

STATE OF NEW YORK: DEPARTMENT OF ENVIRONMENTAL CONSERVATION

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

ORDER
ON
CONSENT
Index # W1-0461-90-02
Site # 1-52-130
Main Plant

FAIRCHILD INDUSTRIES, INC.

Respondent.

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. Fairchild Industries, Inc. ("Respondent") is a corporation organized and existing under the laws of the State of Delaware. Respondent owns real property located at Conklin Street in the Village of East Farmingdale, Town of Babylon, County of Suffolk (the "Site"). A map of the Site is attached to, and is incorporated into this Order as "Appendix A".

3. The Site is an inactive hazardous waste disposal site, as that term is defined at ECL Section 27-1301(2). The Site has been listed in the Registry of Inactive Hazardous Waste Disposal Sites in New York State as "Fairchild Republic Aircraft - Main Plant", Site Number 1-52-130. The Department

has classified the Site as a "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 development and implementation of a Remedial Investigation/Feasibility Study ("RI/FS") for the Site by the Respondent.

6. Respondent, having waived its right to a hearing herein as provided by law, and having consented to the issuance and entry of this Order, without any adjudication of law or fact, agrees to be bound by its terms.

7. Notwithstanding Respondent's agreement to carry out the terms of this Order, Respondent does not admit or acknowledge any liability, fault or wrongdoing or violation of law, regulation or permit of any kind whatsoever in any way related to the Site.

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

I. All activities and submittals required by this Order shall address both on-Site and off-Site contamination resulting from the disposal of hazardous waste at the Site.

II. Respondent shall retain professional consultants, contractors, laboratories, quality assurance/quality control personnel and data validators acceptable to the Department to perform the technical, engineering and analytical obligations required by this Order. The experience, capabilities and qualifications of the firms or individuals selected by Respondent shall be submitted within 30 calendar days after the effective date of this order, consultant selection or contract execution, whichever is later, to the Department for approval prior to initiation of any activities for which the Respondent and their consultants will be responsible.

III. Within 30 calendar days after the effective date of this Order, Respondent shall submit to the Department (if not previously submitted to the Department's project manager) Respondent's scoping effort completed in accordance with EPA's "Guidance for Conducting Remedial Investigations and Feasibility Studies under CERCLA", dated October 1988, and any subsequent revisions thereto, and appropriate technical and administrative guidelines.

Respondent shall, within the same 30 calendar days, submit all data within its possession or control regarding environmental conditions on-Site and off-Site resulting from disposal of hazardous waste at the 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 hazardous waste including methods of disposal and spillage of such wastes;

b. A concise summary of information held by the Respondents and their attorneys with respect to all persons responsible for such disposal of hazardous wastes. 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 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 property surveys and engineering studies. Respondent will provide a complete inventory, listing title dates and subject matter, of all topographical and aerial photographs of the Site. Additionally Respondent shall submit representative copies of the topographical and aerial photographs listed. The Respondent will provide copies of any document covered by this paragraph if the Department so requests.

IV. Within 30 calendar days after the effective date of this Order, Respondent shall submit to the Department a Work Plan for a Remedial Investigation/Feasibility Study.

The Work Plan shall address all elements of a Remedial Investigation/Feasibility Study 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") of March 8, 1990, the USEPA final interim draft guidance document entitled "Guidance for Conducting Remedial Investigations and Feasibility Studies under CERCLA" dated October 1988, and any subsequent revisions thereto and appropriate USEPA and Department technical and administrative guidance documents in effect at the time the RI/FS Work Plan is submitted. 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 data quality objectives. This plan shall designate a data validation expert and must describe such individual's qualifications and experience.

(ii) A Field Sampling Plan that defines 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 any subsequent revisions.

V. 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 objections. Within 30 days after receipt of notice of disapproval, Respondent shall revise the Work Plan in accordance with the Department's specific comments and submit a Revised Work Plan.

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

If the Department disapproves the Revised Work Plan, the Respondent shall be deemed to be in violation of this Order subject to the dispute resolution procedure in ¶ XX.

