

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

In the Matter of the
Development and Implementation
of a Remedial Program for
OU-1 of Harbor at Hastings,
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 No. W3-1000-04-05

Site No. 3-60-022

**Atlantic Richfield Company and
ARCO Environmental Remediation LLC,**

Respondents.

WHEREAS,

1. A. The New York State Department of Environmental Conservation (the "Department" or "DEC") 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." The Department asserts that 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 Inactive Hazardous Waste Disposal Site Remedial Program committed to under order. The Department asserts that 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.

B. The Department also asserts that it has the authority, *inter alia*, to provide for the prevention and abatement of all water, land, and air pollution. *See, e.g.*, ECL 3-0301.1.i.

C. This Order is issued pursuant to the Department's authority under, *inter alia*, ECL Article 27, Title 13, ECL Article 71, Title 27, ECL 3-0301, and consistent with DEC's potential claims under 42 U.S.C. §9601 et seq.

2. The Harbor-at-Hastings Site (the "Site") consists of approximately 31 acres of real property situated along the Hudson River as well as an adjacent portion of the Hudson River. The Site is located at 1 River Road, Village of Hastings on Hudson, Westchester County, New York. Operable Unit 1 (OU-1) comprises approximately 28 acres of on-Site property located above the high tide line and the soils and groundwater

beneath it. The Department issued a Record of Decision for OU-1 of the Site on March 18, 2004 (hereinafter the "ROD" or the "OU-1 ROD"). Operable Unit 2 (OU-2) consists of between 3 and 4 acres of submerged lands below the high tide line, as well as off-Site contamination in the sediments and ecosystem of the Hudson River. A Proposed Remedial Action Plan ("PRAP") for OU-2 has been developed but a ROD has not yet been issued. Exhibit "A" of this Order is a map of the Site showing its general location.

3. For the purposes of this Order on Consent only, Respondent acknowledges that:

A. Anaconda Wire & Cable Company ("AWC") owned and operated a wire and cable manufacturing facility at the Site from approximately 1929 until approximately 1975, when manufacturing ceased. AWC was originally a subsidiary, and later a division, of The Anaconda Company ("Anaconda"). Anaconda sold the Site in 1978. Subsequent owners and operators used the Site for a variety of purposes, including a waste transfer station, a trucking business, and warehouse storage. Hazardous substance contamination was discovered on Site in the late 1980's.

B. Atlantic Richfield Company ("AR") acquired Anaconda in 1977. AWC's assets and liabilities (except for the Site liabilities) were placed into a joint venture in 1980. AR merged with Anaconda in 1981 and AR sold its interest in the joint venture in 1985. As a result, for the limited purpose of this Order, AR shall be treated as the successor-in-interest to Anaconda and AWC at this Site.

C. AR's affiliate, ARCO Environmental Remediation, LLC ("AERL"), acquired the Site in 1998 to facilitate the remediation of any contamination associated with AWC's operations on Site. AERL is the current owner and operator of the Site.

4. The Site is currently listed in the Registry of Inactive Hazardous Waste Disposal Sites in New York State as Site Number 3-60-022 with a Classification "2" pursuant to ECL 27-1305. The Department and AR entered into an Order On Consent, dated November 16, 1995, which obligated AR to conduct a Remedial Investigation/Feasibility Study for OU-1 of the Site and AR has completed all of the work required under the 1995 Order. In March of 2004, the Department selected a remedy and issued a ROD for OU-1. The Department asserts that it has and will continue to incur response costs to which it is entitled under state law and which are not inconsistent with the National Contingency Plan with respect to OU-1 of the Site and that it has claims against Respondents for recovery of such response costs and further response actions under CERCLA, 42 U.S.C. §9601 et seq., including 42 U.S.C. §9607.

5. In 1994, the Hudson Riverkeeper Fund, Inc. ("Riverkeeper") filed a suit styled *Hudson Riverkeeper Fund, Inc. v. Atlantic Richfield Company*, 94 Civ. No. 2741 (WCC) in the United States District Court for the Southern District of New York (the "Riverkeeper Litigation"). Also in 1994, the Village of Hastings-On-Hudson, New York

(the "Village") successfully moved to intervene in the Riverkeeper Litigation. AR is the named defendant in the Riverkeeper Litigation. Both Riverkeeper and the Village alleged that AR is liable for environmental conditions at OU-1 of the Site under the Resource Conservation and Recovery Act ("RCRA") Section 7002(a)(1)(B), 42 U.S.C. § 6972(a)(1)(B), as a person who has contributed to or is contributing to the past or present handling, storage, treatment, transportation, or disposal of any solid or hazardous waste which may present an imminent and substantial endangerment to health or the environment. In an amended complaint, the Village also alleged that AR is liable for response costs and response actions under CERCLA, 42 U.S.C. §9601 et seq.

6. In December, 2003, Riverkeeper, the Village, and AR settled the Riverkeeper Litigation through the entry of a Consent Decree in the Southern District of New York ("the Federal Consent Decree"). The Federal Consent Decree requires AR to perform certain remedial activities on OU-1 of the Site.

7. Respondents AR and AERL consent to the Department's issuance of this Order for OU-1 of the Site 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, or (ii) an acknowledgment that there has been a release or threatened release of hazardous waste while any Respondent owned or operated the Site or that the release or threatened release of hazardous waste at or from the Site constitutes a significant threat to public health or the environment.

8. The Department, AR, and AERL recognize that implementation of this Order will expedite the cleanup of the Site and may avoid prolonged and complicated litigation between the parties, and that this Order is mutually acceptable, fair, reasonable, and in the public interest.

9. Solely with regard to the matters set forth below, Respondents hereby waive their right to a hearing herein as provided by law and consent to the issuance and entry of this Order and agree to be bound by its terms. Respondents consent to and agree not to contest the authority or jurisdiction of the Department to issue or enforce this Order, and agree 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. Remedial Design Work Plan

10. Respondents have prepared and submitted to the Department a draft Remedial Design Work Plan ("RDWP") for OU-1 of the Site, which shall, *inter alia*, propose pre-remedial design activities which may include, but are not limited to, sampling, information gathering, and pilot testing. Within forty-five (45) days

after the Effective Date of this Order, or within forty-five (45) days after DEC provides Respondents with written comments on the draft RDWP, whichever is later, Respondents shall respond to any DEC comments on the draft RDWP and shall prepare and submit a revised RDWP for DEC's review. The RDWP shall be prepared in accordance with relevant EPA and DEC guidance documentation, including, *6 NYCRR Part 375*, and *DER-10 Technical Guidance for Site Investigation and Remediation (draft)*. The RDWP shall propose remedial design activities consistent with the OU-1 ROD for the Site.

11. The RDWP shall include, but not be limited to, the following elements:
 - A. Identification of the additional data required to support the Remedial Design;
 - B. A Site-specific description of field activities required to support the Remedial Design, which activities may be broken down into one or more distinct projects, together with a schedule for the performance of these activities;
 - C. If any further sampling on Site is required to support the Remedial Design, the RDWP shall either contain, or set forth a schedule for preparing, a Sampling and Analysis Plan ("SAP") which shall include:
 - (1) A quality assurance project plan that describes the quality assurance and quality control protocols necessary to achieve the initial data quality objectives. This plan shall describe the level of data validation to be performed, identify a data validation expert and describe such individual's qualifications and experience;
 - (2) A field sampling plan that defines sampling and data gathering methods in a manner consistent with the *Compendium of Superfund Field Operations Method* (EPA/540/P-87/001), OSWER Directive 9355.0-14, December 1987) and *Field Methods Compendium*, OSWER Directive 9285.2-11 (draft June 1993), as amended, and supplemented by the Department;
 - D. A plan to secure or maintain physical security and posting of the Site;
 - E. A health and safety plan, including a community health and safety plan, (collectively a "HASP") to protect persons at and in the vicinity of the Site during the Remedial Design. The HASP shall be prepared in accordance with 29 C.F.R. 1910 by a certified health and safety professional. Respondents shall provide supplements to this Health and Safety Plan as necessary to ensure the health and safety of all persons at and in the vicinity of the Site;

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

G. A narrative description of the Remedial Design, including a description of the remedial goals for the Site, as stated in the ROD for OU-1, and the means by which each element of the selected remedial alternative will be implemented to achieve those goals; and

H. A schedule for the submission of Remedial Design documents that together will form the Remedial Design Contents pursuant to Section II.

