

STATE OF NEW YORK: DEPARTMENT OF ENVIRONMENTAL CONSERVATION

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

ORDER
ON
CONSENT

INDEX # A7-0121-87-09

BORDEN, INC.
Respondent.

WHEREAS,

1. The New York State Department of Environmental Conservation (the "Department") is responsible for enforcement of Article 27, Title 13, of the Environmental Conservation Law, entitled "Inactive Hazardous Waste Disposal Sites."

2. Borden, Inc. ("Respondent") owns and formerly operated a facility (the "Facility") located at 108-112 North Main Street in the Village of Bainbridge, Chenango County, New York (the "Site"). (A map of the Site is attached as Appendix "A.")

3. Beginning in the early 1940's and continuing until approximately 1981, Respondent produced liquid and solid synthetic resins at the Facility. Synthetic resins such as Phenol-Formaldehyde, Urea-Formaldehyde, Melamine-Formaldehyde and Polyvinyl Acetate were manufactured in large reactor vessels at the Facility. The Facility was also used for the generation and storage of waste currently defined as hazardous waste. Solid waste management units ("SWMUs") at

the Facility include: (1) the Phenol Recovery Area, (2) the Land Application Area, (3) the Bone Yard, (4) the River Lagoon, (5) the Paraformaldehyde Tank, and (6) PCB contaminated areas.

4. Following termination of operational activities at the Facility in early 1981, Respondent implemented facility closure in conjunction with the Environmental Protection Agency ("EPA") and the Department.

5. The following sampling events were undertaken to define phenolic contamination at the Facility:

(1) Converse/Ten Ech, a consulting company, sampled soil and groundwater in 1981. The results, submitted to EPA on November 9, 1981, showed phenolic contamination in ground water at the Phenol Recovery Area, Land Application Area and Bone Yard.

(2) Respondent sampled groundwater in the Phenol Recovery Area and Bone Yard in 1982 and 1983. The results, submitted to the Department on July 1, 1983, identified phenolic contamination at both areas.

(3) The Department detected phenolic contamination in groundwater at the Phenol Recovery Area in March 1983.

(4) T.M. Gates, Inc., ("Gates") sampled soil and groundwater during August 1984. The results, submitted to EPA on December 21, 1984, March 15, 1985, and May 30, 1985, showed phenolic contamination in groundwater at a sump location designated "Sump 3."

(5) Gates sampled the groundwater in all

monitoring wells and sumps during 1986. The results, submitted to the Department on April 6, 1987, showed phenolic contamination only at the sumps designated as "1," "2" and "3." Phenolic contamination remained detectable over time only at "Sump 3."

(6) EPA sampled groundwater in the Phenol Recovery Area, Bone Yard, and Land Application Area on July 23, 1986. Phenolics were detected in each of these areas.

(7) Gates' groundwater monitoring of all wells at the Facility, conducted quarterly from March 1988 through 1989, found no phenolics at or above the reported detection limit.

6. In addition to phenolic contamination, the May 30, 1985 Gates submittal and results of sampling conducted by EPA on August 7 and 8, 1984 identified PCB contamination at several of the SWMUs at the Facility. PCB contamination, originally believed to be confined to an area surrounding the Facility's Therminol oil heater, was determined to have been relocated, due to fill and grade activities, to the Bone Yard, trenches in the Land Application area and the River Lagoon adjacent to the Susquehanna River. In addition, it was determined that migration of PCBs through the Facility's waste water sewers had contaminated the sewers, and may have contaminated other components of the wastewater treatment system, including the phenol recovery area and the River Lagoon.

7. Results of sampling by Gates, Converse/Ten Ech and

the Department identified the presence of other compounds, currently identified under 6 NYCRR 371 as hazardous constituents, in the soil and groundwater at various locations at the Facility.

8. The Site is an inactive hazardous waste disposal site, as defined in ECL Section 27-1301(2), and has been listed in the Registry of Inactive Hazardous Waste Disposal Sites in New York State as Site Number 709001.

