectives specified therein are achieved.

10. Should circumstances warrant, Debtor may apply, in writing, to NYSDEC for permission to deviate from the approved Work and Design Plans. Debtor must obtain prior written approval from NYSDEC prior to deviating from the approved Plans in any material way. The NYSDEC shall respond to the request to deviate from the approved Plans within a reasonable amount of time. The period during which Debtor is required to complete the task which is the subject of the request to deviate shall be extended by the amount of time the NYSDEC takes to approve or disapprove the requested deviation. NYSDEC shall not unreasonably withhold its approval.

11. Within 30 days after completion of the Site remediation specified in the approved Plans, Debtor shall submit written notification to the NYSDEC that the Site remediation has been completed in accordance with the approved Plans. This written notification shall be certified by a professional engineer licensed to practice by the State of New York, and shall describe any changes to the SVE system design or other deviations

from the approved Work and Design Plans during construction and remediation.

Storm Drains

12. Debtor shall remove, sample and appropriately dispose of the water in the storm drains. Debtor shall remove the sediments and any other material in storm drains 1 through 10 to the base of the concrete drainage structure, and sample the removed material with the Toxicity Characteristic Leaching Procedure ("TCLP") to determine proper disposal. Debtor shall then dispose of the removed material as required by applicable rules and regulations and the TCLP results.

13. Debtor shall commence the storm drain remediation no later than thirty (30) days from the creation and funding of the escrow account referred to in Paragraph 17 below.

14. All manifests and analytic results generated in connection with the testing and removal of material from the storm drains shall be submitted to NYSDEC in report form.

15. Debtor shall backfill storm drains 1 through 10 to maintain structural integrity, with clean porous sand and/or gravel.

PAYMENT FOR CLEANUP WORK AND DISTRIBUTION OF REMAINING FUNDS

16. The total cost of performing the work required by this Agreement and Order will not exceed the sum of two hundred thousand dollars ($200,000). The $200,000 cost figure referred to above is derived from cost estimates obtained by the Debtor from its prospective contractor, EEA, Inc. ("EEA"), with an

allocation for contingencies added to the estimated cost of completing the work.

17. Upon approval of this Agreement and Order by the Court, the Debtor shall place the sum of $200,000 into an escrow account which shall be dedicated solely toward remediation of the Site until completion of the Remedial Work required hereunder, and thereafter distributed in accordance with the orders and directives of the Court. The law firm of Platzer, Swergold, Karlin, Levine, Goldberg & Jaslow, LLP shall be the escrow agent ("Escrow Agent"). This Agreement and Order shall be provided to the Escrow Agent and Paragraphs 17 through 21 incorporated by reference into, and made part of, the escrow agreement. Upon execution of the contract between the Debtor and EEA (the "EEA Contract"), the Escrow Agent shall pay to EEA an initial payment toward removal of the soil and liquids from the drainage structures in the sum of thirteen thousand dollars ($13,000). Upon receipt of written notice from NYSDEC that NYSDEC has approved the Design Plan, the Escrow Agent shall pay to EEA an initial payment of $16,000 toward construction of the SVE system. NYSDEC shall, simultaneously with notifying EEA that the Design Plan has been approved, notify the Escrow Agent that NYSDEC has approved the Design Plan.

18. In addition to the initial payments referenced in Paragraph 17, EEA shall receive progress payments ("Progress Payments") from the Escrow Agent as EEA completes various items of the Remedial Work, in accordance with the schedule of Progress

Payments set forth in Exhibit C hereto. The Escrow Agent shall withhold 5% retainage from Progress Payments pending completion of the Remedial Work.

19. The EEA Contract shall provide that payment will be made to EEA in accordance with Paragraphs 17 through 20 herein, including Exhibit C hereto.

20. The EEA contract shall additionally provide that:

a. EEA shall submit invoices for Progress Payments to the Escrow Agent, with simultaneous copies to NYSDEC and the other signatory parties hereto. NYSDEC shall determine whether payment of the Progress Payment is proper in accordance with the terms of this Agreement and Order, including Exhibit C hereto, and approve or disapprove the Progress Payment accordingly. If NYSDEC approves the Progress Payment, it shall notify the Escrow Agent, EEA and other parties hereto in writing. The Escrow Agent shall then pay EEA the approved Progress Payment amount.

b. If NYSDEC disapproves an invoiced Progress Payment, NYSDEC shall provide written notice of its reasons for such determination, specifying what EEA must do to complete the work item for which EEA is seeking a Progress Payment.

c. EEA shall have the right to seek a revision of the schedule of Progress Payments, including an upward revision of the amount due for a particular item of

Remedial Work and the total amount due to EEA under the EEA Contract, for good cause shown. Good cause shall mean due to unexpected and unforeseen occurrences necessitating additional costs to complete the Remedial Work required under the EEA Contract. Known additional costs for which payment will be made include the cost of electricity and the cost of replacing and properly disposing of carbon filters.

d. If both the Debtor and NYSDEC determine that EEA has shown good cause, the requested revision of the EEA Contract will be approved, and the Escrow Agent so instructed.

e. Unless otherwise approved by NYSDEC, all equipment dedicated for use in the Remedial Work shall be new. Equipment used solely in the construction process, such as tools, shall not be considered dedicated for use in the Remedial Work.

21. After NYSDEC has approved the work required hereunder as complete, and EEA has been fully paid for that work, including retainage, the Escrow Agent shall distribute any remaining funds in the escrow account in accordance with the orders and directives of the Court.

TERMS AND CONDITIONS FOR THE PERFORMANCE OF THE REMEDIAL WORK

22. All Remedial Work required hereunder shall be subject to NYSDEC supervision and approval. In the event that the Debtor and the NYSDEC disagree, then the determination of the

NYSDEC shall be final and binding, provided that the determination of the NYSDEC does not require the total expenditures for the work performed pursuant to this Agreement and Order to exceed $200,000. Debtor and creditor Apple Bank For Savings ("Apple") reserve the right to challenge, by motion upon proper notice, any determination by the NYSDEC that is arbitrary and capricious. The filing of a motion by the Debtor or creditor Apple challenging a NYSDEC determination shall not stay or delay the expeditious implementation of the disputed work item by the Debtor, unless such delay is agreed to by the NYSDEC in writing, or implementation of the disputed work item is stayed by a court pending its determination whether the item is "arbitrary and capricious."

23. The Debtor shall provide the NYSDEC with written notice of all fieldwork. Such written notice shall be delivered to the NYSDEC no less than five days prior to the start of the fieldwork referred to in the notice.

24. Following consultation with Debtor, the NYSDEC may require Debtor to modify and/or amplify and expand the work required under the approved Work and Design Plans if the NYSDEC determines, as a result of reviewing data generated by an activity required under this Agreement and Order, or as a result of reviewing any other data or facts, that such modification, amplification and/or expansion is necessary, unless the modification, amplification and/or expansion will cause the total cost of performing the Remedial Work required to implement this

Agreement and Order to exceed the $200,000 sum approved by the Court for implementation.

25. Debtor shall retain professional consultants, contractors, laboratories, quality assurance/quality control personnel and data validators acceptable to the NYSDEC to perform the technical, engineering and analytical obligations required by this Agreement and Order (collectively "Debtor's consultant(s)"). The experience, capabilities and qualifications of the firms or individuals selected by Debtor shall be submitted to the NYSDEC upon entry of this Agreement and Order (although nothing herein shall preclude Debtor from making this submission prior to entry of this Agreement and Order).

26. The NYSDEC shall have the right to obtain split samples, duplicate samples, or both, of all substances and materials sampled by Debtor, and the NYSDEC also shall have the right to take its own samples. Debtor shall make available to the NYSDEC the results of all sampling and/or tests or other data generated by Debtor with respect to implementation of this Agreement and Order and shall submit these results in the progress reports required by this Agreement and Order. The NYSDEC shall make available to Debtor the results of all samples and/or tests or other data generated by the NYSDEC with respect to the site which is the subject of this Agreement and Order.

27. Debtor shall obtain whatever permits, easements, rights-of-way, rights-of-entry, approvals, or authorizations are necessary to perform Debtor's obligations under this Agreement

and Order. If, after Debtor's documented, good faith best efforts, Debtor fails to obtain these authorizations, the NYSDEC may take any appropriate action necessary to secure these authorizations.

28. Debtor and its successors and assigns shall be bound by this Agreement and Order. Debtor, through its officers, directors, agents, servants, employees, successors and assigns, shall be responsible for implementing the terms of this Agreement and Order. Any change in ownership or corporate status of Debtor including, but not limited to, any transfer of assets or real or personal property shall in no way alter Debtor's responsibilities under this Agreement and Order.

29. Debtor shall provide a copy of this Agreement and Order to each contractor hired to perform work required by this Agreement and Order and to each person representing Debtor with respect to the Site and shall condition all contracts entered into hereunder upon performance in conformity with the terms of this Agreement and Order. Debtor or Debtor's contractor(s) shall provide written notice of this Agreement and Order to all subcontractors hired to perform any portion of the work required by this Agreement and Order. Debtor shall be responsible for ensuring that Debtor's contractors and subcontractors perform the work to be done under this Agreement and Order in accordance herewith.

CONVERSION TO A VOLUNTARY CLEANUP WORK PLAN

30. If Apple or any third party who qualifies for "volunteer" status (the "Volunteer") under the NYSDEC's Voluntary Cleanup Program (the "Program") applies for and is accepted as a volunteer to cleanup the Site for industrial use under the Program, NYSDEC shall, consistent with its legal authority, accept this Agreement and Order and any approved Work and Design Plans submitted to NYSDEC by the Debtor pursuant to this Agreement and Order as an approved work plan for inclusion in a voluntary third party cleanup agreement for the Site between the Volunteer and the NYSDEC.

31. In the event that a party qualifies and is subsequently approved as a Volunteer for cleanup of the Site under the Program, the EEA Contract shall be assigned by the Debtor, at the option of the Volunteer, to the Volunteer, who shall have all of the rights and obligations of the assignor under the EEA Contract. In the event of an assignment to a Volunteer, the escrow fund established hereunder shall remain dedicated to the cleanup of the Site until the cleanup is complete, as provided herein.

PETITION TO DE-LIST

32. Upon achievement of the cleanup goals of this Agreement, NYSDEC will, consistent with its legal authority, begin the process necessary to reclassify or de-list the Site from the Registry, unless Debtor or any other party has already begun the process. Any costs attributable to the

reclassification or de-listing process will not be paid by the Debtor or from the escrow account.

MISCELLANEOUS

33. This Agreement and Order shall supplement, and not supersede the Interim Agreement and Order. However, the terms of this Agreement and Order, including any previous orders, stipulations or agreements incorporated herein, shall constitute the complete and entire Agreement and Order between Debtor and the NYSDEC concerning implementation of the Site remediation required hereunder. No term, condition, understanding, or agreement purporting to modify or vary any term of this Agreement and Order shall be binding unless made in writing and subscribed by the party to be bound. No informal advice, guidance, suggestion, or comment by the NYSDEC regarding any report, proposal, plan, specification, schedule, or any other submittal by Debtor shall be construed as relieving Debtor of its obligation to obtain such formal approvals as may be required by this Agreement and Order.

34. The caption of the State's adversary proceeding shall be changed to substitute as a party plaintiff the current NYSDEC Commissioner by deleting "Michael D. Zagata as Commissioner of the New York State Department of Environmental Conservation" and inserting in its place "John P. Cahill as Commissioner of the New York State Department of Environmental Conservation."

35. All references to "professional engineer" in this Agreement and Order are to an individual registered as a professional engineer in accordance with Article 145 of the New York State Education Law.