12. Once the Department has approved the RDWP, Respondents shall commence the activities authorized therein according to the schedule set forth therein.
13. Respondents shall perform the RDWP activities in accordance with the Department-approved RDWP.
14. During the performance of field activities pursuant to the RDWP, Respondents shall have on-Site a representative who is qualified to supervise the work done.

II. Remedial Design Contents

15. In accordance with the schedule for Remedial Design submissions contained in the approved RDWP, Respondents shall prepare and submit to the Department a remedial design to implement the remedial alternative selected by the Department in the ROD for OU-1 of the Site (collectively 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. The Remedial Design may consist of a series of documents in accordance with the approved RDWP, in which case each design document shall be so certified.
16. The Remedial Design shall include the following:
 - A. A detailed description of the remedial goals for the Site, as set forth in the ROD;
 - B. A detailed description of each element of the selected remedial alternative contained in the ROD and the means by which such elements will be implemented to achieve the remedial goals for the Site, including, but not limited to:

(1) a summary of findings concerning each pre-design project identified and completed pursuant to the RDWP and Paragraph 11.B of this Order. Each such summary of findings shall:

- a. include all data generated and all other information obtained during the performance of the RDWP activities;
- b. identify any additional data that must be collected in order to design the relevant aspect of the remedy pursuant to the ROD and this Order;
- c. include a certification by the individual or firm with primary responsibility for the day to day performance of the RDWP that all activities that comprised the RDWP were performed in full accordance with the Department-approved RDWP; and
- d. include a reference to the geographic location of the sample point for all sample data supplied. For samples taken pursuant to the RDWP, such location information must be referenced to either the New York Transverse Mercator or New York State Plane Coordinate System. All vertical data shall be referenced to the National Geodetic Vertical Datum ("NGVD"), 1929 adjustment;

(2) The construction and operation of any structures;

(3) The containment, collection, destruction, treatment, and/or disposal of hazardous wastes, their constituents, and hazardous substances and related degradation products, and of soil or other materials contaminated thereby;

(4) The containment, collection, destruction, treatment, and/or disposal of contaminated groundwater, leachate and air;

(5) The quality control and quality assurance procedures and protocols to be applied during implementation of the Remedial Design; and

(6) Monitoring which integrates needs which are present on-Site and off-Site during implementation of the remedial alternative selected in the ROD.

C. 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;

D. A health and safety plan (“HASP”) to protect persons at and in the vicinity of the Site during construction of the Remedial Design, and after construction is complete. The HASP shall be prepared in accordance with 29 C.F.R. 1910 by a certified health and safety professional. Respondents shall provide supplements to this Health and Safety Plan as necessary to ensure the health and safety of all persons at and in the vicinity of the Site;

E. A time schedule to implement the Remedial Design;

F. The parameters, conditions, procedures, and protocols to determine the effectiveness of the Remedial Design;

G. 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;

H. A citizen participation plan which incorporates appropriate activities outlined in the Department’s publication, *Citizen Participation in New York’s Hazardous Waste Site Remediation Program: A Guidebook*, dated June, 1998, and any subsequent revisions thereto, and 6 NYCRR Part 375.

III. Remedial Design Construction and Reporting

17. Once the Department has approved a Remedial Design for the OU-1 ROD (“Approved Remedial Design”), Respondents shall implement the Approved Remedial Design according to any schedule set forth therein. During implementation of all construction activities identified in the Approved Remedial Design, Respondents shall have on-Site a representative who is qualified to supervise the work done.

18. In accordance with the schedule submitted in the Approved Remedial Design, a detailed post-remedial Site Management Plan shall be submitted for review and approval to the Department. The Site Management Plan shall consist of the following three elements:

A. An institutional and engineering control plan which details the oversight steps and any media-specific requirements necessary to assure the institutional and/or engineering controls required by the OU-1 ROD to remain in place and effective. This plan shall include, but not be limited to:

1. A description of all institutional controls, and the engineering controls they are intended to provide for, which are required by the OU-1 ROD or the environmental easement for the Site;

2. A copy of the environmental easement (in the form of Exhibit D) imposing the institutional controls on the Site;
3. Provisions for the annual certification of the institutional and/or engineering controls;
4. Appropriate plans for implementation of an institutional control, such as a soil management plan for handling soils removed from beneath a soil cover or cap; and
5. Any other provisions necessary to identify or establish methods for implementing the institutional controls required by the Site remedy, as determined by DEC.

B. The monitoring plan which details the steps necessary to inspect, monitor and report the performance and effectiveness of the remedy, both short and long-term by:

1. Assessing compliance with actual or equivalent discharge limits;
2. Assessing achievement of the remedial performance criteria;
3. Sampling and analysis of appropriate media;
4. Evaluating Site information periodically to confirm that the remedy continues to be effective for the protection of public health and the environment; and
5. Preparing necessary reports of the results of this monitoring.

C. The operation and maintenance ("O&M") plan which meets the requirements set forth in Exhibit G and:

1. Details the steps necessary to operate and maintain any treatment, collection or containment systems comprising the remedy for the Site; and, which may include, to the extent DEC determines appropriate,
2. An O&M manual for use at the Site by the operator of the Site treatment, containment, collection or recovery system in use at the Site.

The Site Management Plan shall conform with DER-10 Technical Guidance for Site Investigation and Remediation (draft). Upon the Department's approval of the Site Management Plan, Respondents shall implement the Site Management Plan in accordance with the requirements of the Department-approved Site Management Plan.

19. Respondents may petition the Department for a determination that the institutional and/or engineering controls set forth in the Site Management Plan may be terminated. Such petition must be supported by a Professional Engineer stating 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.

20. Until such time as the Department determines that an engineering or institutional control may be terminated, Respondents (or other persons that Respondents may designate with the Department's approval) shall notify the Department within 24 hours upon discovery of any upset, interruption, or termination of any such controls set forth in the Site Management Plan without the prior approval of the Department. During such upset, interruption, or termination of controls, Respondents or their approved designee(s) shall take all actions required by the Department to maintain conditions at the Site that achieve the objectives of the Remedial Program and are protective of public health and the environment. An explanation of such upset, interruption, or termination of one or more controls and the steps taken in response shall be included in the foregoing notice and in the annual report required by the Site Management Plan, as well as in any progress reports required by Section IV.

21. Within 120 days after completion of remedial construction activities (or any approved module thereof) identified in the Approved Remedial Design, Respondents shall submit to the Department "as built" drawings, a final engineering report (each including all changes made to the Approved Remedial Design during construction), and a certification by a professional engineer that the Approved Remedial Design was implemented and all construction activities were completed in accordance with the Approved Remedial Design. The "as built" drawings, final engineering report, and certification shall be hereinafter referred to as the Remedial Construction Certification Report. The Remedial Construction Certification Report(s) shall be prepared, signed, and sealed by a professional engineer.

22. After receipt of the Remedial Construction Certification Report, the Department shall notify Respondents in writing whether the Department is satisfied that all construction activities have been completed in compliance with the Approved Remedial Design. If the Department concludes that all construction activities have been completed in compliance with the Approved Remedial Design, the Department's written notification will be in the form of the letter attached hereto as Exhibit E.

23. If the Department concludes that any element of the Remedial Construction fails to achieve the objectives set forth in the OU-1 ROD or the Approved Remedial Design, or otherwise fails to protect human health or the environment, the Department may request that Respondents submit such other, additional, or supplemental Work Plans as

are appropriate to advance the Remedial Program at the Site. Within thirty (30) days after the Department's written request, Respondents shall advise the Department in writing whether they will submit and implement the requested additional Work Plan (or Supplemental Work Plan) or whether they elect to terminate this Order pursuant to Section XVI. If Respondents elect to submit and implement such Work Plan, Respondents shall submit a Work Plan providing for implementation of the activities requested within sixty (60) days after such election, unless the Department and Respondents agree, in writing, to an alternative schedule. If Respondents elect to terminate this Order or fail to make a timely objection, this Order shall terminate pursuant to Section XVI. Any request made by the Department under this Paragraph shall be subject to dispute resolution pursuant to Section XV.

24. Respondents may, at Respondents' option, propose one or more additional or supplemental Work Plans (including one or more interim remedial measure ("IRM") Work Plans that meet the requirements specified in Exhibit F) at any time, which Work Plan(s) shall be reviewed for appropriateness and technical sufficiency.

