

STATE OF NEW YORK: DEPARTMENT OF ENVIRONMENTAL CONSERVATION

In the Matter of the
Development and Implementation
of a Remedial Program for an
Inactive Hazardous Waste Disposal
Site, Under Article 27, Title 13,
and Article 71, Title 27 of the
Environmental Conservation Law
of the State of New York by
by

ORDER
ON
CONSENT
INDEX # B7-0515-97-05

Universal Instruments Corporation
Respondent.

Site Code #704026

WHEREAS,

1. The New York State Department of Environmental Conservation (the "Department") is responsible for enforcement of Article 27, Title 13 of the Environmental Conservation Law of the State of New York ("ECL"), entitled "Inactive Hazardous Waste Disposal Sites." This Order is issued pursuant to the Department's authority under, inter alia, ECL Article 27, Title 13 and ECL 3-0301.
2. Universal Instruments Corporation ("Respondent") is a former operator at property located at Kirkwood Industrial Park in Kirkwood, Broome County, known as the Dover Electronics Site (the "Site"). A site map is attached to this Order as Appendix "A".
3. The Site is an inactive hazardous waste disposal site, as that term is defined at ECL 27-1301.2. The Site has been listed in the Registry of Inactive Hazardous Waste Disposal Sites in New York State as Site Number 704026. The Department has classified the Site as a Classification "2" pursuant to ECL 27-1305.4.b.
4. A. Pursuant to ECL 27-1313.3.a, whenever the Commissioner of Environmental Conservation (the "Commissioner") "finds that hazardous wastes at an inactive hazardous waste disposal site constitute a significant threat to the environment, he may order the owner of such site and/or any person responsible for the disposal of hazardous wastes at such site (i) to develop an inactive hazardous waste disposal site remedial program, subject to the approval of the department, at such site, and (ii) to implement such program within reasonable time limits specified in the order."

B. Any person under order pursuant to ECL 27-1313.3.a has a duty imposed by ECL Article 27, Title 13 to carry out the remedial program committed to under order. ECL 71-2705 provides that any person who fails to perform any duty imposed by ECL Article 27, Title 13

shall be liable for civil, administrative and/or criminal sanctions.

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

5. Following a period of public comment, on March 30, 2000 the Department selected a final remedial alternative for the Site in a Record of Decision ("ROD"). The ROD, attached to this Order as Appendix "B," is incorporated as an enforceable part of this Order.

6. The Department and Respondent agree that the goals of this Order are for Respondent to (i) develop and implement, in accordance with the ROD, an inactive hazardous waste disposal site remedial program ("Remedial Program") for the Site that shall include design and implementation, and operation, maintenance and monitoring of the selected remedial alternative; and (ii) reimburse the State's administrative costs.

7. Respondent, having waived Respondent's right to a hearing herein as provided by law, and having consented to the issuance and entry of this Order, 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.

8. The Department and Respondent agree that this Consent Order is entered into without any admission of liability for any purpose as to any matter referring or relating in any manner whatsoever to the matters addressed by this Consent Order.

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

I. Remedial Design Contents

A. Within forty-five (45) days after the effective date of this Order, Respondent shall submit to the Department a remedial design work plan (the "RD Work Plan") for the design and implementation of the remedial alternative for the Site selected by the Department in the ROD. The RD Work Plan shall also include a description and schedule for pilot studies to determine the effectiveness of enhanced in-situ bioremediation to achieve the remedial action objectives for the Site.

B. The RD Work Plan shall include the following:

1. A detailed description and schedule for implementation of a pilot study to determine the effectiveness of enhanced in-situ bioremediation at the Site.

2. A contingency plan that details the actions to be implemented if any element of the in-situ bioremediation work plan fails to achieve any of its objectives or otherwise fails to protect human health or the environment during the pilot studies and the full-scale implementation, if implemented. A comprehensive monitoring program will be part of this plan and will be used to generate the information needed to evaluate the effectiveness of the in-situ

bioremediation.

3. A detailed description and schedule for the submission of a written report (the "Pre-design Report") assessing the effectiveness of enhanced in-situ bioremediation at the Site based upon the results of the pilot study.

