STATE OF NEW YORK: DEPARTMENT OF ENVIRONMENTAL CONSERVATION

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

Town of Huntington,
Respondent.

ORDER
ON
CONSENT

INDEX # W1-254-88-06

Site # 1-52-040

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".

2. Town of Huntington ("Respondent"), is a municipality within the meaning set forth in section 27-1301(3) of the ECL. From approximately 1935 to the present, Respondent owned real property located on Town Line Road, Town of Huntington, County of Suffolk (the "Site"). A map of the Site is attached hereto as "Appendix A". The Site has been operated as a municipal landfill known as the Huntington/East Northport Landfill.

3. The Department has determined that the Site is an inactive hazardous waste disposal site, as that term is defined at ECL Section 27-1301(2) and that it 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 1-52-040. The Department has classified the Site as a Classification "2" pursuant to ECL Section 27-1305(4)(b).

4. 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."

5. The Department and Respondent agree that the goals of this Order shall be the implementation of an Interim Remedial Program ("IRP"); and the development and implementation of a Remedial Program for the Site by Respondent, which program shall include a Remedial Investigation/Feasibility Study and the design and implementation of the selected remedial alternative.

6. The Department and Respondent further agree that

pursuant to this Order, an administrative Order of the Commissioner dated May 17, 1989 (In the Matter of the Alleged Violations of Articles 27 and 17 of the New York State Environmental Conservation Law by Town of Huntington (Suffolk County) Landfill, Respondent, Case No. 1-1818) and the Orders entered in The New York State Supreme Court proceeding entitled Huntington v. NYSDEC (Index # 89-13366), the Respondent has ceased receiving any and all solid waste at its sanitary landfill for landfilling and will close the landfill in accordance with 6 NYCRR Part 360 and any such modifications as may be approved by the Department.

7. Respondent has entered into this Order as a precondition to eligibility for financial assistance pursuant to ECL Article 52, Title 3 and ECL §27-1313(5)(g). However, the Department and Respondent agree that all costs for any study or regrading activities, necessary as a prerequisite for placing a conditional final cover system on the landfill, as set forth in paragraphs IV and V of this Order, will not be an eligible cost for any State funding, loan or reimbursement program including but not limited to those available under ECL Article 52, Title 3 and ECL §27-1313(5)(g).

8. Respondent has placed its insurer on notice of the Department's determination that the Site constitutes a significant threat to the environment and of the Department's claim, pursuant to ECL Article 27, Title 13, against Respondent. Respondent has agreed to continue to exercise all reasonable efforts to obtain indemnification or a

commitment to indemnify from its insurance carriers. Further, Respondent has agreed to assist the Department in identifying all other responsible parties and in compelling other responsible persons to bear the cost of the development and implementation of an inactive hazardous waste disposal site remedial program at the site. The terms Responsible Parties and Responsible Persons refer to those persons or parties defined in Paragraph VIII(b) of this Order.

9. The Respondent neither admits nor denies any of the facts contained herein.

10. Respondent, having waived its 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.

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

I. All activities and submittals required by this Order shall address both on-Site and off-Site contamination and shall be in accordance with Requisite Remedial Technology. As used in this Order, Requisite Remedial Technology means the proper application of scientific and engineering principles and practices, subject to the Department's approval, which will identify and mitigate or eliminate any present or potential threat to the public health or environment posed by the presence of any hazardous waste at the Site and any release or threatened release of

hazardous waste at or from the Site.

II. Respondent shall retain professional consultants, contractors and laboratories 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, together with copies of the contracts (and supporting cost data in a format acceptable to the Department) between the Respondent and their consultants shall be submitted within 30 calendar days after the effective date of this Order to the Department for review prior to initiation of any activities for which the Respondent and their consultants will be responsible.

III. Any use or physical alteration of the Site sought to be undertaken during the Interim Remedial Program, RI/FS or the Remedial Program must not interfere with remediation as determined by the Department. Any use of the Site will be subject to all applicable local, State, and Federal laws, rules and regulations.

Respondent will not accept at the Site any solid waste except for the purpose of transferring such waste off-site pursuant to a permit to operate a transfer station issued under 6 NYCRR Part 360, or other competent legal authorization.

