

STATE OF NEW YORK DEPARTMENT
OF ENVIRONMENTAL CONSERVATION

In the Matter of the Remedial
Obligations for an Inactive
Hazardous Waste Disposal Site
under Title 13 of Article 27 of the
Environmental Conservation Law
of the State of New York by

ORDER ON CONSENT

Index # A4-0404-9911
Site # 442011

360 NORTH PASTORIA ENVIRONMENTAL
CORPORATION,

Sterling Drug #3 Site

Respondent.

WHEREAS,

1. The New York State Department of Environmental Conservation (hereafter the "Department") is responsible for enforcement of Article 27, Title 13 of the Environmental Conservation Law of the State of New York ("ECL"), entitled "Inactive Hazardous Waste Disposal Sites".

2. The Respondent, 360 North Pastoria Environmental Corporation (hereafter "NPEC" or "Respondent") is a wholly owned subsidiary of the Eastman Kodak Company (hereafter "Kodak").

3. Heretofore, Sterling Winthrop, Inc. (hereafter "Sterling") and the Department entered into a certain Order on Consent dated March 29, 1993 (Index # A4-0281-9204) for the Sterling Drug # 3 Site located on Riverside Avenue in the Town of

East Greenbush, Rensselaer County, New York (site #422011), having as its goals the development and implementation by Sterling of a remedial program for an Operable Unit at the Site.

4. Sterling, at the time it executed the March 29, 1993 Order, was a subsidiary of the Eastman Kodak Company. In 1994, Kodak sold the stock of Sterling but retained the obligations with respect to the environmental liabilities set forth in the March 29, 1993 Order on Consent. A copy of the Consent Order is attached as Exhibit "A".

5. To more accurately reflect the remedial obligations with respect to this Site, Respondent NPEC and the Department have agreed that the execution of this Consent Order is necessary whereby NPEC will become a named Respondent for this Site and thereby assume the remedial obligations with respect to the Site. Accordingly, the Department and Respondent agree that the execution of this Consent Order is necessary and appropriate.

6. The Site is an inactive hazardous waste disposal site, as that term is defined at ECL Section 27-1301(2) and has been listed in New York State's *Registry of Inactive Hazardous Waste Disposal Sites*. The Department has classified the Site as a Classification "2" pursuant to ECL Section 27-1305(4)(b), having found that the Site presents a "significant threat to the public health or environment".

7. Pursuant to ECL Section 27-1313(3)(a), whenever the Commissioner of Environmental Conservation (the "Commissioner") "finds that hazardous wastes at an inactive hazardous disposal site constitute a significant threat to the environment, he may

order the owner of such site and/or any person responsible for the disposal of hazardous wastes at such site (i) to develop an inactive hazardous waste disposal site remedial program, subject to the approval of the department, at such site, and (ii) to implement such program within reasonable time limits specified in the order".

8. Respondent does not in any manner admit to liability for the alleged contamination or presence of hazardous waste on the subject location on the ground that Respondent at no time contributed to the contamination or hazardous material that is located on the Site. Notwithstanding that, Respondent hereby waives its right to a hearing in this matter in the manner provided by law, consents to the issuance and entry of this Order, and agrees to be bound by its terms.

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

I. Respondent NPEC shall undertake each and every obligation and or remaining component of the remedial program under the terms of the Order on Consent dated March 29, 1993, Index # A4-0281-9204, attached hereto as Exhibit A and made an enforceable part of this Order, and as set forth in the Record of Decision for the Site, as may be amended, including any O&M that may be required.

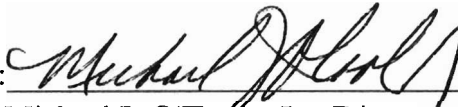
II. The Order on Consent dated March 29, 1993, Index # A4-0281-9204, shall remain in full force and effect and the terms thereof and the obligations therein are hereby incorporated herein and shall apply with the same force and effect to the provisions of this Order.

III. No term, condition, understanding or agreement purporting to modify this Order shall be binding unless subscribed to by both parties in accordance with the terms of the March 29, 1993 Order.

