



STATE OF NEW YORK
OFFICE OF THE ATTORNEY GENERAL

ELIOT SPITZER
Attorney General

PETER LEHNER
Environmental Protection Bureau

(212) 416-8461

September 10, 1999

Edward Devine, Esq.
Division of Environmental Enforcement
New York State Department of
Environmental Conservation
200 White Plains Road
5th Floor
Tarrytown, New York 10591-5805

*FILE
EARDWELL CONDENSED
152035*

Re: State of New York et al v. Cardwell
Condenser Corporation et al., No. 97-5121

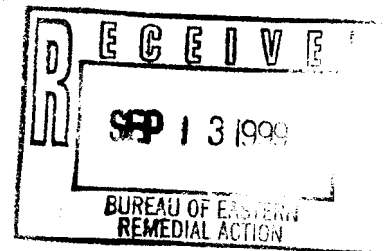
Dear Ed:

Enclosed please a copy of the Final Consent Decree as entered by the court on August 18, 1999. Since John Byrne has been transferred, it will be necessary for another DEC attorney to be assigned to this matter to monitor the implementation of the Focused Remedial Investigation, the preparation of the PRAP and ROD, and other matters. Don't hesitate to give me a call if you have any questions on this matter.

Thanks very much.

Sincerely yours,

ROBERT EMMET HERNAN
Assistant Attorney General



cc: Robert Cozzy, P.E. (w/o encl.)

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

FILED
U.S. DISTRICT COURT, E.D.N.Y.
IN CLERK'S OFFICE
LONG ISLAND COURTHOUSE

-----X
:
THE STATE OF NEW YORK and
JOHN P. CAHILL, as Trustee
of the Natural Resources,
:
:

Plaintiffs,
:
:

-against-
:
:

CARDWELL CONDENSER CORPORATION and
NORMLIT REALTY CORPORATION
:

Defendants.
:
-----X

CIVIL ACTION NO. 97-3121
(ADS)

★ AUG 5 1999 ★

ENTERED

8-18-99
★

**CONSENT DECREE FOR FINAL SETTLEMENT OF THE CLAIMS
BY THE STATE OF NEW YORK AND JOHN P. CAHILL AS
TRUSTEE OF THE NATURAL RESOURCES AGAINST CARDWELL
CONDENSER CORPORATION and NORMILT REALTY CORP.**

WHEREAS, on September 5, 1997 the State of New York and John P. Cahill,
as Trustee of the Natural Resources (together referred to as the "State"), filed a Complaint
against Cardwell Condenser Corporation ("Cardwell") and Normlit Realty Corporation
("Normilt") pursuant to Section 107(a) of the Comprehensive Environmental Response,
Compensation and Liability Act of 1980, 42 U.S.C. § 9607(a) ("CERCLA"), as well as under
New York statutory and common law, in connection with the property located at and near 80
East Montauk Highway, Village of Lindenhurst, County of Suffolk, State of New York, and
known as the Cardwell Condenser Corporation Site ("Site").

WHEREAS, on or about October 23, 1997, the Defendants served their Answer

to the Complaint.

WHEREAS, pursuant to the New York State Environmental Conservation Law ("ECL") § 27-1305, the State has determined that the Site is an Inactive Hazardous Waste Disposal Site as defined at ECL § 27-1301.2, and the State has placed the Site on the Inactive Hazardous Waste Disposal Site Registry as Site Number 1-52-035;

WHEREAS, the New York State Department of Environmental Conservation ("DEC") conducted investigations of the Site to determine the nature, source and extent of contamination at and about the Site;

WHEREAS, investigations of the Site have identified various substances at the Site which are "hazardous substances" as defined in Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), and which substances are alleged to have been released into the environment;

WHEREAS, Defendants, through their consultants, Fanning, Phillips, Molnar ("FPM"), with DEC approval, conducted a Focused Remedial Investigation ("FRI");