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

VI. In accordance with the time schedule contained in the Approved Work Plan, Respondent shall perform the Remedial Investigation and submit status reports and other deliverables as defined in the Work Plan and submit a draft and final Remedial Investigation Report ("the Report"). Respondent shall have on-Site, full-time, during the performance of fieldwork required by the Remedial Investigation, a representative who is qualified to inspect the work. The Report shall include 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 of March 8, 1990, 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 the individual or firm with primary responsibility for the day to day performance of the Remedial Investigation that all activities that comprised the Remedial Investigation were performed in full accordance with the Approved Work Plan.

VII. After receipt of the draft 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 comments on the draft of the Report within 45 calendar days.

Respondent shall revise and submit a final Report in 30 calendar days or reperform or supplement the Remedial Investigation in accordance with the Department's specific comments 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 comments.

After receipt of the final Report, the Department shall notify the Respondent in writing within 30 calendar days of its approval or disapproval of the final Report.

If the Department disapproves the final Report, the Respondent shall be deemed to be in violation of this Order subject to the dispute resolution procedure in ¶ XX.

If the Department approves the final Report (the "Approved Report"), it shall be attached as "Appendix C" and incorporated into this Order.

VIII. 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, that further work is necessary.

IX. Within 30 calendar days after receipt of the Department's approval of the final Report, Respondent shall submit a draft of the Feasibility Study (the "FS") evaluating on-Site and off-Site remedial actions to eliminate, to the maximum extent practicable, all health and environmental hazards and potential hazards attributable to the Site. The FS shall be 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 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.

The FS shall be performed in a manner that is consistent with CERCLA, the NCP of March 8, 1990, 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 guidance documents in effect at the time the RI/FS Work Plan is submitted.

X. After receipt of the draft of the FS, the Department shall determine if the FS was prepared in accordance with this Order, and shall provide written comments within 45 calendar days.

Within 30 calendar days after receipt of notice of comments, Respondent shall revise the FS in accordance with the Department's specific objections and submit a final FS.

After receipt of the final FS, the Department shall notify Respondent in writing within 30 calendar days of its approval or disapproval of the final FS.

If the Department disapproves the final FS, the Respondent shall be deemed to be in violation of this Order subject to the dispute resolution procedure in ¶ XX.

If the Department approves the final FS (the "Approved Feasibility Study"), it shall be attached as "Appendix D" and incorporated into this Order.

XI. Within 30 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 of March 8, 1990, 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 E" and incorporated into this Order.

XII. The Department shall have the right to obtain split samples, duplicate samples, or both, of all substances and materials sampled by Respondent.

XIII. If the Department initiates sampling, the Respondent shall have the right to obtain split samples, duplicate samples, or both, of all substances and material sampled by the Department.

XIV. The Respondent and the Department shall make the laboratory analytical data package of any sampling results available to each other.

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

XVI. Respondent shall use best efforts to obtain whatever permits, easements, rights-of way, rights-of-entry, approvals or authorizations that are necessary to perform Respondent's obligations under this Order. If any access required to perform this Order is not obtained despite best efforts within 30 days of the effective date of this Order, or within 30 days of the date the Department notifies the Respondent in writing that additional access beyond that previously secured is necessary, Respondent shall promptly notify the Department, and shall include in that notification a summary of the steps Respondent has taken to attempt to obtain access. The Department may, as it deems appropriate, assist Respondent in obtaining access. Respondent shall reimburse the Department, in accordance with the procedures in

¶ XVIII. for all costs incurred by the Department in obtaining access, including, but not limited to, attorneys fees.

XVII. 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 Respondents's compliance with this Order. During implementation of the RI/FS, Respondent shall provide the Department with suitable office space at the Site, if available, and access to a telephone, and shall permit the Department full access to all technical records and job meetings related to this Order. The Department agrees that such inspections, sampling and testing shall be made during normal business hours, whenever possible, and the Department's representatives shall be accompanied by Respondent's representatives, whenever possible, during such inspections, sampling and testing.

