

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

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STATE OF NEW YORK,	:	
Plaintiff,	:	<u>CONSENT JUDGMENT</u>
- against -	:	
HARRIS CORPORATION,	:	Index No. 86-CV-649
Defendant.	:	Judge McAvoy

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WHEREAS, the undersigned, having agreed and stipulated that a Judgment can be entered in this action incorporating an agreement containing the following terms and conditions, and the Court having reviewed such terms and conditions, and having determined that they are reasonable and constitute appropriate programs, and the Court having subject matter jurisdiction over this matter and personal jurisdiction over the signatories consenting hereto,

THEREFORE, it is Ordered and Stipulated as follows:

I. GOAL:

The goal of this Consent Judgment is to remediate a site in West Chazy, New York known as the Brault Lagoon Site and thereby to abate the public nuisance which the State alleges resulted therefrom in a manner consistent with CERCLA and the law of public nuisance. It is the parties expectation that this goal will be achieved by the installation and operation of a

groundwater treatment system to contain a groundwater plume containing chemical contaminants, prevent its further migration, and, ultimately, eliminate the plume as a threat to the environment and to drinking water supplies by restoring the groundwater to New York State standards if feasible. This Judgment will make it possible to install and operate a groundwater treatment system in an expedited fashion while continuing to provide assurances that alternative water supplies will be provided to those residents whose wells have become affected by chemical contaminants. The groundwater treatment system is described in the Approved Remedial Plan attached hereto.

## II. DEFINITIONS:

The following definitions will have the meaning set forth below and will have none other for purposes of this Stipulation and Consent Judgment:

- A. "State" means the State of New York.
- B. "DOL" means the New York State Department of Law and the Attorney General.
- C. "DEC" means the New York State Department of Environmental Conservation and its Commissioner.
- D. "EPA" means the United States Environmental Protection Agency and its Administrator.
- E. "Harris" means Harris Corporation, the corporation described in paragraph numbered "6" of the complaint, including its subsidiaries, successors, and assigns.

F. "Harris Graphics" mean Harris Graphics, Inc., including its subsidiaries, successors, and assigns.

G. "Non-settling Parties" means any other entity which may be legally responsible for conditions at the Site or remediation thereof except Harris Graphics, Inc.

H. "Parties" means the parties to this Judgment, i.e., the State and Harris, both individually and collectively.

I. "Site" means the parcel conveyed in the deed from Jane E. Blaney and George W. Blaney to Gerald E. Brault and Teresa A. Brault filed with the Clinton County Clerk, Liber 577, page 786, and includes easements recorded thereon from Gerald and Teresa Brault to Harris Corporation, Liber 634, page 1010, and also includes the property deeded by Donald F. Kinneston and Susan Y. Kinneston, Liber 582, page 1116 to Harris Corporation in 1985, Liber 648, page 611; and also includes all property upon which the operation and implementation of the approved remedial plan will occur.

J. "Off-site" means any property other than the site which has become contaminated with or affected by chemical contaminants which have migrated from or originated at the Site.

K. "CERCLA" means the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601 et seq.

L. "Judgment" means this Stipulation and Consent Judgment.

M. "Approved Remedial Plan" means the remedial plan that is described in the schedule attached hereto as Appendix "A" and that has been agreed to by the parties to this Judgment and approved by Order of this Court.

N. "National Contingency Plan" or "NCP" means the plan described in and promulgated in accordance with 42 U.S.C. § 9605 (1986).

O. "Settlement Date" shall be the date this Judgment is signed and entered by the Court which shall be at least 14 days after the submission of this Judgment to EPA and at least 30 days after publication of notice of this proposed judgment in the New York State Environmental Notice Bulletin.

P. "Chemical contaminants" means those chemicals disposed of by Harris at the Brault Lagoon which have migrated to other on and off-site areas contaminating groundwater, soil and household drinking supply.

Q. "Site Investigation" means the detailed investigation conducted by Harris and New York State of the environmental conditions existing at and in the vicinity of the Site during the period 1983 through and including 1986.

R. "Natural Resources" means land, air, water, groundwater, drinking water supplies, fish, wildlife and other such resources of the State of New York.

S. "Groundwater Standards" means those standards set forth in 6 NYCRR Part 703.

T. "Hazardous substances" has the same meaning as that set forth in CERCLA, 42 U.S.C. § 9601(14).

### III. BACKGROUND:

A. The complaint in this action was filed in June, 1986. In the complaint the State alleges that between the years 1978 through 1983, Harris generated hazardous chemical waste at its manufacturing plant in West Chazy, New York.