WHEREAS, the State and Defendants agreed that the Focused Remedial Investigation was performed in order to provide preliminary information to determine if a full Remedial Investigation/Feasibility Study ("RI/FS") is required for the Site;

WHEREAS, the report by FPM on the Focused Remedial Investigation recommended implementation of an Interim Remedial Measure ("IRM") to excavate and remove contaminated soil from the Site, and DEC agreed with this recommendation;

WHEREAS, Defendants have agreed, pursuant to an earlier, Partial Consent Decree, approved by the Court on April 13, 1998, to implement the contaminated soil excavation and removal IRM;

WHEREAS, pursuant to a court-ordered mediation, the parties have agreed to settle all other outstanding issues in this litigation, including the State's past response costs and the Defendants' future obligations, without the admission by Defendants of liability or the adjudication of any issue of fact or law;

WHEREAS, as part of the court-ordered mediation, Defendants provided to the State certain information regarding the current financial condition of the Defendants;

WHEREAS, the State has determined that settlement of the claims against Defendants is reasonable, practicable and in the public interest;

WHEREAS, the State and Defendants agree that settlement of this action between them without further litigation and without the admission or adjudication of any issue of fact or law is the most appropriate means of resolving certain of the claims in this action and any potential liabilities with regard to the Site;

WHEREAS, the State and Defendants recognize, and the Court by entering into this Consent Decree finds, that this Consent Decree has been negotiated by the parties in good faith, and implementation of this Consent Decree will expedite the cleanup of the Site, if and to the extent it is required, and will reduce the litigation between the parties, and that this Consent Decree is fair, reasonable, and in the public interest.

NOW, THEREFORE, it is ORDERED, ADJUDGED and DECREED as follows:

I. JURISDICTION

1. This Court has jurisdiction over the subject matter and the parties to this action. The parties to this Consent Decree agree to be bound by the terms of this Consent

Decree and agree not to contest its validity in any subsequent proceeding to implement, interpret or enforce its terms.

II. DEFINITIONS

2. Whenever the terms listed below are used in this Consent Decree, the following definitions shall apply;

(a) "CERCLA" means the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986, Pub. L. No. 99-499, 42 U.S.C. §§ 9601, et seq.;

(b) "Department" or "DEC" means the New York State Department of Environmental Conservation and any successor departments or agencies of the State;

(c) "Hazardous Substance" means any substance defined as a "hazardous substance" under Section 101 (14) of CERCLA, 42 U.S.C. § 9601 (14);

(d) "Interim Remedial Measure" shall have the meaning set forth in 6 NYCRR Part 375;

(e) "Natural Resources" means any "natural resources" defined under Section 101 (16) of CERCLA, 42 U.S.C. § 9601 (16);

(f) "Parties" means the State of New York, and the Settling Defendants;

(g) "Settling Defendants" means Defendant Cardwell Condenser Corporation and Defendant Normlit (accurately spelled "Normilt") Realty Corporation and

their successors and assigns;

(h) "Site" means the property located at 80 East Montauk Highway, Village of Lindenhurst, County of Suffolk, State of New York and known as the Cardwell Condenser Corporation Site or as Inactive Hazardous Waste Disposal Site No. 1-52-035, and the areas of alleged contamination attributable to the Site as more fully described in the Reports of investigation conducted by DEC for this Site and the FRI Report;

(i) "State" means the State of New York, including all of its agencies, departments and instrumentalities.

Unless otherwise expressly provided herein, terms used in this Consent Decree which are defined in CERCLA or in regulations promulgated pursuant to CERCLA shall have the meaning assigned to them in CERCLA or such regulations.

III. PARTIES BOUND

3. This Consent Decree shall apply to and be binding upon the State and shall apply to and be binding upon each of the Settling Defendants, their successors and assigns. Each signatory to this Consent Decree represents that she or he is fully authorized to enter into the terms and conditions of this Consent Decree and to bind the party represented by her or him. Any change in governance, ownership or corporate status of a Settling Defendant including, but not limited to, any transfer of assets or real or personal property shall in no way alter such Settling Defendant's responsibilities under this Consent Decree. Settling Defendants shall be jointly and severally liable for the obligations set forth in this Consent

Decree.

