

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION II

In the Matter of :

Commerce Holding Company, Inc. :

Respondent, :

ADMINISTRATIVE ORDER
ON CONSENT

Proceeding under Sections 104 and :
122 of the Comprehensive Environ- :
mental Response, Compensation, :
and Liability Act, 42 U.S.C. :
§§9604, 9622. :

Index No. II CERCLA-80206

Tyctic

I. JURISDICTION

1. This Administrative Order on Consent ("Order") is issued to the above-captioned Respondent pursuant to the authority vested in the President of the United States under Sections 104(a) and (b), 122(a) and 122(d)(3) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA"), as amended, 42 U.S.C. §§9604(a), 9604(b), 9622(a), 9622(d)(3), which authority was delegated to the Administrator of the United States Environmental Protection Agency ("EPA") and duly redelegated to the Regional Administrators of EPA. Notice of this Order and the negotiations preceding its issuance were provided to the New York State Department of Environmental Conservation ("NYSDEC").

2. Respondent agrees to undertake all actions required by the terms and conditions of this Order. Respondent consents to and will not contest the authority or jurisdiction of the Regional Administrator of EPA Region II to issue this Order.

3. Respondent does not admit any of the findings made by EPA in this Consent Order and reserves the right to raise any defenses it may have regarding liability or responsibility in any subsequent proceedings regarding the Tronic Plating Company CERCLA site in Farmingdale, New York.

II. STATEMENT OF PURPOSE

4. In entering into this Order, the mutual objectives of EPA and Respondent are: (1) to further investigate the Site to determine the nature and extent of any threat to public health or welfare or the environment caused by any release or threatened release of hazardous substances from the Site (Remedial Investigation) and (2) to determine and evaluate alternatives for remedial action to prevent, mitigate or otherwise respond to or remedy any release or threatened release of hazardous substances from the Site (Feasibility Study).

III. EPA FINDINGS OF FACT

5. The Tronic Plating Company Site is located at 168 Central Avenue in Farmingdale, Suffolk County, New York. The Site is situated in a large industrial park. It is a portion of the property represented on the Town of Babylon Tax Map as Section 7, Block 1, Lot 20. The Site includes approximately 0.5 acres in the southernmost portion of this 2.68 acre lot, as shown on the map found in Appendix I to this Order.

6. The Site is on the National Priorities List, 40 CFR Part 300, Appendix B, which has been issued pursuant to Section 105(a)(8)(B) of CERCLA, 42 U.S.C. §9605(a)(8)(B).

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

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

9. The property on which the Site is located is owned by Commerce Holding Company, Inc. ("Commerce") a corporation organized and existing under the laws of the State of New York. In view of Respondent's status as the owner of property on which the Site is located, EPA finds that Respondent is a responsible party within the meaning of Section 107(a)(1) of CERCLA, 42 U.S.C. §9607(a)(1).

10. Tronic Plating Company, Inc. ("Tronic"), a corporation organized and existing under the laws of the State of New York, leased the site and operated a business there, primarily engaged in electroplating and anodizing metal electronics parts, from July 1968 to March 1984. Since April 1984, the Tronic Plating Company has been operating at 37 Potter Street, Farmingdale, Nassau County, New York. Parts of the Site are presently occupied by businesses unrelated to Tronic's operations at the Site.

11. Tronic was an operator of the Facility at the time of disposal of hazardous substances there. Accordingly, EPA finds that they are a responsible party under Section 107(a)(2) of CERCLA, 42 U.S.C. §9607(a)(2). EPA both notified Tronic of their potential liability, and offered them the opportunity to participate in the RI/FS through this Order. Tronic declined to so participate.

12. During the course of its operations of the facility from 1968 to 1984, Tronic discharged its industrial process wastewater into underground leaching pools located to the south of the section of the building it occupied. These pools consist of concrete tanks perforated to allow the contents of the tanks to diffuse directly into the surrounding soil. Therefore, any process wastewater discharged to the leaching pools was released into the soil at the site, and may have been released into groundwater at the site.