9. The Department has identified and classified the Site pursuant to ECL Section 27-1305, under classification 2, a "significant threat to the public health or environment - action required." Among the reasons for such classification are the high levels of PCB contamination detected at various locations at the Facility and the presence of phenolic contamination at Sump 3.

10. Pursuant to ECL Section 27-1313(3)(a), whenever the Commissioner of Environmental Conservation (the "Commissioner") "finds that hazardous wastes at an inactive hazardous waste disposal site constitute a significant threat to the environment, he may order the owner of such site and/or any person responsible for the disposal of hazardous wastes at such site (1) to develop an inactive hazardous waste disposal site remedial program, subject to the approval of the Department, at such site, and (11) to implement such program within reasonable time limits specified in the order."

11. The Department and Respondent acknowledge that the

goals of this Order are that Respondent shall develop and/or implement a RCRA Facility Investigation ("Investigation"), Corrective Measures Study ("Study") and remedial program addressing the problems of phenolic contamination at Sump 3, PCB contamination at various locations at the Facility, and contamination by other hazardous constituents in the soil and/or groundwater throughout the Facility. The Investigation shall be performed in accordance with the Revised Work Plan (Appendix "B," attached) which is incorporated herein by reference. All investigations, studies and remedial programs shall be subject to the approval of the Department, and Respondent shall implement the program within the time limits specified hereinafter. The program purpose shall be to abate and eliminate any significant threat to the public health and the environment.

12. Respondent, without any admission of liability or of law or fact, having waived its right to a hearing herein or to otherwise contest the Department's determinations as provided by law, and having consented to the issuance and entry of this Order, agrees to be bound by its terms.

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

1. All investigations, proposals, reports, plans, remedial programs, and supplements and revisions thereto

required by this Order shall address both on-Site and off-Site contamination and impacts caused by the presence of hazardous wastes at the Site, and shall be prepared, designed and executed in accordance with Requisite Technology. As used in this Order, Requisite Technology means engineering, scientific and construction principles and practices, subject to the Department's approval, which (a) are technologically feasible, and (b) will most effectively abate and eliminate any significant threat to the environment posed by the presence of hazardous wastes at the Site.

The failure of Respondent to submit or undertake a required Proposal, Report, Field Investigation, Construction Program Plan or any supplement or revision thereof shall constitute a violation of this Order.

II. Whenever the following terms are used in this Order, the following definitions apply:

a. "Study" shall mean a study, structured as a Resource Conservation and Recovery Act ("RCRA") Corrective Measures Study, which will develop and evaluate corrective measures alternatives and recommend the final corrective measure or measures.

b. "hazardous wastes" shall mean hazardous wastes, as defined at 6 NYCRR 371, and any constituents or degradation products of such wastes.

c. "Party" or "Parties" means the New York State Department of Environmental Conservation and Borden, Inc.

d. "Investigation" shall mean an investigation,

structured as a RCRA Facility Investigation, which will thoroughly evaluate the nature and extent of the presence of hazardous waste and hazardous constituents and will gather necessary data to support a Corrective Measures Study.

e. "solid waste management units" shall mean any discernible waste management unit from which hazardous waste or hazardous constituents have migrated or may migrate, irrespective of whether the unit was intended for the management of hazardous or solid waste as those terms are defined in 6 NYCRR Part 371, Sections 371.1(c) and (d).

III. a. All submittals made by Respondent pursuant to this Order shall be subject to Departmental review. The Department shall approve or disapprove each submittal in writing.

If the Department approves a submittal, Respondent shall perform the specified work or continue with Respondent's obligations under the Order in accordance with the approved submittal and under the Department's supervision.

b. If the Department disapproves a submittal, the Department shall notify Respondent, in writing, of the Department's objections. Within the time limits set forth hereinafter, Respondent shall either (a) revise and resubmit the submittal, addressing each of the Department's objections, or (b) notify the Department, in writing, that it believes that the submittal meets the requirements of this Order, explaining the reasons.

c. If a revised submittal is submitted, the Department shall determine whether the revised submittal is acceptable and shall provide written notification to Respondent of its approval or disapproval of the revised submittal.

