

STATE OF NEW YORK: DEPARTMENT OF ENVIRONMENTAL CONSERVATION

In the Matter of the Implementation
of a Pilot Study and a Remedial
Investigation/Feasibility Study
for an Inactive Hazardous Waste
Disposal Site, Under Article 27,
Title 13, and Article 71, Title 27
of the Environmental Conservation Law
of the State of New York

by

CROSMAN CORPORATION and
NEW COLEMAN HOLDINGS, INC.

ORDER
ON
CONSENT

INDEX # B8-0404-92-04

Site Code # 835012

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." This Order is entered into pursuant to the Department's authority under ECL Article 27, Title 13, ECL 3-0301 and 6 NYCRR Part 375.

2. Respondents, Crosman Corporation and New Coleman Holdings, Inc., formerly known as Coleman, Inc., are corporations authorized to do business in New York, and are organized in the states of Delaware and Kansas respectively. Respondents manufacture or manufactured air guns and related products at a facility located at a 53-acre site on Route 5 & 20 in East Bloomfield, New York (the "Site"). The facility is presently using and has used trichloroethylene ("TCE") in its manufacturing processes.

3. Respondents have told the Department that they first

became aware of the possible presence of TCE in the groundwater at the Site on October 31, 1990 as a result of sampling conducted for a sewer discharge permit. When subsequent resampling confirmed the presence of TCE in the groundwater in excess of New York State Groundwater Quality Standards, the Respondents notified the Department. Since that time, Respondents have voluntarily undertaken a series of investigations which have been submitted to the Department and which resulted in their recommendation that a system capable of extracting TCE from soils be installed on the east side of the facility.

4. The Department alleges that the Site is an inactive hazardous waste disposal site, as that term is defined at ECL Section 27-1301.2, and presents a significant threat to the public health or environment. The Site has been listed in the Registry of Inactive Hazardous Waste Disposal Sites in New York State as Site Number 835012. The Department has classified the Site as a Classification "2" pursuant to ECL 27-1305.4.b.

5. A. Pursuant to ECL 27-1313.3.a, whenever the Commissioner of Environmental Conservation (the "Commissioner") "finds that hazardous wastes at an inactive hazardous waste disposal site constitute a significant threat to the environment, he may order the owner of such site and/or any person responsible for the disposal of hazardous wastes at such site (i) to develop an inactive hazardous waste disposal site remedial program, subject to the approval of the Department, at

such site, and (ii) to implement such program within reasonable time limits specified in the order."

B. ECL 71-2705 provides that any person who fails to perform any duty imposed by ECL Article 27, Title 13 shall be liable for civil, administrative and/or criminal sanctions.

C. In accordance with such existing provisions and limitations as may be elsewhere set forth by law, the Department also has the power, inter alia, to provide for the prevention and abatement of all water, land, and air pollution. ECL 3-0301.1.i.

6. Respondents have submitted, and the Department has approved, a pilot study and a remedial investigation/feasibility study work plan for the site which is attached hereto and which is incorporated herein as Appendix "A".

7. The Department and Respondents agree that the goals of this Order are for Respondents to (i) implement a pilot study and a Remedial Investigation/ Feasibility Study ("RI/FS") for the Site pursuant to the approved work plan attached in Appendix "A"; and (ii) reimburse the Department's administrative costs.

8. Respondents, having waived Respondents' right to a hearing herein as provided by law, and having consented to the issuance and entry of this Order, agrees to be bound by its terms. With respect to this Order and its terms, Respondents consent to and agree not to contest the authority or jurisdiction of the Department to issue or enforce this Order,

and agrees not to contest the validity of this Order or its terms. The recitals, findings, provisions, terms and conditions of this Order shall not give rise to any presumption of law or finding of fact which shall inure to the benefit of any third party and shall not be deemed to be admissions of any kind on the part of either Respondent.

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

I. Data Submittal

Within 30 days after the effective date of this Order, Respondents shall submit to the Department all data within Respondents' possession or control regarding environmental conditions on-Site and off-Site, and other information described below, to the extent that such data have not previously been provided to the Department. The data and other information shall include:

A. A brief history and description of the Site, including the types, quantities, physical state, location, and dates of disposal of hazardous waste including methods of disposal and spillage of such wastes, if any;

B. A concise summary of information held by Respondents and Respondents' attorneys and consultants with respect to all persons responsible for such disposal of hazardous wastes, if any, including but not limited to names,

addresses, dates of disposal and any proof linking each such person responsible with hazardous wastes identified pursuant to Subparagraph I.A; and

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

II. Pilot Study

Pursuant to the schedule in Appendix "A", Respondents shall perform the pilot study in accordance with the specifications in the Department-approved work plan in Appendix "A" and this Order and shall submit a report documenting the performance of the pilot study. Respondents shall notify the Department of any significant difficulties that may be encountered in implementing the Department-approved work plan in Appendix "A", and shall not modify any obligation unless first approved by the Department.