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

DATED: Albany, New York
May 16, 2000

JOHN P. CAHILL
Commissioner, New York State
Department of Environmental Conservation

By: 
Michael J. O'Toole, Jr., Director
Division of Environmental Remediation

CONSENT BY RESPONDENT

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

By: Joseph G. Gabrick

Title: Vice President - NPEC

Date: May 2, 2000

STATE OF NEW YORK)
) s.s.:
COUNTY OF MONROE)

On the 2nd day of May, in the year 2000, before me, the undersigned, personally appeared Joseph G. GABRICK personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that (he)/she executed the same in (his)/her capacity as Vice President, and that by (his)/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Nancy K. Carey
Signature and Office of individual taking acknowledgment

Nancy K. Carey
Notary Public, State of New York
Registration #01CA5066599
Qualified in Monroe County
My Commission Expires Sept. 30, 2000

STATE OF NEW YORK: DEPARTMENT OF ENVIRONMENTAL CONSERVATION

In the Matter of the Development
and Implementation of a Remedial
Program for an Operable Unit of 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 # A4-0281-92-04

STERLING WINTHROP INC.,
Respondent.

Sterling Drug Site 3
Operable Unit 1
Site Code # 442011

WHEREAS,

1. The New York State Department of Environmental Conservation (the "Department") is responsible for enforcement of Article 27, Title 13 of the Environmental Conservation Law of the State of New York ("ECL"), entitled "Inactive Hazardous Waste Disposal Sites." This Order is entered into pursuant to the Department's authority under ECL Article 27, Title 13 and ECL Section 3-0301.

2. Sterling Winthrop Inc. (formerly Sterling Drug Inc.) ("Respondent") is a Delaware corporation with facilities located in New York at 33 Riverside Avenue, Rensselaer, and Route 151, off Third Avenue, East Greenbush, and at the Sterling-Winthrop Research Institute, Columbia Turnpike, Rensselaer (the "Facilities").

3. From approximately 1956 until 1977, Respondent deposited industrial wastes, including wastes presently defined as hazardous wastes in ECL Section 27-1301.1, from the Facilities at a seven-acre site located between the Papscaene Creek and the Penn Central Railroad tracks in the Town of East Greenbush,

Rensselaer County (the "Site"). These wastes included pharmaceutical intermediates, finished pharmaceutical products, filter cakes, solvents, still bottoms and oils. Four acres of the Site are owned by Mr. and Mrs. Salvatore Graziano of Albany and three acres are owned by Niagara Mohawk Power Corporation. A map of the Site is attached to this Order as Appendix "A."

4. The Site is an inactive hazardous waste disposal site, as that term is defined at ECL Section 27-1301.2. The Site has been listed in the Registry of Inactive Hazardous Waste Disposal Sites in New York State as Site Number 442011. The Department has classified the Site as a Classification "2" pursuant to ECL Section 27-1305.4.b.

5. Groundwater beneath the Site is contaminated by volatile organic chemicals including benzene, toluene, xylene, acetone, methyl thiophene, 1,2 dichloroethane, trichloroethylene and chloroform. A plume of diethyl ether has migrated off-Site in a northwesterly direction. The Site contains industrial material, including contaminated soil, research wastes, consumer returns, and construction debris. Site soils are contaminated by petroleum hydrocarbons and volatile and semi-volatile organic compounds.

6. Respondent commenced investigation of the Site in 1982. Since that time, Respondent's activities at the Site include the following: undertaking of Phase I and Phase II Remedial Investigations; removal of approximately 8500 drums; installation of a groundwater treatment system and a pilot vacuum extraction system to address on-Site contamination; and development of a Feasibility Study to evaluate final remedial alternatives.

7. The Department has divided the Site into two operable units. The first ("Operable Unit One") will be the subject of this Order and consists of on-Site soils and groundwater

currently managed by the groundwater treatment system. The second ("Operable Unit Two") will be the subject of a separate Order and consists of groundwater contamination which has migrated off-Site and is not currently being managed by the groundwater treatment system.

8. Following a period of public comment, the Department selected a final remedial alternative for Operable Unit One in a Record of Decision dated March 31, 1992 ("the ROD"). The ROD, attached to this Order as Appendix "B," is incorporated as an enforceable part of this Order.

9. A. Pursuant to ECL Section 27-1313.3.a, whenever the Commissioner of Environmental Conservation (the "Commissioner") "finds that hazardous wastes at an inactive hazardous waste disposal site constitute a significant threat to the environment, he may order the owner of such site and/or any person responsible for the disposal of hazardous wastes at such site (i) to develop an inactive hazardous waste disposal site remedial program, subject to the approval of the Department, at such site, and (ii) to implement such program within reasonable time limits specified in the order."

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

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

10. The Department and Respondent agree that the goals of this Order are for Respondent to (i) develop and implement, in

accordance with the ROD, an inactive hazardous waste disposal site remedial program for Operable Unit One ("Remedial Program") that shall include design and implementation, and operation, maintenance and monitoring of the selected remedial alternative; and (ii) reimburse the Department's administrative costs.

