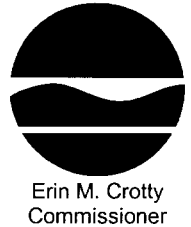


FILE

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New York State Department of Environmental Conservation
Division of Environmental Enforcement
Bureau of State Superfund and Voluntary Cleanup, 14th Floor
625 Broadway, Albany, New York 12233-5550
Phone: (518) 402-9512 • **FAX:** (518) 402-9019
Website: www.dec.state.ny.us



September 20, 2002

Email & Regular Mail

Philip H. Gitlen, Esq.
Whiteman, Osterman & Hanna
One Commerce Plaza
Albany, NY 12260

Re: Honeywell International, Inc. - Onondaga Lake:
Mathews Avenue Landfill PSA/RI/FS Administrative Consent Order
Index No. D7-0007-01-09

Dear Phil:

Enclosed is a fully-executed PSA/RI/FS consent order for the Mathews Avenue Landfill site. The order was signed by the Department today. The signature page of both originals was changed to reflect that Dale Desnoyers signed the order on behalf of the Commissioner. The Department extends its thanks to Honeywell for its assistance in negotiating this Order. If you have any questions regarding these matters please contact me.

Sincerely,

(ORIGINAL SIGNED)

Carol Conyers
Senior Attorney

Encl.

cc (via email only, w/ encl.): Alfred J. Labuz (Honeywell)
Andrew Gershon, Esq. (NYSDOL)
George Shanahan, Esq. (USEPA)

bcc (via email only, w/ encl.): K. Lynch
M.J. Peachey
D. Hesler
B. Conlon
T. Larson (*to pls. forward order to repositories and Onondaga County*)
S. Brooks
C. Conyers (daybook)

EDMS # 55526 (this corresp.)

EDMS # 55730 (Order)

STATE OF NEW YORK: DEPARTMENT OF ENVIRONMENTAL CONSERVATION

-----X
In the Matter of the Development and Implementation
of a Preliminary Site Assessment and Remedial
Investigation/Feasibility Study for a Suspected Inactive
Hazardous Waste Disposal Site, Under Article 27,
Title 13, Article 3, Title 3 and Article 71, Title 27 of the
Environmental Conservation Law of the State of
New York by:

**ORDER ON
CONSENT**

Index # D-7-0007-01-09
(Mathews Avenue Landfill)

Honeywell International Inc.,
Respondent.

-----X
WHEREAS,

1. The New York State Department of Environmental Conservation (the "Department") is responsible for the enforcement of and has authority to investigate inactive hazardous waste disposal sites pursuant to Article 27 of the Environmental Conservation Law of the State of New York ("ECL"). This Order is entered into pursuant to the Department's authority under ECL Article 27; Article 37; Article 71, Title 27; and Article 3, Section 3-0301, and in furtherance of its Cooperative Agreement, as described below, with the United States Environmental Protection Agency ("EPA") pursuant to the Comprehensive Environmental Response, Compensation and Liability Act, as amended by the Superfund Amendments and Reauthorization Act ("CERCLA"), 42 U.S.C. 9601 et seq..

2. Honeywell International Inc., formerly known as AlliedSignal Inc. ("Respondent"), is a corporation organized and existing under the laws of the State of Delaware. Respondent owns property located at the junction of Belle Isle Road and Mathews Avenue in the Village of Solvay, Onondaga County, New York, known as the Mathews Avenue Landfill ("the Site"). Respondent previously operated the Site as a landfill for wastes and debris from its operations. Sampling has documented the presence of contaminants including, but not limited to, mercury and chlorinated benzenes at levels of concern to the Department. A map of the Site is attached as **Appendix A** to this Order.

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

B. Any person under order pursuant to ECL Section 27-1313(3)(a) has a duty imposed by ECL Article 27, Title 13 to carry out the remedial program committed to under order. ECL Section 71-2705 provides that any person who fails to perform any duty imposed by ECL Article 27, Title 13 shall be liable for civil, administrative and/or criminal sanctions.

C. The Department also has the power, *inter alia*, to provide for the prevention and abatement of all water, land, and air pollution (ECL Section 3-0301(1)(i), Articles 17 and 27). 4. Pursuant to ECL §27-1313(1)(a) the Department is responsible for the development of inactive hazardous waste disposal site remedial programs.

4. The Department and Respondent agree that the goals of this Order are for Respondent: (i) to develop and implement a Preliminary Site Assessment ("PSA") to gather data to enable the Department to characterize hazardous wastes or hazardous substances which are or may be present at the Site; ii) depending on the results of the PSA and the corresponding determination made by the Department pursuant to Paragraph IV of this Consent Order, to develop and implement a Remedial Investigation/Feasibility Study ("RI/FS") for the Site; (iii) to perform any mutually agreed upon Interim Remedial Measures ("IRMs"); and (iv) to reimburse the Department's administrative costs associated with the PSA, any RI/FS required to be performed, and any IRMs agreed to be performed.

5. Respondent, having waived its right to a hearing in this matter 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.

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

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

I. Initial Submittals

A. Within 30 days after the effective date of this Order, Respondent shall submit to the Department all data within Respondent's possession or control, or under the possession or control of Respondent's consultants or other agents, regarding environmental conditions at and emanating from the Site, and other information described below, except to the extent that the Respondent identifies to the Department the portion of the documents previously provided to the Department which contain such information and data. The data and other information to be submitted shall include:

1. A brief history and description of the Site, including the nature of operations (past and present) at the Site, the types, quantities, physical state, location, methods and dates of disposal of all hazardous waste and hazardous substances at the Site (including spillage of such wastes); and a description of current Site security (*e.g.*, fencing, posting).