B. The State alleges that Harris hired a licensed septic tank waste transporter to dispose of its chemical waste in the hauler's septage lagoons. The lagoons were permitted to receive septage waste and were not permitted to receive hazardous waste.

C. The State alleges that the chemical wastes disposed of at the septic lagoons have migrated into the groundwater flowing underneath the lagoons and that these wastes have contaminated the soil, surface water, and groundwater of the State.

D. The State alleges that these chemicals now contaminate residential homeowner wells and could threaten the health and welfare of the residents in the vicinity of the lagoons.

E. On August 15, 1986, Harris served its answer to the complaint. Since that date, the action has been stayed and no other pleadings have been filed. If the Court approves of this Consent Judgment, no other pleadings will be filed.

F. In 1983, Harris commenced a Site Investigation of the environmental conditions existing at the Site. Harris submitted a variety of written reports describing the scope of the proposed Site Investigation to the State for its approval. The State, on numerous occasions, requested certain modifications and additions to the proposed plan. Harris incorporated the State's requested modifications and additions into its investigation plans.

G. During the period beginning April, 1983, through and including April, 1986, independent consultants implemented and completed the Site Investigation. The results of the Site Investigation were incorporated into the investigation reports identified in the schedule attached hereto as Appendix "B".

H. The Site Investigation conducted by Harris indicated the presence of chemical contaminants in the groundwater at and in the vicinity of the Site.

I. In order to avoid prolonged litigation and to expedite the remedial program, plaintiff and Harris have agreed to settle this action pursuant to the terms and conditions of this Judgment. Harris commits to undertake the remedial measures of, inter alia, installing and operating a groundwater recovery and treatment system and to implement, as needed, certain residential drinking water treatment systems, as more fully set forth in the Approved Remedial Plan attached hereto as Appendix "A". Provided Harris complies with the terms of this Judgment, plaintiff agrees to release Harris from liability for the presence of hazardous substances on and off the Site, as more fully set forth in Section "X".

J. The terms and conditions of this Judgment and the Approved Remedial Plan have been communicated to the EPA. The EPA has been apprised of the settlement negotiations. The EPA has not disapproved of the terms of this Judgment.

IV. APPROVED REMEDIAL PLAN - IMPLEMENTATION:

A. The Approved Remedial Plan is an integral part of this Judgment and is hereby incorporated by reference as though it were set forth verbatim herein.

B. Harris shall be responsible for completion of the Approved Remedial Plan. Harris shall commence implementation of the Approved Remedial Plan no later than thirty (30) days from the Settlement Date.

C. After installation of the recovery wells and treatment system, Harris shall provide to the State a report, including as-built drawings or plans, showing the locations and design of the recovery wells and the design of the treatment system. Harris' consultant shall certify the completion of the above work.

D. Within 45 days of receiving the report, the State shall determine whether the work performed by Harris and its contractor was in accordance with the Approved Remedial Plan and, if not, the State will indicate any deficiencies in the implementation of the design and installation requirements of the Approved Remedial Plan which must be addressed by Harris. Harris shall either take such actions as are necessary to correct the deficiencies asserted by the State or may move the Court for a determination that the State's notice of deficiencies is inconsistent with the Approved Remedial Plan.

V. APPROVED REMEDIAL PLAN - OPERATION:

A. Harris will not seek to terminate the operation of the treatment system during its first three and one half (3½) years of operation. At any time, however, Harris may seek to modify the operating parameters of the system (e.g. flow rates), or, after three and one half (3½) years of operations, terminate the entire treatment system, provided that Harris can show, and the State agrees, that the proposed modification or discontinuance of all or a portion of the Approved Remedial Plan is consistent with the goal of this Judgment to abate the public nuisance which the State alleges resulted from the disposal of chemical contaminants at the Brault Lagoon by Harris. If Harris wishes to modify the operating parameters and/or discontinue all or a portion of the Approved Remedial Plan, Harris shall notify the State of the proposed modification or discontinuance and the reasons therefore at least 90 days prior to making any such modification or discontinuance.