11. Respondent, having waived its right to a hearing herein as provided by law and having consented to the issuance and entry of this Order, agrees to be bound by its terms. Respondent consents to and agrees not to contest the authority or jurisdiction of the Department to issue or enforce this Order, and agrees not to contest the validity of this Order or its terms.

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

I. Remedial Design Work Plan Contents

A. Respondent shall, in accordance with the provisions of Paragraphs I and II of this Order, submit to the Department a remedial design to implement the remedial alternative for Operable Unit One selected by the Department in the ROD (the "Remedial Design").

B. Within 60 days after the effective date of this Order, Respondent shall submit to the Department a work plan for the Remedial Design (the "Work Plan"). The Work Plan shall be prepared by and have the signature and seal of a professional engineer who shall certify that the Work Plan was prepared in accordance with this Order.

C. The Remedial Design for Operable Unit One shall contain three separate components (the "Components"):

1. Enhancement and operation of the existing ground water recovery and treatment system;
2. Installation and operation of the vacuum

extraction system(s) in the "hot spot" areas identified at the Site; and

3. Installation of a final engineered cover layer (a cap) at the Site.

D. Each Component shall be designed in accordance with time frames set forth in the Work Plan.

E. The Work Plan shall include the following:

1. A detailed description of the remedial goals for Operable Unit One, as set forth in the ROD, and the means by which each essential element of the selected remedial alternative shall be implemented to achieve those goals;

2. A discussion of the pre-design data requirements necessary to optimize the operation and performance of each Component of the Remedial Design;

3. A remedial Component-specific Sampling and Analysis Plan for the collection of the required data detailed under Item I.E.2;

4. A Quality Assurance Project Plan for pre-design sampling and characterization activities to ensure the accuracy and reproduceability of the results obtained during field sampling activities;

5. Parameters, conditions, procedures and protocols to be used during development and implementation of the Remedial Design to ensure that the Remedial Design is developed and implemented according to this Order and accepted engineering practice; and

6. A schedule for development of the design documents associated with each Component of the Remedial Design.

F. The Department shall notify Respondent in writing of the Department's approval or disapproval of the Work Plan within 45 days of its submission by Respondent.

II. Remedial Design

A. Further development of the Remedial Design shall commence in accordance with the time frames set forth in the approved Work Plan. Each Component of the Remedial Design shall be prepared by and have the signature and seal of a professional engineer who shall certify that the Remedial Design was prepared in accordance with this Order.

B. The Remedial Design of each Component shall include the following:

1. A detailed description of the remedial goals and the means by which each essential element of the selected remedial alternative will be implemented to achieve those goals, including, but not limited to:
 - a. the construction and operation of any structures;
 - b. the collection, destruction, treatment, and/or disposal of hazardous wastes and substances and their constituents and degradation products, and of any soil or other materials contaminated thereby;
 - c. the collection, destruction, treatment, and/or disposal of contaminated groundwater, leachate, and air;
 - d. physical security and posting of the Site;
 - e. health and safety of persons living and/or working at or in the vicinity of the Site;
 - f. quality control and quality assurance procedures and protocols to be applied during implementation of the Remedial Design; and
 - g. monitoring which integrates needs which are present on-Site and off-Site during implementation of the Department-selected remedial alternative.
2. A Component-specific schedule (the "Schedule")

detailing the time frames for implementation of each Component of the Remedial Design;

3. Preliminary specifications and design plan drawings for each Component, which, upon preliminary approval by the Department, shall be finalized, certified by a professional engineer, and resubmitted to the Department for final approval. Following final approval by the Department, the specifications and design plan drawings shall be implemented. The specifications and design plan drawings shall satisfy applicable local, state and federal laws, rules and regulations;

4. The parameters, conditions, procedures and protocols required to determine the effectiveness of the Remedial Design during and after implementation of each Component;

5. A description of the operation, maintenance, and monitoring activities to be undertaken after the Department has approved construction of the Remedial Design for each Component, including the number of years during which such activities will be performed;

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

7. A health and safety plan for the protection of persons at and in the vicinity of the Site during construction and after completion of construction of each Component. This plan shall be prepared in accordance with 29 CFR 1910 by a qualified health and safety professional, and shall be updated as necessary to incorporate modifications necessitated by the implementation of subsequent Components; and

8. A citizen participation plan which incorporates appropriate activities outlined in the Department's publication,

"New York State Inactive Hazardous Waste Site Citizen Participation Plan," dated August 30, 1988, and any revisions in effect at the date of submission of the Remedial Design, and 6 NYCRR Part 375.