IV. Progress Reports

25. Respondents shall submit written progress reports to the parties identified in Paragraph 60 by the 10th day of each month commencing with the month subsequent to the Effective Date of this Order and ending with the Termination Date, unless a different frequency is set forth in a Work Plan. Such reports shall, at a minimum, include: all actions taken pursuant to this Order during the previous reporting period and those anticipated for the next reporting period; all approved activity modifications (changes of work scope and/or schedule); all validated results of sampling and tests and all other data received or generated by or on behalf of Respondents in connection with the Site, whether under this Order or otherwise, in the previous reporting period, including quality assurance/quality control information; and information regarding percentage of completion, unresolved delays encountered or anticipated that may affect the future schedule, efforts made to mitigate such delays, and information regarding activities undertaken in support of the Citizen Participation Plan during the previous reporting period and those anticipated for the next reporting period.

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

26. The Department shall review each of the submittals Respondents make 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 make a good faith effort to review and respond to each of the submittals Respondents make pursuant to this Order within sixty (60) days. The Department's response shall

include a written approval or disapproval of the submittal, in whole or in part, and notification to Respondents of the Department's determination. All Department-approved submittals shall be incorporated into and become an enforceable part of this Order.

27. If the Department disapproves a submittal in whole or in part, it shall specify the reasons for its disapproval. Within thirty (30) days after the date of the Department's written notice that Respondents' submittal has been disapproved, Respondents shall elect, in writing to either (i) modify the submittal to address the Department's comments, or (ii) invoke dispute resolution pursuant to Section XV. If Respondents elect to modify the submittal, Respondents shall, within sixty (60) days after such election, make a revised submittal to the Department that addresses all of the Department's stated reasons for disapproving the first submittal, unless the Department and Respondents agree in writing to an alternative schedule.

28. After receipt of a revised submittal, the Department shall notify Respondents in writing of its approval or disapproval. If the Department approves the revised submittal, it shall be incorporated into and become an enforceable part of this Order. If the Department requires further changes in order to approve the revised submittal, Respondent shall have thirty (30) days to make the requested changes or to invoke dispute resolution pursuant to Section XV. In the event that Respondents' revised submittal is disapproved, Respondents shall be in violation of this Order unless they invoke dispute resolution pursuant to Section XV and their position prevails. Failure to make an election or failure to comply with the election is a violation of this Order.

29. Within thirty (30) days after the Department's approval of a final work plan submittal, or report, Respondents shall submit such final work plan, submittal, or report to the Department, as well as all data gathered and drawings and submittals made pursuant to such work plan submittal, or report in an electronic format acceptable to the Department. If any document cannot be converted into electronic format, Respondents shall so advise the Department and, if the Department concurs, submit such document in an alternative format acceptable to the Department.

VI. Entry upon Site

30. Respondents hereby consent, 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 Respondents) 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 (i) inspecting, sampling, and copying records related to the contamination at the Site and not otherwise subject to that attorney client privilege,

attorney work product doctrine, or other applicable privileges (“Non-privileged Records”); (ii) implementing this Order; and (iii) testing and any other activities necessary to ensure Respondents’ compliance with this Order. Upon request, Respondents shall (i) provide the Department with suitable office 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.

31. The Department shall have the right to take its own samples and scientific measurements and the Department and Respondents shall have the right to obtain split samples, duplicate samples, or both, of all substances and materials sampled. The Department shall make the results of all sampling and scientific measurements taken under this Paragraph available to Respondents.

VII. Penalties

32. A Respondent’s failure to comply with any term of this Order constitutes a violation of this Order, the ECL, and 6 NYCRR Section 375-1.2(d) unless such failure is the result of Force Majeure conditions set forth in Paragraph 35 below. Nothing herein abridges any Respondent’s right to contest, defend against, dispute, or disprove any such claim, assertion, or allegation that it has violated this Order.

33. Respondents have agreed that the following stipulated penalties apply in the event of a Respondent’s failure to comply with this Order:

<u>Period of Non-Compliance</u>	<u>Penalty Per Day</u>
1st through 15th day	\$ 500.00
16th through 30th day	\$ 1,000.00
31st day and thereafter	\$ 1,500.00

34. Payment of the penalties shall not in any way alter Respondents’ obligation to complete performance under the terms of this Order.

35. Respondents shall not suffer any penalty or be subject to any proceeding or action in the event they cannot comply with any requirement of this Order as a result of any event arising from causes beyond the reasonable control of Respondents, of any entity controlled by Respondents, and of any of Respondents’ contractors, that delays or prevents the performance of any obligation under this Order despite Respondents best efforts to fulfill the obligation (“Force Majeure Event”). The requirement that

Respondents exercise best efforts to fulfill the obligation includes using best efforts to anticipate the potential Force Majeure Event, best efforts to address the effects of any such event as it is occurring, and best efforts following the Force Majeure Event, such that the delay is minimized to the greatest extent possible. "Force Majeure" does not include Respondents' economic inability to comply with any obligation or the failure of Respondents to make complete and timely application for any required approval or permit, and non-attainment of the goals, standards, and requirements of this Order.

36. Respondents shall notify the Department in writing within seven (7) days after they obtain knowledge of any Force Majeure Event. Respondents shall include in such notice the measures taken and to be taken to prevent or minimize any delays and shall request an appropriate extension or modification of this Order. Failure to give such notice within such seven (7) day period constitutes a waiver of any claim that a delay is not subject to penalties. Respondents shall be deemed to know of any circumstance which it, any entity controlled by it, or its contractors knew or should have known.

37. Respondents 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 was or will be warranted under the circumstances; (iii) best efforts were exercised to avoid and mitigate the effects of the delay; and (iv) Respondents complied with the requirements of Paragraph 36 regarding timely notification.

38. If the Department agrees that the delay or anticipated delay is attributable to a Force Majeure Event, the time for performance of the obligations under this Order that are affected by the Force Majeure Event shall be extended by the Department for such time as is reasonably necessary to complete those obligations.

39. If the Department rejects Respondents' assertion that an event provides a defense to non-compliance with this Order pursuant to Paragraphs 34-38, Respondents shall be in violation of this Order unless they invoke dispute resolution pursuant to Section XV and Respondents' position prevails.

VIII. Payment of State Costs

40. Respondents shall reimburse the Department for all previously unreimbursed State Costs incurred under the November 18, 1995 Order on Consent for the oversight and performance of work in connection with OU-1 prior to the Effective Date of this Order. Respondents shall also pay State Costs incurred after the Effective Date of this Order to oversee or perform work in connection with OU-1. The Department shall provide Respondents with an annual invoice for costs at the end of each calendar year for which the Department has incurred costs recoverable pursuant to this Consent Decree.

Failure to provide an annual invoice shall not prevent the Department from recovering costs otherwise recoverable under this Decree.

41. Respondents shall pay such State Costs set forth in Paragraph 40 to the Department within forty-five (45) days after receipt of an itemized invoice from the Department. Respondents shall have no obligation under this Order to pay any State Costs that may be incurred after the Termination Date of this Order.

42. Personal service costs shall be documented by reports of Direct Personal Service, which shall identify 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. 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. 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.

43. Such invoice shall be sent to Respondents at the following address:

David Kalet
Atlantic Richfield Company
28100 Torch Parkway
Warrenville, Illinois 60555

44. Each such payment shall be made payable to the 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, NY 12233-7010

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

46. Respondents may contest, in writing, invoiced costs under Paragraph 42 if (i) the cost documentation contains clerical, mathematical, or accounting errors; (ii) the costs are not related to the State's oversight or performance of work under the 1995 AOC or this Order; or (iii) the Department is not otherwise legally entitled to such costs. If Respondents object to an invoiced cost, Respondents shall pay all costs not objected to

within the time frame set forth in Paragraph 41 and shall, within forty-five (45) days after receipt of an invoice, identify, in writing, all costs objected to and the basis of the objection. This objection shall be filed with the Division of Environmental Remediation Bureau of Program Management ("BPM") Director. The BPM Director or the BPM Director's designee shall have the authority to relieve Respondents of the obligation to pay invalid costs. Within forty-five (45) days after the date of the Department's determination of the objection, Respondents shall either pay to the Department the amount which the BPM Director or the BPM Director's designee determines Respondents are obligated to pay or commence an action or proceeding seeking appropriate judicial relief.

47. In the event any instrument for the payment of any money due under this Order fails of collection, such failure of collection shall constitute a violation of this Order, provided that (i) the Department gives Respondents written notice of such failure of collection, and (ii) the Department does not receive from Respondents payment in the amount of the uncollected funds within fourteen (14) days after the date of the Department's written notification.

