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2. This Consent Order is issued to Respondent under the authority vested in the President of the United States by

sections 104, 122(a) and 122(d)(3) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, 42 U.S.C. §§ 9604, 9622(a), 9622(d)(3) (CERCLA). This authority was delegated to the Administrator of EPA on January 23, 1987, by Executive Order 12580, 52 Fed. Reg. 2926 (1987), and further delegated to the Regional Administrators on September 13, 1987, by EPA Delegation No. 14-14-C.

3. The Respondent agrees to undertake all actions required by the terms and conditions of this Order. Respondent consents to and agrees not to contest the authority or jurisdiction of the Regional Administrator of EPA Region II to issue or enforce this Order, and also agrees not to contest the validity or terms of this Order in any action to enforce its provisions.

III. PARTIES BOUND

4. This Order shall apply to and be binding upon the Respondent, its agents, successors, assigns, officers, directors and principals. The signatories to this Order certify that they are authorized to execute and legally bind the parties they represent to this Consent Order. No change in the ownership or corporate status of the Respondent or of the Site shall alter Respondent's responsibilities under this Order.

5. The Respondent shall provide a copy of this Order to any subsequent owners or successors before ownership rights or stock or assets in a corporate acquisition are transferred. Respondent shall provide a copy of this Order to all contractors, subcontractors, laboratories, and consultants which are retained to conduct any work performed under this Order, within 14 days after the effective date of this Order or the date of retaining their services, whichever is later. Respondent shall condition any such contracts upon satisfactory compliance with this Order. Notwithstanding the terms of any contract, Respondent is responsible for compliance with this Order and for ensuring that its subsidiaries, employees, contractors, consultants, subcontractors, agents and attorneys comply with this Order.

IV. STATEMENT OF PURPOSE

6. In entering into this Order, the objectives of EPA and the Respondent are: (a) to conduct a remedial investigation ("RI") to determine the nature and extent of contamination and any threat to the public health, welfare, or the environment caused by the release or threatened release of hazardous substances, pollutants or contaminants at the Site; (b) to determine and evaluate alternatives, through the conduct of a feasibility study ("FS"), to remediate or control said release or threatened release of hazardous substances, pollutants, or contaminants; and (c) to provide for the reimbursement to EPA of certain response costs incurred by EPA with respect to the Site.

7. The activities conducted under this Consent Order are subject to approval by EPA and shall provide all appropriate necessary information for the RI/FS, and for a record of decision that is consistent with CERCLA and the National Oil and Hazardous Substances Pollution Contingency Plan ("NCP"), 40 C.F.R. Part 300. The activities conducted by or on behalf of Respondent under this Consent Order shall be conducted in compliance with all applicable EPA guidances, policies, and procedures.

V. FINDINGS OF FACT AND CONCLUSIONS OF LAW

8. The Site encompasses a parcel of land, approximately ten acres in size, located at 100 Sunny Sol Boulevard in the Village of Caledonia, Livingston County, New York, and also includes all areas at which or to which hazardous substances that have been released at that parcel have migrated or come to be located. The Site is situated in a moderately populated suburban area. Farmlands lie to the north and east of the Site. A golf course and residences are located immediately to the south. There are a few homes to the southeast and a large number of single family homes located to the west. The nearest residence is located approximately 200 feet from the plant at the Site.

9. Respondent, Jones Chemicals, Inc., has operated a chemical manufacturing and repackaging plant, among other activities, at this Site since 1939. The plant consists of 10 buildings and includes an office, garage, bleach manufacturing and ammonia repacking building, a chlorine and sulfur dioxide repackaging building, two drum storage sheds, and four interconnected warehouse/office buildings.

10. At the Site, Respondent produces sodium hypochlorite (bleach), sodium bisulfite, and aqua ammonia, among other chemicals. It also cleans, inspects, reconditions and tests gas cylinders.

11. During the time that Respondent has operated at the Site, "releases" of "hazardous substances" into the environment have occurred at the Site, within the meaning of Sections 101(22) and (14) of CERCLA, 42 U.S.C. §§ 9601(22), 9601(14), respectively. These releases included spills during the transfer of liquid chemicals into and from railroad cars and trucks at the Site. Among the hazardous substances released were toluene, trichloroethene, 1,1,1-trichloroethane, methylene chloride, and tetrachloroethene.

12. In May, 1984, Conestoga-Rovers & Associates prepared a hydrogeologic assessment for Respondent which detected contaminated soils at the Site.

13. In 1986, the New York State Department of Health conducted groundwater sampling at the Site and detected such CERCLA hazardous substances as toluene, trichloroethene, 1,1,1 - trichloroethane, methylene chloride and tetrachloroethene in three on-Site wells.

14. Exposure to the various hazardous substances detected at the Site can occur by direct contact, inhalation, or ingestion and may cause a variety of adverse human health effects. Many of the compounds which were detected on-Site are toxic and carcinogenic.

15. The Site was placed on the National Priorities List in early 1990, which list is established under Section 105(a)(8)(B) of CERCLA, 42 U.S.C. § 9605(a)(8)(B), and which is set forth at 40 C.F.R. Part 300, Appendix B.

16. The Respondent is a "person" within the meaning of Section 101(21) of CERCLA, 42 U.S.C. §9601(21). The Respondent is a current and past owner or operator of the Site from which there has been a release or threatened release of hazardous substances, and is accordingly a responsible party under Sections 104, 107, and 122 of CERCLA, 42 U.S.C. §§ 9604, 9607, and 9622.

17. The Site is a "facility" as defined in section 101(9) of CERCLA, 42 U.S.C. §9601(9).

18. Respondent has prepared an RI/FS Work Plan (the "RI/FS Work Plan") which has been approved by EPA. The RI/FS Work Plan sets forth the objectives and procedures for preparation of the RI/FS. The RI/FS Work Plan is attached hereto and incorporated herein as Appendix 1.

19. The actions required by this Consent Order are necessary to protect the public health or welfare or the environment, are in the public interest, 42 U.S.C. §9622(a), are consistent with CERCLA and the NCP, 42 U.S.C. §§ 9604(a)(1), 9622(a), and are expected to expedite effective remedial action and minimize litigation, 42 U.S.C. §9622(a).

20. Respondent has been given an opportunity to discuss with EPA the scope of work and the content of this Order.

VI. NOTICE

21. By providing a copy of this Consent Order to NYSDEC, EPA is notifying the State of New York that this Order is being issued and that EPA is the lead agency for coordinating, overseeing, and enforcing the response action required by the Order.

VII. WORK TO BE PERFORMED

22. All work performed under this Consent Order shall be under the direction and supervision of qualified personnel. Within 30 days of the effective date of this Order, the Respondent shall notify EPA in writing of the names, titles, and qualifications of the personnel, including contractors, subcontractors, consultants and laboratories to be used in carrying out such work. The qualifications of the persons undertaking the work for Respondent shall be subject to EPA's review, for verification that such persons meet minimum technical background and experience requirements. This Order is contingent on Respondent's demonstration to EPA's satisfaction that Respondent is qualified to perform properly and promptly the actions set forth in this Consent Order. If EPA disapproves in writing of any person(s)' technical qualifications, Respondent shall notify EPA of the identity and qualifications of the replacements within 30 days of the written notice. If EPA subsequently disapproves of the replacements, EPA reserves the right to terminate this Order and to conduct a complete RI/FS, and to seek reimbursement for costs and penalties from Respondent. During the course of the RI/FS, Respondent shall notify EPA in writing of any changes or additions in the personnel used to carry out such work, providing their names, titles, and qualifications. EPA shall have the same right to approve changes and additions to personnel as it has hereunder regarding the initial notification.

