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FINAL - Fully Executed

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
and Article 71, Title 27 of the
Environmental Conservation Law
of the State of New York by

ORDER
ON
CONSENT

INDEX #
W3-0719-95-02

Rotron, Inc.

Respondent

Site # 3-56-009

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." This Order is issued pursuant to the Department's authority under, inter alia, ECL Article 27, Title 13 and ECL 3-0301.
2. Rotron, Inc. ("Respondent"), is a corporation with a facility in the Town of Woodstock, County of Ulster, State of New York. Respondent is a subsidiary of EG&G, Inc., which is located at 45 William Street, Wellesley, Massachusetts. Respondent engages in the manufacture and assembly of special purpose air moving devices at its Woodstock facility. The Rotron Woodstock property (hereinafter referred to as "the Site") is situated on approximately 95 acres in Ulster County, and is located at 9 Hasbrouck Lane in the Town of Woodstock, New York. A Site Location Map is attached to this Order as Appendix "A".
3. The Department maintains that the Site is an inactive hazardous waste disposal site, as that term is defined at ECL 27-1301.2, and 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 3-56-009. The Department has classified the Site as a Classification "2" pursuant to ECL 27-1305.4.b. The Department acknowledges that Respondent has expended considerable time in implementing interim remedial measures at the Site as detailed in the Site History/Previous Investigations section of the February 1995 Focused Remedial Investigation Work Plan previously submitted to the Department on behalf of the Respondent.

4. A. Pursuant to ECL 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."

B. Any person under order pursuant to ECL 27-1313.3.a has a duty imposed by ECL Article 27, Title 13 to carry out the remedial program committed to under order. ECL 71-2705 provides that any person who fails to perform any duty imposed by ECL Article 27, Title 13 shall be liable for civil, administrative and/or criminal sanctions.

C. The Department also has the power, inter alia, to provide for the prevention and abatement of all water, land, and air pollution. See, e.g., ECL 3-0301.1.i.

5. The Department and Respondent agree that the goals of this Order are for Respondent to (i) develop and implement an inactive hazardous waste disposal site remedial program ("Remedial Program") for the Site that shall include a Remedial Investigation ("RI"), Feasibility Study ("FS"), design and implementation of the selected remedial alternative, and operation, maintenance and monitoring of the selected remedial alternative; and (ii) reimburse the State's administrative costs.

6. Respondent, having waived Respondent's 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. Subject to the dispute resolution procedure at Subparagraph IX.A.2.b, 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.

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

I. Initial Submittal

The Department and Respondent acknowledge and agree that data in Respondent's possession or control regarding

environmental condition on-Site and off-Site has previously been supplied to the Department. Test data and other information previously submitted include:

1. A brief history and description of the Site, including types, physical state, and location of hazardous waste including methods of disposal and spillage of such waste;

2. A summary of historical groundwater quality data for on-Site monitoring wells, including Production Wells, Shallow Overburden Monitoring Wells, Recovery Wells and Bedrock Monitoring Wells; and off-Site Residential Monitoring Wells including recent Ulster County Health Department results. This information has been summarized in both written and tabular form;

3. A detailed list of all relevant reports concerning the Site with titles, authors and subject matter. A copy of any report so listed that is in Respondent's possession or control will be provided to the Department upon the Department's request.

II. RI and FS Work Plan Contents and Submittals

- A. By letters dated September 26, 1995 and October 5, 1995, the Department received the following:

Remedial Investigation Work Plan - EG&G Rotron Woodstock Site
#3-56-009

- B.
 1. The RI Work Plan includes a Sampling and Analysis Plan (SAP) and a Health and Safety Plan (HASP) as Appendix "A" and "B" respectively. The Sampling and Analysis Plan is composed of a Field Sampling Plan (FSP), a Quality Assurance Project Plan (QAPJP), and a Quality Assurance Program Plan (QAPP). The RI Work Plan will be deemed to have been approved by the Department as of the date the Department executes this Order on Consent.

2. The Department has also received a draft Citizen Participation Plan. Within 30 days of receiving comments on the draft plan, Respondent shall submit a final plan. This plan will be finalized, at a minimum, to be consistent with the Department's publication, "New York State Inactive Hazardous Waste Citizen Participation Plan" dated August 30, 1988, and any subsequent revisions thereto, and 6 NYCRR Part 375.

C. 1. At the time of submittal of the draft RI Report, Respondent shall submit a detailed work plan describing the methods and procedures to be implemented in performing an FS for the Site ("FS Work Plan").