IV. NO ADMISSION OR ACKNOWLEDGMENT

4. Neither this Consent Decree, nor any terms thereof, nor the entry into this Consent Decree, nor performance of the terms of this Decree, by any of the Settling Defendants shall constitute or be construed as an admission or acknowledgment by any of the Settling Defendants of the factual or legal assertions contained in this Consent Decree or the State's Complaint or the Settling Defendants' Answer, and the Settling Defendants retain the right to controvert in any subsequent proceedings, other than proceedings for the purpose of implementing, interpreting or enforcing this Consent Decree, the validity of the facts or determinations contained in this Consent Decree, and the allegations in the Complaint and Answer in this action. Neither this Consent Decree, nor the terms thereof, nor the entry into this Consent Decree, nor performance of the terms of this Decree, by any of the Settling Defendants shall constitute or be construed as an admission or acknowledgment by any of the Settling Defendants of any liability, responsibility or fault with respect to the conditions at or arising from past or future conditions, activities or operations at the Site, or an admission of violation of any law, by any Settling Defendant.

V. PAYMENTS BY DEFENDANTS

5. Settling Defendants shall be jointly and severally liable for the payments set forth in this Consent Decree.

6. Settling Defendants shall pay to the State, by certified check, \$21,000 within

one year of the entry of this Order, and Settling Defendants shall pay an additional \$21,000, by certified check, on each anniversary date of the entry of this Order for nine additional years, for a total of ten payments of \$21,000 each and a total payment of \$210,000.

The amounts due and payable shall be sent to:

Robert Emmet Hernan, Esq.
Assistant Attorney General
Environmental Protection Bureau
New York State Department of Law
120 Broadway - 26th Floor
New York, New York 10271;

The checks shall be made payable to "New York State Department of Environmental Conservation."

VI. IMPLEMENTATION OF INTERIM REMEDIAL MEASURE AND FOCUSED FEASIBILITY STUDY

7. Settling Defendants shall implement the IRM to excavate and remove contaminated soil from the Site as set forth in the Report on a Focused Remedial Investigation ("FRI") by Fanning, Phillips, Molnar ("FPM"), dated October 1998, and complete a Focused Feasibility Study ("FFS"), pursuant to and under the terms of the Partial Consent Decree approved by the Court on April 13, 1998.

8. The implementation of the IRM and FFS shall comply with all requirements of the CERCLA, the National Contingency Plan ("NCP") of March 8, 1990 [40 CFR Part 300], and all applicable United States Environmental Protection Agency ("USEPA") and Department technical and administrative guidance documents in effect at the time Settling Defendants perform the work required under this Consent Decree.

9. After the Department's approval of the Feasibility Study, Defendants shall cooperate and assist the Department in soliciting public comments on the proposed remedial action plan selected by the Department, in accordance with CERCLA, the NCP, and the applicable guidance documents in effect at the time Settling Defendants perform the work required under this Consent Decree.

VII. REMEDIAL ACTIONS

10. After the close of the public comment period, the Department shall use its best efforts to select, within ninety (90) days, a final remedial alternative for the Site in a Record of Decision ("ROD"), a copy of which shall be provided to the Settling Defendants. The selection of the remedial action, including any "no action" alternative, in the ROD shall be based on the Administrative Record and shall be in accordance with CERCLA, the NCP and the applicable State guidance documents in effect at the time of the selection of the final remedial action.

11. If the Department selects a "no-action" alternative in the ROD, then Settling Defendants shall comply with that alternative, including the monitoring and other requirements, if any.