B. Within 60 days of receipt of the notification, the State will respond in writing by stating either its agreement or disagreement with Harris' assertion that the proposed modification or discontinuance of all or a portion of the Approved Remedial Plan is consistent with the goal of this Judgment to abate of the public nuisance which the State alleges resulted from the disposal of chemical contaminants at the Brault Lagoon by Harris Corporation. If the State disagrees, it will state its reasons for its disagreement in its written response. In such a case, Harris may move for a court determination that



its proposed modification or discontinuance is consistent with the goal of this Judgment to abate the public nuisance. It is the parties' expectation that the New York common law of public nuisance (including the application of its equitable principles) would be the standard for the Court's determination. Pending a decision by the Court, the Approved Remedial Plan will continue to operate.

C. If the Approved Remedial Plan is discontinued or modified pursuant to Harris' request, Harris shall then propose and implement a post-remediation groundwater monitoring program to determine the concentrations and extent of remaining chemical contaminants in the groundwater. If the parties cannot agree on the scope of post-remediation monitoring, Harris may seek a Court order that its proposal, rather than the State's, is consistent with the goal of this paragraph to monitor the chemical contaminants in the groundwater at and in the vicinity of the Site to determine whether the goal of this judgment has been met. Pending a decision by the Court, the groundwater monitoring program identified in the Approved Remedial Plan (as modified from time to time) shall continue in effect. If the information derived from this monitoring program indicates that the concentration of chemical contaminants in residential water supplies is greater than the standards for potable groundwater established for potable groundwater by DEC under Article 17 of the Environmental Conservation Law, or, in the absence of such State potable groundwater standards, State drinking water standards for such contaminants(s) or, in the absence of such

State-standards, the maximum contaminants levels established by EPA under the Safe Drinking Water Act, 42 U.S.C. § 300g-3 and such conditions are likely to persist for more than 5 years, the State reserves the right to seek, in a new proceeding, to compel Harris to provide a permanent potable water supply to affected and/or threatened homeowners.

VI. EPA REVIEW AND PUBLIC COMMENT:

A. On October 3, 1986, the State submitted this Judgment with its appendices to the EPA for EPA's comment, requested EPA's comment within 14 days of such submission and advised EPA that the Judgment may be signed by the Court and entered on the Settlement Date unless EPA objects in writing within the 14 day period. EPA was requested to submit its comments directly to the DOL with a copy to the Court. On or before the Settlement Date, the State will submit a written report to the Court summarizing EPA's comments, if any, and the Parties' responses to EPA's comments.

B. On October 14, 1986, the State published notice of the proposed Judgment in the New York State Environmental Notice Bulletin. Copies of the proposed Judgment, along with a fact sheet describing the Approved Remedial Plan, were made available at DEC's main office in Albany, New York and at its two regional offices in Ray Brook and Warrensburg, New York. The notice requested that the public submit comments to DOL within thirty days of the date of the notice. On or before the settlement date, the State will submit a written report to the Court

summarizing public comments, if any, and the Parties' responses to the public comments.

C. The State believes that the Approved Remedial Plan set forth in Appendix A is a remedial plan that is consistent with the National Contingency Plan, CERCLA, and any applicable State statutes or regulations. In the event the Court or EPA determines that the Approved Remedial Plan is inconsistent with the NCP or portions of the proposed judgment are objectionable, the Parties may seek to modify the remedial plan or the proposed judgment in accordance with EPA's, the public's, and/or the Court's comments and resubmit a modified remedial plan and proposed judgment to EPA and the Court. In the event that the Parties cannot reach agreement concerning the resubmission of a remedial plan and the proposed judgment within 30 days of receipt of EPA's or the Court's comments (whichever is later), this Judgment shall not take effect and shall be void.

VII. RESPONSE COSTS/NATURAL RESOURCE DAMAGES:

A. The State of New York has incurred "response costs," as defined in CERCLA 42 U.S.C. § 9601(25), by its monitoring, testing, and study of the release, migration, and threat of migration of hazardous substances at and in the vicinity of the Site. The State alleges that defendant Harris is strictly, jointly, and severally liable to the State for said costs.

B. Defendant Harris, in full satisfaction of the State's claim for past "response costs", shall make a payment of \$75,000 to reimburse the State for such costs.

C. The State of New York has alleged that it has incurred natural resource damages, as defined in CERCLA 42 U.S.C. § 4601(16) and § 4607, by reason of the release of chemical contaminants at and in the vicinity of the Site. The State alleges that defendant Harris is strictly, jointly, and severally liable to the State for damages to its natural resources.

D. Defendant Harris, in full satisfaction of the State's claim for natural resources damages, including damages to wetlands, shall make a payment of \$25,000 to the hazardous waste remedial fund established by section 97-b of the New York State Finance Law (hereinafter "the Fund").

