

NEW YORK STATE 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
by

**ORDER ON CONSENT
and
ADMINISTRATIVE
SETTLEMENT**

Index # A3-0655-12-10

International Business Machines, Corporation,

Respondent.

Site # 314076

WHEREAS,

1. A. The New York State Department of Environmental Conservation ("Department") is responsible for inactive hazardous waste disposal site remedial programs pursuant to Article 27, Title 13 of the Environmental Conservation Law ("ECL") and Part 375 of Title 6 of the Official Compilation of Codes, Rules and Regulations ("6 NYCRR") and may issue orders consistent with the authority granted to the Commissioner by such statute.

B. The Department is responsible for carrying out the policy of the State of New York to conserve, improve and protect its natural resources and environment and control water, land, and air pollution consistent with the authority granted to the Department and the Commissioner by Article 1, Title 3 of the ECL.

C. This Order is issued pursuant to the Department's authority under, inter alia, ECL Article 27, Title 13 and ECL 3-0301, and resolves Respondent's liability to the State as provided at 6 NYCRR 375-1.5(b)(5).

2. International Business Machines, Corporation ("IBM" or "Respondent") is a company existing under the laws of the State of New York. IBM leased the Site is located at Neptune Road, Poughkeepsie, Dutchess County, State of New York (hereinafter the "Site") from the 1950's until 1993 and IBM manufactured printed circuits and stored halogenated solvents on the Site. Exhibit "A" is a map of the Site showing its general location.

3. The Site is currently listed in the *Registry of Inactive Hazardous Waste Disposal Sites in New York State* as Site Number 314076 with a Classification of 04 pursuant to ECL 27-1305.

4. Neptune Capital Investors, LLC acquired the Site from South Road Associates in 2005. Currently, the Site is owned by Neptune Capital Investors, LLC (hereinafter the "Owner").

5. Prior to 1981 IBM disposed of certain hazardous and industrial wastes at the Site. IBM primarily used the Site for manufacturing, parts cleaning and for mainframe computer and ancillary equipment parts salvage. The hazardous and industrial wastes that were disposed included, but were not necessarily limited to, tetrachloroethylene, trichloroethene, methylene chloride, trichloroethylene, dichlorobenzenes and other organic chemicals and solvents.

6. From approximately 1981 through 1993 IBM undertook remedial investigations and remedial actions on their own accord, without a consent order, but with the Department's oversight. Based on IBM's remedial actions the Department reclassified the Site from a class 2a site to a class 4 site in 1993. Continuous management and operation and maintenance plans (O&M plan) have continued at the Site since 1993.

7. A remedial investigation and remedial design was implemented and completed in 1984 under the supervision of a NYSDEC on-site monitor. In 1995 the United States Environmental Protection Agency issued a Final Screening Site Inspection and determined that no further remedial action was required.

8. An O&M Plan, dated February 24, 1994, outlines the groundwater collection and treatment system that was installed in 1993 at the Site. That O&M Plan has been updated and approved several times since its implementation, including the most recent updated approved by NYSDEC on April 24, 2004.

9. In 2008 the Site was identified as a soil vapor legacy site by the New York State Department of Health. The Owner of the Site conducted an investigation, to which it was determined that mitigation of the Site is necessary when the Site is redeveloped.

10. The Department and the Respondent acknowledge that the goal of this Order shall be to develop, update and implement a Site Management Plan (SMP) for the Site as the final stage of the remedial program. This will entail implementing the legacy review, updating the SMP to today's standards, implementing an institutional control, implementing site management and any other actions that are necessary to protect public health and the environment.

11. The current Department approved SMP is hereby superseded by this Order. Activities taken by Respondents at the Site will be subject to the terms and provisions of this Order and will be taken pursuant to an updated Department approved SMP to be developed under and in accordance with the terms of this Order.

12. The Department, by executing this Order, in no way waives its rights, authority or obligations to require the Respondent, or any other responsible party, to perform additional investigations and remediation.

13. The Respondent, by executing this Order, in no way waives its right to contest matters not specifically conceded in this Order, or with respect to any subsequent Order or Orders regarding the Site.

14. Respondent consents to the issuance of this Order without (i) an admission or finding of liability, fault, wrongdoing, or violation of any law, regulation, permit, order, requirement, or standard of care of any kind whatsoever; (ii) an acknowledgment that there has been a release or threatened release of hazardous waste at or from the Site; and/or (iii) an acknowledgment that a release or threatened release of hazardous waste at or from the Site constitutes a significant threat to the public health or environment.