2. The FS Work Plan shall incorporate all elements of an FS as set forth in the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA") [42 USC 9601 et seq.], as amended, the National Contingency Plan ("NCP") of March 8, 1990 [40 CFR Part 300], the USEPA guidance document entitled "Guidance for Conducting Remedial Investigations and Feasibility Studies under CERCLA," dated October 1988, and any subsequent revisions to that guidance document in effect at the time the FS Work Plan is submitted, and appropriate USEPA and Department technical and administrative guidance documents.

III. Performance and Reporting of Remedial Investigation

A. Within 30 days of the effective date of this Order, Respondent shall commence the Remedial Investigation in accordance with the schedule contained in the Department approved RI Work Plan.

B. Respondent shall perform the Remedial Investigation in accordance with the Department-approved RI Work Plan.

C. During the performance of the Remedial Investigation, Respondent shall have on-Site a full-time representative who is qualified to supervise the work done.

D. Within the time frame set forth in the Department-approved RI Work Plan, Respondent shall prepare a Remedial Investigation Report that shall:

1. include all data generated and all other information obtained during the Remedial Investigation:

2. provide all of the assessments and evaluations set forth in CERCLA, the NCP, and the guidance documents identified in Subparagraph II.C.2;

3. identify any additional data that must be collected; and

4. include a certification 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 Department-approved RI Work Plan.

IV. Feasibility Study

A. In accordance with the schedule contained in the Department-approved FS Work Plan, Respondent shall submit a complete 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 at the Site. The Feasibility Study shall be prepared by and have the signature and seal of a professional engineer who shall certify that the Feasibility Study was prepared in accordance with this Order.

B. Respondent shall perform and prepare the Feasibility Study in accordance with the Department-approved FS Work Plan and in a manner consistent with CERCLA, the NCP, and the guidance documents identified in Subparagraph II.C.2.

C. After the Department's approval of the Feasibility Study, public comment shall be solicited. After the close of the public comment period, the Department shall select a final remedial alternative for the Site in a Record of Decision ("ROD"). The ROD shall be incorporated into and become an enforceable part of this Order.

V. Remedial Design Contents

A. Unless the ROD selects the "no further action" alternative, within such period of time after the ROD is signed that the Department shall prescribe in writing (but not less than 60 days), Respondent shall submit to the Department a remedial design to implement the remedial alternative for the Site selected by the Department in the ROD (the "Remedial Design"). The Remedial Design shall be prepared by and have the signature and seal of a professional engineer who shall certify that the Remedial Design was prepared in accordance with this Order.

B. The Remedial Design shall include the following:

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

a. the construction and operation of any structures;

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

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

d. physical security and posting of the Site;

e. quality control and quality assurance procedures and protocols to be applied during implementation of the Remedial Construction; and

f. monitoring which integrates needs which are present on-Site and off-Site during implementation of the Department-selected remedial alternative.

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

3. A time schedule to implement the Remedial Design;

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

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

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

7. A health and safety plan for the protection of persons at and in the vicinity of the Site during construction

and after completion of construction. This plan shall be prepared in accordance with 29 CFR 1910 by a certified health and safety professional; and

8. A citizen participation plan which incorporates appropriate activities outlined in the Department's publication, "New York State Inactive Hazardous Waste Citizen Participation Plan," dated August 30, 1988, and any subsequent revisions thereto, and 6 NYCRR Part 375.

VI. Remedial Construction

A. Within 90 days after the Department's approval of the Remedial Design, Respondent shall commence construction of the Department-approved Remedial Design.

B. Respondent shall implement the Remedial Design in accordance with the Department-approved Remedial Design.

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

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

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

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

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

VII. Interim Remedial Measures

A. 1. Respondent may propose one or more IRMs for the Site.

2. In proposing each IRM, Respondent shall submit to the Department a work plan that includes a chronological description of the anticipated IRM activities together with a schedule for performance of those activities (an "IRM Work Plan" for that Site).

3. Upon the Department's determination that the proposal is an appropriate IRM and upon the Department's approval of such work plan, the IRM Work Plan shall be incorporated into and become an enforceable part of this Order.

B. 1. Upon the Department's determination that the IRM Work Plan does not require an engineering design (such as soil removal) to implement the IRM Work Plan, Respondent shall commence the IRM as soon as it is approved by the Department, but not without giving the Department five (5) working days notice of commencement.

2. During implementation of all field activities identified in the Department-approved IRM Work Plan, Respondent shall have on-Site a full time representative who is qualified to supervise the work done.