23. Respondent shall conduct the work required hereunder in accordance with CERCLA, the NCP, and EPA guidance, including, but not limited to, the "Interim Final Guidance for Conducting Remedial Investigations and Feasibility Studies under CERCLA" (OSWER Directive No. 9355.3-01) (hereinafter, the "RI/FS Guidance") and guidances referenced therein, as they may be amended or modified by EPA. The general activities that Respondent is required to perform are identified below, followed by a list of deliverables. The tasks that Respondent must perform are also described more fully in the attached RI/FS Work Plan. All work performed under this Consent Order shall be in accordance with the schedules herein, and in full accordance with the schedules, standards, specifications, and other requirements of the RI/FS Work Plan and the field operations plan referred to below, as initially approved by EPA, and as they may be amended or modified by EPA as provided in this Order. For purposes of this Order, day means calendar day unless otherwise noted in this Order, provided, however, that if the last day shall fall on a weekend or federal legal holiday, then the period shall be extended to the next normal business day.

A. Task I: Scoping. EPA has determined the site-specific objectives of the RI/FS and has devised a general management approach for the Site, as stated below and in the attached Work Plan. Respondent shall conduct the remainder of scoping

activities as described in the attached Work Plan and referenced guidances. As part of the scoping activities, Respondent shall provide EPA with the following deliverables:

1. Field Operations Plan. Within 30 days after EPA notifies Respondent of the acceptability of the personnel identified by Respondent pursuant to paragraph 22, above, Respondent shall submit to EPA the field operations plan ("FOP"). This plan shall consist of a sampling and analysis plan ("SAP"), a quality assurance project plan ("QAPP"), a health and safety plan ("HSP") and a detailed schedule. If EPA disapproves of or requires revisions to the FOP, in whole or in part, Respondent shall amend and submit to EPA a revised FOP which is responsive to the directions in all EPA comments, within 21 days of receiving EPA's comments. Respondent may invoke the dispute resolution procedures set forth in Section XVII below, in the event of a dispute between Respondent and EPA regarding EPA's disapproval of, or required revisions to, the FOP.

a. The SAP shall address the components described in the attached Work Plan.

b. The QAPP shall include:

- i. Project description;
- ii. Project organization and responsibilities, including curricula vitae of key personnel;
- iii. Quality assurance objectives for measurement;
- iv. Sample custody;
- v. Calibration procedures;
- vi. Analytical procedures;
- vii. Data reduction, validation and reporting;
- viii. Internal quality control;
- ix. Performance and systems audits;
- x. Preventative maintenance;
- xi. Data assessment procedures;
- xii. Corrective actions; and,
- xiii. Quality assurance reports.

The QAPP shall be completed in accordance with the EPA publication Test Methods for Evaluating Solid Waste ("SW-846") (November 1986, or as updated) and the EPA documents entitled, Interim Guidelines and Specifications for Preparing Quality Assurance Project Plans, USEPA QAMS-005/80, and Guidance for Preparation of Combined Work/Quality Assurance Project Plans for Environmental Monitoring (USEPA, Office of Water Regulations and Standards, May 1984).

Respondent shall use Quality Assurance/Quality Control ("QA/QC") procedures in accordance with the QAPP submitted and approved by EPA pursuant to this Order, and shall use standard EPA Chain of Custody procedures, as set forth in the National Enforcement Investigations Center Policies and Procedures Manual, as revised in November 1984, the National Enforcement Investigations Center Manual for the Evidence Audit, published in September 1981, and SW-846, for all sample collection and analysis activities conducted pursuant to this Order. In addition, Respondent shall:

- A. Ensure that all contracts with laboratories used by Respondent for analysis of samples taken pursuant to this Order provide for access for EPA personnel and EPA-authorized representatives to assure the accuracy of laboratory results related to the Site;
- B. Ensure that laboratories utilized by Respondent for analysis of samples taken pursuant to this Order perform all analyses according to SW-846 protocols;
- C. Ensure that all laboratories used by Respondent for analysis of samples taken pursuant to this Order are certified to perform analyses under SW-846 protocols; and
- D. Ensure that the laboratories used by Respondent for analysis of samples taken pursuant to this Order perform satisfactorily on Performance Evaluation samples that EPA may submit to those laboratories for purposes of insuring that the laboratories meet EPA-approved QA/QC requirements.

c. The HSP shall include the components described in the attached Work Plan and shall conform to 29 CFR §1910.120, "OSHA Hazardous Waste Operations Standards," and the EPA guidance document, "Standard Operating Safety Guides" (OSWER, 1988).

2. Following approval or modification by EPA, the FOP shall be deemed to be incorporated by reference herein.

B. Task II: Community Relations Plan. EPA will prepare a community relations plan. To the extent requested by EPA, Respondent shall provide information supporting EPA's community relations program to the extent that such requests are consistent with the scope of the work being performed by Respondent under this Order.

C. Task III: Data Evaluation. Following EPA's written approval or modification of the FOP, Respondent shall implement the provisions of the RI/FS Work Plan and FOP to characterize the nature, quantity, and concentrations of hazardous substances, pollutants, or contaminants at the Site. Respondent shall provide EPA with validated analytical data within 75 days of each sampling activity, in a form showing the location, medium and results. Within 7 days of completion of field activities, Respondent shall notify EPA in writing. Within 90 days of completion of validation of the final set of field data, Respondent shall submit to EPA a Site Summary Report, as described in the attached Work Plan. If EPA disapproves of or requires revisions to the Site Summary Report, in whole or in part, Respondent shall amend and submit to EPA a revised Site Summary Report which is responsive to the directions in all EPA comments within 45 days of receipt of EPA's comments.

D. Task IV: Identification of Candidate Technologies Memorandum. This memorandum shall be submitted within 30 days of Respondent's receipt of the last set of validated analytical results. If EPA disapproves of or requires revisions to the technical memorandum identifying candidate technologies, in whole or in part, Respondent shall amend and submit to EPA a revised technical memorandum identifying candidate technologies which is responsive to the directions in all EPA comments, within 14 days of receiving EPA's comments.

E. Task V: Treatability Studies. At EPA's request, Respondent shall conduct treatability studies, except where Respondent can demonstrate to EPA's satisfaction that they are not needed. The major components of the treatability studies should include a determination of the need for and scope of studies, the design of the studies, and the completion of the studies. Respondent shall provide EPA with the following deliverables:

1. Treatability Testing Statement of Work. If EPA determines that treatability testing is required and so notifies Respondent, Respondent shall, within 14 days thereafter, submit to EPA a Treatability Testing Statement of Work.