15. Solely with regard to the matters set forth below, Respondent hereby waives any right to a hearing as may be provided by law, consents to the issuance and entry of this Order, and agrees to be bound by its terms. Respondent consents to and agrees not to contest the authority or jurisdiction of the Department to issue or enforce this Order, and agrees not to contest the validity of this Order or its terms or the validity of data submitted to the Department by Respondent pursuant to this Order.

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

I. Initial Submittals

A. Not Applicable. As discussed above, Respondent has previously undertaken substantial work at and in the vicinity of the Site. Respondent's initial submittals are summarized in Exhibit "B".

II. Development, Performance, and Reporting of Work Plans

A. Work Plans

All activities at the Site that comprise any element of an Inactive Hazardous Waste Disposal Site Remedial Program shall be conducted pursuant to one or more Department-approved work plans ("Work Plan" or "Work Plans") and this Order and all activities shall be consistent with the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), 40 C.F.R. Part 300, as required under CERCLA, 42 U.S.C. § 9600 et seq. The Work Plan(s) under this Order shall address both on-Site and off-Site conditions and shall be developed and implemented in accordance with 6 NYCRR § 375-1.6(a). All Department-approved Work Plans shall be incorporated into and become enforceable parts of this Order. Upon approval of a Work Plan by the Department, Respondent shall implement such Work Plan in accordance with the schedule contained therein. Nothing in this Subparagraph shall mandate that any particular Work Plan be submitted.

Each Work Plan submitted shall use one of the following captions on the cover page:

1. Site Characterization ("SC") Work Plan: a Work Plan whose objective is to identify the presence of any hazardous waste disposal at the Site;

2. Remedial Investigation/Feasibility Study ("RI/FS") Work Plan: a Work Plan whose objective is to perform a Remedial Investigation and a Feasibility Study;

3. Interim Remedial Measure (“IRM”) Work Plan: a Work Plan whose objective is to provide for an Interim Remedial Measure;

4. Remedial Design/Remedial Action (“RD/RA”) Work Plan: a Work Plan whose objective is to provide for the development and implementation of final plans and specifications for implementing the remedial alternative set forth in the ROD; or

5. Site Management Plan: a Work Plan whose objective is to identify and implement the institutional and engineering controls required for the Site, as well as any necessary monitoring and/or operation and maintenance of the remedy.

B. Submission/Implementation of Work Plans

1. (a) An updated Site Management Plan (“SMP”) shall be submitted to the Department within sixty (60) Days after the effective date of this Order.

(b) The Department may request that Respondent submit additional or supplemental Work Plans for the Site. Within thirty (30) Days after the Department’s written request, Respondent shall advise the Department in writing whether it will submit and implement the requested additional or supplemental Work Plan or whether it elects to terminate this Order pursuant to Paragraph XIII. If Respondent elects to submit and implement such Work Plan, Respondent shall submit the requested Work Plan within sixty (60) Days after such election. If Respondent elects to terminate this Order or fails to make a timely election, this Order shall terminate pursuant to Paragraph XIII.

(c) Respondent may opt to propose one or more additional or supplemental Work Plans (including one or more IRM Work Plans) at any time, which the Department shall review for appropriateness and technical sufficiency.

(d) Any request made by the Department under Subparagraph II.B.1.(b) shall be subject to dispute resolution pursuant to Paragraph XII.

2. A Professional Engineer must stamp and sign all Work Plans other than SC or RI/FS Work Plans.

3. During all field activities conducted under this Order, Respondent shall have on-Site a representative who is qualified to supervise the activities undertaken. Such representative may be an employee or a consultant retained by Respondent to perform such supervision as set forth in 6 NYCRR Part 375-1.6(a)(3).

C. Modifications to Work Plans

The Department shall notify Respondent in writing if the Department determines that any element of a Department-approved Work Plan needs to be modified in order to achieve the objectives of the Work Plan as set forth in Subparagraph II.A or to ensure that the Remedial Program otherwise protects human health and the environment. Upon receipt of such notification, Respondent shall, subject to Respondent's right to terminate pursuant to Paragraph XIII, provide written notification as provided at 6 NYCRR 375-1.6(d)(3) as to whether it will modify the Work Plan, or invoke dispute resolution

D. Submission of Final Reports and Annual Reports

This Site requires site management; therefore the Respondent shall submit an annual report by the March 31 for the previous calendar year. Such annual report shall be signed by a Professional Engineer or by such other qualified environmental professional as the Department may find acceptable and shall contain a certification as provided at 6 NYCRR 375-1.8(h)(3). Respondent may petition the Department for a determination that the institutional and/or engineering controls may be terminated. Such petition must be supported by a statement by a Professional Engineer that such controls are no longer necessary for the protection of public health and the environment. The Department shall not unreasonably withhold its approval of such petition.

