

STATE OF NEW YORK:
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

In the Matter of the
Development and Implementation
of a Remedial Program for an
Inactive Hazardous Waste Disposal
Site, Under Article 27, Title 13,
of the Environmental Conservation
Law of the State of New York
by

MODIFICATION TO
ORDER ON
CONSENT

INDEX #A6-0241-90-08
Site #633013

TOWN OF WHITESTOWN,
Respondent.

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".

2. The Town of Whitestown ("Respondent" or "Town"), is a municipality within the meaning set forth in 27-1301.3 of the ECL. Respondent owns and operates a solid waste management facility in Oneida County known as the Whitestown Landfill ("Landfill" or "Site"). The Site encompasses an area of approximately 50 acres.

3. The Site is an inactive hazardous waste disposal site, as that term is defined at ECL 27-1301.2., and the Department has determined that the Site presents a significant threat to the public health or environment. The Site has

been listed in the Registry of Inactive Hazardous Waste Disposal Sites in New York State as Site Number 6-33-013. The Department has classified the Site as a "2" pursuant to ECL 27-1305.4.b.

4. On November 29, 1988, the Department and the Town executed Order on Consent, Index No. A6-0140-88-02 ("Order A6-0140-88-02"), providing for the development and implementation of an Interim Remedial Measure, a Remedial Investigation, Feasibility Study and a Remedial Program at the Site, and for the discontinuance of landfill activities at the Site on or before September 1, 1990.

5. The Respondent has now requested that the Department grant an extension of the September 1, 1990 closure deadline.

6. The Department and the Town agree that the goals of this Consent Order shall be to modify Order A6-0140-88-02, as provided in paragraph XXXIV of that Order by granting the extension requested by the Town while furthering the goals of expeditious hazardous waste site remediation of the Site.

7. Respondent, having waived any right to a hearing herein as may be provided by law, and having consented to the issuance and entry of this Order, agrees to be bound by its terms.

8. This Order is being entered into under the authority of ECL 27-1301 et seq.

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

I. Except as amended by this Order, Order A6-0140-88-02 between the Department and the Town will survive this Order and will remain in full force and effect.

II. Nothing in this Order shall be construed as barring, diminishing, adjudicating, or in any way affecting any of the Department's rights under Order A6-0140-88-02.

III. The Town may continue to accept municipal waste for landfilling at the Site until 5 P.M., Tuesday, January 1, 1991, provided the Town is, in the Department's opinion, in full compliance with the following conditions:

- A. Respondent must be in full compliance with the terms of this Order and Order A6-0140-88-02.
- B. Respondent shall submit, thirty calendar days after it signs this Order, a Revised Solid Waste Management Plan which demonstrates, to the Department's satisfaction, that sufficient capacity exists in the landfill to accommodate additional waste, and that final grades will accommodate proper closure of the Site.
- C. During the four-month extension period, Respondent shall not increase, by more than twenty percent, the tonnage of municipal waste it accepts from the tonnage of waste it accepted for disposal at the Landfill during the months of September, October, November and December of Calendar Year 1989.

- D. After September 15, 1990. Respondent shall restrict the waste it accepts for disposal at the Landfill to waste generated from the Town of Whitestown and the Town of Marcy.
- E. The continued acceptance of waste and this extension will not interfere with the remediation of the Site, as determined by the Department.
- F. This extension will not slow or in any way impede the existing timetable for the implementation of the Remedial Program at the Site.
- G. The Town must submit a final design for final cover of the Landfill and associated surface water drainage controls within 120 days of the effective date of this Order or February 1, 1991 whichever is earlier, in order to allow construction of the final cover to begin in June 1991. All other items to be included in the Remedial Design shall follow the existing timetable of Paragraph XVII of the Order A6-0140-88-02.
- H. The Remedial Program will continue to be implemented at the Site.
- I. 1) The Town will establish an interest-bearing escrow account ("the Account"). The Town shall, as the monies are received, deposit in the Account, 90 percent of all tipping fees accruing between September 1, 1990 and January 1, 1991, the duration of the

extension.

- 2) The Town shall provide full documentation to the Department to insure its compliance with this paragraph on a monthly basis.
 - 3) The Town shall continue the Account until all tipping fees payable have been received. At the time all such tipping fees are collected, the Town shall notify the Department of the total balance, including interest. This sum shall be called the "Total Balance."
- J. The Total Balance shall represent a sum certain that will be a non-eligible amount for funding under the Environmental Quality Bond Act (EQBA) of 1986. In addition, all previous withdrawals of money from the Account, which are used for remediation of the Site shall not be eligible for funding under the EQBA of 1986.
- K. The Town may withdraw money from the Account, for the sole purpose of funding the remediation of the Site. The Department shall have the right to post-audit expenditures from the Account.
- L. Withdrawals from the Account must be reasonable and meet all of the criteria for eligibility of EQBA funds as though they were eligible expenses.
- M. All monies in the Account must be expended before the Town may seek additional reimbursement for any eligible costs of remediation

under ECL 27-1313.5.g. and ECL 52-0303.

