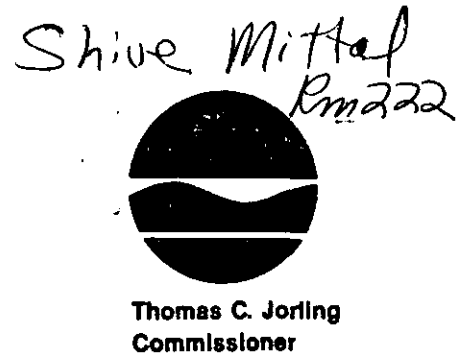


New York State Department of Environmental Conservation
50 Wolf Road, Albany, New York 12233



March 13, 1990

via Telex
Barry R. Kogut, Esq.
Bond, Schoeneck and King
One Lincoln Center
Syracuse, New York 13202-1355

RE: Miller Container Site
Registry No. 738029

Dear Barry:

The contamination at Fulton's Municipal Well Number 2 continues to be a matter of great concern to the Departments of Environmental Conservation and Health.

Health Department officials from the State and Oswego County resampled Municipal Well Number 2 on March 12, 1990. We expect results of that sampling round by Friday, March 16, 1990. If the results find TCA at a level near or above the State Maximum Contaminant Level of 5 ppb, Fulton will be obligated to shut the well down.

For this reason, it is imperative that Miller immediately sign the Amendment to Order on Consent # A701118704 obligating Miller to (1) replace the well's water and (2) pump the well to waste. The Department hereby sets a deadline of Friday, March 16, 1990 for Miller to sign the Amendment. If Miller does not sign the Amendment by the 16th, the Department will resolve the matter of provision of water for the city through a mechanism other than voluntary negotiations. Among the options under consideration are commencement of an action for injunctive relief by the Attorney General, referral of the Site to the State Superfund Program, and issuance of a Summary Abatement Order.

Attached is a revised draft of the Amendment which contains two paragraphs requested by Miller. The first, Paragraph 16, contains language clarifying that the Department will not require Miller to do work if it is not a responsible party. The second, Paragraph V, is a modification of language requested by Miller in its draft Amendment.

The Order also includes language committing Miller to assume responsibility for pumping Municipal Well Number 2 into the Oswego River. As we have discussed since commencement of

negotiations regarding the provision of water, the Department believes that shutting down Municipal Well Number 2 will endanger nearby Kellar Well Number 1 and Kellar Well Number 2 by allowing TCA contamination to migrate to them more quickly. For this reason, it is imperative that Municipal Well Number 2 be pumped to waste.

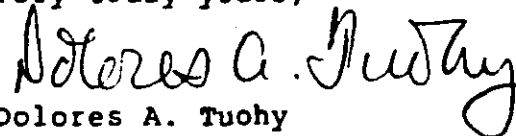
The language added to the Amendment contemplates that Miller will immediately submit to the Department an application for "Emergency Authorization to Discharge Wastewater" (copy attached). The Department can respond to this application within several days. If Miller has not had a response from the Department prior to its execution of the Amendment, the Amendment can be appropriately modified to reflect this.

This Amendment does not require Miller to replace drinking water from Kellar Number 2. Although the Department is concerned about recent contamination detected at the well, we do not wish to have this issue hold up replacement of Municipal Well Number 2's water. Replacement water for Kellar 2 will be discussed in the future.

The Department has not, as yet, received language from Miller with respect to its requested changes regarding the State's indemnification provision and Article 78 review. Please forward the language to me if these matters are still at issue.

Please get back to me regarding any outstanding issues Miller wishes to discuss. The Department's goal is to provide appropriate relief to the City of Fulton as quickly as possible.