C. The Department shall notify Respondent in writing of the Department's approval or disapproval of each Remedial Design Component within 60 days of its submission by Respondent.

III. Remedial Design Implementation and Reporting

A. Following approval of each Remedial Design Component, Respondent shall implement the Component in accordance with the time frames set forth in the Schedule.

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

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

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

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

F. After receipt of the "as-built" drawings, final engineering report, and certification for each Remedial Design Component, the Department shall notify Respondent in writing within 75 days whether the Department agrees that all construction activities have been completed in compliance with the approved Remedial Design.

G. Once Respondent has determined that the remedial component addressing enhancement and operation of the existing ground water recovery and treatment system or the remedial component addressing installation and operation of the vacuum extraction system(s) in the "hot spot" areas is complete, Respondent may request authorization from the Department to (i) discontinue operation and maintenance of the remedial component or (ii) modify operation and maintenance of the remedial component. Respondent shall make such request by submitting a justification package (the "Justification Package") to the Department for review and approval. The Justification Package shall consist of the following:

1. A recitation of this Order's provisions regarding the Justification Package.

2. A narrative description of the remedial activities performed at the Site as part of the component which is the subject of the submittal including:

- a. Field activities associated with the implementation and operation of the remedial component;

- b. Field conditions which could have impacted the operation of the system, and the steps taken to address those conditions; and

c. The sampling and analytical protocols used to monitor the progress of the remedial component;

3. Pre-remediation analytical results of representative samples for the medium or media of concern to determine baseline conditions;

4. Analytical results of representative samples obtained during remedial activities indicating the progress of remedial activities;

5. Post-remediation sampling to demonstrate that the endpoint of remediation has been achieved, or that further contaminant reductions in the media of concern are not feasible;

6. A summary of the information previously submitted to the Department during the operation of the remedial alternative; and

7. Respondent's rationale for its determination that the remedial component is complete.

Within 90 days of Respondent's submission of the Justification Package, the Department shall notify Respondent whether the Justification Package for the specific remedial component is approved.

If the Justification Package is approved, Respondent may discontinue or modify, as appropriate and in accordance with the Department's approval, operation and maintenance of the specific remedial component.

If the Justification Package is not approved, the Department shall provide Respondent with a written rationale for not approving the package and Respondent shall continue operation and maintenance of the remedial component in accordance with the terms of this Order.

At the time of submission of the Justification Package, Respondent may request to discontinue or modify

operation and maintenance of the specific remedial component during the Department's 90-day review and notification period discussed above. The Department shall notify Respondent whether it may discontinue or modify operation and maintenance during the 90-day period within ten days of the Department's receipt of such request.

H. If the Department concludes that any element of the Remedial Program fails to achieve its goals or otherwise fails to protect human health or the environment, Respondent shall have 15 days to respond to that conclusion from the date upon which Respondent receives written notification thereof. Following receipt of Respondent's response, the Department may take any action or pursue whatever rights it has pursuant to any provision of statutory or common law and Respondent reserves any defenses it may have.

IV. Progress Reports

A. Respondent shall submit to the Department's Division of Hazardous Waste Remediation Section Chief designated in Paragraph XII by the fifteenth day of every month following the effective date of this Order one copy of a written monthly progress report that includes the following information: (i) a description of the actions which have been taken toward achieving compliance with this Order during the previous month; (ii) a description of all sampling performed by Respondent or Respondent's contractors or agents in the previous month, whether conducted pursuant to this Order or conducted independently by Respondent, and identification of data packages received by Respondent for data validation (without submission of the preliminary data itself); (iii) notification of the data validation status, and whether data has been accepted by Respondent, and the reasons for any delays in validation of all

preliminary data which has not yet been validated, accepted by Respondent, and submitted to the Department; (iv) identification of all work plans, reports and other deliverables required by this Order that were completed and submitted during the previous month; (v) a description of all actions, including, but not limited to, data collection and implementation of work plans, that are scheduled for the next month and other information relating to the progress at the Site; (vi) information regarding percentage of completion, unresolved delays encountered or anticipated that may affect the future schedule for implementation under the Order, and efforts made to mitigate those delays or anticipated delays; (vii) any modifications to work plans that Respondent has proposed to the Department or that the Department has approved; and (viii) a description of all activities undertaken in support of the Citizen Participation Plan during the previous month and those to be undertaken in the next month.