3. Within the schedule in the Department approved IRM Work Plan, Respondent shall submit to the Department a final IRM Report demonstrating that all activities that comprised the Department approved IRM were completed in accordance with the Department-approved IRM Work Plan and this Order.

4. After receipt of the final IRM Report, the Department shall notify Respondent in writing whether the Department is satisfied that the IRM was completed in compliance with the Department-approved IRM Work Plan.

C. 1. Upon the Department's determination that the IRM Work Plan requires an engineering design (such as a soil vapor extraction system) to implement the IRM Work Plan, Respondent shall submit to the Department for its review and (as appropriate) approval, in accordance with the schedule contained in the Department-approved IRM Work Plan, detailed documents and specifications prepared, signed, and sealed by a professional engineer to implement the Department-approved IRM. Such documents shall include a health and safety plan, contingency plan, and (if the Department requires such) a citizen participation plan that incorporates appropriate activities outlined in the Department's publication, "New York State Inactive Hazardous Waste Citizen Participation Plan," dated August 30, 1988, and any subsequent revisions thereto, and 6 NYCRR Part 375. Respondent shall then carry out such IRM in accordance with the requirements of the approved IRM Work Plan, detailed documents and specifications, and this Order. Respondent shall notify the Department of any significant difficulties that may be encountered in implementing the Department-approved work plan, detailed documents, or specifications and shall not modify any obligation unless first approved by the Department.

2. During implementation of all construction activities identified in the Department-approved IRM Work Plan, Respondent shall have on-Site a full-time representative who is qualified to supervise the work done.

3. Within the schedule contained in the Department-approved IRM Work Plan, Respondent shall submit to the Department a final engineering report prepared by a professional engineer that includes a certification by that individual that all activities that comprised the Department-approved IRM were completed in accordance with the Department-approved IRM Work Plan and this Order.

a. If the performance of the Department-approved IRM encompassed construction activities, the final engineering report also shall include a detailed post-remedial operation and maintenance plan ("IRM O&M Plan"); "as-built" drawings and a final engineering report (each including all changes made to the Remedial Design during construction); and a certification by a professional engineer that the IRM was implemented and all construction activities were completed in accordance with the Department-approved detailed documents and specifications for the IRM and all such activities were personally witnessed by him or her or by a person under his or her direct supervision. The IRM O&M Plan, "as built" drawings, final engineering report, and certification must be prepared, signed, and sealed by a professional engineer.

b. Upon the Department's approval of the IRM O&M Plan, Respondent shall implement the IRM O&M Plan in accordance with the requirements of the Department-approved IRM O&M Plan.

4. After receipt of the final engineering report and certification, the Department shall notify Respondent in writing whether the Department is satisfied that the IRM was completed in compliance with the Department-approved IRM Work Plan and design.

D. Pursuant to Subparagraph XII.B.2, Respondent agrees to reimburse the Department for reasonable expenses incurred by the State that are appropriate and not inconsistent with the NCP and that arise out of the review of IRM proposals, and development and implementation of IRMs the Department shall have approved under Paragraph VII of this Order.

VIII. Progress Reports

Respondent shall submit to the parties identified in Subparagraph XVI.B in the numbers specified therein copies of written monthly progress reports that:

A. describe the actions which have been taken toward achieving compliance with this Order during the previous month;

B. include all results of sampling and tests and all other data received or generated by Respondent or Respondent's contractors or agents in the previous month, including quality assurance/quality control information, whether conducted pursuant to this Order or conducted independently by Respondent;

C. identify all work plans, reports, and other deliverables required by this Order that were completed and submitted during the previous month;

D. describe all actions, including, but not limited to, data collection and implementation of work plans, that are scheduled for the next month and provide other information relating to the progress at the Site;

E. include information regarding percentage of completion, unresolved delays encountered or anticipated that may affect the future schedule for implementation of Respondent's obligations under the Order, and efforts made to mitigate those delays or anticipated delays;

F. include any modifications to any work plans that Respondent has proposed to the Department or that the Department has approved; and

G. describe all activities undertaken in support of the Citizen Participation Plan during the previous month and those to be undertaken in the next month. Respondent shall submit these progress reports to the Department by the tenth day of every month following the effective date of this Order.

Respondent also shall allow the Department to attend, and shall provide the Department at least seven days advance notice of, any of the following: prebid meetings, job progress meetings, substantial completion meeting and inspection, and final inspection and meeting.