2. Treatability Testing Work Plan. Within 30 days of EPA's approval of the Treatability Testing Statement of Work, Respondent shall submit a Treatability Testing Work Plan, including a schedule. Upon its approval by EPA, said schedule shall be deemed incorporated into this Order by reference. If EPA disapproves of or requires revisions to the Treatability Testing Work Plan, in whole or in part, Respondent shall amend and submit to EPA a revised Treatability Testing Work Plan which is responsive to the directions in all EPA comments, within 14 days of receiving EPA's comments. Respondent may invoke the dispute resolution procedures set forth in Section XVII below in the event of a dispute between Respondent and EPA regarding EPA's disapproval of, or required revisions to, the Treatability Testing Work Plan.

3. Treatability Study FOP. Within 30 days of the identification by EPA of the need for a separate or revised QAPP, HSP, and/or SAP, Respondent shall submit to EPA a revised QAPP, HSP and/or SAP, as appropriate. If EPA disapproves of or requires revisions to the revised QAPP, HSP, and/or SAP, in whole or in part, Respondent shall amend and submit to EPA a revised treatability study QAPP, HSP, and/or SAP, which is responsive to the directions in all EPA comments, within 14 days of receiving EPA's comments.

4. Treatability Study Evaluation Report. Within 30 days of completion of any treatability testing, Respondent shall submit a Treatability Study Evaluation Report to EPA. If EPA disapproves of or requires revisions to the Treatability Study Evaluation Report, in whole or in part, Respondent shall amend and submit to EPA a revised Treatability Study Evaluation Report which is responsive to the directions in all EPA comments, within 14 days of receiving EPA's comments.

F. Task VI: Risk Assessment. EPA will prepare a risk assessment which shall be incorporated by the Respondent into the RI. To the extent requested by EPA, Respondent shall provide information supporting EPA's risk assessment to the extent that such requests are consistent with the scope of the work being performed by Respondent under this Order.

G. Task VII: Presentation on Preliminary Findings of RI, Remedial Action Objectives, and Development and Preliminary Screening of Alternatives. Within sixty (60) days after EPA's submittal of the Risk Assessment to the Respondent, Respondent shall make a presentation to EPA and the State of New York (the "State") during which the Respondent shall summarize the preliminary findings of the RI, identify the remedial action objectives, and summarize the development and preliminary screening of remedial alternatives. Respondent shall address any

comments made by EPA during this presentation in the appropriate document.

H. Task VIII: Draft Remedial Investigation Report. Within 30 days of the Task VII presentation to EPA, Respondent shall submit to EPA a draft RI report consistent with the RI/FS Work Plan and FOP. If EPA disapproves of or requires revisions to the RI report, in whole or in part, Respondent shall amend and submit to EPA a revised RI report which is responsive to the directions in all EPA comments, within 30 days of receiving EPA's comments. Respondent may invoke the dispute resolution procedures set forth in Section XVII below in the event of a dispute between Respondent and EPA regarding EPA's disapproval of, or required revisions to, the RI Report.

I. Task IX: Draft FS Report. Within 90 days of the Task VII presentation to EPA, Respondent shall submit a draft FS report. Respondent shall refer to the attached Work Plan and the RI/FS Guidance for report content and format. Within 21 days of submitting the draft FS report, Respondent shall make a presentation to EPA and the State at which Respondent shall summarize the findings of the draft FS and receive and discuss EPA's and the State's preliminary verbal comments and concerns associated with the draft FS report. If EPA disapproves of or requires revisions to the draft FS report, in whole or in part, Respondent shall amend and submit to EPA a revised draft FS report which is responsive to the directions in all EPA comments, within 30 days of receiving EPA's written comments. Respondent may invoke the dispute resolution procedures set forth in Section XVII below in the event of a dispute between Respondent and EPA regarding EPA's disapproval of, or required revisions to, the FS Report.

24. EPA reserves the right to comment on, modify and direct changes for all deliverables required pursuant to this Order. Respondent shall fully correct all deficiencies and incorporate and integrate all information and comments supplied by EPA either in subsequent or resubmitted deliverables. All of EPA's directions for amendments, modifications, correlations, additional evaluations and changes under this Order shall be consistent with the terms of this Order, not inconsistent with the NCP, and not arbitrary and capricious.

25. Respondent shall not proceed further with any subsequent activities or tasks until receiving EPA approval for the following deliverables: FOP, Treatability Testing Work Plan and Treatability Study FOP (if treatability study work is undertaken). While awaiting EPA approval on these deliverables, Respondent shall proceed with all other tasks and activities which may be conducted independently of these deliverables, in accordance with the schedule set forth in this Consent Order.

26. For all remaining deliverables not enumerated above in paragraph 25, Respondent shall proceed with all subsequent tasks, activities and deliverables without awaiting EPA approval on the submitted deliverable. EPA reserves the right to stop Respondent from proceeding further, either temporarily or permanently, on any task, activity or deliverable at any point during the RI/FS process.

27. In the event that Respondent amends or revises a report, plan or other submittal upon receipt of EPA comments, if EPA subsequently disapproves of the revised submittal, or if subsequent submittals do not fully reflect EPA's directions for changes, EPA retains the right in its sole discretion to seek stipulated or statutory penalties; perform its own studies, complete the RI/FS (or any portion of the RI/FS) under CERCLA and the NCP, and seek reimbursement from the Respondent for its costs; and/or seek any other appropriate relief.

28. In the event that EPA takes over some of the tasks, but not the preparation of the RI and FS reports, Respondent shall incorporate and integrate information supplied by EPA into the final RI and FS reports.

29. Neither failure of EPA to expressly approve or disapprove of Respondent's submissions within a specified time period(s), nor the absence of comments, shall be construed as approval by EPA. Whether or not EPA gives express approval for Respondent's deliverables, Respondent is responsible for preparing deliverables acceptable to EPA. Any notice by EPA of disapproval of a submittal will include an explanation of why the given submittal is being disapproved.

30. Respondent shall, prior to any off-Site shipment of hazardous substances from the Site to an out-of-state waste management facility, provide written notification to the appropriate state environmental official in the receiving state and to EPA's Project Coordinator of such shipment of hazardous substances. However, the notification of shipments shall not apply to any such off-Site shipments when the total volume of such shipments will not exceed 10 cubic yards.

(a) The notification shall be in writing, and shall include the following information, where available: (1) the name and location of the facility to which the hazardous substances are to be shipped; (2) the type and quantity of the hazardous substances to be shipped; (3) the expected schedule for the shipment of the hazardous substances; and (4) the method of transportation. Respondent shall notify the receiving state of major changes in the shipment plan, such as a decision to ship the hazardous substances to another facility within the same state, or to a facility in another state.

(b) The identity of the receiving facility and state will be determined by Respondent following the award of the contract for the RI/FS. Respondent shall provide all relevant information, including information under the categories noted in paragraph 30(a) above, on the off-Site shipments, as soon as practical after the award of the contract and before the hazardous substances are actually shipped.

VIII. NOTIFICATION AND REPORTING REQUIREMENTS

31. All reports and other documents submitted by Respondent to EPA (other than the monthly progress reports referred to below) which purport to document Respondent's compliance with the terms of this Order shall be signed by a responsible official(s) for the Respondent. For purposes of this Order, a responsible official is a corporate official who is in charge of a principal business function.