E. Review of Submittals other than Progress Reports and Health and Safety Plans

1. The Department shall make a good faith effort to review and respond in writing to each submittal Respondent makes pursuant to this Order within sixty (60) Days. The Department's response shall include an approval or disapproval of the submittal, in whole or in part. All Department-approved submittals shall be incorporated into and become an enforceable part of this Order.

2. If the Department disapproves a submittal, it shall specify the reasons for its disapproval. Within fifteen (15) Days after the date of the Department's written notice that Respondent's submittal has been disapproved, Respondent shall notify the Department of its election as provided at 6 NYCRR 375-1.6(d)(4). If Respondent elects to modify the submittal, Respondent shall, within thirty (30) Days after such election, make a revised submittal that addresses all of the Department's stated reasons for disapproving the first submittal. In the event that Respondent's revised submittal is disapproved, the Department shall set forth its reasons for such disapproval in writing and Respondent shall be in violation of this Order unless it invokes dispute resolution pursuant to Paragraph XII and its position prevails. Failure to make an election or failure to comply with the election is a violation of this Order.

G. Release and Covenant Not to Sue

Upon the Department's issuance of a Certificate of Completion as provided at 6 NYCRR 375-1.9 and 375-2.9, Respondent shall obtain the benefits conferred by such provisions, subject to the terms and conditions described therein.

III. Progress Reports

Not applicable

IV. Penalties

A. 1. Respondent's failure to comply with any term of this Order constitutes a violation of this Order, the ECL, and 6 NYCRR 375-2.11(a)(4). Nothing herein abridges Respondent's right to contest any allegation that it has failed to comply with this Order.

2. Payment of any penalties shall not in any way alter Respondent's obligations under this Order.

B. 1. Respondent shall not suffer any penalty or be subject to any proceeding or action in the event it cannot comply with any requirement of this Order as a result of any Force Majeure Event as provided at 6 NYCRR 375-1.5(b)(4). Respondent must use best efforts to anticipate the potential Force Majeure Event, best efforts to address any such event as it is occurring, and best efforts following the Force Majeure Event to minimize delay to the greatest extent possible. "Force Majeure" does not include Respondent's economic inability to comply with any obligation, the failure of Respondent to make complete and timely application for any required approval or permit, and non-attainment of the goals, standards, and requirements of this Order.

2. Respondent shall notify the Department in writing within five (5) Days of the onset of any Force Majeure Event. Failure to give such notice within such five (5) Day period constitutes a waiver of any claim that a delay is not subject to penalties. Respondent shall be deemed to know of any circumstance which it, any entity controlled by it, or its contractors knew or should have known.

3. Respondent shall have the burden of proving by a preponderance of the evidence that (i) the delay or anticipated delay has been or will be caused by a Force Majeure Event; (ii) the duration of the delay or the extension sought is warranted under the circumstances; (iii) best efforts were exercised to avoid and mitigate the effects of the delay; and (iv) Respondent complied with the requirements of Subparagraph IV.B.2 regarding timely notification.

4. If the Department agrees that the delay or anticipated delay is attributable to a Force Majeure Event, the time for performance of the obligations that are affected by the Force

Majeure Event shall be extended for a period of time equivalent to the time lost because of the Force Majeure event, in accordance with 375-1.5(4).

5. If the Department rejects Respondent's assertion that an event provides a defense to non-compliance with this Order pursuant to Subparagraph IV.B, Respondent shall be in violation of this Order unless it invokes dispute resolution pursuant to Paragraph XII and Respondent's position prevails.

V. Entry upon Site

A. Respondent hereby consents, upon reasonable notice under the circumstances presented, to entry upon the Site (or areas in the vicinity of the Site which may be under the control of Respondent) by any duly designated officer or employee of the Department or any State agency having jurisdiction with respect to matters addressed pursuant to this Order, and by any agent, consultant, contractor, or other person so authorized by the Commissioner, all of whom shall abide by the health and safety rules in effect for the Site, for inspecting, sampling, copying records related to the contamination at the Site, testing, and any other activities necessary to ensure Respondent's compliance with this Order. Upon request, Respondent shall (i) provide the Department with suitable work space at the Site, including access to a telephone, to the extent available, and (ii) permit the Department full access to all non-privileged records relating to matters addressed by this Order. Raw data is not considered privileged and that portion of any privileged document containing raw data must be provided to the Department. In the event Respondent is unable to obtain any authorization from third-party property owners necessary to perform its obligations under this Order, the Department may, consistent with its legal authority, assist in obtaining such authorizations.

B. The Department shall have the right to take its own samples and scientific measurements and the Department and Respondent shall each have the right to obtain split samples, duplicate samples, or both, of all substances and materials sampled. The Department shall make the results of any such sampling and scientific measurements available to Respondent.