4. A detailed description and schedule for preparation and submission to the Department of the plans and specifications for implementation of the remedial alternative documented in the ROD (the "Remedial Design").

C. Upon the Department's written approval of the RD Work Plan Respondent shall implement the RD Work Plan in accordance with the schedule contained therein.

D. In accordance with the schedule in the RD Work Plan Respondent shall submit to the Department a Remedial Design to implement the remedy selected in the ROD. The Remedial Design shall be prepared by and have the signature and seal of a professional engineer who shall certify that the Remedial Design was prepared in accordance with this Order and the ROD.

E. The Remedial Design shall include the following:

1. A detailed description of the remedial objectives and the means by which each element of the selected remedial alternative will be implemented to achieve those objectives, including, but not limited to:

- a. the construction and operation of any structures;
- b. the collection, destruction, treatment, and/or disposal of hazardous wastes and substances and their constituents and degradation products, and of any soil or other materials contaminated thereby;
- c. the collection, destruction, treatment, and/or disposal of contaminated groundwater, leachate, and air;
- d. physical security and posting of the Site;
- e. quality control and quality assurance procedures and protocols to be applied during implementation of the Remedial Construction; and
- f. monitoring which integrates needs which are present on-Site and off-Site during implementation of the Department-selected remedial alternative.

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 groundwater monitoring wells on-Site and off-Site;
5. 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) a specific description of the criteria to be used to decide when an operation of the remedy may be discontinued.
6. 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;
7. A health and safety plan for the protection of persons at and in the vicinity of the Site during construction and after completion of construction. This plan shall be prepared in accordance with 29 CFR 1910 by a certified health and safety professional; and
8. 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 Guide Book," dated June 1998, and any subsequent revisions thereto, and 6 NYCRR Part 375.

II. Remedial Construction

- A. Within such period of time after the Department's approval of the Remedial Design as the Department shall prescribe, Respondent shall commence construction of the Department-approved Remedial Design.
- B. Respondent shall implement the Remedial Design in accordance with the Department-approved Remedial Design.
- C. During implementation of all construction activities identified in the Remedial Design, Respondent shall have on-Site a full-time representative who is qualified to supervise the work done.
- D. Within 90 days after completion of the construction activities identified in the Department-approved Remedial Design, Respondent shall submit to the Department a detailed post-remedial operation and maintenance plan ("O&M Plan"); "as-built" drawings and a final engineering report (each including all changes made to the Remedial Design during construction); and a certification that the Remedial Design was implemented and that all construction activities were completed in accordance with the Department-approved Remedial Design and were personally witnessed by him or her or by a person under his or her direct

supervision. The O&M Plan, "as built" drawings, final engineering report, and certification must be prepared, signed, and sealed by a professional engineer.

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

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

G. If the Department concludes that any element of the Department-approved Remedial Program fails to achieve its objectives or otherwise fails to protect human health or the environment, Respondent shall take whatever action the Department determines necessary to achieve those objectives or to ensure that the Remedial Program otherwise protects human health and the environment.

III. Progress Reports

A. Respondent shall submit to the parties identified in Paragraph XII in the numbers specified therein copies of written progress reports that:

1. describe the actions which have been taken toward achieving compliance with this Order during the previous reporting period;

2. include all results of sampling and tests and all other data received or generated by Respondent or Respondent's contractors or agents in the previous reporting period, including quality assurance/quality control information, whether conducted pursuant to this Order or conducted independently by Respondent;

3. identify all work plans, reports, and other deliverables required by this Order that were completed and submitted during the previous reporting period;

4. describe all actions, including, but not limited to, data collection and implementation of work plans, that are scheduled for the next reporting period and provide other information relating to the progress at the Site;

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

6. include any modifications to any work plans that Respondent has proposed to the Department or that the Department has approved; and

7. describe all activities undertaken in support of the Citizen Participation Plan during the previous reporting period and those to be undertaken in the next reporting period. Respondent shall submit these progress reports to the Department by the tenth day of every reporting period following the effective date of this Order.