XVIII. Within 30 calendar days after the Department's approval of the Remedial Investigation Report, or 30 calendar days after receipt of an invoice from the Department, whichever is later, Respondent shall pay to the Department a sum of money which shall be determined by the Department and which shall represent reimbursement for the expenses including, but not limited to, direct labor, overhead,

analytical costs and contractor costs incurred by the State of New York for reviewing the Report and overseeing the Remedial Investigation. Invoicing of costs shall include an accounting of personal services indicating the employee name, title, biweekly salary, and time spent (in hours) on the project during the billing period. The Department's approved fringe benefit and indirect costs rates shall be applied. Non-personal service costs shall be summarized by category of expense (e.g., supplies, materials, travel, contractual). Payment shall be to:

Bureau of Program Management
Division of Hazardous Waste Remediation
Department of Environmental Conservation
50 Wolf Road - Room 609
Albany, N.Y. 12233-5500

A photocopy of the check shall be sent to:

Rosalie K. Rusinko, Esq.
Division of Environmental Enforcement
Department of Environmental Conservation
202 Mamaroneck Avenue - Room 304
White Plains, N.Y. 10601-5381

XIX. Respondent shall not suffer any penalty under this Order, or be subject to any proceeding or action, if it cannot comply with any requirements of this Order because of an act of God, war, riot, or because of any condition or event entirely beyond the control of Respondent. 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.

Increased costs or expenses of any work to be performed under this Order, the financial inability of Respondent to perform such work, the failure of Respondent to make complete and timely application for any required approval or permit, and nonattainment of the goals, standards and requirements of this Order do not constitute conditions or events warranting the relief set forth above.

XX. The failure of the Respondent to comply with any term of this Order shall be a violation of this Order and the ECL subject to the following dispute resolution procedure.

The Department and Respondent shall attempt to resolve expeditiously and informally any disagreements concerning implementation of this Order or any work required under this Order. In the event any dispute arising under this Order is not resolved expeditiously through informal means, either party, desiring dispute resolution under this paragraph shall give prompt written notice to the other party.

Within 10 calendar days of the service of notice of dispute pursuant to this paragraph, the party which gave the notice shall serve on the other party a written statement of the issues in dispute, the relevant facts upon which the dispute is based, and factual data, analysis or opinion supporting its position, and all supporting documentation on which such party relies (hereinafter called the "Statement of Position"). The other party shall serve its Statement of Position, including supporting documentation, no later than 10

calendar days after receipt of the complaining party's Statement of Position. In the event that these 10-day time periods for exchange of Statement of Position may cause a delay in the work being performed under this Order, the time periods may be shortened upon and in accordance with notice by the Department.

An administrative record of any dispute under this paragraph shall be maintained by the Department. The record shall include the written notification of such dispute, the Statements of Position served pursuant to the preceding subparagraph, and any other relevant information. The record shall be available for review by all parties.

Upon review of the administrative record, the Commissioner or his designee shall issue a final decision and order resolving the dispute. With respect to the final determination of the Commissioner or his designee, the Respondent shall have those rights granted pursuant to Article 78 of the Civil Practice Law and Rules (CPLR) of New York, provided that a Petition is filed within 10 calendar days of receipt of final decision and order issued by the Commissioner or his designee.

The invocation of the procedures stated in this paragraph shall not extend or postpone the Respondent's obligations under this Order with respect to the disputed item, unless and until the Department finds, or the Court orders, otherwise.

XXI. Nothing contained in this Order shall be construed as barring, diminishing, adjudicating or in any way affecting:

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

b. the Department's right to enforce this Order against Respondent, its directors, officers, 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 directors, officers, employees, servants, agents, successors and assigns with respect to claims for natural resources damages. These damages are for injury to, destruction, or loss of natural resources at the Site or in the vicinity of the Site resulting from the release or threatened release of hazardous wastes or constituents at the Site. Damages also include the reasonable costs of assessing such injury, destruction, or loss resulting from such release;

d. the Department's right to bring any action or proceeding against Respondent, its directors, officers, 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.

XXII. Respondent reserves all rights it may have to oppose and defend against any Department action or proceeding.

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

XXIV. Nothing in this Order shall be construed to preclude Respondent from pursuing claims or other actions for contribution or indemnification against any other potentially responsible party.

XXV. 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 directors, officers, employees, servants, agents, successors or assigns.