VI. Payment of State Costs

A. Within forty-five (45) days of the effective date of this Order, Respondent shall pay to the Department \$10,000. This sum of money shall represent reimbursement for past State Costs as provided at 6 NYCRR 375-1.5(b)(3) and shall be accepted as settlement to all previous past costs associated with this Site.

B. Within forty-five (45) Days after receipt of an itemized invoice from the Department, Respondent shall pay to the Department a sum of money which shall represent reimbursement for State Costs, other than those identified in Subparagraph VI.A, for work performed at or in connection with the Site through and including the Termination Date, as provided at 6 NYCRR 375-1.5(b)(3).

C. Costs shall be documented as provided by 6 NYCRR 375-1.5(b)(3)(ii). The Department shall not be required to provide any other documentation of costs, provided however, that the Department's records shall be available consistent with, and in accordance with, Article 6 of the Public Officers Law.

D. Such invoice shall be sent to Respondent at the following address:

Michael Domitrovits
International Business Machines Corp.
2455 South Road- P536
Poughkeepsie, New York 12601
domitrov@us.ibm.com

E. Each such payment shall be made payable to the New York State Department of Environmental Conservation and shall be sent to:

**Bureau of Program Management
Division of Environmental Remediation
New York State Department of Environmental Conservation
625 Broadway
Albany, New York 12233-7012
Attn: Bureau Director**

F. Each party shall provide written notification to the other within ninety (90) Days of any change in the foregoing addresses.

G. Respondent may contest invoiced costs as provided at 6 NYCRR 375-1.5(b)(3)(v) and (vi).

VII. Reservation of Rights

A. Except as provided at 6 NYCRR 375-1.9 and 375-2.9, nothing contained in this Order shall be construed as barring, diminishing, adjudicating, or in any way affecting any of the Department's rights or authorities, including, but not limited to, the right to require performance of further investigations and/or response action(s), to recover natural resource damages, and/or to exercise any summary abatement powers with respect to any person, including Respondent.

B. Except as otherwise provided in this Order, Respondent specifically reserves all rights and defenses under applicable law respecting any Departmental assertion of remedial liability and/or natural resource damages against Respondent, and further reserves all rights respecting the enforcement of this Order, including the rights to notice, to be heard, to appeal, and to any other due

process. The existence of this Order or Respondent's compliance with it shall not be construed as an admission of liability, fault, wrongdoing, or breach of standard of care by Respondent, and shall not give rise to any presumption of law or finding of fact, or create any rights, or grant any cause of action, which shall inure to the benefit of any third party. Further, Respondent reserves such rights as it may have to seek and obtain contribution, indemnification, and/or any other form of recovery from its insurers and from other potentially responsible parties or their insurers for past or future response and/or cleanup costs or such other costs or damages arising from the contamination at the Site as may be provided by law, including but not limited to rights of contribution under section 113(f)(3)(B) of CERCLA, 42 U.S.C. § 9613(f)(3)(B).

VIII. Indemnification

Respondent shall indemnify and hold the Department, the State of New York, the Trustee of the State's natural resources, and their representatives and employees harmless as provided by 6 NYCRR 375-2.5(a)(3)(i).

IX. Public Notice

A. Within thirty (30) Days after the effective date of this Order, Respondent shall provide notice as required by 6 NYCRR 375-1.5(a). Within sixty (60) Days of such filing, Respondent shall provide the Department with a copy of such instrument certified by the recording officer to be a true and faithful copy.

B. If Respondent proposes to transfer by sale or lease the whole or any part of Respondent's interest in the Site, or becomes aware of such transfer, Respondent shall, not fewer than forty-five (45) Days before the date of transfer, or within forty-five (45) Days after becoming aware of such conveyance, notify the Department in writing of the identity of the transferee and of the nature and proposed or actual date of the conveyance, and shall notify the transferee in writing, with a copy to the Department, of the applicability of this Order. However, such obligation shall not extend to a conveyance by means of a corporate reorganization or merger or the granting of any rights under any mortgage, deed, trust, assignment, judgment, lien, pledge, security agreement, lease, or any other right accruing to a person not affiliated with Respondent to secure the repayment of money or the performance of a duty or obligation.

X. Environmental Easement

A. If a Department-approved final engineering report of Site Management Work Plan for the Site relies upon one or more institutional and/or engineering controls, Respondent (or the Owner of the Site) shall submit to the Department for approval an Environmental Easement to run with the land in favor of the State which complies with the requirements of ECL Article 71, Title 36, and 6 NYCRR 375-1.8(h)(2). Upon acceptance of Environmental Easement by the State, Respondent shall comply with the requirements of 6 NYCRR 375-1.8(h)(2).

