

NEW YORK STATE 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, Titles 13 and 9,
and Article 71, Title 27, of the
Environmental Conservation Law
of the State of New York by

International Business Machines Corporation,

Respondent.

ORDER ON CONSENT

Index # A7-0502-0104

IBM Endicott Site

Site # 704014

WHEREAS,

1. A. 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 Article 27, Title 9, of the ECL, entitled "Industrial Hazardous Waste Management." Any person under order pursuant to ECL 27-1313.3.a has a duty imposed by ECL Article 27, Title 13, to carry out the Inactive Hazardous Waste Disposal Site Remedial Program committed to under order. In addition, pursuant to ECL 71-2727.3, the Department has the authority to issue orders requiring corrective action for all releases of hazardous wastes or constituents from any solid waste management unit at any facility permitted under Article 27, Title 9. ECL 71-2705 provides that any person who fails to perform any duty imposed by ECL Article 27, Titles 9 and 13, shall be liable for civil, administrative, and/or criminal sanctions.

B. The Department also has the authority, *inter alia*, to provide for the prevention and abatement of all water, land, and air pollution. *See, e.g.*, ECL 3-0301.1.i.

C. This Order is issued pursuant to the Department's authority under, *inter alia*, ECL Article 27, Titles 9 and 13, ECL Article 71, Title 27, and ECL 3-0301.

2. A. International Business Machines Corporation ("Respondent") is a corporation organized and existing under the laws of the State of New York.

B. Respondent is the former owner and operator of a 140-acre industrial facility located at 1701 North Street in the Village of Endicott and the Town of Union in Broome County, New York (the "Site"). Appendix "A" of this Order is a Site location map. Respondent acquired the parcels that comprise the Site through a series of acquisitions over a period of approximately ninety years, from entities such as Endicott Johnson Corporation, Walter L. Johnson Company, Inc., Ideal Cleaners, railroad companies, small businesses and residents. The Site is currently owned and operated by Endicott Interconnect Technologies (EIT) / Huron Real Estate Associates, LLC and others. Respondent leases a portion of the Site.

C. The Department alleges that leaks and spills associated with Respondent's former operations at the Site resulted in the contamination of soils and groundwater at and in the vicinity of the Site. Trichloroethene (TCE), 1,1,1-trichloroethane (also known as methyl chloroform or TCA), tetrachloroethene (also known as PCE or perc), methylene chloride, Freon 113, benzene, toluene and xylene are among the contaminants identified at the Site.

D. Contamination from the Site extends into certain areas in the Village of Endicott and the Town of Union. Contaminants in the groundwater aquifer have volatilized through overlying soils and have entered enclosed spaces such as basements. Owners of approximately 480 properties downgradient of the Site have been offered a ventilation system, pursuant to action criteria established for the Endicott Groundwater Vapor Project, to intercept groundwater vapors before they can enter buildings.

3. A. Respondent formerly managed hazardous wastes at the Site pursuant to Permit #7-0346-00032/00006 ("RCRA Permit") issued pursuant to 6 NYCRR Part 373. Between 1980 and approximately 1992, Respondent performed investigation and remediation activities under the oversight of the Department's Division of Water. In 1992, Respondent's obligations to investigate and remediate contamination were incorporated into the RCRA Permit, in the form of a requirement to implement a Corrective Action Program. The Department renewed the RCRA Permit on February 10, 2000. By letter dated November 1, 2002, the Department approved IBM's clean-closure certification for all remaining hazardous waste management units, terminating IBM's authority to operate any such units at the facility and leaving in place as to IBM only the Corrective Action provisions of the RCRA Permit. The RCRA Permit provides that Respondent may execute an Order on Consent pursuant to ECL § 71-2727(3) committing it to complete RCRA Corrective Action.

B. On November 1, 2002, the Department identified Endicott Interconnect Technologies (EIT) / Huron Real Estate Associates, LLC, as a new owner of the Endicott facility and modified the RCRA Permit to include it as a second permittee. A letter from the Department to Respondent, dated November 1, 2002, states "It is the Department's understanding that the sale agreement provides that IBM remains fully responsible for Corrective Action."

C. Beginning in approximately 1979 and continuing to the present, Respondent has conducted investigations of and implemented remedial measures for the contamination. These activities include but are not limited to:

- Excavation of contaminated soils from the Site and, according to Respondent's allegations, disposal of any hazardous materials off-site in secure landfills;
- Installation and operation of thirty-one groundwater extraction wells to control the migration of contaminated groundwater from the Site and to remove contaminants from the groundwater. Since 1980, these wells have removed more than 784,000 pounds of contaminants from groundwater;
- Installation of more than 310 wells (monitoring and extraction) at or in the vicinity of the Site and the collection and analysis of over 25,000 groundwater samples from those wells;
- Submittal to the Department of quarterly (1980-1982) and semiannual (1983-present) reports documenting the findings of investigations and groundwater monitoring results;
- Development and implementation of an investigatory program entitled, "Former IBM Facility, Supplemental Groundwater Assessment Work Plan," the work plan for which was prepared by Groundwater Sciences Corporation ("GSC") and dated April 24, 2003. A report on the program (the "SGA Report") was submitted to the Department on December 31, 2003, and a revised and updated version of the SGA Report prepared by Groundwater Sciences, P.C. ("GSPC") was submitted on May 17, 2004;
- Development and implementation of a program to investigate the potential for and, if necessary, to remediate the impact of groundwater vapor intrusion into buildings in the vicinity of the former plant site. The Department-approved work plan for the program is entitled "Action Plan, Groundwater Vapor Project, Endicott, New York," prepared by Sanborn Head and Associates and dated December 30, 2002. An addendum to the Action Plan was submitted to the Department by letter from M. Meyers to D. Radtke, dated December 18, 2003;
- Development and commencement of implementation of a Department-approved work plan entitled "RCRA Facility Investigation Work Plan, Former Ideal Cleaners Site, 1900 North Street, Endicott, New York," prepared by GSC and dated February 27, 2004;
- Development and commencement of implementation of a Department-approved work plan titled "Interim Corrective Measures Work Plan for Test Wells EN-284TD, EN-91T and EN-92T," prepared by GSC and dated March 18, 2004; and

- Development and implementation of a program to evaluate the existing corrective measures systems. Results and recommendations from this evaluation were provided in a report entitled "Evaluation of Existing Corrective Measures Systems," prepared by GSPC and submitted to the Department on April 30, 2004.
4. In a report entitled "Letter Report, Findings of Phase III Extended Area Sampling West of Jefferson Avenue, Groundwater Vapor Project, Endicott, New York," dated June 23, 2003, Respondent asserts that the soil vapor and groundwater quality conditions currently observed west of Jefferson Avenue are related to sources other than the Site. The Department itself has commenced the investigation of areas west of Jefferson Avenue using funds from the Hazardous Waste Remedial Fund (Superfund). The Department alleges that the Site may be a source of the contamination in this area.
 5. The Department has prepared and released for public comment a citizen participation plan entitled, "Draft Citizen Participation Plan for Endicott-area Environmental Projects, Broome County, New York," dated December 2003 ("Department's Citizen Participation Plan"). The Department anticipates updating the plan as appropriate.
 6. The Site is listed in the Registry of Inactive Hazardous Waste Disposal Sites in New York State as site number 704014. It has been designated a "Class 2" site, pursuant to ECL 27-1305.2.b, indicating the Department's determination that the Site presents a significant threat to the public health or the environment. Respondent disagrees with the Department's determination.
 7. Respondent consents to the Department's issuance of this Order without (i) any admission or finding of liability, fault, wrongdoing, or violation of any law, regulation, permit, order, requirement, or standard of care of any kind whatsoever, or (ii) an admission or acknowledgment that there has been a release or threatened release of hazardous waste or that the release or threatened release of hazardous waste at or from the Site constitutes a significant threat to public health or the environment.
 8. The Department and Respondent agree that the goals of this Order are for Respondent to develop and implement a Remedial Program for the Site pursuant to ECL Article 27, Title 13, which includes: (i) the development and implementation of a Comprehensive Operation, Maintenance and Monitoring Plan for certain activities commenced pursuant to Respondent's implementation of the Corrective Action provisions of the RCRA Permit; (ii) the undertaking of a Site-wide source area evaluation; (iii) the undertaking of a Supplemental Remedial Investigation ("SRI") Program and Focused Feasibility Studies ("FFSs") that will allow for the development of a comprehensive Record of Decision ("ROD") for the Site; (iv) the undertaking of appropriate Interim Remedial Measures ("IRM") Programs at and in the vicinity of the Site; (v) the development and implementation of a final remedial alternative ("Remedial Action") which addresses all on-Site contamination, and off-Site contamination which has emanated from or is emanating from the Site; (vi) the operation, maintenance and monitoring ("OM & M") of all

elements of interim and final remedies implemented with respect to the Site; and (vii) the reimbursement of State Costs as described in Paragraph XV.

9. The parties are entering into this Order to avoid prolonged and complicated litigation between the parties, and agree that this Order is mutually acceptable, fair, reasonable, and in the public interest.

10. Solely with regard to the matters set forth below, Respondent hereby waives its right to a hearing herein as provided by law, consents to the issuance and entry of this Order, and agrees to be bound by its terms. Respondent consents to and agrees not to contest the authority or jurisdiction of the Department to issue or enforce this Order, and agrees not to contest the validity of this Order or its terms, or the validity of the data generated by Respondent pursuant to this Order which has been through Respondent's quality assurance and quality control process.

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

I. WORK PLANS

All activities at the Site that comprise any element of an Inactive Hazardous Waste Disposal Site Remedial Program shall be conducted pursuant to one or more Department-approved work plans ("Work Plan" or "Work Plans") and this Order. The Work Plan(s) under this Order shall be developed and implemented in accordance with CERCLA, the NCP, and all applicable statutes, regulations, and applicable guidance documents then in effect, and the requirements of this Order, including those set forth in the Appendices to this Order. All Department-approved Work Plans shall be incorporated into and become an enforceable part of this Order and shall be attached as Appendix "B". Upon approval of a Work Plan by the Department, Respondent shall implement such Work Plan in accordance with all elements of the Work Plan, including the schedule contained within it.

