



## New York State Department of Environmental Conservation

## MEMORANDUM

*File's*  
*R/ES*  
*Oswego Co.*

TO: Distribution as set forth below  
 FROM: ~~Dolores Tuohy~~ *JA*  
 SUBJECT: Miller Container Site (Registry No. 738029)  
 Order on Consent # A702659106  
 DATE: August 13, 1991

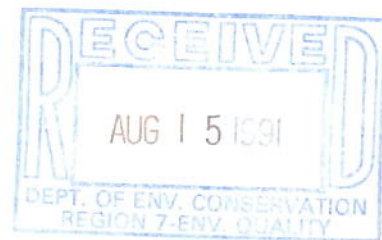
On August 12, 1991, Commissioner Jorling executed Order on Consent # A702659106 which commits Miller Brewing to construct an air stripper for the City of Fulton.

Attached is a copy of the executed Order.

Many thanks to everyone in the Department and DOH who cooperated in bringing these negotiations to a successful conclusion.

Distribution

T. Male	R. Tramontano
M. O'Toole	R. Heerkens
L. Flocke/S. Eidt/B. McCarthy	M. Burke
C. Branagh	E. Walsh/B. Stillman
J. Kelleher/B. Wither	
N. Boyce	
A. Grant	
M. DiPietro	
R. Young	



STATE OF NEW YORK: DEPARTMENT OF ENVIRONMENTAL CONSERVATION

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

ORDER  
ON  
CONSENT

INDEX # A702659106

MILLER BREWING COMPANY,  
CONTAINER DIVISION,

Respondent.

Site No. 738029

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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"). The Miller Container 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 City of Fulton ("the City") municipal drinking water wellfield is located hydrogeologically downgradient of the facility.

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. A soil gas survey conducted during 1990 defined two potential areas of additional contamination: an area at the north corner of the facility and an area at the south corner of the facility, both of which were formerly used for drum storage. An investigation of these areas showed a moderate level of contamination at the south corner of the facility.

5. In April of 1991, a second spill area was identified within the facility during the excavation of a sump. Respondent is currently investigating this area.

6. Laboratory analyses of ground water samples from monitoring wells installed at the Site have detected the presence of methylene chloride, 1,1-dichloroethylene, 1,1-dichloroethane, 1,1,1-trichloroethane ("TCA"), tetrachloroethylene, and other contaminants.

7. A contaminant plume from the former spill containment tank was identified in the aquifer at the Site. TCA and other contaminants identified at the Site have been detected at the municipal water wellfield. Respondent has pumped two municipal drinking water wells, Kellar Well Number 2 ("K-2") and Municipal

Well Number 2 ("M-2"), to the Oswego River since April of 1990 when levels of contaminants in the two wells began to increase.

8. A third municipal drinking water well, Kellar Well Number 1 ("K-1"), provides the City with approximately one-third of its total water supply. Sampling at K-1 has shown sporadic contamination by volatile organics.

9. The Department alleges that Respondent is a responsible party with respect to contamination migrating toward and detected at K-1, K-2 and M-2.

10. Respondent and the Department executed Order on Consent # A701118704, effective January 22, 1988, pursuant to which Respondent implemented an interim remedial measures 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. The program also required the periodic monitoring of the monitoring wells on the Site to assess the effectiveness of the interim remedial program.

11. Respondent and the Department executed an Amendment to Order on Consent # A701118704, effective March 29, 1990, pursuant to which Respondent is implementing an Interim Remedial Measures Program which includes the pumping of M-2 into the Oswego River.

12. Respondent and the Department executed Order on Consent # A7-0227-90-04, effective April 23, 1990, pursuant to which Respondent is conducting a Remedial Investigation/ Feasibility

Study ("RI/FS") at the Site.

13. 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."

14. 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."

15. The Department and Respondent agree that the goal of this Order is for Respondent to undertake interim remedial measures which include (1) the development and construction of a long-term treatment system for drinking water pumped from K-1, K-2 and M-2, (2) the temporary pumping of water from K-1, K-2 and M-2 into the Oswego River, and (3) the provision of water from the Onondaga County Water Authority ("OCWA") to the City

during the period when K-1, K-2 and M-2 are pumped into the Oswego River.

16. As a precondition to its entering into this Order, the Department has required Respondent to agree to transfer ownership of the long-term treatment system to the City.

17. Respondent, having waived its right to a hearing herein, has consented to the issuance of this Order without any adjudication of fact or law and agrees to be bound by its terms. Respondent's consent to and compliance with this Order 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.

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

I. Respondent has retained Malcolm Pirnie, Inc. to perform the technical and engineering obligations required by this Order and Syracuse Research Corporation ("SRC") and/or Galson Laboratories to perform the analytical obligations under this Order. The Department has approved Respondent's use of Malcolm Pirnie, Inc., SRC and Galson Laboratories. Any other consultants, contractors or laboratories retained by Respondent to perform technical, engineering or analytical obligations required by this Order must be acceptable to the Department.

II. A. All submittals made pursuant to paragraphs III

through VI of this Order shall be prepared in accordance with Section 5-1.22 of the New York Sanitary Code.

B. (1) The New York State Department of Health ("DOH") and the City shall review each of the submittals Respondent makes pursuant to paragraphs III through VI of 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. Within 30 days of receipt of the submittal, DOH shall notify Respondent in writing of DOH's and the City's approval or disapproval of the submittal. All approved submittals shall be incorporated into and become an enforceable part of this Order.

(2) If DOH and the City disapprove a submittal, DOH shall so notify Respondent in writing and shall specify the reasons for their disapproval. Within the time frame set by DOH in its notice of disapproval, Respondent shall make a revised submittal to DOH and the City that addresses and resolves all of DOH's and the City's stated reasons for disapproving the first submittal.

(3) Within 30 days after receipt of the revised submittal, DOH shall notify Respondent in writing of DOH's and the City's approval or disapproval. If DOH and the City disapprove the revised submittal, Respondent shall be in violation of this Order and the Department may take whatever action or pursue whatever rights it has pursuant to any

provision of statutory or common law. If DOH and the City approve the revised submittal, it shall be incorporated into and become an enforceable part of this Order.

Respondent, DOH and the City agree to attempt to use best efforts to work in parallel in order to facilitate the rapid completion of the long-term treatment system.

Long-Term Treatment

III. On or before August 2, 1991, Respondent shall submit to DOH and the City a Treatability Study that will support air stripper technology for use in a ground water treatment system ("the Treatment System") to be used for the long-term treatment of water pumped from K-1, K-2 and M-2 prior to the water's introduction into the City's drinking water supply.

IIIA. Within 14 days of DOH's and the City's approval of the Treatability Study, Respondent shall submit an Engineering Report for the Treatment System to DOH and the City.

IV. Within 30 days of DOH's and the City's approval of the Engineering Report, Respondent shall submit Plans and Specifications for the Treatment System to DOH and the City.

The Plans and Specifications shall provide for a Treatment System which, at a minimum:

(i) Treats a range of flow from 549,000 gallons per day ("GPD") to 1,000,000 GPD of water from K-1, K-2 and M-2;

(ii) Treats the water pumped from K-1, K-2 and M-2 so that the following contaminants will be



"non-detectable" in the water prior to the water's return to the municipal water system:

Benzene  
1,2-Dichloroethane  
Ethylbenzene  
Toluene  
1,1,1-Trichloroethane  
Trichloroethylene  
Chloroform  
1,1-Dichloroethane  
Tetrachloroethylene  
1,1-Dichloroethylene  
Xylenes, Total  
Methylene Chloride  
1,2-Dichloroethylene (cis- and trans-)

For purposes of this Order, "non-detectable" shall mean a concentration below 0.5 micrograms per liter;

(iii) Returns treated groundwater to the City's municipal water system;

(iv) Includes carbon filtration for the Treatment System's exhaust gases; and

(v) Meets all State, federal and local permitting requirements, including the requirements of the Department's Division of Air.

The Department's Division of Air shall make any submittal for review made pursuant to this Order the top priority for review for Region 7. The Division of Air shall notify Respondent of its approval or disapproval within 60 days of the Division of Air's receipt of the submittal.

V. Upon DOH's and the City's approval of the Engineering Report and Plans and Specifications, Respondent shall commence construction of the Treatment System in accordance with the

approved Plans and Specifications.

Upon the substantial completion of construction ("Substantial Completion"), Respondent shall undertake a pre-entry testing program in accordance with instructions from DOH. Respondent shall notify the City of Substantial Completion, in writing, within one business day of Substantial Completion. Within one business day of such notification, the City shall submit to DOH an application for a certificate of "Approval of Completed Works."

Respondent shall complete the pre-entry testing program and fully prepare the Treatment System to be put into long-term operation treating municipal drinking water on or before June 30, 1992.

Within 30 days of Substantial Completion, Respondent shall submit to DOH and the City "as-built" drawings and a final engineering report.

VI. Within 45 days of approval of the Engineering Report and Plans and Specifications, Respondent shall submit to DOH and the City an Operation, Maintenance and Monitoring Plan for the Treatment System and an Emergency/Contingency Plan detailing steps which Respondent shall take if 1,2-Dichloropropane, 1,1,2-Trichloroethane, 1,3-Dichlorobenzene or Bromochloromethane is identified as being present at or in the vicinity of K-1, K-2 or M-2 and to increase, change or modify the system and its operation to respond to changes in groundwater quality and/or data from the Remedial Investigation/ Feasibility Study or other

monitoring, including increases in contaminant levels or the identification of new contaminants in the aquifer.

VIA. In the event modifications to the Treatment System are required which are documented to exceed \$200,000.00 in costs, Respondent reserves the right to provide, upon written notice to the Department, DOH and the City, water from alternate source(s), the quantity of which is equal to the daily pumping values for K-1, K-2 and M-2 set forth in Paragraph XIII and the quality of which meets the drinking water standards of this Order, provided that Respondent obtains, independent of this Order, all permits required in connection with the provision of alternate water and the termination or reduction of pumping of K-1, K-2 and/or M-2, including a permit to pump any municipal wells into the Oswego River. If Respondent provides water from alternate source(s), Respondent shall continue to provide such water until Respondent's obligations under this Order terminate in accordance with paragraph XVII.

