

STATE OF NEW YORK: DEPARTMENT OF ENVIRONMENTAL CONSERVATION

In the Matter of a Field
Investigation to Identify and a Remedial
Program to Eliminate Any Threat to the
Environment Caused by the Disposal of
Hazardous and Industrial Wastes by

AGREEMENT/
DETERMINATION

~~Index~~ #T110783

STERLING DRUG INC.

Respondent

WHEREAS:

1. The New York State Department of Environmental Conservation (the "Department") is responsible for the enforcement of Article 27, Title 13, of the Environmental Conservation Law of the State of New York (the "ECL"), entitled "Inactive Hazardous Waste Disposal Sites".
2. Sterling Drug Inc. ("Sterling"), is a Delaware corporation with a facility, Sterling Organics Division, comprising approximately twenty-six (26) acres, located at 33 Riverside Avenue, in the City of Rensselaer, County of Rensselaer, State of New York (the "Site"). (A map of the Site is attached hereto and is incorporated into this Agreement/Determination as Appendix "A".)
3. Sterling has generated and continues to generate industrial wastes at the Site, some of which wastes are hazardous, as that term is defined in ECL Section 27-1301(1).
4. From approximately 1920 until 1947, and in 1970, Sterling disposed of certain industrial and hazardous wastes at the Site. These industrial and hazardous wastes included, but were not limited to, pharmaceutical intermediates, finished pharmaceutical

products, organic impurities with activated carbon, filter cakes, filter aids, hydrated lime, solvents, still bottoms, and oils and wood.

5. The Site is an inactive hazardous waste disposal site, as that term is defined in ECL Section 27-1301(2).

6. It is hereby agreed by Sterling and determined by the Department that the goals of this Agreement/Determination are that Sterling shall: (1) develop and implement a remedial program to abate (to the extent possible through the use of Requisite Technology) any migration of contaminated groundwater in the water table aquifer (the "Upper Aquifer"), from on-site to off-site locations, and (2) provide for an additional field investigation and an additional field investigation report for the purpose of identifying any threats to the environment posed by the prior disposal of industrial and hazardous wastes at the Site, and any additional remedial programs which may be necessary.

NOW, THEREFORE, to achieve the foregoing goals, it is hereby agreed by Sterling and determined by the Department that:

I. All investigations, proposals, reports and remedial actions required by this Agreement/Determination shall be prepared, designed and executed in accordance with Requisite Technology, and shall be subject to the approval of the Department. As used herein, the term "Requisite Technology" means accepted engineering,

scientific and construction principles and practices which (1) are technologically and economically feasible, (2) will most effectively identify, mitigate and eliminate to the extent possible any present or potential threat to the environment posed by the disposal of industrial and hazardous wastes at the Site, and (3) will cost an amount commensurate with the value of the environment, public health and welfare to be protected.

II. All submissions to be made to the Department pursuant to this Agreement/Determination shall be made as follows: (1) Two copies to the Division of Solid and Hazardous Waste, New York State Department of Environmental Conservation, Room 209, 50 Wolf Road, Albany, New York 12233; (2) Two copies to the Division of Environmental Enforcement, Albany Field Unit, New York State Department of Environmental Conservation, Room 105, 50 Wolf Road, Albany, New York 12233; and (3) Two copies to the Regional Director, Region 4, New York State Department of Environmental Conservation, 2176 Guilderland Avenue, Schenectady, New York 12306.

All communications to be made to Sterling pursuant to this Agreement/Determination shall be made as follows: (1) One copy to Sterling Drug Inc., 90 Park Avenue, New York, New York 10016, Attention: Director of Government Affairs; (2) One copy to Sterling Drug Inc., 90 Park Avenue, New York, New York 10016, Attention: General Counsel; and (3) One copy to Sterling Organics Division, 33 Riverside Avenue, Rensselaer, New York 12144, Attention: Project Manager.

III. Sterling and the Department acknowledge that, prior to the effective date of this Agreement/Determination, Sterling submitted to the Department a field investigation report based upon investigations conducted at the Site, entitled "Interim Report, Phase I -- Preliminary Site Investigations" dated February 18, 1983, (the "Interim Report"), attached hereto and incorporated into this Agreement/Determination as Appendix B, and a proposed written scope of work prepared by Dames & Moore, entitled "Proposal, Phase II -- Additional Site Investigations and Design of Remedial Measures" dated February 21, 1983 (the "Proposal"), attached hereto and incorporated into this Agreement/Determination as Appendix C. The Proposal outlines the nature and extent of some additional work to be undertaken in conducting an additional field investigation at the Site and off-site and some remedial actions to be undertaken at the Site. The Department has reviewed the Proposal, and Sterling has commenced the field investigation of the Site, as outlined in the Proposal.