II. TERMINATION OF RCRA PERMIT

In accordance with the provisions of Module 1.C.7 of the RCRA Permit, which provide for Respondent to carry out its RCRA Corrective Action obligations pursuant to an Order on Consent issued pursuant to ECL §71-2727(3), the RCRA permit shall terminate as of the effective date of this Order and Respondent's Corrective Action obligations shall be performed pursuant to this Order.

III. SITE WIDE SOURCE AREA EVALUATION

Respondent shall conduct a Site-Wide Source Area Evaluation ("SAE"), the purpose of which shall be to identify and evaluate source areas at the Site to allow for the selection and implementation of a final remedy for the Site. Upon prior approval by the Department, the SAE can be limited to reflect the fact that prior submissions to the Department have satisfied

particular requirements of the SAE. The SAE shall be conducted in phases. The first phase shall encompass Operable Units ("OUs") 1, 2, 4, 5 and 7 as defined in this Order. A work plan for the SAE at OUs 1, 2, 5 and 7 shall be included as a component of the SRI work plan. For OU 4 (Ideal Cleaners), a work plan for the SAE will be submitted as a modification to the approved RFI Work Plan within 45 days of the effective date of this Order. A work plan for the SAE for the remainder of the Site will be submitted within twelve (12) months after the effective date of this Order. The SAEs will include, but not be limited to, a records search for information regarding site history and operations; known past spills, disposals, and other releases of hazardous waste; and remedial measures undertaken to date. The results of the SAE of OUs 1, 2, 5 and 7 shall be included in the SRI reports to be prepared for those OUs. The results of the SAE for OU 4 will be included in the RFI Report. Respondent shall submit a SAE report for the remainder of the Site in accordance with the approved SAE work plan for that area.

IV. REQUIRED ACTIONS AT INDIVIDUAL OPERABLE UNITS

A. Development of Work Plans

Respondent shall submit the Work Plans described in the Description of Operable Units attached hereto as Appendix "C", within the time frames set forth therein. All SRI/FFS Work Plans shall meet the requirements set forth in Appendix "F". All IRM Work Plans shall meet the requirements set forth in Appendix "G". Respondent shall implement all approved Work Plans in accordance with their terms.

B. Operable Units

The OUs are as follows:

OPERABLE UNIT 1: Railroad Corridor Source Area : Perform SRI, FFS, and IRM.

OPERABLE UNIT 2: North Street Area: Perform SRI, FFS and IRM.

OPERABLE UNIT 3: Plume Reduction in Southern Area: Perform SRI, FFS, and IRM.

OPERABLE UNIT 4: Ideal Cleaners Area: Perform SRI and FFS.

OPERABLE UNIT 5: Building 57 Area: Perform SRI and FFS.

OPERABLE UNIT 6: Plume Control in Bedrock Groundwater: Perform SRI, FFS, if appropriate, and IRM.

OPERABLE UNIT 7: Assessment of On-Site Sewers in Northwestern Area of Site: Perform SRI and FFS, if appropriate.

C. Area West of Jefferson Avenue and Other Areas

The Department reserves the right to require Respondent to undertake investigation and feasibility study-related work with respect to contamination located west of Jefferson Avenue, and/or other areas at and in the vicinity of the Site in the event information developed with respect to the areas establishes Respondent's liability with respect to such contamination. The Department shall notify Respondent, in writing, of the Department's demand for investigation and feasibility study-related work. In the event Respondent determines to contest and defend against any such demand, it shall invoke, within thirty (30) days of Respondent's receipt of such demand, the dispute resolution procedures set forth in Paragraph XXI.

D. Additional Remedial Investigation/Feasibility Study ("RI/FS") Activities

The Department reserves the right to require Respondent's modification, and/or amplification and expansion of the Supplemental Remedial Investigation Program if the Department determines, as a result of reviewing data generated through the RI/FS process or as a result of reviewing any other data or facts, that further work is necessary and that Respondent is liable for its performance. The Department shall notify Respondent in writing of any determination that additional work is necessary. Respondent shall submit to the Department a Work Plan for such work within forty-five (45) days after Respondent's receipt of such demand, unless Respondent determines to contest and defend against any such demand, in which event, it shall invoke, within thirty (30) days of Respondent's receipt of such demand, the dispute resolution procedures set forth in Paragraph XXI.

E. Additional Interim Remedial Measures Programs

In the event the Department determines that one or more additional IRMs are appropriate at or in the vicinity of the Site and that Respondent is liable for the performance of the additional IRM(s), the Department shall notify Respondent of such demand in writing. Respondent shall submit to the Department a Work Plan for such work within forty-five (45) Days after Respondent's receipt of such demand, unless Respondent determines to contest and defend against any such demand, in which event it shall invoke, within thirty (30) days of Respondent's receipt of such demand, the dispute resolution procedures set forth in Paragraph XXI. The Work Plan shall include a chronological description of the IRM activities together with a schedule for performance of those activities. Respondent shall carry out each such IRM Program in accordance with its approved work plan.

V. MISCELLANEOUS SITE ACTIVITIES

Respondent shall submit Work Plans for the following activities described in the Description of Miscellaneous Site Activities attached hereto as Appendix "D", within the time frames set forth therein:

- A. Plume Reduction in Off-Site Capture Zone A IRM: The Work Plan shall additionally meet the requirements for IRM Work Plans set forth in Appendix "G".
- B. Endicott Ambient Air Assessment Plan
- C. Comprehensive Operation, Maintenance and Monitoring Plan: The Work Plan shall additionally meet the requirements for Operation, Maintenance and Monitoring Work Plans set forth in Appendix "E".
- D. Groundwater Vapor Project

Respondent shall implement all approved Work Plans in accordance with the terms of such approved Work Plans.

VI. REMEDY SELECTION

At such time as the Department determines that it is appropriate to choose a comprehensive remedy for the Site, an Operable Unit or any portion of the Site, the Department shall prepare and release for public comment a Proposed Remedial Action Plan ("PRAP"). Respondent shall cooperate with the Department and provide reasonable assistance, consistent with the Department's Citizen Participation Plan and IBM's Citizen Participation Plan, in soliciting public comment on the PRAP. After the close of the public comment period, the Department shall select a Remedial Action for the Site, Operable Unit or portion of the Site in a Record of Decision ("ROD"). The ROD shall be appended to this Order as Appendix "H".

VII. IMPLEMENTATION OF REMEDY

Unless a ROD selects the "no action" alternative, Respondent shall submit a Remedial Design/Remedial Action Work Plan ("RD/RA Work Plan") for the Remedial Action within 90 days after the ROD is issued by the Department. The RD/RA Work Plan is a Work Plan the objective of which is to provide for the development and implementation of the final plans and specifications for implementing the remedial alternative set forth in the ROD. Such Work Plan shall be developed in accordance with Appendix "I".

VIII. OPERATION, MAINTENANCE AND MONITORING FOR REMEDY

In accordance with the schedule contained in each RD/RA Work Plan, Respondent shall modify the Comprehensive Operation, Maintenance and Monitoring Plan to provide for all activities required to maintain and monitor the effectiveness of a comprehensive remedy.

IX. MODIFICATIONS TO WORK PLANS

The Department shall notify Respondent in writing if the Department determines that any element of a Department-approved Work Plan needs to be modified in order to achieve the objectives of the Work Plan or to ensure that the Remedial Program otherwise protects human health and the environment. Unless Respondent determines to contest and defend against such demand, Respondent shall submit to the Department a Work Plan for such requested work within 30 (thirty) Days after Respondent's receipt of such demand or such longer period as may be requested by IBM and agreed to by the Department, such approval not to be unreasonably withheld. In the event that Respondent determines to contest and defend against any such demand, it shall invoke, within thirty (30) days of Respondent's receipt of such demand, the dispute resolution procedures set forth in Paragraph XXI.

X. RELEASE AND COVENANT NOT TO SUE

Upon the Department's approval of either an RD/RA Work Plan final report or an IRM Work Plan final report evidencing that no further remedial action (other than OM&M activities) is required to meet the goals of the Remedial Program, then, except for the provisions of Paragraphs XV and XVII, and except for the future OM&M of the Site and any natural resource damages claims, such acceptance shall constitute a release and covenant not to sue for each and every claim, demand, remedy, or action whatsoever against Respondent, its directors, officers, employees, agents, servants, successors, and assigns (except successors and assigns who were responsible under law for the development and implementation of a Remedial Program at the Site prior to the effective date of this Order), and their respective secured creditors, which the Department has or may have pursuant to Article 27, Titles 9 and 13, of the ECL or pursuant to any other provision of statutory or common law involving or relating to investigative or remedial activities relative to or arising from the disposal of hazardous wastes (or other contaminants remediated by Respondent to the Department's satisfaction pursuant to the ROD or Work Plans) at the Site; provided, however, that the Department specifically reserves all of its rights concerning, and any such release and covenant not to sue shall not extend to any further investigation or remediation the Department deems necessary due to environmental conditions on-Site or off-Site which are related to the disposal of hazardous wastes at the Site and which indicate that the Remedial Program is not protective of public health and/or the environment. The Department shall notify Respondent of such environmental conditions or information and the Department's basis for determining that the Remedial Program is not protective of public health and/or the environment.

This release and covenant not to sue shall be null and void, *ab initio*, in the event of fraud committed by Respondent or its agents, successors or assigns relating to the execution or implementation of this Order or in the event of Respondent's failure to materially comply with any provision of this Order.

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 (i) Respondent may have against anyone other than the Department, or (ii) the Department may have against anyone other than Respondent, its directors, officers, employees, agents, and servants, and those successors and assigns of Respondent that were not responsible under law for the development and implementation of a Remedial Program at the Site prior to the effective date of this Order, and their respective secured creditors.

XI. REVIEW OF SUBMITTALS OTHER THAN PROGRESS REPORTS AND HEALTH AND SAFETY PLANS

The Department shall make a good faith effort to review and respond to each of the submittals Respondent makes pursuant to this Order within sixty (60) Days. The Department's response shall be in writing and include an approval or disapproval of the submittal, in whole or in part, and notification to Respondent of the Department's determination. All Department-approved submittals shall be incorporated into and become an enforceable part of this Order.

If the Department disapproves a submittal, it shall specify, in writing, the reasons for its disapproval. Within thirty (30) Days after Respondent's receipt of the Department's notification of disapproval, Respondent shall submit a revised submittal that addresses all of the Department's stated reasons for disapproving the first submittal. In the event that Respondent's revised submittal is disapproved, Respondent shall be in violation of this Order unless it invokes dispute resolution pursuant to Paragraph XXI.