B. If the ROD or Site Management Work Plan provide for no action other than implementation of one or more institutional controls, Respondent shall cause an environmental easement to be recorded under the provisions of Subparagraph X.A. If Respondent does not cause such environmental easement to be recorded in accordance with 6 NYCRR 375-1.8(h)(2), Respondent will not be entitled to the benefits conferred by 6 NYCRR 375-1.9 and 375-2.9.

XI. Communications

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

1. Communication from Respondent shall be sent to:

**Michael J. Ryan, P.E.
Director, Remedial Bureau C
NYS Department of Environmental Conservation
Division of Environmental Remediation
625 Broadway
Albany, NY 12233**

With copies to: **Department of Environmental Conservation
Region 3
21 South Putt Corners Road
New Paltz, NY 12561-1696
Attn: Division of Environmental Remediation
Regional Hazardous Waste Engineer**

Note: two hard copies (one unbound) of work plans are required, as well as one electronic copy.

**Michael J. Ryan, P.E.
Director, Remedial Bureau C
NYS Department of Environmental Conservation
Division of Environmental Remediation
625 Broadway
Albany, NY 12233**

with copies to: **Steven Bates
Bureau of Environmental Exposure Investigation
New York State Department of Health
Flanigan Square
547 River Street
Troy, New York 12180-2216
smb02@health.state.ny.us**

Dena Putnick, Esq. (correspondence only)
New York State Department of Environmental Conservation
Office of General Counsel
625 Broadway, 14th Floor
Albany, New York 12233-1500
dnpurtnic@gw.dec.state.ny.us

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

Michael Domitrovits
International Business Machines Corp.
2455 South Road- P536
Poughkeepsie, New York 12601
domitrov@us.ibm.com

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

C. Each party shall notify the other within ninety (90) Days after any change in the addresses in this Paragraph XI or in Paragraph VI.

XII. Dispute Resolution

In the event disputes arise under this Order, Respondent may, within fifteen (15) Days after Respondent knew or should have known of the facts which are the basis of the dispute, initiate dispute resolution in accordance with the provisions of 6 NYCRR 375-1.5(b)(2). Nothing contained in this Order shall be construed to authorize Respondent to invoke dispute resolution with respect to the remedy selected by the Department in the ROD or any element of such remedy, nor to impair any right of Respondent to seek judicial review of the Department's selection of any remedy.

XIII. Termination of Order

- A. This Order will terminate upon the earlier of the following events:
1. Not applicable to this Order requiring Site management of the Site; or
 2. The Department's written determination that Respondent has completed all phases of the Remedial Program (including Site Management), in which event the termination shall be effective on the 5th Day after the date of the Department's approval of the final report relating to the final phase of the Remedial Program.

B. Notwithstanding the foregoing, the provisions contained in Paragraphs VI and VIII shall survive the termination of this Order and any violation of such surviving Paragraphs shall be a violation of this Order, the ECL, and 6 NYCRR 375-2.11(a)(4), subjecting Respondent to penalties as provided under Paragraph IV so long as such obligations accrued on or prior to the Termination Date.

C. If the Order is terminated pursuant to Subparagraph XIII.A.1, neither this Order nor its termination shall affect any liability of Respondent for remediation of the Site and/or for payment of State Costs, including implementation of removal and remedial actions, interest, enforcement, and any and all other response costs as defined under CERCLA, nor shall it affect any defenses to such liability that may be asserted by Respondent. Respondent shall also ensure that it does not leave the Site in a condition, from the perspective of human health and environmental protection, worse than that which existed before any activities under this Order were commenced. Further, the Department's efforts in obtaining and overseeing compliance with this Order shall constitute reasonable efforts under law to obtain a voluntary commitment from Respondent for any further activities to be undertaken as part of a Remedial Program for the Site.

XIV. Miscellaneous

A. Respondent agrees to comply with and be bound by the provisions of 6 NYCRR Subparts 375-1 and 375-2; the provisions of such Subparts that are referenced herein are referenced for clarity and convenience only and the failure of this Order to specifically reference any particular regulatory provision is not intended to imply that such provision is not applicable to activities performed under this Order.

B. The Department may exempt Respondent from the requirement to obtain any state or local permit or other authorization for any activity conducted pursuant to this Order in accordance with 6 NYCRR 375-1.12(b), (c), and (d).

C. 1. Respondent shall use best efforts to obtain all Site access, permits, easements, approvals, institutional controls, and/or authorizations necessary to perform Respondent's obligations under this Order, including all Department-approved Work Plans and the schedules contained therein. If, despite Respondent's best efforts, any access, permits, easements, approvals, institutional controls, or authorizations cannot be obtained, Respondent shall promptly notify the Department and include a summary of the steps taken. The Department may, as it deems appropriate and within its authority, assist Respondent in obtaining same.

