

New York State Department of Environmental Conservation
50 Wolf Road, Albany, New York 12233



Thomas C. Jorling
Commissioner

December 15, 1993

Virginia Robbins, Esq.
Bond, Schoeneck & King
One Lincoln Center
Syracuse, New York 13202-1355

Re: Martin Marietta, West Lot (NYS Registry #633036)

Dear Ms. Robbins:

Enclosed, for your files, is your copy of the final RIFS Consent Order for the West Lot Site in Utica, N.Y. Thank you for your cooperation in these negotiations.

Sincerely yours,

Wm. G. Little
Central Field Unit
Division of Environmental Enforcement
(518) 457-3296

cc., w/ encl.: D. Sweredoski/P. Ouderkirk
R. Heerkens

15/

RECEIVED
DEC 16 1993
DIVISION OF ENVIRONMENTAL ENFORCEMENT
ALBANY, NY

STATE OF NEW YORK: DEPARTMENT OF ENVIRONMENTAL CONSERVATION

In the Matter of the
Development and Implementation
of a Remedial Investigation/Feasibility
Study for 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 # A6-0311-93-11

Martin Marietta Corporation,
Respondent.

Site Code # 633036

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. Martin Marietta Corporation ("Respondent" or "Martin Marietta"), a corporation duly organized under the laws of the State of Maryland, is doing business in the State of New York with a facility located at French Road, Utica, New York. Martin Marietta is the successor in interest to the General Electric Company, Aerospace Electronics Systems Division, at the same address.

3. The Department has identified a two-acre a portion of the Martin Marietta property, known as the "West Lot", as an inactive hazardous waste disposal site (the "Site"), as that term is defined at ECL Section 27-1301(2), and has listed the Site in the Registry of Inactive Hazardous Waste Disposal Sites in New York State as Site Number 633036. The Department alleges that analyses of soil and groundwater samples from the Site have detected contamination with volatile organic compounds ("VOCs"). A map of the Site is annexed (Appendix A).

4. The Department alleges that the Site was used during the 1950s and 1960s for the dumping and burning of spent solvents.

5. Respondent purchased the Site from General Electric Company in April 1993. Respondent is entering into this Order on its own behalf as current owner and as successor in

interest to the prior owner, General Electric Company. Thus, Respondent is entering into this Order on behalf of itself and General Electric Company.

6. As an inactive hazardous waste disposal site, the Department alleges that the Site presents a significant threat to the public health or environment. The Department has therefore classified the Site as a Classification "2" pursuant to ECL Section 27-1305 (4) (b).

7. 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. The Department alleges that 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 asserts that it 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).

8. The Department and Respondent agree that the goals of this Order are for Respondent to (i) develop and implement a Remedial Investigation/Feasibility Study ("RI/FS") for the Site; and (ii) reimburse the Department's reasonable administrative and oversight costs for the implementation of this Order.

9. Respondent, having waived Respondent's right to a hearing herein as provided by law, and having consented to the issuance and entry of this Order, without any adjudication of law or fact, agrees to be bound by its terms. Respondent's consent to and compliance with this Order does not constitute, and shall not be construed as, an admission of liability for any purpose or an admission by Respondent of law or fact or the applicability of any law to conditions at the Site. 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. Within 90 days after the effective date of this Order, Respondent shall submit to the Department all data within Respondent's possession or reasonable control regarding

environmental conditions on-Site and off-Site, and other file documents containing the information described below, unless the Department advises the Respondent that such data or information have previously been provided to the Department. The data and other information shall include:

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

B. A concise summary of information held by Respondent and Respondent's attorneys and consultants with respect to all persons responsible for such disposal of hazardous wastes, including but not limited to names, addresses, dates of disposal and any proof linking each such person responsible with hazardous wastes identified pursuant to subparagraph I.A; and

C. A comprehensive list and copies of all existing relevant reports with titles, authors, and subject matter, as well as a description of the results of all previous investigations of the Site and areas in the vicinity of the Site, including copies of all available topographic and property surveys, engineering studies and aerial photographs.

Provided, however, that nothing in this Order shall be construed to require the disclosure of any document protected by the attorney-client privilege or the privileges for attorney work product and material prepared in anticipation of litigation. Notwithstanding this provision, there shall be no such attorney work product, material prepared in anticipation of litigation or client-attorney privilege for data generated with respect to Site conditions. In the event Respondent asserts that any information is privileged, Respondent shall describe the information and the nature of the privilege asserted with sufficient clarity and particularity to place the Department on notice as to the basis of the claim.

II. RI/FS Work Plan Contents and Submittals

A. Within 90 days after the effective date of this Order, Respondent shall prepare and submit to the Department a detailed work plan describing the methods and procedures to be implemented in performing an RI/FS for the Site ("RI/FS Work Plan").

B. The RI/FS Work Plan shall include, but not be limited to, the following:

1. A RI/FS Scoping Report completed in accordance with USEPA Directive 9355.3-01FS1 dated November 1989;

2. Project Plans to complete the tasks identified in the Scoping Report which shall include but are not limited to:

a. characterization of the Site such that remedial alternatives can be screened and the Feasibility Study can be completed;

- b. identification of treatability studies, as necessary;
- c. completion of exposure and risk assessments, as necessary;
- d. development of remedial response alternatives and preliminary screening of the alternatives;
- e. detailed analysis of remedial alternatives; and
- f. a Sampling and Analysis Plan that shall include:
 - (1) A quality assurance project plan that describes the quality assurance and quality control protocols necessary to achieve the initial data quality objectives. This plan shall designate a data validation expert and must describe such individual's qualifications and experience.
 - (2) A field sampling plan that defines sampling and data gathering methods in a manner consistent with the "Compendium of Superfund Field Operations Method" (EPA/540/P-87/001, OSWER Directive 9355.0-14, December 1987) as supplemented by the Department.
 - (3) A health and safety plan to protect persons at and in the vicinity of the Site during the performance of the RI/FS which shall be prepared in accordance with 29 C.F.R. 1910 and all other applicable standards by a certified health and safety professional. Respondent shall add supplemental items to this plan necessary to ensure the health and safety of all persons at or in the vicinity of the Site during the performance of any work pursuant to this Order.
- g. A citizen participation plan that is, at a minimum, consistent with the Department's regulations set forth at 6 NYCRR § 375-1.5 and its publication, "New York State Inactive Hazardous Waste Site Citizen Participation Plan," dated August 30, 1988, and any subsequent revisions thereto.

III. Performance and Reporting of Remedial Investigation

- A. Within 30 days after the Department's approval of the RI/FS Work Plan, Respondent shall commence the RI/FS.
- B. Respondent shall perform the RI/FS in accordance with the Department-approved RI/FS Work Plan.
- C. During the performance of the RI/FS, Respondent or its consultant shall have on-Site a full-time representative who is qualified to supervise the work done.
- D. Within the time frame set forth in the RI/FS Work Plan, Respondent shall prepare and submit a Remedial Investigation Report that shall:

1. include all data generated and all other information obtained during the Remedial Investigation:

2. provide all of the assessments and evaluations set forth in the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA") [42 U.S.C. 9601 et seq.], as amended, the National Contingency Plan ("NCP") of March 8, 1990 [40 CFR Part 300], the USEPA guidance document entitled "Guidance for Conducting Remedial Investigations and Feasibility Studies under CERCLA," dated October 1988, and any subsequent revisions to that guidance document in effect at the time the RI/FS Work Plan is submitted, and appropriate USEPA and Department technical and administrative guidance documents.