VII. Following Substantial Completion and the completion of the pre-entry testing program, but in no event later than June 30, 1992, Respondent shall transfer ownership of the Treatment System to the City and the City shall commence and continue to be responsible for the operation, maintenance and monitoring of the Treatment System in accordance with the approved Operation, Maintenance and Monitoring Plan. DOH reserves the right to modify the monitoring plan as it deems appropriate and the City shall monitor in accordance with all

DOH requirements. The City shall report immediately to the Department, DOH and Respondent in the event of any operating problems with the Treatment System and Respondent shall, upon notice, provide the City with the technical assistance required to operate the Treatment System and resolve any problems encountered in the operation.

VIII. Respondent shall be responsible for the additional costs required for the City's operation and maintenance of the Treatment System. For purposes of this paragraph, "additional costs" is defined to be the following costs:

A. Disposal and replacement of carbon filters. The City shall notify Respondent when the carbon filters need to be replaced in accordance with the approved Operation and Maintenance manual for the Treatment System;

B. Electrical power to operate the Treatment System, which shall be determined by a separate meter affixed to the Treatment System, and beginning June, 1991, the electrical power to operate the proposed temporary treatment systems and the three municipal wells prior to the Date of Commencement of the Treatment System. The City shall be responsible for the cost of operating the three municipal wells using the Treatment System after the Date of Commencement. For purposes of this Order, the Date of Commencement shall be the date when the Treatment System begins to provide treated water to the City's municipal water system;

C. Monitoring required as part of the DOH's approval

of the Treatment System. Respondent shall retain its own DOH certified laboratory to perform the DOH required monitoring and provide a copy of the analytical results to the City;

D. A third-party vendor to perform repairs to the Treatment System which cannot be performed by the City's existing staff. This category of expense shall also include reimbursement for the cost of parts in excess of \$100.00, but shall not include the cost of a third-party engineering firm. In the event of operating problems with the Treatment System, the City shall notify the Respondent, who shall retain Malcolm Pirnie, the firm designing the Treatment System or some other duly qualified engineering firm, to provide the necessary, engineering services. Respondent shall reimburse the City for the costs covered in this subparagraph on a monthly basis upon invoices furnished by the City which shall be payable thirty (30) days after Respondent's receipt;

E. Modifications to the Treatment System which are required as a result of the implementation of the Emergency/Contingency Plan referenced in Paragraph VI of this Order or, if the Respondent chooses to provide water from an alternate source(s) in accordance with Paragraph VIA of this Order, the cost to provide the water;

F. Out-of-pocket expenses for third-party legal or engineering services, which are necessarily incurred by the City solely as a result of the City's operation of the Treatment System in accordance with the approved Operation and Maintenance

manual; and

G. Notwithstanding the foregoing, the Respondent shall not be responsible for reimbursement of costs arising as a result of any modification made by the City to the Treatment System which is unrelated to Respondent's obligations under this Order. In any event, no modifications to the Treatment System shall be made by the City without prior written approval by the Department and the DOH and without at least 10 days prior written notice to the Respondent.

Temporary Pumping of K-2 and M-2

IX. Commencing upon the effective date of this Order, Respondent shall pump K-2 and M-2 into the Oswego River in accordance with the "Effluent Limitations and Monitoring Requirements," the "Action Level Requirements" and the "General Conditions" set forth in Appendix "A" which is attached hereto and incorporated into this Order. Prior to discharge, the effluent from K-2 and M-2 shall be treated by the temporary granular activated carbon treatment system approved by the Department by letter from Joseph Kelleher to Michael Barone dated May 20, 1991. If the Treatment System will not be put in service until after the arrival of freezing weather, the system serving K-2 and M-2 shall be winterized, as necessary.

The Department's authorization for Respondent to pump K-2 and M-2 into the Oswego River, which is set forth in

Appendix "A," shall terminate on June 30, 1992.

The Department reserves the right to terminate the authorization to pump K-2 and M-2 into the Oswego River in the event Respondent fails to pump K-2 and M-2 in accordance with Appendix "A."

Temporary Pumping of K-1

X. Commencing upon the effective date of this Order, the City shall discontinue the pumping of K-1 into the City's municipal water system and Respondent may pump up to 600,000 gallons per day into the Oswego River. Notwithstanding the foregoing, the Respondent and the City shall work together to reduce the pumping of K-1 to the point where they mutually determine that pumping must be maintained to prevent the flooding of the municipal waterworks. During the period when K-1 is pumped into the Oswego River, the City shall not increase or decrease the pumping of K-1 without prior notice to the Department and Respondent. All water pumped from K-1 into the Oswego River shall be pumped in accordance with the "Effluent Limitations and Monitoring Requirements," the "Action Level Requirements" and the "General Conditions" set forth in Appendix "B" which is attached hereto and incorporated into this Order.

The Department's authorization for Respondent to pump K-1 into the Oswego River, which is set forth as Appendix "B," shall terminate on June 30, 1992.

The Department reserves the right to terminate the

authorization to pump K-1 into the Oswego River in the event Respondent fails to pump K-1 in accordance with Appendix "B."

XI. Within two business days of the effective date of this Order, Respondent shall submit to the Department approvable plans for a temporary treatment system which shall be available to treat K-1's effluent prior to discharge into the Oswego River ("Temporary Plans"). The temporary treatment system shall use the same engineering and design principles as those used for the temporary granular activated carbon treatment system approved by the Department by letter from Joseph Kelleher to Michael Barone dated May 20, 1991.

The Department shall notify Respondent, in writing, of its approval or disapproval of the Temporary Plans within fifteen business days of their submittal.

If the Department disapproves the Temporary Plans, the Department shall notify Respondent, in writing, of the Department's specific objections. Respondent shall, within five days after receiving the notice of disapproval, submit Temporary Plans which have been revised to reflect all of the Department's stated reasons for disapproving the first submittal.

The Department shall notify Respondent, in writing, of its approval or disapproval of the revised Temporary Plans. If the Department disapproves the revised Temporary Plans, Respondent shall be in violation of this Order and Respondent's authorization to pump K-1 into the Oswego River shall terminate.

If the Department approves the Temporary Plans or the



revised Temporary Plans, they shall be incorporated into and become an enforceable part of this Order.

Respondent shall install the temporary treatment system, in accordance with the requirements of the Department-approved Temporary Plans or revised Temporary Plans, within 56 days of the effective date of this Order.

If the permanent Treatment System will not be put in service until after the arrival of freezing weather, the system serving K-1 must be winterized, as necessary.

XIII. Within 24 hours of Respondent's receipt of two consecutive test results indicating that the effluent of K-1 is within 80 percent of exceeding the Discharge Limitations or Action Requirements contained in Appendix "B" (e.g., eight micrograms per liter if the discharge level were ten micrograms per liter), Respondent shall commence the treatment of the effluent of K-1 by the temporary treatment system prior to discharge into the Oswego River. If a single sample exceeds the foregoing threshold, Respondent shall, within 24 hours, take a second sample, submit it immediately to a laboratory, and require analysis within 24 hours. Respondent shall submit the second sample's analytical results to the Department within 24 hours of Respondent's receipt of the results.

The treatment of K-1 shall continue for the remainder of the time K-1 is pumped into the Oswego River under the terms of this Order.

Replacement Water from OCWA

XIII. In accordance with existing arrangements, the City has been purchasing water from OCWA to replace water formerly provided by M-2, K-2 and K-1 and Respondent has paid the cost charged by OCWA to the City for the replacement water. Respondent shall continue to pay for the cost of replacement water until the Date of Commencement of the Treatment System. Payment of the cost for the replacement water shall be made monthly, within 30 days after Respondent's receipt of an invoice from the City. For purposes of this paragraph, the following definitions shall apply:

A. "Cost" - the invoice amount charged to the City by OCWA for the replacement water, including any additional "External Customer Charge" imposed by the Metropolitan Water Board.

B. "Replacement Water" - the amount of water provided by M-2, K-2 and K-1 prior to their removal from service. The value of 55,756 GPD shall be used for M-2, 65,066 GPD for K-2, and 656,521 GPD for K-1.

Aquifer Study

XIV. Respondent shall undertake, as part of the RI/FS, the following activities to further define the aquifer servicing K-1, K-2 and M-2:

(a) determine the location, depths, yields and pumping regimens for all wells located on the grounds of the Fulton

Municipal Water Works which are currently or were 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; and

(c) using the information generated by the activities set forth in subparagraphs "a" and "b," above, evaluate the potential for currently identified contamination to migrate to K-1.

XV. If, for any reason, water from K-1 is used as public drinking water prior to DOH's and the City's approval of Respondent's Operation, Maintenance and Monitoring Plan for the Treatment System, Respondent shall monitor K-1 in accordance with the requirements of paragraph VII of the terminated March 29, 1990 Amendment to Order on Consent # A701118704 until the commencement of the Treatment System.

XVI. The City hereby grants Respondent, its representatives and contractors access to enter onto the City's property for purposes of sampling K-1, K-2 and M-2 and construction, placement and startup operation of the treatment systems described in paragraphs III through XII of this Order. During periods of construction of the referenced treatment systems, Respondent shall insure the City from liability claims and will issue the City documentation acknowledging this obligation in a form appropriate for Respondent's status as a self-insurer.

XVII. Respondent's obligations under this Order, which remain after June 30, 1992, except paragraph XXVIII, shall terminate if Respondent demonstrates to the satisfaction of the Department, DOH and the City that:

A. Neither K-1, K-2 nor M-2 has been impacted by contamination for which Respondent is a source, generator or responsible party; or

B. Remedial measures cause the aquifer to be remediated to the point where treatment is no longer necessary.

Upon receipt of a written request by Respondent to terminate its obligations, the Department, DOH and the City shall notify Respondent, in writing, whether the Department, DOH and the City are satisfied with Respondent's showing.

If Respondent's approved Feasibility Study, undertaken as part of the RI/FS, identifies criteria for determining when the aquifer is remediated to the point where treatment is no longer necessary or may be suspended, the Department, DOH and the City shall use that criteria in determining whether they are satisfied with Respondent's showing.