2. If an interest in property is needed to implement an institutional control required by a Work Plan and such interest cannot be obtained, the Department may require Respondent to modify the Work Plan pursuant to 6 NYCRR 375-1.6(d)(3) to reflect changes necessitated by Respondent's inability to obtain such interest.

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

E. 1. The terms of this Order shall constitute the complete and entire agreement between the Department and Respondent concerning the implementation of the activities required by this Order. No term, condition, understanding, or agreement purporting to modify or vary any term of this Order shall be binding unless made in writing and subscribed by the party to be bound. No informal advice, guidance, suggestion, or comment by the Department shall be construed as relieving Respondent of Respondent's obligation to obtain such formal approvals as may be required by this Order. In the event of a conflict between the terms of this Order and any Work Plan submitted pursuant to this Order, the terms of this Order shall control over the terms of the Work Plan(s). Respondent consents to and agrees not to contest the authority and jurisdiction of the Department to enter into or enforce this Order.

2. i. Except as set forth herein, if Respondent desires that any provision of this Order be changed, Respondent shall make timely written application to the Commissioner with copies to the parties listed in Subparagraph XI.A.1.

ii. If Respondent seeks to modify an approved Work Plan, a written request shall be made to the Department's project manager, with copies to the parties listed in Subparagraph XI.A.1.

iii. Requests for a change to a time frame set forth in this Order shall be made in writing to the Department's project attorney and project manager; such requests shall not be unreasonably denied and a written response to such requests shall be sent to Respondent promptly.

F. 1. If there are multiple parties signing this Order, the term "Respondent" shall be read in the plural, the obligations of each such party under this Order are joint and several, and the insolvency of or failure by any Respondent to implement any obligations under this Order shall not affect the obligations of the remaining Respondent(s) under this Order.

2. If Respondent is a partnership, the obligations of all general partners (including limited partners who act as general partners) under this Order are joint and several and the insolvency or failure of any general partner to implement any obligations under this Order shall not affect the obligations of the remaining partner(s) under this Order.

3. Notwithstanding the foregoing Subparagraphs XIV.F.1 and 2, if multiple parties sign this Order as Respondents but not all of the signing parties elect to implement a Work Plan, all Respondents are jointly and severally liable for each and every obligation under this Order through the completion of activities in such Work Plan that all such parties consented to; thereafter, only those Respondents electing to perform additional work shall be jointly and severally liable under this Order for the obligations and activities under such additional Work Plan(s). The parties

electing not to implement the additional Work Plan(s) shall have no obligations under this Order relative to the activities set forth in such Work Plan(s). Further, only those Respondents electing to implement such additional Work Plan(s) shall be eligible to receive the Liability Limitation referenced in Paragraph II.G..

G. Respondent shall be entitled to receive contribution protection and/or to seek contribution to the extent authorized by ECL 27-1421(6) and 6 NYCRR 375-1.5(b)(5).

H. Unless otherwise expressly provided herein, terms used in this Order which are defined in ECL Article 27 or in regulations promulgated thereunder shall have the meaning assigned to them under said statute or regulations.

I. Respondent's obligations under this Order represent payment for or reimbursement of response costs, and shall not be deemed to constitute any type of fine or penalty.

J. Respondent and Respondent's successors and assigns shall be bound by this Order. Any change in ownership or corporate status of Respondent shall in no way alter Respondent's responsibilities under this Order.

K. This Order may be executed for the convenience of the parties hereto, individually or in combination, in one or more counterparts, each of which shall be deemed to have the status of an executed original and all of which shall together constitute one and the same.

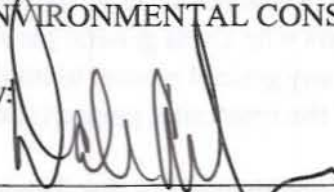
L. The effective date of this Order is the 10th Day after it is signed by the Commissioner or the Commissioner's designee.