3. identify any additional data that must be collected to complete the RI and/or the FS; and

4. include a certification by the individual or firm with primary responsibility for the day to day performance of the Remedial Investigation that all activities that comprised the Remedial Investigation were performed in full accordance with the Department-approved RI/FS Work Plan.

IV. Feasibility Study

A. Within the time frame set forth in the Approved RI/FS Work Plan, Respondent shall submit a Feasibility Study evaluating on-Site and off-Site remedial actions to eliminate, remove, abate, control or monitor, to the maximum extent practicable, all health and environmental hazards and potential hazards attributable to hazardous waste disposal at the Site. The Feasibility Study shall be prepared by and have the signature and seal of a professional engineer who shall certify that the Feasibility Study was prepared in accordance with this Order.

B. Respondent shall perform and prepare the Feasibility Study in accordance with the Department-approved RI/FS Work Plan and in a manner consistent with CERCLA, the NCP, and the guidance documents identified in Subparagraph III, D, 2.

C. Within 30 days after the Department's approval of the Feasibility Study, Respondent shall cooperate and assist the Department in soliciting public comment on the RI/FS and the proposed remedial action plan identified therein, in accordance with CERCLA, the NCP, the guidance documents identified in Subparagraph III, D, 2, and with any Department policy and guidance documents in effect at the time the public comment period is initiated. After the close of the public comment period, the Department shall select a final remedial alternative for the site in a Record of Decision ("ROD"). The ROD shall be incorporated into and become an enforceable part of this Order. Respondent retains all rights pursuant to Article 78 of the CPLR

for the purpose of challenging the Department's selection of a final remedial alternative for the Site as set forth in the ROD.

V. Interim Remedial Measures

A. Before the effective date of the ROD, Respondent may propose interim remedial measures ("IRMs") for the Site on an as-needed basis. In proposing each IRM, Respondent shall submit to the Department a work plan which includes a chronological description of the anticipated IRM activities together with a schedule for the performance of those activities. Upon the Department's determination that the proposal is an appropriate interim remedial measure and does not warrant being the subject of a separate order, and upon its approval of such work plan, the work plan shall be incorporated into and become an enforceable part of this Order.

B. Respondent shall submit to the Department for its review and (as appropriate) approval, in accordance with the schedule contained in the Department-approved work plan, detailed documents and specifications prepared, signed and sealed by a professional engineer to implement the Department-approved IRM. Such documents shall include a health and safety plan, contingency plan, and (if the Department requires such in light of the proposed measures) a citizen participation plan that incorporates appropriate activities outlined in the Department's publication; "New York State Inactive Hazardous Waste Citizen Participation Plan", dated August 30, 1988, and any subsequent revisions thereto. Respondent shall then carry out such IRM in accordance with the approved work plan, detailed documents and specifications, and this Order.

C. Within the schedule contained in the Department-approved work plan, Respondent shall submit to the Department a final engineering report prepared by a professional engineer that includes a certification by the individual that all activities that comprised the IRM were performed in full accordance with the Department-approved work plan, detailed documents and specifications, and this Order. Within the schedule contained in the Department-approved work plan, Respondent shall submit to the Department a report or reports documenting the performance of the IRM. Respondent shall notify the Department of any significant difficulties that may be encountered in implementing the Department-approved work plan, detailed documents or specifications, and shall not modify any obligation unless first approved by the Department.

VI. Progress Reports

Respondent shall submit to the parties set forth in paragraph XV, A copies of written monthly progress reports that:

(i) describe the actions which have been taken toward achieving compliance with this Order during the previous month;

(ii) include a summary of all results of sampling and tests performed during the month and, if required by the Department, all other data received or generated by Respondent or Respondent's contractors or agents in the previous month, including quality assurance/quality control information, whether conducted pursuant to this Order or conducted independently by Respondent;

(iii) identify all work plans, reports, and other deliverables required by this Order that were completed and submitted during the previous month;

(iv) describe all actions, including, but not limited to, data collection and implementation of work plans, that are scheduled for the next month and provide other information relating to the progress at the Site;

(v) include information regarding percentage of completion, unresolved delays encountered or anticipated that may affect the future schedule for implementation of the Respondent's obligations under the Order, and efforts made to mitigate those delays or anticipated delays;

(vi) include a summary of any modifications to any work plans that Respondent has proposed to the Department or that the Department has approved; and

(vii) describe all activities undertaken in support of the Citizen Participation Plan during the previous month and those to be undertaken in the next month.

Respondent shall submit these progress reports to the Department by the tenth day of every month following the effective date of this Order.

VII. Review of Submittals

A. 1. The Department shall review each of the submittals Respondent makes pursuant to Paragraphs I through V of this Order 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, 2, f, (3). 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, specifying the reasons for its disapproval, and shall offer Respondent an opportunity to meet with the Department's staff to discuss the measures necessary to obtain the Department's approval. Within 30 days after receiving written notice that Respondent's submittal has been disapproved, or within such other period of time agreed upon by the parties, Respondent shall make a revised submittal to the Department that addresses and attempts to resolve 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 and the Department may take any action or pursue whatever rights it has pursuant to any provision of statutory or common law unless, within 15 days receipt of the Department's notice of disapproval, Respondent invokes the dispute resolution procedure set forth in Paragraph IX below. If the Department approves the revised submittal, it shall be incorporated into and become an enforceable part of this Order.

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.

VIII. Compliance

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, strike, riot, Act of God or an unforeseeable occurrence which the exercise of ordinary human prudence could not have prevented. Respondent shall, within ten working 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 ten-day period constitutes a waiver of any claim that a delay is not subject to sanctions. Respondent shall have the burden of proving that an event is a defense to compliance with this Order pursuant to this subparagraph.

IX. Dispute Resolution

If the Department disapproves a revised submittal, Respondent shall be in violation of this Order unless, within 15 days of receipt of the Department's notice of disapproval, Respondent requests to meet with the Director of the Division of Hazardous Waste Remediation ("the Director") in order to discuss the Department's objections and Respondent is available to meet immediately thereafter. At this meeting, Respondent shall be given an opportunity to present its responses to the Department's objections, and the Director shall have the opportunity to modify and/or withdraw such objections. Respondent shall revise the submittal in accordance with the Department's specific comments, as may be modified by the Director, and shall submit a revised submittal. The period of time within which the submittal must be revised as specified by the Department in its notice of disapproval shall control unless

the Director revises the time frame during or after the meeting. The Director's determination shall be a final agency determination for purposes of seeking review under Article 78 of the CPLR.

After receipt of the revised submittal, the Department shall notify Respondent in writing of its approval or disapproval thereof. If the revised submittal fails to address the Department's specific comments, as modified, and the Department disapproves the revised submittal for this reasons, Respondent shall be in violation of this Order and the ECL, unless, within 30 days after receipt of the Department's notice of disapproval, Respondent commences an action for review of the Director's determination pursuant to Article 78 of the CPLR.