IV. Within 45 calendar days of the effective date of this Order, the Respondent will submit a Regrading Plan subject to the approval of the Division of Hazardous Waste

Remediation, Special Projects Section (hereinafter the "project manager") and the Department's attorney, incorporating the requirements of the Division of Hazardous Waste Remediation and the Division of Solid Waste. The Regrading Plan shall include all elements of the Request For Proposal ("RFP") promulgated by the Respondent on November 16, 1989, as well as a schedule for its implementation. Failure to submit an approvable Regrading Plan will be a violation of this Order.

V. Respondent will commence and complete implementation of the regrading according to the schedule in the Approved Regrading Plan. Failure to implement such plan will be a violation of the ECL, this Order and the Commissioner's Order.

VI. Within 30 days after approval of the Regrading Plan, Respondent shall submit to the Department a Work Plan for an Interim Remedial Program ("IRP" Work Plan), which shall consist of the installation of an interim perimeter leachate collection system meeting the requirements of 6 NYCRR 360-2.15(g); the installation of a conditional final cover system for the landfill meeting the requirements of 6 NYCRR 360-2.15(b); and the preparation of an engineering report addressing, for the duration of the Interim Remedial Program, vector migration and control, gas migration and control, and those matters identified in 6 NYCRR 360-2.15(i). The IRP Work Plan shall include, but not be limited to the following:

a. certified engineering plans and specifications for installation of the interim perimeter leachate collection system and interim final cover system;

b. the engineering report;

c. an anticipated schedule to install the interim perimeter leachate collection system and the conditional final cover system (which must be consistent with the schedule contained in the Regrading Plan referred to in Paragraphs IV and V above;

d. a sampling and analysis plan that includes a quality assurance project plan describing the quality assurance and quality control protocols necessary to assure the construction and certification requirements of 6 NYCRR Part 360-2.13(p),(q),(r), and (s) relating to the construction of the conditional final cover system; and the construction and certification requirements of 6 NYCRR Part 360-2.8, Part 360-2.15(g), and (if the system includes the construction and operation of a leachate storage facility) 6 NYCRR Part 360-6, relating to the construction of the interim perimeter leachate collection system, and;

e. a health and safety plan for the protection of persons at and in the vicinity of the Site during the performance of the IRP that shall be prepared in accordance with 29 CFR 1910 by a certified health and safety professional.

The Department shall notify Respondent in writing of its approval or disapproval, with specific objections, of

the IRP Work Plan. If the Department disapproves it, within 45 days after receipt of notice of disapproval, Respondent shall resubmit the Work Plan, after having revised it, addressing the Department's specific objections. If the Department disapproves the revision, then Respondent shall be in violation of this Order. Respondent shall implement the Work Plan approved by the Department which shall be attached as Appendix B of this Order and incorporated herein, in accordance with the time schedule contained herein.

Respondent agrees to perform the IRP without prejudice to the Department's right to require further remedial activities pursuant to the Remedial Program approved by the Department.

VII. Respondent has entered into this Order as a precondition to eligibility for financial assistance pursuant to ECL Article 52, Title 3 and ECL §27-1313(5)(g). However, the Department and Respondent agree that all costs for any study or regrading activities, necessary as a prerequisite for placing a conditional final cover system on the landfill, as set forth in paragraphs IV and V of this Order, will not be an eligible cost for any State funding, loan or reimbursement program including but not limited to those available under ECL Article 52, Title 3 and ECL §27-1313(5)(g).

VIII. Within 45 calendar days after the effective date of this Order, Respondent shall submit to the Department its scoping effort completed in accordance with EPA's "Guidance

for Conducting Remedial Investigations and Feasibility Studies under CERCLA", dated October 1988, and all data within its possession or control regarding environmental conditions on-Site and off-Site, and other information described below, to the extent that such data have not previously been provided to 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 any hazardous waste including methods of disposal and spillage of such wastes;

b. A concise summary of information held by the Respondent and their attorneys with respect to all persons responsible for such disposal of hazardous wastes. This, however, does not abrogate any applicable attorney-client privileges established by statute or common law. Person responsible or responsible party means any or all of the following:

(1) the current owner and operator of the site;

(2) the owner and operator of the site at the time or subsequent to the time any hazardous waste disposal occurred;

(3) any person who generated any hazardous waste that was disposed of at the site;

(4) any person who transported any hazardous waste to the site;

(5) any person who disposed of any hazardous waste

at the site;

(6) any person who by contract, agreement or otherwise arranged for the transportation of any hazardous waste to the site or the disposal of any hazardous waste at the site;

(7) any other person determined to be responsible according to applicable principles of statutory or common law liability.