2. A concise summary of information held by Respondent and Respondent's attorneys, consultants and other agents with respect to all persons responsible for such disposal

of hazardous wastes and hazardous substances, including but not limited to names, addresses, dates of disposal and any proof linking each such person responsible with the hazardous wastes and hazardous substances identified pursuant to Subparagraph I.A.1;

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

4. An 8.5-inch by 11-inch portion of a United States Geological Survey topographic map of the Site which contains the name of the quadrangle and an arrow indicating the orientation of a northern compass point.

II. Preliminary Site Assessment Contents and Submittals

A. 1. Within 30 days after the effective date of this Order, Respondent shall submit to the Department a detailed work plan for the implementation of a Preliminary Site Assessment ("PSA Work Plan") at the Site.

2. The PSA Work Plan shall describe the methods and procedures to be used in implementing a PSA.

B. 1. The PSA Work Plan shall include, but not be limited to, the following:

a. A Site-specific description of field activities together with a schedule for performance of these activities;

b. A Sampling and Analysis Plan for the Site which shall consist of a copy of the Sampling and Analysis Plan previously approved for Willis Avenue and included in the document entitled, *O'Brien & Gere, Inc., October 1990, Work Plan, Remedial Investigation/Feasibility Study: Willis Avenue Plant, Petroleum Storage Facility and Associated "Hot Spots," Geddes, New York*. The document referred to in this subparagraph II.B.1.b shall be referred to herein as the "Sampling and Analysis Plan," which shall also include:

i. A Quality Assurance Project Plan ("QAPP") 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 describe such individual's qualifications and experience and shall consist of an updated modification of the QAPP previously approved for Willis Avenue and entitled, *O'Brien & Gere, Inc., November 1990, QAPP, Remedial Investigation/Feasibility Study: Willis Avenue Plant, Petroleum Storage Facility and Associated "Hot Spots," Geddes, New York*. The updated QAPP shall be prepared consistent with *EPA Requirements for Quality Assurance Project Plans (EPA QA/R-5)*, Final, March, 2001 (see www.epa.gov/quality1/qa_docs.html); and

ii. A Field Sampling Plan that shall consist of a modification of the Field Sampling Plan entitled *O'Brien & Gere, Inc., May 1997, Supplemental Remedial Investigation: Willis Avenue Chlorobenzene Site, Geddes, New York* as necessary to describe the field sampling activities proposed at the Site in a manner consistent with the *Compendium of Superfund Field Operations Method* (EPA/540/P-87/001, OSWER Directive 9355.0-14, December 1987), as amended and supplemented by EPA, and other applicable Department and EPA guidance.

c. A Health and Safety Plan to protect persons at and in the vicinity of the Site during the performance of the PSA which shall consist of a modification of the Willis Avenue Chlorobenzene Site Health and Safety Plan to include additional MSDS information for the constituents of concern at the Site. The Willis Avenue Plan shall be modified in order to serve as the Health and Safety Plan for this Site in accordance with 29 CFR 1910 (and all other applicable requirements) by a certified Health and Safety professional. Respondent shall provide supplements to this Health and Safety Plan as necessary to ensure the health and safety of all persons at and in the vicinity of the Site during the performance of any work pursuant to this Order

2. The PSA Work Plan also shall satisfy the requirements for Phase II investigations identified in Division of Hazardous Waste Remediation Technical and Administrative Guidance Memoranda 4007 and 4008 and other appropriate Department technical and administrative guidelines that shall have been developed as of the time of submission of the PSA Work Plan.

III. Performance and Reporting of PSA

A. Within 30 days after the Department's approval of the PSA Work Plan, Respondent shall commence the PSA.

B. Respondent shall perform the PSA in accordance with the Department-approved PSA Work Plan.

C. During the performance of PSA field work, Respondent shall have on-Site a full-time representative who is qualified to supervise the work done.

D. Respondent shall prepare a PSA Report that shall:

1. Include all data generated and all other information obtained during the PSA;

2. Provide all of the assessments and evaluations set forth in the guidance documents referred to in Subparagraph II.B.2;

3. Identify any additional data that must be collected;

4. Include information satisfying Step 1 of the Department's *Fish and Wildlife Impact Analysis, October 1994* ("FWIA"), as referenced in the Department's guidance document entitled, *Generic Ecological Risk Assessment Guidance for Onondaga Lake Sites*, revised April 7, 1998;

5. Include a reference, in all sample data supplied, to the geographic location of the sample point. Such location information must be referenced to either the New York Transverse Mercator or New York State Plane Coordinate System. All vertical data shall be referenced to the National Geodetic Vertical Datum ("NGVD"), 1929 adjustment; and

6. Include a certification by the individual or firm with primary responsibility for the day to day performance of the PSA that all activities that comprised the PSA were performed in full accordance with the approved PSA Work Plan.

IV. RI/FS Work Plan Contents and Submittals

A. Respondent shall perform an RI/FS upon the Department's direction to do so if the Department determines, as a result of reviewing the PSA submittal(s), data generated by an activity required under Paragraphs I-III of this Order, or as a result of reviewing any other data or facts, that hazardous wastes or hazardous substances are present at the Site and that the Department's evaluation of the presence or release of hazardous wastes and/or hazardous substances identifies a need for an RI/FS pursuant to the ECL and/or CERCLA.

B. Within 30 days after the Department issues any determination that Respondent is to perform an RI/FS, Respondent shall prepare and submit to the Department a detailed work plan describing how the PSA submittal(s) will be supplemented by the collection of additional data, if necessary, and modified to comply with CERCLA guidance for the preparation of an RI/FS for the Site ("RI/FS Work Plan").