13. After 1975, Tronic received two State Pollution Discharge Elimination System ("SPDES") permits, to regulate discharges from Tronic's operations. In 1975, a SPDES permit was issued which included a requirement for monitoring wastewater for specified substances (including "hazardous substances" within the meaning of Section 101(14) of CERCLA, 42 U.S.C. §9601(14)), contained in Tronic's process wastewater. Prior to modification of the permit in October 1976, Tronic could discharge process wastewater which contained the specified substances below specified concentrations, to the existing underground leaching pools located to the south of the section of the building which it occupied at the Site.

14. In October 1976, Tronic's permit was modified so as to eliminate any discharges of Tronic's industrial process wastewater. Several violations of this permit were documented by the Suffolk County Department of Environmental Control ("SCDEC") and the Suffolk County Department of Health Services ("SCDHS"), in which Tronic continued to discharge process wastewater into the leaching pools. After October 1976, two (2) 4000 gallon indoor tanks were located at the facility to store process wastewater. According to SCDHS inspection reports, the spill prevention and containment measures around these tanks were inadequate, possibly resulting in further releases.

15. According to reports by SCDHS, liquid in a storm drain next to the portion of the building that Tronic occupied, contained substances also found in Tronic's process wastewater.

16. After October 1976, Tronic's SPDES permits allowed only the discharge of uncontaminated, non-process cooling water to groundwater via underground leaching pools which, for the purpose of this modification of the SPDES permit were referred to as cooling water discharge pools. During this period, the SCDHS documented the presence of contaminants, including numerous hazardous substances, in both the underground leaching pools and the sanitary discharge pool at the Site. SCDHS characterized this presence of contaminants as a violation of SPDES permit requirements.

17. The Upper Glacial aquifer flows underneath the site in a generally southern direction. The nearest well drawing from that aquifer is approximately 1400 feet from the Site. Within a three mile radius of the Site, approximately 498,000 persons utilize the groundwater as their source of drinking water.

18. Samples of water taken from Tronic's industrial discharges, as well as from the leaching pools, the sanitary discharge pool and the storm drain contained hazardous substances. Concentrations were found to be as high as 29 parts per million ("ppm") of cyanide and 17.4 ppm of copper in Tronic's industrial discharges, and 3.2 ppm of lead, 10 ppm of cadmium, 12 ppm of zinc, 11 ppm of silver and 170 ppm of iron in the leaching pools. These substances are typically utilized in the electroplating industry.

19. The discharge of wastewater to various areas of the facility and the actual or potential leaching of hazardous substances to soil and groundwater at the Site constitute a release or threatened release of hazardous substances within the meaning of Sections 101(22) and 104(a) of CERCLA, 42 U.S.C. §§9601(22), 9604(a).

20. Chronic exposure via ingestion, inhalation or dermal contact to the hazardous substances detected at the Site can cause a variety of adverse human health effects.

21. In order to fully determine the nature and extent of any release or threatened release at the Site and to select an appropriate remedial alternative, a Remedial Investigation and Feasibility Study ("RI/FS") must be conducted in conformance with CERCLA, including but not limited to Sections 104 and 121, 42 U.S.C. §§9604, 9621, and the National Oil and Hazardous Substances Pollution Contingency Plan ("NCP"), 40 CFR Part 300 et seq., and any amendments thereto. EPA has prepared a work plan for the RI/FS at the Site, which has been modified by a "Task Plan" submitted by Respondent. These documents are attached hereto as Appendix I and Appendix II, respectively.

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

IV. ORDER

23. Based on the foregoing, it is hereby ordered and agreed that Respondent shall undertake an RI/FS with respect to the Site in accordance with the requirements set forth below.

Remedial Investigation

24. Within thirty (30) days of the effective date of this Order, Respondent shall submit to EPA for review and approval a detailed Project Operations Plan ("POP") for the performance of a Remedial Investigation ("RI") at the Site. The POP shall provide for the performance of the RI in conformance with Appendix I as modified by Appendix II, and the requirements of CERCLA, and the NCP (and any amendments thereto). Respondent and EPA have reviewed in detail the Work Plan, as amended by Respondent's submission (Appendices I and II, respectively), and agree that said Work Plan, as amended, is consistent with CERCLA and the NCP. The POP shall fully describe how the RI activities specified in Appendices I and II (except for Task 2, Community Relations, and Task 6, Public Health Evaluation, which will be performed by EPA) will be implemented, and shall include, but not necessarily be limited to, the following:

- (1) a map depicting all sampling locations;
- (2) the number and types of samples to be obtained at each sampling location, and the analyses to be performed;
- (3) a detailed schedule for the performance of the specific tasks (other than Tasks 2 and 6) set forth in Appendix I as modified by Appendix II;
- (4) the overall management plan, including identification of contractors and subcontractors and their respective responsibilities for performance of the specific tasks set forth in Appendix I as modified by Appendix II;
- (5) a Quality Assurance/Quality Control ("QA/QC") plan for all investigations to be performed, which shall be prepared in conformance with Section 10 of the EPA publication entitled Test Methods for Evaluating Solid Waste ("SW-846"), 2d ed., and which shall specify that within three weeks of completion of the laboratory analyses of each round of samples collected under the RI, a QA/QC evaluation of laboratory data and sampling and analytical procedures is done for each sample;

- (6) a description of the chain of custody procedures to be followed, which shall conform to those set forth in Section 1.3 of SW-846;
- (7) a Health and Safety Plan prepared in accordance with the EPA guidance documents;
- (8) a Contingency Plan for conducting Site activities;
- (9) the curricula vitae of all professionals expected to participate in the RI, together with a description of the responsibilities and the anticipated levels of effort of each of those professionals; and
- (10) a summary QA/QC report ("the QA/QC short form").

25. EPA will review the POP and notify Respondent in writing of its comments, including any deficiencies. Within thirty (30) days of receipt of EPA's comments, Respondent shall amend the POP as required by EPA's comments (or as otherwise specified by EPA after conferring with Respondent), and shall submit the amended POP to EPA.

26. Differences of opinion between EPA and Respondent concerning EPA's comments on the POP will be resolved in accordance with the Dispute Resolution procedure set forth in Paragraph 40 below. EPA remains the final arbiter in any dispute regarding the sufficiency or acceptability of the POP, and EPA may modify it unilaterally. At such time as EPA determines that the POP is acceptable, EPA will transmit to Respondent a written statement to that effect.

27. Respondent shall perform the RI in conformance with Appendices I and II and the EPA-approved POP (including the implementation schedule contained therein). Respondent shall complete all activities specified in the approved POP and, in conformance with the schedule included in the approved POP, shall submit to EPA for review and approval a draft report detailing the results of the RI ("Draft RI Report").

28. Upon receipt of the Draft RI Report, EPA will review the report and notify Respondent in writing of its comments on the report including any deficiencies in the report. Within thirty (30) days of receipt of EPA's comments, Respondent shall amend the Draft RI Report as required by those comments (or as otherwise specified by EPA after conferring with Respondent), and shall submit the amended report to EPA.

29. EPA's comments on the Draft RI Report may require Respondents to perform such additional investigatory work as EPA finds necessary. Such work (including any necessary work plans and reports) shall be performed by Respondent in conformance with a schedule to be proposed by Respondent and approved or modified by EPA.

30. Differences of opinion between EPA and Respondent concerning EPA's comments on the Draft RI Report will be resolved in accordance with the Dispute Resolution procedure set forth in Paragraph 40 below. EPA remains the final arbiter in any dispute regarding the sufficiency or acceptability of the Draft RI Report and any supplementary submissions prepared in accordance with Paragraph 29 above, and EPA may modify them unilaterally. At such time as EPA determines that the Draft RI Report is acceptable, EPA will transmit to Respondent a written statement to that effect and the report will be deemed the Final RI Report.

Feasibility Study

31. Within fourteen (14) days after receiving authorization from EPA to proceed with a Feasibility Study, Respondent shall submit to EPA for review and approval a schedule ("FS Work Plan Schedule") for the performance of the tasks comprising the FS with respect to the Site, in conformance with the FS Work Plan which is included in Appendix I (except the Endangerment Assessment for the Site, including tasks described in Sections 5.2.2 and 5.2.3, which EPA will perform), EPA guidance documents, the requirements of CERCLA (including, but not limited to, Section 121 of the Act), and the NCP (and any amendments thereto).