B. During remedial design and remedial construction the progress reports will be provided to the Department every month. During O&M progress reports will be provided to the Department every three months.

C. Respondent also shall allow the Department to attend, and shall provide the Department at least seven days advance notice of, any of the following: prebid meetings, job progress meetings, substantial completion meeting and inspection, and final inspection and meeting.

IV. Review of Submittals

A. 1. The Department shall review each of the submittals Respondent makes pursuant to this Order to determine whether it was prepared, and whether the work done to generate the data and other information in the submittal was done, in accordance with this Order and generally accepted technical and scientific principles. The Department shall notify Respondent in writing of its approval or disapproval of the submittal, except for the submittals discussed in Subparagraph I.E.7. All Department-approved submittals shall be incorporated into and become an enforceable part of this Order.

2. a. If the Department disapproves a submittal, it shall so notify Respondent in writing and shall specify the reasons for its disapproval. Within 45 days after receiving written notice that Respondent's submittal has been disapproved, Respondent shall make a revised submittal to the Department that addresses and resolves all of the Department's stated reasons for disapproving the first submittal.

b. After receipt of the revised submittal, the Department shall notify Respondent in writing of its approval or disapproval. If the Department disapproves the revised submittal, Respondent shall be in violation of this Order and the Department may take any action or pursue whatever rights it has pursuant to any provision of statutory or common law. If the Department approves the revised submittal, it shall be incorporated into and become an enforceable part of this Order.

B. Respondent shall modify and/or amplify and expand a submittal upon the Department's direction to do so if the Department determines, as a result of reviewing data generated by an activity required under this Order or as a result of reviewing any other data or facts, that further work is necessary.

V. Dispute Resolution

A. 1. If the Department disapproves a revised submittal, Respondent shall be in

violation of this Order unless, within 10 business days after receipt of the Department's notice of disapproval, Respondent serves on the Department a request for an appointment of an Administrative Law Judge ("ALJ") and a written statement of the issues in dispute, the relevant facts upon which the dispute is based, and factual data, analysis or opinion supporting its position, and all supporting documentation on which Respondent relies (hereinafter called the "Statement of Position"). The Department shall serve its Statement of Position, including supporting documentation no later than ten (10) business days after receipt of Respondent's Statement of Position.

2. Respondent shall have ten (10) business days after receipt of the Department's Statement of Position within which to serve upon the Department a reply to the Department's Statement of Position, and in the event Respondent serves such a reply, the Department shall have ten (10) business days after receipt of Respondent's reply to the Department's Statement of Position within which to serve upon the Respondent the Department's reply to Respondent's reply to the Department's Statement of Position. In the event that the periods for exchange of Statements of Position and replies may cause delay in the work being performed under this Order, the time periods may be shortened upon and in accordance with notice by the Department as agreed to by Respondent.

3. An administrative record of any dispute under this Paragraph shall be maintained by the Department. The record shall include the Statement of Position of each party served pursuant to the preceding Subparagraphs, and any relevant information. The record shall be available for review by all parties and the public, consistent with the Freedom of Information Law (New York Public Officers Law Article 6).

4. Upon review of the administrative record as developed pursuant to this Subparagraph, the ALJ shall issue a final decision and order resolving the dispute. Respondent shall revise the submittal in accordance with the Department's specific comments, as may be modified by the ALJ and except for those which have been withdrawn by the ALJ, and shall submit a revised submittal. The period of time within which the submittal must be revised as specified by the Department in its notice of disapproval shall control unless the ALJ revises the time frame in the ALJ's final decision and order resolving the dispute.

5. After receipt of the revised submittal, the Department shall notify the Respondent in writing of its approval or disapproval of the revised submittal. If the revised submittal fails to address and resolve the Department's specific comments, as modified and/or withdrawn by the ALJ, and the Department disapproves the revised submittal for this reason, Respondent shall be in violation of this Order and the ECL.

6. In review by the ALJ of any dispute pursued under this Paragraph, Respondent shall have the burden of proving that there is no rational basis for the Department's position.