IX. Release and Covenant Not to Sue

48. Upon approval by the Department of the final Remedial Construction Certification Report evidencing that no further remedial action (other than O&M or other Site Management Plan activities) is required to meet the goals of the Remedial Program at OU-1 of the Site, then, except for the provisions of Sections VII and IX, and except for the future Site Management Plan activities at the Site and any natural resource damages claims, such approval shall constitute a release and covenant not to sue for each and every claim, demand, remedy, or action whatsoever against Respondents and each of their directors, officers, employees, agents, servants, successors, and assigns (except successors and assigns who were responsible under law for the development and implementation of a Remedial Program at the Site prior to the Effective Date of this Order), and their respective secured creditors, which the Department has or may have pursuant to Article 27, Title 13 of the ECL or pursuant to any other state or federal provision of statutory or common law (including CERCLA, 42 U.S.C. §9601 et seq.) involving or relating to investigative or remedial activities relative to or arising from the disposal of hazardous wastes (or other contaminants remediated by Respondents to the Department's satisfaction pursuant to the OU-1 ROD or Work Plans) at OU-1 of the Site; provided, however, that the Department specifically reserves all of its rights concerning, and any such release and covenant not to sue shall not extend to, (i) any further investigation or remediation the Department deems necessary due to newly discovered environmental conditions on-Site or off-Site which are related to the disposal of hazardous wastes at the Site and which indicate that the Remedial Program is not protective of public health and/or the environment; (ii) natural resource damage claims; or (iii) environmental conditions at OU-2 of the Site.

49. This release and covenant not to sue shall be null and void, *ab initio*, in the event of fraud relating to the execution or implementation of this Order or in the event that Respondents fail to materially comply with the provisions of this Order. The Department's determination that Respondents have committed fraud or materially failed to comply with this Order shall be subject to dispute resolution pursuant to Paragraph 63.

50. Nothing herein shall be construed as barring, diminishing, adjudicating, or in any way affecting any legal or equitable rights or claims, actions, suits, causes of action, or demands whatsoever that (i) Respondents may have against anyone other than the Department, and (ii) the Department may have against anyone other than Respondents, their directors, officers, employees, agents, and servants, successors and assigns (except successors and assigns who were responsible under law for the development and implementation of a Remedial Program at the Site prior to the Effective Date of this Order), and their respective secured creditors, prior to the effective date of this Order.

X. Reservation of Rights

51. Except as provided in Section IX, 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 Respondents.

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

53. The existence of this Order or Respondents' compliance with it shall not be construed as an admission of liability, fault, wrongdoing, or breach of standard of care by Respondents, 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.

54. This Order on Consent constitutes an administrative resolution for payment of costs of certain response actions with respect to OU1 of the Site incurred or to be incurred by the Department under 42 U.S.C. Section 9613(f). Respondents reserve all such equitable and legal rights each of them may have to seek and obtain contribution, indemnification, and/or any other form of recovery from 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.

XI. Indemnification

55. Respondents 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 Respondents' efforts to comply with this Order, and/or the efforts of any of Respondents' directors, officers, employees, servants, agents, successors, and assigns to comply with this Order. This indemnity provision shall not apply to liability arising from (i) vehicular accidents occurring during travel to or from the Site; or (ii) willful, wanton, or malicious acts or omissions, and acts or omissions constituting gross negligence or criminal behavior by the Department, the State of New York, and/or their representatives and employees, during the course of any activities conducted pursuant to this Order. The Department shall provide Respondents with written notice no less than thirty (30) days prior to commencing a lawsuit seeking indemnification pursuant to this Paragraph.

XII. Public Notice

56. Within thirty (30) days after the effective date of this Order, Respondents shall cause to be filed a Department-approved Notice of Order, which Notice shall be substantially similar to the Notice of Order attached to this Order as Exhibit "C," with the Clerk of the County wherein the Site is located to give all parties who may acquire any interest in the Site notice of this Order. Within thirty (30) days of such filing (or such longer period of time as may be required to obtain a certified copy, provided Respondents advise the Department of the status of efforts to obtain same within such thirty (30) days), Respondents shall also provide the Department with a copy of such instrument certified by such County Clerk to be a true and faithful copy.

57. If AERL proposes to convey the whole or any part of AERL's ownership interest in the Site, or AR becomes aware of such conveyance, Respondents shall, not fewer than forty-five (45) days before the date of conveyance, 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 Respondents to secure the repayment of money or the performance of a duty or obligation.

XIII. Environmental Easement

58. In accordance with the schedule submitted in the Approved Remedial Design, Respondents shall submit to the Department for approval an Environmental Easement to run with the land that provides for covenants and restrictions consistent with the OU-1 ROD. This submittal shall be substantially similar to Exhibit "D." Respondents shall cause such instrument to be recorded with the Clerk of the County wherein the Site is located within thirty (30) days of the Department's approval of the Remedial Design. Respondents shall provide the Department with a copy of such instrument certified by such County Clerk to be a true and faithful copy within thirty (30) days after such recording (or such longer period of time as may be required to obtain a certified copy, provided Respondents advise the Department of the status of efforts to obtain same within such thirty (30) day period).

59. Except for those covenants and restrictions required by the Federal Consent Decree, Respondents may petition the Department to modify or terminate the Environmental Easement filed pursuant to Paragraph 58 when reliance upon such covenants and restrictions is no longer required to meet the goals of the Remedial

Program, based on a certification made by a Professional Engineer. The Department shall not unreasonably withhold its consent to such petition.

XIV. Communications

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

A. Communication from Respondents shall be sent to:

George Heitzman
Project Manager
Division of Environmental Remediation
New York State Department of Environmental Conservation
625 Broadway
Albany, New York 12233-7013

Note: four copies (one unbound) of work plans are required to be sent with copies to:

Gary Litwin
Bureau of Environmental Exposure Investigation
New York State Department of Health
Flanigan Square
547 River Street
Troy, New York 12180-2216

Note: two copies of work plans are required to be sent, and

Denise J. D'Ambrosio
Project Attorney
New York State Department of Environmental Conservation
200 White Plains Road, 5th Floor
Tarrytown, New York 10591-5805

B. Communication to be made from the Department to Respondents shall be sent to:

David Kalet
Atlantic Richfield Company
28100 Torch Parkway
Warrenville, Illinois 60555

With a copy to:

Richard Frankoski
BP America Inc.
Room MBC3-145
4850 East 49th Street
Cuyahoga, Ohio 44125

Jean Martin
Environmental Counsel
Atlantic Richfield Company and affiliates
6 Centerpointe Drive, Room 557
La Palma, CA 90623

Michael D. Daneker, Esq.
Arnold & Porter LLP
555 Twelfth Street, NW
Washington, DC 20004-1206

61. The Department and Respondents reserve the right to designate additional or different addressees for communication upon written notice to the other.
62. Each party shall notify the other within ninety (90) days after any change in the addresses in this Section XIV or in Section VIII.

XV. Dispute Resolution

63. If Respondents disagree with the Department's notice under (i) Section V regarding submittals; (ii) Section VII rejecting Respondents' assertion of a Force Majeure Event; or (iii) Section XVII, requesting modification of a time frame, Respondents may, within thirty (30) days of their receipt of such notice, request, in writing, informal negotiations with the Department in an effort to resolve the dispute. A copy of such request shall be sent by Respondents to the appropriate Remedial Bureau Chief in the Department's Central Office. The Department and Respondents shall consult together in good faith and exercise best efforts to resolve any differences or disputes without resort to the procedures described in Paragraphs 64 or 65 of this Order. The period for informal negotiations shall not exceed thirty (30) days from Respondents' request for informal negotiations. If the parties cannot resolve a dispute by informal negotiations during this period, the Department's position shall be considered binding unless Respondents notify the Department in writing within thirty (30) days after the conclusion of the thirty (30) day period for informal negotiations that they invoke the dispute resolution provisions provided under Paragraphs 64 or 65.

64. **Dispute Resolution Procedures For Issues That Do Not Involve a Conflict with the Federal Consent Decree.** The following procedures shall apply to resolve disputes eligible for resolution under Section XV of this Order except for those disputes subject to Paragraph 65 below.

A. Respondents shall file with the OH&M a request for formal dispute resolution and a written statement of the issues in dispute, the relevant facts upon which the dispute is based, factual data, analysis, or opinion supporting its position, and all supporting documentation upon which Respondents rely (hereinafter called the "Statement of Position"). A copy of such request and written statement shall be provided contemporaneously to the Director and the parties listed under Paragraph 60.

B. The Department shall serve its Statement of Position no later than twenty (20) days after receipt of Respondents' Statement of Position.