XII. PERIODIC REPORTS

A. Monthly Reports

With respect to each Work Plan approved by the Department, Respondent shall submit written progress reports to the parties identified in Subparagraph XX by the 10th Day of each month commencing with the month subsequent to the approval of the Work Plan and ending with the Termination Date, unless a different frequency is set forth in a Work Plan or is agreed to by the Department. Such reports shall, at a minimum, include: all actions taken pursuant to this Order during the previous reporting period and those anticipated for the next reporting period; all approved activity modifications (changes of work scope and/or schedule); identification of preliminary data received or generated in connection with the Site, whether under this Order or otherwise, in the previous reporting period; and information regarding percentage of completion,

unresolved delays encountered or anticipated that may affect the future schedule, and efforts made to mitigate such delays, and information regarding activities undertaken in support of IBM's Citizen Participation Plan during the previous reporting period and those anticipated for the next reporting period. Respondent shall submit preliminary data to the Department within five (5) Days of Respondent's receipt of written notification by the Department that such preliminary data must be submitted. Sampling results shall be submitted in paper form and Excel or other equivalent data base format.

B. Analytical Summary Reports

Within ninety (90) Days after the date of the last sample collection associated with a discrete sampling event, Respondent shall submit to the Department an analytical summary report. It shall describe the scope of the sampling addressed in the report, reference any sampling or testing issues associated with the sampling event, attach the relevant lab data sheets, and, if appropriate, include figures identifying changes to sampling locations. Interpretation of the sampling data shall be reserved for the report associated with such data. The Department reserves the right to receive copies of the quality assurance/quality control data packages within forty-five (45) Days after the date of Respondent's receipt of a written request by the Department.

C. OM&M Annual Reports

In the event that the ROD for the Site, if any, or any Work Plan for the Site requires operation, maintenance, and monitoring (OM&M), including reliance upon institutional or engineering controls, Respondent shall submit an annual report by the 1st Day of the month following the anniversary of the start of the OM&M. Respondent shall file such annual report until the Department determines that the Site can be closed out and so notifies Respondent in writing. Such annual report shall be signed by a Professional Engineer and shall contain a certification that any institutional and engineering controls put in place pursuant to this Order are still in place, have not been materially altered, and are still effective in achieving their objectives.

D. Notification of Material Upsets, Interruption or Termination

Respondent shall notify the Department within forty-eight (48) hours of discovery of any material upset, interruption, or termination of any institutional or engineering controls without the prior approval of the Department. Further, Respondent shall take all actions required by the Department to maintain conditions at the Site that achieve the objectives of the Remedial Program and are protective of public health and the environment. An explanation of such upset, interruption, or termination of one or more controls and the steps taken in response shall be included in the foregoing notice and in the annual report required by this Subparagraph, as well as in any progress reports required by Subparagraph XII.A.

XIII. PENALTIES

A. Violations of Order

1. Respondent's failure to comply with any term of this Order constitutes a violation of this Order, the ECL, and 6 NYCRR Section 375-1.2(d). Nothing herein abridges Respondent's right to contest, defend against, dispute, or disprove any such claim, assertion, or allegation that it has violated this Order.

2. Respondent shall be liable for payment to the Department of the sums set forth below as stipulated penalties for each day or part thereof that Respondent is in violation of the terms of this Order. All penalties begin to accrue on the first day Respondent is in violation of the terms of this Order and continue to accrue through the final day of correction of any violation. Such sums shall be due and payable within thirty (30) Days after receipt of notification from the Department assessing the penalties. If such payment is not received within thirty (30) days after Respondent receives such notification, interest shall be payable on the overdue amount from the day on which it was due through, and including, date of payment. Interest shall be payable at the underpayment rate established pursuant to New York State Tax Law § 1096(e), which is available to the public at the following web address: http://www.tax.state.ny.us/taxnews/int_curr.htm. Penalties shall be paid by certified check or money order, made payable to "New York State Department of Environmental Conservation" and shall be delivered personally or by certified mail, return receipt requested, to the Director, Division of Environmental Enforcement, New York State Department of Environmental Conservation, 625 Broadway, Albany, New York 12233-5500.

Stipulated penalties shall be due and payable under this Order pursuant to the following schedule:

<u>Period of Non-Compliance</u>	<u>Penalty Per Day</u>
1st through 15th day	\$ 500.00
16th through 30th day	\$ 2,000.00
31st day and thereafter	\$ 3,000.00

3. Payment of the penalties shall not in any way alter Respondent's obligation to complete performance under the terms of this Order.

B. Force Majeure

1. Respondent shall not suffer any penalty or be subject to any proceeding or action in the event it cannot comply with any requirement of this Order as a result of any event arising from causes beyond the reasonable control of Respondent, of any entity controlled by Respondent, and of Respondent's contractors, that delays or prevents the performance of any obligation under this Order despite Respondent's best reasonable efforts to fulfill the obligation

("Force Majeure Event"). The requirement that Respondent exercise best reasonable efforts to fulfill the obligation includes using best reasonable efforts to anticipate the potential Force Majeure Event, best reasonable efforts to address the effects of any such event as it is occurring, and best reasonable efforts following the Force Majeure Event, such that the delay is minimized to the greatest extent reasonably possible. "Force Majeure" does not include Respondent's economic inability to comply with any obligation or the failure of Respondent to make complete and timely application for any required approval or permit. Further, while the non-attainment of the goals, standards, and requirements of this Order are not in and of themselves Force Majeure Events, Respondent shall not be precluded from demonstrating that the failure to attain a particular goal or standard, or to meet the requirements of this Order, was caused by a Force Majeure Event(s).

2. Respondent shall notify the Department in writing within seven (7) Days after it obtains knowledge of any Force Majeure Event. Respondent shall include in such notice the measures taken and to be taken to prevent or minimize any delays and shall request an appropriate extension or modification of this Order. Failure to give such notice within such seven (7) Day period constitutes a waiver of any claim that a delay is not subject to penalties. Respondent shall be deemed to know of any circumstance of which it, any entity controlled by it, or its contractors knew or should have known.

3. Respondent shall have the burden of proving by a preponderance of the evidence that (i) the delay or anticipated delay has been or will be caused by a Force Majeure Event; (ii) the duration of the delay or the extension sought was or will be warranted under the circumstances; (iii) best reasonable efforts were exercised to avoid and mitigate the effects of the delay; and (iv) Respondent complied with the requirements of Subparagraph XIII.B.2 regarding timely notification.

4. If the Department agrees that the delay or anticipated delay is attributable to a Force Majeure Event, the time for performance of the obligations under this Order that are affected by the Force Majeure Event shall be extended by the Department for such time as is reasonably necessary to complete those obligations.

XIV. ENTRY UPON SITE

A. With respect to Respondent's obligations set forth in this Paragraph XIV, the Department acknowledges that Respondent is not the current owner/operator of the Site and leases only a portion thereof. Respondent hereby consents, upon reasonable notice under the circumstances presented, to entry upon the Site (or areas in the vicinity of the Site which may be under the control of Respondent) by any duly designated officer or employee of the Department or any State agency having jurisdiction with respect to matters addressed pursuant to this Order, and by any agent, consultant, contractor, or other person so authorized by the Commissioner, all of whom shall abide by the health and safety rules in effect for the Site, for (i) inspecting, sampling, and copying records related to the contamination at and in the vicinity of the Site;

(ii) implementing this Order; and (iii) testing and any other activities necessary to ensure Respondent's compliance with this Order. Upon request, Respondent shall (i) provide the Department with suitable office space at the Site, including access to a telephone; and (ii) permit the Department full access to all records relating to activities undertaken in compliance with this Order.

B. The Department shall have the right to take its own samples and scientific measurements and the Department and Respondent shall have the right to obtain split samples, duplicate samples, or both, of all substances and materials sampled. The Department shall make the results of all sampling and scientific measurements taken under this Subparagraph available to Respondent.

XV. PAYMENT OF STATE COSTS

A. Within sixty (60) Days after receipt of an itemized invoice from the Department, Respondent shall pay to the Department a sum of money which shall represent reimbursement for State Costs, as that term is defined herein, commencing January 1, 2004, and through and including the Termination Date.

B. Personal service costs shall be documented by reports of Direct Personal Service, which shall identify 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. Approved agency 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 expenditure reports. The Department shall not be required to provide any other documentation of costs, provided however, that the Department's records shall be available consistent with, and in accordance with, Article 6 of the Public Officers Law.

C. Such invoice shall be sent to Respondent at the following address:

Mitchell E. Meyers
Program Manager
IBM
8976 Wellington Road
Manassas, VA 20109

D. Each such payment shall be made payable to the Department of Environmental Conservation and shall be sent to:

Bureau of Program Management
Division of Environmental Remediation
New York State Department of Environmental Conservation
625 Broadway

Albany, NY 12233-7010.

E. Each party shall provide written notification to the other within ninety (90) Days of any change in the foregoing addresses.

F. Respondent may contest, in writing, invoiced costs under Subparagraph XV.A if it believes that (i) the cost documentation contains clerical, mathematical, or accounting errors; (ii) the costs are not related to the State's activities with respect to the Remedial Program for the Site; or (iii) the Department is not otherwise legally entitled to such costs. If Respondent objects to an invoiced cost, Respondent shall pay all costs not objected to within the time frame set forth in Subparagraph XV.A and shall, within thirty (30) Days after its receipt of an invoice, identify, in writing, all costs objected to and the basis of the objection. This objection shall be filed with the BPM Director. The BPM Director or the BPM Director's designee shall have the authority to relieve Respondent of the obligation to pay invalid costs. Within forty-five (45) Days after Respondent's receipt of the Department's written determination regarding the objection, Respondent shall either pay to the Department the amount which the BPM Director or the BPM Director's designee determines Respondent is obligated to pay or provide written notification to the Department of Respondent's intent to commence an action or proceeding seeking appropriate judicial relief. In the event Respondent provides such notification, Respondent shall, within thirty (30) Days of Respondent's notification to the Department, either (i) commence such action or proceeding seeking judicial relief, or (ii) pay to the Department the amount which the BPM Director or the BPM Director's designee determines Respondent is obligated to pay.