N. The Town shall cooperate with the Oneida-Herkimer Solid Waste Management Authority (the "Authority") which is responsible for providing a regional solution for solid waste management in Oneida County and Herkimer County. This shall include, but not be limited to consenting to the entry upon the Site, or areas in the vicinity of the Site which may be under the control of the Town by any duly designated employee, consultant, contractor or agent of the Authority for purposes of inspection and monitoring the solid waste disposed of at the Landfill to ensure the Town's compliance with the Oneida County Recycling Law of 1989.

IV. If, in the opinion of the Department, the Town is found to be in violation of any term or provision of this Order or Order on Consent A6- 0140-88-02, all acceptance of waste shall immediately cease at the Site and the Site shall no longer be operational.

V. In the event that the Town violates this Order or Order A6-0140-88-02, the Town shall be liable for penalties under ECL 71-2705; subject to the provisions of such Section.

VI. Respondent, its officers, agents, servants, employees, successors and assigns shall be bound by this Order.

VII. The terms hereof together with Order A6-0140-88-02 shall constitute the complete and entire Order between Respondent and the Department concerning the Site. No terms, conditions, understandings or agreements purporting to modify or vary the terms hereof shall be binding unless made in writing and subscribed by the party to be bound. No informal advice, guidance, suggestions or comments by the Department, including but not limited to comments on reports, proposals, plans, specifications, schedules or any other submittals, shall be construed as relieving Respondent of its obligations to obtain such formal approvals as may be required by this Order.

DATED: Albany, New York

Oct. 10, 1990

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

A handwritten signature in cursive script, reading "Thomas C. Jorling", is written over a horizontal line.

CONSENT BY RESPONDENT

TOWN OF WHITESTOWN

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

By: William Goodman
William Goodman

Title: Supervisor
Supervisor, Town of Whitestown

Date: Sept 5, 1990

STATE OF NEW YORK)

) s.s.:

COUNTY OF ONEIDA

On this 5th day of September, 1990 before me personally came William B. Goodman to me known, who being duly sworn, did depose and say that he resides at Wilcox Rd, Whitesboro, NY that he is the Supervisor of the Town of Whitestown, the municipality described herein, and which executed the foregoing instrument; that he knew the seal of said municipality; that the seal affixed to this instrument was such municipal seal; that it was so affixed by a resolution of the Town Board of Town of Whitestown, and that he signed his name thereto by like Order.

William R. Smith
Notary Public
Oneida Co
Comm. Expires 11/30/90

(C.O.#2/WHITES.MW)

STATE OF NEW YORK: DEPARTMENT OF ENVIRONMENTAL CONSERVATION

In the Matter of the
Development and Implementation
of an Interim Remedial Measure,
a Remedial Investigation, a
Feasibility Study and a Remedial
Program for an Inactive Hazardous
Waste Disposal Site, under
Article 27, Title 13, of the
Environmental Conservation Law
of the State of New York
(the "ECL") and of the Interim
Operation of a Solid Waste
Management Facility, under
Article 27, Title 7 of the ECL
by:

ORDER
ON
CONSENT

INDEX #A6-0140-88-02
SITE #633013

TOWN OF WHITESTOWN
Oneida (Co.)

Respondent.

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", and 6 NYCRR Part 375, the regulations promulgated pursuant thereto; and ECL Article 27, Title 7, entitled "Solid Waste Management and Resource Recovery Facilities" and 6 NYCRR Part 360, the regulations promulgated pursuant thereto.

2. The Town of Whitestown ("Respondent") owns and operates a solid waste management facility in Oneida County known as the Whitestown Landfill ("Landfill" or "Site").

The Site encompasses an area of approximately 50 acres. A map of the Site is attached to this Order as Appendix "A".

3. Respondent is a "person responsible", within the meaning of 6 NYCRR §375.2(p), as the owner and operator of the Site during a period beginning approximately in 1967 and continuing through the present. The Department alleges that hazardous wastes and hazardous substances were transported to and disposed of at the Site. The Department further alleges that uncontrolled leachate from the Site is entering into the basements of the D'Allas and the Goodisons, whose properties are located adjacent to the Site along Route 69 and in whose basements the presence of leachate has allegedly been identified.

4. Respondent does not possess a permit to operate the Landfill in accordance with the provisions of 6 NYCRR Part 360.

5. The Site has been designated an inactive hazardous waste disposal site, as that term is defined in ECL Section 27-1301(2), and is listed in the Registry of Inactive Hazardous Waste Disposal Sites in New York State as Site Number 633013.

6. The Department has determined, pursuant to ECL Section 27-1305, that the Site constitutes a significant

threat to the environment, having classified the Site as classification "2". As a result of that classification, action is required to address the threat which is alleged to exist at the Site.

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 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."