IV. A. Sterling has submitted to the Department a supplemental proposal recommending locations for five (5) groundwater monitoring wells, together with supporting data and justification for the locations selected (the "Supplemental Proposal"). The groundwater monitoring wells are to be installed in accordance with Requisite Technology and are to be located in public rights-of-way to the North and West of the Site. Exact locations for the groundwater

monitoring wells will be determined in the field by representatives of the Department and Sterling. In the event of disagreement as to the location of the groundwater monitoring wells, the dispute shall be settled as provided in Paragraph XIV below.

B. No later than December 31, 1983, Sterling shall complete installation of the five (5) groundwater monitoring wells required by subparagraph A of this Paragraph. All procedures and protocols for well installation shall be as presented in the Interim Report.

C. No later than December 31, 1983, Sterling shall obtain one complete round of groundwater samples and water level readings from each new well installed pursuant to subparagraphs A and B of this Paragraph. Immediately thereafter, Sterling shall commence analysis of such samples in accordance with the analytical procedures and protocols contained in the Interim Report and shall submit such analytical results to the Department as soon as they are available but in no event later than March 1, 1984.

V. Sterling shall submit to the Department a field investigation report of work performed on-site pursuant to the Proposal (the "On-Site Report") not later than December 31, 1983. The On-Site Report shall contain all data generated and all other information obtained during the on-site field investigation to the extent that it is not included in the Interim Report.

VI. A. On or before December 1, 1983, Sterling shall submit to the Department plans and specifications for a remedial program to abate (to the extent possible by the use of Requisite Technology) any migration of contaminated groundwater in the Upper Aquifer from on-site to off-site locations by providing for the containment, collection and treatment within the boundaries of the Site of groundwater in the Upper Aquifer (the "Remedial Plan"). On or before December 1, 1983, Sterling shall also submit documentation showing that the Rensselaer County Sewer District (the "Sewer District") will accept, in accordance with legal requirements, into its sewer system the contaminated groundwater proposed to be discharged as part of the remedial program. If it is determined that such groundwaters are unacceptable to the Sewer District, then Sterling shall provide, within ninety (90) days, a proposal for an alternate means of disposal of such groundwaters, subject to the approval of the Department. In the event such contingency occurs, implementation of the remedial program shall be delayed accordingly.

B. No later than thirty days after submission of the Remedial Plan, the Department shall notify Sterling in writing of the Department's approval or disapproval of the Remedial Plan. If the Department approves the Remedial Plan, the approved Remedial Plan shall become the Remedial Plan to be implemented by Sterling and shall become a part of this Agreement/Determination. If the

Department disapproves the Remedial Plan, the Department shall cause the Remedial Plan to be revised in accordance with Requisite Technology.

C. If Sterling agrees to the Remedial Plan as revised, such plan shall become the approved Remedial Plan to be implemented by Sterling and shall become a part of this Agreement/Determination. If Sterling does not agree to the Remedial Plan as revised, the dispute shall be settled as provided in Paragraph XIV below.

D. The Remedial Plan shall include, but shall not be limited to, the following:

1. A complete description of the remedial program required by Paragraph VI.A. above;

2. The quality control, quality assurance, and procedures and protocols to be applied to the remedial program construction techniques;

3. Documentation for the remedial program, including plans and specifications which shall satisfy all applicable state and federal laws and rules and regulations. Such documents shall provide for the complete installation of an interceptor drain as described in the Proposal. The interceptor drain shall be constructed approximately as depicted by Figure No. 3 of the Proposal and shall be keyed into the underlying clay layer so as to prevent lateral movement of groundwater in the Upper Aquifer. Prior to construction, the confining layer must be adequately

probed to ensure that the interceptor drain installation will be an effective barrier to Upper Aquifer ground water migration from the Site. The exact location and length of the interceptor drain shall be established by probe survey and detailed engineering evaluations contained in the On-Site Report. In the event of disagreement as to the location or length of the interceptor drain, the dispute shall be settled as provided in Paragraph XIV below.

4. A time schedule and critical path analysis for implementation of the construction elements of the remedial program;

5. Parameters, conditions, procedures and protocols to determine the success or failure of the remedial program; and

6. Maintenance and monitoring activities, procedures and protocols to be undertaken during and after implementation of the remedial program, and provisions regarding the submission of periodic monitoring reports to the Department. These activities shall include periodic sampling and analysis of the groundwater monitoring wells, located on-site and off-site, to determine the effectiveness of the approved Remedial Plan when implemented.

E. Sterling shall complete the construction elements of the approved Remedial Plan no later than March 31, 1984.

F. No later than forty-five (45) days after completion of the construction elements of the approved Remedial Plan, Sterling shall submit to the Department "As-Built" drawings and a written certification by a professional engineer, licensed in New

York State, that the construction elements were completed in accordance with the approved Remedial Plan.

G. No later than forty-five (45) days after submission of the "As-Built" drawings and written certification required by Paragraph VI.F. above, the Department shall advise Sterling in writing as to whether the implementation of the construction elements of the remedial program were complete in accordance with the approved Remedial Plan.

H. Sterling shall maintain and monitor the areas at which the remedial program has been implemented, and shall provide for physical security thereat in accordance with the approved Remedial Plan until completion of the construction elements of the final remedial program undertaken pursuant to Paragraph IX below.