7. With respect to the final decision of the ALJ, Respondent shall retain those rights available pursuant to Article 78 of the Civil Practice Law and Rules of New York (CPLR),

provided that the petition is filed within thirty (30) days after Respondent's receipt of the final decision and order issued by the ALJ.

8. The invocation of the procedures stated in this Paragraph shall not extend, postpone, or modify Respondent's obligation under this Order with respect to any disputed items, unless and until the Department agrees or a court determines otherwise. The invocation of the procedures stated in this Paragraph shall constitute an election of remedies by Respondent, and such election of this remedy shall constitute a waiver of any and all other remedies which may otherwise be available to Respondent regarding the issue in dispute. The commencement of an Article 78 proceeding shall not extend, postpone or modify any obligation of the Respondent under this Order, other than those obligations directly subject to judicial review under the Article 78 proceeding, unless the Department agrees or a court or the ALJ determines otherwise.

VI. Penalties

A. 1. Respondent's failure to comply with any term of this Order constitutes a violation of this Order and the ECL.

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 15 days after receipt of notification from the Department assessing the penalties. If such payment is not received within 15 days after Respondent receives such notification from the Department, interest shall be payable at the annual rate of nine per centum on the overdue amount from the day on which it was due through, and including, date of payment. 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, N.Y.S.D.E.C., 50 Wolf Road, Albany, New York 12233-5500. Payment of the penalties shall not in any way alter Respondent's obligation to complete performance under the terms of this Order. Stipulated penalties shall be due and payable under Subparagraph VI.A.2 pursuant to the following schedule:

B. Stipulated penalties shall be due and payable for violations of the ECL and the terms of the Order, except for alleged violations of Paragraph III, pursuant to the following schedule:

<u>Period of Non-Compliance</u>	<u>Penalty Per Day</u>
First through 15th day	\$ 1,250.00
16th through 30th day	\$ 5,000.00
31st day and thereafter	\$ 7,500.00

C. Stipulated penalties shall be due and payable for failure to submit progress reports in accordance with Paragraph III pursuant to the following schedule:

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

D. Respondent shall not suffer any penalty under this Order or be subject to any proceeding or action if it cannot comply with any requirement hereof because of an act of God, war, riot, or labor dispute, or because of any condition or event beyond the control of Respondent or its agent or agents carrying out Respondent's obligations under this Order. Respondent shall, within ten days of when it obtains knowledge of any such condition, notify the Department in writing. Respondent shall include in such notice the measures taken and to be taken by Respondent to prevent or minimize any delays and shall request an appropriate extension or modification of this Order. Failure to give such notice within such ten-day period constitutes a waiver of any claim that a delay is not subject to penalties. Respondent shall have the burden of proving that an event is a defense to compliance with this Order pursuant to this Subparagraph. Increased costs or expenses of any work to be performed under this Order, the financial inability of Respondent to perform such work, the failure of Respondent to make complete and timely application for any required approval or permit, and nonattainment of the goals, standards and requirements of this Order do not constitute conditions or events warranting the relief set forth in this Subparagraph.

VII. Entry upon Site

Respondent recognizes that during performance of the remedial program, duly designated employees, consultants, contractors, or agents of the Department or any State agency will need to enter the Site or areas in the vicinity of the Site for purposes of inspection, sampling, and testing and to ensure Respondent's compliance with this Order. Respondent shall arrange for any such entry. During Remedial Construction, Respondent shall provide the Department with suitable office space at the Site, including access to a telephone, and shall permit the Department full access to all records relating to matters addressed by this Order and job meetings.

VIII. Payment of State Costs

Within 60 days after receipt of an itemized invoice from the Department, Respondent shall pay to the Department a sum of money which shall represent reimbursement for the State's expenses including, but not limited to, direct labor, fringe benefits, indirect costs, travel, analytical costs, and contractor costs incurred by the State of New York for work related to the Site to the effective date of this Order, as well as for reviewing and revising submittals made pursuant to this Order, overseeing activities conducted pursuant to this Order, collecting and analyzing samples, and administrative costs associated with this Order. Such payment shall be made by certified check 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
50 Wolf Road
Albany, NY 12233-7010.