d. Within 15 days of receipt of notification that Respondent believes the submittal meets the requirements of this Order, the Department shall re-notify the Respondent in writing of its approval or disapproval of the submittal.

e. If the Department disapproves the revised submittal or if the Respondent elects not to submit a revised submittal, the parties shall confer together in good faith to resolve their differences.

f. If, after conferring in good faith pursuant to paragraph "e," there remains a dispute between Respondent and the Department concerning the terms of the revised submittal or the need to revise the submittal, Respondent shall be in violation of this Order unless it has invoked the dispute resolution procedures set forth in paragraph IV within 20 days of receipt of the Department's written notification of disapproval of the revised submittal, or within 20 days of receipt of the Department's written re-notification of disapproval of the submittal.

g. Each submittal or revised submittal, whichever is approved by the Department or resolved in the dispute resolution process, shall be attached to and incorporated into this Order.

IV. At the written request of Respondent, based on a dispute concerning the terms of any submittals pursuant to paragraphs III, VII, VIII, IX, X or XI, the Respondent, upon written notification to the Department, may request the Commissioner of Environmental Conservation to appoint an Administrative Law Judge (ALJ) to resolve the dispute.

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

1. The parties shall be the Department and the Respondent.
2. Notice shall be provided to the other party by the party requesting resolution of the dispute.
3. The burden of going forward shall be on the Respondent.
4. The ALJ shall have all powers conferred by 6 NYCRR 622.12.
5. All proceedings conducted hereunder shall be stenographically recorded. The Respondent shall arrange for an expedited stenographic transcript to be made within 10 working days after conclusion of the proceeding, and for the original and two copies of the transcript to be delivered to the ALJ at the expense of the Respondent.
6. The ALJ shall prepare, within 45 working days after receipt of the transcript of the proceeding, a written summary of the documentation and testimony received

during the proceeding, and a recommended decision. The summary and recommended decision shall be hand-delivered to the Department's representative and sent by certified mail, return receipt requested, and another copy by express mail, to the Respondent.

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

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

V. On or before 30 days after the effective date of this Order, Respondent shall commence implementation of the Investigation.

VI. Respondent shall submit to the Department Progress Reports, the contents of which are outlined in the Revised Work Plan. Respondent shall submit an initial Progress Report 60 days after commencement of the Investigation, and shall submit a follow-up Progress Report every 60 days

thereafter until such time as Respondent's Investigation Report (as described in Section VII, below) is submitted.

VII. On or before 60 days after the completion of the sampling and analysis required for the Remedial Investigation, Respondent shall submit to the Department an Investigation Report (the "Report") founded upon its performance of the Investigation in accordance with the approved Revised Work Plan. The Report shall include all data generated and all other information obtained during the Investigation and shall provide all assessments and evaluations as set forth in the current RCRA Facilities Investigation Guidance issued by the Environmental Protection Agency ("EPA"). EPA guidance documents shall be applied in a manner reflecting reasonable technical considerations.

At any time prior to the approval of the Report, the Department reserves the right to require clarification, appropriate modification or amplification of the Investigation and Report by Respondent if, as a result of reviewing data generated by the Investigation or as a result of reviewing other reliable data or facts relating to the technical sufficiency of the Investigation or information obtained by the Department after the effective date of this Order regarding the type, locations or quantities of hazardous wastes at the Site, the Department determines that further investigation is necessary.

If the Department disapproves the Report, the Department shall notify Respondent, in writing, of the

reasons for such disapproval. Respondent shall, within 30 days of receipt of such notification, revise and resubmit the submittal or notify the Department, in writing, that Respondent believes the submittal meets the requirements of this Order.

The time frames and procedures for resubmittals, notifications, and invocation of dispute resolution procedures shall be governed by the procedures set forth in Section III.

VIII. Within 90 days after receipt of the Department's approval of the Report, Respondent shall submit to the Department a study (the "Study") evaluating the feasibility of on-Site and off-Site remedial options to abate and eliminate any significant threat to the environment or public health, as determined by comparison with the environmental protection standards and/or criteria developed during the Investigation. The Study shall be prepared and certified by an engineer licensed to practice by the State of New York, who may be an employee of Respondent or an individual or member of a firm who is authorized to offer engineering services in accordance with Article 145 of the New York State Education Law.