IX. Review of Submittals

A. 1. The Department shall review each of the submittals Respondent makes pursuant to this Order to determine whether it was prepared, and whether the work done to generate the data and other information in the submittal was done, in accordance with this Order and generally accepted technical and scientific principles. The Department shall notify Respondent in writing of its approval or disapproval of the submittal within 45 days after receiving the submittal, except for the health and safety plan submittals discussed in Subparagraph II.B.1 and in Subparagraph V.B.7. All Department-approved submittals shall be incorporated into and become an enforceable part of this Order.

2. a. If the Department disapproves a submittal, it shall so notify Respondent in writing and shall specify the reasons for its disapproval. Within 45 days after receiving written notice that Respondent's submittal has been disapproved, Respondent shall make a revised submittal to the Department that addresses and resolves all of the Department's stated reasons for disapproving the first submittal.

b. After receipt of the revised submittal, the Department shall notify Respondent in writing of its approval or disapproval. If the Department disapproves the revised submittal, Respondent shall be in violation of this Order unless, within 10 days of receipt of the Department's notice of disapproval, Respondent requests to meet with the Director of the Division of Hazardous Waste Remediation ("the Director") in order to discuss the Department's objections and Respondent is available to meet immediately thereafter. At this meeting, Respondent shall be given an opportunity to

present its responses to the Department's objections, and the Director shall have the authority to modify and/or withdraw such objections. Respondent shall revise the submittal in accordance with the Department's specific comments, as may be modified by the Director, and except for those which have been withdrawn by the Director, shall submit a revised submittal within the period of time the Director may direct. After receipt of the revised submittal, the Department shall notify Respondent in writing of its approval or disapproval of the revised submittal. If the submittal fails to address the Department's specific comments, as modified, and the Department disapproves the revised submittal for this reason, Respondent shall be in violation of this Order and the ECL. The invocation of formal dispute resolution procedures under this Paragraph shall not of itself extend, postpone or affect in any way any of Respondent's other obligations under this Order, except that payment of stipulated penalties with respect to the disputed matter shall be stayed pending resolution of the dispute pursuant to this Paragraph. Stipulated penalties shall only begin to accrue after receipt by Respondent of notification from the Department that the revised submittal fails to address the Department's written comments, as modified by the Director, after the dispute resolution hearing. In the event that Respondent does not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Paragraph X. The invocation of the procedures stated in this Paragraph does not constitute a waiver of Respondent's judicial rights.

c. Nothing in this Order shall be construed to allow the consideration or resolution, pursuant to the dispute resolution provision of Subparagraph IX.A.2.B., of any dispute regarding the ROD or any of its provisions. Nothing, however, in this Order shall be construed to limit whatever statutory rights Respondent may have regarding a judicial or administrative challenge to the remedy selected in the ROD or the implementation of such remedy.

B. Respondent shall modify and/or amplify and expand a submittal upon the Department's direction to do so if the Department determines, as a result of reviewing data generated by an activity required under this Order or as a result of reviewing any other data or facts, that further work is necessary.

X. Penalties

A. 1. Except as provided in Paragraph IX of this Order with respect to submittals, Respondent's failure to

comply in full with any term of this Order within ten business days of receipt of a Department notice of violation shall be a violation of this Order and the ECL.

2. Respondent shall be liable for payment to the Department of the sums set forth below as stipulated penalties for each day or part thereof that Respondent is in violation of the terms of this Order. All penalties begin to accrue on the first day Respondent is in violation of the terms of this Order and continue to accrue through the final day of correction of any violation. Such sums shall be due and payable within 15 days after receipt of notification from the Department assessing the penalties. If such payment is not received within 15 days after Respondent receives such notification from the Department, interest shall be payable at the annual rate of nine per centum on the overdue amount from the day on which it was due through, and including, date of payment. Penalties shall be paid by certified check or money order, made payable to "New York State Department of Environmental Conservation" and shall be delivered personally or by certified mail, return receipt requested, to the Director, Division of Environmental Enforcement, N.Y.S.D.E.C., 50 Wolf Road, Albany, New York 12233-5500. Payment of the penalties shall not in any way alter Respondent's obligation to complete performance under the terms of this Order. Stipulated penalties shall be due and payable under Subparagraph X.A.2 pursuant to the following schedule:

<u>Period of Non-Compliance</u>	<u>Penalty Per Day</u>
First through 15th day	\$ 1,000
16th through 30th day	\$ 2,500
31st day and thereafter	\$ 5,000

In no event shall the total of all stipulated penalties assessed under this Order, including interest and other fees, exceed \$60,000.00.