G. In the event any instrument for the payment of any money due under this Order fails of collection, such failure of collection shall constitute a violation of this Order, provided that (i) the Department gives Respondent written notice of such failure of collection, and (ii) the Department does not receive from Respondent a certified check or bank check in the amount of the uncollected funds within fourteen (14) Days after the date of the Department's written notification.

XVI. RESERVATION OF RIGHTS

A. Except as provided in Paragraph X, nothing contained in this Order shall be construed as barring, diminishing, adjudicating, or in any way affecting any of the Department's rights or authorities, including, but not limited to, the right to require performance of further investigations and/or response action(s), to recover the State's costs, to recover natural resource damages, and/or to exercise any summary abatement powers with respect to any person, including Respondent.

B. Except as otherwise provided in this Order, Respondent specifically reserves all rights and defenses under applicable law respecting any Departmental assertion of liability against Respondent, and further reserves all rights respecting the enforcement of this Order, including the rights to notice, to be heard, to appeal, and to any other due process. The existence of this

Order or Respondent's compliance with it shall not be construed as an admission of liability, fault, wrongdoing, or breach of standard of care by Respondent, and shall not give rise to any presumption of law or finding of fact, or create any rights, or grant any cause of action, which shall inure to the benefit of any third party. Further, Respondent reserves such rights as it may have to seek and obtain contribution, indemnification, and/or any other form of recovery from its insurers and from other potentially responsible parties or their insurers for past or future response and/or cleanup costs or such other costs or damages arising from the contamination at the Site as may be provided by law.

XVII. 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 arising out of or resulting from the fulfillment or attempted fulfillment of this Order by Respondent and/or any of Respondent's directors, officers, employees, servants, agents, successors, and assigns except for liability arising from (i) vehicular accidents occurring during travel to or from the Site; or (ii) willful, wanton, or malicious acts or omissions, and acts or omissions constituting gross negligence or criminal behavior by the Department, the State of New York, and/or their representatives and employees during the course of any activities conducted pursuant to this Order. The Department shall provide Respondent with written notice prior to commencing a lawsuit seeking indemnification pursuant to this Paragraph.

XVIII. PUBLIC NOTICE

Within one-hundred and twenty (120) Days after the effective date of this Order, Respondent shall cause to be filed a Department-approved Notice of Order, which Notice shall be substantially similar to the Notice of Order attached to this Order as Appendix "J", with the Broome County Clerk to give all parties who may acquire any interest in the Site notice of this Order. Within thirty (30) Days of such filing (or such longer period of time as may be required to obtain a certified copy, provided Respondent advises the Department of the status of its efforts to obtain same within such thirty (30) Days), Respondent shall also provide the Department with a copy of such instrument certified by the Broome County Clerk to be a true and faithful copy.

XIX. ENVIRONMENTAL EASEMENTS

A. Within sixty (60) Days after the Department's approval of an RD/RA or IRM Work Plan which relies upon one or more institutional and/or engineering controls, or within sixty (60) Days after the Department's issuance of a ROD which provides for the "no action" alternative, based upon reliance upon institutional and/or engineering controls, for an element of the Remedial Action for the Site, Respondent shall submit to the Department for approval an Environmental Easement to run with the land in favor of the State which complies with the requirements of ECL Article 71, Title 36, or report to the Department the status of Respondent's efforts to obtain the consent of the owner of the affected property to the granting of such easement. Respondent shall

cause such instrument to be recorded with the recording officer for the county in which the Site is located within thirty (30) Days after the Department's approval of such instrument. Respondent shall provide the Department with a copy of such instrument certified by the recording officer to be a true and faithful copy within thirty (30) Days after such recording (or such longer period of time as may be required to obtain a certified copy provided Respondent advises the Department of the status of its efforts to obtain same within such thirty (30) Day period).

B. Respondent or the owner of the Site may petition the Department to authorize Respondent to amend or extinguish the Environmental Easement(s) filed pursuant to this Order at such time as Respondent can certify that conditions at the Site are protective of human health and the environment without reliance upon the restrictions set forth in such instrument. Such certification shall be made by a Professional Engineer or other expert approved by the Department. The Department may evaluate the petition based upon the facts set forth in the petition and other facts available to the Department. The Department shall not unreasonably withhold its authorization.

XX. 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:

1. Communication from Respondent shall be sent to:

Robert C. Knizek, P.E.
Director
Remedial Bureau E
Division of Environmental Remediation
New York State Department of Environmental Conservation
625 Broadway
Albany, New York 12233

Note: four copies (one unbound) and one electronic copy of work plans and reports are required to be sent.

with copies to:

Gary Litwin, Director
Bureau of Environmental Exposure Investigation
New York State Department of Health
Flanigan Square
547 River Street
Troy, New York 12180-2216

Kenneth Lynch, Esq.
Region VII Regional Director
New York State Department of Environmental Conservation
615 Erie Boulevard West
Syracuse, New York 13204-2400

Dolores A. Tuohy, Esq.
New York State Department of Environmental Conservation
Division of Environmental Enforcement
625 Broadway, 14th Floor
Albany, New York 12233-5500

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

Mitchell E. Meyers
Program Manager
IBM
8976 Wellington Road
Manassas, VA 20109

Ms. Hiroko Muraki Gottlieb
Staff Attorney
Corporate Environmental Affairs and Product Safety
IBM
294 Route 100
Somers, NY 10589

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

C. Each party shall notify the other within ninety (90) Days after any change in the addresses in this Paragraph XX or in Paragraph XV.

XXI. DISPUTE RESOLUTION

A. If the Department disapproves a revised submittal (Paragraph XI) or demands additional work (Subparagraphs IV.C, IV.D, and IV.E and Paragraph IX) , Respondent shall be in violation of this Order unless, within 15 (fifteen) Days of receipt of the Department's written notice of disapproval of a revised submittal, or within 30 (thirty) Days of the Department's demand for additional work, Respondent requests, in writing, informal negotiations with the Department in an effort to resolve the dispute. A copy of such request shall be sent by Respondent to the appropriate Remedial Bureau Chief in the Department's Central Office. The Department and Respondent shall consult together in good faith and exercise best reasonable efforts to resolve

any differences or disputes without resort to the formal procedures described in Subparagraph XXI.B. The period for informal negotiations shall not exceed twenty-one (21) Days from the Department's receipt of Respondent's request for informal negotiations, unless otherwise agreed by the parties. If the parties cannot resolve a dispute by informal negotiations during this period, the Department's position shall be considered binding unless Respondent notifies the Department in writing within ten (10) Days after the conclusion of the twenty-one (21) Day period for informal negotiations that it invokes the formal dispute resolution provisions provided under Subparagraph XXI.B.

B. 1. Respondent may seek formal dispute resolution to resolve differences or disputes after availing itself of the informal negotiation process set forth in Subparagraph XXI.A.

2. Within thirty (30) Days after notifying the Department that it invokes the formal dispute resolution provisions, Respondent shall file with the Department's Office of Hearings and Mediation ("OH&M") a request for formal dispute resolution and a written statement of the issues in dispute, the relevant facts upon which the dispute is based, factual data, analysis, or opinion supporting its position, and all supporting documentation upon which Respondent relies (hereinafter called the "Statement of Position"). A copy of such request and written statement shall be provided contemporaneously to the Director and to the parties listed under Subparagraph XX.A.1.

3. The Department shall serve its Statement of Position no later than twenty (20) Days after receipt of Respondent's Statement of Position.

4. Respondent shall have the burden of proving by substantial evidence that the Department's position does not have a rational basis and should not prevail. The OH&M can conduct meetings, in person or via telephone conferences, and request additional information from either party if such activities will facilitate a resolution of the issues.

5. The OH&M shall prepare and submit a report and recommendation to the Director. The Director shall issue a final decision resolving the dispute in a timely manner. The final decision shall constitute a final agency action and Respondent shall have the right to seek judicial review of the decision pursuant to Article 78 of the CPLR provided Respondent notifies the Department within thirty (30) Days after receipt of a copy of the final decision of its intent to commence an Article 78 proceeding and commences such proceeding within sixty (60) Days after receipt of a copy of the Director's final decision. Respondent shall be in violation of this Order if it fails to comply with the Director's final decision resolving this dispute within forty-five (45) Days after the date of such final decision, or such other time period as may be provided in the Director's final decision, unless it seeks judicial review of such decision within the sixty (60) Day period provided. In the event that Respondent seeks judicial review, Respondent shall be in violation of this Order if it fails to comply with the final Court Order or settlement within thirty (30) Days after the effective date of such Order or settlement, unless

otherwise directed by the Court. For purposes of this Subparagraph, a Court Order or settlement shall not be final until the time to perfect an appeal of same has expired.

6. The invocation of dispute resolution shall not extend, postpone, or modify Respondent's obligations under this Order with respect to any item not in dispute unless or until the Department agrees or a Court determines otherwise. The invocation of the procedures set forth in this Paragraph shall constitute an election of remedies and such election shall constitute a waiver of any and all other administrative remedies which may otherwise be available to Respondent regarding the issue in dispute.

7. The Department shall keep an administrative record of any proceedings under this Paragraph. Such record shall be available consistent with Article 6 of the Public Officers Law.

8. Nothing in this Paragraph shall be construed as an agreement by the parties to resolve disputes through administrative proceedings pursuant to the State Administrative Procedure Act, the ECL, or 6 NYCRR Part 622 or Section 375-2.1.

9. Nothing contained in this Order shall be construed to authorize Respondent to invoke dispute resolution with respect to the remedy selected by the Department in the ROD or any element of such remedy, nor to impair any right of Respondent to seek judicial review of the Department's selection of any remedy, or any element thereof.

XXII. TERMINATION OF ORDER

A. This Order will terminate upon the Department's written determination that Respondent has completed all phases of the Remedial Program (including OM&M), in which event the termination shall be effective on the 5th Day after the Department issues its approval of the final report relating to the final phase of the Remedial Program.

B. Notwithstanding the foregoing, the provisions contained in Paragraphs X, XVII, and XXIII.O shall survive the termination of this Order and any violation of such surviving Paragraphs shall be a violation of this Order, the ECL, and 6 NYCRR Section 375-1.2(d), subjecting Respondent to penalties as provided under Paragraph XIII so long as such obligations accrued on or prior to the Termination Date.

XXIII. MISCELLANEOUS

A. The activities and submittals under this Order shall address both on-Site and off-Site contamination resulting from the disposal of hazardous wastes at the Site for which Respondent is liable.