8. The Department and Respondent acknowledge that the goals of this Order are that Respondent shall develop and implement an interim remedial measure, a solid waste management plan and a remedial investigation, feasibility study, and remedial program for an inactive hazardous waste disposal site which is also a solid waste management facility, subject to the approval of the Department, and shall implement them within the time limits specified hereinafter. The remedial program shall be developed and

implemented to abate and/or eliminate the alleged significant threat to the public health or environment.

9. Respondent, without admitting any of the allegations made herein, and solely for the purpose of settling the matters raised herein without litigation, has waived its right to a hearing in this matter in the manner provided by law, and having consented to the issuance and entry of this Order, agrees to be bound by the terms hereof.

10. Respondent has placed its insurer on notice of the Department's determination that the Site constitutes a significant threat to the environment and of the Department's claim, pursuant to ECL Article 27, Title 13, against Respondent. Respondent has agreed to continue to exercise reasonable efforts, as required by 6 NYCRR 375.6(a)(4), to obtain indemnification or a commitment to indemnify from its insurance carriers. Further, Respondent has agreed to assist the Department, as required by 6 NYCRR 375.6(a)(3), to compel other responsible persons including, but not limited to, Steel Treathers, Inc. and Waterbury Felt Co. to bear the costs associated with the

development and implementation of an inactive hazardous waste disposal site remedial program at the Site.

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

I. Within 45 days of the effective date of this Order, Respondent shall submit to the Department a work plan for a proposed interim remedial measure to be performed at the Site (the "Work Plan"). The interim remedial measure shall be designed to identify and control the flow of any leachate from the Site which may presently be exposing the public health to an increased threat of harm.

II. Within 30 days of its receipt, the Department shall notify the Respondent in writing of its approval or disapproval of the proposed Work Plan. If the Department approves the proposed Work Plan, it shall be attached to this Order as Appendix "B" and thereby made an enforceable part hereof.

If the Department disapproves the proposed Work Plan, it shall so notify the Respondent in writing, and shall state the reasons therefor. Within 30 days of receipt of such notice, the Respondent shall submit to the Department a revised Work Plan which addresses all of the Department's stated reasons for disapproving the first

submittal. If the Department approves the revised Work Plan, it shall be attached to this Order as Appendix "B" and thereby made an enforceable part hereof.

If the Department disapproves the revised Work Plan, it shall so notify the Respondent in writing, and shall state the reasons therefor. If within the following 15 days the parties cannot resolve their differences, either party may request that the dispute be settled in accordance with the dispute resolution procedures set forth in Paragraph XIII of this Order.

III. Upon its approval by the Department, Respondent shall perform an interim remedial measure according to the approved Work Plan.

IV. Within 90 days of the effective date of this Order, Respondent shall submit to the Department a proposed Solid Waste Management Plan ("SWMP") describing how the Respondent intends to meet the September 1, 1990 deadline for the closure of its landfill. The proposed plan must include:

1. A fill plan, proposed final elevations and grades and an estimate, based on that information, of the landfill's remaining capacity;

2. An assessment of the landfill's operational status, in relation to the requirements of 6 NYCRR 360.8, which describes how Respondent will address any deficiencies identified by that assessment;

3. A description of the waste minimization and recycling efforts that the Respondent will undertake;

4. A detailed evaluation of alternatives for the management of solid waste by the Respondent after September 1, 1990; and

5. A schedule for the undertaking of the waste minimization and recycling efforts and for the pursuit of alternatives for the management of solid waste by the Respondent after September 1, 1990.

V. Within 30 days of its receipt, the Department shall notify the Respondent in writing of its approval or disapproval of the proposed SWMP. If the Department approves the proposed SWMP, it shall be attached to this Order as Appendix "C" and thereby made an enforceable part hereof.

If the Department disapproves the proposed SWMP, it shall notify the Respondent in writing, and shall state the reasons therefor. Within 30 days of receipt of such notice,

the Respondent shall submit to the Department a revised SWMP which addresses all of the Department's stated reasons for disapproving the first submittal. If the Department approves the revised SWMP, it shall be attached to this Order as Appendix "C" and thereby made an enforceable part hereof.

If the Department disapproves the revised SWMP, it shall so notify the Respondent in writing, and shall state the reasons therefor. If within the following 15 days the parties cannot resolve their differences, either party may request that the dispute be settled in accordance with the dispute resolution procedures set forth in Paragraph XIII of this Order.

VI. Within 60 days after receipt of the Department's approval of the SWMP, Respondent shall submit to the Department a Potential Remedial Technologies Report ("PRTR") which:

1. Identifies potential remedial technologies that may be determined to be feasible and desirable as part of the remedial program to be implemented at the Landfill; and

2. Evaluates how the continued operation of the Landfill will affect the feasibility of those potential remedial technologies.

VII. Within 30 days of its receipt, the Department shall notify the Respondent in writing of its approval or disapproval of the proposed PRTR. If the Department approves the proposed PRTR, it shall be attached to this Order as Appendix "D" and thereby made an enforceable part hereof.