III. IRMs

Before the effective date of any Record of Decision ("ROD") by the Commissioner selecting a remedial alternative for the site, Respondents may propose interim remedial measures ("IRMs") for the Site on an as-needed basis. In proposing each IRM, Respondents shall submit to the Department a work plan which includes a chronological description of the anticipated

IRM activities together with a schedule for the performance of those activities. Upon the Department's determination that the proposal is an appropriate interim remedial measure and upon the Department's written approval of such work plan, the work plan shall be attached hereto and shall be incorporated herein as an appendix and become an enforceable part of this Order; and Respondents shall submit to the Department for its review and (as appropriate) approval, in accordance with the schedule contained in the Department-approved IRM work plan, detailed documents and specifications prepared, signed, and sealed by a professional engineer to implement the Department-approved IRM. Such documents shall include a health and safety plan, contingency plan, and (if the Department requires such) a citizen participation plan that incorporates appropriate activities outlined in the Department's publication, "New York State Inactive Hazardous Waste Citizen Participation Plan", dated August 30, 1988, or any subsequent revisions thereto. Respondents shall then carry out such IRM in accordance with the requirements of the Department-approved work plan, detailed documents and specifications, and this Order. Within the schedule contained in the Department-approved work plan, Respondents shall submit to the Department a final engineering report prepared by a professional engineer that includes a certification by that individual that all activities that comprised the IRM were performed in full accordance with the Department-approved work plan, detailed documents and

specifications, and this Order. Within the schedule contained in the Department-approved work plan, Respondents shall submit to the Department a report or reports documenting the performance of the IRM. Respondents shall notify the Department of any significant difficulties that may be encountered in implementing the Department-approved work plan, detailed documents, or specifications and shall not modify any obligation unless first approved by the Department.

IV. Performance and Reporting of Remedial Investigation

A. Pursuant to the schedule in Appendix "A", Respondents shall perform the Remedial Investigation in accordance with the Department-approved RI/FS Work Plan in Appendix "A" and with this Order.

B. During the performance of the Remedial Investigation, Respondents shall have on-Site a full-time representative who is qualified to supervise the work done.

C. Within the time frame set forth in the Department-approved RI/FS Work Plan, Respondents shall prepare a Remedial Investigation Report that shall:

(1) include all data generated and all other information obtained during the Remedial Investigation;

(2) provide all of the assessments and evaluations set forth in the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA") [42 U.S.C. 9601 et seq.], as amended, the National Contingency Plan ("NCP"), of March 8, 1990 [40 CFR Part 300], the USEPA

Guidance document entitled "Guidance for Conducting Remedial Investigations and Feasibility Studies under CERCLA," dated October 1988, and any subsequent revisions to that guidance document in effect at the time the RI/FS Work Plan is submitted, and appropriate USEPA and Department technical and administrative guidance documents as specified in 6 NYCRR 375-1.10(c)(1).

(3) identify any additional data that must be collected; and

(4) include a certification by the individual or firm with primary responsibility for the day to day performance of the Remedial Investigation that all activities that comprised the Remedial Investigation were performed in full accordance with the Department-approved RI/FS Work Plan.

V. Feasibility Study

A. Pursuant to the schedule in Appendix "A", Respondents shall perform, prepare, and submit a Feasibility Study evaluating on-Site and off-Site remedial options to eliminate and mitigate, to the maximum extent feasible, all health and environmental hazards and potential hazards attributable to hazardous waste disposal at the Site. The Feasibility Study shall be prepared by and have the signature and seal of a professional engineer who shall certify that the Feasibility Study was prepared in accordance with this Order.

B. Respondents shall perform and prepare the Feasibility Study in accordance with the Department-approved

RI/FS Work Plan and in a manner consistent with CERCLA, the NCP, and the guidance documents identified in Subparagraph IV.C(2).

C. Within 30 days after the Department's approval of the Feasibility Study, Respondents shall cooperate and assist the Department in soliciting public comment on the RI/FS and the proposed remedial action plan identified therein, in accordance with CERCLA, the NCP, 6 NYCRR Part 375-1.5(c), the guidance documents identified in Subparagraph IV.C.(2), and with any Department policy and guidance documents concerning public participation in effect at the time the public comment period is initiated.