B. Within 30 days after data validation has been completed and the data accepted by Respondent, Respondent shall submit to the Department's Division of Hazardous Waste Remediation Section Chief designated in Paragraph XII results of all sampling, tests, and all other analytical data received or generated by Respondent or Respondent's contractors or agents, including quality assurance/quality control information, whether conducted pursuant to this Order or conducted independently by Respondent.

V. Review of Submittals and Dispute Resolution

A. (1) Unless otherwise specified in the Order, the Department shall review each of the submittals Respondent makes pursuant to this Order within 60 days to determine whether it was prepared, and whether the work done to generate the data

and other information in the submittal was done, in accordance with this Order and generally accepted technical and scientific principles. The Department shall notify Respondent in writing of its approval or disapproval of the submittal, except for the submittal discussed in Paragraph II.B.(7), within such 60-day period unless otherwise specified in this Order. All Department-approved submittals shall be incorporated into and become an enforceable part of this Order.

(2) (a) If the Department disapproves a submittal, it shall so notify Respondent in writing and shall specify the reasons for its disapproval. Respondent shall have the option to meet with the Department's representative within 30 days after Respondent's receipt of notice of disapproval in order to review and clarify the Department's objections, to clarify the nature of any analysis or supplemental work that may be requested, to resolve any discrepancies or disagreements over the requested revisions, and to agree to a reasonable schedule for making the requested revisions. Within 30 days after receiving written notice that Respondent's submittal has been disapproved, or, in the event that a meeting is held, pursuant to an agreed schedule, Respondent shall make a revised submittal to the Department that addresses and resolves all of the Department's stated reasons for disapproving the first submittal.

(b) After receipt of the revised submittal, the Department shall notify Respondent in writing of its approval or disapproval.

If the Department disapproves the revised submittal, Respondent shall be in violation of this Order unless, within ten days of receipt of the Department's notice of disapproval, Respondent submits a written request to the Department to meet with the Director of the Division of Hazardous

Waste Remediation ("the Director") to discuss the Department's objections. Respondent must be available to meet within 14 days thereafter. At the meeting, Respondent shall be given an opportunity to present its responses to the Department's objections, and the Director shall have the authority to modify and/or withdraw such objections. The Department shall notify Respondent, in writing, of its specific comments, as modified, as soon as reasonably practicable after the meeting.

Upon receipt of such notification, Respondent shall revise the submittal in accordance with the Department's specific comments, as modified, and shall submit a revised submittal. The period of time for revision shall be determined during the meeting with the Director.

After receipt of the revised submittal, the Department shall notify Respondent in writing of its approval or disapproval of the submittal.

If the revised submittal fails to address the Department's specific comments, as modified, and the Department disapproves the revised submittal for this reason, Respondent shall be in violation of this Order and the ECL and the Department may take any action or pursue whatever rights it has pursuant to any provision of statutory or common law.

The Director's written specific comments shall be the Department's final decision. Nothing in this Order shall diminish or otherwise affect Respondent's statutory rights of appeal with respect to the Department's final decision.

B. The Department may require Respondent to modify and/or amplify and expand a submittal if the Department determines, as a result of reviewing data generated by an activity required under this Order or as a result of reviewing any other data or facts, that further work is necessary.

VI. Penalties

A. Respondent's failure to comply with any term of this Order constitutes a violation of this Order and the ECL.

B. Respondent shall not suffer any penalty under this Order or be subject to any proceeding or action if it cannot comply with any requirement hereof because of war, riot, or because of any condition or event beyond the control of Respondent or its agent or agents carrying out Respondent's obligations under this Order.

Respondent shall, within five days of when it obtains knowledge of any such condition, notify the Department in writing. Respondent shall include in such notice the measures taken and to be taken by Respondent to prevent or minimize any delays and shall request an appropriate extension or modification of this Order. Failure to give such notice within such five-day period constitutes a waiver of any claim that a delay is not subject to penalties. Respondent shall have the burden of proving that an event is a defense to compliance with this Order pursuant to subparagraph VI.B.

Increased costs or expenses of any work to be performed under this Order, the financial inability of Respondent to perform such work, the failure of Respondent to make complete and timely application for any required approval or permits and nonattainment of the goals, standards and requirements of this Order do not constitute conditions or events warranting the relief set forth in subparagraph VI.B.