E. The payments specified in paragraphs "B" and "D" of this section shall be paid to the State within 30 days of the effective date of this Judgment.

#### VIII. CHARITABLE CONTRIBUTION:

Simultaneously with the entry of this Judgment, Harris will make a charitable contribution in the amount of \$20,000 to a not-for-profit organization that has as one of its principal purposes the protection of the environment in northern New York. The contribution(s) will be used for projects directly benefiting the environment. The contribution(s) provided for in this Section will be made within 30 days of the effective date of this Judgment.

IX. FUTURE RESPONSE COSTS:

A. Defendant Harris, in full satisfaction of the State's future response costs, and in consideration of the reasonable costs to be incurred by the State for oversight of the implementation and operation of the Approved Remedial Plan, shall make a payment to the hazardous waste remedial fund established by section 97-b of the New York State Finance Law. This payment shall be in three installments and shall not exceed \$100,000. The first payment shall be \$25,000 and is due within 180 days of the effective date of this Order.

B. If during the period from the settlement date through and including September 30, 1989, the State incurs reasonable response costs in the oversight of the implementation and operation of the Approved Remedial Plan in excess of \$25,000, it shall submit a written statement to Harris requesting payment for the amount in excess of \$25,000. In no event shall the second payment exceed \$37,500.

C. If during the period October 1, 1989 through and including September 30, 1992, the State incurs reasonable response costs in the oversight of the implementation and operation of the Approved Remedial Plan and such response costs were not covered by the first and second payments, then the State shall submit a written statement to Harris requesting payment for the amount not covered by the previous payments. In no event shall the third payment exceed \$37,500.

D. Harris shall pay the second and third installments, if necessary, within 30 days of receipt of the State's written statement unless Harris serves notice to the State prior to the payment date that it disputes all or a portion of the amount. In such case, Harris will make timely payment of the undisputed amount and the State will provide a detailed accounting for the disputed amount. If the parties cannot resolve their dispute, either party may move the Court for a determination of the amount due the State.

X. RELEASE OF LIABILITY AND COVENANT NOT TO SUE:

A. Except as set forth in Section XI below, this Judgment and compliance by Harris with its obligations hereunder shall constitute full discharge and release of Harris and Harris Graphics, their officers, directors, employees, and agents for all claims for damages, fees, fines, taxes, and penalties, including past, present, and future claims under common law and any statutes administered or enforced by the State arising out of or relating to the past releases of chemical contaminants from or at the Site and the migration of such contaminants from the Site and the lawful, non-negligent operation of the Approved Remedial Plan in accordance with this Judgment.

B. In consideration for the completion of Harris' obligations as set forth in this Agreement, the State hereby covenants not to sue, execute judgment, or take any civil, judicial, or administrative action under federal or state common law, equity jurisdiction, or statutory provisions against Harris,

and Harris Graphics arising out of or relating to the chemical contamination of the Site and its off-site areas except as set forth in Section XI below.

C. The provisions of this Section shall not be or become effective until the State or the Court, in accordance with Section IV herein, approves the installation of the recovery wells and treatment system in accordance with the Approved Remedial Plan, except that the State agrees not to take any action against Harris or Harris Graphics that is inconsistent with the terms of this Judgment provided Harris is in compliance with all the terms and conditions hereof.

XI. REOPENER:

A. Nothing in Section X, "Release of Liability and Covenant Not to Sue", shall in any way constitute a release of liability or covenant not to sue for injunctive relief in any civil, judicial, or administrative action under federal or state common law, equity jurisdiction, or statutory provisions against Harris and Harris Graphics as corporate entities or their successors or assigns to respond to the following circumstances:

(1) After completion of the Approved Remedial Plan, previously unknown or undetected chemical contaminants are discovered migrating from the Site to groundwater resources, and such chemical contaminants either pose a significant threat to the environment or present a health risk to persons using the groundwater as a residential water resource; or

(2) After completion of the Approved Remedial Plan, the State receives additional scientific information that is scientifically valid, which was not available at the time or prior to the signing of this Judgment, concerning the scientific determinations upon which the current groundwater and/or drinking water standards were premised, and the additional information demonstrates that chemical contaminant conditions caused by the Site present a significant threat to the environment or a health risk to persons using the groundwater as a residential water resource that is greater than the health risk that is now perceived to exist by the State.