32. EPA will review the FS Work Plan Schedule and notify Respondent in writing of its comments on the schedule. Within fourteen (14) days after receiving EPA's comments, Respondent shall amend the schedule as required by those comments or as otherwise approved by EPA and shall submit the amended schedule to EPA.

33. Differences of opinion between EPA and Respondent concerning EPA's comments on the FS Work Plan Schedule will be resolved in accordance with the Dispute Resolution procedure set forth in Paragraph 40 below. EPA remains the final arbiter in any dispute regarding the sufficiency or acceptability of the FS Work Plan and schedule, and EPA may modify them unilaterally. At such time as EPA determines that the FS Work Plan Schedule is acceptable, EPA will transmit to Respondent a written statement to that effect.

34. Respondent shall perform the FS in conformance with the EPA-approved FS Work Plan and the schedule contained therein. By the date specified in the schedule contained in the EPA-approved FS Work Plan, Respondent shall submit to EPA for review an FS report ("Preliminary FS Report"), which shall include a recommended remedial alternative and a conceptual design of that alternative.

35. EPA will review the Preliminary FS Report and notify Respondent in writing of its comments on the Report including any deficiencies in the Report. Within thirty (30) days of receipt of EPA's comments, Respondent shall amend that report to conform with such comments (or as otherwise specified by EPA after conferring with Respondent), and shall submit the modified report to EPA.

36. EPA's comments on the Preliminary FS Report may require that Respondent conduct such additional evaluations as EPA finds necessary. Such work (including any necessary work plans and reports) shall be performed in accordance with a schedule approved by EPA.

37. Differences of opinion between EPA and Respondent concerning EPA's comments on the Preliminary FS Report and any supplemental submissions will be resolved in accordance with the Dispute Resolution procedure set forth in Paragraph 40 below. EPA remains the final arbiter in any dispute regarding the sufficiency or acceptability of the Preliminary FS Report and any supplementary submissions prepared in accordance with Paragraph 36 above, and EPA may modify them unilaterally. At such time as EPA determines that the Preliminary FS Report is acceptable, EPA will transmit to Respondent a written statement to that effect, and the report will be deemed the Draft FS Report.

38. Following submittal of the Draft FS Report, EPA will announce the availability of both the Final RI Report and the Draft FS Report to the public for review and comment. Following the public comment period (which may involve both written and oral comments), EPA will determine if the reports should be modified and will notify Respondent in writing of its determination. In the event that EPA determines that either or both of the reports need to be modified, within thirty (30) days of receipt of EPA's determination, Respondent shall modify the report(s) as directed by EPA and shall submit the modified document(s) to EPA. Differences of opinion between EPA and Respondent concerning EPA's comments on the Final RI Report or the Draft FS Report following the public comment period will be resolved in accordance with the Dispute Resolution procedure set forth in Paragraph 40 below. EPA shall remain the final arbiter in any dispute regarding the sufficiency or acceptability of both the RI and FS Reports, and EPA may modify them unilaterally.

39. EPA will make the final selection of the remedial alternative(s) to be implemented with respect to the Site.

Dispute Resolution

40. If Respondent, in good faith, disagrees, in whole or in part, with EPA's comments on the POP, the Draft RI Report, the FS Work Plan Schedule, the Preliminary FS Report, or (after public comment) the Final RI Report or Draft FS Report, Respondent shall notify EPA in writing of its objections and the bases therefore as soon as possible, but not later than fourteen (14) calendar days after receipt of EPA's comments. If Respondent so notifies EPA within the aforesaid period, EPA shall provide a written response to Respondent setting forth EPA's position and the basis for that position. EPA's written response shall constitute the resolution of the dispute for purposes of the work required by this Order. If the dispute and its resolution cause a delay that makes it impossible for Respondent to meet a deadline set forth in or established pursuant to this Order, then that deadline shall be extended by a period of time not to exceed the delay resulting from the dispute and its resolution; PROVIDED, that Respondent shall not be entitled to any such extension if EPA determines that Respondent's disagreement with EPA's comments is not in good faith or otherwise lacks a reasonable basis. Notwithstanding any of the foregoing, if Respondent requests an extension of a deadline set forth in or established pursuant to this Order, and if EPA declines to grant an extension in response to such a request, any delay caused solely by the resolution of such a dispute shall not entitle Respondent to an extension of time. In addition, notwithstanding any of the foregoing, EPA will be the final arbiter of all disputes under this Order and the final arbiter as to the sufficiency and acceptability of all work conducted pursuant to this Order. Except as provided in Paragraphs 2 and 80 of this Order, EPA and Respondent expressly reserve all rights and defenses that they may have pursuant to applicable law.