If the Department disapproves the proposed PRTR, it shall so notify the Respondent in writing, and shall state the reasons therefor. Within 30 days of receipt of such notice, the Respondent shall submit to the Department a revised PRTR which addresses all of the Department's stated reasons for disapproving the first submittal. If the Department approves the revised, proposed PRTR, it shall be attached to this Order as Appendix "D" and thereby made an enforceable part hereof.

If the Department disapproves the revised PRTR, it shall so notify the Respondent in writing, and shall state the reasons therefor. If within the following 15 days the parties cannot resolve their differences, either party may request that the dispute be settled in accordance with the dispute resolution procedures set forth in Paragraph XIII of this Order.

VIII. Respondent shall close its landfill to the acceptance of any refuse whatsoever on or before

September 1, 1990 or within 30 days of the date upon which it submits to the Department a Feasibility Study, whichever is sooner, provided, however, that:

a. If the Department determines, at any time prior to the date on which the landfill is to be closed to the acceptance of refuse, that the continued operation of the landfill is interfering with the remedial investigation which is to be conducted at the landfill, that continued operation would interfere with any of the potential remedial technologies identified by the Respondent or that the continued operation of the landfill is exposing the environment or the public health to a significantly increased threat of harm, Respondent shall immediately close its facility to the acceptance of any refuse whatsoever. The Department shall provide written notice to the Respondent of its determination and shall allow the Respondent 30 days from the date of its receipt of such notice to either take corrective action to eliminate such interference or increased threat of harm or to close its landfill to the acceptance of refuse.

b. If the Department determines, at any time prior to the date on which the landfill is to be closed to the acceptance of refuse, that the Respondent has failed to maintain its landfill in compliance with the operational requirements contained in 6 NYCRR 360.8 or any other interim

operating guidelines specified or approved by the Department, Respondent shall immediately close its landfill to the acceptance of any refuse whatsoever. The Department shall provide written notice to the Respondent of its determination and shall allow the Respondent 30 days from the date of its receipt of such notice to either correct its failure or to close its landfill to the acceptance of refuse.

c. The Respondent, at any time prior to the date on which the landfill is to be closed to the acceptance of refuse, may petition the Department for an extension beyond that date. Respondent's petition shall set forth:

1. The specific date to which the Respondent seeks to have the closure date extended;

2. Facts beyond Respondent's control that Respondent believes justify an extension of the closure date for the landfill;

3. Specific, proposed interim operating guidelines or measures, to be implemented at the landfill, that Respondent believes would reduce the impact of the continued operation on the environment and/or the public health or would minimize the potential that the continued

operation of the landfill would interfere with remedial investigations or programs to be implemented at the Site; and

4. Any other information, including, but not limited to a statement regarding the economic implications to the Respondent and its residents of meeting the required closure date, which the Respondent believes may be pertinent to its petition.

The Department shall provide the Respondent with written notice of its decision in relation to any petition for an extension submitted by the Respondent within 60 days of the submission of any such petition. The Department shall not unreasonably deny a petition submitted by the Respondent pursuant to this subparagraph.

IX. All investigations, proposals, reports, plans, remedial programs, and supplements and revisions thereto required by this Order shall address both on-Site and off-Site contamination and impacts caused by the disposal of solid and hazardous wastes at the Site, and shall be prepared, designed and executed in accordance with "Requisite Technology". As used in this Order, Requisite Technology means engineering, scientific and construction principles and practices subject to the Department's approval, which (a) are technologically feasible; (b) will most effectively abate and/or eliminate any significant

threat to the environment posed by the disposal of hazardous wastes at the Site; and (c) comply with the provisions of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. Sections 9601 et seq., as amended by the Superfund Amendments and Reauthorization Act of 1986, Pub. Law #99-499, 100 Stat. 1613 (1986) ("CERCLA").

X. As used herein, "hazardous wastes" shall mean hazardous wastes, as defined at 6 NYCRR 371, and any constituents or degradation products of such wastes; "solid wastes" shall have the meaning set forth in 6 NYCRR 360.1(c).

XI. Within 30 days after the effective date of this Order, Respondent shall submit to the Department all data within its possession or control regarding environmental conditions on-Site and off-Site, to the extent that such data have not heretofore been provided to the Department. At a minimum this information shall include:

a. A brief history and description of the Site, including the types, quantities, physical state and location of hazardous wastes disposed of, including spills and the dates and methods of disposal and spillage of such wastes;

b. A concise summary of information held by Respondents and their attorneys with respect to all "persons

responsible" for such disposal of hazardous wastes, as that term is defined in 6 NYCRR Part 375, including but not limited to names, addresses, dates of disposal and proof linking each such person responsible with hazardous wastes identified in Paragraph III(a) herein;

c. A description of the results of all previous investigations of the Site and of investigations known by Respondent to have been conducted of areas in the vicinity of the Site, including copies of all topographic and property surveys and engineering studies of the Site and areas in the vicinity of the Site; and

d. A historical inventory of all aerial photography available for the Site, including date of flight, area of coverage, scale of reprints, and present owner of photography.