12. If further remedial work is required pursuant to the ROD, then within a reasonable period of time after the ROD is signed that the Department shall prescribe in writing, Settling Defendants shall submit to the Department a remedial plan to implement the remedial alternative for the Site selected by the Department in the ROD (the "Remedial Plan"). The Remedial Plan shall be prepared by and have the signature and seal of a

professional engineer who shall certify that the Remedial Plan was prepared in accordance with this Order.

13. The Remedial Plan shall include the following:

(1) A detailed description of the remedial objectives and the means by which each element of the selected remedial alternative will be implemented to achieve those objectives, including, but not limited to:

- a. the construction and operation of any structures;
- b. the collection, destruction, treatment, and/or disposal of hazardous wastes and substances and their constituents and degradation products, and of any soil or other materials contaminated thereby;
- c. the collection, destruction, treatment, and/or disposal of contaminated groundwater, leachate, and air;
- d. physical security and posting of the Site;
- e. quality control and quality assurance procedures and protocols to be applied during implementation of the Remedial Plan; and
- f. monitoring which integrates needs which are present on-Site and off-Site during implementation of the Department-selected remedial alternative.

(2) "Biddable Quality" documents for the Remedial Plan including, but not limited to, documents and specifications prepared, signed and sealed by a professional engineer. These plans shall satisfy all applicable local, state and federal laws, rules and regulations;

(3) A time schedule to implement the Remedial Plan;

(4) The parameters, conditions, procedures and protocols to determine the effectiveness of the Remedial Plan, including a schedule for periodic sampling of groundwater monitoring wells on-Site and off-Site;

(5) A description of operation, maintenance, and monitoring activities to be undertaken after the Department has approved construction of the Remedial Plan, including the number of years during which such activities will be performed (where appropriate) a specific description of the criteria to be used to decide when an operation of the remedy may be discontinued.

(6) A contingency plan to be implemented if any element of the Remedial Plan fails to achieve any of its objectives or otherwise fails to protect human health or the environment;

(7) A health and safety plan for the protection of persons at and in the vicinity of the Site during construction and after completion of construction. This plan shall be prepared in accordance with 29 CFR 1910 by a certified health and safety professional; and

(8) A citizen participation plan which incorporates appropriate activities outlined in the Department's publication, "Citizen Participation in New York's Hazardous Waste Site Remedial Program: A Guidebook," dated June 1998, and any subsequent revisions thereto, and 6 NYCRR Part 375.

VIII. REMEDIAL PLAN

14. Within such period of time after the Department's approval of the Remedial Plan as the Department shall prescribe, Settling Defendants shall commence implementation of

the Department-approved Remedial Plan.

15. Settling Defendants shall implement the Remedial Plan in accordance with the Department-approved Remedial Plan.

16. During implementation of all construction activities identified in the Remedial Plan, Settling Defendants shall have on-Site a full-time representative who is qualified to supervise the work done.

17. Within 60 days after completion of the activities identified in the Department-approved Remedial Plan, Settling Defendants shall submit to the Department a detailed post-remedial operation and maintenance plan ("O&M Plan"); if required, "as-built" drawings and a final engineering report (each including all changes made to the Remedial Plan during construction); and a certification that the Remedial Plan was implemented and that all activities were completed in accordance with the Department-approved Remedial Plan and were personally witnessed by him or her or by a person under his or her direct supervision. The O&M Plan, and any "as built" drawings, final engineering report, and certification must be prepared, signed, and sealed by a professional engineer.

18. Upon the Department's approval of the O&M Plan, Settling Defendants shall implement the O&M Plan in accordance with the requirements of the Department-approved O&M Plan.

19. After receipt of any "as-built" drawings, final engineering report, and certification, the Department shall notify Settling Defendants in writing whether the Department is satisfied that all construction activities have been completed in compliance with the Department-approved Remedial Plan.

20. If the Department concludes that any element of the Department-approved Remedial Program fails to achieve its objectives or otherwise fails to protect human health or the environment, Settling Defendants shall take whatever action the Department determines necessary to achieve those objectives or to ensure that the Remedial Program otherwise protects human health and the environment.