The invocation of formal dispute resolution procedures under this paragraph shall not of itself extend, postpone or affect in any way any of Respondent's obligations under this Order.

X. Entry upon Site

Respondent hereby consents to the entry upon the Site, or areas in the vicinity of the Site which may be under the control of the Respondent, by any duly designated employee, consultant, contractor, or agent of the Department or any State agency, at reasonable times and upon reasonable notice, for purposes of inspection, sampling, and testing and to ensure Respondent's compliance with this Order.

XI. Payment of Department Costs

Within 45 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 State'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 Department shall send Respondent periodic invoices for these costs. Payment shall be made by check payable to the Department of Environmental Conservation. Payment shall be sent to the Director, 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, as identified by an assigned time and activity code. This information shall be documented by the Department's quarterly reports of Direct Personal Service. 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.

XII. Department Reservation 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. the Department's right to bring any action or proceeding against anyone other than Respondent and/or any of Respondent's successors, and assigns;
2. the Department's right 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 applicable to them;
3. the Department's right 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. the Department's right 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 and because of which a significant threat to the environment remains after implementation of this Order;
5. the Department's right to bring any criminal action against the Respondent and/or any of Respondent's directors, officers, employees, servants, agents, successors, and assigns;
6. the Department's right to require Respondent and/or any of Respondent's directors, officers, employees, servants, agents, successors, and assigns to develop and implement IRMs for the Site; and
7. the Department's right 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 pursuant to Environment Conservation Law § 71-0301 or §71-1719.

XIII. Indemnification

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 ("Liabilities") resulting from the fulfillment or attempted fulfillment of this Order by Respondent, and/or Respondent's directors, officers, employees, servants, agents, successors, and assigns, provided that this indemnification shall not extend to any Liabilities resulting from any negligent or intentionally tortious acts or omissions of the Department, the State of New York, their representatives or employees..

XIV. Public Notice

A. Within 30 days after the effective date of this Order, Respondent shall file a Declaration of Covenants and Restrictions with the Clerk of the County where the Site is located to give all parties who may acquire any interest in the Site notice of this Order.

B. If Respondent proposes to convey the whole or any part of Respondent's ownership interest in the Site, Respondent shall, not fewer than 60 days before the date of conveyance, notify the Department in writing of the identity of the transferee and of the nature and proposed date of the conveyance and shall notify the transferee in writing, with a copy to the Department, of the applicability of this Order.

XIV. 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. Darrell Sweredoski, P.E.,
Region Hazardous Waste Remediation Engineer,
Division of Hazardous Waste Remediation
New York State Department of Environmental Conservation
State Office Bldg.
Watertown, New York 13601
2. Director, Bureau of Environmental
Exposure Investigation
New York State Department of Health
2 University Place
Albany, New York 12203
3. Michael J. O'Toole, P.E., Director,
Division of Hazardous Waste Remediation
Department of Environmental Conservation
50 Wolf Road
Albany, New York 12233-7010
4. Wm. G. Little

Division of Environmental Enforcement
Central Field Unit, Room 415
Department of Environmental Enforcement
50 Wolf Road
Albany, New York 12233-5501

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

1. Four copies (one unbound) to Darrell Sweredoski.
2. Two copies to the Director, Bureau of Environmental Exposure Investigation.
3. One copy to Michael J. O'Toole.
4. One copy to Wm. G. Little.

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

1. Sandra Lee Fenske, Esq.
Counsel
Martin Marietta Corporation
Ocean, Radar and Sensor Systems
French Road
Utica, New York 13503
2. Mr. Brian A. Kent
Senior Project Manager
Syracuse Operations Department
Martin Marietta Corporation
Electronics Parkway
PO Box 4840
Building 2 - Room 147
Syracuse, New York 13221-4840
3. Virginia C. Robbins, Esq.
Bond, Schoeneck & King
One Lincoln Center
Syracuse, New York 13202

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

XVI. Permits

Pursuant to 6 NYCRR § 375-1.7, Respondent shall be exempt from any otherwise applicable requirement to obtain a permit issuable by the Department for any activity undertaken under this Order, provided that the activity is conducted on-site, as defined in 6 NYCRR § 375.1(b)(1), and the activity satisfies all substantive technical requirements applicable to like activity conducted pursuant to a permit as determined by Department.

XVII. Miscellaneous

A. All activities and submittals required by this Order shall address both on-Site and off-Site contamination resulting from the disposal of hazardous waste at the Site.

B. 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. Unless previously approved by the Department, the experience, capabilities and qualifications of the firms or individuals selected by Respondent shall be submitted to the Department within 20 days after the effective date of this Order. The Department's approval of these firms or individuals shall be obtained prior to initiation of any activities for which the Respondent and such firms or individuals will be responsible.

C. 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 and the Department shall make available to each other the results of all sampling and/or tests or other data generated with respect to implementation of this Order. Respondent shall summarize these results in the progress reports required by this Order.

D. Respondent shall notify the Department at least 5 working days in advance of any field activities to be conducted pursuant to this Order.

E. Respondent shall obtain whatever permits, easements, rights-of-way, rights-of-entry, approvals, or authorizations are necessary to perform Respondent's obligations under this Order.

F. Respondent and Respondent's 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 assets or real or personal property shall in no way alter Respondent's responsibilities under this Order.

G. Respondent shall provide a copy of this Order to each contractor hired to perform work required by this Order and to each person representing Respondent with respect to the Site and shall condition all contracts entered into hereunder upon performance in conformity with the terms of this Order. Respondent or Respondent's contractors shall provide written notice of this Order to all subcontractors hired to perform any portion of the work required by this Order. Respondent shall nonetheless be responsible for ensuring that Respondent's contractors and subcontractors perform the work to be done under this Order in accordance with this Order.

H. 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.

I. All references to "days" in this Order are to calendar days unless otherwise specified.

J. 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.

K. 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 the Respondent, to the Commissioner setting forth reasonable grounds for the relief sought. Copies of such written application shall be delivered or mailed to: Wm. G. Little, Esq. and Darrell Sweredoski, P.E.