DATED:

MAY 18 2011

JOE MARTENS
COMMISSIONER
NEW YORK STATE DEPARTMENT OF
ENVIRONMENTAL CONSERVATION

By:


Dale A. Desnoyers, Director
Division of Environmental Remediation

CONSENT BY RESPONDENT

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

International Business Machines, Corporation

By: Michael A. Desens

Title: Senior Location Executive

Date: 5/10/2011

STATE OF NEW YORK)
) ss:
COUNTY OF Dutchess)

On the 10th day of May, in the year ~~2010~~ ²⁰¹¹, before me, the undersigned, personally appeared Michael A. Desens, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name is ~~(are)~~ subscribed to the within instrument and acknowledged to me that he/~~she/they~~ executed the same in his/~~her/their~~ capacity(ies), and that by his/~~her/their~~ signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Joanne L. Richardson
Signature and Office of individual
taking acknowledgment

JOANNE L. RICHARDSON
Notary Public, State of New York
Qualified in Dutchess County
Commission Expires 4/13/2015

EXHIBIT "A"

Map of Site

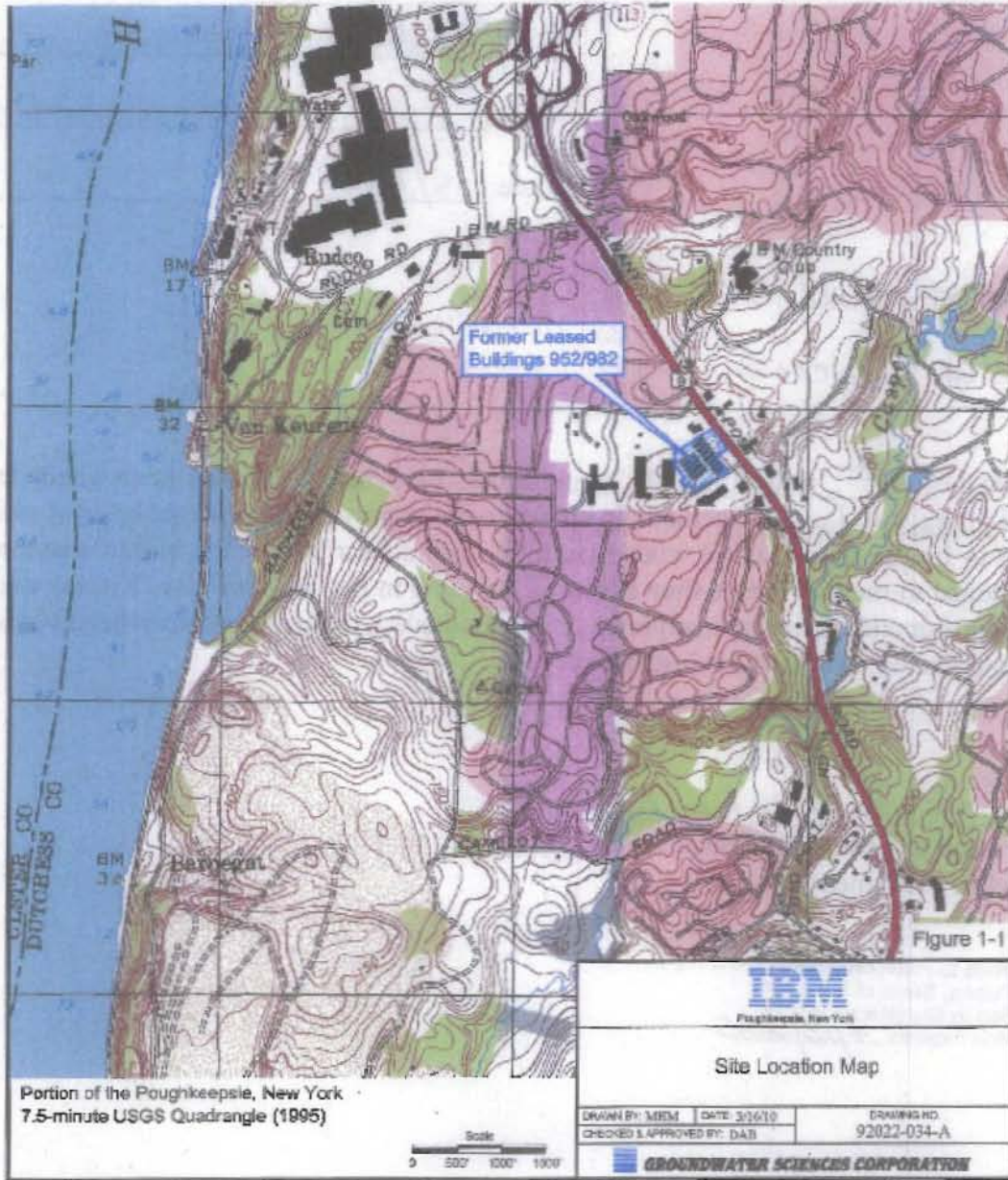


EXHIBIT "B"