C. 1. The RI/FS Work Plan shall include, but not be limited to, the following elements, one or more of which may, in the exercise of the Department's reasonable discretion, consist, in part or in its entirety, of submittal(s) previously approved by the Department:

a. A Site-specific description of field activities together with a schedule for performance of these activities;

b. A Sampling and Analysis Plan consisting of the documentation set forth in Subparagraph II.B.1.b above;

c. A Health and Safety Plan to protect persons at and in the vicinity of the Site during the performance of the RI/FS which shall be prepared in accordance with 29 CFR 1910 and all other applicable standards by a certified health and safety professional. Respondent shall add supplemental items to this Health and Safety Plan as necessary to ensure the health and safety of all persons at or in the vicinity of the Site during the performance of any

work pursuant to this Order;

d. A Citizen Participation Plan that is, at a minimum, consistent with the Department's publication, *New York State Inactive Hazardous Waste Site Citizen Participation Plan*, dated June, 1998, as amended and supplemented; and

e. A report documenting Respondent's completion of the work that shall have been performed prior to the implementation of the RI/FS Work Plan, as set forth in the Department's guidance document entitled *Generic Ecological Risk Assessment Guidance for Onondaga Lake Sites*, revised April 7, 1998.

2. The RI/FS Work Plan shall incorporate all elements of an RI/FS as set forth in CERCLA, as amended, the National Oil and Hazardous Substances Pollution Contingency Plan ("NCP") of March 8, 1990 (40 CFR Part 300), as amended, the EPA guidance document entitled *Guidance for Conducting Remedial Investigations and Feasibility Studies under CERCLA*, dated October 1988, and any subsequent revisions to that guidance document in effect at the time the RI/FS Work Plan is submitted, and appropriate EPA and Department technical and administrative guidance documents, including guidance regarding the performance of risk assessments, including the Department's guidance document entitled, *Generic Ecological Risk Assessment Guidance for Onondaga Lake Sites*, revised April 7, 1998.

V. Performance and Reporting of Remedial Investigation

A. Within 30 days after the Department's approval of the RI/FS Work Plan, Respondent shall commence the Remedial Investigation ("RI").

B. Respondent shall perform the RI in accordance with the Department-approved RI/FS Work Plan.

C. During the performance of the RI, Respondent shall have on-Site a full-time representative who is qualified to supervise the work done.

D. Within the time frame set forth in the RI/FS Work Plan, Respondent shall prepare and submit a Remedial Investigation Report ("RIR") that shall:

1. include all data generated and all other information obtained during the RI;
2. provide all of the assessments and evaluations set forth in CERCLA, the NCP, and the guidance documents identified in Subparagraph IV.C.2;
3. identify any additional data that must be collected;
4. include a certification by the individual or firm with primary responsibility for the day to day performance of the RI that all activities that comprised the RI were performed

in full accordance with the Department-approved RI/FS Work Plan; and

5. include a reference to the geographic location of the sampling point for all sample data supplied. Such location information must be referenced to either the New York Transverse Mercator or New York State Plane Coordinate System. All vertical data shall be referenced to the NGVD, 1929 adjustment.

VI. Human Health Risk Assessment

A. Respondent shall perform the Human Health Risk Assessment ("HHRA") in accordance with the approved RI/FS Work Plan, all applicable EPA and Departmental guidance or policy documents in effect at the time of performance of the HHRA, including, but not limited to, the guidance document identified in Subparagraph IV.C.2, and the *Risk Assessment Guidance for Superfund*, Vol. 1, Human Health Evaluation Manual, Part A (1989), B (1991), C (1991), and D (1998), and in a manner consistent with CERCLA and the NCP.

B. Within the time frame set forth in the approved RI/FS Work Plan, Respondent shall prepare and submit to the Department an HHRA Report that complies with the provisions of Subparagraph V.D as applied to the Human Health Risk Assessment component of the RI.

VII. Ecological Risk Assessment

A. Respondent shall perform an Ecological Risk Assessment ("ERA") in accordance with the approved RI/FS Work Plan, all applicable EPA and Departmental guidance or policy documents in effect at the time of performance of the ERA, including, but not limited to, the guidance documents identified in Subparagraph IV.C.2, and in a manner consistent with CERCLA and the NCP.

B. Within the time frame set forth in the approved RI/FS Work Plan, Respondent shall prepare and submit to the Department the appropriate ERA deliverables (required by the guidance identified in Subparagraph VII.A, above), including an ERA Report, that comply with the provisions of Subparagraph V.D as applied to the ERA component of the RI.

VIII. Feasibility Study

A. Within 60 days after receipt of the Department's approval of the RIR, Respondent shall submit a Feasibility Study ("FS") report evaluating remedial actions to eliminate, to the maximum extent practicable, all health and environmental hazards and potential hazards attributable to hazardous waste disposal at the Site. The FS report shall be prepared by and have the signature and seal of a professional engineer who shall certify that the FS was prepared in accordance with this Order.

B. Respondent shall perform and prepare the FS in accordance with the Department-approved RI/FS Work Plan and in a manner consistent with CERCLA, as amended, the NCP, and the guidance documents identified in Subparagraph IV.C.2.

C. Respondent shall cooperate with and assist the Department in soliciting public comment on the proposed remedial action plan that the Department prepares in accordance with CERCLA, the NCP, the guidance documents identified in Subparagraph IV.C.2, and with any Department policy and guidance documents in effect at the time the public comment period is initiated. After the close of the public comment period, the Department shall select a final remedial alternative for the site in a Record of Decision ("ROD").

IX. Interim Remedial Measures

A. Before the selection of a remedy for the Site in a ROD, the Department or Respondent may propose, for mutual agreement of the parties, IRMs for the Site on an as-needed basis. Upon mutual agreement that an IRM will be performed, Respondent shall submit to the Department a work plan ("IRM Work Plan") which shall include a chronological description of the anticipated IRM activities together with a schedule for the performance of those activities. Upon the Department's determination that a proposal submitted by Respondent is an appropriate IRM, and its approval of a corresponding IRM Work Plan, or upon the Department's approval of an IRM Work Plan associated with a proposal of the Department (which has been agreed to by Respondent), the IRM Work Plan shall be incorporated into and become an enforceable part of this Order.