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.

IX. Reservation of Rights

A. Nothing contained in this Order shall be construed as barring, diminishing, adjudicating, or in any way affecting any of the Department's civil, criminal, or administrative rights (including, but not limited to, nor exemplified by, the right to recover natural resource damages) or authorities.

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

C. If, after review, the Department accepts and approves the professional engineer's final engineering report and certification that construction of the Remedial Program was completed in accordance with the approved Remedial Design and the Department accepts and approves Respondent's O&M Plan, and after the Department determines that the goals in the ROD have been accomplished, then, unless a supplementary remedial program is determined to be necessary by the Department pursuant to Subparagraph II.G, and/or pursuant to Subparagraph I.B.6 and/or Subparagraph IV.B, and except for the future Operation and Maintenance of the Site, reimbursement of State costs in accordance with Paragraph VIII, indemnification pursuant to Paragraph X, any Natural Resource Damage claims that may arise, and the provisions of Subparagraphs IX.A and IX.B, such acceptance and approval shall constitute a release and discharge by the Department from each and every claim, demand, remedy or action whatsoever against Respondent, its directors, officers, employees and agents, and Respondent's successors and assigns which the Department has or may have pursuant to Article 27, Title 13 of the ECL, CERCLA, and any other state or federal statute, regulation and/or theory of common law relative to or arising from, the release of or the disposal of hazardous wastes at or from the Site.

Provided, however, that the Department specifically reserves all of its rights against Respondent concerning, and any such release and satisfaction shall not extend to, any investigation or remediation the Department deems necessary due to:

1. environmental conditions on-Site or off-Site which are related to the disposal of hazardous wastes at the Site and were unknown to the Department as of the effective date of this Order, or

2. information received, in whole or in part, after the effective date of this Order, and such unknown environmental conditions or information indicate that the Remedial Program is not protective of human health or the environment. The Department shall notify Respondent of such environmental conditions or information and its basis for determining that the Remedial Program is not protective of human health and the environment.

This release shall inure only to the benefit of Respondent and Respondent's directors, officers, employees and agents, in their official capacity for Respondent.

Nothing herein shall be construed as barring, diminishing, adjudicating or in any way affecting any legal or equitable rights or claims, actions, suits, causes of action or demands whatsoever that the Department may have against anyone other than Respondent or Respondent's directors, officers, employees and agents, and against Respondent's successors and assigns who are legally responsible under applicable principles of statutory or common law to remediate the release or disposal of hazardous wastes or hazardous substances at or from the Site, as provided above.

Nothing in this Paragraph shall in any way constitute or be construed as a release of claims against any person not a party to this Order.

Nothing contained in this Paragraph shall in any way constitute or be construed as a release of claims by any Department or Agency of the State of New York other than this Department.

X. Indemnification

Respondent shall indemnify and hold the Department, the State of New York, and their representatives and employees harmless for all claims, suits, actions, 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. In no event shall Respondent be required to indemnify and hold the Department, the State of New York, and their representatives and employees harmless regarding any liability arising as a result of unlawful, willful or malicious acts or omissions by the Department, the State of New York, and their representatives and employees during the course of any activities conducted pursuant to this Order.

XI. Public Notice

Within 30 days after the effective date of this Order, Respondent shall cause to be recorded a Department-approved instrument to run with the land with the Clerk of Broome County to give all parties who may acquire any interest in the Site notice of this Order and, in accordance with the ROD and 6NYCRR 375-1.2(e)(2), to restrict certain Site activities. Respondent shall provide the Department with a copy of such instrument certified by the Broome County Clerk to be a true and faithful copy. Respondent may petition the Department to terminate or revise the restrictions filed pursuant to this Paragraph when the Site has been

remediated.