B. Respondent shall not suffer any penalty under this Order or be subject to any proceeding or action, if it cannot comply with any requirement of this Order because of acts or omissions of civil or military authority, government priorities, fires, floods, severe weather, epidemics, war, riot, or an unforeseeable disaster arising exclusively from natural causes which the exercise of ordinary human prudence could not have prevented; or because of any condition or event beyond the reasonable control of Respondent or Respondent's

agents or contractors carrying out Respondent's obligations under this Order; or because Respondent has failed to obtain access to property not under the control of Respondent despite good faith efforts by Respondent to obtain same, which good faith efforts include attempted payment of a reasonable amount of money to obtain the needed access. Respondent shall, within ten days of when it obtains knowledge of any such condition, notify the Department in writing. Respondent shall include in such notice the measures taken and to be taken by Respondent to prevent or minimize any delays and shall request an appropriate extension or modification of this Order. If the Department agrees that a delay is not or was not the fault of Respondent, Respondent and the Department shall promptly modify this Order to provide such additional time as may be necessary to allow the completion of the specific phase of work and/or any succeeding phase of the work affected by such delay. If the Respondent and the Department cannot agree whether the reason for the delay was beyond the fault of the Respondent, whether the duration of the delay is or was warranted under the circumstances, or whether the additional time provided is sufficient to compensate for the delay, the Department shall promptly notify Respondent in writing and give the reasons for its determination, and Respondent and the Department shall resolve the dispute according to the dispute resolution procedure set forth on Subparagraph IX.A.2.b of this Order. Failure to give such notice within such ten-day period constitutes a waiver of any claim that a delay is not subject to penalties. Respondent shall have the burden of proving that an event is a defense to compliance with this Order pursuant to this Subparagraph. 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 in this Subparagraph.

XI. Entry upon Site

Respondent hereby consents to the entry upon the Site or areas in the vicinity of the Site which may be under the control of Respondent by any duly designated employee, consultant, contractor, or agent of the Department or any State agency for purposes of inspection, sampling, and testing and to ensure Respondent's compliance with this Order. During Remedial Construction, Respondent shall provide the Department with suitable office space at the Site, including access to a telephone, and shall permit the Department full access to all records relating to matters addressed by this Order and job meetings.

XII. Payment of State Costs

A. Within 30 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 the State's expenses including, but not limited to, direct labor, fringe benefits, indirect costs, travel, analytical costs, and contractor costs incurred by the State of New York for work related to the Site to the effective date of this Order, as well as for reviewing and revising submittals made pursuant to this Order, overseeing activities conducted pursuant to this Order, collecting and analyzing samples, and administrative costs associated with this Order. Such payment shall be made by certified check payable to the Department of Environmental Conservation. Payment shall be sent to the Bureau of Program Management, Division of Hazardous Waste Remediation, N.Y.S.D.E.C., 50 Wolf Road, Albany, NY 12233-7010. Itemization of the 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, as identified by an assigned time and activity code. This information shall be documented by reports of Direct Personal Service. Approved agency fringe benefit and indirect cost rates shall be applied. Non-personal service costs shall be summarized by category of expense (e.g., supplies, materials, travel, contractual) and shall be documented by expenditure reports. Past State reimbursable costs are capped at \$29,004.18.

B. 1. Except for the expenses identified in Subparagraphs XII.A, XII.B.2 and XII.B.3 of this Order, Respondent agrees to reimburse the Department for reasonable expenses incurred by the State* that are appropriate and not inconsistent with the NCP in connection with this Order subject to the limitations and conditions set forth in this Paragraph; provided, however, that Respondent shall not be obligated to make such reimbursement under this Order for response costs incurred by the New York State Department of Environmental Conservation subsequent to September 20, 1995, and the New York State Department of Health subsequent to September 30, 1995, in excess of \$85,000.00 in the aggregate. *CEL*
** (i.e., the New York State Department of Health and the New York State Department of Environmental Conservation)*

2. In addition to the reimbursements made under Subparagraph XII.A of this Order, Respondent agrees to reimburse the Department for reasonable expenses incurred by the State that are appropriate and not inconsistent with the NCP and that arise out of the review of IRM proposals, and development and implementation of IRMs the Department shall have approved under Paragraph VII of this Order, and such reimbursements shall not be counted in the aggregate of

reimbursements Respondent shall make under Subparagraph XII.B.1 of this Order for purposes of the limitation on payments Respondent agrees to make under this Order set forth in that Subparagraph.