Such information shall include, but not be limited to, names, addresses, dates of such disposal and any proof linking each such person responsible with hazardous wastes identified pursuant to Paragraph III (a) herein;

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.

d. An application with supporting cost estimates in a form acceptable to the Department, for State assistance pursuant to ECL Article 52, Title 3 together with a resolution acceptable to the Department which designates, by title, a Town official authorized to act on behalf of the Town in all matters relating to State assistance pursuant to ECL Article 52, Title 3.

IX. Within 15 calendar days after Respondent's receipt of the site-specific State Assistance Contract (SAC),

Respondent shall sign and deliver the SAC to the Department.

X. Within 45 calendar days after the effective date of this Order, Respondent shall submit to the Department a Work Plan for a Remedial Investigation/Feasibility Study. This Work Plan shall at a minimum address the comments raised by the Department in response to the August 1988 Work Plan and all matters identified in 6 NYCRR Part 360-2.15. The Work Plan also shall address all elements of a Remedial Investigation/Feasibility Study ("RI/FS") as set forth in the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA"), 42 U.S.C. Sections 9601 et seq., as amended, the National Contingency Plan ("NCP") then in effect, the USEPA draft guidance document entitled "Guidance for Conducting Remedial Investigations and Feasibility Studies under CERCLA" dated October 1988, and any subsequent revisions thereto, and appropriate technical and administrative guidelines. In addition, the Work Plan shall include:

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

b. A Sampling and Analysis Plan which shall include:

(i) A Quality Assurance Project Plan that describes the quality assurance and quality control ("QA/QC") protocols necessary to achieve the initial data quality objectives.

(ii) A Field Sampling Plan that defines the 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 for the protection of persons at and in the vicinity of the Site during the performance of the Remedial Investigation which shall be prepared in accordance with 29 C.F.R. Section 1910 by a certified health and safety professional.

d. A Citizen Participation Plan which is prepared in a manner consistent with the Department's publication "New York State Inactive Hazardous Waste Site Citizen Participation Plan", dated August 30, 1988, and which is to be implemented in accordance with Department policy.

XI. The Department shall notify Respondent in writing of its approval or disapproval of the Work Plan.

If the Department disapproves the Work Plan, the Department shall notify Respondent in writing of the Department's specific objections. Within 45 calendar days after receipt of notice of disapproval, Respondent shall revise the Work Plan addressing the Department's objections and submit a Revised Work Plan.

The Department shall notify Respondent in writing of its approval or disapproval with specific objections of the Revised Work Plan. If the Department disapproves the Revised Work Plan, the Respondent shall be in violation of this Order.

The Work Plan or the Revised Work Plan, whichever the Department approves, (the "Approved Work Plan"), shall be attached as "Appendix C" and incorporated into this Order.

Respondent shall perform the RI/FS in accordance with the Approved Work Plan.

XII. In accordance with the time schedule contained in the Approved Work Plan, Respondent shall perform the Remedial Investigation and submit the status reports and other deliverables (as defined in the Work Plan) and the Remedial Investigation Report ("Report"). During the Remedial Investigation field activities, Respondent shall have on-Site, full-time, a representative qualified to inspect the work. The Report shall include a copy of all data generated and all other information obtained during the Remedial Investigation, provide all of the assessments and evaluations set forth in CERCLA, the NCP then in effect, and in the guidance documents referred to above and identify any additional data that must be collected. The Report shall be prepared and certified by an engineer licensed to practice by the State of New York. This licensed engineer must be an individual or member of a firm which is authorized to offer engineering services in accordance with Article 145 of the New York State Education Law. The engineer shall certify that all activities that comprised the Remedial Investigation were performed in full accordance with the approved Work Plan.