XVIII. Within 360 days of the effective date of this Order, or 30 days after receipt of an invoice from the Department, whichever is later, Respondent shall pay to the Department a sum of money which shall represent reimbursement for the Department's expenses including, but not limited to, direct

labor, overhead, travel, analytical costs and contractor costs incurred by the State of New York for negotiating this Order, reviewing and revising submittals made pursuant to this Order, overseeing activities conducted by the Respondent pursuant to this Order, and collecting and analyzing samples taken pursuant to this Order. Subsequent payments shall be made on an annual basis, within 30 days after receipt of an invoice from the Department, during the period in which Respondent performs any activities under this Order. Such payment shall be by check payable to the Department of Environmental Conservation. Payment shall be sent to the Bureau of Program Management, Division of Hazardous Waste Remediation, NYSDEC, 50 Wolf Road, Albany, New York 12233. The Department shall itemize costs incurred. Itemization of costs shall include an accounting of personal services indicating 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. This information shall be documented by the Department's quarterly reports of Direct Personal Service. The Department's approved fringe benefit and indirect cost rates shall be applied. Non-personal service costs shall be summarized by category of expense (supplies and materials, travel, contractual) and shall be documented by the New York State Office of the State Comptroller's quarterly expenditure reports. Respondent shall not be obligated to pay any portion of costs which it demonstrates to the Department's satisfaction were

incurred inconsistent with this Order or which are the result of clerical errors.

XIX. Within 30 days of receipt of an invoice from the City, Respondent shall pay to the City, a sum of money which shall represent a not-to-exceed cost of \$10,000 for the City to retain a third-party engineering firm to review the submittals for the Treatment System in accordance with Paragraphs II through VI of this Order.

XX. 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 the Department's receipt of Respondent's results.

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

XXII. Except as already provided for in paragraph XVI, Respondent shall obtain whatever permits, easements, rights-of-way, rights-of-entry, approvals or authorizations are necessary in order to perform its obligations pursuant to this Order. If the Respondent's good faith efforts are unsuccessful in obtaining any required authorizations, the Department may exercise its authority under the ECL in an effort to assist the Respondent in obtaining the necessary authorizations.

XXIII. Respondent shall permit any duly designated employee,

consultant, contractor or agent of the Department or the Department of Health to enter upon the Site or areas in the vicinity of the Site which may be under the control of Respondent for purposes of inspection, sampling and testing and to assure Respondent's compliance with this Order.

XXIV. Respondent shall not suffer any penalty under 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 five days of when it obtains knowledge of any such condition and request an appropriate extension or modification of the terms of this Order.

XXV. The failure of the Respondent to comply with any term of this Order shall constitute a violation of this Order and the ECL.

XXVI. 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:

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

3. 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

4. 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.

Other than subparagraph 2 of paragraph XXVI, nothing contained in paragraph XXVI represents a concession on the part of Respondent that the Department has the authority to take any of the actions cited.

B. Except as otherwise provided in this Order, the Respondent and the City reserve their respective rights under applicable law regarding claims with respect to any release of hazardous wastes and/or substances into the environment and claims arising as a result of responding to the environmental conditions at the Site and in the municipal drinking water wellfield which is the subject of this Order.



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

XXVIII. 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 to the extent that Respondent, its contractors or agents are liable under applicable law.

XXIX. The effective date of this Order shall be the date it is signed by the Commissioner or his designee. Upon the effective date of this Order, all terms and conditions of the March 29, 1990 Amendment to Order on Consent # A701118704, except paragraph XIV (the provision requiring Respondent to indemnify the Department and hold it harmless), shall terminate.

XXX. If Respondent desires that any provision of this Order 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:

Michael DiPietro of the Department (at the address set forth in paragraph XXVI.A)

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

A. State and Oswego County/ Non-SPDES:

1. Division of Hazardous Waste Remediation, New York State Department of Environmental Conservation, 50 Wolf Road, Albany, New York 12233, Attention: Michael DiPietro.

2. New York State Department of Environmental Conservation, Region 7 Headquarters, 615 Erie Boulevard West, Syracuse, New York 13204, Attention: Charles Branagh, P.E.

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

4. 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.

5. New York State Department of Health, 677 South Salina Street, Syracuse, New York 13202, Attention: Ronald Heerkens.

6. Bureau of Public Water Supply, New York State Department of Health, 2 University Place, Albany, New York 12203, Attention: Michael Burke, Director.

7. Oswego County Health Department, 70 Bunner Street, P.O.Box 3080, Oswego, New York 13126-3080, Attention: Bruce Stillman/ Evan Walsh.

B. All communication regarding SPDES-related matters must be addressed to:

1. Division of Water, New York State Department of Environmental Conservation, Region 7 Headquarters, 615 Erie Boulevard West, Syracuse, New York 13204, Attention: Leland Flocke, Regional Water Engineer.

2. Division of Water, New York State Department of Environmental Conservation, 50 Wolf Road, Room 318, Albany, New York 12233, Attention: Joseph Kelleher.

Copies should be sent to the parties set forth in A, above.

C. All communications regarding Air authorizations must be addressed to:

1. Division of Air, New York State Department of Environmental Conservation, Region 7 Headquarters, 615 Erie Boulevard West, Syracuse, New York 13204, Attention: Norman Boyce, Regional Air Engineer.

2. Division of Air, New York State Department of Environmental Conservation, PO Box 5170 Fisher Avenue, Cortland, New York 13045, Attention: Randall Young.

Copies should be sent to the parties set forth in A, above.

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

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: Michael Barone.

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

E. City of Fulton:

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

2. Chief Water Treatment Plant Operator, City of Fulton, Water Works, 960 South First Street, Fulton, New York, 13069.

3. Water and Sanitation Commissioner, City of Fulton, 141 South First Street, Fulton, New York 13069.

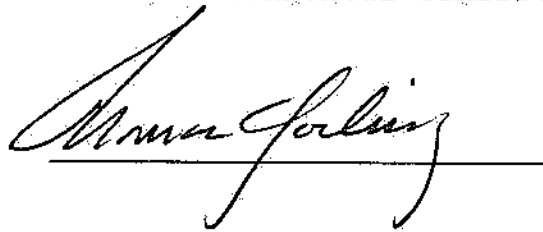
XXXII. The terms of this Order shall be deemed to bind the signatories thereto and their respective officers, directors, agents, servants, employees, successors and assigns. Nothing herein shall be construed to bind any other entity.

XXXIII. 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 Order.

DATED: *Albany*, New York  
*August 12,* 1991

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

A handwritten signature in cursive script, reading "Thomas Jorling", is written over a horizontal line.

CONSENT BY RESPONDENT

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

William G. Schmitz

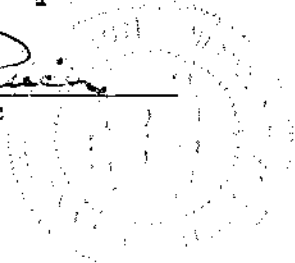
*William G. Schmitz*

By: \_\_\_\_\_  
 (TYPE NAME OF SIGNER)  
 Title: Assistant Secretary  
 Date: August 1, 1972

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

On this 1st day of August, 1972, before me personally came William G. Schmitz, to me known, who being duly sworn, did depose and say that he resides in Brookfield, Wisconsin; that he is the Assistant Secretary of the Wisconsin corporation described in and which executed the foregoing instrument; that he knew the seal of said corporation; 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 corporation, and that he signed his name thereto by like order.

*William G. Schmitz*  
 Notary Public



CITY OF FULTON

By: Muriel L. Allerton  
(TYPE NAME OF SIGNER)

Title: Muriel L. Allerton  
Mayor

Date: August 8, 1991

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

On this eight day of August, 1991,  
before me personally came Muriel L. Allerton, to me  
known, and being duly sworn, did depose and say: that she  
resides at 827 Forest Ave., Fulton, NY, 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.

[Signature]  
Notary Public

JEROME A. MIRABITO  
Notary Public, State of New York  
No. 02M14710622  
Qualified in Oswego County  
Commission Expires December 31, 1991

## EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

During the period beginning Effective Date of Consent Order #A702659106

and lasting until June 30, 1992 or as otherwise specified in Order.

the discharges from the permitted facility shall be limited and monitored by the permittee as specified below:

Outfall Number & Effluent Parameter	Discharge Limitations		Units	Minimum Monitoring Requirements	
	Daily Avg.	Daily Max.		Measurement Frequency	Sample Type
<u>001 Groundwater:</u>					
Flow	Monitor	Monitor	gpd	Continuous	Recorder
Benzene	Monitor	0.02	lb/d	Weekly	GRAB
Benzene	Monitor	0.01	mg/l	Weekly	"
1,2-Dichloroethane	Monitor	0.05	lb/d	Weekly	"
1,2-Dichloroethane	Monitor	0.03	mg/l	Weekly	"
1,2-Dichloropropane	Monitor	0.05	lb/d	Weekly	"
1,2-Dichloropropane	Monitor	0.03	mg/l	Weekly	"
Ethylbenzene	Monitor	0.02	lb/d	Weekly	"
Ethylbenzene	Monitor	0.01	mg/l	Weekly	"
1,1,2,2-Tetrachloroethane	Monitor	0.05	lb/d	Weekly	"
1,1,2,2-Tetrachloroethane	Monitor	0.03	mg/l	Weekly	"
Toluene	Monitor	0.02	lb/d	Weekly	"
Toluene	Monitor	0.01	mg/l	Weekly	"
1,1,1-Trichloroethane	Monitor	0.02	lb/d	Weekly	"
1,1,1-Trichloroethane	Monitor	0.01	mg/l	Weekly	"
Trichloroethylene	Monitor	0.02	lb/d	Weekly	"
Trichloroethylene	Monitor	0.01	mg/l	Weekly	"
Chloroform	Monitor	0.05	lb/d	Weekly	"
Chloroform	Monitor	0.03	mg/l	Weekly	"
1,1-Dichloroethane	Monitor	0.05	lb/d	Weekly	"
1,1-Dichloroethane	Monitor	0.03	mg/l	Weekly	"
Tetrachloroethylene	Monitor	0.05	lb/d	Weekly	"
Tetrachloroethylene	Monitor	0.03	mg/l	Weekly	"

\* Required turnaround on analysis shall be a maximum of seven days.

Copies of the results should be submitted to the DEC within two working days of completion of the receipt of the analysis.



## EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

During the period beginning Effective Date of Consent Order #A702659106

and lasting until June 30, 1992 or as otherwise specified in Order.

the discharges from the permitted facility shall be limited and monitored by the permittee as specified below:

Outfall Number & Effluent Parameter	Discharge Limitations		Units	Minimum Monitoring Requirements	
	Daily Avg.	Daily Max.		Measurement Frequency	Sample Type
<u>001 - Groundwater</u>					
1,1,2-Trichloroethane	Monitor	0.05	lb/d	Weekly	Grab
1,1,2-Trichloroethane	Monitor	0.03	mg/l	Weekly	"
1,3-Dichlorobenzene	Monitor	0.02	lb/d	Weekly	"
1,3-Dichlorobenzene	Monitor	0.01	mg/l	Weekly	"
1,1-Dichloroethylene	Monitor	0.05	lb/d	Weekly	"
1,1-Dichloroethylene	Monitor	0.03	mg/l	Weekly	"
Xylenes, Total	Monitor	0.02	lb/d	Weekly	"
Xylenes, Total	Monitor	0.01	mg/l	Weekly	"
Zinc, Total	Monitor	1.5	lb/d	Weekly	"
Zinc, Total	Monitor	1.0	mg/l	Weekly	"
Bromochloromethane	Monitor	0.08	lb/d	Weekly	"
Bromochloromethane	Monitor	0.05	mg/l	Weekly	"
Naphthalene	Monitor	0.02	lb/d	Weekly	"
Naphthalene	Monitor	0.01	mg/l	Weekly	"
1,2-(cis)-Dichloroethylene	Monitor	0.02	lb/d	Weekly	"
1,2-(cis)-Dichloroethylene	Monitor	0.01	mg/l	Weekly	"
1,2-(trans)-Dichloroethylene	Monitor	0.02	lb/d	Weekly	"
1,2-(trans)-Dichloroethylene	Monitor	0.01	mg/l	Weekly	"

\* Required turnaround analysis shall be a maximum of seven days.

Copies of the results should be submitted to the DEC within two working days of completion of the receipt of the analysis.

**ACTION LEVEL REQUIREMENTS (TYPE I)**

The parameters listed below have been reported present in the discharge but at levels that currently do not require water quality or technology based limits. Action levels have been established which, if exceeded, will result in reconsideration or water quality or technology based limits.

Routine action level monitoring results, if not provided for on the Discharge Monitoring Report (DMR) form, shall be appended to the DMR for the period during which the sampling was conducted. If submission of DMR's is not required by this permit, the results shall be maintained in accordance with instructions on the RECORDING, REPORTING AND MONITORING page of this permit.

If any of the action levels is exceeded, the permittee shall undertake a short-term, high-intensity monitoring program for this parameter. Samples identical to those required for routine monitoring purposes shall be taken on each of at least three operating days and analyzed. Results shall be expressed in terms of both concentration and mass, and shall be submitted no later than the end of the third month following the month when the action level was first exceeded. Results may be appended to the DMR or transmitted under separate cover to the addresses listed on the RECORDING, REPORTING AND MONITORING page of this permit. If levels higher than the actions levels are confirmed the permit may be reopened by the Department for consideration of revised action levels or effluent limits.

The permittee is not authorized to discharge any of listed parameters at levels which may cause or contribute to a violation of water quality standards.

<u>Outfall Number &amp; Effluent Parameter</u>	<u>Action Level</u>	<u>Units</u>	<u>Minimum Monitoring Requirements</u>	
			<u>Measurement Frequency</u>	<u>Sample Type</u>
<u>001 - Treated Groundwater</u>				
Iron, Total	0.40	lb/d	Quarterly	GRAB
Copper, Total	0.55	lb/d	Quarterly	"

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

GENERAL CONDITIONS (Consent Orders)\*

<u>SECTION</u>	<u>PAGE(s)</u>
1. General Provisions . . . . .	1
2. Special Reporting Requirements . . . . .	1
3. Exclusions . . . . .	1-2
4. Reporting Noncompliance . . . . .	2
5. Inspection and Entry . . . . .	2
6. Special Provisions - New or Modified Disposal Systems . . . . .	3
7. Monitoring, Recording, and Reporting . . . . .	3-5
7.1 General . . . . .	3
7.2 Signatories and Certification . . . . .	4
7.3 Recording of Monitoring Activities and Results . . . . .	4-5
7.4 Test and Analytical Procedures . . . . .	5
8. Disposal System Operation and Quality Control . . . . .	6-7
8.1 General . . . . .	6
8.2 Bypass . . . . .	6
8.3 Upset . . . . .	7
8.4 Special Condition-Disposal Systems with Septic Tanks . . . . .	7
8.5 Sludge Disposal . . . . .	7

\* This version of General Conditions is intended to be incorporated as Appendix A of all Consent Orders for site remediation projects where a State Pollutant Discharge Elimination System permit is not required but where the order authorizes the treatment and discharge of wastewaters to the surface or groundwaters of New York State.

## 1. GENERAL PROVISIONS

- a. This order, or a true copy, shall be kept readily available for reference at the wastewater treatment facility.
- b. A determination has been made on the basis of a submitted plans, or other available information, that compliance with the provisions specified in this order will reasonably protect classified water use and assure compliance with applicable water quality standards. Satisfaction of these provisions notwithstanding, if operation pursuant to the order causes or contributes to a condition in contravention of State water quality standards, or if the Department determines, on the basis of notice provided by the operator and any related investigation, inspection or sampling, that a modification of the order is necessary to prevent impairment of the best use of the waters or to assure maintenance of water quality standards or compliance with other provisions of ECL, the Department may require such a modification and may require abatement action to be taken by the operator and may also prohibit the noticed act until the order has been modified.
- c. All discharges authorized by this order shall be consistent with the terms and conditions of this order. Facility expansion or other modifications, treatment and disposal system changes which will result in new or increased discharges of pollutants into the waters of the state must be reported by submission of a formal request for modification of this order. The discharge of any pollutant, not identified and authorized, or the discharge of any pollutant more frequently than, or at a level in excess of, that identified and authorized by this order shall constitute a violation of the terms and conditions of this order. Facility modifications which result in decreased discharges of pollutants must be reported by submission of written notice to the Department.
- d. Where the operator becomes aware that he/she failed to submit any relevant facts or submitted incorrect information prior to or in pursuit of this order or in any report to the Department, the operator shall promptly submit such facts or information.
- e. It shall not be a defense for an operator in an enforcement action that it would have been necessary to halt or reduce the authorized activity in order to maintain compliance with the conditions of this order, unless directed by the Department to continue the activity.
- f. The filing of a request for a modification of this order, or a notification of planned changes or anticipated noncompliance, does not stay any condition of this order.
- g. The operator 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 order, or to determine compliance with this order. The operator shall also furnish to the Department, upon request, copies of records required to be kept by this order.

## 2. SPECIAL REPORTING REQUIREMENTS

Dischargers must notify the Department as soon as they know or have reason to believe:

- a. That any activity has occurred or will occur which would result in the discharge, on a routine or frequent basis, of any toxic pollutant (USEPA Priority Pollutants plus phenols, total) which is not specifically controlled in the order, pursuant to General Provision 1 (c) herein. For the purposes of this section, recurrent accidental or unintentional spills or releases on a frequent basis shall be considered to be a discharge.
- b. That any activity has occurred or will occur which would result in any discharge, on a non-routine or infrequent basis, of a toxic pollutant which is not limited in the order, if that discharge will exceed five times the maximum concentration value reported for that pollutant in the information submitted prior to this order; or the level established by the Department.
- c. That they will begin to use any toxic pollutant which was not reported prior to this order and which is being or may be discharged to waters of the state.

## 3. EXCLUSIONS

- a. The issuance of this order by the Department and the receipt thereof by the operator does not supersede, revoke or rescind an order or modification thereof on consent or determination by the Commissioner issued heretofore by the Department or any of the terms, conditions or requirements contained in such order or modification thereof unless specifically intended by said order.

- b. The issuance of this order does not convey any property rights in either real or personal property, or any exclusive privileges, nor does it authorize any injury to private property or any invasion of personal rights, nor any infringement of Federal, State or local laws or regulations; nor does it obviate the necessity of obtaining the assent of any other jurisdiction as required by law for the discharge authorized.
- c. Unless specifically authorized in this order, the construction of any onshore or offshore physical structures or facilities or the undertaking of any work in any navigable waters is not approved.

#### 4. REPORTING NONCOMPLIANCE

- a. Anticipated noncompliance. The operator shall give advance notice to the Department of any planned changes in the authorized facility or activity which may result in noncompliance with this order as soon as the operator becomes aware that non-compliance will be unavoidable.
- b. Immediate and twenty-four hour reporting. The operator shall report any noncompliance which may endanger health or the environment. Any unusual situation, caused by a deviation from normal operation or experience (e.g. upsets, bypasses, inoperative treatment process units, spills or illegal chemical discharges or releases to the collection system) which create a potentially hazardous condition shall be orally reported immediately. Other information shall be provided orally within 24 hours from the time he or she becomes aware of the circumstances. A written noncompliance report shall also be provided within five (5) days of the time the operator becomes aware of the circumstances. The written noncompliance report shall contain a description of the noncompliance and its cause; the period of noncompliance, including exact dates and times, and if the noncompliance has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent the noncompliance and its reoccurrence.
  - (1) The following shall be included as information which must be reported within 24 hours under paragraph (b) above:
    - (i) any unanticipated bypass which violates any effluent limitation in the order;
    - (ii) any upset which violates any effluent limitation in the order;
    - (iii) violation of a maximum daily discharge limitation for any of the pollutants listed by the Department in the order to be reported within 24 hours.
  - (2) The Department may waive, at their discretion, the written report on a case-by-case basis if the oral report has been received within 24 hours.
  - (3) Reports required by this section shall be filed with the Department's regional office having jurisdiction over the facility. During weekends and holidays, oral noncompliance reports, required by this paragraph, may be made at (518) 457-7362.
- c. Duty to mitigate. The operator shall take all reasonable steps to minimize or prevent any discharge in violation of this order which has a reasonable likelihood of adversely affecting human health or the environment.

#### 5. INSPECTION AND ENTRY

The operator shall allow the Commissioner of the Department, the New York State Department of Health, the County Health Department, or their authorized representatives, upon the presentation of credentials and other documents as may be required by law, to:

- a. enter upon the operator's premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of this order;
- b. have access to and copy, at reasonable times, any records that must be kept under the conditions of this order, including records maintained for purposes of operation and maintenance;
- c. inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this order, and
- d. sample or monitor at reasonable times, for the purposes of assuring compliance with this order or as otherwise authorized by the Environmental Conservation Law, any substances or parameters at any location.