3. In addition to the reimbursements made under Subparagraph XII.A of this Order, Respondent agrees to reimburse the Department pursuant to Subparagraph XVII.E for all costs incurred by the Department in obtaining access, including, but not limited to, attorneys fees. Such reimbursements shall not be counted in the aggregate of reimbursements Respondent shall make under Subparagraph XII.B.1 of this Order for purposes of the limitation on payments Respondent agrees to make under this Order as set forth in that Subparagraph.

XIII. Department Reservation of Rights

A. Nothing contained in this Order shall be construed as barring, diminishing, adjudicating, or in any way affecting any of the Department's civil, criminal, or administrative rights or authorities.

B. Nothing contained in this Order shall be construed to prohibit the Commissioner or his duly authorized representative from exercising any summary abatement powers.

C. By carrying out the terms of this Order, Respondent shall have resolved its liability for the work done in accordance with this Order and approved by the Department, within the meaning of 42 USC 9613(f)(2). Respondent shall be entitled to such protection from actions for contribution and shall not be liable for claims for contribution for the work Respondent shall have done in accordance with this Order and that shall have been approved by the Department, as may be afforded by such section and by any comparable New York statutes. The Department believes that Respondent's undertaking to perform the work to be done in accordance with this Order represents a good faith settlement and compromise of a disputed claim with respect to the activities identified in this Order.

D. 1. Respondent reserves all rights it may have to oppose and defend against such claims and actions and to assert any and all claims it may have against the Department and/or any other entity, person, or agency under State or Federal law.

2. By consenting to the issuance of this Order, or by taking any action in accordance with it, Respondent does

not admit any of the findings of fact, conclusions of law, determinations or any of the allegations contained in this Order, nor does Respondent admit liability for the alleged release or threat of release of any hazardous waste into the environment. Respondent's consent to the issuance of this Order without a hearing first having been held shall not be admissible against Respondent in any judicial or administrative action or proceeding, except for an action or proceeding by the Department to enforce the terms of this Order.

3. By signing and consenting to this Order or by taking any actions pursuant to this Order, Respondent does not concede that the RI, FS or any additional IRMs or any other investigation at the Site is necessary to protect the public health or welfare or the environment, or for any other reason; that the methodologies or protocols described or noted in this Order or otherwise required are the only ones appropriate; or that a release or threatened release of a hazardous waste at or from the Site, may present a significant threat to the public health or welfare or the environment. Respondent has agreed to the issuance of this Order without a hearing first having been held to provide assistance to the Department and to avoid unnecessary conflict or litigation.

E. 1. Among those jointly and severally liable, there is a right of contribution under 42 USC 9613(f) and a right to response costs under 42 USC 9607(a)(4)(B). The provisions of this Order do not constitute and shall not be deemed a waiver of any right Respondent otherwise may have to seek and obtain contribution and/or indemnification from other potentially responsible parties, or Respondent's insurers, for payments made previously or in the future for response costs.

2. To the extent authorized under 42 USC 9613, General Obligations Law 15-108, and any other provision of State law, Respondent shall not be liable for any claim, nor in the future, in the nature of contribution, indemnity, or indemnification, however characterized, by potentially responsible parties regarding work Respondent shall have done in accordance with this Order and that shall have been approved by the Department. In any future action brought by Respondent against a potentially responsible party, the provisions of 42 USC 9613(f)(3) shall apply.

3. Respondent specifically reserves all rights that it may have to assert claims against its insurers and potentially responsible parties with respect to the matters addressed in this Order, including, without limitation, claims for breach of contract, cost recovery, contribution, tortious conduct, and indemnity.

XIV. Indemnification

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 tortious acts or omissions in the fulfillment or attempted fulfillment of this Order by Respondent and/or any of Respondent's directors, officers, employees, servants, agents, successors, and assigns, except that in no event shall Respondent be required to indemnify the Department, the State and their respective representatives and employees against claims arising from or related to their own tortious acts or omissions.

XV. Public Notice

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

B. If Respondent proposes to convey the whole or any part of Respondent's ownership interest in the Site, Respondent shall, not fewer than 30 days before the date of conveyance, notify the Department in writing of the identity of the transferee and of the nature and proposed date of the conveyance and shall notify the transferee in writing, with a copy to the Department, of the applicability of this Order.