The Study shall be performed consistent with applicable guidance documents, issued by EPA and the Department, which are in effect at the time the Investigation Report is approved by the Department. EPA guidance documents shall be applied in a manner reflecting reasonable technical

considerations.

If the Department disapproves the submittal, the Department shall notify the Respondent, in writing, of the reasons for such disapproval. Respondent shall, within 30 days of receipt of such notification, revise and resubmit the submittal or notify the Department, in writing, that Respondent believes that the submittal meets the requirements of this Order.

The time frames and procedures for resubmittals, notifications and invocation of dispute resolution procedures shall be governed by the procedures set forth in Section III.

IX. Within 90 days after receipt of the Department's approval of the Study, Respondent shall submit to the Department an engineering report, plans and specifications for a remedial program (the "Remedial Design"). The Remedial Design shall be prepared and certified by an engineer licensed to practice by the State of New York, who may be an employee of Respondent or an individual or member of a firm who is authorized to offer engineering services in accordance with Article 145 of the New York State Education Law.

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

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

1. the disposition of hazardous wastes, constituents and degradation products, and any soil or other materials contaminated thereby;
 2. the collection, treatment, and disposition of contaminated groundwater, leachate and air;
 3. physical security and posting of the Site;
 4. health and safety of persons living and/or working at or in the vicinity of the areas being remediated;
 5. quality control and quality assurance procedures and protocols to be applied to Remedial Program construction operations;
 6. integrated air monitoring on and off-site during implementation of the Remedial Program, if necessary.
- b. "Contract-ready" documents for the construction of the elements of the Remedial Program, including plans and specifications prepared and certified by a licensed professional engineer registered in the State of New York, which plans shall satisfy all applicable state and federal laws, rules and regulations;
 - c. A time schedule for construction of the elements of the Remedial Program and provisions for periodic work-in-progress reports during the implementation of the Remedial Program;
 - d. The parameters, conditions, procedures and protocols to determine the effectiveness of the Remedial Program, including a schedule for periodic sampling of existing and planned groundwater monitoring wells;

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

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

g. A health and safety plan with a design to prevent any adverse impact, upon persons at or in the vicinity of the Site, from the hazardous wastes and/or constituents at or in the vicinity of the Site. The plan shall contain provisions for post-closure monitoring and maintenance and shall be certified by a health and safety professional.

If the Department disapproves the Remedial Design, the Department shall notify Respondent, in writing, of the reasons for such disapproval. Respondent shall, within 45 days of notice of disapproval, revise and resubmit the submittal or notify the Department, in writing, that Respondent believes that the submittal meets the requirements of this Order.

Time frames for resubmittals, notifications, and invocation of the dispute resolution procedures shall be

governed by the procedures set forth in Section III.

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

Prior to its approval of the Remedial Design, the Department may require Respondent to modify the Remedial Design and/or perform additional investigatory activities if the Department determines that such modification or investigation is necessary due to: (1) environmental conditions on-Site or off-Site which are related to the presence of hazardous wastes at the Site and were unknown to the Department at the time of the Department's approval of the Report, or (2) information received, in whole or in part, after the Department's approval of the Report, where such unknown environmental conditions or reliable information indicates that modification or additional investigation is necessary. The Department will make relevant new information available to Respondent upon the information's receipt by the Department's Project Manager.

X. Within such period as may be allowed by the approved Remedial Design and any modifications thereto which have been approved by the Department or any Supplemental Remedial Program which may be required, Respondent shall complete construction pursuant to the approved Remedial Design and any modifications to the Remedial Design which have been approved

by the Department. Within 90 days of completion of construction, Respondent shall submit to the Department as-built drawings, a final engineering report and a certification that construction was completed in accordance with the approved Remedial Design and any approved modifications, all by an engineer licensed to practice by the State of New York.