VII. Entry upon Site

Respondent hereby consents to the entry upon areas of the Site or in the vicinity of the Site which may be under the control of Respondent by any duly designated and properly identified employee, consultant, contractor, or agent of the

Department or any State agency which has authority relevant to the subject of this Order for purposes of inspection, sampling, and testing and to ensure Respondent's compliance with this Order. All State representatives entering areas of the Site or in the vicinity of the Site which may be under Respondent's control shall be subject to the direction of the Site safety officer regarding matters of health and safety and shall comply with Respondent's health and safety plan as it applies to Respondent's own personnel. If, however, Respondent's health and safety plan is less stringent than the State's requirements regarding the health and safety of its employees, State representatives shall follow State requirements. Respondent shall provide the Department with suitable office space at the Site, including access to a telephone, and shall permit the Department full access to all records relating to matters addressed by this Order and technical job meetings.

VIII. Payment of Department Costs

Within 60 days after receipt of an itemized invoice from the Department, Respondent shall pay to the Department a sum of money which shall represent reimbursement for the Department's reasonable expenses including, but not limited to, direct labor, overhead, travel, analytical costs, and contractor costs incurred by the State of New York for work performed at the Site to date, as well as for negotiating this Order, reviewing and revising submittals made pursuant to this Order, overseeing activities conducted pursuant to this Order, and collecting and analyzing samples. The total of such costs reimbursed to the Department pursuant to this Order shall not exceed \$130,000. Such payment shall be made by certified check payable to the Department of Environmental Conservation. Payment shall be sent to the Bureau of Program Management, Division of Hazardous Waste Remediation,

N.Y.S.D.E.C., 50 Wolf Road, Albany, NY 12233-7010. Itemization of the costs shall include an accounting of personal services indicating the employee name, title, biweekly salary, and time spent (in hours) on the project during the billing period. The Department's approved 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 the New York State Office of the State Comptroller's quarterly expenditure reports. The Department reserves its right to seek reimbursement for any expenses not reimbursed pursuant to this Order.

IX. Reservations of Rights

A. Nothing contained in this Order shall be construed as barring, diminishing, adjudicating, or in any way affecting any of the Department's rights including, but not limited to or exemplified by, the following:

1. any right of the Department to bring any action or proceeding against anyone other than Respondent and/or any of Respondent's directors, officers, employees, servants, agents, successors, and assigns;

2. any right of the Department to enforce this Order against Respondent and/or any of Respondent's directors, officers, employees, servants, agents, successors, and assigns if Respondent fails to satisfy any of the terms of this Order;

3. any right of the Department to bring any action or proceeding against Respondent and/or any of Respondent's directors, officers, employees, servants, agents, successors, and assigns with respect to claims for natural resources damages as a result of the release or threatened release of hazardous substances or constituents at or from the Site or areas in the vicinity of the Site;

4. any right of the Department to bring any action or proceeding against Respondent and/or any of Respondent's directors, officers, employees, servants, agents, successors, and assigns with respect to hazardous substances that are present at the Site or that have migrated from the Site, provided, however, that, following the Department's approval of the engineer's certification that construction of each Remedial Design Component was completed in accordance with the approved Remedial Design, unless a supplementary remedial program is required pursuant to Paragraph II.B.6, and except for any natural resource damage claims, and so long as Respondent remains in compliance with this Order, the Department agrees to forbear from pursuing Respondent and/or any of Respondent's directors, officers, employees, servants, agents, successors, and assigns with respect to any action or proceeding which the Department has pursuant to Article 27, Title 13 of the ECL relative to or arising from the disposal of hazardous wastes which created the Operable Unit One hazardous waste conditions; and provided, further, however, that the Department reserves its rights with respect to any further investigation or remediation the Department deems necessary due to:

(a) environmental conditions on-Site or off-Site which are related to the disposal of hazardous wastes at the Site and were not known to the Department at the time of its issuance of the ROD, or

(b) information received after the Department's issuance of the ROD which demonstrates that the Remedial Program is not protective of human health or the environment.

The Department shall notify Respondent, in writing, of such environmental conditions or information and its basis for determining that the Remedial Program is not protective of human

health and the environment.

Nothing herein shall be construed as barring, diminishing, adjudicating, or in any way affecting any right of the Department to bring any action or proceeding against anyone other than Respondent and/or any of Respondent's directors, officers, employees, agents, successors, and assigns.