36. All references to "days" in this Agreement and Order are to calendar days unless otherwise specified.

37. The section headings set forth in this Agreement and Order are included for convenience of reference only and shall be disregarded in the construction and interpretation of any of the provisions of this Agreement and Order.

38. This Agreement and Order is subject to the approval of the United States Bankruptcy Court.

39. Any notices or reports required to be provided herein shall be in writing and sent by regular mail, or by hand delivery addressed as follows:

If to the Debtor:

Platzer, Swergold, Karlin, Levine, Goldberg
& Jaslow, LLP
150 East 52nd Street
New York, New York 10016
Attention: Michele K. Jaspan, Esq.

-and-

Martin Cantor
16 Foothill Road
East Northport, NY 11731

-and-

Cahn Wishod & Lamb, LLP
534 Broadhollow Road
Melville, New York 11747-9034
Attention: Frederick Eisenbud, Esq.

If to Apple:

Apple Bank For Savings
277 Park Avenue
New York, New York 10172
Attention: Michael B. Greene

With a copy to:

Baer Marks & Upham LLP
805 Third Avenue
New York, NY 10022
Attention: Jay L. Gottlieb, Esq.

If to the State:

New York State Department of Law
120 Broadway
New York, New York 10271
Attention: Andrew J. Gershon, Esq.

-and-

New York State Department of Environmental Conservation/DER
50 Wolf Road
Albany, New York 12233-7010
Attention: Steven M. Scharf, P.E.

-and-

New York State Department of Environmental Conservation/DEE
200 White Plains Road, 5th Fl.
Tarrytown, New York 10591-5805
Attention: Edward Devine, Esq.

40. In addition to the notices and reports that must be provided to Apple pursuant to Paragraph 39, copies of any correspondence between and among the Escrow Agent, Debtor and NYSDEC concerning implementation of this Agreement and Order shall be provided to Apple. In the event such correspondence includes lengthy exhibits or attachments, the party initiating the correspondence may omit such exhibits or attachments,

provided this omission is noted and Apple is provided with copies if it so requests.

41. This Agreement and Order shall survive dismissal of this case. The parties consent to the exclusive jurisdiction of the New York State Supreme Court for the County of New York, or, if a federal cause of action arises, of the United States District Court for the Southern District of New York, to decide any case or controversy arising out of this Agreement and Order.

42. This Agreement and Order is in full and final settlement of this adversary proceeding, and any and all claims filed in connection therewith by the NYSDEC and Apple.

SO AGREED:

Dated: New York, New York
October 31, 1997

DENNIS C. VACCO, ATTORNEY GENERAL FOR THE STATE OF NEW YORK
ATTORNEY FOR PLAINTIFFS

By: Andrew J. Gershon
ANDREW J. GERSHON (AG/6141)
Assistant Attorney General
120 Broadway
New York, New York 10271
(212) 416-8474

PLATZER, SWERGOLD, KARLIN, LEVINE, GOLDBERG & JASLOW, LLP
ATTORNEYS FOR DEBTOR

By: Michele K. Jaspan
MICHELE K. JASPAN (MK/1737)
For The Firm
150 East 52nd Street
New York, New York 10022
(212) 593-3000

Dated: New York, New York
October ~~3~~ November 3, 1997

BAER MARKS & UPHAM LLP
ATTORNEYS FOR APPLE BANK
FOR SAVINGS

By: _____
JAY GOTTLIEB (JG/9733)
A Member of the Firm
805 Third Avenue
New York, New York 10022
(212) 702-5700

SO ORDERED, this 2
day of ~~October~~ December, 1997

_____
UNITED STATES BANKRUPTCY JUDGE

cmt\ttlp.7

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK

----------x

In re Cantor Bros., Inc.,
Debtor.

In Proceedings for a Reorganization Under Chapter 11

Bankruptcy Case No. 893-80853-478

Judge Eisenberg

----------x

State of New York and Langdon Marsh as Acting Commissioner of Environmental Conservation,

Plaintiffs,

-against-

Cantor Bros., Inc.,
Defendant.

Adversary Proceedings No. 894-8182-478

file #152021 available

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INTERIM AGREEMENT AND STIPULATED ORDER

WHEREAS, Cantor Bros., Inc., (the "Debtor" or "Cantor Bros.") conducted business and commercial activities from on or before 1975 to April 1993 on property located at 50 Engineers Lane, Farmingdale, New York (the "Site");

WHEREAS, the Site has been listed in the Registry of Inactive Hazardous Waste Disposal Sites in New York State as site number 1-52-021, and is classified by the New York State Department of Environmental Conservation ("NYSDEC") as a class "2" site.

WHEREAS, Cantor Bros. consented to the entry of an order by the New York State Commissioner of Environmental Conservation, dated March 25, 1992 ("Administrative Order"), requiring the

Debtor to develop and implement a remedial investigation and feasibility study ("RI/FS") and appropriate interim remedial measures with respect to the contamination at the Site;

WHEREAS, Cantor Bros. filed a petition under Chapter 11 of the Bankruptcy Code on February 16, 1993, in the United States Bankruptcy Court for the Eastern District of New York;

WHEREAS, the NYSDEC filed an administrative proof of claim (the "NYSDEC Administrative claim") on March 7, 1994, asserting that the costs incurred and to be incurred by the Debtor in discharging its responsibilities and obligations under the Administrative Order and/or statutes relating to the protection of the environment, including the costs of implementing the final cleanup remedy for the Site selected by the NYSDEC, and the costs incurred or to be incurred by the NYSDEC for purposes of oversight or as a consequence of the Debtor's failure to comply with its obligations under the Administrative Order or applicable environmental statutes, including the obligation to implement the remedy, are entitled to administrative expense status and priority;

WHEREAS, the State of New York filed an adversary proceeding (the "Adversary Complaint") against the Debtor on April 19, 1994, adversary proceeding number 894-8182-478, in which New York State seeks, inter alia, the entry of a judgment directing the Debtor to comply with the Administrative Order and, in addition, New York seeks the entry of a judgment declaring that the costs of compliance with the Administrative Order, including costs

incurred by the State of New York, are entitled to administrative status and priority;

WHEREAS, the Debtor filed an Answer to New York State's Adversary Complaint asserting, inter alia, that the NYSDEC holds an unliquidated contingent claim that has not been classified as an administrative claim and that the Debtor cannot be compelled to comply with the Administrative Order until there is an order from the Bankruptcy Court authorizing and directing it to comply; that if the Administrative Order is deemed to be an administrative claim, it must be treated pari passu with any and all administrative claims; and that compliance with the Administrative Order cannot be an administrative expense unless the Site poses an imminent and identifiable danger to the public safety;

WHEREAS, it is the position of the State of New York that, inter alia, the Debtor is obligated to comply with the terms of the Administrative Order and that its failure to comply subjects the Debtor to civil and criminal sanctions and penalties under the New York Environmental Conservation Law;

WHEREAS, the parties to this interim agreement and stipulated order desire to advance the resolution of these matters and thereby avoid the additional litigation costs.

NOW, THEREFORE, upon the consent and agreement of the parties by their attorneys, it is hereby ORDERED:

1. The Debtor shall undertake the remedial work and other obligations set forth below.

2. The Debtor, by its contractor Handex of New York, Inc. ("Handex"), shall implement as part of the RI/FS and the Interim Remedial Measures required by the Administrative Order, the following work items:

REMEDIAL WORK

Soil Borings and Laboratory Analysis

A. Handex shall drill a total of 23 soil borings in areas potentially impacted by such structures as former underground storage tanks, trash dumpsters, leaching pools and storm drains. One (1) soil boring, at location TW-16, shall be drilled using a hollow stem auger or Cone Penetrometer. All other borings shall utilize a hollow stem auger. The approximate locations of the soil borings are indicated on the map attached hereto as appendix A.

B. Soil samples shall be collected from each boring starting at the base of the structure, e.g., storm drain/leaching pool, and continuing in five feet intervals until the water table is encountered approximately forty feet below land surface. The samples will be screened every five feet for Target Compound List volatile organic compounds ("VOCs") with a portable gas chromatograph ("GC"). Based on the portable GC results two (2) soil samples will be submitted to a New York State Department of Health ("NYSDOH") ELAP certified laboratory using Contract Laboratory Protocols ("CLP") for analysis of target compound list

volatile organic compounds ("VOCs") and target compound list semi-volatile organic compounds ("Semi-VOCs"). The samples submitted for laboratory analysis shall be selected using the following criteria:

i. If the portable GC results for VOC analysis are non-detect ("ND"), the sample just below the structure, e.g., storm drain/leach pool, will be analyzed for Semi-VOCs and the sample just above the water table will be analyzed for VOCs.

ii. If VOC's are detected then the sample with the highest GC results will be analyzed for VOC and Semi-VOC compounds. A second sample will be collected and analyzed for VOCs and Semi-VOCs in order to document the depth at which the VOC's are no longer present at detectable levels or, in the event that VOCs are detected to the water table, to determine the concentration in soil just above the water table.

C. The results of the soil boring program will be utilized in determining the need for additional work to delineate the areal extent of soil contamination as well as the number and location of such additional borings. Handex shall take and analyze such additional soil borings as may be necessary to determine the areal extent of the soil contamination. The additional soil borings shall be undertaken as part of the obligations arising under this agreement and order.

Groundwater Sampling

D. In addition to the soil samples collected in the borings installed inside the building, see appendix "A", one groundwater

sample shall be collected approximately five feet below the water table from the soil boring drilled at location TW-16, using a hollow stem auger or Cone Penetrometer. Handex shall submit the groundwater sample to the laboratory for Target Compound List VOC analysis.

E. Handex shall drill one (1) temporary groundwater well point at an off-site location south of the Site. Selection of the off-site location is subject to the approval of the DEC. The well point will be installed using a Hydro-punch/Cone Penetrometer Technology ("CPT") or hollow stem auger method. It is anticipated that groundwater will be encountered at approximately forty feet below land surface. The first sample shall be collected at ten feet below the water table followed by sample collections at ten feet intervals until two groundwater samples are non-detect using the portable GC.

F. The water samples collected shall be screened on site with a portable GC for VOCs. Based upon the GC screening the two samples with the highest GC results for VOCs shall be submitted to the laboratory for VOC analysis.

G. Handex shall collect groundwater samples from the four (4) existing monitoring wells (MW-1 through MW-4) for VOC and Semi-VOC analysis. This task shall include collecting the appropriate QA/QC blanks for analysis. Handex may install and sample additional groundwater monitoring wells subject to the approval of DEC as provided in paragraph 3.

Data Validation

H. All samples collected under this agreement and order may be split and analyzed by the NYSDEC. NYSDEC Analytical Services

Protocols 91-1 and 91-2 with category B deliverables shall be utilized. This agreement and order does not establish data validation requirements. However, based upon its review of the QA/QC submittal, NYSDEC may require data validation which Handex shall perform, subject to the provisions of paragraph 3 below.

Waste Management

I. Drill cuttings, generated during the boring program and water generated from steam cleaning and purging of wells during groundwater sampling, shall be collected in 55 gallon drums and staged on-site. Upon receipt of the waste classification analysis, Handex shall contract with a transporter and a disposal facility for removal of the waste from the site.

Report Preparation

J. A report summarizing the investigation shall be prepared by Handex and submitted to the NYSDEC and counsel for the Debtor, the Apple Bank for Savings ("Apple") and the State. The report will include recommendations for additional work as and if necessary.

Site Structure Investigation

K. Upon completion of the field investigation work, Handex shall provide the NYSDEC, Apple and the Debtor, with a drawing based upon visual observations of all floor drains, cesspools, septic systems and leaching pools, and associated piping, referred to herein collectively as "structures", located on the Site.