B. In accordance with the schedule contained in the Department-approved IRM Work Plan, Respondent shall submit to the Department for its review and approval, detailed documents and specifications prepared, signed and sealed by a professional engineer to implement the Department-approved IRM. Such documents shall include health and safety plans and contingency plans, as well as (if the Department requires such) a citizen participation plan that incorporates appropriate activities outlined in the Department's publication entitled, *Citizen Participation in New York's Hazardous Waste Site Remediation Program: A Guidebook*, dated June, 1998, and any subsequent revisions thereto, and 6 NYCRR Part 375, as amended. Respondent shall then carry out such IRM in accordance with the requirements of the approved IRM Work Plan, detailed documents and specifications, and this Order. During implementation of all construction activities identified in the Department-approved IRM Work Plan, Respondent shall have on Site a full-time representative who is qualified to supervise the work done.

C. In accordance with the schedule contained in the Department-approved IRM Work Plan, Respondent shall submit to the Department a final engineering report prepared by a professional engineer that includes a certification by the individual that all activities that comprised the IRM were performed in full accordance with the Department-approved IRM Work Plan, detailed documents and specifications, and this Order. The report shall include all data generated, if any, and any manifests and documents generated under the IRM Work Plan, and a brief summary of the activities conducted, including waste removal, storage, disposal, handling

and characterization ("Final IRM Engineering Report and Certification"). Subsequent to the submission of the Final IRM Engineering Report and Certification, and within the schedule contained in the Department-approved IRM Work Plan, Respondent shall submit to the Department, if applicable, a report or reports documenting the performance of the IRM ("Operations and Maintenance Report"). Respondent shall notify the Department of any significant difficulties that may be encountered in implementing the Department-approved IRM Work Plan, detailed documents or specifications, and shall not modify any obligation unless first approved by the Department.

X. Progress Reports

A. Respondent shall submit to the parties set forth in Paragraph XIX copies of written monthly progress reports that:

1. Describe the actions which have been taken toward achieving compliance with this Order during the previous month;

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 month, 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 month;

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

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

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

7. Describe all activities undertaken in support of the Citizen Participation Plan during the previous month and those to be undertaken in the next under this Order.

B. Respondent shall submit these progress reports to the Department by the 10th day of every month following the effective date of this Order.

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.

XI. 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 Health and Safety Plan submittals discussed in Subparagraphs II.B.1.c and IV.C.1.c. All Department-approved submittals shall be incorporated into and become an enforceable part of this Order.

2. The Onondaga Lake Site was added to the National Priorities List ("NPL") on December 16, 1994. The Onondaga Lake NPL Site is composed of the Lake itself, its tributaries and upland hazardous substance sites which have contributed or are contributing contamination to the Lake (subsites). The Department and EPA have entered into a Cooperative Agreement pursuant to which EPA has designated the Department as the lead agency with respect to the Onondaga Lake Site and its subsites. Therefore, the Department shall seek EPA's written comments on all of the required submittals under this Order.

3. a. If the Department disapproves a submittal, it shall so notify Respondent in writing and shall specify the reasons for its disapproval. Within 30 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 approves the revised submittal, it shall be incorporated into and become an enforceable part of this Order. If the Department disapproves the revised submittal, unless Respondent proceeds under the Dispute Resolution Paragraph below, 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.

B. The Department may, in accordance with applicable provisions of law, rule or regulation, require Respondent to modify and/or amplify and expand a submittal, and to perform any corresponding additional work required, 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.

XII. Dispute Resolution

A. The Department's disapproval of a revised submittal and determinations made by the Department under Subparagraphs IV.A (necessity of RI/FS), XI.B. (modification, amplification, expansion of a submittal and performance of corresponding additional work) or XVIII.A (alternative means of notice) of this Order are subject to dispute resolution pursuant to this Paragraph X. Respondent shall be in violation of this Order unless, within 10 business days of receipt of the Department's notice of disapproval of a submittal, Respondent requests the appointment of an Administrative Law Judge ("ALJ") for the purpose of dispute resolution as set forth under this Paragraph and serves on the Department's Office of Hearings and Mediation ("OH&M") and the Department's Director of the Division of Environmental Remediation ("the Director") 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"). A determination by the Department under Subparagraphs IV.A, XI.B and/or XVIII.A of this Order shall also be subject to dispute resolution pursuant to this Paragraph XII by the Respondent serving on OH&M and the Director a Statement of Position within 10 business days of receipt of the Department's determination. The Department shall serve its Statement of Position, including supporting documentation, no later than ten business (10) days after receipt of Respondent's Statement of Position. Respondent shall have five (5) business days after receipt of the Department's Statement of Position within which to serve upon the OH&M and the Director a reply to the Department's Statement of Position, and in the event Respondent serves such a reply, the Department shall have five (5) business days after receipt of Respondent's reply to the Department's Statement of Position within which to serve upon 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 a delay in the work being performed under this Order, the time periods may be shortened upon and in accordance with notice by the Department to OH&M and the Director as agreed to by Respondent. OH&M shall review the Statements submitted for the limited purpose of preparing and submitting a report and recommendation to the Director. Nothing in this Paragraph shall be construed as an agreement by the parties to resolve disputes through administrative law proceedings pursuant to the ECL, 6 NYCRR Parts 622 or 375.2.1.

B. 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 Subparagraph, and any relevant information. The record shall be available for review of all parties and the public, consistent with the Freedom of Information Law (New York Public Officers Law Article 6).