VI. Progress Reports

Respondents shall submit to the parties set forth in Subparagraph XIV.B. written monthly progress reports that: (i) describe the actions which have been taken toward achieving compliance with this Order during the previous month; (ii) include all results of sampling and tests and all other data received or generated by Respondents or Respondents' contractors or agents in the previous month, including quality assurance/quality control information, whether conducted pursuant to this Order or conducted independently by Respondents; (iii) identify all work plans, reports, and other deliverables required by this Order that were completed and submitted during the previous month; (iv) describe all actions, including, but not limited to, data collection and

implementation of work plans, that are scheduled for the next month and provide other information relating to the progress at the Site; (v) include information regarding percentage of completion, unresolved delays encountered or anticipated that may affect the future schedule for implementation of the Respondents' obligations under the Order, and efforts made to mitigate those delays or anticipated delays; (vi) include any modifications to any work plans that Respondents have proposed to the Department or that the Department has approved; and (vii) describe all activities undertaken in support of the Citizen Participation Plan during the previous month and those to be undertaken in the next month. Respondents shall submit these progress reports to the Department by the tenth day of every month following the effective date of this Order.

VII. Review of Submittals

A. (1) The Department shall review each of the submittals, other than the monthly progress reports, Respondents make pursuant to this Order to determine whether it was prepared, and whether the work done to generate the data and other information in the submittal was done, in accordance with this Order and generally accepted technical and scientific principles. The Department shall notify Respondents in writing of its approval or disapproval of the submittal. All Department-approved submittals shall be incorporated into and become an enforceable part of this Order.

(2) (a) If the Department disapproves a

submittal, it shall so notify Respondents in writing and shall specify the reasons for its disapproval. Within the period of time specified in the notice of disapproval, which time period shall be reasonable, Respondents shall make a revised submittal to the Department that addresses and resolves all of the Department's stated reasons for disapproving the first submittal.

(b) After receipt of the revised submittal, the Department shall notify Respondents in writing of its approval or disapproval. If the Department disapproves the revised submittal, Respondents shall be in violation of this Order and the Department may take any action or pursue whatever rights it has pursuant to any provision of statutory or common law unless the Respondents invoke the dispute resolution mechanism identified in Paragraph XVI of the Order within ten (10) days of receipt of such disapproval. If the Department approves the revised submittal, it shall be incorporated into and become an enforceable part of this Order.

B. The Department may require Respondents to modify and/or amplify and expand a submittal and associated work if the Department determines, as a result of reviewing data generated by an activity required under this Order or as a result of reviewing any other data or facts, that further work is necessary to achieve the goals of this Order.

VIII. Penalties

A. Respondents' failure to comply with any term of

this Order constitutes a violation of this Order and the ECL.

B. Respondents shall not suffer any penalty under this Order or be subject to any proceeding or action for any remedy or relief if they cannot comply with any requirements of this Order because of an act of God, war, or riot or because of any condition or event entirely beyond the control of Respondents or their agent or agents carrying out Respondents' obligations under this Order.

Increased costs or expenses of any work to be performed under this Order, the financial inability of Respondents to perform such work, failure of Respondents to make complete and timely application for any required approval or permit, and nonattainment of the goals, standards and requirements of this Order do not constitute conditions or events warranting the relief set forth in this Subparagraph.

Respondents shall, within 5 days of when they obtain knowledge of any such condition, notify the Department in writing. Respondents shall include in such notice the measures taken and to be taken by Respondents to prevent or minimize any delays and shall request an appropriate extension or modification of this Order. Failure to give such notice within such five-day period constitutes a waiver of any claim that a delay is not potentially subject to penalties. Respondents shall have the burden of proving that an event is a defense pursuant to this paragraph to compliance with this Order.

C. The obligations of Respondents to finance and

perform obligations under this Order and to pay amounts owed the Department under this Order are joint and several. In the event of the insolvency or other failure of any one of the Respondents to implement the requirements of this Order, the remaining Respondent shall complete all such requirements.

IX. Entry upon Site

Respondents hereby consent to the entry upon the Site or areas in the vicinity of the Site which may be under the control of the Respondents by any duly designated employee, consultant, contractor, or agent of the Department or any State agency to ensure Respondents' compliance with this Order, and at reasonable times, for purposes of inspection, sampling, and testing. To the extent practicable, such representative shall identify himself or herself to Respondent Crosman Corporation's facilities manager or its environmental engineer.