L. Handex will make a concerted effort to locate structures identified in the as-built drawings but which could not be field verified during the site visit conducted on October 12, 1994. Handex will inspect each structure to determine its size and identify piping entering and exiting the structure. When possible, Handex will conduct dye testing and snaking, if required, to confirm use of the structures. Samples of relevant media will be collected and analyzed as and if appropriate. Please note, Handex is assuming no floor/wall destruction or excavation will be required to access and inspect these structures. This inspection will focus on accessible structures which appear to be active and are not permanently closed. Procedures for sampling of these structures can not be addressed at this time as conditions can not be anticipated.

M. The Site Plan, which is attached as Figure 2, "General Site Map", to the Draft Interim Remedial Measures, shall be updated, as necessary, to show the true location of all structures, including those identified in the architectural and/or as-built drawings. The update of the Site Plan shall be prepared after inspection by Handex of the structures. The Site Plan figures shall include bar scales.

Site History

N. Within sixty days from the date that this agreement and order is entered, Debtor shall provide the NYSDEC and Apple with a written statement describing in detail:

i. All business activities conducted on the Site;

ii. All chemical substances shipped to the Site;

iii. All chemical substances transported from the Site; and

iv. Storage, mixing and packaging of chemical substances at the site.

TERMS AND CONDITIONS FOR THE PERFORMANCE OF THE REMEDIAL WORK

3. Except as is otherwise explicitly provided in paragraph 2 above, all work required hereunder shall be performed in compliance with and under the terms set forth in the Administrative Order, attached hereto as appendix B, including but not limited to the provision that all work performed must be done subject to NYSDEC supervision and approval. In the event that the Debtor by its contractor and the NYSDEC disagree, then the determination of the NYSDEC shall be final and binding provided that the determination of the NYSDEC does not require the total expenditures for the work performed pursuant to this agreement and order to exceed the total cost established pursuant to paragraph 5. Debtor and Apple reserve the right to challenge by motion upon proper notice, any determination by the NYSDEC that is arbitrary and capricious. The filing of a motion by the Debtor or Apple challenging a NYSDEC determination shall not stay or delay the expeditious implementation of the disputed work item by the Debtor or Handex.

4. The fieldwork required by this agreement and order shall begin within thirty days of the entry of this agreement and order and substantially all work shall be completed within one hundred

and twenty days of the entry of this order. All reports and data submissions required pursuant to this agreement and order shall be delivered to the NYSDEC, the Debtor and Apple on or before sixty days after the completion of the fieldwork.

5. The total cost of performing the work required by this interim agreement and stipulated order shall not exceed the sum of one hundred twenty-five thousand dollars ($125,000.00) except upon application to and the approval of the Court. The $125,000 cost figure referred to above is derived from cost estimates submitted by Handex. The Debtor by its contractor Handex shall notify the State of New York and Apple in writing when costs totalling ~~one hundred~~ seventy thousand dollars ($70,000.00) ~~($100,000.00)~~ have been incurred. Such notice shall itemize the work that has yet to be done and the anticipated costs of such work.

6. The Debtor by its contractor Handex shall provide the NYSDEC with written notice of all fieldwork. Such written notice shall be delivered to the NYSDEC no less than five days prior to the start of the fieldwork referred to in the notice.

RESERVATION OF CLAIMS AND DEFENSES

7. This Interim Agreement and Stipulated Order obligates the Debtor to perform the remedial work and other obligations set forth herein. Following the completion of the work required under this agreement and order including the submission to the NYSDEC of the requisite reports, the NYSDEC may select a remedy for the Site. The Debtor's obligation, if any, to implement the selected remedy is not addressed by this agreement and

stipulation. With respect to the Debtor's obligation to implement the selected remedy and with respect to all other claims and obligations that are not explicitly addressed herein, including, but not limited to, additional sampling and the implementation of interim remedial measures, the parties reserve all of their rights and defenses for subsequent resolution either by agreement or litigation.

MISCELLANEOUS

8. The caption of the State's adversary proceeding shall be changed to substitute as a party plaintiff, the current NYSDEC Commissioner by deleting "Langdon Marsh as Acting Commissioner of Environmental Conservation" and inserting in its place "Michael D. Zagata as Commissioner of the New York State Department of Environmental Conservation."

9. This Interim Agreement and Stipulation Order is subject to the approval of the United States Bankruptcy Court.

10. Any notices or reports required to be provided herein shall be in writing and sent by regular mail, or by hand delivery addressed as follows:

If to the Debtor:

Platzer, Fineberg & Swergold
150 East 52nd Street
New York, New York 10016
Attention: Michele K. Jaspan

-and-

Martin Cantor
16 Foothill Road
East Northport, NY 11731

If to Handex:

Handex of New York, Inc.
61 C Carolyn Boulevard
Farmingdale, New York 11735
Attention: Carol Karp

If to Apple Bank for Savings:

Baer Marks & Upham, LLP
805 Third Avenue
New York, NY 10022
Attention: Jay L. Gottlieb, Esq.

If to the State:

New York State Department of Law
120 Broadway
New York, New York 10271
Attention: Norman Spiegel, Esq.

-and-

New York State Department of Environmental Conservation/DHWR
50 Wolf Road
Albany, New York 12233
Attention: Susan McCormick, P.E.

-and-

New York State Department of Environmental Conservation/DEE
200 White Plains Road, 5th Fl.
Tarrytown, New York 10591-5805
Attention: Samara Swanston, Esq.

SO AGREED:

Dated: Morganville, New Jersey
April , 1996

HANDEX OF NEW JERSEY, INC. d/b/a
HANDEX OF NEW YORK

By: _____
JOHN ST. JAMES (JJ/)
Chief Financial Officer, Treas. VP
500 Campus Drive
Morganville, NJ 07751

SO AGREED:

Dated: New York, New York
April 15, 1996

DENNIS C. VACCO, ATTORNEY GENERAL
FOR THE STATE OF NEW YORK
ATTORNEY FOR PLAINTIFFS

By: _____
NORMAN SPIEGEL (NS/5619)
Assistant Attorney General
120 Broadway
New York, New York 10271
(212) 416-8454

Dated: New York, New York
April , 1996

PLATZER, FINEBERG & SWERGOLD
ATTORNEYS FOR DEBTOR

By: _____
MICHELE K. JASPAN (MK/1737)
For The Firm
150 East 52nd Street
New York, New York 10022
(212) 593-3000

Dated: New York, New York
April 16, 1996

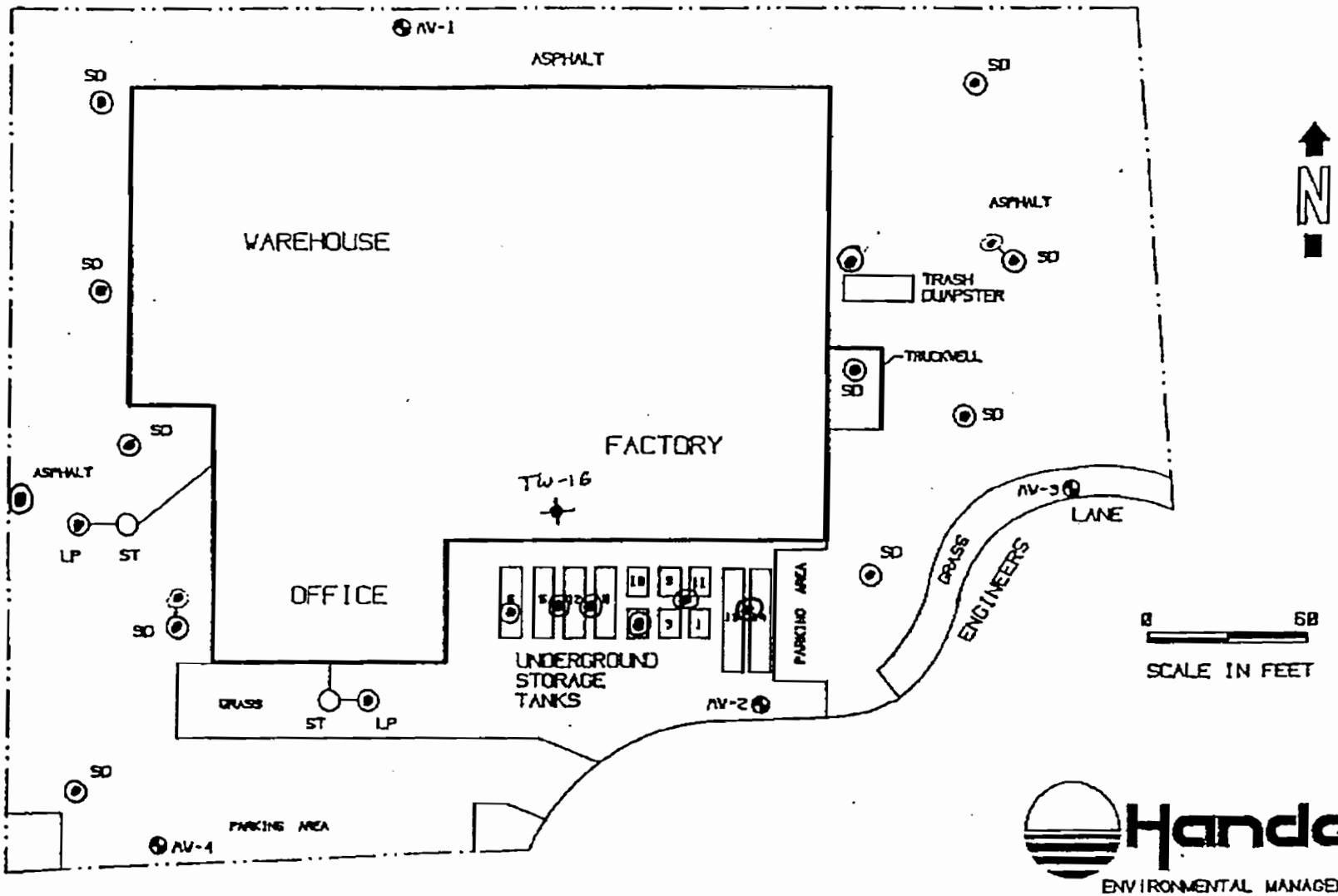
BAER, MARKS & UPHAM, LLP
ATTORNEYS FOR APPLE BANK
FOR SAVINGS

By: _____
JAY GOTTLIEB (JG/9733)
805 Third Avenue
New York, New York 10022
(212) 702-5700

SO ORDERED, this 26
day of June 1996

_____
UNITED STATES BANKRUPTCY JUDGE

no.1\spiegel\cantstp.10



SD = STORM DRAIN
ST = SETTLING TANK
LP = LEACHING POOL

NOTE: MONITORING WELL LOCATIONS ARE APPROXIMATE

⊙ Soil boring
✦ Soil boring/gw sample location

Handex
ENVIRONMENTAL MANAGEMENT

FIGURE 2

GENERAL SITE MAP

CANTOR BROTHERS
ENGINEERS LANE
FARMINGDALE, NEW YORK

2-10

Exhibit A

STATE OF NEW YORK: DEPARTMENT OF ENVIRONMENTAL CONSERVATION

In the Matter of the
Development and Implementation
of a Remedial Investigation/Feasibility
Study for an Inactive Hazardous Waste
Disposal Site, Under Article 27, Title 13,
and Article 71, Title 27 of the
Environmental Conservation Law
of the State of New York by

CANTOR BROTHERS, INC.,

Respondent.

ORDER
ON
CONSENT

INDEX #
W1-0570-91-12

Site Code # 1-52-021

WHEREAS,

1. The New York State Department of Environmental Conservation (the "Department") is responsible for enforcement of Article 27, Title 13 of the Environmental Conservation Law of the State of New York ("ECL"), entitled "Inactive Hazardous Waste Disposal Sites." This Order is entered into pursuant to the Department's authority under ECL Article 27, Title 13 and ECL Section 3-0301.