C. Upon review of the administrative record as developed pursuant to this Paragraph, the ALJ shall prepare and submit a report and recommendation to the Director. The Director shall issue a final decision and order resolving the dispute.

D. Respondent shall revise the relevant submittal in accordance with the Department's specific comments, as may be modified by the Director and except for those which

have been withdrawn by the Director, and shall submit a revised submittal. The period of time within which the submittal must be revised as specified by the Department in its notice of disapproval shall control unless the Director revises the time frame in the Director's final decision and order resolving the dispute.

E. After receipt of the revised submittal, the Department shall notify Respondent in writing of its approval or disapproval of the revised submittal.

F. If the revised submittal fails to address the Department's specific comments, as modified, and the Department disapproves the revised submittal for this reason, Respondent shall be in violation of this Order and the ECL.

G. If Respondent fails to abide by the final decision of the Director concerning a determination under Subparagraphs IV.A, XI.B or XVIII.A within 5 days or such other period as the Director may prescribe in the final decision resolving the dispute, Respondent shall be in violation of this Order and applicable law.

H. In review by the Director of any dispute pursued under this Paragraph, Respondent shall have the burden of proving that the Department's position is arbitrary, capricious and not in accordance with law.

I. The invocation of formal dispute resolution procedures under this Paragraph shall not of itself extend, postpone or affect Respondent's obligations under this Order. 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 administrative remedies which may otherwise be available to Respondent regarding the issue in dispute. Any judicial appeal of this process must be made within thirty days after the decision appealed from.

J. In the event that the Department disapproves a revised submittal or Respondent is otherwise found to be in violation of this Order, the Department retains any and all rights pursuant to CERCLA and the ECL to conduct a complete PSA, RI/FS and any IRMs and seek full reimbursement from the Respondent, including any administrative costs previously incurred by the Department while overseeing the Respondent's efforts. If the Department conducts such work, Respondent is still required to preserve any records pertaining to Site work, RI/FS work and IRM work already conducted.

XIII. Force Majeure

Respondent's failure to comply with any term of this Order constitutes a violation of this Order. 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 an event (including prohibitively severe or extraordinary weather conditions which materially interfere with implementation of the Remedial Program) beyond the control of Respondent or its

agents in carrying out Respondent's obligations under this Order ("Force Majeure Event"). A Force Majeure Event specifically excludes a lack of sufficient financial resources. Respondent shall, within five 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 five-day period constitutes a waiver of any claim that a delay is not a violation of this Order. Respondent shall have the burden of proving that an event is a defense to compliance with this Order pursuant to this subparagraph.

XIV. Entry upon Site

Respondent hereby consents to the entry upon the Site or areas in the vicinity of the Site which may be under the control of the Respondent upon notice which is reasonable under the circumstances presented by any duly designated employee, consultant, contractor, or agent of the Department or any State agency, as well as by EPA and its designated representatives or agents, for purposes of inspection, sampling, and testing and to ensure Respondent's compliance with this Order. Respondent shall permit the Department full access to all records relating to matters addressed by this Order and job meetings.

XV. Payment of Department Costs

A. Within 30 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 up to and following 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.

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.

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

Honeywell International Inc.
5000 Brittonfield Parkway, Suite 700
East Syracuse, NY 13057

Attn: Alfred A. Labuz

D. Such payment shall be made by certified check payable to the Department of Environmental Conservation and shall be sent to:

Bureau of Program Management
Attn: Bureau Director
Division of Environmental Remediation
New York State Department of Environmental Conservation
625 Broadway, 12th Floor
Albany, NY 12233-7016

E. Each party shall notify the other within 90 days of any change in the foregoing addresses.

F. Respondent may contest, in writing, invoiced costs if it believes (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 entitled to recover such costs from Respondent under the ECL, the New York State Finance Law, the NYCRR, CERCLA, the Cooperative Agreement or any other statutory, regulatory or common law provisions. 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 identify the basis of the objection. This objection shall be filed with the Division of Environmental Remediation's Director of the Bureau of Program Management. This Director or the Director's designee shall have the authority to relieve Respondent of the obligation to pay invalid costs. Within forty-five (45) Days after the date of the Department's determination of the objection, Respondent shall pay to the Department the amount which the Director or the Director's designee determines Respondent is obligated to pay or commence an action or proceeding seeking appropriate judicial relief.

XVI. Reservations of Rights

A. Nothing contained in this Order shall be construed as barring, diminishing, adjudicating, or in any way affecting any of the Department's rights including, but not limited to nor exemplified by, the following:

1. Any right of the Department to bring any action or proceeding against anyone other than Respondent and/or any of Respondent's directors, officers, employees, servants, agents, successors, and assigns;

2. Any right of the Department to enforce this Order against Respondent and/or any of Respondent's directors, officers, employees, servants, agents, successors, and assigns if Respondent fails to satisfy any of the terms of this Order;

3. Any right of the Department to bring any action or proceeding against Respondent and/or any of Respondent's directors, officers, employees, servants, agents, successors, and assigns with respect to claims for natural resources damages as a result of the release or threatened release of hazardous substances or constituents at or from the Site or areas in the vicinity of the Site;

4. Any right of the Department to bring any action or proceeding against Respondent and/or any of Respondent's directors, officers, employees, servants, agents, successors, and assigns with respect to hazardous substances that are present at the Site or that have migrated from the Site;

5. Any right of the Department to bring any criminal action against the Respondent and/or any of Respondent's directors, officers, employees, servants, agents, successors, and assigns; and

6. Any right of the Department to gather information and enter and inspect property and premises.

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

C. Except as provided in this Order, nothing contained herein shall be construed as barring, diminishing, adjudicating or in any way affecting:

1. Any equitable or legal rights, claims, causes of action, demands or defenses whatsoever that Respondent may have against the Department;

2. Any rights that Respondent may have to contest any allegation of violation of this Order;

3. Any equitable or legal rights, claims, causes of action, demands or defenses whatsoever that Respondent may have against any persons or entities that are not parties to this Order; and

4. Any rights the Respondent may have under CERCLA and the ECL to challenge the ROD issued with respect to the Site.

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 Respondent's directors, officers, employees, servants, agents,

successors, and assigns; provided, however, that Respondent shall not 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 the gross negligence or recklessness, wanton or intentional misconduct or any criminal act by the Department, the State of New York, and their representatives and employees during the course of any activities conducted pursuant to this Order.