IX. INTERIM REMEDIAL MEASURES

21. Settling Defendants may propose one or more additional IRMs for the Site and, if approved by the Department, implement said IRM(s), all in accordance with Sections VII - IX of the Partial Consent Decree approved by the Court on April 13, 1998.

X. FAILURE TO COMPLY

22. Settling Defendants' failure to comply substantially with any provision of this Decree constitutes a violation of this Decree and the ECL. Any such alleged failure shall be subject to the provisions of Section XVIII ("Dispute Resolution").

23. Settling Defendants shall have the right to cure, to the satisfaction of the Department, any non-compliance within thirty (30) days after receipt of a Notice of such non-compliance. The Department's determination of cure shall not be unreasonably withheld. The Department may waive any such alleged non-compliance or extend the time for cure of any such alleged non-compliance.

24. Settling Defendants shall be liable for payment to the Department of the sums set forth below as stipulated penalties for each day or part thereof that Settling

Defendants are in violation of the terms of this Decree. All penalties begin to accrue on the first day Settling Defendants are in violation of the terms of this Decree and continue to accrue through the final day of correction of any violation. Such sums shall be due and payable within 15 days after receipt of notification from the Department assessing the penalties. If such payment is not received within 15 days after Settling Defendants receive such notification from the Department, interest shall be payable at the annual rate of nine per cent on the overdue amount from the day on which it was due through, and including, date of payment. Penalties shall be paid by certified check or money order, made payable to "New York State Department of Environmental Conservation" and shall be delivered personally or by certified mail, return receipt requested, to the Director, Division of Environmental Enforcement, N.Y.S.D.E.C., 50 Wolf Road, Albany, New York 12233-5500. Payment of the penalties shall not in any way alter Settling Defendants' obligation to complete performance under the terms of this Decree. Stipulated penalties shall be due and payable under this Paragraph pursuant to the following schedule:

<u>Period of Non-Compliance</u>	<u>Penalty Per Day</u>
First through 15th day	\$ 500
16th through 30th day	\$ 1000
31st day and thereafter	\$ 1500

25. Settling Defendants shall not be deemed to have violated this Decree or be subject to any proceeding or action if they cannot comply with any requirement hereof because of act of God, war, riot, or an unforeseeable disaster arising exclusively from human or natural causes. Settling Defendants shall, within five days of when they obtain knowledge of any such

condition, notify the Department in writing. Settling Defendants shall include in such notice the measures taken and to be taken by Settling Defendants to prevent or minimize any delays and shall request an appropriate extension or modification of this Decree. Failure to give such notice within such five-day period constitutes a waiver of any claim that a delay is not a violation. Settling Defendants shall have the burden of proving that an event is a defense to compliance with this Decree pursuant to this Paragraph.

XI. ENTRY UPON SITE

26. Settling Defendants hereby consent to the entry upon the Site or areas in the vicinity of the Site which may be under the control of Settling Defendants 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 Settling Defendants' compliance with this Decree, provided that any such party notifies Settling Defendants and FPM in writing at least 24 hours prior to entry upon the Site, except where such party reasonably concludes that there are exigent circumstances which require access on shorter notice. Settling Defendants shall provide the Department with suitable office space at the Site, including access to a telephone, and shall permit the Department full access to all records, other than those which are subject to the attorney-client or attorney-work product privilege that do not contain analytical data relating to the environmental condition of the Site. Settling Defendants shall have the right to be present at their Site at all times.