2. Cantor Brothers, Inc. ("Respondent"), is a corporation organized and existing under the laws of the State of New York. The site is located on Engineers Lane, Farmingdale, New York 11735, and is in the Town of Babylon. The owner of the site is Anman Realty Corp., Engineers Lane, P.O. Box 126, Farmingdale, New York 11735. Anman Realty Corp. is a wholly owned subsidiary of Cantor Bros., Inc. Cantor Bros., Inc. was incorporated in 1934. Emanuel Cantor owns 50%

Exhibit B

of the shares of the corporation and Martin Cantor has effective control of the remaining 50% of the shares. The Closing for the purchase of the site was on August 21, 1964. A map of the site is attached hereto and is incorporated into this Order as Appendix "A."

3. The Department maintains that the Site is an inactive hazardous waste disposal site, as that term is defined at ECL Section 27-1301(2), and presents a significant threat to the public health or environment. The Site has been listed in the Registry of Inactive Hazardous Waste Disposal Sites in New York State as Site Number 1-52-021. The Department has classified the Site as a "2" pursuant to ECL Section 27-1305(4)(b).

4. A. Pursuant to ECL Section 27-1313(3)(a), whenever the Commissioner of Environmental Conservation (the "Commissioner") "finds that hazardous wastes at an inactive hazardous waste disposal site constitute a significant threat to the environment, he may order the owner of such site and/or any person responsible for the disposal of hazardous wastes at such site (i) to develop an inactive hazardous waste disposal site remedial program, subject to the approval of the Department, at such site, and (ii) to implement such program within reasonable time limits specified in the order."

B. Any person under order pursuant to ECL Section 27-1313(3)(a) has a duty imposed by ECL Article 27, Title 13 to carry out the remedial program committed to

under order. ECL Section 71-2705 provides that any person who fails to perform any duty imposed by ECL Article 27, Title 13 shall be liable for civil, administrative and/or criminal sanctions.

C. The Department also has the power, inter alia, to provide for the prevention and abatement of all water, land, and air pollution. ECL Section 3-0301(1)(i).

5. The Department and Respondent agree that the goals of this Order are for Respondent to (i) develop and implement a Remedial Investigation/Feasibility Study ("RI/FS") for the Site.

6. Respondent, having waived Respondent's right to a hearing herein as provided by law, and having consented to the issuance and entry of this Order, agrees to be bound by its terms. Respondent consents to and agrees not to contest the authority or jurisdiction of the Department to issue or enforce this Order, and agrees not to contest the validity of this Order or its terms.

7. Nothing in this Order shall be construed to limit Respondent's right to file a petition with the Commissioner pursuant to ECL Section 27-1305(4)(b) to de-list the site from the Registry or to change its classification.

8. Notwithstanding Respondent's agreement to carry out the terms of this Order, Respondent does not admit or acknowledge any liability, fault or wrongdoing or violation of

law, regulation or permit of any kind whatsoever in any way related to the Site.

NOW, having considered this matter and being duly advised, IT IS ORDERED THAT:

I. Within 30 days after the effective date of this Order, Respondent shall submit to the Department all data within Respondent's possession or control regarding environmental conditions on-Site and off-Site, and other information described below, unless the Department advises the Respondent that such data have previously been provided to the Department. Unless already contained in the Phase I and Phase II reports previously prepared for the Department, the data and other information shall include:

A. A brief history and description of the Site, including the types, quantities, physical state, location, and dates of disposal of hazardous waste including methods of disposal and spillage of such wastes;

B. A concise summary of information held by Respondent and Respondent's attorneys and consultants with respect to all other PRPs responsible for such disposal of hazardous wastes, including but not limited to names, addresses, dates of disposal and any proof linking each such person responsible with hazardous wastes identified pursuant to subparagraph I(A); and

C. A comprehensive list and copies of all existing relevant reports with titles, authors, and subject matter, as well as a description of the results of all previous investigations of the Site and areas in the vicinity of the Site, including copies of all available topographic and property surveys, engineering studies and aerial photographs.

II. RI/FS Work Plan Contents and Submittals

A. Unless a longer period of time is agreed to in writing by the Department, Respondent shall submit to the Department, within 30 days after the effective date of this Order, a detailed work plan describing the methods and procedures to be implemented in performing an RI/FS for the Site ("RI/FS Work Plan").

B. (1) The RI/FS Work Plan shall include, but not be limited to, the following:

a. A chronological description of the anticipated RI/FS activities together with a schedule for the performance of these activities.

b. A Sampling and Analysis Plan that shall include:

(i) A quality assurance project plan that describes the quality assurance and quality control protocols necessary to achieve the initial data quality objectives. This plan shall designate a data validation expert and must describe such individual's qualifications and experience.

(ii) A field sampling plan that defines sampling and data gathering methods in a manner consistent with the "Compendium of Superfund Field Operations Method" (EPA/540/P-87/001, OSWER Directive 9355.0-14, December 1987) as supplemented by the Department.

c. A health and safety plan to protect persons at and in the vicinity of the Site during the performance of the RI/FS which shall be prepared in accordance with 29 C.F.R. 1910 and all other applicable standards by a certified health and safety professional. Respondent shall add supplemental items to this plan necessary to ensure the health and safety of all persons at or in the vicinity of the Site during the performance of any work pursuant to this Order.

d. A citizen participation plan that is, at a minimum, consistent with the Department's publication, "New York State Inactive Hazardous Waste Site Citizen Participation Plan," dated August 30, 1988, and any subsequent revisions thereto.

(2) The RI/FS Work Plan shall incorporate all elements of a RI/FS as set forth in the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA") [42 U.S.C. 9601 et seq.], as amended, the National Contingency Plan ("NCP") of March 8, 1990 [40 CFR Part 300], the USEPA guidance document entitled "Guidance for Conducting Remedial Investigations and Feasibility Studies

under CERCLA," dated October 1988, and any subsequent revisions to that guidance document in effect at the time the RI/FS Work Plan is submitted, and appropriate USEPA and Department technical and administrative guidance documents.

III. Performance and Reporting of Remedial Investigation

A. Within 30 days after the Department's approval of the RI/FS Work Plan, Respondent shall commence the Remedial Investigation.

B. Respondent shall perform the Remedial Investigation in accordance with the Department-approved RI/FS Work Plan.

C. During the performance of the Remedial Investigation, Respondent shall have on-Site a full-time representative who is qualified to supervise the work done.

D. Within the time frame set forth in the RI/FS Work Plan, Respondent shall prepare a Remedial Investigation Report that shall:

(1) include all data generated and all other information obtained during the Remedial Investigation:

(2) provide all of the assessments and evaluations set forth in CERCLA, the NCP, and the guidance documents identified in Subparagraph II(B)(2);

(3) identify any additional data that must be collected; and

(4) include a certification by the individual or firm with primary responsibility for the day to day

performance of the Remedial Investigation that all activities that comprised the Remedial Investigation were performed in full accordance with the Department-approved RI/FS Work Plan.

IV. Feasibility Study

A. Within 30 days after receipt of the Department's approval of the Remedial Investigation Report, Respondent shall perform, prepare, and submit a Feasibility Study evaluating on-Site remedial actions to eliminate, to the maximum extent practicable, all health and environmental hazards and potential hazards attributable to hazardous waste disposal at the Site. The Feasibility Study shall be prepared by and have the signature and seal of a professional engineer who shall certify that the Feasibility Study was prepared in accordance with this Order. The Department does not release the Respondent from any liability the Respondent may have for the off-Site migration of hazardous substances.

B. Respondent shall perform and prepare the Feasibility Study in accordance with the Department-approved RI/FS Work Plan and in a manner consistent with CERCLA, the NCP, and the guidance documents identified in Subparagraph II(B)(2).

C. Within 30 days after the Department's approval of the Feasibility Study, Respondent shall cooperate and assist the Department in soliciting public comment on the RI/FS and the proposed remedial action plan identified therein, in accordance with CERCLA, the NCP, the guidance

documents identified in Subparagraph II(B)(2), and with any Department policy and guidance documents in effect at the time the public comment period is initiated. After the close of the public comment period, the Department shall select a final remedial alternative for the site in a Record of Decision ("ROD").

V. Interim Remedial Measures

Before the effective date of the ROD, Respondent or the Department may propose interim remedial measures ("IRMs") for the Site on an as-needed basis. In proposing each IRM, Respondent shall submit to the Department a work plan which includes time frames for the completion of the IRM. Upon the Department's determination that the proposal is an appropriate interim remedial measure and its approval of such work plan, the work plan shall be incorporated into and become an enforceable part of this Order. Respondent shall then carry out such IRM in accordance with the requirements of the approved work plan and this Order.

VI. Progress Reports

Respondent shall submit to the parties set forth in paragraph XIII copies of written monthly progress reports that: (i) describe the actions which have been taken toward achieving compliance with this Order during the previous month; (ii) include all results of sampling and tests and all other data received or generated by Respondent or Respondent's contractors or agents in the previous month, including quality

assurance/quality control information, whether conducted pursuant to this Order or conducted independently by Respondent; (iii) identify all work plans, reports, and other deliverables required by this Order that were completed and submitted during the previous month; (iv) describe all actions, including, but not limited to, data collection and implementation of work plans, that are scheduled for the next month and provide other information relating to the progress at the Site; (v) include information regarding percentage of completion, unresolved delays encountered or anticipated that may affect the future schedule for implementation of the Respondent's obligations under the Order, and efforts made to mitigate those delays or anticipated delays; (vi) include any modifications to any work plans that Respondent has proposed to the Department or that the Department has approved; and (vii) describe all activities undertaken in support of the Citizen Participation Plan during the previous month and those to be undertaken in the next month. Respondent shall submit these progress reports to the Department by the tenth day of every month following the effective date of this Order.

VII. Review of Submittals

A. (1) The Department shall review each of the submittals Respondent makes pursuant to this Order to determine whether it was prepared, and whether the work done to generate the data and other information in the submittal was done, in accordance with this Order and generally accepted

technical and scientific principles. The Department shall notify Respondent in writing of its approval or disapproval of the submittal, except for the submittal discussed in Paragraph II(B)(1)(c). All Department-approved submittals shall be incorporated into and become an enforceable part of this Order.

(2) (a) If the Department disapproves a submittal, it shall so notify Respondent in writing and shall specify the reasons for its disapproval. Within 30 days after receiving written notice that Respondent's submittal has been disapproved, Respondent shall make a revised submittal to the Department that addresses and resolves all of the Department's stated reasons for disapproving the first submittal.

(b) After receipt of the revised submittal, the Department shall notify Respondent in writing of its approval or disapproval. If the Department disapproves the revised submittal, Respondent shall be in violation of this Order and the Department may take any action or pursue whatever rights it has pursuant to any provision of statutory or common law. If the Department approves the revised submittal, it shall be incorporated into and become an enforceable part of this Order.

B. Following consultation with Respondent, the Department may require Respondent to modify and/or amplify and expand a submittal if the Department determines, as a result of reviewing data generated by an activity required under this

Order or as a result of reviewing any other data or facts, that further work is necessary.

VIII. Penalties

A. (1) Respondent's failure to comply with any term of this Order may be deemed by the Department to be a violation of this Order and the ECL.

B. Respondent shall not suffer any penalty under this Order or be subject to any proceeding or action if it cannot comply with any requirement hereof because of war, riot, or an unforeseeable disaster arising exclusively from natural causes which the exercise of ordinary human prudence could not have prevented. Respondent shall, within five days of when it obtains knowledge of any such condition, notify the Department in writing. Respondent shall include in such notice the measures taken and to be taken by Respondent to prevent or minimize any delays and shall request an appropriate extension or modification of this Order. Failure to give such notice within such five-day period constitutes a waiver of any claim that a delay is not subject to penalties. Respondent shall have the burden of proving that an event is a defense to compliance with this Order pursuant to subparagraph VIII(B).