VII. A. On or before March 1, 1984, Sterling shall submit to the Department a written evaluation of all existing data and a proposed written scope of work outlining the nature and extent of additional work, if any, to be undertaken in conducting an additional field investigation of the Site and of areas affected by the disposal of industrial and hazardous wastes at the Site (the "Phase III Proposal"). The Phase III Proposal shall be subject to the written approval of the Department. At a minimum the Phase III Proposal shall address all of the following items to the extent that they have not already been accomplished or the information provided to the Department pursuant to the Agreement/Determination:

1. A brief history and description of the Site, including the types, quantities, physical state and location of wastes disposed of, including spills at and in the vicinity of the Site, and the dates and methods of disposal and spillage of such wastes, to the extent known or with reasonable diligence ascertainable by Sterling;

2. A description of the results of all previous investigations of the Site and of the vicinity of the Site, the results of which are in Sterling's possession or which are actually known to Sterling, including copies of all topographic and property surveys and engineering studies of the Site and areas in the vicinity of the Site.

3. The methods and procedures by which types, quantities, and the areal and vertical extent of industrial and hazardous wastes, and hazardous constituents or toxic degradation products thereof, present at and in the vicinity of the Site can be determined, particularly including the areal and vertical extent of off-site contamination, and an evaluation of the necessity therefor;

4. The methods and procedures by which the hydrogeological conditions at and in the vicinity of the Site shall be determined, including, if necessary, a proposed number of additional exploratory borings and groundwater monitoring wells;

5. The methods and procedures which shall be used to determine the past, present and future release and migration of industrial and hazardous wastes, and hazardous constituents or toxic degradation products thereof, if any, from the Site, including, if necessary, the number, location and types of samples of surface water, groundwater, air, soil, sediment and the biota collected or to be collected and the specific analyses performed or to be performed on each sample;

6. The calculations which shall be utilized to predict the potential release and migration of existing industrial and hazardous wastes, hazardous constituents or toxic degradation products thereof, through groundwater, surface water and air, at the Site to any other on-site or off-site area;

7. Procedures and protocols, including but not limited to, quality control and quality assurance, to be employed in establishing sampling stations, in obtaining samples and in analyzing such samples, and in gathering other field data; and

8. A time schedule for the initiation and completion of the actions necessary to furnish the information required by this Paragraph.

B. Within thirty (30) days of receipt of the Phase III Proposal, the Department shall notify Sterling in writing of its approval or disapproval of the Phase III Proposal. If the Department approves the Phase III Proposal, the approved Phase

III Proposal shall become a part of this Agreement/Determination. If the Department disapproves the Phase III Proposal, the Department shall so notify Sterling and the dispute shall be settled according to the procedures set forth in Paragraph XIII below.

VIII. A. On or before December 31, 1984, Sterling shall submit to the Department a field investigation report (the "Phase III Report") conducted in accordance with and to the extent required by the approved Phase III Proposal. The Phase III Report shall include a copy of the approved Phase III Proposal and all data generated and all other information obtained during any additional field investigation, and shall also include, but shall not be limited to, the following specific information with respect to the Site and off-site areas affected by the disposal of industrial and hazardous wastes at the Site, to the extent that this data and information have not already been provided to the Department pursuant to the Agreement/ Determination:

1. A topographic survey and a resultant plot plan for the purpose of showing surface drainage, on-site monitoring wells, building locations and on-site benchmarks;

2. A summary of material environmental conditions, including, but not limited to: annual and seasonal climatic conditions, Site drainage, flood characteristics of the Hudson River, Site water balance, land use, soil conditions, and hydro-geologic characteristics;

3. All data collected and used in preparing the Phase III Report, including, but not limited to: soil boring logs, well data, and the results of chemical analyses performed on samples obtained during field investigations;

4. A determination of the types and quantities of industrial and hazardous wastes present as well as the areal and vertical extent of such wastes, which determination shall result in the preparation of a waste location and concentration map and cross-sections of the waste disposal area and any spill areas;

5. A study and evaluation of the hydrogeological conditions, which shall include an adequate number of upgradient and downgradient soil borings and groundwater monitoring wells to a sufficient depth to thoroughly evaluate subsurface conditions;

6. A determination of the nature and extent of actual and potential release and migration of industrial and hazardous wastes, and hazardous constituents or toxic degradation products thereof, from the Site through surface water, groundwater, air, soil and sediment to other areas on the Site and off-site, particularly including an evaluation of the effectiveness of the Remedial Plan implemented pursuant to Paragraph VI above.

7. A determination of the extent to which both on-site and off-site surface water, groundwater, air, soil, sediment and the biota have been, are being or may be contaminated

by industrial or hazardous wastes, hazardous constituents or toxic degradation products thereof;

8. An assessment of the results of the field investigation and a determination of the current or potential impacts of any threat to the environment which exists, or may exist in the future, at and in the vicinity of the Site, as a result of the industrial and hazardous wastes disposed of at the Site.