## 6. SPECIAL PROVISIONS - NEW OR MODIFIED DISPOSAL SYSTEMS

- a. Prior to construction of any new or modified waste disposal system or modification of a facility generating wastewater which could alter the design volume of, or the method or effect of treatment or disposing of the wastes from an existing waste disposal system, the operator shall submit to the Department or its designated field office for review, an approvable engineering report, plans, and specifications which have been prepared by a person or firm licensed to practice Professional Engineering in the State of New York.
- b. The construction of the above new or modified disposal system shall not start until the operator receives written approval of the system from the Department or its designated field office.
- c. The construction of the above new or modified disposal system shall be under the general supervision of a person or firm licensed to practice Professional Engineering in New York State. Upon completion of construction, that person or firm shall certify to the Department or its designated field office that the system has been fully completed in accordance with the approved engineering report, plans and specifications and letter of approval; and the operator shall receive written acceptance of such certificate from the Department or designated field agency prior to commencing discharge.
- d. The Department and its designated field offices review wastewater disposal system reports, plans, and specifications for treatment process capability only, and approval by either office does not constitute approval of the system's structural integrity.

## 7. MONITORING, RECORDING, AND REPORTING

### 7.1 GENERAL

- a. The operator shall comply with all recording, reporting, monitoring and sampling requirements specified in this order and such other additional terms, provisions, requirements or conditions that the Department may deem to be reasonably necessary to achieve the purposes of the Environmental Conservation Law, or rules and regulations adopted pursuant thereto.
- b. Samples and measurements taken to meet the monitoring requirements specified in this order shall be representative of the quantity and character of the monitored discharges. Composite samples shall be composed of a minimum of 8 grab samples, collected over the specified collection period, either at a constant sample volume for a constant flow interval or at a flow-proportioned sample volume for a constant time interval, unless otherwise specified in this order. For GC/MS Volatile Organic Analysis (VOA), aliquots must be combined in the laboratory immediately before analysis. At least 4 (rather than 8) aliquots or grab samples should be collected over the specified collection period. Grab sample means a single sample, taken over a period not exceeding 15 minutes.
- c. Accessible sampling locations must be provided, maintained and identified by the operator. New sampling locations shall be provided if proposed or existing locations are deemed unsuitable by the Department or its designated field agency.
- d. Actual measured values of all positive analytical results obtained above the Practical Quantitation Limit (PQL)<sup>1</sup> for all monitored parameters shall be recorded and reported, as required by this order; except, for parameters which are limited in this order to values below the PQL, actual measured values for all positive analytical results above the Method Detection Limit (MDL)<sup>2</sup> shall be reported.
- e. The operator shall periodically calibrate and perform manufacturer's recommended maintenance procedures on all monitoring and analytical instrumentation to insure accuracy of measurements. Verification of maintenance shall be logged into the daily record book(s) of the facility. The operator shall notify the Department's regional office immediately if any required instrumentation becomes inoperable. In addition, the operator shall verify the accuracy of their measuring equipment to the Department's Regional Office annually.

<sup>1</sup> Practical Quantitation Limit (PQL) is the lowest level that can be measured within specified limits of precision and accuracy during routine laboratory operations on most effluent matrices.

<sup>2</sup> Method Detection Limit (MDL) is the level at which the analytical procedure referenced is capable of determining with a 99% probability that the substance is present. This value is determined in distilled water with no interfering substances present. The precision at this level is +/- 100%.

## 7.2 SIGNATORIES AND CERTIFICATION

a. All reports required by this order shall be signed as follows:

- (1) for a corporation: by a responsible corporate officer. For the purposes of this section, a responsible corporate officer means:
  - (i) a president, secretary, treasurer, or a vice president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making function for the corporation, or
  - (ii) the manager of one or more manufacturing, production, or operating facilities employing more than 250 persons or having gross annual sales or expenditures exceeding \$25 million (in second quarter 1980 dollars), if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.
- (2) for a partnership or sole proprietorship: by a general partner or the proprietor, respectively; or
- (3) for a municipality, state, federal, or other public agency: by either a principal or executive officer or ranking elected official. For purposes of this section, a principal executive officer of a federal agency includes: (i) the chief executive officer of the agency, or (ii) a senior executive officer having responsibility for the overall operations of a principal geographic unit of the agency; or
- (4) a duly authorized representative of the person described in items (1), (2), or (3). A person is a duly authorized representative only if:
  - (i) the authorization is made in writing by a person described in paragraph (a)(1), (2), or (3) of this section;
  - (ii) the authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity such as the position of plant manager, operator of a well or well field, superintendent, position of equivalent responsibility, or an individual or position having overall responsibility for environmental matters for the company. (A duly authorized representative may thus be either a named individual or any individual occupying a named position); and
  - (iii) the written authorization is submitted to the Department.

b. Changes to authorization: If an authorization under subparagraph (a)(4) of this section is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization satisfying the requirements of subparagraph (a)(4) of this section must be submitted to the Department prior to or together with any reports, information, or applications to be signed by an authorized representative.

c. Certification: Any person signing a report shall make the following certification:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision, in accordance with a system, designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the order or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information including the possibility of fine and imprisonment for knowing violations."

## 7.3 RECORDING OF MONITORING ACTIVITIES AND RESULTS

a. The operator shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this order, and records of all data used to complete the application for this order, for a period of at least 3 years from the date of the sample, measurement, report or application. This period may be extended by request of the Department at any time.

b. Records of monitoring information shall include:

- (1) the date, exact place, and time of sampling or measurements;
- (2) the individual(s) who performed the sampling or measurements;
- (3) the date(s) analyses were performed;
- (4) the individual(s) who performed the analyses;
- (5) the analytical techniques or methods used; and
- (6) the results of such analyses.

#### 7.4 TEST AND ANALYTICAL PROCEDURES

a. Monitoring and analysis must be conducted using test procedures promulgated, pursuant to 40 CFR Part 136, except:

- (1) should the Department require the use of a particular test procedure, such test procedure will be specified in this order.
- (2) should the operator desire to use a test method not approved herein, prior Department approval is required, pursuant to paragraph (b) of this section.

b. Application for approval of test procedures shall be made to the Director of DEC's Division of Water, and shall contain:

- (1) the name and address of the applicant or the responsible person making the discharge, identification of this particular order and the telephone number of applicant's contact person;
- (2) the names of the pollutants or parameters for which an alternate testing procedure is being requested, and the monitoring location(s) at which each testing procedure will be utilized;
- (3) justification for using test procedures, other than those approved in paragraph (a) of this section; and
- (4) a detailed description of the alternate procedure, together with:
  - (i) references to published studies, if any, of the applicability of the alternate test procedure to the effluent in question;
  - (ii) information on known interferences, if any; and
- (5) a comparability study, using both approved and proposed methods. The study shall consist of 8 replicates of 3 samples from a well mixed waste stream for each outfall if less than 5 outfalls are involved, or from 5 outfalls if 5 or more outfalls are involved. Four (4) replicates from each of the samples must be analyzed using a method approved in paragraph (a) of this section, and four replicates of each sample must be analyzed using the proposed method. This results in 24 analyses per outfall up to a maximum of 120 analyses. A statistical analysis of the data must be submitted that shall include, as a minimum:
  - (i) calculated statistical mean and standard deviation;
  - (ii) a test for outliers at the mean  $\pm 3$  standard deviations level. Where an outlier is detected, an additional sample must be collected and 8 replicates of the sample must be analyzed as specified above;
  - (iii) a plot distribution with frequency counts and histogram;
  - (iv) a test for equality among within sample standard deviation;
  - (v) a check for equality of pooled within sample variance with an F-Test;
  - (vi) a t-Test to determine equality of method means; and

copies of all data generated in the study.

Additional information can be obtained by contacting the Bureau of Technical Services & Research (NYSDEC, 50 Wolf Road, Albany, New York 12233 - 3502).



## 8. DISPOSAL SYSTEM OPERATION AND QUALITY CONTROL

### 8.1 GENERAL

- a. The disposal system shall not receive or be committed to receive wastes from unapproved sources, nor wastes beyond its design capacity as to volume and character of wastes treated, nor shall the system be materially altered as to type, degree, or capacity of treatment provided; disposal of treated effluent; or treatment and disposal of separated scum, liquids, solids or combination thereof resulting from the treatment process without written approval of the Department of Environmental Conservation or its designated field office.
- b. The operator shall, at all times, properly operate and maintain all facilities and systems of treatment and control (or related appurtenances) which are installed or used by the operator to achieve compliance with the conditions of this order. Proper operation and maintenance also includes as a minimum, the following: 1) A preventive/corrective maintenance program, 2) A site specific action orientated operation and maintenance manual for routine use, training new operators, adequate laboratory controls and appropriate quality assurance procedures. This provision requires the operation of installed backup or auxiliary facilities or similar systems only when the operation is necessary to achieve compliance with the conditions of the order.
- c. The operator shall not discharge floating solids or visible foam.

### 8.2 BYPASS

#### a. Definitions:

- (1) "Bypass" means the intentional or unintentional diversion of waste stream(s) around any portion of a treatment facility for the purpose or having the effect of reducing the degree of treatment intended for the bypassed portion of the treatment facility.
- (2) "Severe property damage" means substantial damage to property, damage to the treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which would not reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.

#### b. Bypass not exceeding limitations:

The operator may allow any bypass to occur which does not cause effluent limitations to be violated, but only if it also is for essential maintenance, repair or replacement to assure efficient and proper operation. These bypasses are not subject to the provisions of paragraph (c) and (d) of this section, provided that written notice is submitted prior to bypass (if anticipated) or as soon as possible after bypass (if unanticipated), and no public health hazard is created by the bypass.

#### c. Notice:

- (1) Anticipated bypass - If the operator knows in advance of the need for a bypass, it shall submit prior written notice, at least forty five (45) days before the date of the bypass.
- (2) Unanticipated bypass - The operator shall submit notice of an unanticipated bypass as required in Section 4, paragraph b. of this Part (24 hour notice).

#### d. Prohibition of bypass:

- (1) Bypass is prohibited, and the Department may take enforcement action against a operator for bypass, unless:
  - (i) bypass was unavoidable to prevent loss of life, personal injury, public health hazard, or severe property damage;
  - (ii) there were no feasible alternatives to the bypass such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal period of equipment downtime. This condition is not satisfied if adequate backup equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance or if designed and installed backup equipment which could have prevented or mitigated the impact of the bypass is not operating during the bypass; and
  - (iii) the operator submitted notices as required under paragraph (c) of this section and, excepting emergency conditions, the proposed bypass was accepted by the Department.