Very truly yours,



Dolores A. Tuohy
Senior Attorney
Division of Environmental
Enforcement
(518) 457-3296

cc: Garrett Reich, Esq. - via telex

bcc: Muriel Allerton
Ron Heerkens
Bill McCarthy
Dick Brazell
Shive Mittal
Al Grant

STATE OF NEW YORK: DEPARTMENT OF ENVIRONMENTAL CONSERVATION

In the Matter of the
Implementation of an Interim
Remedial Measure at an Inactive
Hazardous Waste Disposal Site
by:

Amendment to
Order on Consent
Index # A701118704
Site # 738029

MILLER BREWING COMPANY,
CONTAINER DIVISION,

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 of the State of New York ("ECL"), entitled "Inactive Hazardous Waste Disposal Sites".

2. Miller Brewing Company is a corporation organized and existing under the laws of the State of Wisconsin and is authorized to do business in the State of New York. Miller Brewing Company has a Container Division (the "Respondent"), which operates a canmaking facility in the Town of Volney, Oswego County (the "Site"). Respondent's facility is located approximately 1200 feet southeast of the Fulton, New York municipal boundary, approximately 1000 feet northeast of the Oswego River and approximately 900 feet south of New York State Route 481. A map of the Site is attached to this Order as Appendix "A."

3. Respondent formerly had in use a spill containment tank

installed near the northwest corner of its facility ("the Spill Area"), which was found at the time of its excavation in the Spring of 1986 to have been leaking.

4. Laboratory analyses of ground water samples taken from monitoring wells at the Site detected the presence of 1,1,1-trichloroethane ("TCA") and other volatile organics (including methylene chloride, 1,1-dichloroethylene, 1,1-dichloroethane, and 1,1,2,2-tetrachlorethylene).

5. Respondent and the Department executed Order on Consent # A701118704, effective January 22, 1988 (the "Order"), pursuant to which Respondent implemented an interim remedial program intended to treat ground water at the Site to acceptable levels. The interim remedial program included the installation of three ground water recovery wells and the treatment of contaminated ground water by an air stripper. Operation of the ground water remedial system formally began on June 27, 1988.

6. Effective December 1, 1987, the City of Fulton (the "City") issued to the Respondent a wastewater discharge permit (the "permit") pursuant to which the Respondent was allowed to discharge water from the air stripper operation into the City's publicly owned treatment works. The current permit expires on December 1, 1990.

7. The City's Municipal Well Number 2 ("Well Number 2") is located 1400 feet downgradient of the Spill Area. In 1989, this well provided an average of 55,756 gallons per day to the municipal water system.

8. The City required Respondent, as one of the conditions of the permit, to sample Well Number 2, using EPA analytical methods 601 and 602, immediately prior to the startup of the interim remedial program and monthly thereafter. Beginning in March 1988, TCA began to be detected in Well Number 2. The level of TCA thereafter detected in the well under the Respondent's monthly sampling program follows:

<u>Date</u>	<u>1,1,1-Trichloroethane ("TCA") (in micrograms/liter or ug/l)</u>
03/88	3
04/88	*BDL1
05/88	2
06/88	BDL1
07/88	2
08/88	3
09/88	2
10/88	1
11/88	BDL1
12/88	BDL1
01/89	BDL1
02/89	BDL1
03/89	BDL1
04/89	BDL1
05/89	BDL1
06/89	BDL1
07/89	BDL1
08/89	2
09/89	2
10/89	2
11/89	3
12/89	5 (resampled-4)
01/90	5 (resampled-4)

* BDL1 - Below Detection Limit of 1 ug/l

9. The Department alleges, based upon sampling data provided by Respondent, that the Site is the source of TCA contamination at Well Number 2.

10. The Department further alleges that two additional municipal wells, Kellar Well Number 1 ("Kellar 1") and Kellar Well Number 2 ("Kellar 2"), may potentially be impacted by contaminants determined to be emanating from the Site.

11. The City has agreed to cease the use of Well Number 2 as a source of drinking water and to commence the purchase of drinking water to replace that currently supplied by the well.

12. The Site is an inactive hazardous waste disposal site, as that term is defined at ECL Section 27-1301(2) and has been listed in the Registry of Inactive Hazardous Waste Disposal Sites in New York State as Site Number 738029. The Department has classified the Site as a Classification "2" pursuant to ECL Section 27-1305(4)(b), having found that the Site presents a "significant threat to the public health or environment - action required."