XII. Within the time limits set forth in the table below, the Department shall approve or disapprove each of the following submittals in writing.

Table No. 1
Submittals

Submittal	Consent Order Paragraph	Days after Receipt for Department Review	Days to Prepare and Submit Revision
Proposal	XIV	60 Days	60 Days
Report	XV	60 Days	60 Days
Feasibility Study	XVI	60 Days	60 Days
Remedial Design	XVII	60 Days	60 Days

If the Department approves a submittal, it shall so notify the Respondent in writing. The Department's approval shall constitute acknowledgement that the submittal fulfills the conditions and requirements for the development of that submittal that are contained in this Order. The approved submittal shall be appended to this Order and shall become an enforceable part hereof.

If the Department disapproves a submittal, it shall so notify the Respondent in writing, and shall state the reasons therefor. Within the time limits set forth by Table No. 1 herein, the Respondent shall revise and resubmit the submittal, addressing each of the Department's objections. Within 15 days of receipt of the revised submittal, the Department shall approve or disapprove the revised submittal in writing.

If the Department approves the revised submittal, it shall so notify the Respondent in writing. The Department's approval shall constitute acknowledgement that

the submittal fulfills the conditions and requirements for the development of that submittal that are contained in this Order. The approved, revised submittal shall be appended to this Order and shall become an enforceable part hereof.

If the Department disapproves the revised submittal, it shall so notify the Respondent in writing, and shall state the reasons therefor. If within the following 15 days the parties cannot resolve their differences, either party may request that the dispute be settled in accordance with the dispute resolution procedures set forth in Paragraph XIII of this Order.

XIII. At the written request of either party, based on a dispute concerning the terms of a revised submittal, the Commissioner may appoint an Administrative Law Judge (ALJ) to settle the matter.

If the ALJ deems it necessary to convene a hearing, the taking of evidence shall be concluded as soon as practicable after the ALJ's appointment. In all proceedings hereunder:

1. The parties shall be the Department and the Respondent.
2. Notice shall be provided to the other party by the party requesting resolution of the dispute.

3. The burden of going forward shall be on the Respondent.

4. The ALJ shall have all powers conferred by 6 NYCRR 622.12.

5. All proceedings conducted hereunder shall be stenographically recorded. The Respondent shall arrange for an expedited stenographic transcript to be made within 10 working days after conclusion of the proceeding, and for the original and two copies of the transcript to be delivered to the ALJ at the expense of the Respondent.

6. The ALJ shall prepare, within 45 working days after receipt of the transcript of the proceeding, a written summary of the documentation and testimony received during the proceeding, and a recommended decision. The summary and recommended decision shall be hand-delivered to the Department's representative and sent by certified mail, return receipt requested, and another copy by Express Mail, to the Respondent.

7. The ALJ's recommended decision shall become the final determination of the Commissioner unless, within 10 working days from receipt of the recommended decision, either the Respondent or the Department objects in writing. Any objections shall be submitted in writing to the ALJ with a copy sent by Express Mail, telecopier or hand-delivery to the other party, which shall serve and file in the same manner its response, if any, within 5 working days of receipt of the objections. Upon receipt of the objections

and any response, the ALJ shall refer the matter to the Commissioner for final determination.

8. The final determination by the Commissioner shall be made as soon as practicable after receipt by him of the recommended decision by the ALJ.

XIV. Within 60 days after the effective date of this Order, Respondent shall submit to the Department a proposed written scope of work (the "Proposal") to investigate the field environmental conditions on-Site and off-Site (the "Remedial Investigation"). Such Proposal shall address all elements of a Remedial Investigation as set forth in the most current National Oil and Hazardous Substances Contingency Plan ("NCP"), CERCLA and the USEPA Guidance Document entitled, "Guidance on Remedial Investigations and Feasibility Studies Under CERCLA," dated June, 1985, or any subsequent revisions thereto. The proposal shall also include a schedule for performing the Remedial Investigation.

XV. Upon its approval by the Department, the Proposal shall be attached to this Order as Appendix "E" and thereby made an enforceable part hereof. Respondent shall perform the Remedial Investigation according to the approved Proposal and shall submit to the Department a Remedial Investigation Report (the "Report") founded upon its performance of the Remedial Investigation in accordance with

the approved Proposal. The Report shall include all data generated and all other information obtained during the Remedial Investigation and shall provide all of the assessments and evaluations which are set forth in the most current National Contingency Plan and are consistent with CERCLA.