### 8.3 UPSET

a. Definition:

"Upset" means an exceptional incident in which there is unintentional and temporary noncompliance with order effluent limitations because of factors beyond the reasonable control of the operator. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.

b. Effect of an upset:

An upset constitutes an affirmative defense to an action brought for noncompliance with such order effluent limitations if the requirements of paragraph (c) of this section are met. No determination made during administrative review of claims that noncompliance was caused by upset, and before an action for noncompliance, is final administrative action subject to judicial review.

c. Conditions necessary for a demonstration of upset:

An operator who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operation logs, or other relevant evidence that:

- (1) an upset occurred and that the operator can identify the cause(s) of the upset;
- (2) the facility was at the time being properly operated; and
- (3) the operator submitted notice of the upset as required in Section 4, paragraph b of this part (24 hour notice).
- (4) the operator complied with any remedial measures required under Section 4, paragraph d of this part.

d. Burden of proof:

In any enforcement proceeding the operator seeking to establish the occurrence of an upset has the burden of proof.

### 8.4 SPECIAL CONDITION - DISPOSAL SYSTEMS WITH SEPTIC TANKS

If a septic tank is installed as part of the disposal system, it shall be inspected by the operator or his agent for scum and sludge accumulation at intervals not to exceed one year's duration, and such accumulation will be removed before the depth of either exceeds one-fourth (1/4) of the liquid depth so that no settleable solids or scum will leave in the septic tank effluent. Such accumulation shall be disposed of in an approved manner.

### 8.5 SLUDGE DISPOSAL

The storage or disposal of collected screenings, sludges, other solids, or precipitates separated from the authorized discharges and/or intake or supply water by the operator shall be done in such a manner as to prevent creation of nuisance conditions or entry of such materials into classified waters or their tributaries, and in a manner approved by the Department. Any live fish, shellfish, or other animals collected or trapped as a result of intake water screening or treatment should be returned to their water body habitat. The operator shall maintain records of disposal on all effluent screenings, sludges and other solids associated with the discharge(s) herein described. The following data shall be compiled and reported to the Department or its designated field office upon request:

- a. the sources of the materials to be disposed of;
- b. the approximate volumes, weights, water content and (if other than sewage sludge) chemical composition;
- c. the method by which they were removed and transported, including the name and permit number of the waste transporter; and
- d. their final disposal locations.

## EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

During the period beginning Effective Date of Consent Order #A702659106

and lasting until June 30, 1992 or as otherwise specified in Order.

the discharges from the permitted facility shall be limited and monitored by the permittee as

specified below:

Discharge Number & Effluent Parameters	Discharge Limitations		Units	Measurement Frequency	Sample Type
	Daily Ave.	Daily Max.			
001 Groundwater					
Flow	Monitor	Monitor	gpd	Continuous	Recorder
Benzene	Monitor	0.05	lb/d	Weekly	GRAB
Benzene	Monitor	0.01	mg/l	Weekly	"
1,2-Dichloroethane	Monitor	0.15	lb/d	Weekly	"
1,2-Dichloroethane	Monitor	0.03	mg/l	Weekly	"
1,2-Dichloropropane	Monitor	0.15	lb/d	Weekly	"
1,2-Dichloropropane	Monitor	0.03	mg/l	Weekly	"
Ethylbenzene	Monitor	0.05	lb/d	Weekly	"
Ethylbenzene	Monitor	0.01	mg/l	Weekly	"
1,1,2,2-Tetrachloroethane	Monitor	0.15	lb/d	Weekly	"
1,1,2,2-Tetrachloroethane	Monitor	0.03	mg/l	Weekly	"
Toluene	Monitor	0.05	lb/d	Weekly	"
Toluene	Monitor	0.01	mg/l	Weekly	"
1,1,1-Trichloroethane	Monitor	0.05	lb/d	Weekly	"
1,1,1-Trichloroethane	Monitor	0.01	mg/l	Weekly	"
Trichloroethylene	Monitor	0.05	lb/d	Weekly	"
Trichloroethylene	Monitor	0.01	mg/l	Weekly	"
Chloroform	Monitor	0.15	lb/d	Weekly	"
Chloroform	Monitor	0.03	mg/l	Weekly	"
1,1-Dichloroethane	Monitor	0.15	lb/d	Weekly	"
1,1-Dichloroethane	Monitor	0.03	mg/l	Weekly	"
Tetrachloroethylene	Monitor	0.15	lb/d	Weekly	"
Tetrachloroethylene	Monitor	0.03	mg/l	Weekly	"

\* Required turnaround on analysis shall be a maximum of seven days.

Copies of the results should be submitted to the DEC within two working days of completion of the receipt of the analysis.

**EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS**During the period beginning Effective Date of Consent Order #A702659106and lasting until June 30, 1992 or as otherwise specified in Order.

the discharges from the permitted facility shall be limited and monitored by the permittee as specified below:

Outfall Number & Effluent parameters	Discharge Limitations		Units	Minimum Monitoring Requirements	
	Daily Ave.	Daily Max.		Measurement Frequency	Sample Type
<b>001- Groundwater</b>					
<u>1,1,2-Trichloroethane</u>	Monitor	<u>0.15</u>	<u>lb/d</u>	Weekly	GRAB
<u>1,1,2-Trichloroethane</u>	Monitor	<u>0.03</u>	<u>mg/l</u>	Weekly	"
<u>1,3-Dichlorobenzene</u>	Monitor	<u>0.05</u>	<u>lb/d</u>	Weekly	"
<u>1,3-Dichlorobenzene</u>	Monitor	<u>0.01</u>	<u>mg/l</u>	Weekly	"
<u>1,1-Dichloroethylene</u>	Monitor	<u>0.15</u>	<u>lb/d</u>	Weekly	"
<u>1,1-Dichloroethylene</u>	Monitor	<u>0.03</u>	<u>mg/l</u>	Weekly	"
<u>Xylenes, Total</u>	Monitor	<u>0.05</u>	<u>lb/d</u>	Weekly	"
<u>Xylenes, Total</u>	Monitor	<u>0.01</u>	<u>mg/l</u>	Weekly	"
<u>Methylene chloride</u>	Monitor	<u>0.15</u>	<u>lb/d</u>	Weekly	"
<u>Methylene Chloride</u>	Monitor	<u>0.03</u>	<u>mg/l</u>	Weekly	"
<u>ortho-chlorotoluene</u>	Monitor	<u>0.25</u>	<u>lb/d</u>	Weekly	"
<u>ortho-chlorotoluene</u>	Monitor	<u>0.05</u>	<u>mg/l</u>	Weekly	"
<u>Naphthalene</u>	Monitor	<u>0.05</u>	<u>lb/d</u>	Weekly	"
<u>Naphthalene</u>	Monitor	<u>0.01</u>	<u>mg/l</u>	Weekly	"
<b>015</b> <u>1,2-Dichloroethene</u>	Monitor	<u>0.05</u>	<u>lb/d</u>	Weekly	"
" <u>"</u>	Monitor	<u>0.01</u>	<u>mg/l</u>	Weekly	"
<u>Trans-1,2-Dichloroethene</u>	Monitor	<u>0.05</u>	<u>lb/d</u>	Weekly	"
" <u>"</u>	Monitor	<u>0.01</u>	<u>mg/l</u>	Weekly	"

\* Required turnaround on analysis shall be a maximum of seven days.

Copies of the results should be submitted to the DEC within two working days of completion of the receipt of the analysis.

### DEFINITIONS OF DAILY AVERAGE AND DAILY MAXIMUM

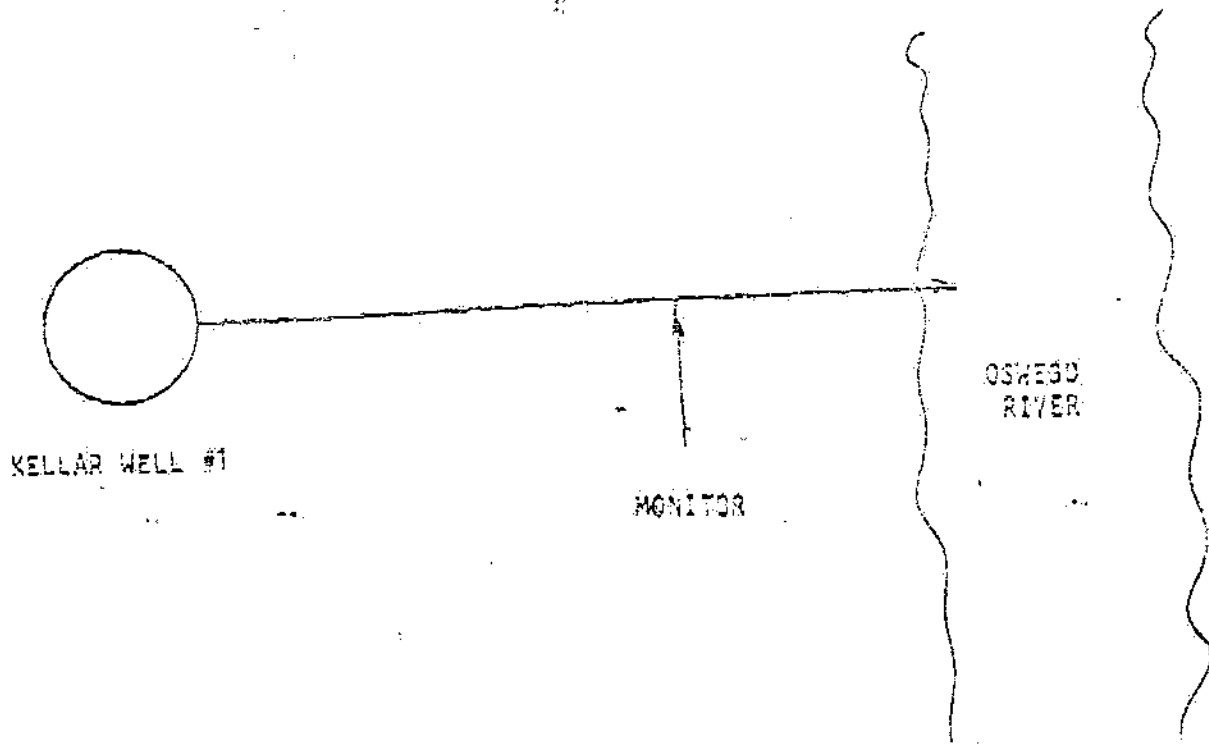
The daily average discharge is the total discharge by weight or in other appropriate units as specified herein, during a calendar month divided by the number of days in the month that the facility was operating. Where less than daily sampling is required, the daily average discharge shall be determined 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 facilities with sketch or flow diagram as appropriate)

From effluent prior to discharge to river.



NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

GENERAL CONDITIONS (Consent Orders)\*

<u>SECTION</u>	<u>PAGE(s)</u>
1. General Provisions . . . . .	1
2. Special Reporting Requirements . . . . .	1
3. Exclusions . . . . .	1-2
4. Reporting Noncompliance . . . . .	2
5. Inspection and Entry . . . . .	2
6. Special Provisions - New or Modified Disposal Systems . . . . .	3
7. Monitoring, Recording, and Reporting . . . . .	3-5
7.1 General . . . . .	3
7.2 Signatories and Certification . . . . .	4
7.3 Recording of Monitoring Activities and Results . . . . .	4-5
7.4 Test and Analytical Procedures . . . . .	5
8. Disposal System Operation and Quality Control . . . . .	6-7
8.1 General . . . . .	6
8.2 Bypass . . . . .	6
8.3 Upset . . . . .	7
8.4 Special Condition-Disposal Systems with Septic Tanks . . . . .	7
8.5 Sludge Disposal . . . . .	7

\* This version of General Conditions is intended to be incorporated as Appendix A of all Consent Orders for site remediation projects where a State Pollutant Discharge Elimination System permit is not required but where the order authorizes the treatment and discharge of wastewaters to the surface or groundwaters of New York State.

## 1. GENERAL PROVISIONS

- a. This order, or a true copy, shall be kept readily available for reference at the wastewater treatment facility.
- b. A determination has been made on the basis of a submitted plans, or other available information, that compliance with the provisions specified in this order will reasonably protect classified water use and assure compliance with applicable water quality standards. Satisfaction of these provisions notwithstanding, if operation pursuant to the order causes or contributes to a condition in contravention of State water quality standards, or if the Department determines, on the basis of notice provided by the operator and any related investigation, inspection or sampling, that a modification of the order is necessary to prevent impairment of the best use of the waters or to assure maintenance of water quality standards or compliance with other provisions of ECL, the Department may require such a modification and may require abatement action to be taken by the operator and may also prohibit the noticed act until the order has been modified.
- c. All discharges authorized by this order shall be consistent with the terms and conditions of this order. Facility expansion or other modifications, treatment and disposal system changes which will result in new or increased discharges of pollutants into the waters of the state must be reported by submission of a formal request for modification of this order. The discharge of any pollutant, not identified and authorized, or the discharge of any pollutant more frequently than, or at a level in excess of, that identified and authorized by this order shall constitute a violation of the terms and conditions of this order. Facility modifications which result in decreased discharges of pollutants must be reported by submission of written notice to the Department.
- d. Where the operator becomes aware that he/she failed to submit any relevant facts or submitted incorrect information prior to or in pursuit of this order or in any report to the Department, the operator shall promptly submit such facts or information.
- e. It shall not be a defense for an operator in an enforcement action that it would have been necessary to halt or reduce the authorized activity in order to maintain compliance with the conditions of this order, unless directed by the Department to continue the activity.
- f. The filing of a request for a modification of this order, or a notification of planned changes or anticipated noncompliance, does not stay any condition of this order.
- g. The operator 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 order, or to determine compliance with this order. The operator shall also furnish to the Department, upon request, copies of records required to be kept by this order.

## 2. SPECIAL REPORTING REQUIREMENTS

Dischargers must notify the Department as soon as they know or have reason to believe:

- a. That any activity has occurred or will occur which would result in the discharge, on a routine or frequent basis, of any toxic pollutant (USEPA Priority Pollutants plus phenols, total) which is not specifically controlled in the order, pursuant to General Provision 1 (c) herein. For the purposes of this section, recurrent accidental or unintentional spills or releases on a frequent basis shall be considered to be a discharge.
- b. That any activity has occurred or will occur which would result in any discharge, on a non-routine or infrequent basis, of a toxic pollutant which is not limited in the order, if that discharge will exceed five times the maximum concentration value reported for that pollutant in the information submitted prior to this order; or the level established by the Department.
- c. That they will begin to use any toxic pollutant which was not reported prior to this order and which is being or may be discharged to waters of the state.

## 3. EXCLUSIONS

- a. The issuance of this order by the Department and the receipt thereof by the operator does not supersede, revoke or rescind an order or modification thereof on consent or determination by the Commissioner issued heretofore by the Department or any of the terms, conditions or requirements contained in such order or modification thereof unless specifically intended by said order.

- b. The issuance of this order does not convey any property rights in either real or personal property, or any exclusive privileges, nor does it authorize any injury to private property or any invasion of personal rights, nor any infringement of Federal, State or local laws or regulations; nor does it obviate the necessity of obtaining the assent of any other jurisdiction as required by law for the discharge authorized.
- c. Unless specifically authorized in this order, the construction of any onshore or offshore physical structures or facilities or the undertaking of any work in any navigable waters is not approved.

#### 4. REPORTING NONCOMPLIANCE

- a. Anticipated noncompliance. The operator shall give advance notice to the Department of any planned changes in the authorized facility or activity which may result in noncompliance with this order as soon as the operator becomes aware that non-compliance will be unavoidable.
- b. Immediate and twenty-four hour reporting. The operator shall report any noncompliance which may endanger health or the environment. Any unusual situation, caused by a deviation from normal operation or experience (e.g. upsets, bypasses, inoperative treatment process units, spills or illegal chemical discharges or releases to the collection system) which create a potentially hazardous condition shall be orally reported immediately. Other information shall be provided orally within 24 hours from the time he or she becomes aware of the circumstances. A written noncompliance report shall also be provided within five (5) days of the time the operator becomes aware of the circumstances. The written noncompliance report shall contain a description of the noncompliance and its cause; the period of noncompliance, including exact dates and times, and if the noncompliance has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent the noncompliance and its recurrence.
  - (1) The following shall be included as information which must be reported within 24 hours under paragraph (b) above:
    - (i) any unanticipated bypass which violates any effluent limitation in the order;
    - (ii) any upset which violates any effluent limitation in the order;
    - (iii) violation of a maximum daily discharge limitation for any of the pollutants listed by the Department in the order to be reported within 24 hours.
  - (2) The Department may waive, at their discretion, the written report on a case-by-case basis if the oral report has been received within 24 hours.
  - (3) Reports required by this section shall be filed with the Department's regional office having jurisdiction over the facility. During weekends and holidays, oral noncompliance reports, required by this paragraph, may be made at (518) 457-7362.
- c. Duty to mitigate. The operator shall take all reasonable steps to minimize or prevent any discharge in violation of this order which has a reasonable likelihood of adversely affecting human health or the environment.

#### 5. INSPECTION AND ENTRY

The operator shall allow the Commissioner of the Department, the New York State Department of Health, the County Health Department, or their authorized representatives, upon the presentation of credentials and other documents as may be required by law, to:

- a. enter upon the operator's premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of this order;
- b. have access to and copy, at reasonable times, any records that must be kept under the conditions of this order, including records maintained for purposes of operation and maintenance;
- c. inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this order, and
- d. sample or monitor at reasonable times, for the purposes of assuring compliance with this order or as otherwise authorized by the Environmental Conservation Law, any substances or parameters at any location.



## 6. SPECIAL PROVISIONS - NEW OR MODIFIED DISPOSAL SYSTEMS

- a. Prior to construction of any new or modified waste disposal system or modification of a facility generating wastewater which could alter the design volume of, or the method or effect of treatment or disposing of the wastes from an existing waste disposal system, the operator shall submit to the Department or its designated field office for review, an approvable engineering report, plans, and specifications which have been prepared by a person or firm licensed to practice Professional Engineering in the State of New York.
- b. The construction of the above new or modified disposal system shall not start until the operator receives written approval of the system from the Department or its designated field office.
- c. The construction of the above new or modified disposal system shall be under the general supervision of a person or firm licensed to practice Professional Engineering in New York State. Upon completion of construction, that person or firm shall certify to the Department or its designated field office that the system has been fully completed in accordance with the approved engineering report, plans and specifications and letter of approval; and the operator shall receive written acceptance of such certificate from the Department or designated field agency prior to commencing discharge.
- d. The Department and its designated field offices review wastewater disposal system reports, plans, and specifications for treatment process capability only, and approval by either office does not constitute approval of the system's structural integrity.

## 7. MONITORING, RECORDING, AND REPORTING

### 7.1 GENERAL

- a. The operator shall comply with all recording, reporting, monitoring and sampling requirements specified in this order and such other additional terms, provisions, requirements or conditions that the Department may deem to be reasonably necessary to achieve the purposes of the Environmental Conservation Law, or rules and regulations adopted pursuant thereto.
- b. Samples and measurements taken to meet the monitoring requirements specified in this order shall be representative of the quantity and character of the monitored discharges. Composite samples shall be composed of a minimum of 8 grab samples, collected over the specified collection period, either at a constant sample volume for a constant flow interval or at a flow-proportioned sample volume for a constant time interval, unless otherwise specified in this order. For GC/MS Volatile Organic Analysis (VOA), aliquots must be combined in the laboratory immediately before analysis. At least 4 (rather than 8) aliquots or grab samples should be collected over the specified collection period. Grab sample means a single sample, taken over a period not exceeding 15 minutes.
- c. Accessible sampling locations must be provided, maintained and identified by the operator. New sampling locations shall be provided if proposed or existing locations are deemed unsuitable by the Department or its designated field agency.
- d. Actual measured values of all positive analytical results obtained above the Practical Quantitation Limit (PQL)<sup>1</sup> for all monitored parameters shall be recorded and reported, as required by this order; except, for parameters which are limited in this order to values below the PQL, actual measured values for all positive analytical results above the Method Detection Limit (MDL)<sup>2</sup> shall be reported.
- e. The operator shall periodically calibrate and perform manufacturer's recommended maintenance procedures on all monitoring and analytical instrumentation to insure accuracy of measurements. Verification of maintenance shall be logged into the daily record book(s) of the facility. The operator shall notify the Department's regional office immediately if any required instrumentation becomes inoperable. In addition, the operator shall verify the accuracy of their measuring equipment to the Department's Regional Office annually.