13. 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."

14. The Department and Respondent agree that the goal of this Amendment shall be the implementation by Respondent of an Interim Remedial Program.

15. Respondent, having waived its right to a hearing herein, has consented to the issuance of this Amendment to the Order and agrees to be bound by its terms. Respondent's consent to and compliance with this Amendment does not constitute, and shall not be construed as, an admission of liability of any kind or an admission by Respondent of law or fact or of the applicability of any law to conditions at the Site.

16. It is further understood and agreed that the Department will not require Respondent to undertake remedial activity attributable to contamination with respect to which Respondent is not a responsible party.

17. The City is a signatory to this Amendment solely for the purpose of effecting the arrangements involving the City municipal water system.

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

I. Except to the extent that this Amendment imposes additional requirements on Respondent in relation to the Site, the terms and conditions of Order on Consent # A701118704 shall remain unchanged and in full force and effect.

II. Respondent shall retain professional consultants, contractors and laboratories acceptable to the Department to perform the technical, engineering and analytical obligations required by this Amendment. The experience, capabilities and qualifications of the firms or individuals selected by Respondent shall be submitted within 30 days after the effective date of this Amendment.

III. Upon the effective date of this Amendment, Respondent shall be responsible to the City for the additional costs incurred by the City in purchasing water from the Onondaga County Water Authority ("OCWA") to replace water currently provided by Well Number 2. ("Additional costs" shall mean the cost to the City of purchasing the water, including any additional "External Customer Charge" imposed by the Metropolitan Water Board, less the current cost to the City of providing water from Well Number 2). Payment of such additional costs shall be made quarterly, within 30 days after Respondent's receipt of an invoice from the City.

IV. Upon termination of use of Well Number 2 for drinking water purposes, Respondent shall continuously pump Well Number 2 into the Oswego River. Respondent shall discharge the waste water in accordance with all Departmental requirements.

Temporary authorization for such discharge is attached hereto as Appendix A.

Within 30 days of the effective date of this Order,

Respondent shall apply to the Department for long-term authorization to discharge such waste water. Respondent's application shall include all information required to apply for a State Pollutant Discharge Elimination System Permit. Upon Respondent's notification of the Department's long-term authorization of such discharge, Respondent shall discharge such waste water in accordance with terms and conditions of the long-term authorization. The terms and conditions of the long-term authorization shall be appended to and incorporated into this Order.

V. It is understood and agreed that Respondent's agreement to provide an alternate water supply under the terms of this Amendment is a temporary solution to the concern over the TCA detected in Well Number 2. The ultimate goal of the parties is to see Well Number 2 put back in service once the aquifer is decontaminated. Respondent reserves the right to provide, upon written notice of the Department, the New York State Department of Health and the City, another alternate water supply, the quality of which meets applicable regulatory standards for public drinking water supplies.

VI. In accordance with a separate Order on Consent with the Department, Respondent shall perform a Remedial Investigation/Feasibility Study at the Site. If, at any time, Respondent believes that it is not a responsible party with respect to contamination detected in Well Number 2, Respondent may request consent from the City and the Department to cease

making the payments referenced in Paragraph III and the discharge referenced in Paragraph IV. If Respondent demonstrates that it is not a responsible party with respect to the contamination, the City and the Department shall give their written consent allowing Respondent to terminate its obligations under this Amendment.

VII. Respondent shall monitor the quality of the water obtained at Kellar 1 and Kellar 2 and the City shall permit Respondent access to perform the monitoring described herein. During the three month period following the effective date of this Order, Respondent shall sample and analyze water from each well on a weekly basis utilizing EPA 502.1 and 503.1 analytical protocols, using a detection level of 1 part per billion or less. After the three month period, Respondent shall monitor the wells on a schedule set forth by the Department. All sampling data shall be submitted to the Department, the City of Fulton and the Oswego County Health Department within 48 hours of receipt by Respondent.