XVIII. Public Notice

A. Within 30 days after the effective date of this Order, Respondent shall, for those portions of the Site for which it has an ownership interest: (i) file a Declaration of Covenants and Restrictions with the Onondaga County Clerk; and (ii) send a copy of the filed document to the Department. Respondent shall file a Declaration of Covenants and Restrictions and send a copy of the filed document to the Department for those portions of the Site to which it acquires an ownership interest after the effective date of this Order within 30 days after acquiring that interest. For parcels for which an ownership interest may not be recorded with Onondaga County or Respondent is unable to determine the ownership, Respondent shall, within the applicable 30-day period, notify the Department in writing and propose for the Department's approval an alternative method of providing notice, which approval shall not be unreasonably withheld. Any rejection by the Department of Respondent's proposed method of notice is subject to Dispute Resolution.

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

XIX. Communications

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

B. Written communications enclosing data, reports or deliverables shall be sent as follows:

-Five copies to: [Of the five copies, one shall be an unbound hard copy with associated figures; and one shall be an electronic copy on 3 ½" computer disks, compact disk(s) or PC compatible Iomega® Zip™ Disk(s)). The electronic copy shall contain all text in Word Perfect version 6.1 or newer format (Windows 95), all spreadsheet tables in Excel version 97 or newer format (Windows 95) and all figures in either WordPerfect version 6.1 or newer format (Windows 95), Excel version 97 or newer format (Windows

95) or AutoCad LT version 3.0 or newer (Windows 95)]

Timothy Larson, Project Manager
Division of Environmental Remediation
New York State Department of Environmental Conservation
625 Broadway, 12th Floor
Albany, New York 12233-7016

-Four copies to: Robert Nunes
United States Environmental Protection Agency
Region II
290 Broadway, 20th Floor
New York, NY 10007-1866

-One copy to: Reginald Parker
New York State Department of Environmental Conservation
615 Erie Boulevard West, Region 7
Syracuse, NY 13204-2400

Henriette M. Hamel
New York State Department of Health
217 South Salina Street, 3rd Floor
Syracuse, NY 13202

Michael Rivara
New York State Department of Health
547 River Street
Troy, New York 12180

-Respondent shall submit two additional copies of department-approved documents to Richard Mustico for placement in public repositories.

-Copy of transmittal letters only to:

Carol Conyers, Esq.
New York State Department of Environmental Conservation
Division of Environmental Enforcement
625 Broadway, 14th Floor
Albany, NY 12233-5500

George A. Shanahan, Esq.
United States Environmental Protection Agency
Region II
290 Broadway, 17th Floor
New York, NY 10007-1866

C. Correspondence, including progress reports, which do not contain data, reports or deliverables need not be sent in electronic format and only one copy needs to be sent to each party listed in Subparagraph XIX.B above.

D. Written communications from the Department to the Respondent shall be sent to:

Honeywell International Inc.
5000 Brittonfield Parkway, Suite 700
East Syracuse, NY 13057

Attn: Alfred J. Labuz

With a copy to:

Honeywell International Inc.
Law Department
PO Box 2245R
Morristown, NJ 07962-2245

Attn: Gordon D. Quin, Esq.

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

XX. Miscellaneous

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

B. Respondent shall retain professional consultants, contractors, laboratories, quality assurance/quality control personnel, and data validators to perform the technical, engineering, and analytical obligations required by this Order. The names, experience, capabilities, and qualifications of the firms or individuals selected by Respondent shall be submitted to the Department within 10 days after the effective date of this Order. 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, or otherwise, and shall submit these results in the progress reports required by this Order.

D. All data gathered for utilization during the PSA and any RI/FS and IRMs is to be transmitted to the Department in electronic format in accordance with the guidelines set forth in **Appendix B** to this Order.

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

F. Respondent shall obtain all permits, easements, rights-of-way, rights-of-entry, approvals, or other authorizations necessary to perform Respondent's obligations under this Order except that the Department may exempt Respondent from the requirement to obtain any permit issued by the Department for any activity that is conducted on the Site and that the Department determines satisfies all substantive technical requirements applicable to like activity conducted pursuant to a permit. Respondent shall obtain whatever permits, easements, rights-of-way, rights-of-entry, approvals, or authorizations are necessary to perform Respondent's obligations under this Order. If any access required to perform this Order is not obtained, despite all reasonable efforts, Respondent shall promptly notify the Department, and shall include in that notification a summary of the steps Respondent has taken to attempt to obtain access, within 45 days after: (i) the effective date of this Order; and (ii) the date, if any, upon which the scope(s) of the PSA, RI/FS and/or IRM change with the Department's approval, where such change(s) cause Respondent to require access from one or more additional owners. The Department may, as it deems appropriate, assist Respondent in obtaining access. Respondent shall reimburse the Department, in accordance with the procedures in Paragraph XV, for all costs incurred by the Department in obtaining access, including, but not limited to, attorneys fees of the Department.

G. Respondent and Respondent's officers, directors, agents, servants, employees, 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. Nothing contained in this Order shall be construed as barring, diminishing, adjudicating, or in any way affecting the rights of any entity that is not a party to this Order.