32. Until the termination of this Order, Respondent shall prepare and provide EPA with written monthly written progress reports which: (1) describe the actions which have been taken toward achieving compliance with this Order during the previous month; (2) include all results of sampling, tests, modelling and all other data (including raw data) received or generated by or on behalf of Respondent during the previous month in the implementation of the work required hereunder (unless that data has already been submitted by Respondent to EPA pursuant to Section VII, above); (3) describe all actions, data and plans which are scheduled for the next two months and provide other information relating to the progress of work as is customary in the industry; (4) include information regarding percentage of completion, all delays encountered or anticipated that may affect the future schedule for completion of the work required hereunder, and a description of all efforts made to mitigate those delays or anticipated delays. These progress reports shall be submitted to EPA by Respondent by the tenth (10th) day of every month following the effective date of this Order.

33. Upon the occurrence of any event during performance of the work required hereunder which event, pursuant to Section 103 of CERCLA, requires reporting to the National Response Center, Respondent shall, within twenty-four (24) hours, orally notify the EPA Project Coordinator (or, in the event of the unavailability of the EPA Project Coordinator, the Chief of the Western New York Superfund Section I of the Emergency and Remedial Response Division of EPA Region II), in addition to the reporting required by Section 103. Within twenty (20) days of the onset of such an event, Respondent shall furnish EPA with a written report setting forth the events which occurred and the measures taken, and to be taken, in response thereto.

34. All work plans, reports, notices and other documents required to be submitted to EPA under this Order shall be sent by certified mail, return receipt requested, by overnight delivery or courier to the following addressees:

7 copies: Chief, Western New York Superfund Section I
(including Emergency and Remedial Response Division
1 un-bound United States Environmental Protection Agency
copy) 26 Federal Plaza, Room 29-100
New York, New York 10278

Attention: Eduardo Gonzalez
Project Manager

1 copy: Chief, New York/Caribbean Superfund Branch
Office of Regional Counsel
United States Environmental Protection Agency
26 Federal Plaza, Room 437
New York, New York 10278

Attention: Princina Watts
Attorney

4 copies: Western Remedial Section B
Central Remedial Projects Section
Bureau of Western Remedial Action
New York State Department of Environmental
Conservation
50 Wolf Road
Albany, New York 12233-7010

Attention: Christopher Allen
Projects Section

1 copy: Mr. Ronald Tramontano
Chief
Bureau of Environmental Exposure Investigation
Division of Environmental Health Assessment
New York State Department of Health
2 University Place
Albany, NY 12203

1 copy: Mr. Michael Khalil
Regional Hazardous Waste Remediation Engineer
NYSDEC Region 8 Office
6274 East Avon-Lima Road
Avon, NY 14414

35. Respondent shall give EPA at least fourteen (14) days advance notice of all field work or field activities to be performed by Respondent pursuant to this Order.

IX. MODIFICATION OF THE WORK PLAN

36. If at any time during the RI/FS process, Respondent identifies a need for additional data, a memorandum documenting the need for additional data shall be submitted to the EPA Project Coordinator within twenty (20) days of identification. EPA in its discretion will determine whether the additional data will be collected by Respondent and whether it will be incorporated into reports and deliverables required pursuant to this Order.

37. In the event of conditions posing an immediate threat to human health or welfare or the environment, Respondent shall notify EPA and NYSDEC immediately. In the event of unanticipated or changed circumstances at the Site, Respondent shall notify the EPA Project Coordinator (or, in the event of the unavailability of the EPA Project Coordinator, the Chief of the Western New York Superfund Section I of the Emergency and Remedial Response Division of EPA Region II) by telephone within forty-eight (48) hours of discovery of the unanticipated or changed circumstances. In addition to the authorities in the NCP, in the event that EPA determines that the immediate threat or the unanticipated or changed circumstances warrant changes in the RI/FS Work Plan and/or FOP, EPA will modify or amend the RI/FS Work Plan and/or FOP in writing accordingly. To the extent that time permits, EPA will provide Respondent an opportunity to discuss with EPA the changes to the RI/FS Work Plan or FOP. Respondent shall implement the RI/FS Work Plan and/or FOP as modified or amended by EPA.

38. EPA may determine that in addition to tasks defined in the initially-approved RI/FS Work Plan, other additional work may be necessary to accomplish the objectives of the RI/FS as set forth in the attached RI/FS Work Plan. EPA may require, pursuant to this Order, that the Respondent perform these response actions in addition to those required by the initially-approved RI/FS Work Plan, including any approved modifications, if EPA determines that such actions are necessary for a complete RI/FS. Subject to EPA resolution of any dispute pursuant to Section XVII, Respondent shall implement the additional tasks which EPA determines are necessary. The additional work shall be completed according to the standards, specifications and schedule set forth or approved by EPA in a written modification to the RI/FS Work Plan or written Work Plan supplement. EPA reserves the right to conduct the work itself at any point, to seek reimbursement for the costs associated with the work from Respondent, and/or to seek any other appropriate relief.

X. FINAL RI/FS, PROPOSED PLAN, PUBLIC COMMENT, RECORD OF DECISION

39. EPA retains the responsibility for the release to the public of the RI and FS reports. EPA retains responsibility for the preparation and release to the public of the proposed remedial action plan and record of decision in accordance with CERCLA and the NCP.

40. EPA will provide Respondent with the final RI and FS reports (to the extent that Respondent does not already have these reports), proposed remedial action plan, and record of decision.

41. Respondent shall submit to EPA documents developed during the course of the RI/FS upon which selection of the remedial action may be based. Respondent shall provide copies of plans, task memoranda including documentation of field modifications, recommendations for further action, quality assurance memoranda and audits, raw data, field notes, laboratory analytical reports, and other reports. Respondent shall additionally submit any previous studies conducted under state, local or other federal authorities relating to selection of the response action and all communications between Respondent and state, local or other federal authorities concerning selection of the response action.

XI. PROJECT COORDINATORS, OTHER PERSONNEL

42. EPA has designated the following individual as its Project Coordinator with respect to the Site:

Eduardo Gonzalez
New York/Caribbean Superfund Branch I
Emergency and Remedial Response Division
U.S. Environmental Protection Agency
26 Federal Plaza, Room 29-100
New York, N.Y. 10278
(212) 264-5714

Not later than fifteen (15) days after the effective date of this Order, Respondent shall select its own Project Coordinator and shall notify EPA in writing of the name, address, qualifications, job title and telephone number of that Project Coordinator. He or she shall have technical expertise sufficient to adequately oversee all aspects of the work contemplated by this Order. Respondent's and EPA's Project Coordinators shall be responsible for overseeing the implementation of this Order and shall coordinate communications between EPA and Respondent. EPA and Respondent may change its respective Project Coordinators. Such a change shall be accomplished by notifying the other party in writing at least ten days prior to the change where possible, and concurrently with the change or as soon thereafter as possible in the event that advance notification is not possible.

43. EPA's Project Coordinator shall have the authority lawfully vested in a Remedial Project Manager and On-Scene Coordinator by the NCP. In addition, EPA's Project Coordinator shall have the authority, consistent with the NCP, to halt any work required by this Consent Order, and to take any necessary response action when he determines that conditions at the Site may present an immediate endangerment to public health or welfare or the environment. The absence of the EPA Project Coordinator from the area under study pursuant to this Consent Order shall not be cause for the stoppage or delay of work.

44. All activities required of Respondent under the terms of this Consent Order shall be performed only by qualified persons possessing all necessary permits, licenses, and other authorizations required by applicable law.