XXVI. The effective date of this Order shall be the date it is signed by the Commissioner or his designee. The Department shall give the Respondent timely oral notification of the signing date.

XXVII. 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. The written application shall be delivered or mailed to:

Rosalie K. Rusinko, Esq.
Division of Environmental Enforcement
NYS Dept. of Environmental Conservation
202 Mamaroneck Avenue - Room 304
White Plains, N.Y. 10601-5381

with a copy to:

James Quinn
Bureau of Eastern Remedial Action
NYS Department of Environmental Conservation
50 Wolf Road - Room 222
Albany, N.Y. 12233-7010

XXVIII. Within 30 calendar days after the effective date of this Order, Respondent shall file a Declaration of Covenants and Restrictions with the Suffolk County Clerk to give all parties who may acquire any interest in the Site notice of this Order.

XXIX. 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 calendar days prior to the conveyance, notify the Department in writing of the identity of the transferee and of the nature and date of the conveyance and shall notify the transferee in writing, with a copy to the Department and the parties named in Paragraph XXXII, of the applicability of this Order.

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

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

1. Four copies to:

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

2. Two copies to:

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

3. One copy to:

Rosalie K. Rusinko, Esq.
Division of Environmental Enforcement
NYS Department of Environmental Conservation
202 Mamaroneck Avenue - Room 304
White Plains, N.Y. 10601-5381

4. One copy to:

James Quinn
Bureau of Eastern Remedial Activities
NYS Department of Environmental Conservation
50 Wolf Road - Room 222
Albany, N.Y. 12233-7010

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

Rosalie K. Rusinko, Esq.
Division of Environmental Enforcement
NYS Dept. of Environmental Conservation
202 Mamaroneck Avenue - Room 304
White Plains, N.Y. 10601-5381

with copies to the Department's project manager:

James Quinn
Bureau of Eastern Remedial Action
NYS Department of Environmental Conservation
50 Wolf Road - Room 222
Albany, N.Y. 12233-7010

However, day to day considerations of a purely technical nature may be addressed by the Respondent's consultant directly to the project manager.

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

B. Michael Hodge
Assistant General Counsel
The Fairchild Corporation
P.O. Box 10803
300 West Service Road
Chantilly, Virginia 22021

with a copy to:

Debra L. Rothberg, Esq.
Winston and Strawn
175 Water Street
New York, NY 10038-4981

XXXIV. The Department and Respondent respectively reserve the right to designate other or additional addressees on notice to the other.

XXXV. Respondent and its successors and assigns shall be bound by this Order. Respondent, through its officers, directors, agents, servants, and employees shall be responsible for implementing the terms of this Order.

XXXVI. 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 regarding 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. The Department shall cooperate with Respondent in providing such formal written approvals.

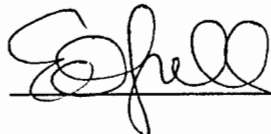
DATED:

3/20

, New York
, 1992

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

By: EDWARD O. SULLIVAN
Deputy Commissioner
New York State Department of
Environmental Conservation



TO: B. Michael Hodge
Assistant General Counsel
The Fairchild Corporation
P.O. Box 10803
300 West Service Road
Chantilly, Virginia 22021

CONSENT BY RESPONDENT

FAIRCHILD INDUSTRIES, INC.

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

By: John D. Jackson
~~Donald B. Miller~~
John D. Jackson Secretary
Title: Senior Vice President and General
Counsel
Date: MAR. 9, 1992

STATE OF VIRGINIA)
COUNTY OF FAIRFAX) S.S.:

On this 9th day of March, 1992, before me personally came John D. Jackson, to me known, who being duly sworn, did depose and say that he resides in Arlington Virginia; that he is the Vice President - Secretary of Fairchild Industries, Inc., the corporation described herein and which executed the foregoing instrument; that he knew the seal of said corporation; that the seal affixed to this instrument was such corporate seal; that it was so affixed by the order of the Board of Directors of said corporation, and that he signed his name thereto by like order.