B. For purposes of this Section, a groundwater concentration of a chemical contaminant(s) greater than the standards for potable groundwater established for potable groundwater by DEC under Article 17 of the Environmental Conservation Law, or, in the absence of such State potable groundwater standards for such contaminant(s), State drinking water standards for such contaminant(s) or, in the absence of such State standards, the maximum contaminant level(s) established by EPA under the Safe Drinking Water Act, 42 U.S.C. § 300g-3, shall be presumed to present a health risk to persons using the groundwater as a residential water resource. Such presumption shall be rebuttable by Harris.

C. In the absence of standards for potable groundwater under Article 17 of the Environmental Conservation Law, and in the absence of State potable groundwater standards established by State regulation, and in the absence of maximum contaminant



levels established under the Safe Drinking Water Act, any unfiltered well used as a residential water resource for which sampling results show either 5 ppb or greater of any such chemical contaminant (unless the chemical contaminant is toluene or 1,1,1-trichloroethane, in which case the limit is 10 ppb or greater) or 20 ppb total concentration of such chemical contaminants (unless the aggregate concentration of toluene and 1,1,1-trichloroethane exceeds 10 ppb, in which case the aggregate limit is 30 ppb or greater) shall be presumed to present a health risk to the persons using the groundwater as a residential water resource. Such presumption shall be rebuttable by Harris.

D. For purposes of this Section, the levels of chemical contaminant(s) shall be determined by sampling and analyzing groundwater at the monitoring wells and residential wells established as part of the long term monitoring program referred to in Section V.C.

E. Groundwater concentrations of chemical contaminants, less than the standards for potable groundwater established under Article 17 of the ECL shall be presumed not to be a significant threat to the environment. Such a presumption shall be rebuttable by the State.

## XII. PROTECTION OF HARRIS CORPORATION FROM FURTHER PAYMENT:

A. The purpose of this Section is to protect Harris and Harris Graphics against any claim for contribution which might arise as a result of any litigation concerning the Site brought

by or on behalf of the State. It is the Parties' expectations that this Judgment (including the release provisions of Section X) and compliance by Harris with its obligations hereunder shall relieve Harris and Harris Graphics from any liability now or in the future to the Non-Settling Parties in contribution, while, at the same time, preserving Harris' rights and claims to seek contribution against the Non-Settling Parties.

B. The State agrees that Harris and Harris Graphics and their officers, directors, employees and agents will not be liable to the State with respect to the Site for any payment or obligation in excess of or in addition to the amount paid and obligations incurred pursuant to this Judgment. Nothing in this Section shall constitute a limitation upon the paragraphs numbered (1) and (2) in Section XI. The State agrees that this Judgment shall be dispositive of each and all of the duties and liabilities of Harris and Harris Graphics and their officers, directors, employees, and agents with respect to any other person or entity against whom a claim or settlement is made by, or a judgment is rendered in favor of or on behalf of the State, arising out of or relating to the past releases of hazardous substances from or at the Site and/or the migration of such substances from the Site.

C. To this end, if in any action brought by the State which arises out of or relates to the past releases of hazardous substances from or at the Site and/or the migration of such substances from the Site, any court of competent jurisdiction enters a final judgment requiring Harris or Harris Graphics or

their officers, directors, employees or agents to pay an amount with regard to the Site in addition to the amount paid by Harris pursuant to this Judgment, then the State shall adjust the amount of such judgment so that Harris and Harris Graphics or their officers, directors, employees, or agents shall not be required to pay all or any part of said additional amount.

D. The provisions of this Section shall not apply to any action which is brought by the State pursuant to paragraphs numbered (1) and (2) in Section XI.

XIII. COMPLIANCE WITH ALL LAWS/DELAY IN PERFORMANCE:

A. Harris shall obtain, on a timely basis, all easements, rights-of-way, or rights-of-entry which are necessary to carry out Harris' obligations pursuant to this Judgment. The State will cooperate and assist Harris in obtaining whatever easements, rights-of-way, or rights-of-entry, that are necessary in order to perform the Approved Remedial Plan, and to perform all of Harris' other obligations pursuant to this Judgment. Harris shall promptly notify the State in the event of Harris' inability to obtain any such authorizations on a timely basis.

B. Harris shall not be in default of compliance with this Judgment or suffer any penalty under any of the provisions, terms and conditions of this Judgment, or be subject to any proceedings or actions, if it cannot comply with any requirements of the provisions hereof because of the action of a national or local government body, or court, an act of God or other condition as to which negligence or willful misconduct on the part of Harris was

not a proximate cause; provided, however, that Harris shall notify the State in writing within ten days time after it obtains knowledge of any such condition and request an appropriate modification of the provisions hereof.