XVI. Upon its approval by the Department, the Report shall be attached to this Order as Appendix "F" and thereby made an enforceable part hereof. Within 120 days after receipt of the Department's approval of the Report, Respondent shall submit to the Department a study evaluating the feasibility of on-Site and off-Site remedial options to abate and eliminate the significant threat to the environment or public health (the "Feasibility Study"). The Feasibility Study shall be prepared and certified by an engineer licensed to practice by the State of New York, who may be an employee of Respondent, or an individual or member of a firm which is authorized to offer engineering services in accordance with Article 145 of the New York State Education Law.

The Feasibility Study shall be performed consistent with the NCP, CERCLA and the USEPA guidance document entitled, "Guidance on Remedial Investigations and Feasibility Studies under CERCLA", dated June, 1985, or any subsequent revisions thereto.

XVII. Upon its approval by the Department, the Feasibility Study shall be attached to this Order as Appendix "G" and thereby made an enforceable part hereof. Within 120 days after receipt of the Department's approval of the Feasibility Study, Respondent shall submit to the Department an engineering report, plans and specifications for a remedial program (the "Remedial Design"). The Remedial Design shall be prepared and certified by an engineer licensed to practice by the State of New York, who may be an employee of the Respondent, or an individual or member of a firm which is authorized to offer engineering services in accordance with Article 145 of the New York State Education Law.

The Remedial Design shall include, but not be limited to, the following:

a. A description of the means of effectuating the combination of technologies which has been selected from the alternatives identified by the approved Feasibility Study, and which therefore collectively constitutes the Remedial Program ("Remedial Program") to include but not be limited to:

1. the disposition of hazardous wastes, constituents and degradation products, and any soil or other materials contaminated thereby;

2. the collection, treatment, and disposition of contaminated groundwater, leachate and air;

3. physical security and posting of the Site;

4. health and safety of persons living and/or working at or in the vicinity of the areas being remediated;

5. quality control and quality assurance procedures and protocols to be applied to Remedial Program construction operations;

6. integrated air monitoring on and off-Site during implementation of the Remedial Program.

b. "Contract-ready" documents for the construction of the elements of the Remedial Program, including plans and specifications prepared and certified by a licensed professional engineer registered in the State of New York, which plans shall satisfy all applicable state and federal laws, rules and regulations;

c. A time schedule for construction of the elements of the Remedial Program and provisions for periodic work-in-progress reports during the implementation of the Remedial Program;

d. The parameters, conditions, procedures and protocols to determine the effectiveness of the Remedial

Program, including a schedule for periodic sampling of existing and planned groundwater monitoring wells on-Site and off-Site;

e. A description of the maintenance and monitoring activities, procedures and protocols to be undertaken during the period commencing upon completion of the construction of the elements of the Remedial Program, including a provision for submission to the Department of periodic monitoring reports (post-closure monitoring);

f. A contingency plan to be implemented in the event that any element of the Remedial Program fails to operate in accordance with the Remedial Design prior to the date 30 years after satisfactory completion of construction pursuant thereto (Supplemental Remedial Program); and

g. An evaluation of the need to take measures to provide for the health and safety of human beings working or residing at and in the vicinity of the Site during a 30 year period following completion of the implementation of the Remedial Program, and a plan for the implementation of such measures.

XVIII. Upon its approval by the Department, the Remedial Design shall be attached to this Order as Appendix "H" and thereby made an enforceable part hereof. In the event that

the approved Remedial Design requires modification during implementation, such modification must receive the prior written approval of the Department before incorporation of such modification into the approved Remedial Design.

XIX. Within such period as may be allowed by the approved Remedial Design and any modifications thereto which have been approved by the Department or any Supplemental Remedial Program which may be required, Respondent shall complete construction pursuant to the approved Remedial Design and any modifications to the Remedial Design which have been approved by the Department. Within 45 days of completion of construction, Respondent shall submit to the Department as-built drawings and a certification that construction was completed in accordance with the approved Remedial Design and any approved modifications. Such certification shall be made by an engineer licensed to practice by the State of New York, who may be an employee of Respondent, or an individual or member of a firm which is authorized to offer engineering services in accordance with Article 145 of the New York State Education Law.

XX. Within 45 days after receipt of the as-built drawings and certification, the Department shall review the same and provide comments to Respondent. In the event that the Department believes that the quality and completeness of construction does not meet the requirements and specifications of construction documents, the Department may take any action and pursue any remedy to which it may be entitled by law.

If, after review, the Department accepts the engineer's certification that construction of the Remedial Program was completed in accordance with the approved Remedial Design, then, unless a Supplementary Remedial Program is required hereby, and except for the provisions of Paragraphs XXI and XXIX hereof, such acceptance shall constitute a full and complete satisfaction and release of each and every claim, demand, remedy or action whatsoever against Respondent, its directors, officers, employees, agents, successors and assigns, which the Department has or may have pursuant to Article 27, Title 13, of the ECL relative to or arising from the disposal of hazardous waste at the Site; provided, however, that the Department specifically reserves all of its rights concerning, and any such release and satisfaction shall not extend to, any investigation or remediation the Department deems necessary due to:

- (1) environmental conditions on-site or off-site which are related to the disposal of hazardous wastes at the Site and were unknown to the Department at the time of its approval of the Remedial Investigation Report, or
- (2) information received, in whole or in part, after the Department's approval of the Remedial Investigation Report,

and such unknown environmental conditions or information indicates that the Remedial Program is not protective of human health and the environment. The Department shall

notify the Respondent of such environmental conditions or information and its basis for determining that the Remedial Program is not protective of human health and the environment.