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

I. 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.

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

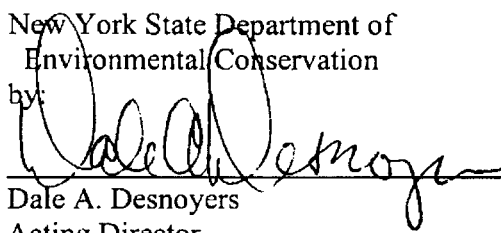
K. The section headings set forth in this Order are included for convenience of reference only and shall be disregarded in the construction and interpretation of any of the provisions of this Order.

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

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

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

DATED: Albany, New York
4/20, 2002

ERIN M. CROTTY
Commissioner
New York State Department of
Environmental Conservation
by: 
Dale A. Desnoyers
Acting Director
Division of Environmental Remediation

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: Alfred J. Labuz
(SIGN NAME)

ALFRED J. LABUZ
(TYPE NAME)

Title: SITE LEADER

Company: HONEYWELL INTERNATIONAL INC.

Date: September 13, 2002

STATE OF NEW YORK)
) s.s.:
COUNTY OF ONONDAGA)

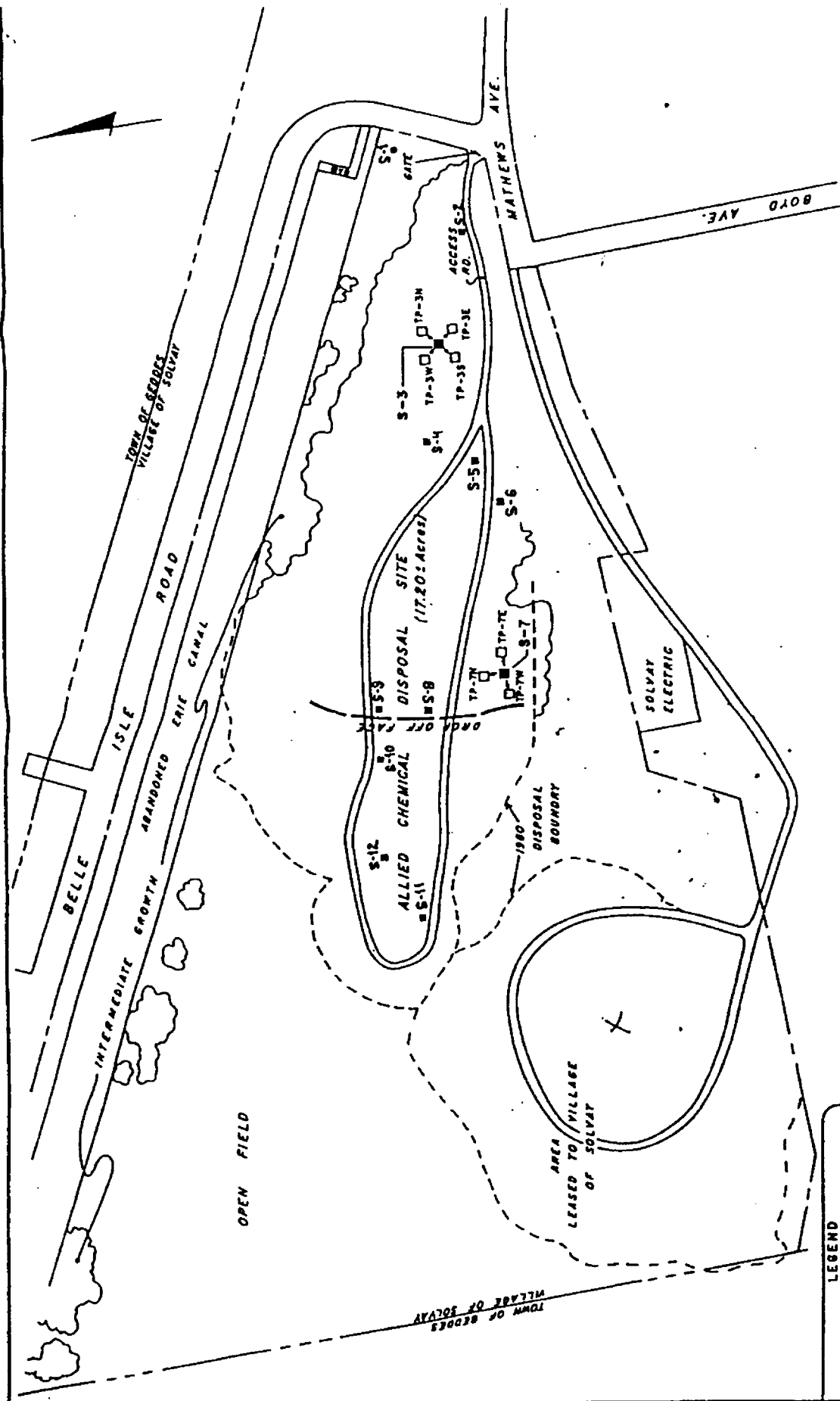
On the 13th day of September, in the year 2002, before me, the undersigned, personally appeared, Alfred J. Labuz, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Margaret Hermann
Notary Public

MARGARET A. HERMANN
Notary Public, State of New York
Qualified in Onon. Co. No. 4870360
Commission Expires Sept. 2, 2006

APPENDIX A

Site Map



LEGEND

■ FORMER TEST PIT (2/89)

□ NEW TEST PIT (9/89)

ALL LOCATIONS ARE APPROXIMATE

NOTE: MAP PREPARED FROM "FILLIS WASTE STATION, MATHAWS AVE., CONSTRUCTION & DEMOLITION BEHIND DISPOSAL SITE" UP-0000-2 BY THE NATIONAL DEFENSE INT., ALLIED CHEM. CORP., NY. PRELIMINARY MAP SCALE 1"=100'. DATED 6/10/89

BLASLAND & BOUCE
ENGINEERS, P.C.
Buffalo, New York
Village of Solvay, New York

ALLIED CHEMICAL CORPORATION
SOLVAY, NEW YORK
MATHAWS AVE. LANDFILL
TEST PIT LOCATIONS

FIGURE

File No 131.25

Date received 12. 1989

SCALE 1"=100'

APPENDIX B

In accordance with Subparagraph XX.D of this Consent Order, all data gathered for utilization during the PSA and any RI/FS and IRM(s) is to be transmitted to the Department in electronic format in accordance with the guidelines set forth below.