<sup>1</sup> Practical Quantitation Limit (PQL) is the lowest level that can be measured within specified limits of precision and accuracy during routine laboratory operations on most effluent matrices.

<sup>2</sup> Method Detection Limit (MDL) is the level at which the analytical procedure referenced is capable of determining with a 99% probability that the substance is present. This value is determined in distilled water with no interfering substances present. The precision at this level is +/- 100%.

## 7.2 SIGNATORIES AND CERTIFICATION

- a. All reports required by this order shall be signed as follows:
- (1) for a corporation: by a responsible corporate officer. For the purposes of this section, a responsible corporate officer means:
    - (i) a president, secretary, treasurer, or a vice president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making function for the corporation, or
    - (ii) the manager of one or more manufacturing, production, or operating facilities employing more than 250 persons or having gross annual sales or expenditures exceeding \$25 million (in second quarter 1980 dollars), if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.
  - (2) for a partnership or sole proprietorship: by a general partner or the proprietor, respectively; or
  - (3) for a municipality, state, federal, or other public agency: by either a principal or executive officer or ranking elected official. For purposes of this section, a principal executive officer of a federal agency includes: (i) the chief executive officer of the agency, or (ii) a senior executive officer having responsibility for the overall operations of a principal geographic unit of the agency; or
  - (4) a duly authorized representative of the person described in items (1), (2), or (3). A person is a duly authorized representative only if:
    - (i) the authorization is made in writing by a person described in paragraph (a)(1), (2), or (3) of this section;
    - (ii) the authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity such as the position of plant manager, operator of a well or well field, superintendent, position of equivalent responsibility, or an individual or position having overall responsibility for environmental matters for the company. (A duly authorized representative may thus be either a named individual or any individual occupying a named position); and
    - (iii) the written authorization is submitted to the Department.
- b. Changes to authorization: If an authorization under subparagraph (a)(4) of this section is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization satisfying the requirements of subparagraph (a)(4) of this section must be submitted to the Department prior to or together with any reports, information, or applications to be signed by an authorized representative.
- c. Certification: Any person signing a report shall make the following certification:
- "I certify under penalty of law that this document and all attachments were prepared under my direction or supervision, in accordance with a system, designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the order or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

## 7.3 RECORDING OF MONITORING ACTIVITIES AND RESULTS

- a. The operator shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this order, and records of all data used to complete the application for this order, for a period of at least 3 years from the date of the sample, measurement, report or application. This period may be extended by request of the Department at any time.

- b. Records of monitoring information shall include:
- (1) the date, exact place, and time of sampling or measurements;
  - (2) the individual(s) who performed the sampling or measurements;
  - (3) the date(s) analyses were performed;
  - (4) the individual(s) who performed the analyses;
  - (5) the analytical techniques or methods used; and
  - (6) the results of such analyses.

#### 7.4 TEST AND ANALYTICAL PROCEDURES

- a. Monitoring and analysis must be conducted using test procedures promulgated, pursuant to 40 CFR Part 136, except:
- (1) should the Department require the use of a particular test procedure, such test procedure will be specified in this order.
  - (2) should the operator desire to use a test method not approved herein, prior Department approval is required, pursuant to paragraph (b) of this section.
- b. Application for approval of test procedures shall be made to the Director of DEC's Division of Water, and shall contain:
- (1) the name and address of the applicant or the responsible person making the discharge, identification of this particular order and the telephone number of applicant's contact person;
  - (2) the names of the pollutants or parameters for which an alternate testing procedure is being requested, and the monitoring location(s) at which each testing procedure will be utilized;
  - (3) justification for using test procedures, other than those approved in paragraph (a) of this section; and
  - (4) a detailed description of the alternate procedure, together with:
    - (i) references to published studies, if any, of the applicability of the alternate test procedure to the effluent in question;
    - (ii) information on known interferences, if any; and
  - (5) a comparability study, using both approved and proposed methods. The study shall consist of 8 replicates of 3 samples from a well mixed waste stream for each outfall if less than 5 outfalls are involved, or from 5 outfalls if 5 or more outfalls are involved. Four (4) replicates from each of the samples must be analyzed using a method approved in paragraph (a) of this section, and four replicates of each sample must be analyzed using the proposed method. This results in 24 analyses per outfall up to a maximum of 120 analyses. A statistical analysis of the data must be submitted that shall include, as a minimum:
    - (i) calculated statistical mean and standard deviation;
    - (ii) a test for outliers at the mean  $\pm 3$  standard deviations level. Where an outlier is detected, an additional sample must be collected and 8 replicates of the sample must be analyzed as specified above;
    - (iii) a plot distribution with frequency counts and histogram;
    - (iv) a test for equality among within sample standard deviation;
    - (v) a check for equality of pooled within sample variance with an F-Test;
    - (vi) a t-Test to determine equality of method means; and

copies of all data generated in the study.

Additional information can be obtained by contacting the Bureau of Technical Services & Research (NYSDEC, 50 Wolf Road, Albany, New York 12233 - 3502).

## 8. DISPOSAL SYSTEM OPERATION AND QUALITY CONTROL

### 8.1 GENERAL

- a. The disposal system shall not receive or be committed to receive wastes from unapproved sources, nor wastes beyond its design capacity as to volume and character of wastes treated; nor shall the system be materially altered as to type, degree, or capacity of treatment provided; disposal of treated effluent; or treatment and disposal of separated scum, liquids, solids or combination thereof resulting from the treatment process without written approval of the Department of Environmental Conservation or its designated field office.
- b. The operator shall, at all times, properly operate and maintain all facilities and systems of treatment and control (or related appurtenances) which are installed or used by the operator to achieve compliance with the conditions of this order. Proper operation and maintenance also includes as a minimum, the following: 1) A preventive/corrective maintenance program. 2) A site specific action orientated operation and maintenance manual for routine use, training new operators, adequate laboratory controls and appropriate quality assurance procedures. This provision requires the operation of installed backup or auxiliary facilities or similar systems only when the operation is necessary to achieve compliance with the conditions of the order.
- c. The operator shall not discharge floating solids or visible foam.

### 8.2 BYPASS

#### a. Definitions:

- (1) "Bypass" means the intentional or unintentional diversion of waste stream(s) around any portion of a treatment facility for the purpose or having the effect of reducing the degree of treatment intended for the bypassed portion of the treatment facility.
- (2) "Severe property damage" means substantial damage to property, damage to the treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which would not reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.

#### b. Bypass not exceeding limitations:

The operator may allow any bypass to occur which does not cause effluent limitations to be violated, but only if it also is for essential maintenance, repair or replacement to assure efficient and proper operation. These bypasses are not subject to the provisions of paragraph (c) and (d) of this section, provided that written notice is submitted prior to bypass (if anticipated) or as soon as possible after bypass (if unanticipated), and no public health hazard is created by the bypass.

#### c. Notice:

- (1) Anticipated bypass - If the operator knows in advance of the need for a bypass, it shall submit prior written notice, at least forty five (45) days before the date of the bypass.
- (2) Unanticipated bypass - The operator shall submit notice of an unanticipated bypass as required in Section 4, paragraph b. of this Part (24 hour notice).

#### d. Prohibition of bypass:

- (1) Bypass is prohibited, and the Department may take enforcement action against a operator for bypass, unless:
  - (i) bypass was unavoidable to prevent loss of life, personal injury, public health hazard, or severe property damage;
  - (ii) there were no feasible alternatives to the bypass such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal period of equipment downtime. This condition is not satisfied if adequate backup equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance or if designed and installed backup equipment which could have prevented or mitigated the impact of the bypass is not operating during the bypass; and
  - (iii) the operator submitted notices as required under paragraph (c) of this section and, excepting emergency conditions, the proposed bypass was accepted by the Department.

### 8.3 UPSET

a. Definition:

"Upset" means an exceptional incident in which there is unintentional and temporary noncompliance with order effluent limitations because of factors beyond the reasonable control of the operator. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.

b. Effect of an upset:

An upset constitutes an affirmative defense to an action brought for noncompliance with such order effluent limitations if the requirements of paragraph (c) of this section are met. No determination made during administrative review of claims that noncompliance was caused by upset, and before an action for noncompliance, is final administrative action subject to judicial review.

c. Conditions necessary for a demonstration of upset:

An operator who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operation logs, or other relevant evidence that:

- (1) an upset occurred and that the operator can identify the cause(s) of the upset;
- (2) the facility was at the time being properly operated; and
- (3) the operator submitted notice of the upset as required in Section 4, paragraph b of this part (24 hour notice).
- (4) the operator complied with any remedial measures required under Section 4, paragraph d of this part.

d. Burden of proof:

In any enforcement proceeding the operator seeking to establish the occurrence of an upset has the burden of proof.

### 8.4 SPECIAL CONDITION - DISPOSAL SYSTEMS WITH SEPTIC TANKS

If a septic tank is installed as part of the disposal system, it shall be inspected by the operator or his agent for scum and sludge accumulation at intervals not to exceed one year's duration, and such accumulation will be removed before the depth of either exceeds one-fourth (1/4) of the liquid depth so that no settleable solids or scum will leave in the septic tank effluent. Such accumulation shall be disposed of in an approved manner.

### 8.5 SLUDGE DISPOSAL

The storage or disposal of collected screenings, sludges, other solids, or precipitates separated from the authorized discharges and/or intake or supply water by the operator shall be done in such a manner as to prevent creation of nuisance conditions or entry of such materials into classified waters or their tributaries, and in a manner approved by the Department. Any live fish, shellfish, or other animals collected or trapped as a result of intake water screening or treatment should be returned to their water body habitat. The operator shall maintain records of disposal on all effluent screenings, sludges and other solids associated with the discharge(s) herein described. The following data shall be compiled and reported to the Department or its designated field office upon request:

- a. the sources of the materials to be disposed of;
- b. the approximate volumes, weights, water content and (if other than sewage sludge) chemical composition;
- c. the method by which they were removed and transported, including the name and permit number of the waste transporter; and
- d. their final disposal locations.