9. An evaluation of various remedial programs, including the approved Remedial Plan, which, when implemented, would identify, mitigate and eliminate to the extent possible, and in accordance with Requisite Technology, any threat to the environment on-site or off-site, which threat is determined to exist as a result of the disposal of industrial and hazardous wastes at the Site, and which shall include, but not be limited to: (1) containment and monitoring of on-site contaminated groundwater; (2) identification, mitigation and elimination of any migration of contamination from the Site to areas off the Site; and (3) identification, mitigation and elimination to the extent possible and in accordance with Requisite Technology of off-site contamination;

10. The selection of a specific remedial program, if necessary, for the Site and appropriate off-site areas, which program satisfies the requirements of subparagraph (9) of this Paragraph. The reasons for selection of a particular program, and the reasons for rejection of other programs evaluated, shall be presented. Such reasons shall include all scientific evidence which forms the basis for program selection or rejection;

11. References to all scientific or technical literature used in the preparation of the Phase III Report; and

12. Names, titles and disciplines of all professionals engaged in the preparation of the Phase III Report.

B. Within sixty (60) days of receipt of the Phase III Report, the Department shall notify Sterling in writing of its approval or disapproval of the Phase III Report. If the Department approves the Phase III Report, the approved Phase III Report shall become a part of this Agreement/Determination. If the Department disapproves the Phase III Report, the Department shall so notify Sterling, and the dispute shall be settled in accordance with the procedures set forth in Paragraph XIII below.

IX. A. Within one hundred twenty (120) days of receipt of the Department's approval of the Phase III Report, Sterling shall submit to the Department a final plan for implementation of any remedial program recommended therein (the "Final Remedial Plan").

B. The Final Remedial Plan shall include, but shall not be limited to, the following:

1. A complete description of the approved final remedial program at the Site and at any off-site areas affected by the disposal of industrial and hazardous wastes at the Site, to include, if applicable:

a. the disposition of hazardous wastes, and any soil or other materials contaminated thereby, or by hazardous constituents or toxic degradation products thereof which the approved Phase III Report requires to be excavated, if any;

b. collection, treatment, and disposal of contaminated groundwater and leachate;

c. physical security and posting of the Site, and possible off-site locations;

d. quality control and quality assurance procedures and protocols to be applied to remedial program construction operations;

2. A description of those elements of the approved Remedial Plan to be incorporated into the Final Remedial Plan;

3. Documentation for the approved final remedial program, including plans and specifications which shall satisfy all applicable state and federal laws and rules and regulations;

4. A time schedule and critical path analysis for implementation of the construction elements of the approved final remedial program;

5. Parameters, conditions, procedures and protocols to determine the success or failure of the proposed final remedial program;

6. Maintenance and monitoring activities, procedures and protocols to be undertaken during and after implementation of the proposed final remedial program and during a thirty (30) year period following the completion of the implementation of the remedial program, and the submission of periodic monitoring reports to the Department.

C. Within sixty (60) days of receipt of the Final Remedial Plan, the Department shall notify Sterling in writing its approval or disapproval of the Final Remedial Plan. If the Department approves the Final Remedial Plan, the approved Final Remedial Plan shall become the Final Remedial Plan to be implemented by Sterling and shall become a part of this Agreement/Determination. If the Department disapproves the Final Remedial Plan, the Department shall so notify Sterling, and the dispute shall be settled in accordance with the procedures set forth in Paragraph XIII below.

D. Sterling shall complete the construction elements of the final remedial program in accordance with the provisions of the approved Final Remedial Plan, including the time schedules contained therein.

E. Within forty-five (45) days of the completion of the construction elements to the final remedial program, Sterling shall submit to the Department "As-Built" drawings and a written certification by a professional engineer, licensed in New York State, that the construction elements were completed in accordance with the approved Final Remedial Plan.

F. Within forty-five (45) days of receipt of the "As-Built" Drawings, the Department shall advise Sterling in writing as to whether the implementation of the construction elements of the final remedial program are complete and in accordance with the approved Final Remedial Plan.

X. For a period of thirty (30) years from the date of the Department's written acknowledgment that Sterling has completed the implementation of the construction elements of the final remedial program in accordance with the approved Final Remedial Plan, or for a longer period of time commensurate with Sterling's obligations pursuant to this Agreement/Determination (the Post-Closure Period), Sterling shall maintain and monitor the areas at

which the final remedial program has been implemented, and shall provide for the physical security of the Site in accordance with the approved Final Remedial Plan.

XI. A. In the event that either the Department or Sterling has reasonable grounds to believe that the remedial program or the final remedial program has failed to meet or is inconsistent with: (1) Requisite Technology; (2) the requirements and goals of this Agreement/Determination; or (3) the Remedial Plan or Final Remedial Plan at any time prior to or during the Post-Closure Period, Sterling shall, on its own initiative or after notice by the Department, as the case may be, investigate to determine the causes therefor. Within ninety (90) days after discovery or notice of such failure, Sterling shall submit to the Department a supplementary remedial plan utilizing Requisite Technology (the "Supplementary Remedial Plan") to correct the failure. The Supplementary Remedial Plan shall include a time schedule and critical path analysis for implementation.