XII. OVERSIGHT

45. During the implementation of the requirements of this Consent Order, Respondent and its contractors and subcontractors shall be available for such conferences and inspections with EPA as EPA may reasonably determine are necessary for EPA to adequately oversee the work being carried out and/or to be carried out.

46. Respondent and its employees, agents, contractors and consultants shall cooperate with EPA in its efforts to oversee Respondent's implementation of this Consent Order.

XIII. SAMPLING, ACCESS AND DATA AVAILABILITY/ADMISSIBILITY

47. If any area to which access is necessary to perform work under this Consent Order is owned in whole or in part by parties other than those bound by this Consent Order, Respondent shall obtain, or use its best efforts to obtain, access agreements from the present owner(s) within thirty (30) days of the effective date of this Consent Order. Such agreements shall provide access for EPA, its contractors and oversight officials, NYSDEC and its contractors, and the Respondent or its authorized representatives, and agreements for such access shall specify that Respondent are not EPA's representative with respect to liability associated with Site activities. Copies of such agreements shall be provided to EPA upon request prior to Respondent's initiation of field activities. Respondent's best efforts shall include providing reasonable compensation to any property owner. If access agreements are not obtained within the time referenced above, Respondent shall immediately notify EPA of its failure to obtain access. EPA may, in its sole discretion, obtain access for Respondent, perform those tasks or activities with EPA contractors, or terminate this Consent Order in the

event that Respondent cannot obtain access agreements. In the event that EPA performs those tasks or activities with EPA contractors and does not terminate this Consent Order, Respondent shall reimburse EPA for all costs incurred in performing such activities and shall perform all other activities not requiring access to the given property. Respondent additionally shall integrate the results of any such tasks undertaken by EPA into its reports and deliverables. Furthermore, Respondent agrees to indemnify the United States as specified in paragraph 89 of this Consent Order. Respondent also shall reimburse EPA pursuant to paragraph 73 for all costs and attorney fees incurred by the United States in its efforts to obtain access for Respondent.

48. At all reasonable times, EPA and its authorized representatives shall have the authority to enter and freely move about all property at the Site and off-Site areas where work, if any, is being performed, for the purposes of inspecting conditions, activities, the results of activities, records, operating logs, and contracts related to the Site or Respondent and its contractor pursuant to this Consent Order; reviewing the progress of the Respondent in carrying out the terms of this Consent Order; conducting tests as EPA or its authorized representatives deem necessary; using a camera, sound recording device or other documentary type equipment; and verifying the data submitted to EPA by Respondent. Respondent agrees to provide EPA and its designated representatives with access to inspect and copy all records, files, photographs, documents, sampling and monitoring data, and other writings related to work undertaken in carrying out this Consent Order. All parties with access to the Site under this paragraph shall comply with all approved health and safety plans.

49. All data, records, photographs and other information created, maintained or received by Respondent or its agents, contractors or consultants in connection with implementation of the work under this Consent Order, including but not limited to contractual documents, quality assurance memoranda, raw data, field notes, laboratory analytical reports, invoices, receipts, work orders and disposal records, shall, without delay, be made available to EPA on request. EPA shall be permitted to copy all such documents and other items.

50. Upon request by EPA, or its designated representatives, Respondent shall provide EPA or its designated representatives with duplicate and/or split samples of any material sampled in connection with the implementation of this Consent Order, or allow EPA or its designated representatives to take such samples.

51. Respondent may assert a claim of business confidentiality under 40 C.F.R. § 2.203, covering part or all of the information submitted to EPA pursuant to the terms of this Consent Order, provided such claim is allowed by section 104(e)(7) of CERCLA, 42

U.S.C. § 9604(e)(7). This claim shall be asserted in the manner described by 40 C.F.R. § 2.203(b) and substantiated at the time the claim is made. Information determined to be confidential in accordance with Section 104(e)(7) of CERCLA and/or 40 C.F.R. Part 2, Subpart B will be given the protection specified in 40 C.F.R. Part 2. If no such claim accompanies the information when it is submitted to EPA, it may be made available to the public by EPA or New York State without further notice to Respondent. Respondent agrees not to assert confidentiality claims with respect to any data related to Site conditions, sampling, or monitoring.

52. Notwithstanding any other provision of this Consent Order, EPA hereby retains all of its information gathering, access and inspection authority under CERCLA, the Solid Waste Disposal Act, 42 U.S.C. §§ 6901-6991, and any other applicable statute or regulation.

53. In entering into this Consent Order, Respondent waives any objections to the validity of any data gathered, generated, or evaluated by EPA, NYSDEC or Respondent in the performance or oversight of the work that has been verified according to the quality assurance/quality control (QA/QC) procedures required pursuant to this Consent Order. If Respondent object to any other data relating to the RI/FS and which is submitted in a monthly progress report in accordance with paragraph 32 herein, Respondent shall submit to EPA a report that identifies and explains its objections, describes its views regarding the acceptable uses of the data, if any, and identifies any limitations to the use of the data. The report must be submitted to EPA within fifteen (15) days of the monthly progress report containing the data.

XIV. OTHER APPLICABLE LAWS

54. Respondent shall comply with all laws that are applicable when performing the RI/FS. No local, state, or federal permit shall be required for any portion of the work, including studies, required hereunder which is conducted entirely on-Site, where such work is carried out in compliance with Section 121 of CERCLA; however, Respondent must comply with the substantive requirements that would otherwise be included in such permits. For any off-Site work performed pursuant to this Consent Order, Respondent shall obtain all permits necessary under applicable laws and shall submit timely applications and requests for any such permits. This Consent Order is not, nor shall it act as, a permit issued pursuant to any federal or state statute or regulation.

XV. RECORD PRESERVATION

55. All records and documents in Respondent's possession that relate in any way to the Site shall be preserved during the conduct of this Consent Order and for a minimum of ten (10) years after commencement of construction of any remedial action which is selected following the completion of the RI/FS. Respondent shall acquire and retain copies of all documents that relate to the Site and are in the possession of its employees, agents, accountants, contractors, or attorneys. After this 10-year period, Respondent shall notify EPA at least ninety (90) days before the documents are scheduled to be destroyed. If EPA requests that the documents be saved, Respondent shall, at no cost to EPA, give the documents or copies of the documents to EPA.

XVI. COMMUNITY RELATIONS

56. Respondent shall cooperate with EPA in providing information relating to the work required hereunder to the public. To the extent requested by EPA, Respondent shall participate in the preparation of all appropriate information disseminated to the public and make presentations at, and participate in, public meetings which may be held or sponsored by EPA to explain activities at or concerning the Site.