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

DATED: *Albany*, New York
December 5 1993

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

By:


Ann 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: Steven J. Walker
(TYPE NAME OF SIGNER)

Title: Operations Manager

Date: 9 December 93

STATE OF NEW YORK)

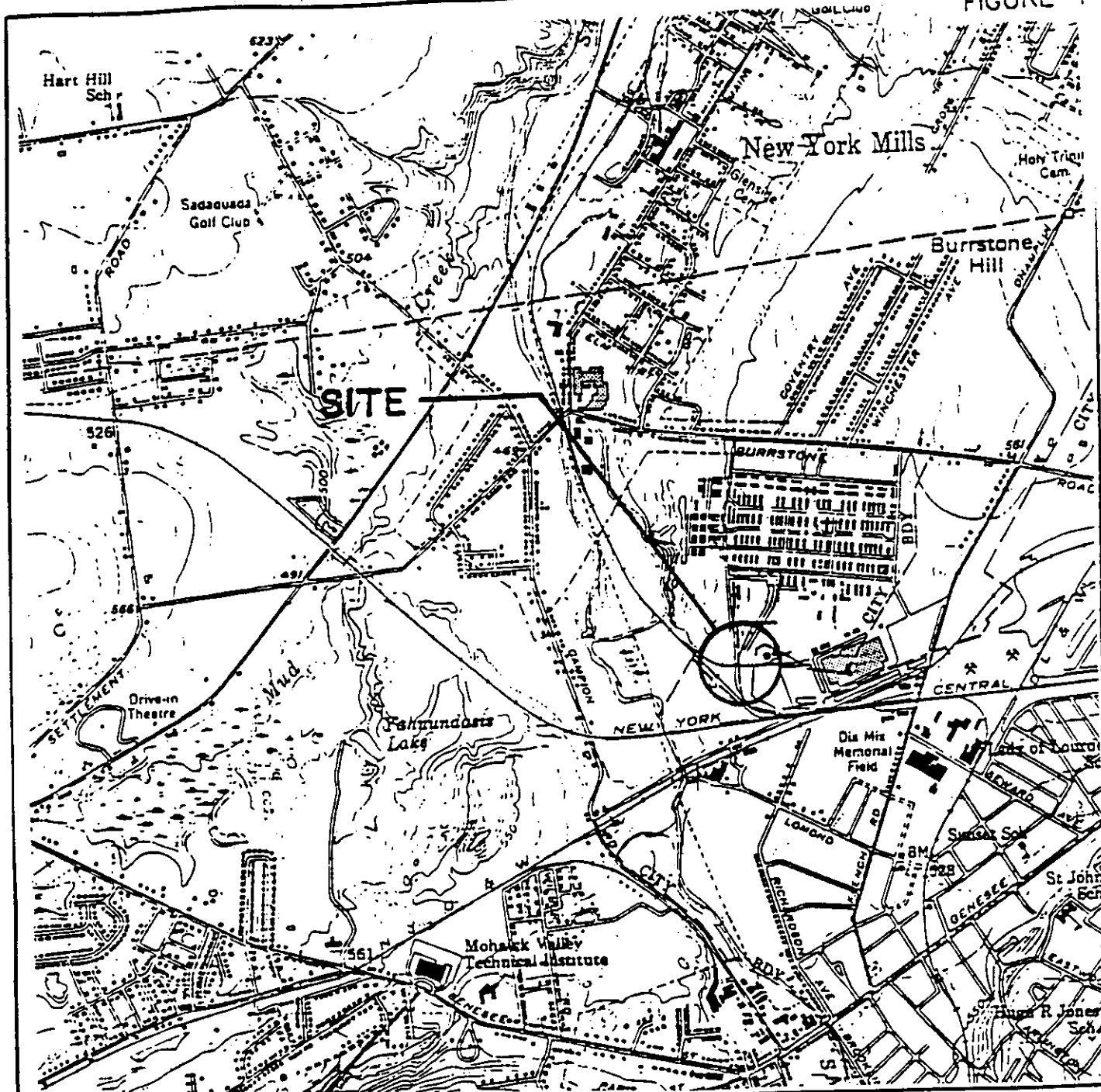
) s.s.:

COUNTY OF Onondaga

On this 9 day of December, 1993, before me personally came Steven J. Walker, to me known, who being duly sworn, did depose and say that he resides in Syracuse; that he is the Operations Manager of the Martin Marietta corporation described in and which executed the foregoing instrument; that he is duly authorized to execute the foregoing instrument on behalf of said corporation.

Pauline S. Wohn
Notary Public

PAULINE S. WOHN
Notary Public in the State of New York
Qualified in Onondaga County No. 34-432100
My Commission Expires Sept. 30, 1995