C. Respondents shall have the burden of proving by substantial evidence that the Department's position does not have a rational basis and should not prevail. The OH&M may conduct meetings, in person or via telephone conferences, and request additional information from any or all parties if such activities will facilitate a resolution of the issues.

D. The OH&M shall prepare and submit a report and recommendation to the Director. The Director shall issue a final decision resolving the dispute in a timely manner. The final decision shall constitute a final agency action and Respondents shall have the right to seek judicial review of the decision pursuant to Article 78 of the CPLR provided that Respondents notify the Department within thirty (30) days after receipt of a copy of the final decision of their intent to commence an Article 78 proceeding and commence such proceeding within sixty (60) days after receipt of a copy of the Director's final decision. Respondents shall be in violation of this Order for failure to comply with the final decision resolving this dispute within forty-five (45) days after the date of such final decision, or such other time period as may be provided in the final decision, unless Respondents seek judicial review of such decision within the sixty (60) day period provided. In the event that Respondents seek judicial review, Respondents shall be in violation of this Order for failure to comply with the final Court Order or settlement within thirty (30) days after the effective date of such Order or settlement, unless otherwise directed by the Court. For the purposes of this Subparagraph, a Court Order or settlement shall not be final until the time to perfect an appeal of same has expired.

E. The invocation of dispute resolution shall not extend, postpone, or modify Respondents' obligations under this Order with respect to any item not in dispute unless or until the Department agrees or a Court determines otherwise. The invocation of the procedures set forth in this Paragraph 64 shall constitute an election of remedies and such election shall constitute a waiver of any and all other administrative remedies which may otherwise be available to a Respondent regarding the issue in dispute.

F. The Department shall keep an administrative record of any proceedings under this Paragraph 64 that shall be available consistent with Article 6 of the Public Officers Law.

G. Nothing in this Paragraph 64 shall be construed as an agreement by the parties to resolve disputes through administrative proceedings pursuant to the State Administrative Procedure Act, the ECL, or 6 NYCRR Part 622 or Section 375-2.1.

H. Nothing contained in this Order shall be construed to authorize Respondents to invoke dispute resolution under this Paragraph 64 with respect to the remedy selected by the Department in the OU-1 ROD or any element of such remedy.

65. Dispute Resolution Procedures For Disputes Involving Conflict with Federal Consent Decree. The procedures in this Paragraph apply only if Riverkeeper or the Village initiate proceedings in the United States District Court for the Southern District of New York ("the Federal Court") alleging a direct and material conflict between the Respondents' DEC Order Obligations and Respondents' Federal Consent Decree obligations and seeking to have the Federal Consent Decree obligations enforced against Respondents to the exclusion of Respondents' DEC Order obligations. .

A. Respondents and the Department shall both make a good faith effort to engage in negotiations with the Village and Riverkeeper to resolve the alleged direct material conflict.

B. In proceedings before the Federal Court, Respondents shall seek to have the Federal Consent Decree modified to the extent necessary to conform to Respondents' obligations under the DEC Order. At its discretion, the DEC may elect to intervene in, be interpleaded into, appear as a witness in, or otherwise proffer testimony in the Federal Court proceedings in support of Respondents' DEC Order Obligations. The Department agrees that the work under this Order which is alleged to conflict directly and materially with the Federal Consent Decree may be delayed or postponed without penalty from the time Respondents notify the Department in writing that either Riverkeeper or the Village has initiated

proceedings in the Federal Court alleging such direct, material conflict until the Federal Court has resolved the allegations of a direct, material conflict.

C. If the Federal Court issues a ruling conforming the Federal Consent Decree to Respondents' DEC Order Obligations, then any work that has been delayed or postponed pursuant to this Paragraph shall proceed immediately. If the Federal Court refuses to conform the Federal Consent Decree to Respondents' DEC Order Obligations, then such event shall be treated as a Force Majeure event and the Department, at its discretion, shall have the right to either (i) conform the Respondents' DEC Order Obligations to the Federal Court Consent Decree or (ii) terminate those portions of the DEC Order for which there is a direct, material conflict with the Federal Court Consent Decree.

XVI. Termination of Order

66. This Order will terminate upon the earlier of the following events:

A. Termination pursuant to Paragraph 23. In the event of termination in accordance with this Paragraph 23, this Order shall terminate effective the 5th day after the Department's receipt of the written notification terminating this Order or the 5th day after the time for DEC to make an election has expired under Paragraph 65, whichever is earlier, provided, however, that if there are one or more Work Plan(s) for which a final report has not been approved at the time of Respondents' notification of election to terminate this Order pursuant to Paragraph 23, Respondents shall promptly complete the activities required by such previously approved Work Plan(s) consistent with the schedules contained therein. Thereafter, this Order shall terminate effective the 5th day after the Department's approval of the final report for all previously approved Work Plans; or

B. Termination pursuant to Paragraph 65. In the event of termination in accordance with this Paragraph 23, this Order shall terminate effective the 5th day after Respondents' receipt of written notification from DEC terminating this Order or the 5th day after the time for Respondents to make an election has expired; or

C. The Department's issuance of a written notice of satisfactory completion for OU-1 pursuant to Paragraph 22, in which event the termination shall be effective on the 5th day after the Department issues its written notice.

67. Notwithstanding the foregoing, the provisions contained in Sections VIII and XI shall survive the termination of this Order and any violation of such surviving Sections shall be a violation of this Order, the ECL, and 6 NYCRR Section 375-1.2(d), subjecting

a Respondent to penalties as provided under Section VII so long as such obligations accrued on or prior to the Termination Date.

68. If the Order is terminated pursuant to Paragraph 66, neither this Order nor its termination shall affect any further liability of Respondents for remediation of the Site and/or for payment of State Costs as defined by this Order, including implementation of removal and remedial actions, interest, enforcement, and any and all other response costs as defined under CERCLA. Respondents shall also ensure that they do not leave the Site in a condition, from the perspective of human health and environmental protection, worse than that which prevailed before any activities under this Order were commenced. Further, the Department's efforts in obtaining this Order and requesting additional Work Plan(s) shall constitute "reasonable efforts" under law to obtain a voluntary commitment from Respondents for any further activities to be undertaken as part of an Inactive Hazardous Waste Disposal Site Remedial Program for the Site.

XVII. Miscellaneous

69. The activities and submittals under this Order shall address conditions at OU-1 of the Site resulting from the disposal of hazardous wastes at the Site.

70. Respondents shall retain professional consultants, contractors, laboratories, quality assurance/quality control personnel, and third party data validators ("Respondents' Contractors") to perform the technical, engineering, and analytical obligations required by this Order. Respondents shall submit the experience, capabilities, and qualifications of Respondents' Contractors to the Department at least thirty (30) days before the start of any activities for which Respondents and such firms or individuals will be responsible. The responsibility for the performance of the professionals retained by Respondents shall rest solely with Respondents. Respondents retain the right to select or change firms or individuals in their sole discretion, subject to the requirements of this Paragraph.

71. Respondents shall allow the Department to attend and shall notify the Department at least seven (7) days in advance of any field activities to be conducted pursuant to this Order. The Department shall have the right to obtain split samples, duplicate samples, or both, of all substances and materials sampled by any Respondent, and the Department also shall have the right to take its own samples, and Respondents shall have the right to obtain split samples, duplicate samples, or both of all substances and materials sampled by the Department. The Respondents shall make available to the Department the results of all sampling and/or tests or other data generated by that Respondent with respect to implementation of this Order and shall submit these results in the progress reports required by this Order.

72. Respondents shall use “best efforts” to obtain all site access, permits, easements, rights-of-way, rights-of-entry, approvals, institutional controls, or authorizations necessary to perform Respondents’ obligations under this Order, except that the Department may exempt Respondents from the requirement to obtain any state or local permit or other authorization for any activity needed to implement this Order that the Department determines is conducted in a manner that satisfies all substantive technical requirements applicable to like activity conducted pursuant to a permit. If, despite Respondents’ best efforts, any necessary Site access, easements, rights-of-way, rights-of-entry, approvals, institutional controls, or authorizations required to perform this Order are not obtained within forty-five (45) days after the effective date of this Order, or within forty-five (45) days after the date the Department notifies Respondents in writing that additional access beyond that previously secured is necessary, Respondents shall promptly notify the Department, and shall include in that notification a summary of the steps Respondents have taken to obtain access. The Department may, as it deems appropriate and within its authority, assist Respondents in obtaining access. If any 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 Respondents to modify the Work Plan to reflect changes necessitated by the lack of access and/or approvals.