XII. COVENANT NOT TO SUE AND RESERVATION OF RIGHTS

27. In consideration of the payments to be made and other obligations assumed by Settling Defendants pursuant to this Consent Decree, and only as long as Settling Defendants are in compliance with the schedule for making such payments and with such other obligations, and subject to the reservation of rights below, the State releases, discharges, covenants not to sue and agrees not to assert any claims for relief or any causes of action against Settling Defendants pursuant to Section 107(a) or Section 113 of CERCLA, 42 U.S.C. § 9607(a) or § 9613, or under any other federal, state or local statute, regulation or ordinance, or common law, arising out of or relating to environmental conditions at the Site, including without limitation the claims asserted by the State against Settling Defendants in the complaint in this action, except claims for natural resources damages, as a result of the release or threatened release of hazardous substances or constituents at or from the Site or areas in the vicinity of the Site. This covenant not to sue extends only to Settling Defendants and their successors and assigns which are not responsible parties, and does not extend to any other person or entity.

28. Settling Defendants hereby release, discharge, covenant not to sue and agree not to assert any claims or causes of action against the State pursuant to § 107(a) or § 113 of CERCLA, 42 U.S.C. § 9607(a) or § 9613, or under any other federal, state or local statute, regulation or ordinance, or common law, arising out of or relating to environmental conditions at the Site, except claims for natural resources damages, as a result of the release or threatened release of hazardous substances or constituents at or from the Site or areas in the vicinity of the Site. This covenant not to sue extends only to the State, its agencies and

officials, and its assigns, and does not extend to any other person or entity.

29. Nothing contained in this Decree shall be construed as barring, diminishing, adjudicating, or in any way affecting any of the State's civil, criminal, or administrative rights or authorities, including but not limited to, and the State reserves:

(a) the State's right to bring any action or proceeding against any person, firm, corporation, or other entity other than Settling Defendants; and,

(b) the State's right to enforce the provisions of this Decree against either or both of Settling Defendants in the event Settling Defendants fail to satisfy any of the terms of this Decree; and,

(c) the State's right to bring any criminal action against either or both of Settling Defendants arising out of their future conduct with respect to the site; and,

(d) the State's right to issue summary abatement orders, pursuant to its powers under State law, to protect the public health or the environment.

30. Settling Defendants reserve the right to petition the Department to delist or reclassify the Site pursuant to 6 NYCRR Part 375-1.9, or such other State or federal laws and regulations as may be applicable.

XIII. INDEMNIFICATION

31. Settling Defendants 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

Defendants' negligence in the fulfillment or attempted fulfillment of this Decree by Settling Defendants and/or any of Settling Defendants' directors, officers, employees, servants, agents, successors, and assigns.

XIV. PUBLIC NOTICE

32. Within 30 days after the effective date of this Decree, Settling Defendants shall file a Declaration of Covenants and Restrictions with the Suffolk County Clerk's Office to give all parties who may acquire any interest in the Site notice of this Decree.

33. If Settling Defendants propose to convey the whole or any part of Settling Defendants' ownership interest in the Site, Settling Defendants 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 Decree.

XV. COMMUNICATIONS

34. All written communications required by this Decree shall be transmitted by United States Postal Service, by private courier service, or hand delivered, to the persons as provided below.

35. Communication from Settling Defendants shall be sent to:

- A. Robert Cozzy, P.E.
Chief, Remedial Section C
Bureau of Eastern Remedial Action
NYS Dept. of Environmental Conservation
Division of Environmental Remediation

50 Wolf Road
Albany, New York 12233-7010

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

C. Robert Becherer, P.E.
Remediation Engineer
NYS Dept. of Environmental Conservation
Division of Environmental Remediation
Region 1 Office
S.U.N.Y. Campus - Building 40
Stony Brook, New York 11790-2356

D. John F. Byrne, Esq.
Senior Attorney
N.Y.S. Dept. of Environmental Conservation
Division of Environmental Enforcement
200 White Plains Road - 5th Floor
Tarrytown, New York 10591-5805

36. Communication to be made from the Department to Settling Defendants

shall be sent to:

Irving Like, Esq. or Frank Ambrosino, Esq.
Reilly, Like, Tenety, Ambrosino
179 Little East Neck Road North
P.O. Box 818
Babylon, New York 11702
Fax: (516) 669-4122