B. Within sixty (60) days of receipt of the Supplementary Remedial Plan, the Department shall notify Sterling in writing of its approval or disapproval of the Supplementary Remedial Plan. If the Department approves the Supplementary Remedial Plan, the approved Supplementary Remedial Plan shall become the Supplementary Remedial Plan to be implemented by Sterling and shall become a

part of this Agreement/Determination. If the Department disapproves the Supplementary Remedial Plan, the Department shall so notify Sterling, and the dispute shall be settled in accordance with the procedures set forth in Paragraph XIII below.

C. Sterling shall complete the construction elements of the supplementary remedial program in accordance with the provisions of the approved Supplementary Remedial Plan.

D. Within forty-five (45) days of the completion of the construction elements of the Supplementary Remedial Plan, Sterling shall submit to the Department "As-Built" drawings and a written certification by a professional engineer, licensed in New York State, that the construction elements were completed in accordance with the approved Supplementary Remedial Plan.

E. Within forty-five (45) days of receipt of the "As-Built" Drawings, the Department will advise Sterling in writing as to whether the implementation of the construction elements of the Supplementary Remedial Plan is complete and in accordance with the provisions of the approved Supplementary Remedial Plan.

XII. For a period of thirty (30) years from the date of the Department's written acknowledgment that Sterling has completed the implementation of the construction elements of the remedial program in accordance with the approved Supplementary Remedial Plan (the "Extended Post-Closure Period"), Sterling shall maintain and monitor the areas at which the supplementary remedial program

is implemented, shall collect, treat and dispose of any leachate generated thereat, and shall provide for physical security of the Site in accordance with the approved Supplementary Remedial Plan. During the Extended Post-Closure Period, Sterling shall provide the Department with periodic monitoring reports, as set forth in the approved Remedial Plan or approved Supplementary Remedial Plan.

XIII. A. If the Department disapproves the Phase III Proposal, the Phase III Report, the Final Remedial Plan or the Supplementary Remedial Plan (referred to individually as the "Document"), as the case may be, the Department shall specify, in its notification to Sterling, its objections or proposed modifications.

B. Within sixty (60) days of receipt of the Department's objections or proposed modifications, Sterling shall revise the Document in accordance with the Department's objections and proposed modifications or, if Sterling does not agree that the Department's objections and proposed modifications are in accordance with Requisite Technology, Sterling shall seek to have the dispute settled as provided in Paragraph XIV below.

C. Within thirty (30) days of a final determination rendered pursuant to Paragraph XIV, if any, Sterling shall revise the Document in accordance with the final determination and submit the revised Document to the Department.

D. Within thirty (30) days of receipt of the revised Document, the Department shall notify Sterling in writing as to whether the revised Document conforms to the final determination. If the Department finds that the revised Document conforms to the final determination, the revised Document shall become the approved Document to be implemented by Sterling and shall become a part of this Agreement/Determination. If the Department finds that the revised Document does not conform to the final determination, the Department shall cause the Document to be revised in accordance therewith. The revised Document, as further revised, shall then become the approved Document to be implemented by Sterling and shall become a part of this Agreement/Determination.

XIV. If there is a dispute between Sterling and the Department as to whether a given action is in accord with Requisite Technology, the matter shall be settled in accordance with the following procedures:

A. Either party, upon written notice to the other, may request the Commissioner of Environmental Conservation to appoint an administrative law judge (ALJ) to settle the dispute.

B. In all proceedings hereunder:

1. The parties shall be Sterling and the Department.
2. In addition to those powers conferred by Article 3 of the State Administrative Procedure Act, the ALJ shall have the power to:

- a. set the time and place of the proceeding;
- b. hear arguments;
- c. permit cross-examination; and
- d. question parties and receive exhibits.

3. All proceedings conducted pursuant to this Paragraph shall be stenographically recorded. The ALJ shall arrange for a stenographic transcript to be made as soon as possible after conclusion of the proceeding, and for the original and two copies of the transcript to be delivered to the ALJ at the expense of Sterling.

4. The ALJ shall prepare, no later than ten (10) working days after receipt of the transcript of the proceeding, a written summary of the documentation and testimony received during the proceeding, and a recommended decision. The summary and recommendation shall be hand delivered to the Department's representative and mailed, certified with return receipt requested, to Sterling.

5. The ALJ's recommended decision shall become the final determination of the Commissioner unless, within five (5) working days from receipt of the recommended decision, either Sterling or the Department objects in writing. Any objections shall be submitted in writing to the ALJ, with a copy to the other party.

6. If either Sterling or the Department objects to the recommended decision, the ALJ shall refer the matter to the Commissioner for final determination.