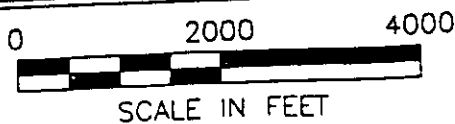


INTERIM REMEDIAL MEASURE
MARTIN MARIETTA CORPORATION
WEST LOT
UTICA, NEW YORK

SITE LOCATION MAP



QUADRANGLE LOCATION

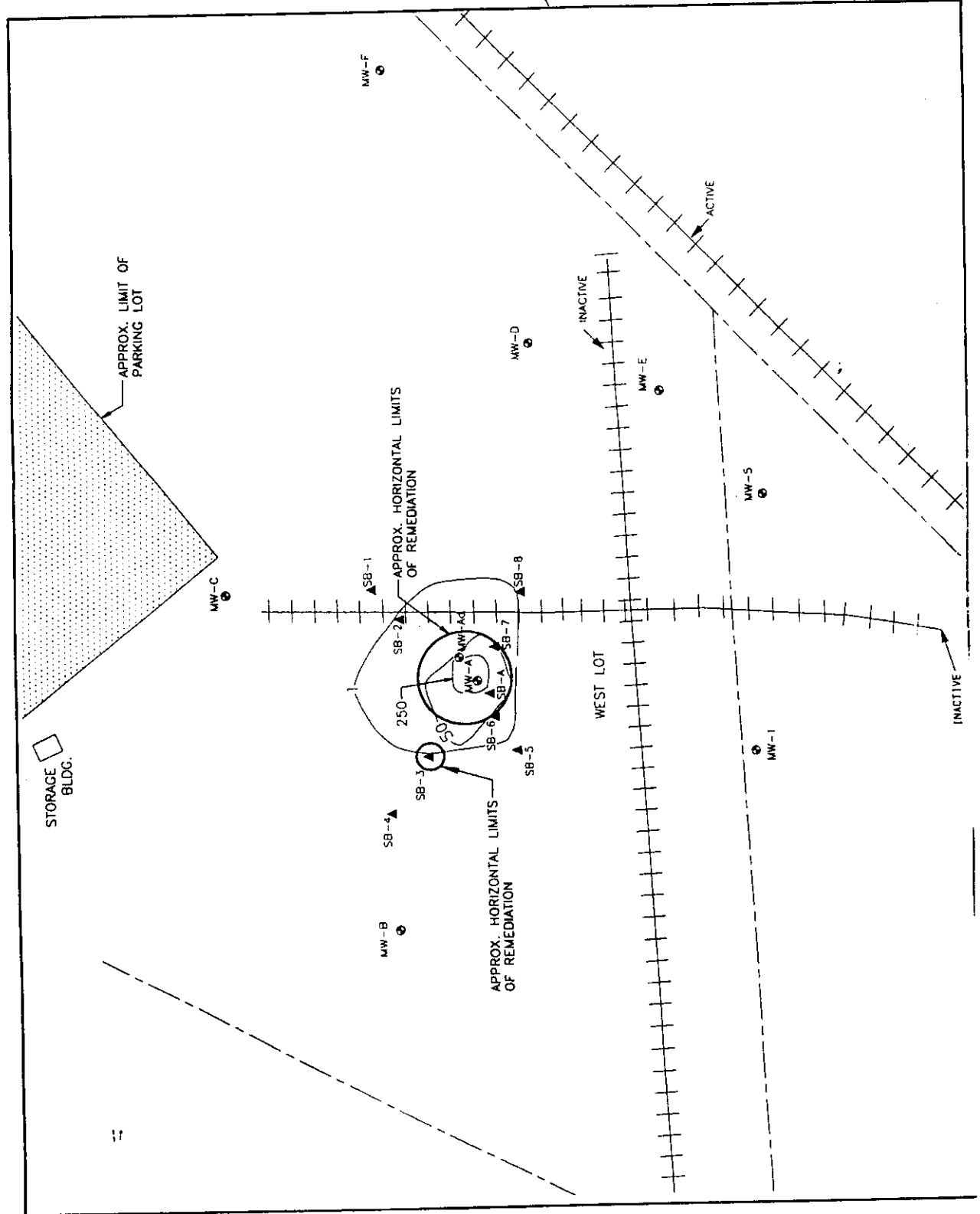


ADAPTED FROM U.S.G.S. UTICA WEST, NEW YORK 7.5 MIN. QUAD. 1955

FIGURE 2

INTERIM REMEDIAL MEASURE
MARTIN MARIETTA CORPORATION
WEST LOT
UTICA, NEW YORK

SITE MAP



LEGEND:

PROPERTY LINE

GROUND WATER
MONITORING WELL

SOIL BORING

SOIL GAS CONTOUR (ppm)
(DUNN, 1990)

APPROX. HORIZONTAL LIMITS
OF REMEDIATION

0 80 160
APPROX. SCALE IN FEET

O'BRIEN & GERE
ENGINEERS INC.

New York State Department of Environmental Conservation
50 Wolf Road, Albany, New York 12233



Thomas C. Jorling
Commissioner

December 15, 1993

Virginia Robbins, Esq.
Bond, Schoeneck & King
One Lincoln Center
Syracuse, New York 13202-1355

Re: Martin Marietta, West Lot (NYS Registry #633036)

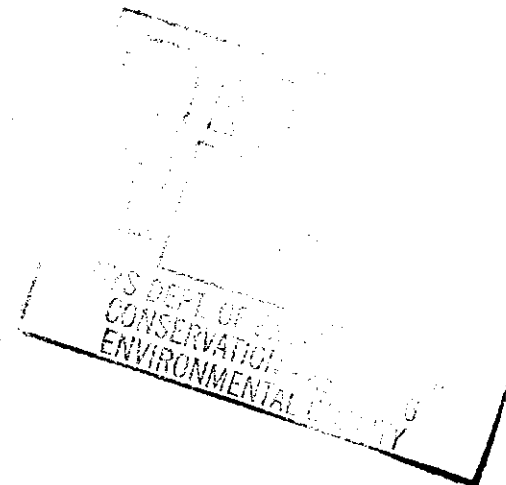
Dear Ms. Robbins:

Enclosed, for your files, is your copy of the final RIFS Consent Order for the West Lot Site in Utica, N.Y. Thank you for your cooperation in these negotiations.

Sincerely yours,

Wm. G. Little
Central Field Unit
Division of Environmental Enforcement
(518) 457-3296

cc., w/ encl.: D. Sweredoski/P. Ouderkirk
R. Heerkens



STATE OF NEW YORK: DEPARTMENT OF ENVIRONMENTAL CONSERVATION

In the Matter of the
Development and Implementation
of a Remedial Investigation/Feasibility
Study for 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 # A6-0311-93-11

Martin Marietta Corporation,
Respondent.

Site Code # 633036

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. Martin Marietta Corporation ("Respondent" or "Martin Marietta"), a corporation duly organized under the laws of the State of Maryland, is doing business in the State of New York with a facility located at French Road, Utica, New York. Martin Marietta is the successor in interest to the General Electric Company, Aerospace Electronics Systems Division, at the same address.

3. The Department has identified a two-acre a portion of the Martin Marietta property, known as the "West Lot", as an inactive hazardous waste disposal site (the "Site"), as that term is defined at ECL Section 27-1301(2), and has listed the Site in the Registry of Inactive Hazardous Waste Disposal Sites in New York State as Site Number 633036. The Department alleges that analyses of soil and groundwater samples from the Site have detected contamination with volatile organic compounds ("VOCs"). A map of the Site is annexed (Appendix A).

4. The Department alleges that the Site was used during the 1950s and 1960s for the dumping and burning of spent solvents.

5. Respondent purchased the Site from General Electric Company in April 1993. Respondent is entering into this Order on its own behalf as current owner and as successor in

interest to the prior owner, General Electric Company. Thus, Respondent is entering into this Order on behalf of itself and General Electric Company.

6. As an inactive hazardous waste disposal site, the Department alleges that the Site presents a significant threat to the public health or environment. The Department has therefore classified the Site as a Classification "2" pursuant to ECL Section 27-1305 (4) (b).

7. 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. The Department alleges that 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 asserts that it 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).

8. The Department and Respondent agree that the goals of this Order are for Respondent to (i) develop and implement a Remedial Investigation/Feasibility Study ("RI/FS") for the Site; and (ii) reimburse the Department's reasonable administrative and oversight costs for the implementation of this Order.

9. Respondent, having waived Respondent's right to a hearing herein as provided by law, and having consented to the issuance and entry of this Order, without any adjudication of law or fact, agrees to be bound by its terms. Respondent's consent to and compliance with this Order does not constitute, and shall not be construed as, an admission of liability for any purpose or an admission by Respondent of law or fact or the applicability of any law to conditions at the Site. 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. Within 90 days after the effective date of this Order, Respondent shall submit to the Department all data within Respondent's possession or reasonable control regarding

environmental conditions on-Site and off-Site, and other file documents containing the information described below, unless the Department advises the Respondent that such data or information have previously been provided to the Department. The data and other information shall include:

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

B. A concise summary of information held by Respondent and Respondent's attorneys and consultants with respect to all persons responsible for such disposal of hazardous wastes, including but not limited to names, addresses, dates of disposal and any proof linking each such person responsible with hazardous wastes identified pursuant to subparagraph I.A; and

C. A comprehensive list and copies of all existing relevant reports with titles, authors, and subject matter, as well as a description of the results of all previous investigations of the Site and areas in the vicinity of the Site, including copies of all available topographic and property surveys, engineering studies and aerial photographs.

Provided, however, that nothing in this Order shall be construed to require the disclosure of any document protected by the attorney-client privilege or the privileges for attorney work product and material prepared in anticipation of litigation. Notwithstanding this provision, there shall be no such attorney work product, material prepared in anticipation of litigation or client-attorney privilege for data generated with respect to Site conditions. In the event Respondent asserts that any information is privileged, Respondent shall describe the information and the nature of the privilege asserted with sufficient clarity and particularity to place the Department on notice as to the basis of the claim.

II. RI/FS Work Plan Contents and Submittals

A. Within 90 days after the effective date of this Order, Respondent shall prepare and submit to the Department a detailed work plan describing the methods and procedures to be implemented in performing an RI/FS for the Site ("RI/FS Work Plan").