IX. Entry upon Site

Respondent hereby consents to the entry upon the Site or areas in the vicinity of the Site which may be under the control of the Respondent by any duly designated employee, consultant, contractor, or agent of the Department or any

State agency for purposes of inspection, sampling, and testing and to ensure Respondent's compliance with this Order.

X. Department's Reservation of Rights

A. Nothing contained in this Order shall be construed as barring, diminishing, adjudicating, or in any way affecting any of the Department's rights including, but not limited to nor exemplified by, the following:

1. the Department's right to bring any action or proceeding against anyone other than Respondent and/or any of Respondent's directors, officers, employees, servants, agents, successors, and assigns;

2. the Department's right to enforce this Order against Respondent and/or any of Respondent's directors, officers, employees, servants, agents, successors, and assigns if Respondent fails to satisfy any of the terms of this Order;

3. the Department's right to bring any action or proceeding against Respondent and/or any of Respondent's directors, officers, employees, servants, agents, successors, and assigns with respect to claims for natural resources damages as a result of the release or threatened release of hazardous substances or constituents at or from the Site;

4. the Department's right to bring any action or proceeding against Respondent and/or any of Respondent's directors, officers, employees, servants, agents, successors, and assigns with respect to hazardous substances that are present at the Site or that have migrated from the Site;

5. the Department's right to require Respondent and/or any of Respondent's directors, officers, employees, servants, agents, successors, and assigns to develop and implement IRMs for the Site; and

6. the Department's right to gather information and enter and inspect property and premises.

7. the Department's right to recover a sum of money which shall represent reimbursement for the Department's expenses including, but not limited to, direct labor, overhead, travel, analytical costs, and contractor costs incurred by the State of New York for work performed at the Site to date, as well as for negotiating this Order, reviewing and revising submittals made pursuant to this Order, overseeing activities conducted pursuant to this Order, and collecting and analyzing samples. Itemization of the costs shall include an accounting of personal services indicating the employee name, title, biweekly salary, and time spent (in hours) on the project during the billing period. The Department's approved fringe benefit and indirect cost rates shall be applied. Non-personal service costs shall be summarized by category of expense (e.g., supplies, materials, travel, contractual).

B. Nothing contained in this Order shall be construed to prohibit the Commissioner or his duly authorized representative from exercising any summary abatement powers.

XI. Indemnification

Respondent shall indemnify and hold the Department, the State of New York, and their representatives and employees harmless for all claims, suits, actions, damages, and costs of every name and description arising out of or resulting from the fulfillment or attempted fulfillment of this Order by Respondent, and/or Respondent's directors, officers, employees, servants, agents, successors, and assigns.

XII. Public Notice

A. After the effective date of this Order, Respondent shall file a Declaration of Covenants and Restrictions with the Suffolk County Clerk to give all parties who may acquire any interest in the Site notice of this Order.

B. If Respondent proposes to convey the whole or any part of Respondent's ownership interest in the Site, Respondent shall, not fewer than 60 days before the date of conveyance, notify the Department in writing of the identity of the transferee and of the nature and proposed date of the conveyance and shall notify the transferee in writing, with a copy to the Department, of the applicability of this Order.

XIII. Communications

A. All written communications required by this Order shall be transmitted by United States Postal Service, by private courier service, or hand delivered as follows:

Communication from Respondent shall be sent to:

1. Peter Bleiweiss
   Division of Environmental Enforcement
   NYS Dept. of Environmental Conservation
   202 Mamaroneck Avenue Room 304
   White Plains, NY 10601-5381

2. John Conover
   NYS Dept. of Environmental Conservation
   SUNY Building # 40
   Stony Brook, NY 11790-2356

3. Director, Bureau of Environmental
   Exposure Investigation
   New York State Department of Health
   2 University Place
   Albany, New York 12203

4. Raymond Cowen, Director, Region 1
   NYS Dept. of Environmental Conservation
   SUNY Building # 40
   Stony Brook, NY 11790-2356

5. Louis P. Oliva, Esq.
   Division of Environmental Enforcement
   NYS Dept. of Environmental Conservation
   202 Mamaroneck Avenue Room 304
   White Plains, NY 10601-5381

B. Copies of work plans and reports shall be submitted as follows:

1. Four copies (one unbound) to:

   Anthony Candela, P.E.
   NYS Dept. of Environmental Conservation
   SUNY Building # 40
   Stony Brook, NY 11790-2356

2. Two copies to:

   The Director
   NYS Department of Health
   Bureau of Env. Exposure Investigation
   2 University Place Room 205
   Albany, NY 12203

3. One copy to:

Michael O'Toole, P.E.
Division of Hazardous Waste Remediation
NYS Dept. of Environmental Conservation
50 Wolf Road
Albany, NY 12233-7010

4. One copy to:

Louis P. Oliva, Esq.
Division of Environmental Enforcement
NYS Dept. of Environmental Conservation
202 Mamaroneck Avenue Room 304
White Plains, NY 10601-5381

B. Within 30 days of the Department's approval of any report submitted pursuant to this Order, Respondent shall submit to Anthony Candela, a computer readable magnetic media copy of the approved report in American Standard Code for Information Interchange (ASCII) format.

C. Communication to be made from the Department to the Respondent shall be sent to:

Frederick Eisenbud, Esq.
Cahn Wishod Wishod & Lamb
534 Broadhollow Road
CS 9034
Melville, NY 11747-9034

D. The Department and Respondent reserve the right to designate additional or different addressees for communication or written notice to the other.

XV. Miscellaneous

A. All activities and submittals required by this Order shall address on-Site contamination resulting from the disposal of hazardous waste at the Site. The Department does

not release the Respondent from any liability the Respondent may have for the off-Site migration of hazardous substances.

B. Respondent shall retain professional consultants, contractors, laboratories, quality assurance/quality control personnel and data validators acceptable to the Department to perform the technical, engineering and analytical obligations required by this Order. The experience, capabilities and qualifications of the firms or individuals selected by Respondent shall be submitted to the Department within 30 days after the effective date of this Order. The Department's approval of these firms or individuals shall be obtained prior to initiation of any activities for which the Respondent and such firms or individuals will be responsible.

C. The Department shall have the right to obtain split samples, duplicate samples, or both, of all substances and materials sampled by Respondent, and the Department also shall have the right to take its own samples. Respondent shall make available to the Department the results of all sampling and/or tests or other data generated by Respondent with respect to implementation of this Order and shall submit these results in the progress reports required by this Order. The Department shall make available to Respondent the results of all samples and/or tests or other data generated by the Department with respect to the site which is the subject of this Order.

D. Respondent shall notify the Department at least 10 working days in advance of any field activities to be conducted pursuant to this Order.

E. Respondent shall obtain whatever permits, easements, rights-of-way, rights-of-entry, approvals, or authorizations are necessary to perform Respondent's obligations under this Order. If after Respondent's documented, good faith best efforts, Respondent fails to obtain these authorizations, the Department may take any appropriate action necessary to secure these authorizations.

F. Respondent and its successors and assigns shall be bound by this Order. Respondent, through its officers, directors, agents, servants, employees, successors and assigns, shall be responsible for implementing the terms of this Order. Any change in ownership or corporate status of Respondent including, but not limited to, any transfer of assets or real or personal property shall in no way alter Respondent's responsibilities under this Order.

G. Respondent shall provide a copy of this Order to each contractor hired to perform work required by this Order and to each person representing Respondent with respect to the Site and shall condition all contracts entered into hereunder upon performance in conformity with the terms of this Order. Respondent or Respondent's contractors shall provide written notice of this Order to all subcontractors hired to perform any portion of the work required by this

Order. Respondent shall nonetheless be responsible for ensuring that Respondent's contractors and subcontractors perform the work to be done under this Order in accordance with this Order.

H. All references to "professional engineer" in this Order are to an individual registered as a professional engineer in accordance with Article 145 of the New York State Education Law.

I. All references to "days" in this Order are to calendar days unless otherwise specified.

J. The section headings set forth in this Order are included for convenience of reference only and shall be disregarded in the construction and interpretation of any of the provisions of this Order.

K. (1) The terms of this Order shall constitute the complete and entire Order between Respondent and the Department concerning the Site. No term, condition, understanding, or agreement purporting to modify or vary any term of this Order shall be binding unless made in writing and subscribed by the party to be bound. No informal advice, guidance, suggestion, or comment by the Department regarding any report, proposal, plan, specification, schedule, or any other submittal shall be construed as relieving Respondent of Respondent's obligation to obtain such formal approvals as may be required by this Order.

(2) If Respondent desires that any provision of this Order be changed, Respondent shall make timely written application, signed by the Respondent, for the Commissioner's consideration setting forth reasonable grounds for the relief sought. Such written application shall be delivered or mailed to:

1. Louis P. Oliva, Esq.
Division of Environmental Enforcement
NYS Dept. of Environmental Conservation
202 Mamaroneck Avenue Room 304
White Plains, NY 10601-5381

2. Peter Bleiweiss
Division of Environmental Enforcement
NYS Dept. of Environmental Conservation
202 Mamaroneck Avenue Room 304
White Plains, NY 10601-5381

3. Anthony Candela, P.E.
NYS Dept. of Environmental Conservation
SUNY Building # 40
Stony Brook, NY 11790-2356

L. The effective date of this Order shall be the date it is signed by the Commissioner or his designee.

DATED: 3/25, New York
, 1992

THOMAS C. JORLING
Commissioner
New York State Department
of Environmental Conservation

by: Edward O. Sullivan
Deputy Commissioner
New York State Department
of Environmental Conservation

CONSENT BY RESPONDENT

CANTOR BROTHERS, INC.

Respondent hereby consents to the issuing and entering of this Order, waives Respondent's right to a hearing herein as provided by law, and agrees to be bound by this Order.