C. This Judgment shall act as the sole required authorization and approval for the implementation and operation of the Approved Remedial Plan and establishes limits on contaminants discharged to the environment.

XIV. MODIFICATIONS:

Notwithstanding the provisions of Section V herein, the terms and conditions of this Judgment and the Approved Remedial Plan may be modified by written agreement between the State and Harris. Notice of modifications must be forwarded to the Court.

XV. PRESERVATION OF CLAIM:

A. Harris reserves all rights that it may have to assert claims against its insurers or any third party for matters arising from this action, including, without limitation, claims for breach of contract, contribution, tortious conduct, and indemnity.

B. Harris, in entering into this Judgment, does not admit or intend to acknowledge any liability or fault by it with respect to any matter arising out of or relating to the Site or admit any of the allegations in the complaint relating to the cause of current environmental conditions of the Site.

C. The provisions, terms, and conditions of this Judgment, and any actions or submissions under or by reason of the provisions, terms, and conditions hereof, shall not, in any action or proceeding or litigation whatsoever, whether or not brought by the State, constitute or be construed as an adjudication or a finding of any issue or be construed as, or operated as, an admission that Harris has violated any law or regulation or otherwise committed a breach of any duty at any time.

XVI. SPLIT SAMPLES/SITE ACCESS NOTICE  
OF REMEDIAL WORK:

A. The State shall have the right to obtain split samples of all substances and materials sampled by Harris pursuant to this Judgment. As used herein, the term "split samples" shall mean whole samples divided into aliquots to be tested by the State for the purpose of comparative analysis.

B. Harris shall permit access to any duly designated employee, consultant, contractor, or agent of the State to any areas under its control at and in the vicinity of the Site necessary for inspection purposes and for the purpose of making or causing to be made such sampling and tests as the State deems necessary, and for ascertaining Harris' compliance with the provisions of this Judgment, provided that reasonable notices are given to Harris.

C. Harris shall give five days notice to the State prior to the commencement of any excavating, drilling, or sampling to be conducted pursuant to the terms and conditions of this Judgment.

XVII. RESTRICTION ON ALIENATION:

In the event that Harris proposes to convey or relinquish the whole or any part of its interest in any portion of the Site to any other person, Harris shall notify the State, in writing, not less than 30 days prior to the consummation of such conveyance, of the identity of such other person and the nature and date of the proposed conveyance. In the event of such proposed conveyance, Harris shall advise such person in writing, with a copy to the State, of the applicability of this Judgment. Harris shall not convey the Site until the Approved Remedial Plan is completed. If it does so, it will be deemed in non-compliance with the Judgment. A certified copy of this Judgment may be filed with the Clinton County Clerk to be recorded against the parcel of lands identified herein as the Site.

XVIII. CLAIMS AGAINST THE STATE:

Harris hereby releases, acquits, and forever discharges the State of New York and its employees and agents from any and all claims and counterclaims raised and which could have been raised by Harris in its answer resulting from prior actions by the State of New York and its employees and agents (including the filing of this action) in responding to the disposal of chemical contaminants at the Brault Lagoon and the subsequent migration of such contaminants from the Brault lagoon into the surrounding area. Nothing in this section shall in any way prevent Harris from asserting in any proceeding brought by the State pursuant to

Sections V and XI or any other provision of this judgment any defense it may have based upon the prior actions of the State and its employees and agents.

XIX. MISCELLANEOUS:

A. This Judgment shall bind and inure to the benefit of all parties hereto and their representative successors and assigns.

B. Each party shall bear its own costs and disbursements in this action.

C. None of Harris' obligations under this Judgment shall be deemed to constitute any type of fine or penalty.

D. The undersigned representatives of each signatory certify that they are fully authorized to enter into the terms and conditions of this Judgment and to execute and to legally bind such signatory to this document.

E. When notification to the State or to Harris is required by the terms of this Judgment, it shall be in writing and addressed as follows:

(a) Notice to the State:

Dean Sommer, Esq.  
Albert Bronson, Esq.  
Assistant Attorneys General  
Environmental Protection Bureau  
New York State Department of Law  
The Capitol  
Albany, New York 12224

Norm Mosenchuck  
Director  
Division of Solid and Hazardous Waste  
50 Wolf Road  
Albany, New York 12233