Financial Assurance

41. Respondent has, in contemplation of entering into this Order, undertaken and obtained financial assurance in the sum of five hundred and twenty-five thousand dollars (\$525,000), that amount being the estimated cost of response activities under this Order. In the event that projected costs exceed the financial assurance, Respondent shall, upon request from EPA, provide additional financial assurance in the amount of those excess costs. Financial assurance provided by Respondent shall name USEPA as obligee upon default. All documents which comprise the financial assurance are deemed incorporated into this Order.

42. At the time of Respondent's submission of the POP to EPA, Respondent shall obtain from its contractors, and submit to EPA, a certification that the contractors have adequate insurance coverage for any liability which may result from the RI/FS activities to be conducted by them.

Notification And Reporting Requirements

43. Respondent shall provide monthly written progress reports to EPA by the tenth day of every month following the effective date of this Order. The progress reports shall: (1) describe the actions which have been taken toward achieving compliance with this Order; (2) include all results of sampling and tests and all other data received by Respondent; (3) describe all plans and procedures completed during the past month; and (4) describe all actions, data, and plans which are scheduled for the next month.

44. All work plans, reports and other documents required to be submitted to EPA under this Order shall be sent by certified or express mail, return receipt requested, to the following addressees:

3 copies: Chief, Site Compliance Branch
United States Environmental Protection Agency
Region II
26 Federal Plaza, Room 747
New York, NY 10278

Attn: Douglas Tomchuk, Project Manager
Tronic Plating Company Site

2 copies: Director, Division of Solid and Hazardous Waste
New York State Department of Environmental
Conservation
50 Wolf Road
Albany, NY 12233

45. Correspondence to be submitted by EPA to Respondent under this Order will be sent to the Facility Coordinator selected pursuant to Paragraph 49. EPA will send copies of such correspondence to:

Andrew J. Simons, Esq.
Jacqueline M. Merson, Esq.
Farrell, Fritz, Caemmerer, Cleary,
Barnosky & Armentano
EAB Plaza
Uniondale, New York 11556-0120

46. Respondent shall give EPA seven (7) days advance notice of any field activities to be undertaken pursuant to this Order.

47. All reports and other documents produced by Respondent and submitted to EPA in the course of implementing this Order may be made available to the public unless identified as confidential by Respondent and determined by EPA to merit confidential treatment, in accordance with 40 CFR Part 2, Subpart B. In addition, EPA may release all such documents to NYSDEC and NYSDEC may make those documents available to the public unless Respondent conforms with appropriate New York law and regulations regarding confidentiality. No sampling and monitoring data or hydrological or geological data shall be considered confidential.

48. Respondent shall use its best efforts to avoid or minimize any delay or prevention of performance of its obligations under this Order. Respondent shall provide written notification to EPA of any circumstances which have caused or which Respondent believes are likely to cause a delay in performance. Such written notice: (a) shall be provided as soon as possible, but not later than seven (7) days after the date when Respondent learned or should have learned of the occurrence of such circumstances; (b) shall be accompanied by all available pertinent documentation, including, but not limited to, third-party correspondence; and (c) shall include (i) a description of the circumstances causing or potentially causing the delay; (ii) the actions (including pertinent dates) that Respondent has taken and/or plans to take to minimize any delay; and (iii) the date by which or time period within which Respondent proposes to complete the delayed activities. Such notification does not relieve Respondent of any of its obligations under this Order. EPA will respond in writing to Respondent's request.