B. The RI/FS Work Plan shall include, but not be limited to, the following:

1. A RI/FS Scoping Report completed in accordance with USEPA Directive 9355.3-01FS1 dated November 1989;

2. Project Plans to complete the tasks identified in the Scoping Report which shall include but are not limited to:

a. characterization of the Site such that remedial alternatives can be screened and the Feasibility Study can be completed;

- b. identification of treatability studies, as necessary;
- c. completion of exposure and risk assessments, as necessary;
- d. development of remedial response alternatives and preliminary screening of the alternatives;
- e. detailed analysis of remedial alternatives; and
- f. a Sampling and Analysis Plan that shall include:
 - (1) A quality assurance project plan that describes the quality assurance and quality control protocols necessary to achieve the initial data quality objectives. This plan shall designate a data validation expert and must describe such individual's qualifications and experience.
 - (2) A field sampling plan that defines sampling and data gathering methods in a manner consistent with the "Compendium of Superfund Field Operations Method" (EPA/540/P-87/001, OSWER Directive 9355.0-14, December 1987) as supplemented by the Department.
 - (3) A health and safety plan to protect persons at and in the vicinity of the Site during the performance of the RI/FS which shall be prepared in accordance with 29 C.F.R. 1910 and all other applicable standards by a certified health and safety professional. Respondent shall add supplemental items to this plan necessary to ensure the health and safety of all persons at or in the vicinity of the Site during the performance of any work pursuant to this Order.
- g. A citizen participation plan that is, at a minimum, consistent with the Department's regulations set forth at 6 NYCRR § 375-1.5 and its publication, "New York State Inactive Hazardous Waste Site Citizen Participation Plan," dated August 30, 1988, and any subsequent revisions thereto.

III. Performance and Reporting of Remedial Investigation

- A. Within 30 days after the Department's approval of the RI/FS Work Plan, Respondent shall commence the RI/FS.
- B. Respondent shall perform the RI/FS in accordance with the Department-approved RI/FS Work Plan.
- C. During the performance of the RI/FS, Respondent or its consultant shall have on-Site a full-time representative who is qualified to supervise the work done.
- D. Within the time frame set forth in the RI/FS Work Plan, Respondent shall prepare and submit a Remedial Investigation Report that shall:

1. include all data generated and all other information obtained during the Remedial Investigation:

2. provide all of the assessments and evaluations set forth in the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA") [42 U.S.C. 9601 et seq.], as amended, the National Contingency Plan ("NCP") of March 8, 1990 [40 CFR Part 300], the USEPA guidance document entitled "Guidance for Conducting Remedial Investigations and Feasibility Studies under CERCLA," dated October 1988, and any subsequent revisions to that guidance document in effect at the time the RI/FS Work Plan is submitted, and appropriate USEPA and Department technical and administrative guidance documents.

3. identify any additional data that must be collected to complete the RI and/or the FS; and

4. include a certification by the individual or firm with primary responsibility for the day to day performance of the Remedial Investigation that all activities that comprised the Remedial Investigation were performed in full accordance with the Department-approved RI/FS Work Plan.

IV. Feasibility Study

A. Within the time frame set forth in the Approved RI/FS Work Plan, Respondent shall submit a Feasibility Study evaluating on-Site and off-Site remedial actions to eliminate, remove, abate, control or monitor, to the maximum extent practicable, all health and environmental hazards and potential hazards attributable to hazardous waste disposal at the Site. The Feasibility Study shall be prepared by and have the signature and seal of a professional engineer who shall certify that the Feasibility Study was prepared in accordance with this Order.

B. Respondent shall perform and prepare the Feasibility Study in accordance with the Department-approved RI/FS Work Plan and in a manner consistent with CERCLA, the NCP, and the guidance documents identified in Subparagraph III, D, 2.

C. Within 30 days after the Department's approval of the Feasibility Study, Respondent shall cooperate and assist the Department in soliciting public comment on the RI/FS and the proposed remedial action plan identified therein, in accordance with CERCLA, the NCP, the guidance documents identified in Subparagraph III, D, 2, and with any Department policy and guidance documents in effect at the time the public comment period is initiated. After the close of the public comment period, the Department shall select a final remedial alternative for the site in a Record of Decision ("ROD"). The ROD shall be incorporated into and become an enforceable part of this Order. Respondent retains all rights pursuant to Article 78 of the CPLR

for the purpose of challenging the Department's selection of a final remedial alternative for the Site as set forth in the ROD.

V. Interim Remedial Measures

A. Before the effective date of the ROD, Respondent may propose interim remedial measures ("IRMs") for the Site on an as-needed basis. In proposing each IRM, Respondent shall submit to the Department a work plan which includes a chronological description of the anticipated IRM activities together with a schedule for the performance of those activities. Upon the Department's determination that the proposal is an appropriate interim remedial measure and does not warrant being the subject of a separate order, and upon its approval of such work plan, the work plan shall be incorporated into and become an enforceable part of this Order.

B. Respondent shall submit to the Department for its review and (as appropriate) approval, in accordance with the schedule contained in the Department-approved work plan, detailed documents and specifications prepared, signed and sealed by a professional engineer to implement the Department-approved IRM. Such documents shall include a health and safety plan, contingency plan, and (if the Department requires such in light of the proposed measures) a citizen participation plan that incorporates appropriate activities outlined in the Department's publication; "New York State Inactive Hazardous Waste Citizen Participation Plan", dated August 30, 1988, and any subsequent revisions thereto. Respondent shall then carry out such IRM in accordance with the approved work plan, detailed documents and specifications, and this Order.

C. Within the schedule contained in the Department-approved work plan, Respondent shall submit to the Department a final engineering report prepared by a professional engineer that includes a certification by the individual that all activities that comprised the IRM were performed in full accordance with the Department-approved work plan, detailed documents and specifications, and this Order. Within the schedule contained in the Department-approved work plan, Respondent shall submit to the Department a report or reports documenting the performance of the IRM. Respondent shall notify the Department of any significant difficulties that may be encountered in implementing the Department-approved work plan, detailed documents or specifications, and shall not modify any obligation unless first approved by the Department.

VI. Progress Reports

Respondent shall submit to the parties set forth in paragraph XV, A copies of written monthly progress reports that:

(i) describe the actions which have been taken toward achieving compliance with this Order during the previous month;

(ii) include a summary of all results of sampling and tests performed during the month and, if required by the Department, all other data received or generated by Respondent or Respondent's contractors or agents in the previous month, including quality assurance/quality control information, whether conducted pursuant to this Order or conducted independently by Respondent;

(iii) identify all work plans, reports, and other deliverables required by this Order that were completed and submitted during the previous month;

(iv) describe all actions, including, but not limited to, data collection and implementation of work plans, that are scheduled for the next month and provide other information relating to the progress at the Site;

(v) include information regarding percentage of completion, unresolved delays encountered or anticipated that may affect the future schedule for implementation of the Respondent's obligations under the Order, and efforts made to mitigate those delays or anticipated delays;

(vi) include a summary of any modifications to any work plans that Respondent has proposed to the Department or that the Department has approved; and

(vii) describe all activities undertaken in support of the Citizen Participation Plan during the previous month and those to be undertaken in the next month.