7. The final determination of the Commissioner shall be made within thirty (30) days of receipt of a party's objections to the ALJ's recommended decision.

8. Sterling may, within thirty (30) days of the final determination of the Commissioner, initiate judicial review of such determination pursuant to Article Seventy-Eight (78) of the Civil Practice Laws and Rules of the State of New York.

XV. A. Sterling shall use its best efforts to timely and expeditiously obtain whatever permits, easements, rights-of-way, rights-of-entry, authorizations or approvals (collectively referred to as "Approvals") from any governmental authority or other person as may be necessary for Sterling to perform its obligations pursuant hereto. Sterling shall not be obliged to accept any Approvals containing use restrictions on realty which prohibit or interfere with the operation of Sterling's facilities or with the performance by Sterling of its obligations pursuant hereto, if Sterling shall have used its best efforts without success to obtain the same without such use restrictions. Sterling shall promptly notify the Department in the event of Sterling's inability

to obtain such Approvals on a timely basis, or of its inability to obtain Approvals without prohibiting or interfering use restrictions or of its receipt of an Approval containing terms or conditions not specifically required by law; in which event the parties shall proceed as provided in subdivision B of this Paragraph.

B. In the event Sterling is unable to obtain the necessary Approvals or is unable to obtain acceptable Approvals, the Department shall use its best efforts, consistent with its legal authority, to assist in obtaining, as appropriate, all such Approvals which Sterling was unable to timely obtain, or was unable to obtain without prohibiting or interfering use restrictions, or obtain containing terms or conditions not specifically required by law. Sterling shall reimburse the Department for its costs and expenses incurred in assisting in obtaining any Approvals consisting of easements or otherwise relating to realty.

XVI. Sterling and the Department shall each have the right to obtain, for the purpose of comparative analysis, "split samples" or "duplicate samples", at their respective options, of all substances and materials sampled by each other at any time pursuant hereto. As used herein: "split samples" shall mean whole samples divided into aliquots; "duplicate samples" shall mean multiple samples, collected at the same time from exactly the same location, using the same sampling apparatus, collected into identical

containers prepared identically, filled to the same volume, and thereafter identically handled and preserved.

XVII. Sterling shall provide notice to the Department of any excavating, drilling, sampling or any remedial work, performed pursuant to this Agreement/Determination, to be conducted at the Site and at any off-site areas at least five (5) working days in advance of such activities.

XVIII. Sterling shall permit any duly designated officer, employee, consultant, contractor or agent of the Department to enter upon the Site or areas in the vicinity of the Site which may be under the control of Sterling, and any areas necessary to gain access thereto, at any reasonable time, for inspection purposes to ascertain Sterling's compliance with the provisions hereof and for the purpose of making or causing to be made such sampling and tests as the Department deems necessary, and for ascertaining Sterling's compliance with the provisions of this Agreement/Determination.

XIX. Sterling shall retain a disinterested third-party private professional engineer licensed in New York State to perform the technical, engineering and analytical obligations required by this Agreement/Determination.

XX. Sterling agrees and the Department has determined that this Agreement/Determination, together with all proposals and reports made a part hereof, shall constitute, and shall be enforceable

as, a determination of the Commissioner of the Department for purposes of ECL Articles 17, 19 and 27 and the enforcement provisions of Article 71 applicable thereto.

XXI. A. Nothing in this Agreement/Determination shall be construed as barring, diminishing, adjudicating or in any way affecting: (1) any legal or equitable right, claim, action, suit, cause of action or demand whatsoever that the Department may have against anyone other than Sterling, its directors, officers, employees, servants or agents; (2) the Department's right to enforce, at law or in equity, the terms and conditions hereof against Sterling, its directors, officers, employees, servants, or agents, or its successors or assigns; (3) the Department's right to bring any action, at law or in equity, against Sterling, its directors, officers, employees, servants, or agents, or its successors or assigns, on account of any area or resources that may have been affected or contaminated as a result of the release or migration of hazardous wastes, or hazardous constituents or degradation products thereof, from the Site; (4) Sterling's right to contest any action or proceeding, or to raise any statutory or common-law defense in any action or proceeding, brought by any person whatsoever (including, without limitation, the Department) in connection with, relating to or arising out of Sterling's disposal of industrial and hazardous wastes at the Site. Nothing herein shall be construed as modifying or changing the Department's

burden of proof according to law in any action or proceeding it may commence in connection with, relating to, or arising out of Sterling's disposal of industrial or hazardous wastes at the Site. Nothing herein shall be construed as affecting the Department's right to commence any such action or proceeding to which it may be entitled in connection with, relating to, or arising out of Sterling's disposal of industrial or hazardous wastes at the Site.

B. Upon expiration of the Post-Closure Period and the Extended Post-Closure Period, if any, or at such earlier time as the Department may determine that the Remedial Plan, the Final Remedial Plan, if any, and the Supplementary Remedial Plan, if any, have accomplished the goals of this Agreement/Determination, the Department shall execute a document certifying that the goals of this Agreement/Determination have been accomplished and releasing Sterling from all claims which the Department may have against Sterling arising from the past disposal of industrial and hazardous wastes at the Site as to which the Department has knowledge at the time of execution of this Agreement/Determination.