VIII. Respondent shall undertake the following activities to further define the aquifer servicing Well Number 2, Kellar 1 and Kellar 2:

(a) determine the location, depths, yields and pumping regimens for all wells located on the grounds of the Fulton Municipal Water Works which were currently or formerly used as drinking water wells;

(b) locate and determine the depths of all test wells

and piezometers, including United States Geological Survey wells, located on the grounds of the City of Fulton's Water Works;

(c) undertake a pump test on Kellar 1 and monitor all relevant data points; and

(d) using the information generated by the activities set forth in Paragraph VI(a) through VI(c), evaluate the potential for currently identified contamination to migrate to Kellar 1.

IX. 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 shall also have the right to take its own samples. The Department shall provide Respondent with the analytical results of any such samples, after receipt of Respondent's results.

X. Respondent shall provide notice to the Department at least 5 working days in advance of any field activities to be conducted pursuant to this Amendment.

XI. The failure of the Respondent to comply with any term of this Amendment shall constitute a violation of this Amendment, Order on Consent #A701118704 and the ECL.

XII. Nothing contained in this Amendment shall be construed as barring, diminishing, adjudicating or in any way affecting, any of the Department's rights, including, but not limited to:

A. the Department's right to bring any action or proceeding against anyone other than Respondent, its directors,

officers, employees, servants, agents, successors and assigns;

B. the Department's right to enforce this Amendment 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 or proceeding against Respondent, its directors, officers, employees, servants, agents, successors and assigns with respect to claims for natural resource damages as a result of the release or threatened release of hazardous wastes or constituents at or from the Site or areas in the vicinity of the Site; and

D. the Department's right to bring any action or proceeding against Respondent, its directors, officers, employees, servants, agents, successors and assigns with respect to hazardous wastes that are present at the Site or that have migrated from the Site and present a significant threat to human health or the environment.

XIII. This Amendment shall not be construed to prohibit the Commissioner or his duly authorized representative from exercising any summary abatement powers.

XIV. 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 Amendment by

Respondent, its directors, officers, employees, servants, agents, successors or assigns, provided, however, the 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 Amendment.

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

XVI. All written communications required by this Order shall be transmitted as follows:

A. Department

1. Division of Environmental Enforcement, New York State Department of Environmental Conservation, 50 Wolf Road, Albany, New York 12233, Attention: David Markell, Esq., Director.

2. Division of Hazardous Waste Remediation, New York State Department of Environmental Conservation, 50 Wolf Road, Albany, New York 12233, Attention: Michael J. O'Toole, Jr., P.E., Director.

3. New York State Department of Environmental Conservation, Region 7 Headquarters, 615 Erie Boulevard West, Syracuse, New York 13204, Attention: Richard Brazell, P.E.

4. Bureau of Environmental Exposure Investigation, New York State Department of Health, 2 University Place, Albany, New York 12203, Attention: Ronald Tramontano, Director.

5. Division of Environmental Enforcement, Albany Field Unit, Room 415, New York State Department of Environmental Conservation, 50 Wolf Road, Albany, New York 12233, Attention: Dolores A. Tuohy, Esq.

6. New York State Department of Health, 677 south Salina Street, Syracuse, New York 13202, Attention: Ronald Heerkens, Regional Toxics Coordinator.

7. Oswego County Health Department, 70 Bunner Street, P.O. Box 3080, Oswego, New York 13126-3080, Attention: Rupert J. Collins, Commissioner.

B. Respondent

1. Miller Brewing Company, Legal Department, 3939 West Highland Boulevard, Milwaukee, Wisconsin 53208, Attention: Garrett W. Reich, Esq.

2. Miller Brewing Company, Corporate Engineering, 3939 West Highland Boulevard, Milwaukee, Wisconsin 53208, Attention: Thomas N. Swett, P.E.