Respondent shall submit these progress reports to the Department by the tenth day of every month following the effective date of this Order.

VII. Review of Submittals

A. 1. The Department shall review each of the submittals Respondent makes pursuant to Paragraphs I through V of this Order 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, 2, f, (3). 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, specifying the reasons for its disapproval, and shall offer Respondent an opportunity to meet with the Department's staff to discuss the measures necessary to obtain the Department's approval. Within 30 days after receiving written notice that Respondent's submittal has been disapproved, or within such other period of time agreed upon by the parties, Respondent shall make a revised submittal to the Department that addresses and attempts to resolve 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 and the Department may take any action or pursue whatever rights it has pursuant to any provision of statutory or common law unless, within 15 days receipt of the Department's notice of disapproval, Respondent invokes the dispute resolution procedure set forth in Paragraph IX below. If the Department approves the revised submittal, it shall be incorporated into and become an enforceable part of this Order.

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.

VIII. Compliance

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, strike, riot, Act of God or an unforeseeable occurrence which the exercise of ordinary human prudence could not have prevented. Respondent shall, within ten working 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 ten-day period constitutes a waiver of any claim that a delay is not subject to sanctions. Respondent shall have the burden of proving that an event is a defense to compliance with this Order pursuant to this subparagraph.

IX. Dispute Resolution

If the Department disapproves a revised submittal, Respondent shall be in violation of this Order unless, within 15 days of receipt of the Department's notice of disapproval, Respondent requests to meet with the Director of the Division of Hazardous Waste Remediation ("the Director") in order to discuss the Department's objections and Respondent is available to meet immediately thereafter. At this meeting, Respondent shall be given an opportunity to present its responses to the Department's objections, and the Director shall have the opportunity to modify and/or withdraw such objections. Respondent shall revise the submittal in accordance with the Department's specific comments, as may be modified by the Director, and shall submit a revised submittal. The period of time within which the submittal must be revised as specified by the Department in its notice of disapproval shall control unless

the Director revises the time frame during or after the meeting. The Director's determination shall be a final agency determination for purposes of seeking review under Article 78 of the CPLR.

After receipt of the revised submittal, the Department shall notify Respondent in writing of its approval or disapproval thereof. If the revised submittal fails to address the Department's specific comments, as modified, and the Department disapproves the revised submittal for these reasons, Respondent shall be in violation of this Order and the ECL, unless, within 30 days after receipt of the Department's notice of disapproval, Respondent commences an action for review of the Director's determination pursuant to Article 78 of the CPLR.

The invocation of formal dispute resolution procedures under this paragraph shall not of itself extend, postpone or affect in any way any of Respondent's obligations under this Order.

X. Entry upon Site

Respondent hereby consents to the entry upon the Site, or areas in the vicinity of the Site which may be under the control of the Respondent, by any duly designated employee, consultant, contractor, or agent of the Department or any State agency, at reasonable times and upon reasonable notice, for purposes of inspection, sampling, and testing and to ensure Respondent's compliance with this Order.

XI. Payment of Department Costs

Within 45 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 State'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 Department shall send Respondent periodic invoices for these costs. Payment shall be made by check payable to the Department of Environmental Conservation. Payment shall be sent to the Director, 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, as identified by an assigned time and activity code. This information shall be documented by the Department's quarterly reports of Direct Personal Service. 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.

XII. Department Reservation 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. the Department's right to bring any action or proceeding against anyone other than Respondent and/or any of Respondent's successors, and assigns;
2. the Department's right 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 applicable to them;
3. the Department's right 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. the Department's right 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 and because of which a significant threat to the environment remains after implementation of this Order;
5. the Department's right to bring any criminal action against the Respondent and/or any of Respondent's directors, officers, employees, servants, agents, successors, and assigns;
6. the Department's right to require Respondent and/or any of Respondent's directors, officers, employees, servants, agents, successors, and assigns to develop and implement IRMs for the Site; and
7. the Department's right 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 pursuant to Environment Conservation Law § 71-0301 or §71-1719.

XIII. Indemnification

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 ("Liabilities") resulting from the fulfillment or attempted fulfillment of this Order by Respondent, and/or Respondent's directors, officers, employees, servants, agents, successors, and assigns, provided that this indemnification shall not extend to any Liabilities resulting from any negligent or intentionally tortious acts or omissions of the Department, the State of New York, their representatives or employees..

XIV. Public Notice

A. Within 30 days after the effective date of this Order, Respondent shall file a Declaration of Covenants and Restrictions with the Clerk of the County where the Site is located to give all parties who may acquire any interest in the Site notice of this Order.

B. If Respondent proposes to convey the whole or any part of Respondent's ownership interest in the Site, Respondent shall, not fewer than 60 days before the date of conveyance, notify the Department in writing of the identity of the transferee and of the nature and proposed date of the conveyance and shall notify the transferee in writing, with a copy to the Department, of the applicability of this Order.

XIV. 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. Darrell Sweredoski, P.E.,
Region Hazardous Waste Remediation Engineer,
Division of Hazardous Waste Remediation
New York State Department of Environmental Conservation
State Office Bldg.
Watertown, New York 13601
2. Director, Bureau of Environmental
Exposure Investigation
New York State Department of Health
2 University Place
Albany, New York 12203
3. Michael J. O'Toole, P.E., Director,
Division of Hazardous Waste Remediation
Department of Environmental Conservation
50 Wolf Road
Albany, New York 12233-7010
4. Wm. G. Little

Division of Environmental Enforcement
Central Field Unit, Room 415
Department of Environmental Enforcement
50 Wolf Road
Albany, New York 12233-5501

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

1. Four copies (one unbound) to Darrell Sweredoski.
2. Two copies to the Director, Bureau of Environmental Exposure Investigation.
3. One copy to Michael J. O'Toole.
4. One copy to Wm. G. Little.

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

1. Sandra Lee Fenske, Esq.
Counsel
Martin Marietta Corporation
Ocean, Radar and Sensor Systems
French Road
Utica, New York 13503
2. Mr. Brian A. Kent
Senior Project Manager
Syracuse Operations Department
Martin Marietta Corporation
Electronics Parkway
PO Box 4840
Building 2 - Room 147
Syracuse, New York 13221-4840
3. Virginia C. Robbins, Esq.
Bond, Schoeneck & King
One Lincoln Center
Syracuse, New York 13202

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

XVI. Permits

Pursuant to 6 NYCRR § 375-1.7, Respondent shall be exempt from any otherwise
applicable requirement to obtain a permit issuable by the Department for any activity undertaken
under this Order, provided that the activity is conducted on-site, as defined in 6 NYCRR
§ 375.1(b)(1), and the activity satisfies all substantive technical requirements applicable to like
activity conducted pursuant to a permit as determined by Department.

XVII. Miscellaneous

A. All activities and submittals required by this Order shall address both on-Site and off-Site contamination resulting from the disposal of hazardous waste at the Site.

B. 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. Unless previously approved by the Department, the experience, capabilities and qualifications of the firms or individuals selected by Respondent shall be submitted to the Department within 20 days after the effective date of this Order. The Department's approval of these firms or individuals shall be obtained prior to initiation of any activities for which the Respondent and such firms or individuals will be responsible.