XVI. 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:

Susan D. McCormick, P.E.
Chief, Remedial Section B.
Bureau of Eastern Remedial Action
Division of Hazardous Waste Remediation
New York State Department of Environmental Conservation
50 Wolf Road
Albany, New York 12233-7010

with copies to:

Director, Bureau of Environmental Exposure
Investigation
New York State Department of Health
2 University Place
Albany, New York 12203

Ramanand Pergadia, P.E.
NYS Dept. of Environmental Conservation
Division of Hazardous Waste Remediation
Region 3 Office
21 South Putt Corners Road
New Paltz, New York 12561-1696

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

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

John L. Healy, Esq.
EG&G, Inc.
45 William Street
Wellesley, Massachusetts 02181

General Manager
Rotron, Inc.
9 Hasbrouck Lane
Woodstock, New York 12498

B. Copies of work plans and reports (except the monthly
reports called for in Paragraph VIII) shall be submitted as
follows:

Four copies (one unbound) to:

Susan D. McCormick, P.E.
Chief, Remedial Section B.
Bureau of Eastern Remedial Action
Division of Hazardous Waste Remediation
NYS Dept. of Environmental Conservation
50 Wolf Road
Albany, New York 12233-7010

Two copies to:

Director, Bureau of Environmental
Exposure Investigation.
New York State Department of Health
2 University Place
Albany, New York 12203

One copy to:

Ramanand Pergadia, P.E.
NYS Dept. of Environmental Conservation
Division of Hazardous Waste Remediation
Region 3 Office
21 South Putt Corners Road
New Paltz, New York 12561-1696

One copy to:

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

C. 1. Within 30 days of the Department's approval of any report submitted pursuant to this Order, Respondent shall submit to Director, Division of Hazardous Waste Remediation, a computer readable magnetic media copy of the approved report in American Standard Code for Information Interchange (ASCII) format.

2. Within 30 days after the Department's approval of the drawings and submittals described in Paragraph V. of this Order, Respondent shall submit one microfilm copy (16 millimeter roll film M type cartridge) of such Department-approved drawings and submittals, as well as all other Department-approved submittals. Respondent shall submit same to Susan D. McCormick, P.E.

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

XVII. Miscellaneous

A. 1. All activities and submittals required by this Order shall address both on-Site and off-Site contamination resulting from the disposal of hazardous wastes at the Site.

2. All activities Respondent is required to undertake under this Order are ordinary and necessary expenses for the continued operation of Respondent.

B. Respondent shall retain professional consultants, contractors, laboratories, quality assurance/quality control personnel, and third party data validators acceptable to the Department to perform the technical, engineering, and analytical obligations required by this Order. The experience, capabilities, and qualifications of the firms or individuals selected by Respondent shall be submitted to the Department within 30 days after the effective date of this Order. The Department's approval of these firms or individuals shall be obtained before the start of any activities for which Respondent and such firms or individuals will be responsible; no other requirements of this Order shall be triggered until the Department's approval of consultants is obtained. The responsibility for the performance of the professionals retained by Respondent shall rest solely with Respondent.

C. 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 also shall have the right to take its own samples. Respondent shall make available to the Department the results of all sampling and/or tests or other data generated by Respondent with respect to implementation of this Order and shall submit these results in the progress reports required by this Order.

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

E. Respondent shall obtain all permits, easements, rights-of-way, rights-of-entry, approvals, or authorizations necessary to perform Respondent's obligations under this Order, subject to the access provision of Subparagraph X.B. The Department may take such steps as may be necessary to enable Respondent or its representatives to gain access to off-Site locations. Respondent shall reimburse the Department, in accordance with the procedures in Paragraph XII, for all costs incurred by the Department in obtaining access, including, but not limited to, attorneys fees. These costs are not to be considered for purposes of determining the cap amount of \$85,000.00 in Paragraph XII of this Order.

F. Respondent's successors and assigns shall be bound by this Order. Any change in ownership or corporate status of Respondent including, but not limited to, any transfer of assets or real or personal property shall in no way alter Respondent's responsibilities under this Order. Respondent's successors and assigns shall be obliged to comply with the relevant provisions of this Order in the performance of their designated duties on behalf of the Respondent.

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

H. All references to "professional engineer" in this Order are to an individual registered as a professional engineer in accordance with Article 145 of the New York State Education Law. If such individual is a member of a firm, that firm must be authorized to offer professional engineering services in the State of New York in accordance with Article 145 of the New York State Education Law.