By: Matthew Miller
Matthew Miller

Title: Treasurer and General Manager

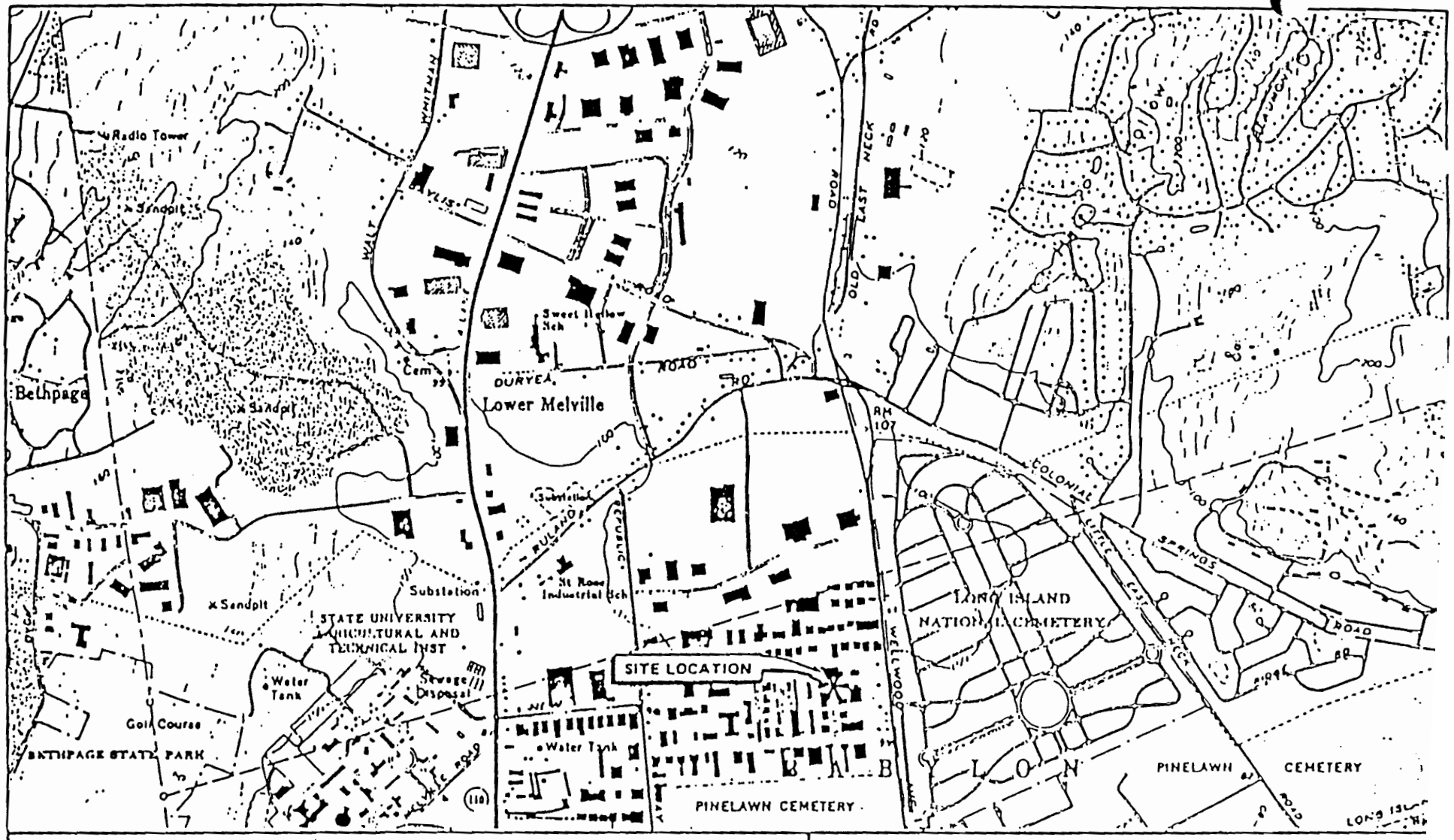
Date: March 9, 1992

STATE OF NEW YORK)
) s.s.:
COUNTY OF Suffolk)

On this 9th day of March, 1992, before me personally came MATTHEW MILLER, to me known, who being duly sworn, did depose and say that he resides in HUNTINGTON STATION NY; that he is the TREASURER & GENERAL MANAGER of the Cantor Bros., Inc., the corporation described in and which executed the foregoing instrument; that he knew the seal of the corporation; that the seal affixed to this instrument was such corporate seal; that it was so affixed by the order of the Board of Directors of the corporation and that he signed his name pursuant to a resolution of the Board of Directors.

Lilli Schlindra
Notary Public

LILLI SCHLINDRA
Notary Public, State of New York
No. 30-4680958
Qualified in Nassau County
Commission Expires November 30, 1992

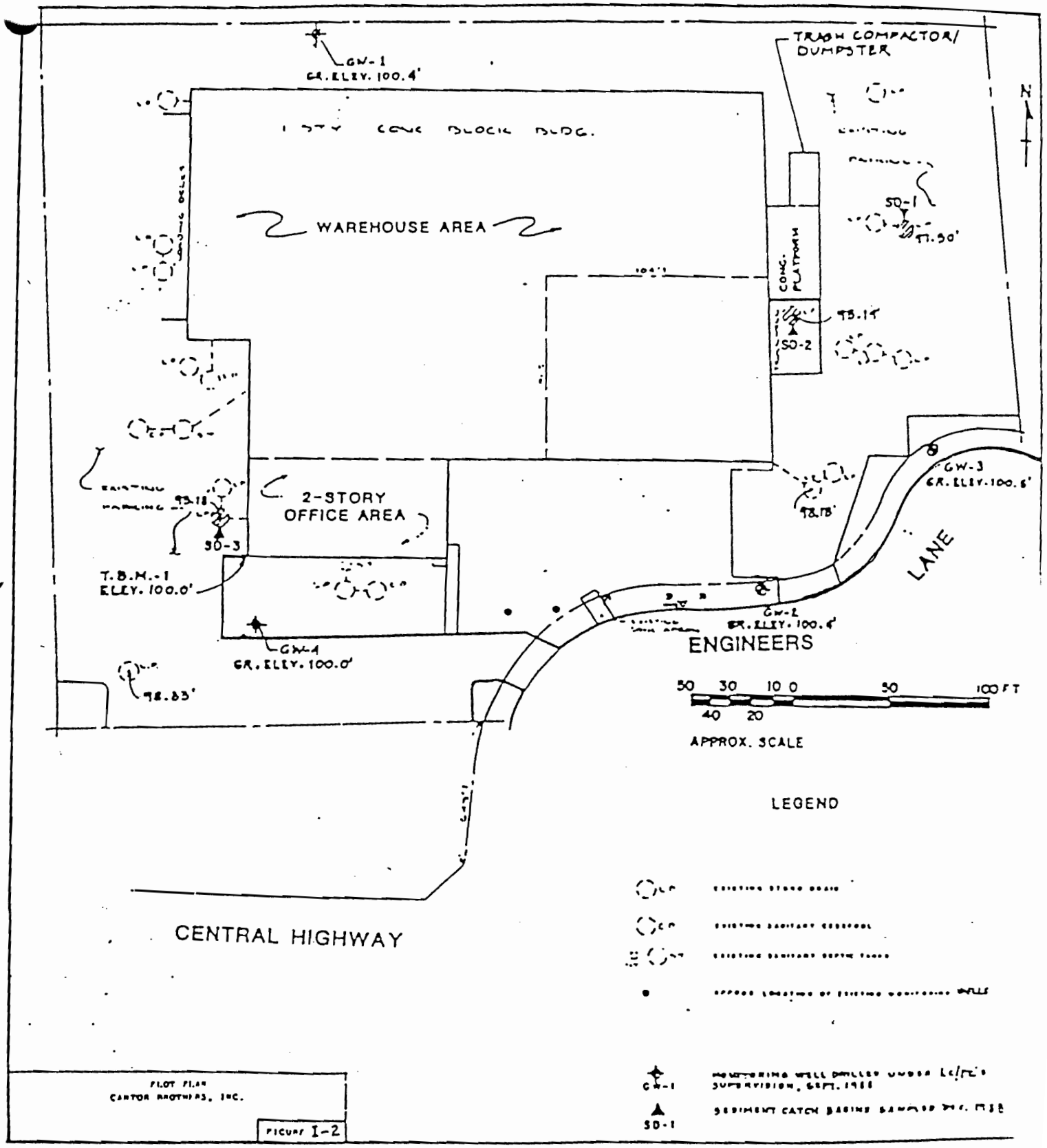


NOTE: BASE MAP FROM USGS, HUNTINGTON QUAD, 1979

SITE LOCATION MAP
CANTOR BROTHERS, INC.

WOODWARD—CLYDE CONSULTANTS
CONSULTING ENGINEERS, GEOLOGISTS AND ENVIRONMENTAL SCIENTIS
WAYNE, NEW JERSEY

DR. BY: CIG	SCALE: 1 IN. = 2000 FT	PROJ. NO.: 82C4648	
CK'D. BY: AJS	DATE: 31 AUGUST 1983	FIG. NO.: 1	



FLOT PLAN
CANTOR BROTHERS, INC.

FIGURE I-2

STATE OF NEW YORK: DEPARTMENT OF ENVIRONMENTAL CONSERVATION

In the Matter of the
Development and Implementation
of a Remedial Investigation/Feasibility
Study for an Inactive Hazardous Waste
Disposal Site, Under Article 27, Title 13,
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ORDER
ON
CONSENT

INDEX #
W1-0570-91-12

CANTOR BROTHERS, INC.,

Site Code # 1-52-021

Respondent.

STATE OF NEW YORK: DEPARTMENT OF ENVIRONMENTAL CONSERVATION

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1. The New York State Department of Environmental Conservation (the "Department") is responsible for enforcement of Article 27, Title 13 of the Environmental Conservation Law of the State of New York ("ECL"), entitled "Inactive Hazardous Waste Disposal Sites." This Order is entered into pursuant to the Department's authority under ECL Article 27, Title 13 and ECL Section 3-0301.

2. Cantor Brothers, Inc. ("Respondent"), is a corporation organized and existing under the laws of the State of New York. The site is located on Engineers Lane, Farmingdale, New York 11735, and is in the Town of Babylon. The owner of the site is Anman Realty Corp., Engineers Lane, P.O. Box 126, Farmingdale, New York 11735. Anman Realty Corp. is a wholly owned subsidiary of Cantor Bros., Inc. Cantor Bros., Inc. was incorporated in 1934. Emanuel Cantor owns 50%

of the shares of the corporation and Martin Cantor has effective control of the remaining 50% of the shares. The Closing for the purchase of the site was on August 21, 1964. A map of the site is attached hereto and is incorporated into this Order as Appendix "A."

3. The Department maintains that the Site is an inactive hazardous waste disposal site, as that term is defined at ECL Section 27-1301(2), and presents a significant threat to the public health or environment. The Site has been listed in the Registry of Inactive Hazardous Waste Disposal Sites in New York State as Site Number 1-52-021. The Department has classified the Site as a "2" pursuant to ECL Section 27-1305(4)(b).

4. A. Pursuant to ECL Section 27-1313(3)(a), whenever the Commissioner of Environmental Conservation (the "Commissioner") "finds that hazardous wastes at an inactive hazardous waste disposal site constitute a significant threat to the environment, he may order the owner of such site and/or any person responsible for the disposal of hazardous wastes at such site (i) to develop an inactive hazardous waste disposal site remedial program, subject to the approval of the Department, at such site, and (ii) to implement such program within reasonable time limits specified in the order."

B. Any person under order pursuant to ECL Section 27-1313(3)(a) has a duty imposed by ECL Article 27, Title 13 to carry out the remedial program committed to

under order. ECL Section 71-2705 provides that any person who fails to perform any duty imposed by ECL Article 27, Title 13 shall be liable for civil, administrative and/or criminal sanctions.

C. The Department also has the power, inter alia, to provide for the prevention and abatement of all water, land, and air pollution. ECL Section 3-0301(1)(i).

5. The Department and Respondent agree that the goals of this Order are for Respondent to (i) develop and implement a Remedial Investigation/Feasibility Study ("RI/FS") for the Site;

6. Respondent, having waived Respondent's right to a hearing herein as provided by law, and having consented to the issuance and entry of this Order, agrees to be bound by its terms. Respondent consents to and agrees not to contest the authority or jurisdiction of the Department to issue or enforce this Order, and agrees not to contest the validity of this Order or its terms.

7. Nothing in this Order shall be construed to limit Respondent's right to file a petition with the Commissioner pursuant to ECL Section 27-1305(4)(b) to de-list the site from the Registry or to change its classification.

8. Notwithstanding Respondent's agreement to carry out the terms of this Order, Respondent does not admit or acknowledge any liability, fault or wrongdoing or violation of

law, regulation or permit of any kind whatsoever in any way related to the Site.