Respondents' Facility Coordinator, Other Personnel

49. Not later than seven (7) days after the effective date of this Order, Respondent shall select an individual to be known as the Facility Coordinator and shall notify EPA in writing of the name, address, qualifications, job title and telephone number of the Facility Coordinator. The Facility Coordinator shall be responsible for oversight of the implementation of this Order. He or she shall have technical expertise sufficient to adequately oversee all aspects of the work contemplated by this Order. Respondent shall notify EPA in writing at least seven (7) days prior to changing the individual named as their Facility Coordinator.

50. All activities required of Respondent under the terms of this Order shall be performed only by well-qualified persons possessing all necessary permits, licenses, and other authorizations required by federal, state, and local governments.

Access and Availability of Data

51. Respondent shall be responsible for obtaining in a timely fashion such access to the Site as is necessary for Respondent to carry out the requirements of this Order. In addition, Respondent shall use its best efforts to obtain, in a timely fashion, such access to any other premises where work under this Order is to be performed as is necessary for Respondent to carry out the requirements of this Order. This Order does not convey any rights of access to Respondent. If Respondent is unable to obtain needed access, Respondent shall so notify EPA (in accordance with the requirements of Paragraph 69 below). As appropriate, EPA will then endeavor to assist Respondent in obtaining access.

52. EPA and its designated representatives, including but not limited to their employees, agents, contractors and consultants, shall be permitted to observe the work carried out pursuant to this Order upon presentation of proper identification. Respondent shall provide EPA and its designated representatives with access to and freedom of movement at the Site (and any other premises under the ownership or control of Respondent where work under this Order is performed) at all reasonable times, including, but not limited to, any time that work under this Order is being performed, for purposes of inspecting or observing Respondent's progress in implementing the requirements of this Order, verifying the information submitted to EPA by Respondent, or for any other purpose reasonably related to EPA oversight of the implementation of this Order. With respect to any other premises where work under this Order is performed but which are not under the ownership or control of Respondent, Respondent shall not interfere with EPA access to such premises, and to the maximum extent practicable, shall support and assist EPA in obtaining access to such premises. NYSDEC and its designated representatives shall be eligible to be designated representatives of EPA under this paragraph.

53. Respondent shall preserve, during the pendency of this Order and for a minimum of six (6) years after completion of all work required by this Order, all data and other documents generated, created or maintained by or on behalf of Respondent in connection with the implementation of the work required by this Order. After this six-year period, Respondent shall notify EPA at least thirty (30) days prior to the destruction of any such documents.

54. Upon request by EPA, all data, including raw sampling and monitoring data, generated pursuant to this Order by or on behalf of Respondent shall be made available to EPA as soon as possible, and EPA shall be permitted to copy such data. In addition, upon request, Respondent shall make available to EPA, without delay, all other documents created or maintained by or on behalf of Respondent in connection with the implementation of the work required by this Order (except those documents, other than those claimed business confidential, or that are privileged under law), and EPA shall be permitted to copy such documents.

55. EPA agrees to make available to Respondent, upon request, final analytical results of all samples collected by EPA at the Site during the performance of the RI/FS.

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

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

General Provisions

58. This Order shall apply to and be binding upon Respondent and Respondent's receivers, trustees, successors and assigns.

59. All actions performed by Respondent pursuant to this Order shall be carried out in conformance with all applicable federal, state, and local laws, regulations, and requirements, including, but not limited to, the NCP and any amendments thereto.

60. All work conducted pursuant to this Order shall be performed in accordance with prevailing professional standards.

61. Respondent shall be responsible for obtaining all necessary permits, licenses and other authorizations.

62. Neither the United States Government nor any agency thereof shall be liable for any injuries or damages to persons or property resulting from acts or omissions by Respondent or Respondent's officers, directors, employees, agents, contractors, consultants, receivers, trustees, successors or assigns in carrying out any action or activity pursuant to this Order; nor shall the United States Government or any agency thereof be held out as a party to any contract entered into by Respondent in carrying out any activities pursuant to this Order.

63. Nothing herein shall constitute or be construed as a satisfaction or release from liability for Respondent or Respondent's receivers, trustees, successors or assigns or for any other individual or entity. Nothing herein shall constitute a finding that Respondent is the sole responsible party with respect to any release and threatened release of hazardous substances from the Facility.

64. Nothing contained in this Order shall affect any right, claim, interest, defense, or cause of action of any party hereto with respect to other parties, nor shall anything in this Order affect any right, claim, interest, defense or cause of action of Respondent with respect to other parties.