XII. Communications

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

1. Communication from Respondent shall be sent to:

Andrew English
Division of Environmental Remediation
New York State Department of Environmental Conservation
50 Wolf Road
Albany, New York 12233-7010

with copies to:

Regional Director
New York State Department of Environmental Conservation
Region 7
615 Erie Boulevard West
Syracuse, New York 13204-2400

G. Anders Carlson, Ph.D.
Director, Bureau of Environmental Exposure Investigation
New York State Department of Health
Flanigan Square
547 River Street
Troy, New York 12180-2216

Maura C. Desmond, Esq.
Division of Environmental Enforcement
New York State Department of Environmental Conservation
270 Michigan Avenue
Buffalo, New York 14203

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

Robert Kuhbach
Vice President, General Counsel and Secretary
Dover Corporation
280 Park Avenue
New York, New York 10017-1292

with a copy to:

Philip H. Gitlen, Esq.
Whiteman Osterman & Hanna
One Commerce Plaza
Albany, New York 12210

and

Len Eder, P.E.
Eder Consulting, Inc.
85 Forest Avenue
Locust Valley, New York 11560

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

Four copies (one unbound) to Division of Environmental Remediation.

One copy to Regional Director.

Two copies to the Director, Bureau of Environmental
Exposure Investigation.

One copy to Division of Environmental Enforcement.

C. 1. Within 30 days of the Department's approval of any report submitted pursuant to this Order, Respondent shall submit to Director, Division of Environmental Remediation, a computer readable magnetic media copy of the approved report in American Standard Code for Information Interchange (ASCII) format.

2. Within 30 days after its approval of the drawings and submittals described in Subparagraph II.D of this Order, Respondent shall submit one microfilm copy (16 millimeter roll film M type cartridge) of such Department-approved drawings and submittals, as well as all other Department-approved submittals. Respondent shall submit same to Division of Environmental Remediation.

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

XIII. Miscellaneous

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

B. Respondent shall retain professional consultants, contractors, laboratories, quality assurance/quality control personnel, and third party data validators acceptable to the Department to perform the technical, engineering, and analytical obligations required by this Order. The experience, capabilities, and qualifications of the firms or individuals selected by Respondent

shall be submitted to the Department within 30 days after the effective date of this Order. The Department's approval of these firms or individuals shall be obtained before the start of any activities for which Respondent and such firms or individuals will be responsible. The responsibility for the performance of the professionals retained by Respondent shall rest solely with Respondent.

C. The Department shall have the right to obtain split samples, duplicate samples, or both, of all substances and materials sampled by Respondent, and the Department also shall have the right to take its own samples. Respondent shall make available to the Department the results of all sampling and/or tests or other data generated by Respondent with respect to implementation of this Order and shall submit these results in the progress reports required by this Order.

D. Respondent shall notify the Department at least 10 working days in advance of any field activities to be conducted pursuant to this Order.

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

F. This Order shall be binding upon, and shall inure to the benefit of, Respondent and Respondent's officers, directors, agents, servants, employees, successors, and assigns. 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. Respondent's officers, directors, employees, servants, and agents shall be obliged to comply with the relevant provisions of this Order in the performance of their designated duties on behalf of Respondent.

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

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

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

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 of the provisions of this Order.

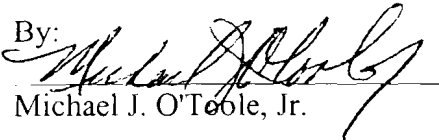
K. 1. No term, condition, understanding, or agreement purporting to modify or vary any term of this Order shall be binding unless made in writing and subscribed by the party to be bound. No informal advice, guidance, suggestion, or comment by the Department regarding any report, proposal, plan, specification,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

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

L. The effective date of this Order is twenty days after the date the Order is signed by the Commissioner or his designee.

DATED: 1/19/2001

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

By: 
Michael J. O'Toole, Jr.

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.

UNIVERSAL INSTRUMENTS CORPORATION

By:

(TYPE NAME OF SIGNER)

Robert G. Kuhbach

Title:

Vice President

Date:

1/3/01

STATE OF NEW YORK)

) s.s.:

COUNTY OF)

On this 3rd day of January in the year 2000 before me, the undersigned, a notary public in and for said State, personally appeared Robert G. Kuhbach, 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.

Caryl Keylor
Notary Public