73. Respondents and Respondents’ successors and assigns shall be bound by this Order. Any change in ownership or corporate status of Respondents including, but not limited to, any transfer of assets or real or personal property, shall in no way alter Respondents’ responsibilities under this Order.

74. Respondents shall provide a copy of this Order to each contractor hired to perform work required by this Order and shall condition all contracts entered into pursuant to this Order upon performance in conformity with the terms of this Order. Respondents or their contractor(s) shall provide written notice of this Order to all subcontractors hired to perform any portion of the work required by this Order. Respondents shall nonetheless be responsible for ensuring that Respondents’ contractors and subcontractors perform the work in satisfaction of the requirements of this Order.

75. 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.

76. The terms of this Order shall constitute the complete and entire agreement between the Department and Respondents concerning 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 Respondents of Respondents' 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) attached as Exhibit "B."

77. A. Except as set forth herein, if Respondents desire that any provision of this Order be changed, other than a provision of a Work Plan or a time frame, Respondents shall make timely written application to the Commissioner with copies to the parties listed in Paragraph 60. The Commissioner or the Commissioner's designee shall timely respond.

B. Changes to a Work Plan shall be accomplished as set forth in Section V of this Order.

C. Changes to a time frame set forth in this Order shall be accomplished by a written request to the Department's project attorney and project manager, which request shall be timely responded to in writing. The Department's decision relative to the request for a time frame change shall be subject to dispute resolution pursuant to Section XV.

78. To the extent authorized under 42 U.S.C. Section 9613, New York General Obligations Law § 15-108, and any other applicable law, Respondents shall be deemed to have resolved their liability to the State for purposes of contribution protection provided by CERCLA Section 113(f)(2) for "matters addressed" pursuant to and in accordance with this Order. "Matters addressed" in this Order shall mean all response actions taken by either or both Respondents to implement this Order for OU-1 of the Site and all response costs incurred and to be incurred by any person or party in connection with the work performed under this Order, which costs have been paid by Respondents, including reimbursement of State Costs pursuant to this Order.

79. All activities undertaken by Respondents pursuant to this Order shall be performed in accordance with the requirements of all applicable Federal and State laws, regulations, and guidance documents.

80. Unless otherwise expressly provided herein, terms used in this Order which are defined in ECL Article 27, Title 13 or in regulations promulgated under such statute shall have the meaning assigned to them under said statute or regulations. Whenever terms listed in the Glossary attached hereto are used in this Order or in the attached Exhibits, the definitions set forth in the Glossary shall apply. In the event of a conflict, the definition set forth in the Glossary shall control.

81. If there are multiple parties signing this Order, the term "Respondent" shall be read in the plural where required to give meaning to this Order. Further, the obligations of Respondents 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) to carry out the obligations under this Order.

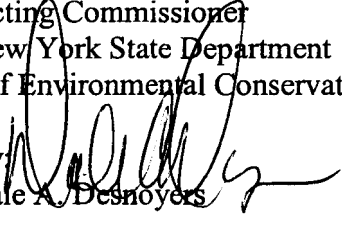
82. Respondents' obligations under this Order represent payment for or reimbursement of response costs, and shall not be deemed to constitute any type of fine or penalty.

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

84. The Effective Date of this Order is the 10th day after the date the Commissioner or the Commissioner's designee signs this Order.

DATED: MAR 25 2005

DENISE SHEEHAN
Acting Commissioner
New York State Department
of Environmental Conservation

By: 
Dale A. Desnoyers

CONSENT BY RESPONDENT AERL

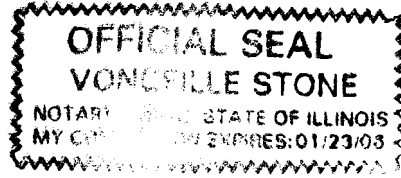
Respondent hereby consents to the issuing and entering of this Order, waives Respondent's right to a hearing herein as provided by law, and agrees to be bound by this Order.

By: Stephen A. Scott

Title: Chairman and CEO

Date: 04 MARCH 2005

Illinois)
STATE OF NEW YORK)
COUNTY OF DuPage) ss:

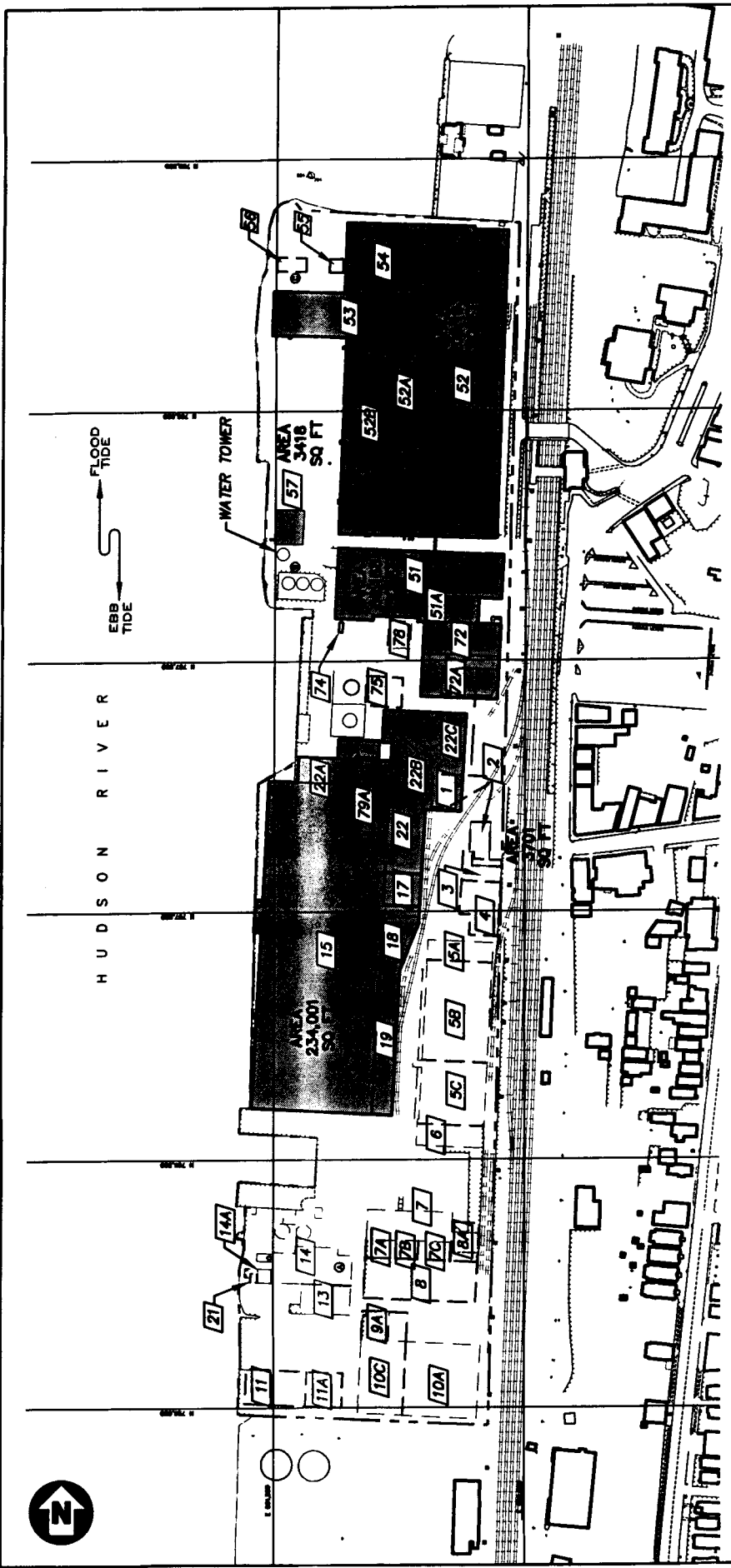


On the ^{4th} day of March, in the year ²⁰⁰⁵ ~~2004~~, before me, the undersigned, personally appeared Stephen A. Elbert personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name is (are) subscribed to the within instrument and acknowledged to me 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.