This release shall inure only to the benefit of Respondent, its directors, officers, employees, agents, successors and assigns, with respect to the aforesaid matter.

Nothing herein shall be construed as barring, diminishing, adjudicating or in any way affecting any legal or equitable rights or claims, actions, suits, causes of action or demands whatsoever that the Department may have against anyone other than Respondent, its directors, officers, employees, agents, successors and assigns.

XXI. Notwithstanding any provision contained in this Order to the contrary, for a period of up to 30 years from the date of the Department's written acknowledgement that Respondent has completed the implementation of the construction and other elements in accordance with the approved Remedial Design, or for a longer period of time commensurate with Respondent's obligations pursuant to this Order, Respondent shall operate, maintain and monitor the areas at which the elements of the Remedial Program were implemented in accordance with the approved Remedial Design

("Post-Closure Period"). During such Post-Closure Period, Respondent shall provide the Department with the periodic monitoring reports, as set forth in the approved Remedial Design and shall provide immediate notice to the Department of any failure of the Remedial Program.

Within five years of the date of the inception of the Post-Closure Period, and at least every five years thereafter for its duration, the Department shall evaluate whether Respondent's obligation to operate, maintain and monitor the areas at which the elements of the Remedial Program were implemented, in accordance with the approved Remedial Design, should be modified.

XXII. The Department shall have the right to obtain "split samples", "duplicate samples", or both, of all substances and materials sampled by Respondent pursuant to this Order. The Department shall make the results of any such tests available to the Respondent upon request.

XXIII. Respondent shall provide notice to the Department of any excavating, drilling or sampling to be conducted pursuant to the terms of this Order at least 10 working days in advance of such activities.

XXIV. Respondent shall obtain whatever permits, easements, rights-of-way, rights-of-entry, approvals or authorizations are necessary in order to perform the

Remedial Investigation and all of Respondent's other obligations pursuant to this Order.

XXV. Respondent shall permit any duly designated officer, employee, consultant, contractor or agent of the Department to enter upon the Site or areas in the vicinity of the Site which may be under the control of Respondent, and any areas necessary to gain access thereto, for purposes of inspection and of making or causing to be made such sampling and tests as the Department deems necessary, and for assurance of Respondent's compliance with the terms of this Order. Any such officer, employee, consultant, contractor or agent seeking access for those purposes, prior to being permitted access, shall comply with the training requirements imposed by 29 CFR 1910.120.

XXVI. Respondent shall retain professional consultants, contractors and laboratories acceptable to the Department to perform the technical, engineering, analytical, and certification 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 initiation of any activities for which they will be responsible.

XXVII. Respondent shall not suffer any penalty under any of the terms of this Order, or be subject to any proceeding

or actions for any remedy or relief if it cannot comply with any requirements hereof because of an act of God, war, or other condition as to which negligence or willful misconduct on the part of the Respondent was not a proximate cause, including, but not limited to, delays attributable solely to weather conditions or difficulties in obtaining necessary easements or rights-of-way, provided, however, that Respondent shall immediately notify the Department in writing when it obtains knowledge of any such condition and request an extension or modification of the terms of this order. Any such request shall not be unreasonably denied by the Department.

XXVIII. The failure of Respondent to comply with any term of this Order shall constitute a default and a failure to perform an obligation under this Order and under the ECL.

XXIX. Nothing contained in this Order shall be construed as barring, diminishing, adjudicating or in any way affecting:

a. any legal or equitable rights or claims, actions, suits, causes of action or demands whatsoever that the Department may have against anyone other than Respondent, its directors, officers, employees, servants, agents, successors and assigns;

b. the Department's right to enforce at law or in equity the terms and conditions of this Order against Respondent, its directors, officers, employees, servants, agents, successors and assigns in the event that Respondent shall fail to satisfy any of the terms hereof; and

c. the Department's right to bring any action or proceeding against Respondent, its directors, officers, employees, servants, agents, successors and assigns with respect to claims for natural resource damages.

XXX. Within 90 days of the effective date of this Order, and every six months thereafter, Respondent shall advise the Department of the efforts that it has made to obtain indemnification from its insurers and to assist the Department in compelling other responsible parties to bear the costs associated with the development and implementation of an inactive hazardous waste disposal site remedial program at the Site.

XXXI. The terms of this Order shall not be construed to prohibit the Commissioner or his duly authorized representative from exercising any summary abatement powers, either at common law or as granted pursuant to statute or regulation.