XIII. After receipt of the Report, the Department shall determine if the Remedial Investigation was conducted and the

Report prepared in accordance with the Approved Work Plan and this Order, and shall notify Respondent in writing of its approval or disapproval of the Report.

If the Department disapproves the Report, the Department shall notify Respondent in writing of the Department's specific objections. Respondent shall revise the Report and/or reperform or supplement the Remedial Investigation addressing the Department's objections and shall submit a Revised Report. The period of time within which the Report must be revised or the Remedial Investigation reperformed or supplemented shall be specified by the Department in its notice of disapproval and shall afford the Respondent time to revise the Report or to reperform or supplement the investigation.

After receipt of the Revised Report, the Department shall notify the Respondent in writing of its specific approval or disapproval with specific objections of the Revised Report.

If the Department disapproves the Revised Report, the Respondent shall be in violation of this Order.

The Report or Revised Report, whichever the Department approves (the "Approved Report") shall be attached as "Appendix D" and incorporated into this Order.

XIV. The Department reserves the right to require a modification and/or an amplification and expansion of the Remedial Investigation and Report by Respondent if the Department determines, as a result of reviewing data generated by the Remedial Investigation or as a result of

reviewing any other data or facts, which shall be made available to the Respondent, that further work is necessary.

XV. Within 90 calendar days after receipt of the Department's approval of the Report, Respondent shall submit a Feasibility Study evaluating on-Site and off-Site remedial actions to eliminate, to the maximum extent practicable, all health and environmental hazards and potential hazards that may be attributable to the Site and shall take into account the Interim Remedial Program that shall be implemented under this Order and all matters contained in 6 NYCRR Part 360 pertaining to the closure and post-closure monitoring and maintenance of a landfill. The Feasibility Study shall be prepared and certified by an engineer licensed to practice by the State of New York, and approved by the Department. This engineer must be an an individual or member of a firm which is authorized to offer engineering services in accordance with Article 145 of the New York State Education Law.

The Feasibility Study shall be performed in a manner that is consistent with CERCLA, the NCP then in effect, the USEPA draft guidance document entitled "Guidance for Conducting Remedial Investigations and Feasibility Studies under CERCLA," dated October 1988 and any subsequent revisions thereto and appropriate technical and administrative guidelines.

XVI. After receipt of the Feasibility Study, the Department shall determine if the Feasibility Study was prepared in accordance with this Order, and shall provide

written notification of its approval or disapproval.

If the Department disapproves the Feasibility Study, the Department shall notify Respondent in writing of the Department's specific objections. Within 45 calendar days after receipt of notice of disapproval, Respondent shall revise the Feasibility Study addressing the Department's specific objections and submit a Revised Feasibility Study.

After receipt of the Revised Feasibility Study, the Department shall notify Respondent in writing of its approval or disapproval with specific objections of the Revised Feasibility Study.

If the Department disapproves the revised Feasibility Study, the Respondent shall be in violation of this Order.

The Feasibility Study or the Revised Feasibility Study, whichever the Department approves (the "Approved Feasibility Study"), shall be attached as "Appendix E" and incorporated into this Order.

XVII. Within 60 calendar days after the Department's approval of the Feasibility Study, the Department and Respondent shall solicit public comment on the Remedial Investigation/Feasibility Study and the recommended remedial program in accordance with CERCLA, the NCP, the Approved Citizen Participation Plan, any other applicable law, and any relevant 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 program for the site in a Record of Decision ("ROD"). The ROD shall be attached as "Appendix F" and incorporated into this Order.

XVIII. Unless the ROD recommends the "no action" alternative, Respondent shall submit a Remedial Design within 90 days after the ROD is signed. The Respondent may apply for an extension of this deadline in the event that the implementation of the ROD is enjoined by a court of competent jurisdiction. The Remedial Design shall be prepared and certified by an engineer licensed to practice by the State of New York and approved by the Department. The engineer must be an individual or member of a firm which is authorized to offer engineering services in accordance with Article 145 of the New York State Education Law.