5. any right of the Department to bring any criminal action against Respondent and/or any of Respondent's directors, officers, employees, servants, agents, successors, and assigns, except with respect to hazardous waste management violations arising from disposal which occurred between 1956 and 1977 and created the Operable Unit One hazardous waste conditions which the Department knew to exist at the Site on the date of the Department's issuance of the ROD; and

6. any right of the Department, pursuant to statute or common law, to gather information and enter and inspect property and premises.

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

C. Respondent reserves its rights to assert claims against other potentially responsible parties at the Site.

X. Indemnification

Respondent shall indemnify and hold the Department, the State of New York, and their representatives and employees harmless for all claims, suits, actions, and damages of every name and description ("losses") arising out of or resulting from the fulfillment or attempted fulfillment of this Order by Respondent, and/or Respondent's directors, officers, employees, servants, agents, successors, and assigns to the extent such losses are not caused by the gross negligence or wilful

misconduct of the Department.

XI. Disclaimer

Neither anything contained in this Order nor Respondent's participation in this Order shall constitute an admission of liability or of violation of law, or concurrence with the facts and conclusions contained in this Order. Respondent neither admits to responsibility for response costs, except as set forth in Paragraph VIII, or damages, nor to a breach of any standard of care, nor does it accept that it has strict liability. This Order shall not be admissible and Respondent does not waive any rights it may have, including the right to contest facts and conclusions contained in this Order, in any proceeding other than in an action brought by the Department to enforce this Order.

Nothing contained in Paragraph XI shall preclude the Department from using any data or information obtained as a result of work performed pursuant to this Order.

XII. Communications

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

Communication from Respondent shall be sent to:

1. William Daigle, P.E., Section Chief
Division of Hazardous Waste Remediation
New York State Department of Environmental
Conservation
50 Wolf Road
Albany, New York 12233-7010
2. Director, Bureau of Environmental
Exposure Investigation
New York State Department of Health
2 University Place
Albany, New York 12203

3. Anthony Adamczyk, P.E., Regional Director
New York State Department of Environmental
Conservation Region 4 Office
2176 Guilderland Avenue
Schenectady, New York 12306-4498

4. Dolores A. Tuohy, Esq.
Division of Environmental Enforcement
Department of Environmental Conservation
50 Wolf Road
Albany, New York 12233

B. Copies of work plans and reports shall be submitted
as follows:

1. Four copies (one unbound) to William Daigle
2. Two copies to the Director, Bureau of
Environmental Exposure Investigation.
3. One copy to Anthony Adamczyk
4. One copy to Dolores A. Tuohy

C. Within 30 days after the Department's approval of
any report submitted pursuant to this Order, Respondent shall
submit to William Daigle a computer readable magnetic media copy
of the approved report in American Standard Code for Information
Interchange (ASCII) format and additional copies of figures,
drawings, and tables associated with the report shall be supplied
by Respondent on magnetic media in their original format.

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

1. Michael J. Rykaczewski, P.E.
Dames & Moore
2325 Maryland Road
Willow Grove, PA. 19090

2. Dean Malagrida
Sterling Organics, Inc.
33 Riverside Avenue
Rensselaer, N.Y. 12144
3. George R. Hollerbach, Jr., P.E.
Environmental Manager
Engineering Services
Sterling Winthrop, Inc.
90 Park Avenue
New York, N.Y. 10016
4. John Fallone, P.E.
Plant Manager
Sterling Organics, Inc.
33 Riverside Avenue
Rensselaer, N.Y. 12144

E. Legal communication to Respondent shall be sent to all persons detailed under Section X, Item D. and also to:

Antoinette Bennett, Esquire
Sterling Winthrop Inc.
90 Park Avenue
New York, N.Y. 10016

F. Invoices from the Department to Respondent shall be sent to:

Dean Malagrida
Sterling Organics
33 Riverside Avenue
Rensselaer, N.Y. 12144

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

XIII. Miscellaneous

A. Respondent shall retain professional consultants, contractors, laboratories, quality assurance/quality control

personnel, and data validators acceptable to the Department to perform the technical, engineering, and analytical obligations required by this Order. The experience, capabilities, and qualifications of the firms or individuals selected by Respondent shall be submitted to the Department prior to Respondent's contracting for services. The Department shall endeavor to notify Respondent of its approval or disapproval of these firms or individuals within 15 days of receipt of qualifications. Any delay by the Department in notifying Respondent of the Department's approval or disapproval of Respondent's selection beyond the 15-day period shall extend the time for the performance of work by such firm or individual by an equivalent period. The Department's approval of these firms or individuals shall be obtained before the start of any activities for which Respondent and such firms or individuals will be responsible. The responsibility for the performance of the professionals retained by Respondent shall rest solely with Respondent. Respondent retains the right to change consultants, subject to the Department's approval.