I. All references to "days" in this Order are to calendar days unless otherwise specified.

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

K. 1. The terms of this Order constitute the complete and entire Order concerning the Site's investigation and remediation as an inactive hazardous waste disposal site. 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 regarding any report, proposal, plan, specification, schedule or any other submittal shall be construed as relieving Respondent of Respondent's obligation to obtain such formal approvals as may be required by this Order.

2. If Respondent desires that any provision of the Order be changed, Respondent shall make timely written application, signed by Respondent, to the Commissioner setting forth reasonable grounds for the relief sought. Copies of such written application shall be delivered or mailed to:

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

and

Michael J. Komoroske, P.E.
Environmental Engineer 2
NYS Dept. of Environmental Conservation
Bureau of Eastern Remedial Action
Division of Hazardous Waste Remediation
Room 222 - Central Office
50 Wolf Road
Albany, New York 12233-7010.

L. The effective date of this Order is the date the Commissioner or his designee signs it.

M. Respondent's obligations under this Order shall terminate and shall be satisfied upon its receipt of written notice from the Department that Respondent has completed all of the terms of this Order, which terms are consistent with all applicable New York environmental regulations, and to the

best of the Department's knowledge are consistent with the National Contingency Plan; provided, however, that the Department specifically reserves all of its rights concerning, and any such release and satisfaction shall not extend to, any investigation or remediation the Department deems necessary due to:

1. environmental conditions on-Site or off-Site which are related to the disposal of hazardous wastes at the Site and were unknown to the Department at the time of its approval of the Remedial Investigation Report; or

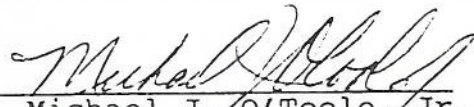
2. information received, in whole or in part, after the Department's approval of the Remedial Investigation Report, and such unknown environmental conditions or information indicates that the Remedial Program is not protective of human health or the environment. The Department shall notify the Respondent of such environmental conditions or information and its basis for determining that the Remedial Program is not protective of human health and the environment.

The Department's notification shall not be unreasonably withheld.

N. Nothing in this Order shall interpreted as limiting or affecting Respondent's right to preserve the confidentiality of attorney work product or attorney-client communication, provided that any analytical data or other objective information relating to the environmental condition of the Site contained in such attorney work product or attorney-client communication may be required to be disclosed pursuant to this Order.

DATED: 12/18, New York
1995

MICHAEL D. ZAGATA
Commissioner
New York State Department
of Environmental Conservation

BY: 
Michael J. O'Toole, Jr.

CONSENT BY RESPONDENT

ROTRON, INC.

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

By: Charles E. Lohwasser

Title: VP Finance & Admin

Date: 12/8/95

STATE OF NEW YORK)
COUNTY OF ULSTER) S.S.:

On this 8th day of DECEMBER, 1995, before me personally came CHARLES E. LOHWASSER, to me known, who being duly sworn, did depose and say that he resides in WEST HURLEY, NY; that he is the V.P. FINANCE & ADMINISTRATION of ROTRON INC. (EG & ROTRON), the corporation described in and which executed the foregoing instrument; that he knew the seal of said corporation; that the seal affixed to said 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.

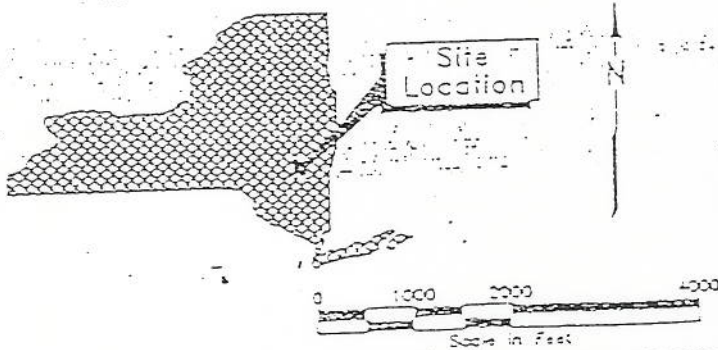
Beatrice A. Duplessis
Notary Public

BEATRICE A. DUPLESSIS
Notary Public in the State of New York
Resident in and for Ulster County
Commission Expires 7-31-97

APPENDIX A



Reference: U.S. Geological Survey, 7.5 Minute Quadrangle, Woodstock, New York, 1980



SITE LOCATION

EG & G ROTRON
Woodstock, New York

ORN: TAD/G222A | DATE:
APP'D: FEB. 1995

FIGURE 1

 **GERAGHTY
& MILLER, INC.**
Environmental Services