VonCelle Stone
Signature and Office of individual
taking acknowledgment

EXHIBIT "A"

Map of Site



LEGEND

- 5B BUILDING DESIGNATION
- EXISTING BUILDINGS
- FORMER BUILDING OUTLINE
- APPROXIMATE OU-1 SITE BOUNDARY

SITE MAP

AR and AERL

**FORMER AWC PLANT
ONE RIVER STREET
HASTINGS-ON-HUDSON, NEW YORK**

PARSONS
290 ELWOOD DAVIS ROAD, SUITE 312, LIVERPOOL, N.Y. 13088, PHONE: 315-451-8690

P:\441247\CAD\HARBOR SITE\SK441247C003.DWG, 1=1 JTS 6/2/04
No. XREF= XE203-D2.DWG

EXHIBIT "B"

Department-Approved Work Plan(s)

EXHIBIT "C"
NOTICE OF ORDER

Atlantic Richfield Company and ARCO Environmental Remediation, LLC ("Respondents") have entered into an Order On Consent (Index No. W2-1000-04-05) (the "Order") with the New York State Department of Environmental Conservation (the "Department") relative to 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 ("ECL") for the Harbor at Hastings Site, OU-1, located at 1 River Road, Village of Hastings on Hudson, Westchester County, New York, New York (the "Site").

The Site has been designated by the Department as an inactive hazardous waste disposal site, as that term is defined at ECL Section 27-1301.2, and has been listed in the Registry of Inactive Hazardous Waste Disposal Sites in New York State as Site No. 3-60-022. The Department has classified the Site as a Class "2" site pursuant to ECL Section 27-1305.4.b. This classification means that the Department has determined that the Site presents a significant threat to the public health or environment. The Site is more particularly described in the legal description that is attached hereto as Schedule "A."

The purpose of the Order is to remediate the environmental conditions at or migrating from OU-1 of the Site. The effective date of the Order was _____. A copy of the Order, as well as any and all Department-approved Work Plans under this Order can be reviewed at the Department's Region _____ offices located at _____ by contacting _____.

This Notice of Order is being filed with the _____ County Clerk (or City Register) in accordance with Section XII of the Order to give all parties who may acquire any interest in the Site notice of this Order.

WHEREFORE, the undersigned has signed this Notice of Order in compliance with the terms of the Order.

Respondents Atlantic Richfield Company
and ARCO Environmental Remediation,
LLC

By: Stephen A. Scott

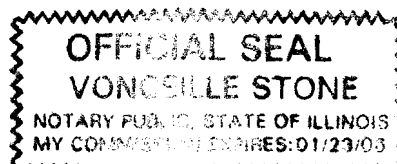
Title: Chairman and CEO

Date: 04 MARCH 2005

Illinois
STATE OF ~~NEW YORK~~

COUNTY OF DuPage

) ss.:



On the 4th day of March in the year 2005 before me, the undersigned, a notary public in and for said State, personally appeared Stephen A. Scott personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) 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 this instrument.

Voncille Stone
Notary Public

Appendix "A"
(to Exhibit "D")
Map of the Property

EXHIBIT "D"

MODEL ENVIRONMENTAL EASEMENT

THIS INDENTURE made this ____ day of _____, 20 __, between ARCO Environmental Remediation LLC ("AERL") having an office at 28100 Torch Parkway, Warrenville, Illinois 60555 (the "Grantor"), and The People of the State of New York (the "Grantee."), acting through their Commissioner of the Department of Environmental Conservation (the "Commissioner", or "NYSDEC" or "Department" as the context requires) with its headquarters located at 625 Broadway, Albany, New York 12233,

WHEREAS, the Legislature of the State of New York has declared that it is in the public interest to encourage the remediation of abandoned and likely contaminated properties ("brownfield sites") that threaten the health and vitality of the communities they burden while at the same time ensuring the protection of public health and the environment; and

WHEREAS, the Legislature of the State of New York has declared that it is in the public interest to establish within the Department a statutory environmental remediation program that includes the use of environmental easements as an enforceable means of ensuring the performance of maintenance, monitoring or operation requirements and of ensuring the potential restriction of future uses of the land, when an environmental remediation project leaves residual contamination at levels that have been determined to be safe for a specific use, but not all uses, or which includes engineered structures that must be maintained or protected against damage to be effective, or which requires groundwater use restrictions; and

WHEREAS, the Legislature of the State of New York has declared that environmental easement shall mean an interest in real property, created under and subject to the provisions of Article 71, Title 36 of the New York State Environmental Conservation Law ("ECL") which contains a use restriction and/or a prohibition on the use of land in a manner inconsistent with engineering controls which are intended to ensure the long term effectiveness of a brownfield site remedial program or eliminate potential exposure pathways to hazardous waste or petroleum; and;

WHEREAS, Grantor, is the owner of real property located in the Village of Hastings-On-Hudson, Westchester County, New York known and designated on the tax map of the _____ of _____ as insert tax map information, being the same as that property conveyed to Grantor by deed on _____, and recorded in the Land Records of the _____ County Clerk at insert Liber and page or computerized system tracking/ identification number, comprised of approximately # acres, and hereinafter more fully described in Exhibit A attached hereto and made a part hereof (the " Controlled Property"); and;

Attach an adequate legal description of the property subject to the easement, or reference a recorded map. If the easement is on only a part of a parcel of land which is not subdivided into encumbered and unencumbered portions, a legal description needs to be created by a survey bearing the seal and signature of a licensed land surveyor with reference to a metes and bounds description.

WHEREAS, the Property is subject to that certain Consent Decree dated December 19, 2003 in Hudson Riverkeeper Fund, Inc. v. Atlantic Richfield Company (Civ. Act. No. 94 Civ. 2741 (WCC)) (“**Consent Decree**”);

WHEREAS, pursuant to Section 9.1 of the Consent Decree, Grantor is required to record certain restrictions against the Property regarding the use and development thereof;

WHEREAS, the Commissioner does hereby acknowledge that the Department accepts this Environmental Easement in order to ensure the protection of human health and the environment and to achieve the requirements for remediation established at this Controlled Property until such time as this Environmental Easement is extinguished pursuant to ECL Article 71, Title 36; and

NOW THEREFORE, in consideration of the covenants and mutual promises contained herein and the terms and conditions of **Order on Consent Number** _____, Grantor grants, conveys and releases to Grantee a permanent Environmental Easement pursuant to Article 71, Title 36 of the ECL in, on, over, under, and upon the Controlled Property as more fully described herein (“**Environmental Easement**”).

1. **Purposes.** Grantor and Grantee acknowledge that the Purposes of this Environmental Easement are: to convey to Grantee real property rights and interests that will run with the land in perpetuity in order to provide an effective and enforceable means of encouraging the reuse and redevelopment of this Controlled Property at a level that has been determined to be safe for a specific use while ensuring the performance of maintenance, monitoring or operation requirements; and to ensure the potential restriction of future uses of the land that are inconsistent with the above-stated purpose.

2. **Definitions.** The terms set forth below shall have the following meaning:

3. **Institutional and Engineering Controls.** The following controls apply to the use of the Controlled Property, run with the land are binding on the Grantor and the Grantor’s successors and assigns, and are enforceable in law or equity against any owner of the Controlled Property, any lessees, and any person using the Controlled Property:

A. *[Insert a final description of institutional and engineering controls as set forth in the Approved Remedial Design.]*

B. Grantor covenants and agrees that until such time as the Environmental Easement is extinguished in accordance with the requirements of Article 71, Title 36 of the ECL, the property deed and all subsequent instruments of conveyance relating to the Controlled Property shall state in at least fifteen-point bold-faced type:

This property is subject to an environmental easement held by the New York State Department of Environmental Conservation pursuant of Title 36 to Article 71 of the Environmental Conservation Law.

C. Grantor covenants and agrees that this Environmental Easement shall be incorporated in full or by reference in any leases, licenses, or other instruments granting a right to use the Controlled Property.

D. Grantor covenants and agrees that it shall annually, or such time as NYSDEC may allow, submit to NYSDEC a written statement by an expert the NYSDEC may find acceptable certifying under penalty of perjury that the controls employed at the Controlled Property are unchanged from the previous certification or that any changes to the controls employed at the Controlled Property were approved by the NYSDEC, and that nothing has occurred that would impair the ability of such control to protect the public health and environment or constitute a violation or failure to comply with any Site Management Plan for such controls and giving access to such Controlled Property to evaluate continued maintenance of such controls.

4. Right to Enter and Inspect. Grantee, its agents, employees, or other representatives of the State may enter and inspect the Controlled Property in a reasonable manner and at reasonable times to assure compliance with the above-stated restrictions.