IBM Poughkeepsie Correspondences/Reports Provided to NYSDEC Regarding Former Building 952/982		
REPORT CATALOG	REPORT DATE	Document Type
Hydrogeology and Chemistry of the Building 952 Area (Final Report)	3/17/1983	Report
Data Report for the 1982 Environmental Assessment Program	5/1/1983	Report
Data Report : Hydrogeology and Chemistry of the Building 952 Area	2/20/1984	Report
List of NYSDEC-submitted Reports for purpose of reclassification	1/31/1991	Correspondence
B952/982 Site Reclassification Petition, Vol. 1	3/8/1993	Report
B952/982 Site Reclassification Petition, Vol. 2	3/8/1993	Report
Petition to Reclassify the IBM B952/982 Site from a Class 2a to a Class 4 (Site Code: 314076)	3/8/1993	Correspondence
Supporting Certification Document for the B952/982 Site Reclassification Petition	5/20/1993	Correspondence
Excavation of Soils at IBM B952/982 Site	7/30/1993	Correspondence
Transmittal of Operations and Maintenance Plan and Groundwater Monitoring Data, First and Second Quarters 1993, IBM B952/982 Site, New York State Registry No. 314076	8/23/1993	Correspondence
B952/982 Leased Property Reclassification	10/1/1993	Correspondence
Transmittal of Groundwater Data, IBM B952/982	10/22/1993	Correspondence
Transmittal of Groundwater Data, IBM B952/982	10/25/1993	Correspondence
Transmittal of Groundwater Data, IBM B952/982	10/27/1993	Correspondence
Operation and Maintenance Manual, Groundwater Remediation System, Building 952/982	2/1/1994	Report
Operation and Maintenance Plan for the Groundwater Collection and Treatment System, IBM Building 952 and Building 982 Leased Property	2/24/1994	Report
1994 Annual Groundwater Monitoring Report for the Groundwater Collection and Treatment System, Former Building 952 and Building 982 Leased Property	3/31/1995	Report
1995 Annual Groundwater Monitoring Report for the Groundwater Collection and Treatment System, Former Building 952 and Building 982 Leased Property	3/22/1996	Report
1996 Annual Groundwater Monitoring Report for the Groundwater Collection and Treatment System, Former Building 952 and Building 982 Leased Property	3/26/1997	Report
1997 Annual Groundwater Monitoring Report for the Groundwater Collection and Treatment System, Former Building 952 and Building 982 Leased Property	3/30/1998	Report
1998 Annual Groundwater Monitoring Report for the Groundwater Collection and Treatment System, Former Building 952 and Building 982 Leased Property	3/31/1999	Report
Transmittal of Historical Groundwater Monitoring Data, Former Building 952/982 Site, Inactive Hazardous Waste Disposal Site 314076.	2/1/2000	Correspondence
1999 Annual Groundwater Monitoring Report for the Groundwater Collection and Treatment System, Former Building 952 and Building 982 Leased Property	3/31/2000	Report
2000 Annual Groundwater Monitoring Report for the Groundwater Collection and Treatment System, Former Building 952 and Building 982 Leased Property	3/30/2001	Report
Response to NYSDEC's Request to Consider Measures to Increase Rate of Mass Removal	5/4/2001	Correspondence

IBM Poughkeepsie Correspondences/Reports Provided to NYSDEC Regarding Former Building 952/982

REPORT CATALOG	REPORT DATE	Document Type
2001 Annual Groundwater Monitoring Report for the Groundwater Collection and Treatment System, Former Building 952 and Building 982 Leased Property	3/29/2002	Report
2002 Annual Groundwater Monitoring Report for the Groundwater Collection and Treatment System, Former Building 952 and Building 982 Leased Property	3/31/2003	Report
2003 Annual Groundwater Monitoring Report for the Groundwater Collection and Treatment System, Former Building 952 and Building 982 Leased Property	3/31/2004	Report
2004 Annual Groundwater Monitoring Report for the Groundwater Collection and Treatment System, Former Building 952 and Building 982 Leased Property	3/31/2005	Report
2005 Annual Groundwater Monitoring Report for the Groundwater Collection and Treatment System, Former Building 952 and Building 982 Leased Property	3/30/2006	Report
2006 Annual Groundwater Monitoring Report for the Groundwater Collection and Treatment System, Former Building 952 and Building 982 Leased Property	3/29/2007	Report
2007 Annual Groundwater Monitoring Report for the Groundwater Collection and Treatment System, Former Building 952 and Building 982 Leased Property	3/28/2008	Report
2008 Annual Groundwater Monitoring Report for the Groundwater Collection and Treatment System, Former Building 952 and Building 982 Leased Property	3/30/2009	Report
Response to NYSDEC Correspondence dated September 17, 2009 – Site Management Periodic Review – Neptune Road, Site No. 314076	10/13/2009	Correspondence
2009 Periodic Review Report for the Former Building 952 and Building 982 Leased Property (Site ID: 314076)	3/30/2010	Report