B. The Department shall have the right to obtain split samples, duplicate samples, or both, of all substances and materials sampled by Respondent, and the Department also shall have the right to take its own samples. Respondent shall make available to the Department the results of all sampling and/or tests or other data generated by Respondent with respect to implementation of this Order; and the Department shall make available to Sterling the results of any sampling, tests or data the Department generates.

C. Respondent shall notify the Department at least 10 working days in advance of any field activities to be conducted pursuant to this Order unless, for any particular

notification event, a shorter period of notification is deemed acceptable to the Department.

D. Respondent shall use its best efforts to obtain all permits, easements, rights-of-way, rights-of-entry, approvals, or authorizations necessary to perform Respondent's obligations under this Order. The Department acknowledges that Respondent does not own the Site and that Respondent's ability to comply with this provision may be subject to Respondent's ability to secure the cooperation of the Site owners, Niagara Mohawk, and other parties over which Respondent lacks control. If any access required to perform this Order is not obtained, despite best efforts, within 45 days of the effective date of this Order, or within 45 days of the date the Department notifies Respondent in writing that additional access beyond that previously secured is necessary, Respondent shall promptly notify the Department, and shall include in that notification a summary of the steps Respondent has taken to attempt to obtain access. The Department may, as it deems appropriate, assist Respondent in obtaining access.

E. Respondent and Respondent's officers, directors, agents, servants, employees, successors, and assigns shall be bound by this Order. Any change in ownership or corporate status of Respondent including, but not limited to, any transfer of Respondent's assets or real or personal property shall in no way alter Respondent's responsibilities under this Order.

F. Respondent shall provide a copy of this Order to each Major Contractor hired to perform work required by this Order and to each person representing Respondent with respect to the Site. A "Major Contractor" is any General Contractor retained by Respondent or Respondent's representative who has overall responsibility for the completion of one or all of the

Components of the selected remedial alternative as specified in the final signed Order. Respondent shall condition all contracts entered into in order to carry out the obligations identified in this Order upon performance in conformity with the terms of this Order. Respondent shall nonetheless be responsible for ensuring that Respondent's contractors and subcontractors perform the work in satisfaction of the requirements of this Order.

G. All references to "professional engineer" in this Order are to an individual registered as a professional engineer in accordance with Article 145 of the New York State Education Law.

H. All references to "days" in this Order are to calendar days unless otherwise specified. In the event that any time period set forth in this Order ends on a Saturday, Sunday, or legal holiday, such time period shall be extended to the next day that is not a Saturday, Sunday, or legal holiday.

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

J. (1) The terms of this Order shall constitute the complete and entire Order between Respondent and the Department concerning the Site. No term, condition, understanding, or agreement purporting to modify or vary any term of this Order shall be binding unless made in writing and subscribed by the party to be bound. No informal advice, guidance, suggestion, or comment by the Department regarding any report, proposal, plan, specification, schedule, or any other submittal shall be construed as relieving Respondent of Respondent's obligation to obtain such formal approvals as may be required by this Order.

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

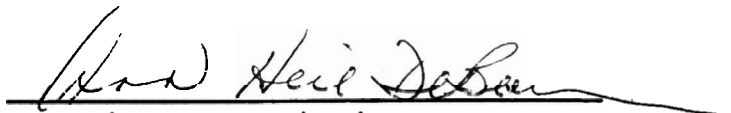
Dolores A. Tuohy and William Daigle.

K. The effective date of this Order shall be the date it is signed by the Commissioner or his designee.

DATED: *Albany*, New York
March 29, 1993

THOMAS C. JORLING
Commissioner
New York State Department
of Environmental Conservation

By:


Ann Hill DeBarbieri
Deputy Commissioner

CONSENT BY RESPONDENT

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

By: Jane Melville
(TYPE NAME OF SIGNER)

Title: Vice President

Date: March 23, 1993

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

On this 23RD day of MARCH, 1993, before me personally came Jane Melville, to me known, who being duly sworn, did depose and say that she resides in Slingerlands, New York; that she is the Vice President of the Sterling ^{with} ~~Drug~~ Inc. ("the Company") and that she is authorized by the Company to execute the foregoing instrument.

Ellen Marie Bennett
Notary Public

ELLEN MARIE BENNETT
Notary Public, State of New York
Qualified in New York County
Commission Expires March 30, 19 95

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