The Remedial Design shall include the following:

a. A detailed description of the means by which each essential element of the Remedial Program will be performed, to include but not be limited to:

1. the collection, destruction, treatment and/or disposal of hazardous wastes, and their constituents and degradation products, and any soil or other materials contaminated thereby;

2. the collection, destruction, treatment, and/or disposal of contaminated groundwater, leachate and air;

3. the physical security of and the posting of signs at the Site;

4. the health and safety of persons living and/or working at or in the vicinity of the site;

5. the Quality Control and Quality Assurance ("QA/QC") procedures and protocols to be applied during implementation of the Remedial Program;

6. the Monitoring Program which adequately assesses the environmental conditions both on-Site and off-Site during implementation of the Remedial Program; and to all matters contained in 6 NYCRR Part 360 pertaining to the closure and post-closure monitoring and maintenance of a landfill; and

7. all matters contained in 6 NYCRR Part 360 pertaining to the closure and post-closure monitoring and maintenance of a landfill.

b. "Biddable Quality" documents for the Remedial Program, including plans and specifications prepared and certified by an engineer licensed to practice by the State of New York and approved by the Department. This engineer may be an employee of the Respondent, or an individual or member of a firm which is authorized to offer engineering services in accordance with Article 145 of the New York State Education Laws. These plans shall satisfy all applicable local, State and Federal laws, rules and regulations;

c. A time schedule for the Remedial Program and provisions for periodic work-in-progress reports during the Remedial Program;

d. The parameters, conditions, procedures and protocols to determine the effectiveness of the Remedial Program, including a schedule for periodic sampling of groundwater monitoring wells on-Site and off-Site;

e. A description of operation, maintenance and monitoring ("O & M") activities to be undertaken following completion of the Remedial Program, including the number of years during which such activities will be performed.

f. A Contingency Plan to be implemented in the event that any element of the Remedial Program fails to operate in accordance with the Remedial Design or otherwise fails to protect human health or the environment; and

g. A Health and Safety Plan for the protection of persons at and in the vicinity of the Site both during construction and after completion of the Remedial Program. The plan shall be prepared in accordance with 29 C.F.R. Section 1910 by a certified health and safety professional.

XIX. After receipt of the Remedial Design, the Department shall notify Respondent in writing of its approval or disapproval of the Remedial Design.

If the Department disapproves the Remedial Design, the Department shall notify Respondent in writing of the Department's specific objections. Within 45 calendar days after receipt of notice of disapproval, Respondent shall revise the Remedial Design addressing the Department's

objections and submit a Revised Remedial Design.

After receipt of the Revised Remedial Design, the Department shall notify Respondent in writing of its approval or disapproval with specific objections of the Revised Remedial Design.

If the Department disapproves the Revised Remedial Design, the Respondent shall be in violation of this Order.

The Remedial Design or the Revised Remedial Design, whichever the Department approves ("Approved Remedial Design"), shall be attached as "Appendix G" and incorporated into this Order.

XX. Respondent shall implement the Remedial Program in accordance with the Approved Remedial Design. Respondent must obtain prior written approval from the Department prior to deviating from the Approved Remedial Design in any way. During implementation of the Remedial Program, Respondent shall have on-Site, full-time during field activities, a representative qualified to inspect the work.

Within 60 calendar days after completion of the Remedial Program, Respondent shall submit as-built drawings, a Final Engineering Report, and a Final Operation, Maintenance and Monitoring Report. These Reports shall reflect all changes made during construction and shall include a certification that the Remedial Program was completed in accordance with the Approved Remedial Design. The Reports shall be prepared by and the certification made by an engineer licensed to practice by the State of New York and

approved by the Department. This engineer may be an employee of the Respondent, or an individual or member of a firm which is authorized to offer engineering services in accordance with Article 145 of the New York State Education Law.

XXI. After receipt of the as-built drawings, Final Engineering Report and certification, the Department shall notify Respondent in writing whether it is satisfied with the quality and completeness of the Remedial Program as being protective of human health and the environment.

If the Department concludes that any element of the Remedial Program fails to operate in accordance with the Approved Remedial Design or otherwise fails to protect human health or the environment, the Department may take any action or pursue whatever rights it has pursuant to any provision of statutory or common law.