XI. Following receipt of the as-built drawings, final engineering report, and certification, the Department shall review the same. If the Department disapproves the submittal, the Department shall notify the Respondent in writing of the reasons for such disapproval. Respondent shall, within 30 days of such notification, revise and resubmit the submittal or notify the Department, in writing, that it believes that the submittal meets the requirements of this Order.

Time frames for resubmittals, notifications, and invocation of dispute resolution procedures shall be governed by the procedures set forth in Section III.

If the Department is satisfied with the quality and completeness of construction, the Department shall provide written acknowledgment that Respondent has completed the implementation of the construction and other elements in accordance with the approved Remedial Design.

Prior to its acceptance and approval of the engineer's certification that construction was completed in accordance with the approved Remedial Design, the Department

may require the Respondent to modify the Remedial Design and Construction, and/or perform additional investigatory activities, if the Department determines that such modification or investigation is necessary due to:

(1) environmental conditions on-Site or off-Site which are related to the presence of hazardous wastes at the Site and were unknown to the Department at the time of approval of the Remedial Design, or

(2) reliable information received, in whole or in part, after the approval of the Remedial Design, where such unknown environmental conditions or reliable information indicates that the Remedial Program is not protective of human health or the environment.

XII. Notwithstanding any provision contained in this Order to the contrary, unless reduced pursuant to this Section, for a period of 30 years from the date of the Department's written acknowledgment that Respondent has completed the implementation of the construction and other elements in accordance with the approved Remedial Design, or for a longer period of time commensurate with Respondent's obligations pursuant to this Order, Respondent, or its successors or assigns, shall maintain and monitor the areas at which the elements of the Remedial Program were implemented in accordance with the approved Remedial Design ("Post-Closure Period").

In the event any element of the Remedial Program fails within 30 years of its completion, Respondent shall

implement the contingency plan contained in the approved Remedial Design, and implement the health and safety plan contained in the approved Remedial Design.

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

The Respondent may make written application to the Commissioner to reduce the period of time during which maintenance and monitoring activities must be performed. The Commissioner shall consider the relevant data and applicable statutory authority in determining whether the relief sought shall be granted.

XIII. During all phases of investigation and remediation, Respondent shall perform groundwater monitoring activities in accordance with the provisions for such set forth in the Revised Work Plan attached as Appendix "B." The groundwater monitoring activities shall be initiated within 30 days of the effective date of the Order and will continue until post-closure monitoring is initiated.

XIV. The Department shall have the right to take or obtain "split samples" for the purpose of comparative analysis of all substances and materials sampled by Respondent pursuant to this Order.

XV. Respondent shall provide notice to the Department of any excavating, drilling or sampling to be conducted pursuant

to the terms of this Order at least 10 working days in advance of such activities.

XVI. Respondent shall use its best efforts to obtain whatever permits, easements, rights-of-way, rights-of-entry, approvals or authorizations are necessary in order to perform the Remedial Investigation and all of Respondent's other obligations pursuant to this Order. Respondent shall promptly notify the Department in the event of Respondent's inability to obtain such authorizations on a timely basis.

In the event Respondent is unable to obtain the necessary authorizations required to perform its obligations under this Order, the Department shall, consistent with its legal authority, assist in obtaining all such authorizations Respondent was unable to obtain or which Respondent could not obtain without terms or conditions which were economically unreasonable or would effectively prevent implementation. If Respondent cannot obtain such authorizations on a timely basis, the time for performance of any obligation dependent upon such authorization shall be appropriately extended upon written request. If Respondent cannot obtain such authorization, this Order may be appropriately modified.

XVII. Respondent shall permit any duly designated officer, employee, consultant, contractor or agent of the Department to enter upon the Site or areas in the vicinity of the Site which may be under the control of Respondent, and any areas necessary to gain access thereto, for purposes of inspection and of making or causing to be made such sampling, tests and

photographs as the Department deems necessary, and for assurance of Respondent's compliance with the terms of this Order.

XVIII. Respondent shall retain professional consultants, contractors and laboratories 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 for approval, which shall not be unreasonably withheld, prior to initiation of any activities for which they will be responsible. The Department shall notify Respondent of its approval or disapproval within 14 days of the submission required by this paragraph.