B. Respondent shall retain professional consultants, contractors, laboratories, quality assurance/quality control personnel, and third party data validators ("Respondent's Contractors")

acceptable to the Department to perform the technical, engineering, and analytical obligations required by this Order. To the extent that the Department has not previously approved some or all of Respondent's Contractors for the work contemplated by this Order, Respondent shall submit the experience, capabilities, and qualifications of Respondent's Contractors not previously approved to the Department within ten (10) Days after the effective date of this Order or at least thirty (30) Days before the start of any activities for which Respondent and such firms or individuals will be responsible. The Department's approval of these firms or individuals shall be obtained prior to the start of any activities for which such firms or individuals will be responsible. The responsibility for the performance of the professionals retained by Respondent shall rest solely with Respondent. The Department's approval of such firms or individuals shall not be unreasonably withheld. Subject to the requirements of this Subparagraph, Respondent retains the right to select or change firms or individuals in its sole discretion.

C. During all field activities, Respondent shall have on-Site a representative who is qualified to supervise the activities undertaken. Such representative may be an employee or a consultant retained by Respondent to perform such supervision.

D. Respondent shall allow the Department to attend and shall notify the Department at least seven (7) Days or as soon as is reasonably practicable in advance of field activities described in approved Work Plans or other field activities identified by the Department, as well as any pre-bid meetings, job progress meetings, the substantial completion meeting and inspection, and the final inspection and meeting.

E. Respondent shall use best reasonable efforts to obtain all Site access, permits, easements, rights-of-way, rights-of-entry, approvals, institutional controls, or authorizations necessary to perform Respondent's obligations under this Order, except that, pursuant to its authority under ECL 27-1313.10, the Department may exempt Respondent from the requirement to obtain any permit issued by the Department for any activity needed to implement the Remedial Program, provided that the Department determines that the activity will be conducted in a manner which satisfies all substantive technical requirements applicable to like activity conducted pursuant to a permit. If, despite Respondent's best reasonable efforts, any necessary Site access, permits, easements, rights-of-way, rights-of-entry, approvals, institutional controls, or authorizations required to perform this Order are not obtained in accordance with the schedules set forth in approved Work Plans, or within forty-five (45) Days after the date the Department notifies Respondent in writing that additional access beyond that previously secured is necessary, Respondent shall promptly notify the Department, and shall include in that notification a summary of the steps Respondent has taken to obtain access. The Department may, as it deems appropriate and within its authority, assist Respondent in obtaining access. If any interest in property is needed to implement an institutional control required by a Work Plan and such interest cannot be reasonably obtained, the Department may require Respondent to modify the Work Plan pursuant to Paragraph IX of this Order to reflect changes necessitated by the lack of access and/or approvals.

F. Nothing contained in this Order shall be construed to require 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, Respondent hereby acknowledges that there shall be no attorney-client, attorney-work product or material prepared in anticipation of litigation privilege for sampling and analytical data generated pursuant to this Order with respect to the Site. The preceding sentence shall not be construed as a waiver of the Department's rights to data which is generated with respect to the Site outside of the scope of this Order. 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.

G. Within thirty (30) Days after the Department's approval of a final Work Plan or report, Respondent shall submit such final document to the Department in an electronic format acceptable to the Department. All data gathered and drawings and submittals made pursuant to the development of a Work Plan or report or the implementation of a Work Plan shall be submitted as a hard copy and in an electronic format acceptable to the Department. If any document cannot be converted into electronic format, Respondent shall so advise the Department and, if the Department concurs, which concurrence shall not be unreasonably withheld, submit such document in an alternative format acceptable to the Department.

H. 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.

I. Respondent shall provide a copy of this Order to each contractor hired to perform work required by this Order and shall condition all contracts entered into pursuant to this Order upon performance in conformity with the terms of this Order. Respondent or its contractor(s) 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 in satisfaction of the requirements of this Order.

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

K. 1. The terms of this Order shall constitute the complete and entire agreement between the Department and Respondent concerning implementation of the activities required by this Order. 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 shall be construed as relieving Respondent of Respondent's obligation to obtain such formal approvals as

may be required by this Order. In the event of a conflict between the terms of this Order and any Work Plan submitted pursuant to this Order, the terms of this Order shall control over the terms of the Work Plan(s) attached or to be attached as Appendix "B".

2. i. Except as set forth herein, if Respondent desires that any provision of this Order be changed, other than a provision of a Work Plan or a time frame, Respondent shall make timely written application to the Commissioner with copies to the parties listed in Subparagraph XX.A.1. The Commissioner or the Commissioner's designee shall timely respond.

ii. Changes to a Work Plan shall be accomplished as set forth in Paragraph IX of this Order.

iii. Changes to a time frame set forth in this Order shall be accomplished by a written request to the Department's project attorney and project manager, which request shall be timely responded to in writing.

L. To the extent authorized under 42 U.S.C. § 9613, New York General Obligations Law § 15-108, and any other applicable law, Respondent shall be deemed to have resolved its liability to the State for purposes of contribution protection provided by CERCLA § 113(f)(2) for "matters addressed" pursuant to and in accordance with this Order. "Matters addressed" in this Order shall mean all response actions taken by Respondent to implement this Order for the Site and all response costs incurred and to be incurred by any person or party in connection with the work performed under this Order, which costs have been paid by Respondent, including reimbursement of State Costs pursuant to this Order. Furthermore, to the extent authorized under 42 U.S.C. § 9613(f)(3)(B), by entering into this administrative settlement of liability, Respondent is entitled to seek contribution from any person except those who are entitled to contribution protection under 42 U.S.C. § 9613(f)(2).

M. All activities undertaken by Respondent pursuant to this Order shall be performed in accordance with the requirements of all applicable Federal and State laws, regulations, and guidance documents.

N. Unless otherwise expressly provided herein, terms used in this Order which are defined in ECL Article 27, Title 13, or in regulations promulgated under such statute shall have the meaning assigned to them under said statute or regulations. Whenever terms listed in the Glossary attached hereto are used in this Order or in the attached Appendices, the definitions set forth in the Glossary shall apply. In the event of a conflict, the definition set forth in the Glossary shall control.

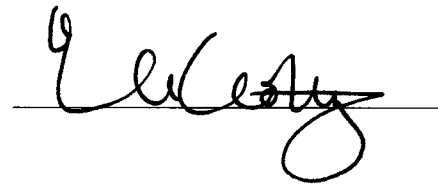
O. Respondent's obligations under this Order represent payment for or reimbursement of response costs, and shall not be deemed to constitute any type of fine or penalty.

P. This Order may be executed for the convenience of the parties hereto, individually or in combination, in one or more counterparts, each of which for all purposes shall be deemed to have the status of an executed original and all of which shall together constitute one and the same.

Q. The effective date of this Order is the 10th Day after the date the Commissioner or the Commissioner's designee signs this Order.

DATED: August 4, 2004

ERIN M. CROTTY
Commissioner
New York State Department
of Environmental Conservation

A handwritten signature in black ink, appearing to read "Erin M. Crotty", is written over a horizontal line.

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.

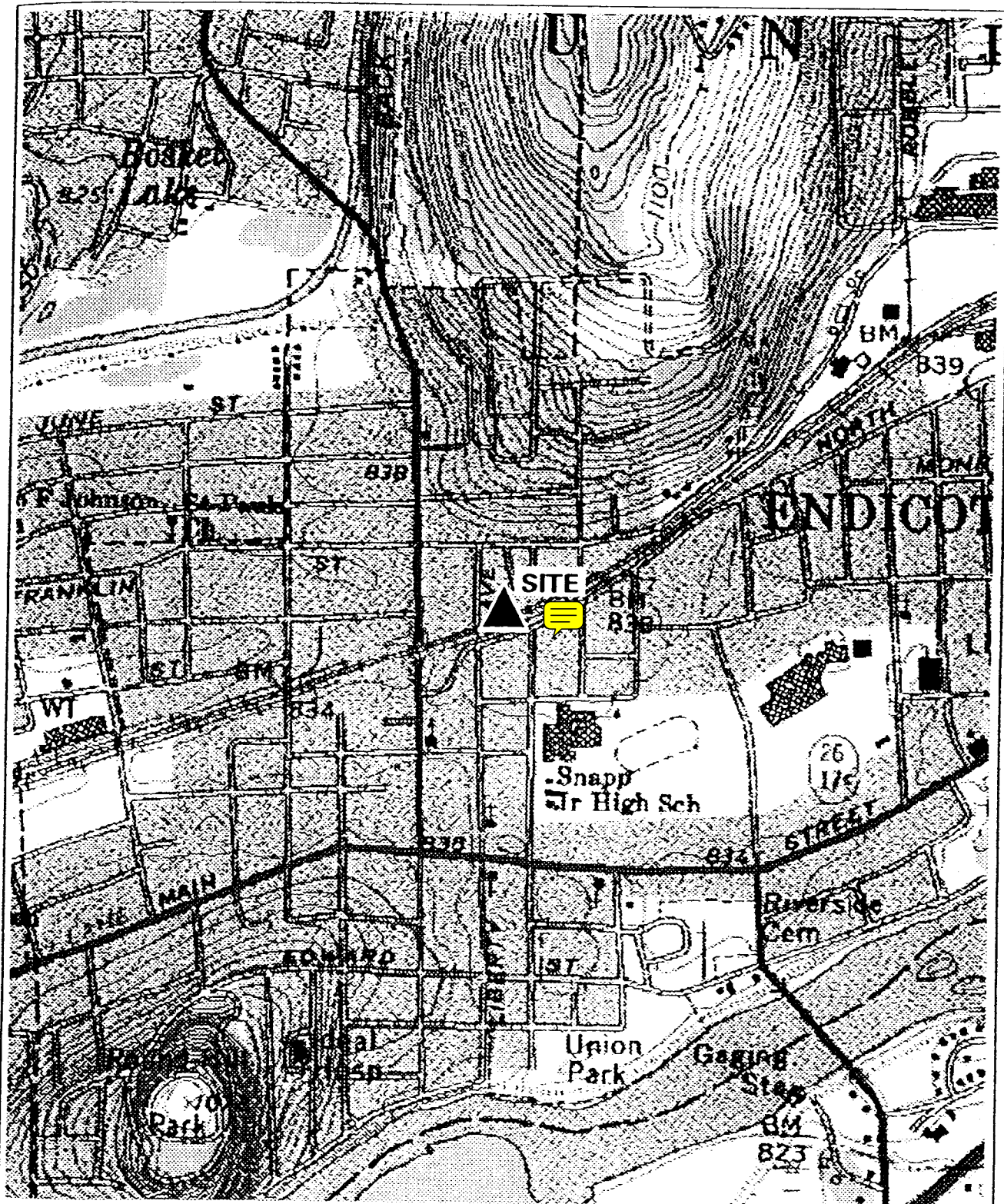
By: Wayne S. Batta
VICE PRESIDENT,
Title: CORPORATE ENVIRONMENTAL
AFFAIRS
Date: JULY 16, 2004