65. Respondent agrees not to make any claims pursuant to Sections 106(b)(2), 111 and/or 112 of CERCLA, 42 U.S.C. §§9606(b)(2), 9611, 9612, either directly or indirectly, for reimbursement from the Hazardous Substance Superfund of costs incurred by them in complying with this Order.

66. Nothing in this Order shall be construed to constitute preauthorization under Section 111(a)(2) of CERCLA, 42 U.S.C. §9611(a)(2), and 40 CFR §300.25(d).

67. No informal advice, guidance, suggestions or comments by EPA shall be construed to relieve Respondent of any of its obligations under this Order.

68. EPA will provide Respondent with such advance notice of public meetings regarding the Site as is given to the public. EPA will not deny Respondent an opportunity to have a spokesperson at each public meeting.

69. Respondent's activities under this Order shall be performed within the time limits set forth herein, or otherwise established or approved by EPA, unless performance is delayed by events which constitute a force majeure. For purposes of this Order, force majeure is defined as any event arising from causes beyond Respondent's control. Financial considerations shall not be considered circumstances beyond the control of Respondent. When an event constituting a force majeure occurs, Respondent shall perform the affected activities within a time period which shall not exceed the time provided in this Order together with the period of delay attributed to the force majeure; provided, however, that no deadline shall be extended beyond a period of time that is reasonably necessary. Respondent shall orally notify the EPA Project Manager identified in Paragraph 44 above as soon as possible after discovering that circumstances that may constitute a force majeure have occurred or are likely to occur. If the Project Manager cannot be reached, Respondent shall leave a message at his/her office. In addition, Respondent shall notify EPA in writing as soon as possible, but not later than seven (7) days after the date when Respondent becomes aware of the circumstances alleged to constitute a force majeure. Such written notice shall be accompanied by all available pertinent documentation, including, but not limited to, third-party correspondence, and shall contain the following: 1) a description of the circumstances, and Respondent's rationale for interpreting such circumstances as being beyond its control; 2) the actions (including pertinent dates) that Respondent has taken and/or plans to take to minimize any delay; and 3) the date by which or the time period within which Respondent proposes to complete the delayed activities. Respondent's failure to timely and properly notify EPA as required by this paragraph shall render the remaining provisions of this paragraph null and void insofar as they may entitle Respondent to an extension of time. The burden of proving that an event constituting a force majeure has occurred shall rest with the Respondent, and EPA shall be the final arbiter of whether events encountered during the performance of this Order shall be considered force majeure.

70. This Order may be amended by mutual agreement of EPA and Respondent. Such amendments shall be in writing and shall have as their effective date that date on which such amendments are signed by EPA.

Reimbursement

71. Respondent agrees to reimburse EPA for all costs associated with the Community Relations Plan and Endangerment Assessment to be conducted by EPA as part of the RI/FS. Respondent shall make such payment within thirty (30) days of Respondent's receipt of an accounting of these costs by EPA. Payment shall be made in the manner specified in Paragraph 72, below.

72. Respondent agrees to reimburse EPA for all oversight costs relating to this Order and/or the RI/FS of the Site that are incurred by the United States Government after the issuance of this Order which are not inconsistent with the NCP. After the end of each federal fiscal year in which such oversight costs are incurred by the United States Government, EPA will transmit to Respondent an accounting of all such costs that were incurred during the previous year together with a narrative description of the activities for which the costs were incurred. These accountings will include both direct and indirect costs. Respondent shall, within thirty (30) days of receipt of each such accounting, remit a cashier's or certified check for the amount of those costs, made payable to the "Hazardous Substance Superfund." Such payments shall contain a reference to the docket number of this Order and shall be mailed to the following addresses:

U.S. Environmental Protection Agency
Superfund
P.O. Box 371003M
Pittsburgh, PA 15251

Such payments shall also be accompanied by a letter of explanation including the name and address of Respondent, the name of the Site (the Tronic Plating Company Site), and the EPA Region number (EPA Region II); a copy of the letter shall be sent to EPA at the address listed in Paragraph 44 above.