XXXII. Respondent shall indemnify and hold the Department, the State of New York, and their representatives and employees harmless for all claims, suits, actions, damages and costs of every name and description arising out of or resulting from the fulfillment or attempted fulfillment of the terms of this Order by Respondent, its directors, officers, employees, servants, agents, successors or assigns.

XXXIII. The effective date of this Order shall be the date it is signed by the Commissioner.

XXXIV. If the Respondent desires that any terms of this Order be changed, Respondent shall make timely written application to the Commissioner, setting forth reasonable grounds for the relief sought. Respondent's duty to meet any deadline which is imposed by this Order and related to such application shall be delayed until the Commissioner responds to the application.

XXXV. The findings, provisions, terms and conditions of this Order shall not give rise to any presumption of law or finding of fact which shall inure to the benefit of any third person and shall not be deemed to be admissions of any kind on the part of the Respondent, its officers or employees.

XXXVI. Within 30 days after the effective date of this Order, Respondent shall file a Declaration of Covenants and Restrictions with the Oneida County Clerk's Office for the purpose of providing notice of this Order to all potential future purchasers of any portion or all of the Site. This Declaration must indicate that any successor in title to any portion or all of the Site shall be responsible for implementing the provisions of this Order. A certified copy of this filing shall be provided to the Department.

XXXVII. In the event that Respondent proposes to convey the whole or any part of its ownership interest in the Site, Respondent shall, not fewer than 30 days prior to the consummation of such proposed conveyance, notify the Department in writing of the identity of the transferee and of the nature and date of the proposed conveyance. In advance of such proposed conveyance, Respondent shall notify the transferee in writing, with a copy to the Department, of the applicability of this Order.

XXXVIII. Pursuant to ECL §27-1313(5)(g), the Department shall provide from the hazardous waste remedial fund, within the limitations therefore and once the Respondent has complied with all the requirements set forth in 6 NYCRR 375.6, seventy-five percent of the eligible design and construction costs of the inactive hazardous waste disposal site remedial program developed and implemented at the Site.

XXXIX. A. All communication required by this Order to be made between the Department and Respondent shall be made in writing and transmitted by United States Postal Service, Return Receipt Requested, express mail or hand delivered to the address listed below.

B. Communication to be made from Respondent to the Department shall be made as follows:

1. Two copies to the Division of Hazardous Waste Remediation, Room 212, 50 Wolf Road, Albany, New York 12233, Attn: Michael J. O'Toole, Jr., Director.

2. Two copies to the Division of Environmental Enforcement, Room 415, 50 Wolf Road, Albany, New York 12233, Attn: Paul Van Cott, Esq.

3. Two copies to the NYS Department of Environmental Conservation, Region 6, 317 Washington Street, Watertown, N.Y. 13601 Attn: Thomas Brown, Regional Director.

4. Two copies to the NYS Department of Health, Attn: Ronald Tramontano, 2 University Place, Albany, New York 12203.

C. Communication from the Department to Respondent shall be sent to William B. Goodman, Town Supervisor, Whitestown Town Hall, 8 Park Avenue, Whitesboro, New York 13492

D. The Department and Respondent respectively reserve the right to designate other or different addresses on notice to the other.

XL. The terms of this Order shall be deemed to bind Respondent, its officers, directors, agents, servants, employees, successors and assigns.

XLI. Nothing herein shall be construed to bind any entity not specifically bound by the terms of this Order.

XLII. The terms hereof shall constitute the complete and entire Order between Respondent and the Department concerning the Site. No terms, conditions, understandings or agreements purporting to modify or vary the terms hereof shall be binding unless made in writing and subscribed by the party to be bound. No informal advice, guidance, suggestions or comments by the Department regarding reports, proposals, plans, specifications, schedules or any other writing submitted by Respondent shall be construed as relieving Respondent of its obligations to obtain such formal approvals as may be required by this Order.

DATED: *Albany*, New York
Nov. 29, 1988

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

A handwritten signature in cursive script, reading "Thomas C. Jorling", is written over a horizontal line.

CONSENT BY RESPONDENT

Respondent, without any admission of law or fact and solely for the purpose of settling the matters raised herein without litigation, hereby consents to the issuing and entering of this Order, waives its right to a hearing herein as provided by law, and agrees to be bound by the provisions, terms and conditions contained in this Order.

TOWN OF WHITESTOWN

By: William Goodman
Title: Supervisor
Date: October 12, 1988

STATE OF NEW YORK)
COUNTY OF Orleans) S.S.:

On this 12th day of October, 1988,
before me personally came William Goodman,
to me known, who being duly sworn did depose and say that he
resides in _____; that he is the
_____ of the _____
municipality described in and which executed the foregoing
instrument; that he knew the seal of said municipality; that
the seal affixed to said instrument was such municipal seal;
that it was so affixed by the Order of the Town Board of
said municipality and that he signed his name thereto by
like order.

[Signature]
Notary Public

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