XXII. The provisions of this Agreement/Determination and any action or submission under or by reason of the provisions hereof shall not, in any action or proceeding or litigation whatsoever, whether or not brought by the Department, constitute or be construed as an adjudication or finding on any issue of fact or law, or as

admissions by either party with respect to any such issue, or be construed as or operate as any admission that Sterling has violated any law or regulation or otherwise committed a breach of duty at any time.

XXIII. Sterling shall not suffer any penalty under any of the provisions, terms and conditions hereof, or be subject to any proceedings or actions or any remedy or relief, if it cannot comply with any requirements of the provisions hereof because of an act of God, war, strike, riot, or other condition as to which negligence or willful misconduct on the part of Sterling was not a proximate cause; provided, however, that Sterling shall notify the Department in writing when it obtains knowledge of any such condition and request an appropriate extension or modification of the provisions hereof. Under such circumstances, the Department's approval shall not be unreasonably withheld.

XXIV. If for any reason Sterling may desire that any provision hereof be changed, it shall make a timely written application therefor to the Commissioner setting forth reasonable grounds for the change sought.

XXV. The Department shall keep confidential whatever information is provided by Sterling to the Department as may be entitled to confidentiality by law.

XXVI. In the event that Sterling proposes to convey the whole or any part of its ownership interest in the Site, Sterling shall, not less than thirty (30) days prior to the consummation of such conveyance, notify the Department in writing of the identity of the transferee and of the nature and date of the proposed conveyance. In advance of such proposed conveyance, Sterling shall notify the transferee in writing, with a copy to the Department, of the applicability of this Agreement/Determination.

XXVII. Within ten (10) days after approval by the Department of the Remedial Plan, Sterling shall pay to the Department the sum of fifteen thousand dollars (\$15,000) which represents reimbursement to the Department for reasonable expenses incurred heretofore and estimated by to be incurred hereafter in connection with its activities relating to the Remedial Plan and related post-closure monitoring. Reimbursement of reasonable expenses which may be incurred by the Department in connection with the Final Remedial Plan, if any, and the Supplementary Remedial Plan, if any, and related post-closure monitoring shall be determined by the Department and agreed to by Sterling as the need therefore arises.

XXVIII. A. On or before June 30, 1984, and annually thereafter until the expiration of the Post-Closure Period and the Extended Post-Closure Period, if any, Sterling shall provide to the Department financial assurances sufficient to cover the costs of all for the activities to be conducted pursuant to this Agreement/Determination. Such financial assurances shall satisfy, in form and content, the requirements of the United States Environmental Protection Agency, governing demonstrations of financial responsibility, as set forth in Subparts H of 40 CFR Parts 264 and 265.

B. If at any time the Department is not satisfied that the financial assurances provided by Sterling are reasonably adequate to cover such costs, the Department may require Sterling to post a bond or other surety in an amount estimated by the Department to cover such costs.

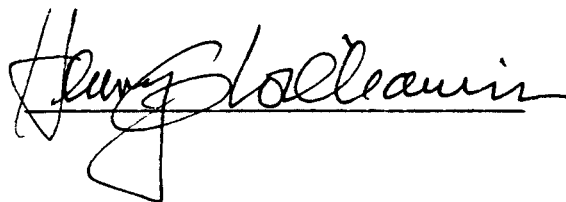
XXIX. The provisions hereof shall be deemed to bind Sterling, its successors and assigns. The provisions hereof shall constitute the complete and entire Agreement/Determination between Sterling and the Department concerning the Site and shall create no obligations (including, without limitation, additional field investigation, testing or remedial action) on Sterling, its successors and assigns, except as specifically set forth hereinbefore. No terms, conditions, understandings or agreements purporting to

modify or vary the terms hereof shall be binding unless made in writing and subscribed by the party to be bound. No informal advice, guidance, suggestions or comments by the Department regarding reports, plans, specifications, schedules or any other writing submitted by Sterling shall be construed as relieving Sterling of its obligations to obtain such formal approvals as may be required by this Agreement/Determination.

XXX. The effective date hereof shall be the date upon which it shall be subscribed by the Commissioner of Environmental Conservation, or his designee.

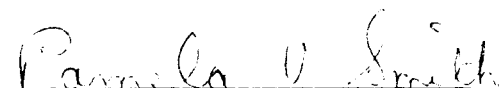
DATED: Albany, New York
December 1, 1983

HENRY G. WILLIAMS
Commissioner
New York State Department of
Environmental Conservation



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

On this 10th day of December, 1983, before me personally came HENRY G. WILLIAMS, to me known, who, being by me duly sworn, did depose and say that he is Commissioner of the Department of Environmental Conservation, and that he executed the foregoing instrument for and on behalf of the Department of Environmental Conservation by virtue of the authority in him vested as Commissioner.