Sheri L. Livingston
Notary Public

\MAINPT.IFS 02/27/92

SHERI L. LIVINGSTON
Notary Public
Commonwealth of VA
My Comm. Exp. June 25, 1993

DWG DATE: 2/8/92

PRJCT NO.: NY09601

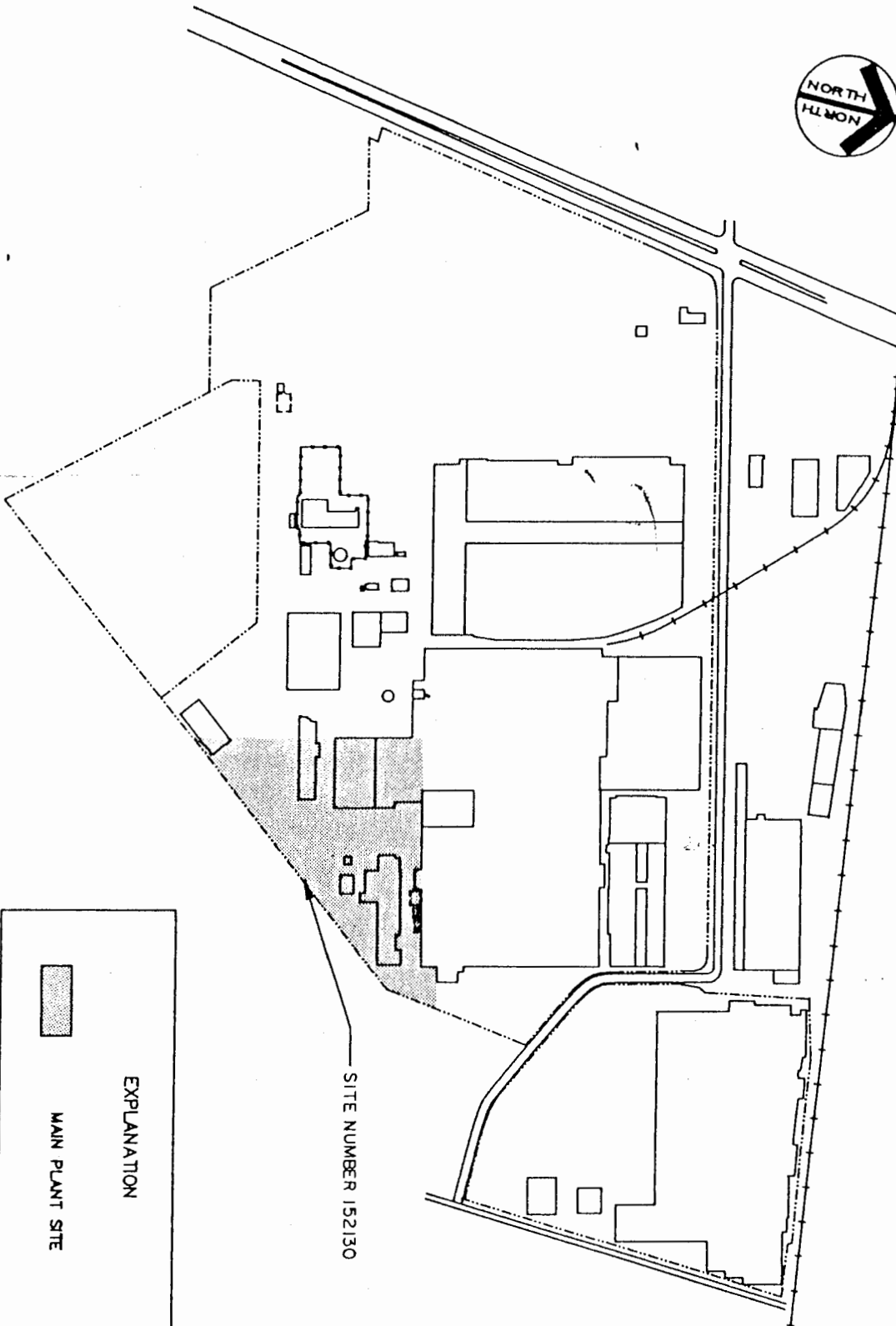
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DRAWING: BIGFAIR2

CHECKED: V. GLASSER

APPROVED: V. GLASSER

DRAFTER: EDULLICA BYRNES



MAIN PLANT SITE

FIGURE