A. Analytical Data

All analytical data should be provided in both a hard copy format as well as an electronic format. Two (2) copies of each data file should be submitted in either a PC-based spreadsheet format, *e.g.*, *.xls files, or a database format, *e.g.*, *.dbf files. The data files shall include all available sample description and location information in one table and laboratory results in another table and be linkable by a sample identification code. The following should also be provided: hard copy/electronic copy of SAP/QAPP and hard copies of field notes and chain of custody forms.

Sample Information:

The sample information table should include the fields (columns) identified below, where applicable. For spreadsheet files, the field names are the column headings and each sample would occupy one row (record).

- **Sample ID** The sample identifier should be unique for a given environmental sample for a specific location (both horizontal and vertical), time, and matrix
- **Station ID** Abbreviated description of sample location (*e.g.*, well number [MW101], sediment location [SD8], etc.).
- **Sample Type** Field duplicate, MS/MSD, field blank, trip blank, split sample, spatial composite, temporal composite. If other sample types are collected, provide a description.
- **Date Collected**
- **Time Collected**
- **Sample Matrix** The two-character codes should be used.
- **Location** Full description of sample location, including water body name, well number if different from Station ID field, outfall pipe description etc.
- **Sampling Method** Grab, core, etc.
- **Northing** Defines sample location; coordinate system based on NAD 27 datum, Universal Transverse Mercator coordinate (UTM) or NY State Plane in feet

- Easting Defines sample location; coordinate system based on NAD 27 datum, Universal Transverse Mercator coordinate (UTM) or NY State Plane in feet.
- Survey Descriptor of the manner in which the coordinates were determined and the accuracy thereof, *i.e.*, field survey, GPS, scaled off a base map, etc.
- Base Elevation Defines vertical position; elevation referenced to USGS/NGVD 1929 datum.
- Depth Distance above (+) or below (-) base elevation to define the depth of the sample.
- Unit Increment Unit of the depth increment (cm, inches, ft, etc.).
- Reference Point The type of reference point from which the increment is measured, *i.e.*, ground surface (or top of well casing for groundwater sample), water surface, or sediment/water interface.
- Sample Desc. Any additional text to further define the sample, *e.g.*, river mile locations on a tributary, species, length and weight for a biota sample, etc. should be placed in additional, clearly designated fields.

Analytical Data:

The results of analyses for all parameters analyzed (including physical, conventional, and non-conventional parameters) should be included in this table in the following fields (columns), where applicable. Similar to the sample information table, the following fields should be the column headings. For a given sample, each parameter analyzed should be in a separate row and not spread across the columns as separate field names. For example, if ten parameters are analyzed in a single sample, there should be ten rows (records) with the same Sample ID and each of the ten rows would have a unique parameter and value/concentration, as defined below.

- Sample ID Sample ID as stated above to provide linkage
- Parameter Physical or chemical parameter name, *e.g.*, flow/discharge, pH, conductivity, DO, TOC, fish weight, benzene, methyl-mercury, lead, total-PCB, etc. (provide "PARMSORT.DBF" file).
- CAS Number Chemical Abstract No. (if applicable)
- Value Concentration or other measured value

- Unit Units of measurement (mg/L, pg/gm, cfs, etc.)
- Qualifier Data qualifier assigned by laboratory/validator
- Technique Analytical method used
- Validation Validation status (Y/N)
- Laboratory Name of laboratory performing analysis
- Analysis Date Date of analysis if not identical to date of collection

For file-size considerations, the analytical data tables can be separated by sample matrix, e.g., separate tables for sediment data, water data, groundwater data, biota data, etc. However, each table should be structured as defined above.

B. Facility/Site Maps

The PRP shall provide to the Department both paper copies and electronic files of drawings showing the facility/Site. Five (5) sets of paper copies should be provided as well as two (2) copies of each file in an AutoCAD format. Map data used to produce the Site-feature maps should not be taken from maps of smaller scale than 1:24,000. USGS and NYSDOT, 7.5 minute quadrangle maps at 1:24,000 scale are acceptable, but 1:100,000 and 1:250,000 scale maps are not. Lines and points should be located to an accuracy of 25 feet. The Site-feature maps should include, at a minimum, property lines, building locations (including manufacturing areas and waste handling/wastewater treatment areas), topographic and groundwater elevation contours (if available), locations of sewer lines (process, sanitary or combined), storm drains, manholes, outfalls to a receiving water body and sampling locations such as monitoring wells. Each of these features should be included on separate layers. Appropriate text descriptions of the features shall be included in each layer. A printout of the layer names and descriptions should be provided. Drawing title boxes should be included on both hard copies and the electronic files. The title boxes should include the name and address (including lot and block numbers) of the facility/Site as well as the name and address of the drawing preparers.

All position data shall be referenced to either the New York Transverse Mercator or New York State Plane Coordinate Systems. All vertical data shall be referenced to the National Geodetic Vertical Datum (NGVD), 1929 Adjustment. A grid system should be used with coordinates clearly identified. In addition, the maps and files should include the locations and coordinates of survey control monuments and benchmarks with surveyor recovery notes. The drawings should be created using real, one-to-one, distances (ft.), *i.e.*, not scaled. Units should use the AutoCAD decimal option.