XVII. DISPUTE RESOLUTION

57. Any significant dispute concerning activities or deliverables required under this Consent Order, for which dispute resolution has been expressly provided for herein shall be resolved as follows: if Respondent objects to an EPA notice of disapproval or determination made pursuant to this Consent Order, and if the given dispute is one for which dispute resolution has been expressly provided for herein, Respondent shall notify EPA's Project Coordinator, in writing, of its objections within fourteen (14) days of receipt of the disapproval notice or determination. Respondent's written objections shall define the dispute, state the basis of Respondent's objections, and be sent to EPA by certified mail, return receipt requested. EPA and Respondent then have an additional fourteen (14) days to reach agreement. If an agreement is not reached within the fourteen (14) days, Respondent may, within seven (7) days of the conclusion of the aforementioned 14-day period, request a determination by the Chief of the New York/Caribbean Superfund Branch 1 of the Emergency and Remedial Response Division, EPA Region II (hereinafter, the "Chief"). Such a request by Respondent shall be made in writing. The Chief's determination is EPA's final decision. Respondent shall proceed in accordance with EPA's final decision regarding the matter in dispute, regardless of whether Respondent agree with the decision. The decision of the Chief will be in writing and will summarize the

reasons for her or his decision as to the matter in dispute. If Respondent does not agree to perform or does not actually perform the work in accordance with EPA's final decision, EPA reserves the right in its sole discretion to conduct the work itself and seek reimbursement from the Respondent of the costs of that work, to seek enforcement of the decision, to seek stipulated penalties, and/or to seek any other appropriate relief.

58. Respondent is not relieved of its obligation to perform and conduct activities and submit deliverables on the schedules which are approved by EPA and applicable to the work required pursuant to this Order, while a matter is pending in dispute resolution. However, if the dispute and its resolution cause a delay which makes it impossible for Respondent to meet a deadline set forth in or established pursuant to this Order, such deadline shall be extended by a period of time not to exceed the time of the delay resulting from the dispute and its resolution. Respondent shall not be entitled to any extension if EPA determines that Respondent's disagreement with EPA's comments or position is not in good faith or otherwise lacks a reasonable basis. Notwithstanding any of the foregoing, if Respondent requests an extension of any deadline, and if EPA declines to grant such an extension, any delay caused solely by the resolution of such a dispute shall not entitle Respondent to any extension. The invocation of dispute resolution does not stay the accrual of stipulated penalties under this Order.

XVIII. DELAY IN PERFORMANCE/STIPULATED PENALTIES

59. For each day that Respondent fails to comply with any of the requirements listed in paragraphs 62, 63, and 64, EPA may assess, and if so, Respondent shall pay stipulated penalties in accordance with the terms below. For purposes of this paragraph, and paragraphs 62, 63, and 64 the term "fail to comply" shall include failure by Respondent to submit an original or revised deliverable within the time limits set forth in or established pursuant to this Order, failure to revise a deliverable to fully conform with EPA's comments, and submittal of an original deliverable which is of such poor quality as to not even qualify as a bona fide submission. Penalties begin to accrue on the day that performance is due or a violation occurs, and shall continue to accrue until the noncompliance is corrected, or up to and including the 30th day of noncompliance, whichever occurs earlier. EPA will provide written notice of those violations for which EPA is assessing stipulated penalties; nevertheless, penalties shall accrue from the day a violation commences. Payment shall be due within 60 days of receipt of a demand letter from EPA, or within 60 days of completion of dispute resolution under Section XVIII (should the dispute resolution procedures be timely invoked by Respondent with respect to an EPA assessment of stipulated penalties), whichever is later. Where stipulated penalties apply to violations of a particular requirement of this

Order and where those violations do not last for more than 30 days, EPA will not seek statutory penalties for such violations until and unless EPA notifies Respondent in advance of EPA's intent to pursue statutory instead of stipulated penalties.

60. Respondent shall pay interest on the unpaid balance, which shall begin to accrue at the end of the 30-day period referred to in paragraph 59, above, at the rate established by the Department of Treasury pursuant to 31 U.S.C. §3717. Respondent shall further pay a handling charge of 1 percent, to be assessed at the end of each 30-day period, and a 6 percent per annum penalty charge, to be assessed if the penalty is not paid in full within 90 days after it is due.

61. Respondent shall make all payments by forwarding a cashier's or certified check to:

U.S. Environmental Protection Agency
EPA - Region 2
Attn: Superfund Accounting
P.O. Box 360188M
Pittsburgh, PA 15251

Checks shall identify the name of the Site, the Site identification number, the account number, and the index number of this Order. A copy of the check and of the accompanying transmittal letter shall be sent to the first two addressees listed in paragraph 34 above.

62. For the following major deliverables, stipulated penalties shall accrue in the amount of \$1000 per day, per violation, for the first seven days of noncompliance; \$2000 per day, per violation, for the 8th through 14th day of noncompliance; and \$4000 per day, per violation, for the 15th day through the 30th day of noncompliance.

- A. An original and any revised FOP.
- B. An original and any revised Site Summary Report.
- C. An original and any revised Draft RI Report.
- D. An original and any revised Treatability Testing Work Plan, if required.
- E. An original and any revised Treatability Study QAPP, HSP, and SAP, if required.
- F. An original and any revised Treatability Study Evaluation Report, if required.
- G. An original and any revised Draft Feasibility Study Report.

63. For the following interim deliverables, stipulated penalties shall accrue in the amount of \$500 per day, per violation, for the first week of noncompliance; \$1000 per day, per violation, for the 8th through 14th day of noncompliance; and \$2000 per day, per violation, for the 15th day through the 30th day of noncompliance.

- A. An original and any revised Identification of Candidate Technologies Memorandum.
- B. An original and any revised Treatability Testing Statement of Work.
- C. Presentation regarding Preliminary Findings of RI.
- D. Notification of names, titles, and qualifications of personnel pursuant to paragraph 22 above.

64. For the monthly progress reports, stipulated penalties shall accrue in the amount of \$250 per day, per violation, for the first week of noncompliance; \$500 per day, per violation, for the 8th through 14th day of noncompliance; and \$1000 per day, per violation, for the 15th day through the 30th day.

65. Respondent may dispute EPA's right to the stated amount of penalties by invoking the dispute resolution procedures under Section XVII herein. Penalties shall accrue but need not be paid during the dispute resolution period. If Respondent does not prevail upon resolution, all penalties shall be due to EPA within 30 days of resolution of the dispute. If Respondent prevails upon resolution, no penalties shall be paid.

66. In the event that EPA requires that corrections to an interim deliverable be reflected in the next deliverable, rather than requiring that the interim deliverable be resubmitted, stipulated penalties for that interim deliverable shall cease to accrue on the date of such decision by EPA.

67. The stipulated penalties provisions of this Order do not preclude EPA from pursuing any other remedies or sanctions which are available to EPA because of the Respondent's failure to comply with this Order, including but not limited to conduct of all or part of the RI/FS by EPA. Payment of stipulated penalties does not alter Respondent's obligation to complete performance under this Order.

XIX. FORCE MAJEURE

68. "Force majeure", for purposes of this Consent Order, is defined as any event arising from causes entirely beyond the control of Respondent and of any entity controlling, controlled

by, or under common control with Respondent, including its contractors and subcontractors, that delays the timely performance of any obligation under this Consent Order notwithstanding Respondent's best efforts to avoid the delay. The requirement that Respondent exercise "best efforts to avoid the delay" includes using best efforts to anticipate any potential force majeure event and best efforts to address the effects of any potential force majeure event (1) as it is occurring and (2) following the potential force majeure event, such that the delay is minimized to the greatest extent practicable. Examples of events that are not force majeure events include, but are not limited to, increased costs or expenses of any work to be performed under this Consent Order or the financial difficulty of Respondent to perform such work.