XXII. Prior to its acceptance and approval of the engineer's certification that construction was completed in accordance with the Approved Remedial Design, the Department may require the Respondent to modify the Remedial Design and Construction if the Department determines that such modification is necessary due to:

(1) environmental conditions on-Site or off-Site which are related to the presence of hazardous wastes at the Site and which were unknown to the Department at the time of the effective date of this Order, <u>or</u>

(2) information received, in whole or in

part, after the effective date of this Order, where such unknown environmental conditions or information indicates that the Remedial Program is not protective of human health or the environment. The Department shall make available to the Respondent the information relied on in making such determination.

XXIII. Respondent shall operate, maintain and monitor all elements of the Remedial Program for the period of years set forth in the Approved Remedial Design, implement the Contingency Plan contained in the Approved Remedial Design in the event any element of the Remedial Program fails after completion or otherwise fails to protect human health or the environment, and implement the Health and Safety plan contained in the Approved Remedial Design after completion.

XXIV. Within 60 calendar days after the effective date of this Order and every six months thereafter Respondent shall provide a written report to the Department of the efforts that it has made to obtain indemnification from its insurers and to assist the Department in compelling other responsible parties to bear the costs associated with the development and implementation of an inactive hazardous waste disposal site remedial program at the Site.

XXV. 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 shall also have the right to take its own samples. A copy of the Department analysis shall be made available to the Respondent

after QA/QC verification.

XXVI. Respondent shall provide notice to the Project Manager at least 10 working days in advance of all field activities to be conducted pursuant to this Order.

XXVII. Respondent shall obtain whatever permits, easements, rights-of-way, rights-of-entry, approvals or authorizations that are necessary to perform Respondent's obligations under this Order. The Department shall assist the Respondent if the Respondent, despite its good faith efforts to comply with this paragraph, is unable to do so.

XXVIII. Respondent shall permit any duly designated employee, consultant, contractor or agent of the Department or any State agency to enter upon the Site or areas in the vicinity of the Site which may be under the control of Respondent for purposes of inspection, sampling and testing and to assure Respondent's compliance with this Order. During implementation of the Remedial Program, Respondent shall provide the Department with access to and use of suitable office space at the site, including access to a telephone, and shall permit the Department full access to all technical records and job meetings relating to compliance with this Order.

XXIX. Respondent shall not suffer any penalty under this Order, or be subject to any proceeding or action, if it cannot comply with any requirements hereof because of an act of God, war, or riot, or other condition as to which negligence or willful misconduct of the Respondent is not the

proximate cause, provided that the Respondent shall immediately notify the Department in writing when it obtains knowledge of any such condition and request an appropriate extension or modification of this Order.

XXX. The failure of the Respondent to comply with any term of this Order shall be a violation of this Order and the ECL.

XXXI. 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 the following:

a. the Department's right to bring any action or proceeding against anyone other than Respondent, its officials, employees, servants, agents, successors and assigns;

b. the Department's right to enforce this Order against Respondent, its officials, employees, servants, agents, successors and assigns in the event that Respondent shall fail to satisfy any of the terms hereof;

c. the Department's right to bring any action or proceeding against Respondent, its officials, 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 wastes or constituents at or from the Site or to areas in the vicinity of the Site, and;

d. the Department's right to bring any action

or proceeding against Respondent, its officials, employees, servants, agents, successors and assigns with respect to hazardous wastes that are present at the Site or that have migrated from the site and present a significant threat to human health or the environment.

XXXII. Except as otherwise provided in this Order, nothing contained in this Order shall be construed as barring, diminishing, adjudicating, or in any way affecting the Respondent's rights.

XXXIII. This Order shall not be construed to prohibit the Commissioner or his duly authorized representative from exercising any summary abatement powers.

XXXIV. 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, its officials, employees, servants, agents, successors or assigns, except such as might arise out of or as a result of the gross negligence or willful misconduct of the State of New York, the Department, its representatives or employees.

XXXV. The effective date of this Order shall be the date it is signed by the Commissioner. The Department will notify the Respondent's attorney within 5 business days of the Order's effective date. The Respondent will be provided with a fully executed copy of the Order.

XXXVI. If Respondent desires that any provision of this Order be changed, it shall make timely written application to the Department for the Commissioner's consideration, setting forth reasonable grounds for the relief sought. Such written application shall be delivered or mailed pursuant to ¶ XXXIX below.