XIX. Respondent shall not suffer any penalty under any of the terms of this Order, or be subject to any proceeding or actions for any remedy or relief if it cannot comply with any requirements hereof because of an act of God, war, riot, or other condition as to which negligence or willful misconduct on the part of Respondent was not a proximate cause, provided however, that Respondent shall notify the Department, in writing, within 10 days of obtaining knowledge of any such condition and request an extension or modification of the terms of this Order.

XX. Within thirty (30) days after the effective date of this Order, Respondent shall provide a cost estimate for the Remedial Program and shall provide financial assurance for

such requirements pursuant to one of the methods set forth in 6 NYCRR 373-2.8(d). Within thirty (30) days after the Department acknowledges completion of the elements of the Remedial Program pursuant to Paragraph XI, Respondent shall provide a cost estimate for the Post-Closure Period, and shall provide financial assurance for such requirements pursuant to one of the methods set forth in 6 NYCRR 373-2.8(f).

XXI. The failure of Respondent to comply with any term of this Order shall constitute a default and a failure to perform an obligation under this Order and under the ECL, provided, however, that there shall be no default for failure to perform technical and/or reporting obligations related to a matter in dispute during a period of dispute resolution pursuant to paragraph IV, or for failure to perform pursuant to the provisions of paragraph XIX.

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

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

b. the Department's right to enforce at law or in equity the terms and conditions of this Order against Respondent, its directors, officers, employees, servants,

agents, successors and assigns in the event that Respondent shall fail to satisfy any of the terms hereof;

c. the Department's right to bring any action at law or in equity against Respondent, its directors, officers, employees, servants, agents, successors and assigns with respect to claims for injuries to natural resources;

d. any legal or equitable rights and defenses Respondent, its directors, officers, employees, servants, agents, successors and assigns may have to defend themselves in any action brought by the Department or any other person.

XXIII. From the effective date of this Order until completion of the work agreed to herein, the Department agrees not to bring any judicial or administrative action against Respondent, its directors, officers, employees, servants, agents, successors and assigns relating to any matters addressed by this Order, except that the Department reserves its rights to enforce the terms and conditions of this Order, and the Department further reserves its right to bring an action or issue an order should any condition or activity at the Site present an imminent danger to the health and welfare of the people of the State or result in or be likely to result in irreversible or irreparable damage to natural resources.

b. If, after review, the Department accepts and approves the engineer's certification that construction of the Remedial Program was completed in accordance with the approved Remedial Design, then, unless a supplement to the

Remedial Program (pursuant to Section IX(f)) is required hereby, and except for the provisions of Section XXV (general indemnification paragraph) hereof, such acceptance shall constitute a full and complete satisfaction and release of each and every claim, demand, remedy or action whatsoever against Respondent, its directors, officers, employees, agents, successors and assigns, which the Department has or may have pursuant to Article 27, Title 9 of the ECL and any and all regulations promulgated thereunder, relative to or arising from the presence of hazardous wastes at the Site; provided, however, that the Department specifically reserves all of its rights concerning, and any such release and satisfaction shall not extend to, any investigation or remediation the Department deems necessary due to:

(1) environmental conditions on-Site or off-Site which are related to the presence of hazardous wastes at the Site and were unknown to the Department at the time of its approval of the certification that construction was completed in accordance with the approved Remedial Design; or

(2) reliable information received, in whole or in part, after the Department's certification that construction was completed in accordance with the approved Remedial Design, and such unknown environmental conditions or information indicates that the Remedial Program is not protective of human health or the environment. The Department shall notify the Respondent of such environmental

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

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

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

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

XXV. Respondent shall indemnify and hold the Department, the State of New York, and their representatives and employees harmless for all claims, suits, actions, damages and costs of every name and description arising out of or resulting from the fulfillment or attempted fulfillment of the terms of this Order by Respondent, its directors, officers, employees, servants, agents, successors or assigns, provided, however, that Respondent does not assume any liability arising from the negligent or intentionally tortious acts or omissions of the Department, the State of

New York, and their representatives and employees during the course of any activities conducted pursuant to this Order. '

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

XXVII. This Order may be amended by mutual agreement of the Department and Respondents. Such amendments shall be in writing and shall have as their effective date that date on which such amendments are signed by the Department.