69. If any event occurs or has occurred that may delay the performance of any obligation under this Consent Order, whether or not caused by a force majeure event, Respondent shall notify by telephone the EPA Project Coordinator or, in his or her absence, the Chief of the Western New York Superfund Section I of the Emergency and Remedial Response Division, EPA Region II, within forty-eight (48) hours of when Respondent knew or should have known that the event might cause a delay. Within seven (7) business days thereafter, Respondent shall provide in writing: the reasons for the delay; Respondent's rationale for interpreting the circumstances as constituting a force majeure event (should that be Respondent's claim); the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to mitigate the effect of the delay; and a statement as to whether, in the opinion of Respondent, such event may cause or contribute to an endangerment to public health, welfare or the environment. Such written notice shall be accompanied by all available pertinent documentation including, but not limited to, third-party correspondence. Respondent shall exercise best efforts to avoid or minimize any delay and any effects of a delay. Failure to comply with the above requirements shall preclude Respondent from asserting any claim of force majeure.

70. If EPA agrees that the delay or anticipated delay is attributable to force majeure, the time for performance of the obligations under this Consent Order that are directly affected by the force majeure event will be extended for a period of time, determined by EPA, not to exceed the actual duration of the delay caused by the force majeure event. An extension of the time for performance of the obligation directly affected by the force majeure event shall not, of itself, extend the time for performance of any subsequent obligation.

71. If EPA does not agree that the delay or anticipated delay has been or will be caused by a force majeure event or if

Respondent objects to the length of the extension determined by EPA pursuant to paragraph 70, above, the issue shall be subject to the dispute resolution procedures set forth in Section XVII of this Consent Order. In order to qualify for a force majeure defense, Respondent shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a force majeure event, that the duration of the delay was or will be warranted under the circumstances, that Respondent did exercise or are exercising due diligence by using its best efforts to avoid and mitigate the effects of the delay, and that Respondent complied with the requirements of paragraph 69.

72. Should Respondent carry the burden set forth in paragraph 68, the delay at issue shall not be deemed a violation of the affected obligation of this Consent Order.

XX. REIMBURSEMENT

73. Respondent hereby agrees to reimburse EPA for all response costs not inconsistent with the NCP, including oversight costs, incurred by the U.S. Government with respect to the RI/FS. EPA will periodically transmit to Respondent accountings of the costs incurred by EPA. Such costs may include, but are not limited to, costs incurred by the U.S. Government in overseeing Respondent's implementation of the requirements of this Order and activities performed by the Government as part of the RI/FS and community relations, including any costs incurred while obtaining access. Such costs will include both direct and indirect costs, including but not limited to, time and travel costs of EPA personnel and associated indirect costs, contractor costs, cooperative agreement costs, costs of compliance monitoring, including the collection and analysis of split samples, inspection of RI/FS activities, Site visits, discussions regarding disputes that may arise as a result of this Order, review and approval or disapproval of reports, and costs of redoing any of Respondent's tasks. Any necessary summaries, including, but not limited to EPA's Agency Financial Management System summary data ("SPUR" Reports), or such other summary as compiled by EPA, shall serve as the basis for payment demands. Respondent shall, within thirty (30) days of receipt of such accounting, remit a cashier's or certified check for the amount of those costs, made payable to the "Hazardous Substance Superfund".

74. Respondent may invoke the Dispute Resolution procedures of Section XVII of this Consent Order with respect to payment demands submitted to Respondent by EPA under the preceding paragraph. However, Respondent agree to limit any disputes concerning such costs to accounting errors and the inclusion of costs outside the scope of this Consent Order. Respondent shall identify any contested costs and the basis of its objection. All undisputed costs shall be remitted by Respondent in accordance

with the schedule set forth above. Disputed costs shall be paid by Respondent into an escrow account while the dispute is pending. Respondent bears the burden of establishing an EPA accounting error or the inclusion of costs outside the scope of this Consent Order.

75. Respondent shall mail the payments required pursuant to this Section to the following address:

EPA - Region II
Attn: Superfund Accounting
P.O. Box 360188M
Pittsburgh, PA 15251

Checks shall include the name of the Site, and the index number of this Consent Order. A copy of each check and of the accompanying transmittal letter shall be sent to the first two addressees listed in paragraph 34, above.

76. Respondent shall pay interest on any amounts overdue under paragraph 73. Such interest shall begin to accrue on the first day that the respective payment is overdue. Interest shall accrue at the rate of interest on investments of the Hazardous Substances Superfund, in accordance with Section 107(a) of CERCLA.

XXI. RESERVATIONS OF RIGHTS AND REIMBURSEMENT OF OTHER COSTS

77. EPA reserves the right to bring an action against Respondent (and/or any other responsible parties) under Section 107 of CERCLA for recovery of all response costs incurred by the United States at the Site that are not reimbursed by Respondent, including, but not limited to oversight costs, any costs incurred in the event that EPA performs the RI/FS or any part thereof and any future costs incurred by the United States in connection with response activities conducted under CERCLA at the Site.

78. EPA reserves the right to bring an action against Respondent to enforce the requirements of this Consent Order, to collect stipulated penalties assessed pursuant to Section XVIII of this Consent Order, and to seek penalties pursuant to Section 109 of CERCLA, 42 U.S.C. § 9609, or any other applicable provision of law.

79. Except as expressly provided in this Consent Order, each party reserves all rights and defenses it may have. Nothing in this Consent Order shall be construed to limit, in any way, EPA's response or enforcement authorities including, but not limited to, the right to seek injunctive relief, stipulated penalties, statutory penalties, and/or punitive damages.

80. Following satisfaction of the requirements of this Consent Order, Respondent shall have resolved its liability to EPA for the work performed by Respondent pursuant to this Consent Order. Respondent is not released from liability, if any, for any response actions taken beyond the scope of this Consent Order regarding removals, other operable units, remedial design/remedial action of this operable unit, or activities arising pursuant to Section 121(c) of CERCLA.

XXII. DISCLAIMER

81. By signing and taking actions under this Consent Order, Respondent does not necessarily agree with the Findings of Fact and Conclusions of Law contained herein. Furthermore, the participation of Respondent in this Consent Order shall not be considered an admission of liability and is not admissible in evidence against Respondent in any judicial or administrative proceeding other than a proceeding by the United States, including EPA, to enforce this Consent Order or a judgment relating to it. Respondent retain its rights to assert claims against other potentially responsible parties at the Site. However, Respondent agrees not to contest the validity or terms of this Consent Order, or the procedures underlying or relating to it in any action brought by the United States, including EPA, to enforce its terms.

XXIII. OTHER CLAIMS

82. In entering into this Consent Order, Respondent waives any right to seek reimbursement, under Section 106(b) of CERCLA. Respondent also waives any right to present a claim with respect to such costs under Section 111 or 112 of CERCLA. This Consent Order does not constitute any decision on preauthorization of funds under Section 111(a)(2) of CERCLA. Respondent further waives all other statutory and common law claims against EPA, including, but not limited to, contribution and counterclaims, relating to or arising out of conduct of the RI/FS or this Consent Order.

83. Nothing in this Consent Order shall constitute or be construed as a release from any claim, cause of action, or demand in law or equity against any "person," as that term is defined in Section 101(21) of CERCLA, not a signatory to this Consent Order for any liability it may have arising out of or relating in any way to the generation, storage, treatment, handling, transportation, release, or disposal of any hazardous substances, pollutants, or contaminants found at, taken to, or taken from the Site. Nothing herein shall constitute a finding that Respondent is the sole responsible party with respect to the release and threatened release of hazardous substances at or from the Site.