C. 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 and the Department shall make available to each other the results of all sampling and/or tests or other data generated with respect to implementation of this Order. Respondent shall summarize these results in the progress reports required by this Order.

D. Respondent shall notify the Department at least 5 working days in advance of any field activities to be conducted pursuant to this Order.

E. Respondent shall obtain whatever permits, easements, rights-of-way, rights-of-entry, approvals, or authorizations are necessary to perform Respondent's obligations under this Order.

F. Respondent and Respondent's 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 assets or real or personal property shall in no way alter Respondent's responsibilities under this Order.

G. Respondent shall provide a copy of this Order to each contractor hired to perform work required by this Order and to each person representing Respondent with respect to the Site and shall condition all contracts entered into hereunder upon performance in conformity with the terms of this Order. Respondent or Respondent's contractors shall provide written notice of this Order to all subcontractors hired to perform any portion of the work required by this Order. Respondent shall nonetheless be responsible for ensuring that Respondent's contractors and subcontractors perform the work to be done under this Order in accordance with this Order.

H. 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.

I. All references to "days" in this Order are to calendar days unless otherwise specified.

J. 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.


K. 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 the Respondent, to the Commissioner setting forth reasonable grounds for the relief sought. Copies of such written application shall be delivered or mailed to: Wm. G. Little, Esq. and Darrell Sweredoski, P.E.

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

DATED: *Albany*, New York
December 5 1993

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

By: 
Ann 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: *Steven J. Walker*

(TYPE NAME OF SIGNER)

Title: *Operations Manager*

Date: *9 December 93*

STATE OF NEW YORK)

) s.s.:

COUNTY OF *Onondaga*

On this *9* day of *December*, 19*93*, before me personally came *Steven J. Walker*, to me known, who being duly sworn, did depose and say that he resides in *Syracuse*; that he is the *Operations Manager* of the *Martin Marietta* corporation described in and which executed the foregoing instrument; that he is duly authorized to execute the foregoing instrument on behalf of said corporation.

Pauline S. Wohn

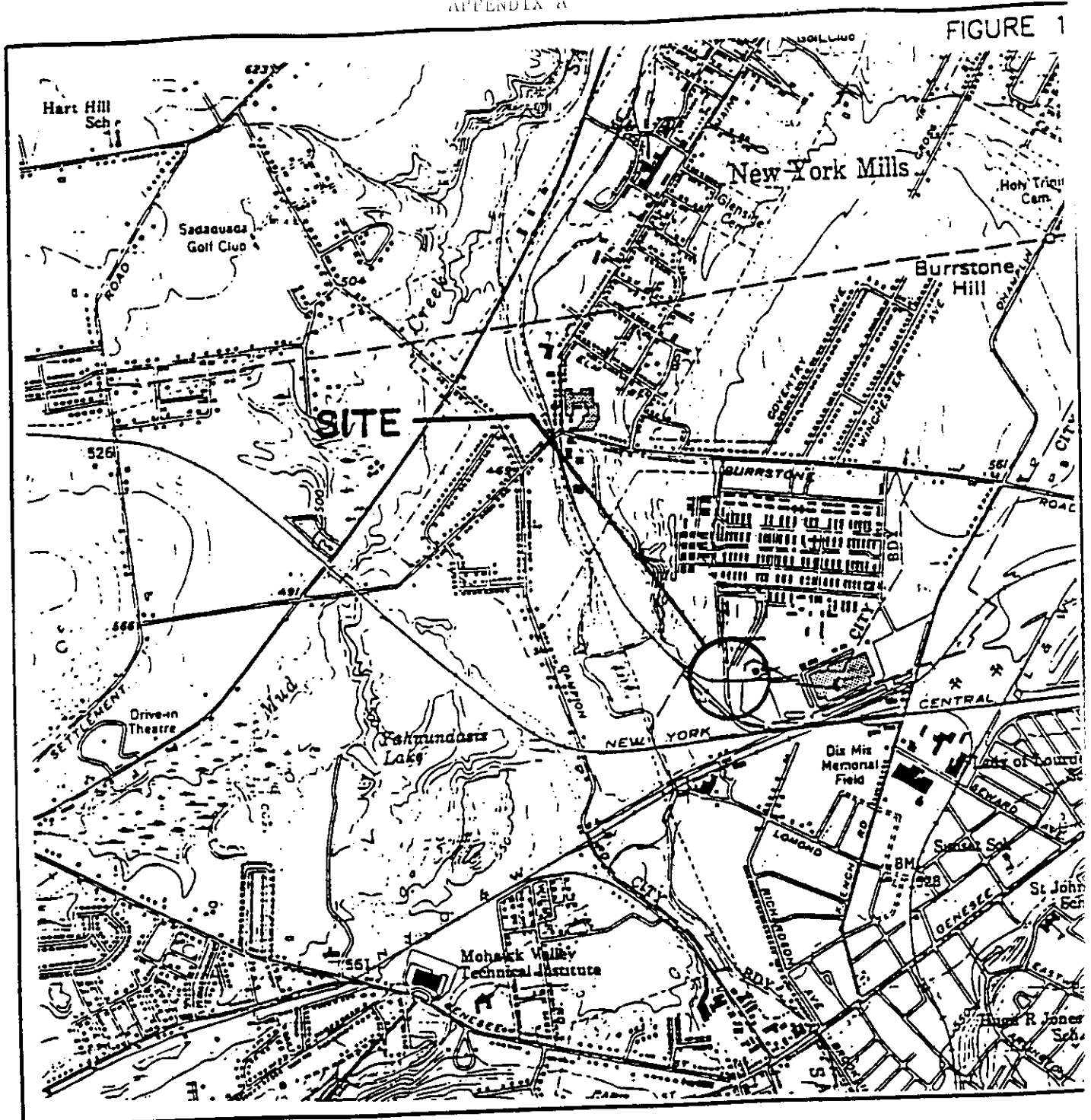
Notary Public

PAULINE S. WOHN

Notary Public in the State of New York

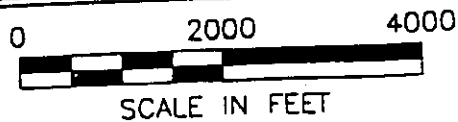
Qualified in Onondaga County No. 34-432100

My Commission Expires Sept. 30, 19*95*



INTERIM REMEDIAL MEASURE
MARTIN MARIETTA CORPORATION
WEST LOT
UTICA, NEW YORK

SITE LOCATION MAP



ADAPTED FROM U.S.G.S. UTICA WEST, NEW YORK 7.5 MIN. QUAD. 1955

FIGURE 2

INTERIM REMEDIAL MEASURE
MARTIN MARIETTA CORPORATION
WEST LOT
UTICA, NEW YORK

SITE MAP

ALLEGANY



LEGEND:

PROPERTY LINE

GROUND WATER
MONITORING WELL

SOIL BORING

SOIL GAS CONTOUR (ppm)
(DUNN, 1990)

APPROX. HORIZONTAL LIMITS
OF REMEDIATION