NOW, having considered this matter and being duly advised, IT IS ORDERED THAT:

I. Within 30 days after the effective date of this Order, Respondent shall submit to the Department all data within Respondent's possession or control regarding environmental conditions on-Site and off-Site, and other information described below, unless the Department advises the Respondent that such data have previously been provided to the Department. Unless already contained in the Phase I and Phase II reports previously prepared for the Department, the data and other information shall include:

A. A brief history and description of the Site, including the types, quantities, physical state, location, and dates of disposal of hazardous waste including methods of disposal and spillage of such wastes;

B. A concise summary of information held by Respondent and Respondent's attorneys and consultants with respect to all other PRPs responsible for such disposal of hazardous wastes, including but not limited to names, addresses, dates of disposal and any proof linking each such person responsible with hazardous wastes identified pursuant to subparagraph I(A); and

C. A comprehensive list and copies of all existing relevant reports with titles, authors, and subject matter, as well as a description of the results of all previous investigations of the Site and areas in the vicinity of the Site, including copies of all available topographic and property surveys, engineering studies and aerial photographs.

II. RI/FS Work Plan Contents and Submittals

A. Unless a longer period of time is agreed to in writing by the Department, Respondent shall submit to the Department, within 30 days after the effective date of this Order, a work plan describing the methods and procedures to be implemented in performing an RI/FS for the Site (the "RI/FS Work Plan").

B. (1) The RI/FS Work Plan shall include, but not be limited to, the following:

a. A chronological description of the anticipated RI/FS activities together with a schedule for the performance of these activities.

b. A Sampling and Analysis Plan that shall include:

(i) A quality assurance project plan that describes the quality assurance and quality control protocols necessary to achieve the initial data quality objectives. This plan shall designate a data validation expert and must describe such individual's qualifications and experience.

(ii) A field sampling plan that defines sampling and data gathering methods in a manner consistent with the "Compendium of Superfund Field Operations Method" (EPA/540/P-87/001, OSWER Directive 9355.0-14, December 1987) as supplemented by the Department.

c. A health and safety plan to protect persons at and in the vicinity of the Site during the performance of the RI/FS which shall be prepared in accordance with 29 C.F.R. 1910 and all other applicable standards by a certified health and safety professional. Respondent shall add supplemental items to this plan necessary to ensure the health and safety of all persons at or in the vicinity of the Site during the performance of any work pursuant to this Order.

d. A citizen participation plan that is, at a minimum, consistent with the Department's publication, "New York State Inactive Hazardous Waste Site Citizen Participation Plan," dated August 30, 1988, and any subsequent revisions thereto.

(2) The RI/FS Work Plan shall incorporate all elements of a RI/FS as set forth in the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA") [42 U.S.C. 9601 et seq.], as amended, the National Contingency Plan ("NCP") of March 8, 1990 [40 CFR Part 300], the USEPA guidance document entitled "Guidance for Conducting Remedial Investigations and Feasibility Studies

under CERCLA," dated October 1988, and any subsequent revisions to that guidance document in effect at the time the RI/FS Work Plan is submitted, and appropriate USEPA and Department technical and administrative guidance documents.

III. Performance and Reporting of Remedial Investigation

A. Within 30 days after the Department's approval of the RI/FS Work Plan, Respondent shall commence the Remedial Investigation.

B. Respondent shall perform the Remedial Investigation in accordance with the Department-approved RI/FS Work Plan.

C. During the performance of the Remedial Investigation, Respondent shall have on-Site a full-time representative who is qualified to supervise the work done.

D. Within the time frame set forth in the RI/FS Work Plan, Respondent shall prepare a Remedial Investigation Report that shall:

(1) include all data generated and all other information obtained during the Remedial Investigation:

(2) provide all of the assessments and evaluations set forth in CERCLA, the NCP, and the guidance documents identified in Subparagraph II(B)(2);

(3) identify any additional data that must be collected; and

(4) include a certification by the individual or firm with primary responsibility for the day to day

performance of the Remedial Investigation that all activities that comprised the Remedial Investigation were performed in full accordance with the Department-approved RI/FS Work Plan.

IV. Feasibility Study

A. Within 30 days after receipt of the Department's approval of the Remedial Investigation Report, Respondent shall perform, prepare, and submit a Feasibility Study evaluating on-Site remedial actions to eliminate, to the maximum extent practicable, all health and environmental hazards and potential hazards attributable to hazardous waste disposal at the Site. The Feasibility Study shall be prepared by and have the signature and seal of a professional engineer who shall certify that the Feasibility Study was prepared in accordance with this Order. The Department does not release the Respondent from any liability the Respondent may have for the off-Site migration of hazardous substances.

B. Respondent shall perform and prepare the Feasibility Study in accordance with the Department-approved RI/FS Work Plan and in a manner consistent with CERCLA, the NCP, and the guidance documents identified in Subparagraph II(B)(2).

C. Within 30 days after the Department's approval of the Feasibility Study, Respondent shall cooperate and assist the Department in soliciting public comment on the RI/FS and the proposed remedial action plan identified therein, in accordance with CERCLA, the NCP, the guidance

documents identified in Subparagraph II(B)(2), and with any Department policy and guidance documents in effect at the time the public comment period is initiated. After the close of the public comment period, the Department shall select a final remedial alternative for the site in a Record of Decision ("ROD").

V. Interim Remedial Measures

Before the effective date of the ROD, Respondent or the Department may propose interim remedial measures ("IRMs") for the Site on an as-needed basis. In proposing each IRM, Respondent shall submit to the Department a work plan which includes time frames for the completion of the IRM. Upon the Department's determination that the proposal is an appropriate interim remedial measure and its approval of such work plan, the work plan shall be incorporated into and become an enforceable part of this Order. Respondent shall then carry out such IRM in accordance with the requirements of the approved work plan and this Order.

VI. Progress Reports

Respondent shall submit to the parties set forth in paragraph XIII copies of written monthly progress reports that: (i) describe the actions which have been taken toward achieving compliance with this Order during the previous month; (ii) include all results of sampling and tests and all other data received or generated by Respondent or Respondent's contractors or agents in the previous month, including quality

assurance/quality control information, whether conducted pursuant to this Order or conducted independently by Respondent; (iii) identify all work plans, reports, and other deliverables required by this Order that were completed and submitted during the previous month; (iv) describe all actions, including, but not limited to, data collection and implementation of work plans, that are scheduled for the next month and provide other information relating to the progress at the Site; (v) include information regarding percentage of completion, unresolved delays encountered or anticipated that may affect the future schedule for implementation of the Respondent's obligations under the Order, and efforts made to mitigate those delays or anticipated delays; (vi) include any modifications to any work plans that Respondent has proposed to the Department or that the Department has approved; and (vii) describe all activities undertaken in support of the Citizen Participation Plan during the previous month and those to be undertaken in the next month. Respondent shall submit these progress reports to the Department by the tenth day of every month following the effective date of this Order.

VII. Review of Submittals

A. (1) The Department shall review each of the submittals Respondent makes pursuant to this Order to determine whether it was prepared, and whether the work done to generate the data and other information in the submittal was done, in accordance with this Order and generally accepted

technical and scientific principles. The Department shall notify Respondent in writing of its approval or disapproval of the submittal, except for the submittal discussed in Paragraph II(B)(1)(c). All Department-approved submittals shall be incorporated into and become an enforceable part of this Order.

(2) (a) If the Department disapproves a submittal, it shall so notify Respondent in writing and shall specify the reasons for its disapproval. Within 30 days after receiving written notice that Respondent's submittal has been disapproved, Respondent shall make a revised submittal to the Department that addresses and resolves all of the Department's stated reasons for disapproving the first submittal.

(b) After receipt of the revised submittal, the Department shall notify Respondent in writing of its approval or disapproval. If the Department disapproves the revised submittal, Respondent shall be in violation of this Order and the Department may take any action or pursue whatever rights it has pursuant to any provision of statutory or common law. If the Department approves the revised submittal, it shall be incorporated into and become an enforceable part of this Order.

B. Following consultation with Respondent, the Department may require Respondent to modify and/or amplify and expand a submittal if the Department determines, as a result of reviewing data generated by an activity required under this

Order or as a result of reviewing any other data or facts, that further work is necessary.

VIII. Penalties

A. (1) Respondent's failure to comply with any term of this Order may be deemed by the Department to be a violation of this Order and the ECL.

B. Respondent shall not suffer any penalty under this Order or be subject to any proceeding or action if it cannot comply with any requirement hereof because of war, riot, or an unforeseeable disaster arising exclusively from natural causes which the exercise of ordinary human prudence could not have prevented. Respondent shall, within five days of when it obtains knowledge of any such condition, notify the Department in writing. Respondent shall include in such notice the measures taken and to be taken by Respondent to prevent or minimize any delays and shall request an appropriate extension or modification of this Order. Failure to give such notice within such five-day period constitutes a waiver of any claim that a delay is not subject to penalties. Respondent shall have the burden of proving that an event is a defense to compliance with this Order pursuant to subparagraph VIII(B).

IX. Entry upon Site

Respondent hereby consents to the entry upon the Site or areas in the vicinity of the Site which may be under the control of the Respondent by any duly designated employee, consultant, contractor, or agent of the Department or any

State agency for purposes of inspection, sampling, and testing and to ensure Respondent's compliance with this Order.

X. Department's Reservation of Rights

A. Nothing contained in this Order shall be construed as barring, diminishing, adjudicating, or in any way affecting any of the Department's rights including, but not limited to nor exemplified by, the following:

1. the Department's right to bring any action or proceeding against anyone other than Respondent and/or any of Respondent's directors, officers, employees, servants, agents, successors, and assigns;

2. the Department's right to enforce this Order against Respondent and/or any of Respondent's directors, officers, employees, servants, agents, successors, and assigns if Respondent fails to satisfy any of the terms of this Order;

3. the Department's right to bring any action or proceeding against Respondent and/or any of Respondent's directors, officers, employees, servants, agents, successors, and assigns with respect to claims for natural resources damages as a result of the release or threatened release of hazardous substances or constituents at or from the Site;

4. the Department's right to bring any action or proceeding against Respondent and/or any of Respondent's directors, officers, employees, servants, agents, successors, and assigns with respect to hazardous substances that are present at the Site or that have migrated from the Site;

5. the Department's right to require Respondent and/or any of Respondent's directors, officers, employees, servants, agents, successors, and assigns to develop and implement IRMs for the Site; and

6. the Department's right to gather information and enter and inspect property and premises.

7. the Department's right to recover a sum of money which shall represent reimbursement for the Department's expenses including, but not limited to, direct labor, overhead, travel, analytical costs, and contractor costs incurred by the State of New York for work performed at the Site to date, as well as for negotiating this Order, reviewing and revising submittals made pursuant to this Order, overseeing activities conducted pursuant to this Order, and collecting and analyzing samples. Itemization of the costs shall include an accounting of personal services indicating the employee name, title, biweekly salary, and time spent (in hours) on the project during the billing period. The Department's approved fringe benefit and indirect cost rates shall be applied. Non-personal service costs shall be summarized by category of expense (e.g., supplies, materials, travel, contractual).

B. Nothing contained in this Order shall be construed to prohibit the Commissioner or his duly authorized representative from exercising any summary abatement powers.

XI. Indemnification

Respondent shall indemnify and hold the Department, the State of New York, and their representatives and employees harmless for all claims, suits, actions, damages, and costs of every name and description arising out of or resulting from the fulfillment or attempted fulfillment of this Order by Respondent, and/or Respondent's directors, officers, employees, servants, agents, successors, and assigns.

XII. Public Notice

A. After the effective date of this Order, Respondent shall file a Declaration of Covenants and Restrictions with the Suffolk County Clerk to give all parties who may acquire any interest in the Site notice of this Order.

B. If Respondent proposes to convey the whole or any part of Respondent's ownership interest in the Site, Respondent shall, not fewer than 60 days before the date of conveyance, notify the Department in writing of the identity of the transferee and of the nature and proposed date of the conveyance and shall notify the transferee in writing, with a copy to the Department, of the applicability of this Order.