5. Reserved Grantor's Rights. Grantor reserves for itself, its assigns, representatives, and successors in interest with respect to the Property, all rights as fee owner of the Controlled Property, including:

A. Use of the Controlled Property for all purposes not inconsistent with, or limited by the terms of this Environmental Easement;

B. The right to give, sell, assign, or otherwise transfer the underlying fee interest to the Controlled Property by operation of law, by deed, or by indenture, subject and subordinate to this Environmental Easement;

6. Enforcement.

A. This environmental easement is enforceable in law or equity in perpetuity by Grantor, Grantee, or any affected local government, as defined in ECL Section 71-3603, including the Village, against the owner of the Property, any lessees, and any person using the land. Enforcement shall not be defeated because of any subsequent adverse possession, laches, estoppel, or waiver. It is not a defense in any action to enforce this environmental easement that: it is not appurtenant to an interest in real property; it is not of a character that has been recognized traditionally at common law; it imposes a negative burden; it imposes affirmative obligations upon the owner of any interest in the burdened property; the benefit does not touch or concern real property; there is no privity of estate or of contract; or it imposes an unreasonable restraint on alienation.

B. If any person intentionally violates this environmental easement, the Grantee may revoke the No Further Action Letter provided under ECL Article 27, Title 14, or the Satisfactory Completion of Project provided under ECL Article 56, Title 5 with respect to the Controlled Property.

C. Grantee shall notify Grantor of a breach or suspected breach of any of the terms of this Environmental Easement. Such notice shall set forth how Grantor can cure such breach or suspected breach and give Grantor a reasonable amount of time from the date of receipt of notice in which to cure. At the expiration of such period of time to cure, or any extensions granted by Grantee, the Grantee shall notify Grantor of any failure to adequately cure the breach or suspected breach. Grantor shall then have a reasonable amount of time from receipt of such notice to cure. At the expiration of said second period, Grantee may commence any proceedings and take any other appropriate action reasonably necessary to remedy any breach of this Environmental Easement in accordance with applicable law to require compliance with the terms of this Environmental Easement.

D. The failure of Grantee to enforce any of the terms contained herein shall not be deemed a waiver of any such term nor bar its enforcement rights in the event of a subsequent breach of or noncompliance with any of the terms of this Environmental easement.

7. Notice.

A. Whenever notice to the State (other than the annual certification) or approval from the State is required, the Party providing such notice or seeking such

approval shall identify the Controlled Property by referencing the its County tax map number or the Liber and Page or computerized system tracking/ identification number and address correspondence to:

Division of Environmental Enforcement
Office of General Counsel
New York State Department of Environmental Conservation
625 Broadway
Albany New York 12233-5500

B. Whenever notice to the Grantor is required, the Party providing such notice shall address correspondence to:

Mr. David Kalet
AERL
28100 Torch Parkway
Warrenville, Illinois 60555

with a copy to:

Jean Martin
Environmental Counsel
Atlantic Richfield Company and Affiliates
6 Centerpointe Drive, Room 557
La Palma, CA 90623

C. Such correspondence shall be delivered by hand, or by registered mail or by Certified mail and return receipt requested. The Parties may provide for other means of receiving and communicating notices and responses to requests for approval.

8. Recordation. Grantor shall record this instrument, within thirty (30) days of execution of this instrument by the Commissioner or her/his authorized representative in the office of the recording officer for the county or counties where the Property is situated in the manner prescribed by Article 9 of the Real Property Law.

9. Amendment. This environmental easement may be amended only by an amendment executed by the Commissioner of the New York State Department of Environmental Conservation and filed with the office of the recording officer for the county or counties where the Property is situated in the manner prescribed by Article 9 of the Real Property Law.

10. Extinguishment. This environmental easement may be extinguished only by a release by the Commissioner of the New York State Department of Environmental Conservation and filed with the office of the recording officer for the county or

counties where the Property is situated in the manner prescribed by Article 9 of the Real Property Law.

11. **Joint Obligation.** If there are two or more parties identified as Grantor herein, the obligations imposed by this instrument upon them shall be joint and several.

12. **Costs and Liabilities.** As between Grantor and Grantee, Grantor shall retain all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, operation, upkeep, and maintenance of the Property, including but not limited to the obligation to maintain adequate liability insurance coverage.

13. **Taxes.** As between Grantor and Grantee, Grantor shall pay before delinquency all taxes, assessments, fees, and charges of whatever description levied on or assessed against the Property by competent authority.

14. **Successors.** The term "Grantor," wherever used herein, shall include the persons and/or entities named at the beginning of this document, identified as "Grantor" and their personal representatives, heirs, successors, and assigns.

15. **Compliance with Law.** This Environmental easement shall not remove the necessity of Grantor to obtain any permit and/or approval from any governmental agency having jurisdiction over any activity conducted or to be conducted on the Controlled Property.

IN WITNESS WHEREOF, Grantor has caused this instrument to be signed in its name.

ARCO ENVIRONMENTAL
REMEDATION LLC

By: _____
Name:
Title:

EXHIBITS:
Exhibit A Description of Property

EXHIBIT E

Form of Written Notice of Satisfactory Completion

Atlantic Richfield Company
28100 Torch Parkway
Warrenville, IL 60555

Attn: Mr. David Kalet

**Re: Hastings-On-Hudson Site
Order On Consent Index # _____; Site Code _____**

Dear Mr. Kalet:

Pursuant to the above-referenced Order on Consent ("Order") dated _____, the Atlantic Richfield Company ("AR") and ARCO Environmental Remediation LLC ("AERL") performed remedial activities at Operable Unit 1 ("OU-1") of the referenced site in accordance with a remedial design work plan and remedial design approved by the Department. The Order was entered into pursuant to the Department's authority under, *inter alia*, ECL Article 27, Title 13; Article 71, and Title 27, Article 3-0301. The approved Remedial Design Work Plan and Remedial Design provided for implementation of the remedy selected in the Record of Decision for OU-1 issued by the Department on March 18, 2004

The Department hereby approves the Remedial Certification Report. AR and AERL have satisfied the Department that all construction activities have been completed in compliance with the approved Remedial Design and the Order.

Nothing contained herein shall be construed as barring, diminishing, or in any way limiting the Department's authority under CERCLA or the Environmental Conservation Law.

Should you have any questions concerning this matter, you may call me.

Sincerely,

EXHIBIT "F"

IRM Work Plan Requirements

An IRM Work Plan shall include, at a minimum, the following:

1. a summary of the data supporting the extent of the proposed IRM;
2. a chronological description of the anticipated IRM activities;
3. a schedule for performance of the IRM activities;
4. detailed documents and/or specifications prepared, signed, and sealed by a Professional Engineer providing sufficient detail to implement the Department-approved IRM, including, as appropriate, a description of soil and sediment erosion control, storm water management and monitoring, and dust, odor, and organic vapor control and monitoring procedures to be implemented during remedial activities, and a detailed description of confirmation sampling and site restoration plans;
5. a health and safety plan, including a community air monitoring plan;
6. a contingency plan, including a description of procedures for dismantling and removing remedial structures and equipment from the Site, if applicable;
7. a citizen participation plan, if required, that incorporates appropriate activities outlined in the Department's publication "Citizen Participation in New York's Hazardous Waste Site Remediation Program: A Guidebook," dated June 1998, any subsequent revisions thereto, and 6 NYCRR Part 375;
8. an O&M Plan, if the performance of the Department-approved IRM results in a treatment system which is expected to operate for greater than 18 months. If the system will not operate for greater than 18 months, or if only monitoring is required, only a monitoring plan will be needed; and
9. a description of institutional controls to be implemented as well as written approval from the owner of the affected property if the remedy selected requires implementation of an institutional control at an off-Site location or if the person responsible for the remedy is not the Site owner.

Exhibit "G"

O&M Work Plan Requirements

The O&M Work Plan shall provide for:

1. Operation and maintenance of engineering controls and/or treatment systems;
2. Maintenance of institutional controls, where applicable;
3. Yearly certification by a Professional Engineer of the continued effectiveness of any institutional and/or engineering controls, where applicable. The certification must identify the required controls and evaluate whether the controls should remain in place and effective for the protection of public health and/or the environment;
4. A monitoring plan which describes the measures for monitoring the performance and effectiveness of the remedy at the Site;
5. A contingency plan which describes procedures which may be required to protect and/or maintain the operation of the remedy in the event of an emergency, such as a fire, spill, tank or drum overflow or rupture, severe weather, or vandalism;
6. A health and safety plan and a list of records and references;
7. Monitoring and reporting of the performance and effectiveness of the remedy, both short and long-term, by:
 - (i) Assessing compliance with actual or equivalent discharge permit limits;
 - (ii) Assessing achievement of the remedial performance criteria; and,
 - (iii) Sampling and analysis of appropriate media.
8. A determination that the remedy is complete by demonstrating that the remedial action objectives have been achieved.

Exhibit "H"

Record of Decision