XXVIII. In the event that Respondent proposes to convey the whole or any part of its ownership interest in the Site, Respondent shall, not fewer than 60 days prior to the consummation of such proposed conveyance, notify the Department in writing of the identity of the transferee and of the nature and date of the proposed conveyance. In advance of such proposed conveyance, Respondent shall notify the transferee in writing, with a copy to the Department, of the applicability of this Order.

XXIX. a. All communication required by this Order to be made between the Department and Respondent shall be made in writing and transmitted by United States Postal Service Return Receipt Requested, or hand delivered to the address listed below. Submissions, notices, and other communications shall be deemed made when postmarked or hand delivered.

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

1. One copy to the Bureau of Hazardous Waste Facility Management, Room 228, 50 Wolf Road, Albany, New York

12233. Attention: Paul Counterman, Bureau Director.

2. One copy to the Division of Environmental Enforcement, Room 415, 50 Wolf Road, Albany, New York 12233. Attention: Dolores Tuohy, Esq.

3. One copy to the NYS Department of Environmental Conservation, Region Seven, 615 Erie Boulevard West, Syracuse, New York 13204. Attention: Tom Male, Regional Engineer.

4. One copy to the NYS Department of Health, 2 University Place, Room 205, Albany, New York 12203. Attention: Ronald Tramontano.

5. One copy to the New York State Department of Health, 677 South Salina Street, Syracuse, New York 13202. Attention: Ron Heerkens.

6. One copy to the United States Environmental Protection Agency, Region II, 26 Federal Plaza, New York, New York 10278. Attention: Andrew Bellina, Chief, Hazardous Waste Facilities Branch, and George Meyer, Chief, Hazardous Compliance Branch.

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

1. Two copies to W. Bailey Barton, Vice President, Environmental Affairs, Borden, Inc., 1050 Kingsmill Parkway, Columbus, Ohio 43229-1143.

2. One copy to Martha E. Horvitz, Regulatory Attorney, Borden, Inc., Law Department - 27th Floor, 180 East Broad Street, Columbus, Ohio 43215.

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

XXX. The terms of this Order shall be deemed to bind the Parties, and their officers, directors, agents, servants, employees, successors and assigns.

XXXI. The Department reserves the right to solicit and/or require the Respondent to solicit public participation before giving final approval to Respondent's Study and/or Remedial Design.

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

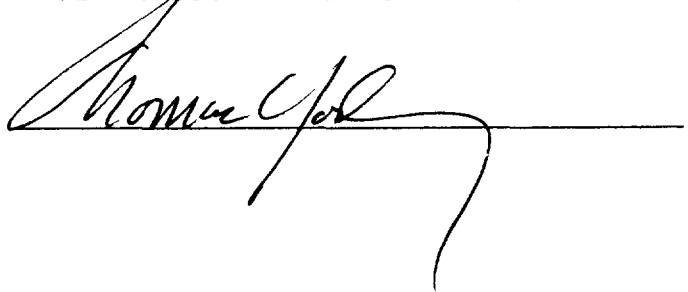
XXXIII. Neither anything contained in this Order nor Respondent's consent to this Order shall constitute an admission of liability or of law or fact by Respondent, or evidence of such, or of the violation of any statute, regulation, ordinance or law. Neither this Order nor the fact of Respondent's consent to this Order may be used in any fashion or admitted into evidence in any proceeding other than to enforce the terms of this Order and in such proceeding, only for the purposes of enforcing this Consent Order, provided that this shall not bar the Department from using any information obtained as a result of work performed pursuant to this Order.

XXXIV. The terms hereof shall constitute the complete and entire Order between Respondent and the Department concerning the Site. No terms, conditions, understandings or agreements

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

DATED: *albany*, New York, 1990 *November 21, 1990*

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

A handwritten signature in dark ink, appearing to read "Thomas C. Jorling", is written over a horizontal line. The signature is stylized with a large, sweeping initial "T" and a long, curved flourish extending to the right.