3. Miller Brewing Company, Container Division, P.O. Box 400, Fulton, New York 13069, Attention: Larry Messina.

4. Bond, Schoeneck and King, One Lincoln Center, Syracuse, New York 13202, Attention: Barry R. Kogut, Esq.

C. City of Fulton

1. City of Fulton, Office of the Mayor, Municipal Building, Fulton, New York 13069, Attention: Hon. Muriel Allerton.

XVII. If Respondent desires that any provision of this

Amendment be changed, it shall make timely written application to the Commissioner, setting forth reasonable grounds for the relief sought. A copy of such written application shall be delivered or mailed to:

Richard Brazell, P.E., New York State Department of Environmental Conservation, Region 7 Headquarters, 615 Erie Boulevard West, Syracuse , New York 13204.

XVIII. The terms of this Amendment shall be deemed to bind the signatories thereto and their respective officers, directors, agents, servants, employees, successors and assigns. Nothing herein shall be construed to bind any other entity.

XIX. 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 submittals shall be construed as relieving Respondent of its obligations to obtain such formal approvals as may be required by this Amendment.

DATED: , New York
 , 1990

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

BY:

Edward O. Sullivan
Deputy Commissioner

CONSENT BY RESPONDENT

Respondent, without any admission of law or fact, hereby consents to the issuing and entering of this Amendment to Order on Consent #A701118704, waives its right to a hearing herein as provided by law, and agrees to be bound by this Amendment.

MILLER BREWING COMPANY,
CONTAINER DIVISION

By: _____
(TYPE NAME OF SIGNER)
Title: _____
Date: March, 1990

STATE OF WISCONSIN)
) s.s.:
COUNTY OF MILWAUKEE)

On this _____ day of _____, 1990,
before me personally came _____, to me
known, who being duly sworn, did depose and say that he is the
_____ of the _____
corporation described herein and which executed the foregoing
instrument; that he knew the seal of said coproration; that the
seal affixed to said instrument was such corporate seal; that
it was so affixed by the order of the Board of Directors of said
coproration, and that he signed his name thereto by like order.

Notary Public

CITY OF FULTON

By: _____
(TYPE NAME OF SIGNER)

Title: _____

Date: _____

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

On this _____ day of _____, 1990,
before me personally came _____, to me
known, and being duly sworn, did dipose and say: that she
resides at _____, that she is the Mayor
of the City of Fulton, the municipality described herein, that
she was authorized by resolution of the Common Council of the
City of Fulton to execute the foregoing instrument, and that
she signed her name to said instrument by like authorization.

Notary Public

(DAT)
(C.O. #1 disk)



**Application and
Emergency Authorization to Discharge Wastewater**

Regional Authorization No.

Page 1 of

This application form with attachments, when signed by an authorized issuing agent, constitutes an Emergency Authorization to Discharge Wastewater in conformance with Article 70 of the Environmental Conservation Law of New York State.

(The Person Making Application Should Complete the Shaded Areas)

1. Person Making Application:	Name: _____ Address: _____ City: _____	Phone: () _____ State: _____	Zip Code: _____
2. Representing: (Government, Firm, Self)	Name: _____ Address: _____ City: _____	State: _____	Zip Code: _____
3. Facility or Project Site:	Name: _____ Street: _____ City, Town or Village: _____ County: _____ Name of Water Body Receiving Discharge: _____		
4. Give Explicit Directions to Project and/or Discharge Site and Attach a Map Describing the Project Area(s):			
5. Describe Exact Nature of Emergency:			
5a. Describe How Emergency Came to Exist:			
5b. Pollutants Potentially Released in the Discharge (Toxics, Petroleum Products, Sewage, others):			
5c. Adverse Impact if Treated Discharge is not Authorized (Life, Health, Property, Natural Resources, etc.):			
5d. Is Area of Pollution Expanding in the Environment or is the Pollution Now Contained?			

This Emergency Authorization to Discharge Wastewater shall expire at midnight on the 30th day following issuance. This 30 Day Authorization can be extended only once for a 30 day period upon submission of a SPDES Discharge Permit Application in full compliance with Sections 17-0803 and 17-0804 of the Environmental Conservation Law and Parts 621 and 752 of the Department's Rules and Regulations. The Discharge cannot continue after 60 days following the issuance of the initial Emergency Authorization unless the Department has, as a minimum, issued a Notice of Complete Application for the SPDES permit associated with the discharge.