XIII. Communications

A. All written communications required by this Order shall be transmitted by United States Postal Service, by private courier service, or hand delivered as follows:

Communication from Respondent shall be sent to:

1. Peter Bleiweiss
   Division of Environmental Enforcement
   NYS Dept. of Environmental Conservation
   202 Mamaroneck Avenue Room 304
   White Plains, NY 10601-5381

2. John Conover
   NYS Dept. of Environmental Conservation
   SUNY Building # 40
   Stony Brook, NY 11790-2356

3. Director, Bureau of Environmental
   Exposure Investigation
   New York State Department of Health
   2 University Place
   Albany, New York 12203

4. Raymond Cowen, Director, Region 1
   NYS Dept. of Environmental Conservation
   SUNY Building # 40
   Stony Brook, NY 11790-2356

5. Louis P. Oliva, Esq.
   Division of Environmental Enforcement
   NYS Dept. of Environmental Conservation
   202 Mamaroneck Avenue Room 304
   White Plains, NY 10601-5381

B. Copies of work plans and reports shall be submitted as follows:

1. Four copies (one unbound) to:

   Anthony Candela, P.E.
   NYS Dept. of Environmental Conservation
   SUNY Building # 40
   Stony Brook, NY 11790-2356

2. Two copies to:

   The Director
   NYS Department of Health
   Bureau of Env. Exposure Investigation
   2 University Place Room 205
   Albany, NY 12203

3. One copy to:

Michael O'Toole, P.E.
Division of Hazardous Waste Remediation
NYS Dept. of Environmental Conservation
50 Wolf Road
Albany, NY 12233-7010

4. One copy to:

Louis P. Oliva, Esq.
Division of Environmental Enforcement
NYS Dept. of Environmental Conservation
202 Mamaroneck Avenue Room 304
White Plains, NY 10601-5381

B. [redacted] submit to Anthony Candela, [redacted] copy of the approved report in American Standard Code for Information Interchange (ASCII) format.

C. Communication to be made from the Department to the Respondent shall be sent to:

Frederick Eisenbud, Esq.
Cahn Wishod Wishod & Lamb
534 Broadhollow Road
CS 9034
Melville, NY 11747-9034

D. The Department and Respondent reserve the right to designate additional or different addressees for communication or written notice to the other.

XV. Miscellaneous

A. [redacted] disposal of hazardous waste at the Site. [redacted]

not release the Respondent from any liability the Respondent may have for the off-Site migration of hazardous substances.

B. Respondent shall retain professional consultants, contractors, laboratories, quality assurance/quality control personnel and data validators acceptable to the Department to perform the technical, engineering and analytical obligations required by this Order. The experience, capabilities and qualifications of the firms or individuals selected by Respondent shall be submitted to the Department within 30 days after the effective date of this Order. The Department's approval of these firms or individuals shall be obtained prior to initiation of any activities for which the Respondent and such firms or individuals will be responsible.

C. The Department shall have the right to obtain split samples, duplicate samples, or both, of all substances and materials sampled by Respondent, and the Department also shall have the right to take its own samples. Respondent shall make available to the Department the results of all sampling and/or tests or other data generated by Respondent with respect to implementation of this Order and shall submit these results in the progress reports required by this Order. The Department shall make available to Respondent the results of all samples and/or tests or other data generated by the Department with respect to the site which is the subject of this Order.

D. Respondent shall notify the Department at least 10 working days in advance of any field activities to be conducted pursuant to this Order.

E. Respondent shall obtain whatever permits, easements, rights-of-way, rights-of-entry, approvals, or authorizations are necessary to perform Respondent's obligations under this Order. If after Respondent's documented, good faith best efforts, Respondent fails to obtain these authorizations, the Department may take any appropriate action necessary to secure these authorizations.

F. Respondent and its successors and assigns shall be bound by this Order. Respondent, through its officers, directors, agents, servants, employees, successors and assigns, shall be responsible for implementing the terms of this Order. Any change in ownership or corporate status of Respondent including, but not limited to, any transfer of assets or real or personal property shall in no way alter Respondent's responsibilities under this Order.

G. Respondent shall provide a copy of this Order to each contractor hired to perform work required by this Order and to each person representing Respondent with respect to the Site and shall condition all contracts entered into hereunder upon performance in conformity with the terms of this Order. Respondent or Respondent's contractors shall provide written notice of this Order to all subcontractors hired to perform any portion of the work required by this

Order. Respondent shall nonetheless be responsible for ensuring that Respondent's contractors and subcontractors perform the work to be done under this Order in accordance with this Order.

H. All references to "professional engineer" in this Order are to an individual registered as a professional engineer in accordance with Article 145 of the New York State Education Law.

I. All references to "days" in this Order are to [redacted] unless otherwise specified.

J. The section headings set forth in this Order are included for convenience of reference only and shall be disregarded in the construction and interpretation of any of the provisions of this Order.

K. (1) The terms of this Order shall constitute the complete and entire Order between Respondent and the Department concerning the Site. No term, condition, understanding, or agreement purporting to modify or vary any term of this Order shall be binding unless made in writing and subscribed by the party to be bound. No informal advice, guidance, suggestion, or comment by the Department regarding any report, proposal, plan, specification, schedule, or any other submittal shall be construed as relieving Respondent of Respondent's obligation to obtain such formal approvals as may be required by this Order.

(2) If Respondent desires that any provision of this Order be changed, Respondent shall make timely written application, signed by the Respondent, for the Commissioner's consideration setting forth reasonable grounds for the relief sought. Such written application shall be delivered or mailed to:

1. Louis P. Oliva, Esq.
Division of Environmental Enforcement
NYS Dept. of Environmental Conservation
202 Mamaroneck Avenue Room 304
White Plains, NY 10601-5381

2. Peter Bleiweiss
Division of Environmental Enforcement
NYS Dept. of Environmental Conservation
202 Mamaroneck Avenue Room 304
White Plains, NY 10601-5381

3. Anthony Candela, P.E.
NYS Dept. of Environmental Conservation
SUNY Building # 40
Stony Brook, NY 11790-2356

L. The effective date of this Order shall be the date it is signed by the Commissioner or his designee.

DATED: 3/25, New York
, 1992

THOMAS C. JORLING
Commissioner
New York State Department
of Environmental Conservation

by: Edward O. Sullivan
Deputy Commissioner
New York State Department
of Environmental Conservation

E O Sullivan

CONSENT BY RESPONDENT

CANTOR BROTHERS, INC.

Respondent hereby consents to the issuing and entering of this Order, waives Respondent's right to a hearing herein as provided by law, and agrees to be bound by this Order.

By: Matthew Miller
Matthew Miller

Title: Treasurer and General Manager

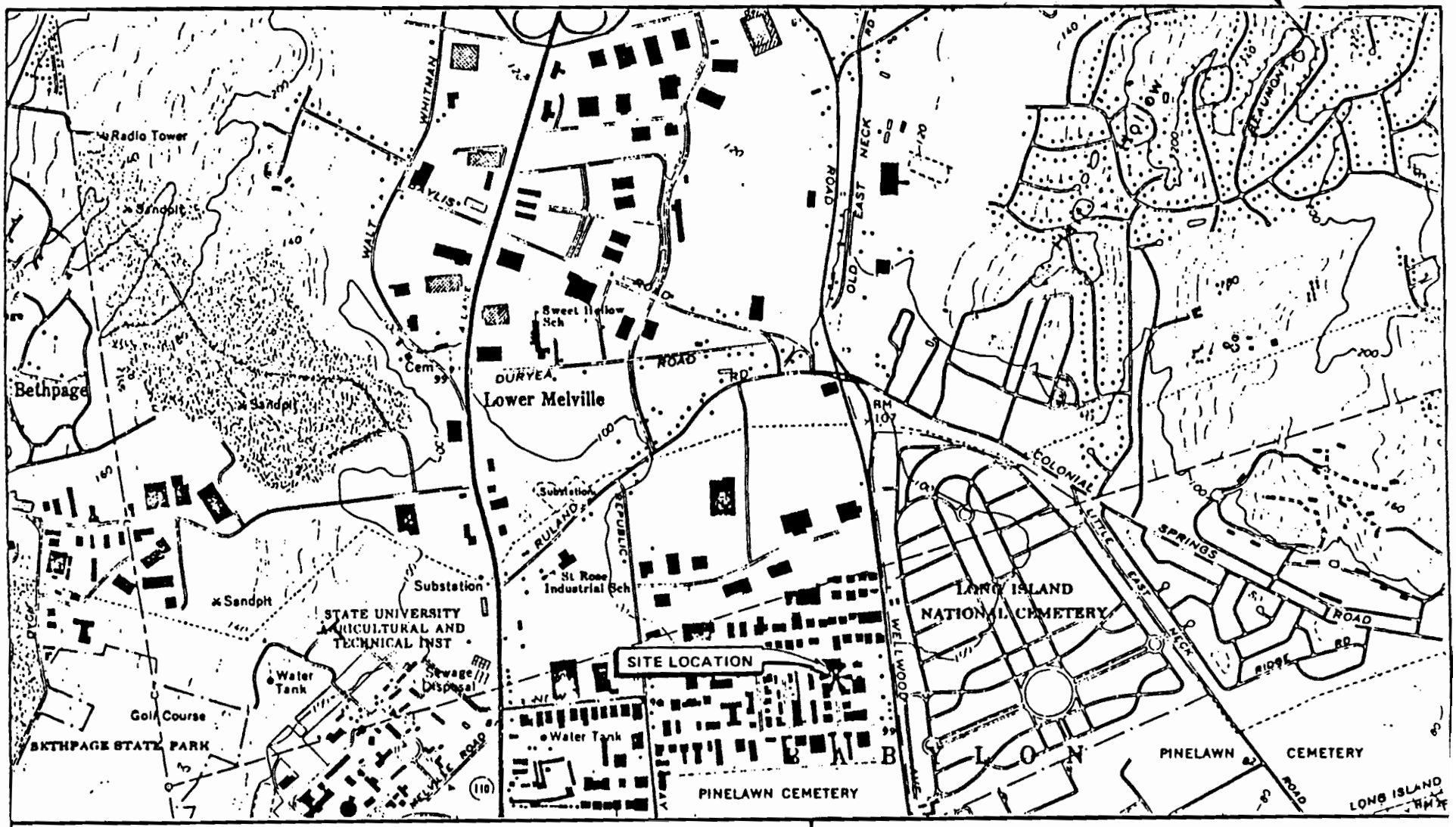
Date: March 9, 1992

STATE OF NEW YORK)
) s.s.:
COUNTY OF Suffolk)

On this 9th day of March, 1992, before me personally came MATTHEW MILLER, to me known, who being duly sworn, did depose and say that he resides in HUNTINGTON STATION, NY; that he is the TREASURER & GENERAL MANAGER of the Cantor Bros., Inc., the corporation described in and which executed the foregoing instrument; that he knew the seal of the corporation; that the seal affixed to this instrument was such corporate seal; that it was so affixed by the order of the Board of Directors of the corporation and that he signed his name pursuant to a resolution of the Board of Directors.

Lilli Schlindra
Notary Public

LILLI SCHLINDRA
Notary Public, State of New York
No. 30-4680958
Qualified in Nassau County
Commission Expires November 30, 1992



NOTE: BASE MAP FROM USGS, HUNTINGTON QUAD, 1979

SITE LOCATION MAP
CANTOR BROTHERS, INC.

WOODWARD—CLYDE CONSULTANTS

CONSULTING ENGINEERS, GEOLOGISTS AND ENVIRONMENTAL SCIENTISTS
WAYNE, NEW JERSEY

DR. BY: CIG	SCALE: 1 IN. = 2000 FT	PROJ. NO.: 82C4548-14
CK'D. BY: AJS	DATE: 31 AUGUST 1983	FIG. NO.: 1