~~COMMONWEALTH OF PENNSYLVANIA~~
~~STATE OF NEW YORK~~)
) s.s.:
COUNTY OF ALLEGHENY)

On the 16th day of July, in the year 2004, before me, the undersigned, personally appeared WAYNE S. BATT, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Karen Lee Anick
Signature and Office of individual
taking acknowledgment

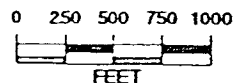
Notarial Seal
Karen Lee Anick, Notary Public
Pittsburgh, Allegheny County
My Commission Expires Sept. 7, 2004
Member, Pennsylvania Association of Notaries



Site Location Map

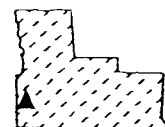
704014 IBM Corp.; Endicott Facility

Map source: USGS 1:24,000-scale topographic quadrangles



Scale 1:12,000

April 1, 2000



County: Broome

Appendix “B”

Department-Approved Work Plans

Appendix "C"

Description of Operable Units

OPERABLE UNIT #1: Railroad Corridor Source Area

Supplemental Remedial Investigation

This activity shall include, but not be limited to, the following:

- Compile historical existing data for this area, including any historical pumping tests, soils gradation analyses, other data to assist in refining the conceptual model of conditions and further defining the areal extent of the "source area" which has been defined on the basis of groundwater quality data.
- Prepare plan and profile maps focused on railroad corridor source area to show land use constraints imposed by railroad corridor, approximate area of historical soil excavation work as inferred from photos, overhead and subsurface utility locations that potentially impact investigative work, viability of pilot testing, and/or application of source removal technologies.
- Develop list of source removal technologies to be evaluated in FFS using Part 375 remedy selection criteria.
- Conduct limited additional soil sampling on silt aquitard.
- Install one additional monitoring well at a location approximately 150 feet north of existing monitoring well EN-34. Sample soil and groundwater and screen for presence of DNAPL in both. Check for presence of a separate phase layer in the bottom of the well.
- Drill exploratory borings into the lacustrine silt layer at 3 locations adjacent to existing wells EN-25, EN-107, and EP-119. Collect discrete samples of the silt to a depth of four feet below the top of this unit. Perform field screening of samples to identify presence of separate phase liquid. Analyze samples for VOCs.
- Identify the likely location and distribution of potential source materials.
- Prepare and submit an SRI report.

Focused Feasibility Study

This activity shall include, but not be limited to, the following:

- Update plan and profile view figures constituting the conceptual model of site conditions.
- Complete FFS screening of technologies retained from the pre-screening conducted prior to completing field work against Part 375 criteria.
- Prepare final FFS report.

Interim Remedial Measures

This activity shall include, but not be limited to, the following:

- Consistent with the recommendations of the report entitled, "Evaluation of Existing Corrective Measures Systems," dated April 30, 2004, perform an eight- to ten-week operational test of vacuum-assisted groundwater extraction at existing test well EN-428. On the basis of this test, evaluate the operational performance of this technology and the benefits to be derived from its use in terms of enhanced efficiency and reliability of hydraulic control and increased mass removal.
- Following successful completion of operational test, install and place into operation a permanent vacuum-assisted extraction well at location EN-428.
- Following the first six months of operation of permanent well at EN-428, evaluate potential benefits to be derived from the application of this technology at other extraction well locations in or near known or suspected source zones. These would include: EN-253, EN-219, EN-107 and EN-276. Implement this technology at those locations where it is determined to provide substantial improvement over the current operating mode at each of these well locations.

Schedule

- SRI and FFS

Work Plan: 60 days after effective date of Order

- IRM

Implementation: As presented in the April 30, 2004 evaluation report or as amended and approved by the Department

OPERABLE UNIT #2: North Street Area

Supplemental Remedial Investigation

This activity shall include, but not be limited to, the following:

- Examine existing drawings/plans for buildings along that segment of North Street across which groundwater chemical flux is occurring. Interview current owner and operator to determine feasibility of accessing areas inside buildings to perform investigations, remedial design testing and implementation of remedial technologies. Document building conditions, locations of subsurface utilities, etc. through plan view mapping and photos.
- Develop list of source removal technologies to be evaluated in FFS using Part 375 remedy selection criteria.
- Identify the likely location and distribution of potential source materials.
- Prepare and submit an SRI report.

Focused Feasibility Study

This activity shall include, but not be limited to, the following:

- Complete FFS screening of source removal or treatment technologies retained from the pre-screening conducted prior to completing field work against Part 375 criteria.
- Prepare final FFS report.

Interim Remedial Measures

This activity shall include, but not be limited to, the following:

- Implement vacuum-assisted groundwater extraction at location EN-284 to control groundwater chemical flux across North Street. Monitor effectiveness of this flux control measure and augment as necessary with additional extraction capacity and, if appropriate, application of contingent technologies as described in the May 17, 2004 SGA Report.

Schedule

- SRI and FFS

Work Plan: 90 days after effective date of Order

- IRM

Implementation: As presented and approved in the fast-track work plan dated March 18, 2004 or as amended and approved by the Department.

OPERABLE UNIT #3: Plume Reduction in the Southern Area

Supplemental Remedial Investigation

This activity shall include, but not be limited to, the following:

- Prepare and implement a work plan for the installation and sampling of additional Upper Aquifer monitoring wells in the area surrounding the intersection of River View Drive and McKinley Avenue and in areas along and adjacent to Monroe Street in Off-Site Capture Zone A and the Southern Area.
- Based on groundwater elevation and chemistry data from new and existing wells and information available with respect to current and past land uses in this area, prepare and submit an SRI report that identifies the probable source(s) and extent of VOC contamination in the Southern Area.

Focused Feasibility Study

- If the Department determines it is appropriate.

Interim Remedial Measures

This activity shall include, but not be limited to, the following:

- Provided the SRI identifies contamination for which IBM is liable as a source of VOC contamination in groundwater in the Southern Area, prepare a work plan in accordance with the recommendations contained in the report entitled, "Supplemental Groundwater Assessment," originally dated December 31, 2003, and revised and updated May 17, 2004. Specifically, this work plan should address the recommendations for a two-stage approach to remediation of groundwater contamination in the Southern Area.
- Provided the SRI identifies contamination for which IBM is liable as a source of VOC contamination in groundwater in the Southern Area, implement the work plan for a two-stage approach to remediation of groundwater contamination in the Southern Area.

Schedule

- SRI

Work Plan: Submitted June 16, 2004.

- IRM

Work Plan: If the Department determines an IRM is appropriate, IBM will submit an IRM work plan, consistent with the provisions of Subparagraph IV.E.

- FFS

Work Plan: If the Department determines it is appropriate, within 45 days following the date of Respondent's receipt of notification of such determination.

OPERABLE UNIT #4: Ideal Cleaners Area

Supplemental Remedial Investigation

This activity shall include, but not be limited to, the following:

- Perform an investigation of soil, soil vapor and groundwater quality at the former Ideal Cleaners property and surrounding areas in accordance with the approved work plan entitled, "RCRA Facility Investigation Work Plan, Former Ideal Cleaners Site, 1900 North Street, Endicott, New York," dated February 27, 2004.

Focused Feasibility Study

FFS Work Plan

Schedule

- SRI

Work Plan: As presented and approved in the RFI work plan dated February 27, 2004 or as amended and approved by the Department.

- FFS

FFS Work Plan: 45 days following receipt of an approval of SRI Report

OPERABLE UNIT #5: Building 57 Area

Supplemental Remedial Investigation

This activity shall include, but not be limited to, the following:

- Prepare and implement a work plan to investigate on-site and potential upgradient sources of VOCs in groundwater.
- In the event that contamination originating on-Site at the Building 57 OU has migrated to the property boundary, IBM will submit a work plan addendum to investigate whether and to what extent such contamination has migrated off-Site.

Focused Feasibility Study

This activity shall include, but not be limited to, the following:

- Based on available operating data for the existing extraction and treatment system and the remedial action objectives identified in the SRI, evaluate the performance and effectiveness of the current interim remedial measures.
- Prepare and implement a work plan for the evaluation of alternative remedial technologies to remediate on-site sources of VOCs in groundwater.

Schedule

- SRI and FFS

Work Plan for Building 57 on-Site source evaluation: 30 days after effective date of Order

OPERABLE UNIT #6: Plume Control in Bedrock Groundwater

Supplemental Remedial Investigation

This activity shall include, but not be limited to, the following:

- Implement the recommendations of the report entitled "Evaluation of Existing Corrective Measures Systems," dated April 30, 2004, with respect to the installation and sampling of four additional bedrock monitoring wells. Based on the results of this investigation, determine the requirements for an extraction well to replace the existing EN-CAF well located inside B042.

Focused Feasibility Study

- If the Department determines it is appropriate.

Interim Remedial Measures

This activity shall include, but not be limited to, the following:

- If the Department determines it is appropriate, prepare and implement a work plan for the installation, testing, and startup of a bedrock groundwater extraction well and associated conveyance and treatment systems in accordance with the provisions of Subparagraph IV.E.

Schedule

- SRI

Implementation and Work Plan: As presented in the April 30, 2004 evaluation report or as amended and approved by the Department.

- FFS

Work Plan: If the Department determines it is appropriate, within 45 days following the date of Respondent's receipt of notification of such determination.

OPERABLE UNIT #7: Assessment of Sewers in Northwestern Area of the Site

Supplemental Remedial Investigation

This activity shall include, but not be limited to, the following:

- Prepare SRI work plan following review of the Department's Preliminary Investigation Work Plan entitled "Preliminary Investigation, Old Village Dump and Tannery Sewer."
- Compile available historical data on the construction and sampling of the Tannery sewer and associated sanitary and storm sewers in the vicinity of Clark Street and Franklin Street. Assess the potential impacts of past operations of the Endicott Johnson Corporation on groundwater quality in the vicinity of these sewer systems.
- Prepare a summary report of existing information documenting the conclusion that contaminant migration from the upper to lower aquifer is not occurring.
- Perform surveys of sewer line invert elevations to confirm historical data.