David Kjeldsen
Cardwell Condenser Corporation
80 East Montauk Highway
Lindenhurst, New York 11757

Fax: (516) 957-7203

Fanning, Phillips and Molnar
909 Marconi Avenue
Ronkonkoma, New York 11779
Fax: (516) 737-3410

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

Four copies (one unbound) to:

Robert Cozzy, P.E.
Chief, Remedial Section C
Bureau of Eastern Remedial Action
NYS Dept. of Environmental Conservation
Division of Environmental Remediation
50 Wolf Road
Albany, New York 12233-7010

One copy 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

One copy to:

Robert Becherer, P.E.
Remediation Engineer
NYS Dept. of Environmental Conservation
Division of Environmental Remediation
Region 1 Office
S.U.N.Y. Campus - Building 40
Stony Brook, New York 11790-2356

One copy to:

John F. Byrne, Esq.
Senior Attorney
N.Y.S. Dept. of Environmental Conservation
Division of Environmental Enforcement
200 White Plains Road - 5th Floor
Tarrytown, New York 10591-5805

38. Within 30 days of the Department's approval of any report submitted pursuant to this Decree, Settling Defendants shall submit to the Director, Division of Environmental Remediation, 50 Wolf Road, Albany, New York 12233-7010, a computer readable magnetic media copy of the approved report in American Standard Code for Information Interchange (ASCII) format.

39. Within 30 days after the Department's approval of the IRM Report and remedial action required by the ROD, if any, Settling Defendants shall submit to the Department one microfilm copy (16 millimeter roll film M type cartridge) of the Department-approved Report as well as all other Department-approved submittals. Settling Defendants shall submit such to Robert Cozzy, P.E.

40. The Department and Settling Defendants reserve the right to designate additional or different addressees for communication or written notice to the other.

XVI. MISCELLANEOUS

41. Settling Defendants have retained FPM as their professional consultants and will retain, if required, contractors, laboratories, quality assurance/quality control personnel, and third party data validators acceptable to the Department to perform the technical, engineering, and analytical obligations required by this Decree. The experience,

capabilities, and qualifications of the firms or individuals selected by Settling Defendants shall be submitted to the Department within 15 days after the effective date of this Decree. The Department's approval of these firms or individuals shall be obtained before the start of any activities for which Settling Defendants and such firms or individuals will be responsible. The responsibility for the performance of the professionals retained by Settling Defendants shall rest solely with Settling Defendants.

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

43. Settling Defendants shall notify the Department at least 10 working days in advance of any field activities to be conducted pursuant to this Decree.

44. Settling Defendants shall obtain all permits, easements, rights-of-way, rights-of-entry, approvals, or authorizations necessary to perform Settling Defendants' obligations under this Decree.

45. Settling Defendants and Settling Defendants' officers, directors, successors, and assigns shall be bound by this Decree. Any change in ownership or corporate status of Settling Defendants including, but not limited to, any transfer of assets or real or personal property shall in no way alter Settling Defendants' responsibilities under this Decree. Settling Defendants' officers and directors shall be obliged to comply with the relevant provisions of

this Decree in the performance of their designated duties on behalf of Settling Defendants.

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

47. All references to "professional engineer" in this Decree are to 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.

48. All references to "days" in this Decree are to calendar days unless otherwise specified.

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

50. No term, condition, understanding, or agreement purporting to modify or vary any term of this Decree 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 Settling Defendants of their obligation to obtain such formal approvals as may be required by this Decree.