Enforcement

73. Failure of Respondent to comply with any of the requirements of this Order may result in EPA taking the required actions unilaterally, pursuant to Section 104 of CERCLA, 42 U.S.C. §9604.

74. If Respondent fails, without prior EPA approval, to comply with any of the requirements or time limits set forth in or established pursuant to Paragraphs 23 through 39 of this Order, and such failure is not excused pursuant to the terms of Paragraph 69 of this Order, Respondent shall pay a stipulated penalty to EPA in the amount indicated below for each day of noncompliance:

<u>Days After Required Date</u>	<u>Daily Stipulated Penalty</u>
1 to 10 days	\$250.00
11 to 20 days	\$1000.00
21 days or more	\$2000.00

Any such penalty shall accrue as of the first day after the applicable deadline has passed, and shall continue to accrue until the noncompliance is corrected. Such penalties shall be due and payable ten (10) days following receipt of a written demand by EPA and shall be due and payable every thirtieth day thereafter. Payment of any such penalty to EPA shall be made by cashier's or certified check made payable to the "Hazardous Substance Superfund," with a notation of the docket number of this Order, and shall be mailed to the address set forth in Paragraph 72 above. A letter stating the basis for the penalties, the name and address of Respondent, the name of the Site (the Tronic Plating Company Site) and the EPA Region number (EPA Region II) shall accompany each such payment; a copy of the letter shall be mailed to EPA at the address listed in Paragraph 44 above.

75. Notwithstanding any other provision of this Order, EPA reserves its right to bring an action against Respondent (or any other responsible parties) pursuant to Section 107 of CERCLA, 42 U.S.C. §9607, for recovery of any costs incurred in oversight of Respondent's implementation of this Order, and any other response costs incurred by the United States Government with respect to the Site.

76. Notwithstanding any other provision of this Order, EPA reserves its right to take enforcement actions against Respondent (or any other responsible parties), including, but not limited to, actions for monetary penalties for any violation of law or this Order. Such enforcement actions may include, though need not be limited to, actions pursuant to Sections 107(c)(3), 109 and/or 122(d)(3) of CERCLA, 42 U.S.C. §§9607(c)(3), 9609, 9622(d)(3).

77. Nothing herein shall preclude EPA from taking any additional enforcement actions and/or additional removal or remedial actions as it may deem necessary or appropriate for any purpose, including, but not limited to, the investigation (including performance of all tasks in Appendix I), prevention or abatement of a threat to the public health, welfare, or the environment arising from conditions at the Site.

Termination and Satisfaction

78. The provisions of this Order shall be deemed satisfied upon Respondent's receipt of written notice from EPA that all of the terms of this Order, including any additional tasks that EPA has determined to be necessary, have been satisfactorily carried out.

Effective Date and Effect of Consent

79. This Order shall become effective on the first (1st) business day after it is signed by the Regional Administrator of EPA Region II and received by Respondent, and all times for performance of actions or activities to be performed under this Order shall be calculated from said effective date.

80. Nothing contained in this Order shall constitute or be construed as an admission by Respondent with respect to any factual finding or legal determination. However, Respondent agrees not to contest the authority or jurisdiction of the Regional Administrator of EPA Region II to issue this Order, and also agree not to contest the validity or terms of this Order in any action to enforce its provisions. Further, by consenting to this Order, Respondent waives any right it may have to seek reimbursement pursuant to Sections 106(b)(2), 111 and/or 112 of CERCLA for the response costs incurred by it in complying with this Order.

U.S. ENVIRONMENTAL PROTECTION AGENCY


CHRISTOPHER J. DAGGETT

Regional Administrator
U.S. Environmental Protection Agency
Region II

JUNE 7, 1988
DATE

CONSENT

The Respondent identified below has had an opportunity to confer with EPA to discuss this Order. The Respondent hereby consents to the issuance of this Order and to its terms. Furthermore, the signatory identified below certifies that he or she is fully authorized to agree to the terms and conditions of this Order and to legally bind the Respondent represented by him or her.

COMMERCE HOLDING COMPANY, INC.

Irwin B. Cain
(signature)

5-20-88
DATE

IRWIN B. CAIN
(printed name of signatory)

TREASURER
(title of signatory)