

STATE OF NEW YORK: DEPARTMENT OF ENVIRONMENTAL CONSERVATION

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

Agreement  
and  
Determination

STERLING DRUG INC.

Index #437T072382

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 facilities at 33 Riverside Avenue, Rensselaer, New York, and Route 151, off Third Avenue, East Greenbush, New York, and the Sterling-Winthrop Research Institute, Columbia Turnpike, Rensselaer, New York (the "Facilities"). Sterling has generated and continues to generate industrial wastes at the Facilities, some of which wastes are hazardous wastes, as that term is defined in ECL §27-1301(1).

3. From approximately 1956 until 1977, Sterling removed industrial and hazardous wastes from the Facilities and deposited such wastes at a seven acre site located between Papscaenee Creek and Penn Central Railroad tracks in the Town of East Greenbush, Rensselaer County, New York, four acres of which are owned by Mr. and Mrs. Salvatore Graziano, of Albany, New York, and three acres of which are owned by Niagara Mohawk Power Corporation (the "Site"). These industrial and hazardous wastes included pharmaceutical intermediates, finished pharmaceutical products, filter cakes, solvents, still bottoms, and oils and wood, all in unknown quantities.

4. The Site is an inactive hazardous waste disposal site, as that term is defined in ECL §27-1301(2), and it is hereby agreed and determined by the parties hereto that Sterling shall provide for a field investigation and a field investigation report, with the goal of identifying any threat to the environment, posed by the prior disposal of industrial and hazardous wastes at the Site.

NOW, therefore, to achieve the goal of identifying any threat to the environment posed by the prior disposal of industrial and hazardous wastes at the Site, it is hereby agreed by Sterling and determined by the Department, that:

I. All investigations, proposals and reports required by this Agreement and Determination shall be prepared, designed and executed through the application of "Requisite Technology", and shall be subject to approval of the Department. As used herein, Requisite Technology means accepted engineering, scientific and construction principles and practices which are technologically and economically feasible and which will most effectively identify any threat to the environment posed by the prior disposal of industrial and hazardous wastes at the Site.

II. All submissions to be made to the Department shall be made to the Division of Hazardous Waste Enforcement, Room 105, 50 Wolf Road, Albany, New York 12233-0001. All correspondence and notice to Sterling shall be sent to the Director of Government Affairs, Sterling Drug Inc., 90 Park Avenue, New York, New York 10016, cc General Counsel at the same address. The Department and Sterling reserve the right to amend this provision on notice to the other.

III. The parties hereto acknowledge that, prior to the effective date of this Agreement/Determination, Sterling submitted to the Department a proposed

written scope of work entitled the "Confirming Proposal Interim Hydrogeologic Study of Inactive Waste Site, Rensselaer, New York for Sterling Drug Inc.," Job. No. 7425-008-10, dated May 3, 1982, prepared by Dames & Moore (the "Proposal") outlining the nature and extent of the work to be undertaken in conducting a field investigation of the Site, and some, but not all, of the procedures and protocols to be employed in establishing sampling stations, ground water monitoring wells and soil borings, in obtaining samples and in analyzing such samples, and in gathering other field data. Any conflict which may arise between the terms of the Proposal and this document shall be resolved in favor of this document. A copy of the Proposal, as approved by the Department, shall be attached and made a part hereof. The number and general location of monitoring wells and soil borings set forth in the Proposal is satisfactory to the Department, for purposes of this document.

IV. Sterling shall perform a field investigation of the Site as outlined in the approved Proposal, and shall submit to the Department a field investigation report (the "Report") not later than June 1, 1983. The Report shall contain all data generated and all other information obtained during the field investigation, including, but not limited to, the following specific information.

- (a) Based upon documents and/or recollections a brief history and description of the operation of the Site, including the nature, amounts, physical state and location of wastes disposed of at the Site, and the dates and methods of such disposal;
- (b) A description of the results of all previous investigation of the Site and/or the area in the vicinity of the Site within Sterling's knowledge, including copies of any previous topographic surveys and engineering studies of the Site;

- (c) A plot plan or survey of the Site and contiguous property, including the location and elevation of all sampling stations, monitoring wells, and soil borings;
- (d) A summary of all environmental conditions at and in the vicinity of the Site, including, but not limited to, annual and seasonal climatic conditions, stream flow data, wildlife habitats, land use, soil conditions, and hydrogeologic characteristics;
- (e) All data collected and used in preparing the Report, including, but not limited to, soil boring logs, well data, and the analytical results of chemical tests performed on samples obtained from the Site. This includes all data rejected, not used or considered invalid and reasons therefor;
- (f) As a result of the field investigation, a determination of the types, quantities, physical state and location of industrial and hazardous wastes deposited at the Site, as well as the areal and vertical extents of such wastes as best evaluated utilizing test methods such as resistivity, radar, seismic and/or magnetometer testing which determination, to the extent possible, shall result in the preparation of a waste location and concentration map and cross-sections of the disposal area;
- (g) A study and evaluation of the hydrogeological characteristics at and in the vicinity of the Site which shall include an adequate number of upgradient and downgradient soil borings and ground water monitoring wells to a sufficient depth to thoroughly evaluate subsurface conditions at and in the vicinity of the Site;
- (h) An evaluation of the nature and extent of actual or potential release and migration of industrial and hazardous wastes or

contamination derived therefrom from the Site through surface water, ground water, and soils at and in the vicinity of the Site;