84. Respondent shall bear its own costs and attorneys fees.

XXIV. FINANCIAL ASSURANCE, INSURANCE, AND INDEMNIFICATION

85. Respondent shall establish and maintain a financial instrument or trust account or other financial mechanism acceptable to EPA, funded sufficiently to perform the work and any other obligations required under this Consent Order, including a margin for cost overruns. Within fifteen (15) days after the effective date of this Consent Order, Respondent shall fund the financial instrument or trust account sufficiently to perform the work required under this Consent Order projected for the period beginning with the effective date of this Consent Order through the date of EPA's approval of Respondent's certification pursuant to paragraph 94, below.

86. If at any time the net worth of the financial instrument or trust account is insufficient to perform the work and other obligations under this Consent Order for the upcoming quarter, Respondent shall provide written notice to EPA within seven (7) days after the net worth of the financial instrument or trust account becomes insufficient. The written notice shall describe why the financial instrument or trust account is funded insufficiently and explain what actions have been or will be taken to fund the financial instrument or trust account adequately.

87. (a) Prior to commencement of any work under this Consent Order, Respondent shall secure and maintain in force for the duration of this Consent Order and for two (2) years after the completion of all activities required by this Consent Order, Comprehensive General Liability ("CGL") and automobile insurance, with limits of \$2,000,000 combined single limit, naming the United States as certificate holder thereunder with the right to receive notice addressed to the first two addressees listed in paragraph 38 above in the event of cancellation or amendment. The CGL insurance shall include Contractual Liability Insurance in the amount of \$_____ per occurrence, and Umbrella Liability Insurance in the amount of \$20 million.

(b) Respondent shall also secure and maintain in force for the duration of this Consent Order and for two (2) years after the completion of all activities required by this Consent Order the following:

- i. Professional Errors and Omissions Insurance in the amount of \$1,000,000 per occurrence.

(c) For the duration of this Consent Order, Respondent shall satisfy, and shall ensure that its contractors or subcontractors satisfy, all applicable laws and regulations regarding the provision of employer's liability insurance and workmen's

compensation insurance for all persons performing work on behalf of Respondent, in furtherance of this Consent Order.

(d) If Respondent demonstrates by evidence satisfactory to EPA that any contractor or subcontractor maintains insurance equivalent to that described above, or insurance covering the same risks but in a lesser amount, and, in either case, including the naming of the United States as an additional insured, then with respect to that contractor or subcontractor, Respondent need only provide that portion of the insurance described above which is not maintained by the contractor or subcontractor.

(e) Prior to commencement of any work under this Consent Order, and annually thereafter on the anniversary of the effective date of this Consent Order, Respondent shall provide to EPA certificates of such insurance and a copy of each insurance policy.

88. At least seven (7) days prior to the commencement of any work by a contractor on behalf of Respondent under this Consent Order, Respondent shall certify to EPA that the required insurance has been obtained by that contractor.

89. Respondent agrees to indemnify and hold the United States Government, its agencies, departments, agents, and employees harmless from any and all claims or causes of action arising from or on account of acts or omissions of Respondent, its employees, agents, servants, receivers, successors, or assignees, or any other persons acting on behalf of Respondent, including, but not limited to, firms, corporations, parent, subsidiaries and contractors, in carrying out activities under this Consent Order. The United States Government or any agency or authorized representative thereof shall not be held as a party to any contract entered into by Respondent in carrying out activities under this Consent Order.

90. Neither the United States Government nor any agency thereof shall be liable for any injuries or damages to persons or property resulting from acts or omissions by Respondent or Respondent's officers, directors, employees, agents, contractors, consultants, receivers, trustees, successors or assigns in carrying out any action or activity pursuant to this Consent Order.

XXV. EFFECTIVE DATE AND SUBSEQUENT MODIFICATION

91. After issuance, this Consent Order shall be effective on the date of receipt of a copy hereof by counsel to Respondent.

92. This Consent Order may be amended by mutual agreement of EPA and Respondent. Amendments shall be in writing and shall be

effective when signed by EPA. EPA Project Coordinators do not have the authority to sign amendments to this Consent Order.

93. No informal advice, guidance, suggestions, or comments by EPA regarding reports, plans, specifications, schedules, and any other writing submitted by Respondent will be construed as relieving Respondent of its obligation to obtain such formal approval as may be required by this Consent Order. Any deliverables, plans, technical memoranda, reports (other than progress reports), specifications, schedules and other documents required to be submitted to EPA pursuant to this Consent Order shall, upon approval by EPA, be deemed to be incorporated in and an enforceable part of this Consent Order.

XXVI. TERMINATION AND SATISFACTION

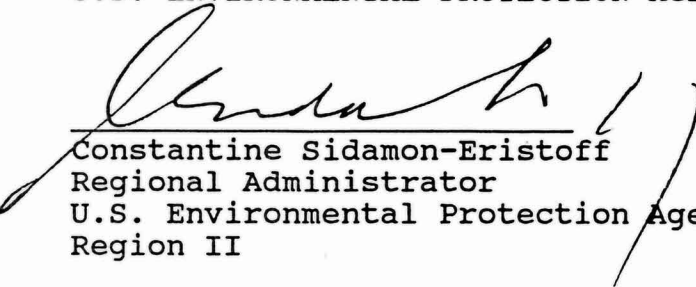
94. This Consent Order shall terminate when Respondent demonstrates in writing and certifies to the satisfaction of EPA that all activities required under this Consent Order - including any additional work, payment of costs in accordance with Section XX of this Consent Order, and payment of any stipulated penalties demanded by EPA - have been performed and EPA has approved the certification in writing. This notice shall not, however, terminate Respondent's obligation to comply with any of Respondent's remaining obligations under this Consent Order, including record preservation and the payment of any costs specified in Section XX of this Consent Order which have not yet, at that time, been paid by Respondent.

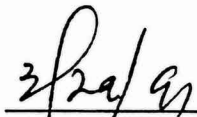
95. The certification referred to in paragraph 94, above, shall be signed by a responsible official(s) representing each Respondent. Such representative shall make the following attestation:

"I certify that the information contained in or accompanying this certification is true, accurate, and complete."

For purposes of this Consent Order, a responsible official is a corporate official who is in charge of a principal business function.

U.S. ENVIRONMENTAL PROTECTION AGENCY


Constantine Sidamon-Eristoff
Regional Administrator
U.S. Environmental Protection Agency
Region II


Date 3/24/91

CONSENT

The Respondent identified below has had an opportunity to confer with EPA regarding this Consent Order. Respondent hereby consents to the issuance of this Consent Order and to its terms. The individual executing this Consent Order on behalf of Respondent certifies under penalty of perjury under the laws of the United States and of the State of Respondent's incorporation that he or she is fully and legally authorized to agree to the terms and conditions of this Consent Order and to bind Respondent thereto.

JONES CHEMICALS, INC.
NAME OF RESPONDENT

MARCH 26 1991
Date

Laurence H. Schongar
(signature)

LAURENCE H. SCHONGAR
(typed name of signatory)

VICE PRESIDENT, OPERATIONS
(title of signatory)