51. If Settling Defendants desire that any provision of this Decree be changed, Settling Defendants shall make timely written application, signed by Settling Defendants, to the Commissioner setting forth reasonable grounds for the relief sought. Copies of such written application shall be delivered or mailed to:

John F. Byrne, Esq.
Senior Attorney
NYS Dept. of Environmental Conservation
Division of Environmental Enforcement
200 White Plains Road
5th Floor
Tarrytown, New York 10591-5805

and

Robert Filkens
Project Manager
NYS Dept. of Environmental Conservation
Division of Environmental Remediation
50 Wolf Road
Albany, New York 12233-7010

XVII. CONTRIBUTION PROTECTION

52. The Parties agree and by entering into this Consent Decree the Court finds that the Settling Defendants are entitled to the full extent of protection from contribution actions or claims provided by CERCLA Section 113(f)(2), 42 U.S.C. § 9613(f)(2), and/or any other applicable federal or state law, with respect to the matters addressed in this Decree.

53. Settling Defendants expressly reserve any and all rights, including, but not limited to, any right to contribution, defenses, claims, demands, and causes of action they may have with respect to any matter, transaction, or occurrence, relating to any person not a party hereto.

XVIII. DISPUTE RESOLUTION

54. The State and Settling Defendants shall endeavor to resolve all disputes that arise directly or indirectly under this Consent Decree, including but not limited to its implementation, performance and all acts in furtherance thereof, by means of negotiation as, and if, appropriate under the circumstances.

55. In the event that the parties cannot resolve their dispute by negotiation, after reasonable efforts, the State may make a determination with respect to the subject of the dispute, which determination shall be in writing and summarize the findings, evidence and conclusions on which it is based, and shall reference this provision of the Consent Decree.

56. All determinations by the State, including but not limited to approval or disapproval of work performed in implementing Work Plans, the submittals and requirements for the revision or supplementation of plans, reports and field work, or the applicability and/or amount of stipulated penalties shall be final and binding upon Settling Defendants unless within thirty days of receipt of the State's determination by the attorneys of record for Settling Defendants, or such extension of time as may be agreed to, Settling Defendants petition the Court for review. In any such dispute, the State's determination shall not be set aside unless the Settling Defendants can demonstrate, on the administrative record, that the decision was

arbitrary and capricious or otherwise not in accordance with law. The filing of a petition by Settling Defendants pursuant to this Paragraph shall not stay or excuse the timely performance of work or the timely transmission of submittals with respect to the disputed issue, except by agreement of the State or upon Settling Defendants' application to the Court for an order staying or enjoining the performance, and then only until the Court rules on the application for a stay or injunction. Settling Defendants shall have the burden of establishing, before the Court, the necessity and appropriateness of such a stay or injunction.

XIX. COURT APPROVAL

57. If for any reason the Court should decline to approve this Consent Decree in the form presented, or as same may be amended by consent of the parties, then this agreement is voidable at the sole discretion of any Party, upon written notice within 30 days after such Court action. In such event the terms of this Consent Decree may not be used as evidence in any litigation.

XX. EFFECTIVE DATE

58. The Effective Date of this Decree shall be the date when the Decree is entered by the Court.

FOR THE PLAINTIFFS:

ELIOT SPITZER

Attorney General of the State
of New York

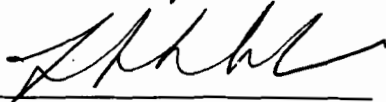
Dated: August 2, 1999

BY: Robert Emmet Hernan
Robert Emmet Hernan
Assistant Attorney General
State of New York
120 Broadway
New York, NY 10271

FOR CARDWELL CONDENSER CORPORATION



Sworn to before me this
28 day of July 1999.



NOTARY PUBLIC

FRANK N. AMBROSINO
Notary Public, State of New York
No. 02AM5004114
Qualified in Suffolk County
Commission Expires Nov. 9, 20 01

FOR NORMILT REALTY CORPORATION



Sworn to before me this
28 day of July 1999.




NOTARY PUBLIC

FRANK N. AMBROSINO
Notary Public, State of New York
No. 02AM5004114
Qualified in Suffolk County
Commission Expires Nov. 9, 20 00

SO ORDERED THIS 5 DAY OF Aug, 1999.

Case Closed



United States District Judge