- Sample and analyze water associated with dry weather flows in sewers within this area of the Site. Compare the results of this sampling to the quality of groundwater adjacent to these sewers and draw conclusions regarding the potential impact from infiltration inflow of contaminated groundwater into these sewers.

Focused Feasibility Study

If the Department determines it is appropriate.

Schedule

- SRI

Work Plan: 45 days following receipt of the Department's Preliminary Investigation Work Plan entitled "Preliminary Investigation, Old Village Dump and Tannery Sewer."

- FFS

Work Plan: If the Department determines it is appropriate, within 45 days following the date of Respondent's receipt of notification of such determination.

Appendix "D"

Miscellaneous Site Activities

ACTIVITY A: Plume Reduction in Off-Site Capture Zone A

Interim Remedial Measures

This activity shall include, but not be limited to, the following:

- Implement the installation and sampling of effectiveness monitoring wells as described in the work plan entitled, "Interim Corrective Measures Work Plan for Test Wells EN-284TD, EN-91T, and EN-92T," dated March 18, 2004. Based on the analysis of groundwater elevation and chemistry data from these and other wells in Off-Site Capture Zone A, determine the effectiveness of existing extraction wells in preventing the flow of groundwater containing VOCs into the adjacent Southern Area. Using data from these new and existing wells, assess the potential for a local source to be causing or contributing to the contamination in the vicinity of Monroe Street and the Southern Area.
- Implement the interim remedial measures described in the work plan entitled, "Interim Corrective Measures Work Plan for Test Wells EN-284TD, EN-91T, and EN-92T," dated March 18, 2004.
- Implement the recommendations of the report entitled, "Evaluation of Existing Corrective Measures Systems," dated April 30, 2004 with respect to the modification and upgrade of existing groundwater treatment facilities or alternate treatment facilities that serve the same function.
- Prepare and implement a work plan for the design and installation of permanent vacuum-assisted extraction wells in the vicinity of locations EN-284, EN-91 and EN-92. Implement this work plan in accordance with the schedule contained in the approved work plan. This work plan should include a discussion of the operating regimen and sequencing for the existing and proposed extraction wells in Off-Site Capture Zone A. In addition, undertake a limited investigation of the extent of the "kettle hole" in the vicinity of EN-284.

Schedule

- Fast-track IRM

Implementation: As presented and approved in the fast-track work plan dated March 18, 2004 or as amended and approved by the Department.

- Permanent IRM at Locations EN-284, EN-91 and EN-92

Work Plan: 6 months following fast-track startup of EN-284TD

ACTIVITY B: Ambient Air Assessment Plan

This activity shall include, but not be limited to, the following:

To assess possible impacts to ambient air from operation of ventilation systems installed by IBM under the Groundwater Vapor Project, the following tasks will be completed in general accordance with the scoping elements set forth in the March 3, 2004 letter from the Department to IBM regarding the Ambient Air Assessment and the schedule outlined in the April 19, 2004 letter from the Department to IBM, as follows:

- Task 1: Define Assessment Parameters- Compile and submit existing ambient air data, and identify target compounds and the study area for the assessment. Report submitted on May 7, 2004.
- Task 2: Develop a Protocol for Ventilation System Emission Sampling- A report containing a protocol for sampling ventilation system vent emissions, including analytical methods and a sampling schedule, was submitted on June 7, 2004.
- Task 3: Modeling Feasibility Assessment- A report containing an assessment of the feasibility of modeling to be used as part of the ambient air assessment was submitted on June 7, 2004. If modeling is deemed feasible by the Department, IBM will submit a proposed modeling protocol within 30 days of a request for it by the Department.
- Task 4: Ambient Air Monitoring Plan- Following completion of Task 3, IBM will prepare an ambient air monitoring plan including proposed monitoring locations, target compounds, frequency and duration of monitoring, sampling and analytical protocols, and plan rationale. The plan will be submitted within 45 days of approval of the modeling report from Task 3.
- Task 5: Data Evaluation and Impact Assessment- IBM will evaluate data from preceding tasks and determine statistically whether impacts to ambient air from ventilation system emissions exceed the Department's Annual Guideline Concentrations for target compounds. IBM will recommend future work, as needed, based on the assessment findings. A report will be submitted at a time approved by the Department, contingent on precedent tasks.

Schedule (Included above in each task description.)

ACTIVITY C: Operation, Maintenance and Monitoring

The Comprehensive Operation, Maintenance and Monitoring (COM&M) Plan shall include, but not be limited to, plans for groundwater remediation systems; ventilation systems, including sub-slab depressurization systems; soil vapor and, if necessary, ambient air. Operation, maintenance and monitoring of the existing groundwater remedial systems are currently performed subject to O&M plans dating from 1997 and 1999. As documented in the report entitled, "Evaluation of Existing Corrective Action Systems," dated April 30, 2004, significant changes are being made to these systems and additional changes are recommended in that report.

System Upgrades, Repairs, and Replacements

Implement the recommendations of the report entitled, "Evaluation of Existing Corrective Action Systems," dated April 30, 2004 with respect to upgrades, repairs and replacements of various components of those systems.

Schedule

- COM&M Plan

A Draft Ventilation Systems O&M Plan was submitted to the Department on June 18, 2004.

A Draft Soil Vapor O&M Plan was submitted to the Department on June 15, 2004.

Ambient air O&M requirements will be contingent on completion of the Ambient Air Assessment, currently underway.

A draft Groundwater Remediation Systems O, M & M Plan will be submitted to the Department 90 days following receipt of the Department's approval of the recommendations presented in the April 30, 2004 evaluation report. Subsequent updates will be submitted to the Department on February 1, 2005 and February 1, 2006.

The COM&M Plan will be updated as needed to accommodate completion of the individual plans, changes to these plans over time, and the development of additional plans needed to maintain and monitor the effectiveness of the elements of a comprehensive remedy.

- System Upgrades, Repairs and Replacements

As presented in the April 30, 2004 evaluation report or as amended and approved by the Department

ACTIVITY D: Groundwater Vapor Project

If indoor air monitoring is necessary, it will be carried out in accordance with the approved "Action Plan, Groundwater Vapor Project, Endicott, New York," dated December 30, 2002 and the Addendum to the Action Plan, dated December 18, 2003.

Appendix“E”

Operation, Maintenance and Monitoring Work Plan Requirements

All OM&M Work Plans shall contain the signature and seal of a Professional Engineer and a certification by said engineer that he or she prepared the Work Plan, include a Table of Contents, and provide for:

1. Operation and maintenance of engineering controls and/or treatment systems;
2. Maintenance of institutional controls, where applicable;
3. Yearly certification by a Professional Engineer of the continued effectiveness of any institutional and/or engineering controls, where applicable. The certification must identify the required controls and evaluate whether the controls should remain in place and effective for the protection of public health and/or the environment;
4. A monitoring plan which describes the measures for monitoring the performance and effectiveness of the remedy at the Site;
5. A contingency plan which describes procedures which may be required to protect and/or maintain the operation of the remedy in the event of an emergency, such as a fire, spill, tank or drum overflow or rupture, severe weather, or vandalism;
6. A health and safety plan and a list of records and references;
7. Monitoring and reporting of the performance and effectiveness of the remedy, both short and long-term, by:
 - (i) Assessing compliance with actual or equivalent discharge permit limits;
 - (ii) Assessing achievement of the remedial performance criteria; and,
 - (iii) Sampling and analysis of appropriate media.
8. A determination that the remedy is complete by demonstrating that the remedial action objectives have been achieved.

Appendix "F"

Investigation and Feasibility Study-Related Work Plan Requirements

Investigation and Feasibility Study-Related Work Plans shall include but not be limited to:

1. A chronological description of the anticipated activities, including the submission of reports, together with a schedule for the performance of these activities.
2. A Sampling and Analysis Plan that shall include:
 - (i) 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;
 - (ii) A field sampling plan that defines sampling and data gathering methods in a manner consistent with the "Field Methods Compendium," OSWER Directive 9285.2-11 (draft June 1993), as supplemented by the Department;
 - (iii) A health and safety plan to protect persons at and in the vicinity of the Site during the performance of the work which shall be prepared in accordance with 29 CFR 1910 and all other applicable standards by a certified health and safety professional. Respondent shall add supplemental items to this plan necessary to protect 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; and
 - (iv) A citizen participation plan that is, at a minimum, consistent with the Department's publication "Citizen Participation in New York's Hazardous Waste Site Remediation Program: A Guidebook," dated June 1998, any subsequent revisions thereto, and 6 NYCRR Part 375 and is not inconsistent with the Department's Citizen Participation Plan .
3. The Work Plan shall address all elements of an RI/FS as set forth in CERCLA, as amended, the NCP, the USEPA guidance document entitled "Guidance for Conducting Remedial Investigations and Feasibility Studies under CERCLA," dated October 1988, and any subsequent revisions thereto in effect at the time the Work Plan is submitted, and appropriate USEPA and Department technical and administrative guidance documents.
4. The Work Plan shall provide for the submission to the Department of a Remedial Investigation Report or a Supplemental Remedial Investigation Report, as appropriate, which shall include a certification that all requirements of the Work Plan have been complied with and all activities have been performed in full accordance with such Work Plan. Such certification shall be by the person with primary responsibility for the day to day performance of the activities under this Order.

5. The Work Plan shall provide for a Feasibility Study, or a Focused Feasibility Study, as appropriate, evaluating on-Site, and off-Site remedial actions, as appropriate, to restore the Site to pre-disposal conditions, to the extent feasible and authorized by law. At a minimum, alternatives shall evaluate the elimination or mitigation of all significant threats to the public health and to the environment presented by hazardous waste disposed at the Site through the proper application of scientific and engineering principles. The Work Plan shall provide for the submission to the Department of a Feasibility Study Report or a Focused Feasibility Study Report, as appropriate, which includes a certification that all requirements of the Work Plan have been complied with and all activities have been performed in full accordance with the Work Plan. Such certification shall be by the person with primary responsibility for the day to day performance of the activities under this Order and shall be by a Professional Engineer.