- (i) An evaluation of the extent to which surface waters, ground water, air and soils have been or are being contaminated by industrial or hazardous wastes from the Site, or contamination derived therefrom;
- (j) An evaluation of the results of the field investigation and a determination of the impacts of any threat to the environment which exists at and in the vicinity of the Site, and/or further off-site, if applicable, as the result of industrial and hazardous wastes disposed of at the Site;
- (k) References to all scientific and technical literature used in the preparation of the Report;
- (l) Names, titles, and disciplines of all professionals engaged in the conduct of the field investigation and the preparation of the Report.

V. Within 30 days after receipt of the Report, the Department shall provide written notification to Sterling of its approval or its disapproval of the Report, setting forth its objections and/or proposed modifications to the Report.

If the Department disapproves the Report, then within 30 days of receipt of the Department's objections and/or proposed modifications to the Report, Sterling shall review the Department's proposed modifications and/or objections and submit a written response to the Department which shall be included in the Report (the "Revised Report"). The Revised Report shall be subject to the Department's approval.

VI. Sterling shall provide notice to the Department of any excavating, drilling or sampling to be conducted pursuant hereto at least five working days in advance of performing such activities.

VII. The Department shall have the right to obtain split samples of all substances and materials sampled by Sterling pursuant hereto. As used herein the term "split samples" shall mean whole samples divided into aliquots to be tested by the Department for the purpose of comparative analysis.

VIII. Sterling shall permit any duly designated officer, employee, consultant, contractor or agent of the Department to enter upon the Site, or upon any areas under Sterling's control necessary to gain access to the Site, at any reasonable time, for inspection purposes to ascertain Sterling's compliance with the provisions hereof and for the purpose of performing or causing to be performed such sampling and testing as the Department may deem necessary pursuant to Paragraph VII herein.

IX.A. Sterling shall use its best efforts to timely and expeditiously obtain whatsoever permits, easements, rights-of-way, rights-of-entry, authorizations or approvals ("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 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, and/or of its inability to obtain Approvals without prohibiting or interfering use restrictions, and/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 such event, 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.

X. Sterling shall not suffer any penalty under any of the provisions, terms or conditions hereof, or be subject to any proceedings or actions or any remedy or relief, if its performance of its obligations pursuant hereto shall be impossible due to an act of God, war, strike, riot, climatic conditions, or other cause not proximately caused by the culpable action or omission to act of Sterling, its directors, officers, employees, servants or agents. Within ten working days after it shall have acquired knowledge of such impossibility, Sterling shall fully communicate such knowledge to the Department and apply for the appropriate extension or modification or suspension of the terms and conditions hereof, and the Department shall not unreasonably withhold such extension, modification or suspension.

XI. Nothing herein 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 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 in any manner 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.

XII. The provisions hereof 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.

XIII. Sterling shall retain a disinterested third-party private professional engineer licensed in New York State to perform the technical, engineering and analytical obligations required pursuant hereto.

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

XV. 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.



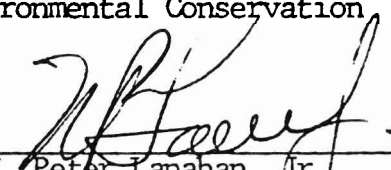
XVI. The Department shall keep confidential whatever information is provided by Sterling to the Department as may be entitled to confidentiality by law, pursuant to specific requests by Sterling.

XVII. The provisions hereof shall be deemed to bind Sterling, its successors and assigns. The provisions hereof shall constitute the complete and entire Agreement and Determination between Sterling and the Department concerning the Site and shall create no obligation (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.

DATED: Albany, New York

AUG 6 1982 , 1982

ROBERT F. FLACKE  
Commissioner  
New York State Department of  
Environmental Conservation

By:   
M. Peter Lanahan, Jr.  
First Deputy Commissioner

CONSENT BY RESPONDENT

Sterling this Agreement and Determination  
Respondent hereby consents to the ~~issuing and entering of this Order,~~  
waives its right to a hearing herein, and agrees to be bound by the terms,  
provisions and conditions contained herein.

\*with respect to the terms  
and conditions of this  
Agreement only

STERLING DRUG INC.

BY: Herbert A. McKenzie

TITLE: VICE - PRESIDENT

DATE: 7-21-82

STATE OF NEW YORK )  
COUNTY OF New York ) s.s.:

On this 21<sup>st</sup> day of July, 1982 before me personally came  
Herbert A. McKenzie to me known, who being by me duly sworn, did  
depose and say that he resides at 90 Park Ave, New York, NY  
; that he is 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, 19...74