I hereby affirm under penalty of perjury that the information provided on this form and any attached supplemental information is true to the best of my knowledge and belief. False statements are punishable as a Class A misdemeanor pursuant to Section 210.45 of the Penal Law.

Signature of Person Making Application:	Date:	Printed Name:	Title:
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DISTRIBUTION:

I certify that this Authorization is immediately necessary to respond to an emergency and is issued in conformance with Section 70-0116 of the Environmental Conservation Law.	
Signature of Issuing Agent (address & phone # is on an attached page):	Effective Date:
Date	
Attachments:	Expiration Date:

EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

During the period of this authorization the discharge from the permitted facility shall be limited and monitored as specified below:

Outfall Number & Effluent parameters	Discharge Limitations		Units	Minimum Monitoring Requirements	
	Daily Ave.	Daily Max.		Measurement Frequency	Sample Type

DEFINITIONS OF DAILY AVERAGE AND DAILY MAXIMUM

The daily average discharge is the total discharge by weight or in other appropriate units as specified herein, during a calendar month divided by the number of days in the month that the facility was operating. Where less than daily sampling is required, the daily average discharge shall be determined by the summation of all the measured daily discharges in appropriate units as specified herein divided by the number of days during the calendar month when measurements were made.

The daily maximum discharge means the total discharge by weight or in other appropriate units as specified herein, during any calendar day.

MONITORING LOCATIONS

Samples and measurements, to comply with monitoring requirements specified in this authorization, shall be taken at the location(s) indicated below: (Show sampling locations and outfalls with sketch or flow diagram as appropriate)

RECORDING, REPORTING AND SPECIAL CONDITIONS

- a) The monitoring information required by this authorization shall be summarized, signed and retained for a period of three years from the date of the sampling for subsequent inspection by the Department or its designated agent. **Also;** a copy of all data shall be sent to:

Department of Environmental Conservation
Regional Water Engineer

- b) **Noncompliance** with the provisions of this authorization shall be reported to the Regional Water Engineer as soon as the noncompliance is identified.
- c) Monitoring must be conducted according to test procedures approved under 40 CFR Part 136, unless other test procedures have been specified in this authorization.
- d) If the permittee monitors any pollutant more frequently than required, using test procedures approved under 40 CFR Part 136 or as specified in this authorization, the results of this monitoring shall be included in the calculations, recording and reporting of the data.
- e) Calculations for all limitations which require averaging of measurements shall utilize an arithmetic mean unless otherwise specified in this authorization.
- f) Unless otherwise specified, all information recorded and reported shall be based upon measurements and sampling carried out during the most recently completed reporting period.
- g) Any laboratory test or sample analysis required by this authorization for which the State Commissioner of Health issues certificates of approval pursuant to section five hundred two of the Public Health Law shall be conducted by a laboratory which has been issued a certificate of approval. Inquiries regarding laboratory certification should be sent to the Environmental Laboratory Accreditation Program, New York Health Department Center for Laboratories and Research, Division of Environmental Sciences, The Nelson A. Rockefeller State Plaza, Albany, New York 12201.
- h) This authorization, or a true copy, shall be kept readily available for reference at the facility.
- i) The discharge of any pollutant, not identified or authorized, or the discharge of any pollutant more frequently than, or at a level in excess of, that identified and authorized shall constitute a violation of the terms and conditions of this authorization.
- j) The permittee must comply with all terms and conditions of this authorization.
- k) The applicant shall furnish to the Department, within a reasonable time, any information which the Department may request to determine whether cause exists for modifying, suspending or revoking this authorization, or to determine compliance with this authorization. The permittee shall furnish to the Department, upon request, copies of records required to be kept by this permit.
- l) The applicant shall allow the Commissioner, or an authorized representative to enter the premises where the authorized activity is located to inspect any facilities, equipment, practices, operations and or records regulated or required by this authorization and to sample or monitor at reasonable times for the purposes of assuring compliance with this authorization.