Appendix "G"

IRM Work Plan Requirements

An IRM Work Plan shall include, at a minimum, the following:

1. a summary of the data supporting the extent of the proposed IRM;
2. a chronological description of the anticipated IRM activities;
3. a schedule for performance of the IRM activities, including the submission of a final report;
4. detailed documents and/or specifications prepared, signed, and sealed by a Professional Engineer providing sufficient detail to implement the Department-approved IRM, including, as appropriate, a description of soil and sediment erosion control, storm water management and monitoring, and dust, odor, and organic vapor control and monitoring procedures to be implemented during remedial activities, and a detailed description of confirmation sampling and site restoration plans;
5. a health and safety plan. Such plan shall include a community air monitoring plan unless Respondent has received prior written authorization from the Department to omit such plan;
6. a contingency plan, including a description of procedures for dismantling and removing remedial structures and equipment from the Site, if applicable;
7. a citizen participation plan, if required, that incorporates appropriate activities outlined in the Department's publication "Citizen Participation in New York's Hazardous Waste Site Remediation Program: A Guidebook," dated June 1998, any subsequent revisions thereto, and 6 NYCRR Part 375 and is not inconsistent with the Department's Citizen Participation Plan;
8. an OM&M Plan, if the performance of the Department-approved IRM results in a treatment system which is expected to operate for more than 18 months. If the system will not operate for more than 18 months, or if only monitoring is required, only a monitoring plan will be needed; and
9. a description of institutional and/or engineering controls to be implemented, as well as written approval from the owner of the affected property if the remedy selected requires implementation of an institutional control at an off-Site location or if the person responsible for the remedy is not the Site owner.
10. the signature and seal of a Professional Engineer and a certification by said engineer that he or she prepared the Work Plan.

11. Respondent shall submit a final IRM Report. In the event the final IRM Report sets forth construction activities performed during the implementation of the IRM Work Plan, the report shall include "as built" drawings showing all changes made to the IRM. The final IRM Report shall include a certification that all requirements of the Work Plan have been complied with and all activities have been performed in full accordance with the Work Plan. Such certification shall be by the person with primary responsibility for the day to day performance of the activities under this Order and shall be by a Professional Engineer.

Appendix “H”
Record of Decision

Appendix "I"

Remedial Design/Remedial Action Work Plan Requirements

The Remediation ("RD/RA") Work Plan shall include the following:

1. A detailed description of the remedial objectives of the Remedial Action and the means by which each element of the Remedial Action will be implemented to achieve those objectives, including, but not limited to:
 - (i) the construction and operation of any structures;
 - (ii) the collection, destruction, treatment, and/or disposal of hazardous wastes and substances and their constituents and degradation products, and of any soil or other materials contaminated thereby;
 - (iii) the collection, destruction, treatment, and/or disposal of contaminated groundwater, leachate, and air;
 - (iv) physical security and posting of the Site;
 - (v) quality control and quality assurance procedures and protocols to be applied during implementation of the Remedial Construction; and
 - (vi) monitoring which integrates needs which are present on-Site and off-Site during implementation of the Remedial Action.
2. "Biddable Quality" documents for the Remedial Design including, but not limited to, documents and specifications prepared, signed, and sealed by a Professional Engineer. These plans shall satisfy all applicable local, state, and federal laws, rules, and regulations;
3. A time schedule to implement the Remedial Design;
4. The parameters, conditions, procedures, and protocols to determine the effectiveness of the Remedial Design, including a schedule for periodic sampling of all media of concern, including groundwater monitoring wells on-Site and off-Site;
5. A description of institutional and/or engineering controls to be implemented, as well as written approval from the owner of the affected property if the remedy selected requires implementation of an institutional control at an off-Site location or if the person responsible for the remedy is not the Site owner.
6. A description of operation, maintenance, and monitoring activities to be undertaken after the Department has approved construction of the Remedial Design, including the number of years during which such activities will be performed (where appropriate) and a

specific description of the criteria to be used to decide when operation of such activities may be discontinued.

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

8. A health and safety plan for the protection of persons at and in the vicinity of the Site during and after construction. This plan shall be prepared in accordance with 29 CFR 1910 by a certified health and safety professional; and

9. A citizen participation plan which incorporates appropriate activities outlined in the Department's publication "Citizen Participation in New York's Hazardous Waste Site Remediation Program: A Guidebook," dated June 1998, any subsequent revisions thereto, and 6 NYCRR Part 375 and is not inconsistent with the Department's Citizen Participation Plan .

10. A time frame for submittal of a final report which includes "as built" drawings showing all changes made to the Remedial Design. The final engineering report shall include a certification that all requirements of the Work Plan have been complied with and all activities have been performed in full accordance with the Work Plan. Such certification shall be by the person with primary responsibility for the day to day performance of the activities under this Order and shall be by a Professional Engineer.

11. A time frame for the submittal of an Operation, Maintenance and Monitoring Work Plan.

12. The signature and seal of a Professional Engineer and a certification by said engineer that he or she prepared the Work Plan.

Appendix "J"

NOTICE OF ORDER

International Business Machines Corporation ("Respondent") has entered into an Order On Consent Index # A7-0502-0104 (the "Order") with the New York State Department of Environmental Conservation (the "Department") relative to 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 ("ECL") for the IBM Corp. Endicott Facility Site located at Endicott, New York (the "Site").

The Site has been designated by the Department as an inactive hazardous waste disposal site, as that term is defined at ECL Section 27-1301.2, and has been listed in the Registry of Inactive Hazardous Waste Disposal Sites in New York State as Site # 704014. The Department has classified the Site as a Class "2" site pursuant to ECL Section 27-1305.2.b. This classification means that the Department has determined that the Site presents a significant threat to the public health or environment. Respondent disagrees with the Department's determination. A map of the Site is attached hereto as Appendix "A".

The purpose of the Order is to address the environmental conditions at or migrating from the Site. The effective date of the Order was _____. A copy of the Order, as well as any and all Department-approved Work Plans under this Order can be reviewed at the Department's Region VII Offices located at 615 Erie Boulevard West by contacting Gina Brown.

This Notice of Order is being filed with the Broome County Clerk in accordance with Paragraph XVIII of the Order to give all parties who may acquire any interest in the Site notice of this Order.

WHEREFORE, the undersigned has signed this Notice of Order in compliance with the terms of the Order.

Respondent

By: _____

Title: _____

Date: _____

STATE OF NEW YORK)
) ss.:
COUNTY OF _____)

On the _____ day of _____ in the year 2004 before me, the undersigned, a notary public in and for said State, personally appeared _____ personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s) or the person upon behalf of which the individual(s) acted, executed this instrument.

Notary Public

Appendix “A”
(to Appendix “J”)
Map of the Site

Glossary of Terms

The following terms shall have the following meanings:

“BPM Director”: the Director of the Bureau of Program Management within the Division of Environmental Remediation.

“CERCLA”: the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. 9601 et seq.

“Day”: a calendar day. In computing any period of time under this Order, where the last day would fall on a Saturday, Sunday or State holiday, the period shall run until the close of business of the next working day.

“Department”: the New York State Department of Environmental Conservation.

“Director”: the Division Director, Division of Environmental Remediation.

“ECL”: the Environmental Conservation Law, Chapter 43-B of the Consolidated Laws of New York, as amended.

“Feasibility study”: a study undertaken to develop and evaluate options for remedial action. The feasibility study emphasizes data analysis and is generally performed concurrently and in an interactive fashion with the remedial investigation, using data gathered during the remedial investigation. The term also refers to a report that describes the results of the study. (See 6 NYCRR 375-1.3(j))

“Force Majeure Event”: an event which is brought on as a result of fire, lightning, earthquake, flood, adverse weather conditions, strike, shortages of labor and materials, war, riot, obstruction or interference by adjoining landowners, or any other fact or circumstance beyond Respondent’s reasonable control.

“Inactive Hazardous Waste Disposal Site Remedial Program” or “Remedial Program”: activities undertaken to eliminate, remove, abate, control, or monitor existing health hazards, existing environmental hazards, potential health hazards, and/or potential environmental hazards in connection with the Site and all activities to manage wastes and contaminated materials at or removed from the Site. (See ECL 27-1301(3) and 6 NYCRR 375-1.3(m))

“Interim Remedial Measure” or “IRM”: a discrete set of activities, including removal activities, to address both emergency and non-emergency Site conditions, which can be undertaken without extensive investigation or evaluation, to prevent, mitigate, or remedy environmental damage or the consequences of environmental damage attributable to the Site. (See 6 NYCRR Part 375-1.3(n))

“National Contingency Plan” or “NCP”: the National Oil and Hazardous Substances Pollution Contingency Plan promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. 9605, and codified at 40 C.F.R. Part 300, and any amendments thereto.

“OH&M”: the Office of Hearings and Mediation Services.

“OM&M”: post-construction operation, maintenance, and monitoring; the last phase of a remedial program, which continues until the remedial action objectives for the Site are met.

“Order”: this Order and all appendices attached hereto.

“Professional Engineer”: an individual registered as a professional engineer in accordance with Article 145 of the New York State Education Law. If such individual is a member of a firm, that firm must be authorized to offer professional engineering services in the State of New York in accordance with Article 145 of the New York State Education Law.

“Record of Decision” or “ROD”: the document reflecting the Department’s selection of a remedy relative to the Site or any Operable Unit thereof. The ROD shall be attached to and made enforceable under this Order as Appendix “H”.

“Remedial Action”: those activities, except for OM&M, to be undertaken under this Order to implement the ROD.

“Remedial Investigation” or “RI”: a process undertaken to determine the nature and extent of contamination. The remedial investigation emphasizes data collection and site characterization and generally is performed concurrently with the feasibility study. It includes sampling and monitoring, as necessary, and includes the gathering of sufficient information to determine the necessity for and the proposed extent of the program and to support the evaluation of proposed alternatives. (See 6 NYCRR 375-1.3(t))

“State Costs”: all the State’s response expenses related to this Site, incurred by the State of New York for negotiating, implementing, overseeing, administering, or enforcing this Order, including, but not limited to, direct labor, fringe benefits, indirect costs, travel, analytical costs, contractor costs, and any other response costs as defined under CERCLA. Approved agency fringe benefit and indirect cost rates will be applied.

“Termination Date”: the date that this Order is terminated pursuant to Paragraph XXII.

“USEPA”: the United States Environmental Protection Agency.