XXXVII. In the event Respondent proposes to convey the whole or any part of its ownership interest in the Site, Respondent shall, not fewer than 60 days prior to the proposed conveyance, notify the Department in writing of the identity of the transferee and of the nature and date of the proposed conveyance and shall notify the transferee in writing, with a copy to the Department, of the applicability of this Order.

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

XXXIX. All communications and correspondence from Respondent shall be addressed to the Department's attorney:

Alice McCarthy, Esq.
Div. of Environmental Enforcement
N.Y.S. Dept. of Environmental Enf.
202 Mamaroneck Avenue - Room 304
White Plains, New York 10601-5381

with a copy to project manager:

George Heitzman, P.E.
Special Projects Section
Bureau of Eastern Remedial Action/DHWR
N.Y.S. Dept. of Environmental Conservation
50 Wolf Road - Room 222
Albany, New York 12233-7010

XL. All Work Plans, Reports and other technical documents required to be submitted under this Order shall be sent to the following:

1. One copy to:

David L. Markell, Director
Division of Environmental Enforcement
N.Y.S. Department of Environmental Conservation
50 Wolf Road - Room 609
Albany, N.Y. 12233-5500

2. Six copies to:

Michael J. O'Toole, Jr., P.E., Director
Division of Hazardous Waste Remediation
N.Y.S. Department of Environmental Conservation
50 Wolf Road - Room 212
Albany, N.Y. 12233-7010

3. Two copies to:

Ron Tramontano, P.E., Director
Bureau of Environmental Exposure Investigation
N.Y.S. Department of Health
2 University Place
Albany, N.Y. 12203

4. One copy to:

Alice M. McCarthy, Esq.
Division of Environmental Enforcement
N.Y.S. Department of Environmental Conservation
202 Mamaroneck Avenue - Room 304
White Plains, N.Y. 10601-5381

5. Two copies to:

Harold Berger, Director, Region 1
N.Y.S. Department of Environmental Conservation
Building 40
SUNY
Stony Brook, N.Y. 11794

XLI. Communication from the Department to Respondent shall be made as follows:

Kevin B. McGrath, Esq.
Theodore W. Firetog, Esq.
Shea & Gould
1251 Avenue of the Americas
New York, N.Y. 10020-1193

and to:

Town Supervisor
Town of Huntington Town Hall
100 Main Street
Huntington, NY 11743

XLII. Respondent, its officials, agents, servants, employees, successors and assigns shall be bound by this Order.

XLIII. The terms hereof shall constitute the complete and entire Order between Respondent and the Department concerning the Site. No terms, conditions, understandings or agreements purporting to modify or vary the terms hereof shall be binding unless made in writing and subscribed by the party to be bound. No informal advice, guidance, suggestions or comments by the Department, including but not limited to comments on reports, proposals, plans, specifications, schedules or any other submittals, shall be construed as relieving Respondent of its obligations to obtain such formal approvals as may be required by this Order.

DATED: Albany, New York
March 26, 1990

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

Thomas C. Jorling

TO: Kevin B. McGrath, Esq.
Theodore W. Firetog, Esq.
Shea & Gould
1251 Avenue of the Americas
New York, N.Y. 10020-1193

CONSENT BY RESPONDENT

Town of Huntington

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

By: Stephen C. Ferraro
(Type name of signer)

Title: Supervisor
(Type title of signer)

Date: November 27, 1990

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

On this 27th day of NOVEMBER, 19 90, before me personally came STEPHEN C FERRARO, to me known, who being duly sworn, did depose and say that he resides at 4 POLLY DR HUNTINGTON, NY; that he is the SUPERVISOR of the Town of Huntington, the municipality described herein, and which executed the foregoing instrument; that he knew the seal of said municipality; that the seal affixed to this instrument was such municipal seal; that it was so affixed by a resolution of the Town Board of Huntington, and that he signed his name thereto by like order.

Mark T. Newton
Notary Public

(AM-ORD#1-8.9/jl/jg 06/19/90)

MARK T. NEWTON
NOTARY PUBLIC, State of New York
No. 4836838
Qualified in Suffolk County
Commission Expires October 31, 1991