Notary Public

NOTARY PUBLIC
Pamela V. Smith
Notary Public
State of New York
County of Albany

CONSENT BY STERLING

Sterling hereby consents to this Agreement/Determination and agrees to be bound by the terms, provisions and conditions contained herein.

STERLING DRUG INC.

BY:

Herbert A. McKenzie
Herbert A. McKenzie
Vice President
Sterling Drug Inc.

DATE:

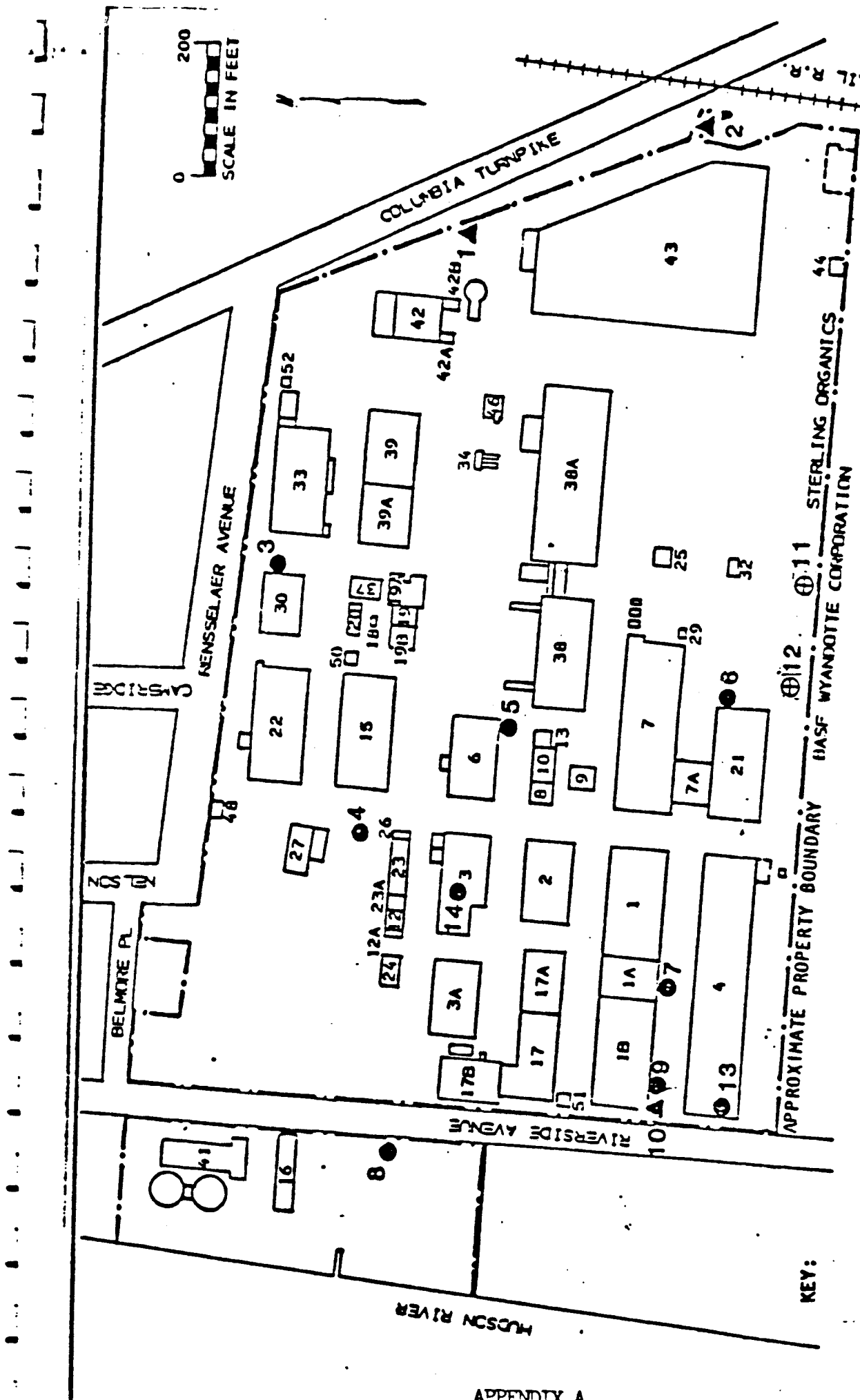
11/15/83

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

On this 15th day of November, 1983, before me personally came Herbert A. McKenzie to me known, who being by me duly sworn, did depose and say that his offices are at 90 Park Avenue, New York, New York 10016; that he is a Vice President of Sterling Drug Inc., the corporation described in and which executed the foregoing instrument; and that he signed his name as authorized by said Corporation.

Josephine A. Nicastro
Notary Public

JOSEPHINE A. NICASTRO
Notary Public, State of New York
No. 4727245
Qualified in Westchester County
Certificate filed in New York County
Commission Expires March 30, 1984



STERLING ORGANICS
RENSSELAER, NEW YORK