X. Payment of Costs

Within 30 days after receipt of an itemized invoice from the Department, Respondents shall pay to the Department a sum of money not to exceed \$50,000.00 which shall represent reimbursement for the State's expenses including, but not limited to, direct labor, overhead, travel, analytical costs, and contractor costs incurred by the State of New York for work performed at the Site to date, as well as for negotiating this Order, reviewing and revising submittals made pursuant to this Order, overseeing activities conducted pursuant to this Order, and collecting and analyzing samples. Such payment shall be

made by certified check payable to the Department of Environmental Conservation. Payment shall be sent to the Bureau of Program Management, Division of Hazardous Waste Remediation, N.Y.S.D.E.C., 50 Wolf Road, Albany, New York 12233-7010. Itemization of the 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 quarterly reports of Direct Personal Service. Approved agency fringe benefit and indirect cost rates shall be applied. Non-personal service costs shall be summarized by category of expense (e.g., supplies, materials, travel, contractual) and shall be documented by the New York State Office of the State Comptroller's quarterly Expenditure Reports.

XI. Department Reservation of Rights

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

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

2. the Department's right to enforce this Order against Respondents and/or any of Respondents' directors,

officers, employees, servants, agents, successors, and assigns if Respondents fail to satisfy any of the terms of this Order;

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

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

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

6. the Department's right to require Respondents and/or any of Respondents' directors, officers, employees, servants, agents, successors, and assigns to develop and implement IRMs for the Site; and

7. the Department's right to gather information and enter and inspect property and premises.

B. Nothing contained in this Order shall be construed to prohibit the Commissioner or his duly authorized

representative from exercising any summary abatement powers.

C. Upon the Department's approval of the submittals specified in Paragraph VII herein, and upon payment of all monies specified in Paragraph X herein, Respondents shall have fulfilled their obligations pursuant to this Order and this Order shall terminate, with the exception of Paragraph XII herein.

XII. Indemnification

Respondents shall indemnify and hold the Department, the State of New York, and their representatives and employees harmless for all claims, suits, actions, damages, and costs of every name and description arising out of or resulting from the fulfillment or attempted fulfillment of this Order by Respondents, and/or Respondents' directors, officers, employees, servants, agents, successors, and assigns.

XIII. Public Notice

A. Within 30 days after the effective date of this Order, Respondents shall file a Notice with the Ontario County Clerk to give all parties who may acquire any interest in the Site notice of this Order. Respondents may terminate the notice when this Order terminates as specified in Paragraph XI.C.

B. If Respondents propose to convey the whole or any part of Respondents' ownership interest in the Site prior to termination of this Order as specified in Paragraph XI.C. herein, Respondents shall, not fewer than 60 days before the

date of conveyance, notify the Department in writing of the identity of the transferee and of the nature and proposed date of the conveyance and shall notify the transferee in writing, with a copy to the Department, of the existence and terms of this Order.

XIV. Communications

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

Communication from Respondents shall be sent to:

1. Mary Jane Peachey, Region 8
New York State Department of Environmental Conservation
6274 E. Avon-Lima Road
Avon, New York 14414
2. Director, Bureau of Environmental Exposure Investigation
New York State Department of Health
2 University Place
Albany, New York 12203
3. Director, Division of Hazardous Waste Remediation
New York State Department of Environmental Conservation
50 Wolf Road
Albany, New York 12233-7010

B. Copies of work plans and reports shall be submitted as follows:

1. Four copies (one unbound) to Mike Khalil, Region 8, New York State Department of Environmental Conservation
6274 E. Avon-Lima Road
Avon, New York 14414

2. Two copies to the Director, Bureau of
Environmental Exposure Investigation
New York State Dept. of Health
2 University Place
Albany, New York 12203
3. One copy to Director, Division of Hazardous
Waste Remediation
New York State Dept. of Environmental
Conservation
50 Wolf Road
Albany, New York 12233-7010
4. One copy to Assistant Counsel,
Division of Environmental Enforcement
New York State Department of Environmental
Conservation
270 Michigan Avenue
Buffalo, New York 14203

C. Communication to be made from the Department to
the Respondents shall be sent to:

1. John DeBrock, Facilities Manager
Crosman Corporation
Routes 5 & 20
East Bloomfield, New York 14443
2. Lorelei J. Borland, Esq.
New Coleman Holdings, Inc.
625 Madison Avenue, 16th Floor
New York, New York 10022
3. Thomas F. Walsh, Esq.
Nixon, Hargrave, Devans & Doyle
Clinton Square
P.O. Box 1051
Rochester, New York 14603

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

XV. Miscellaneous

- A. All activities and submittals required by this

Order shall address both on-Site and off-Site contamination resulting from the presence of hazardous waste in the environment at the Site.

B. As set forth in the Departmental-approved work plans attached hereto, Respondents have retained professional consultants, contractors, laboratories, quality assurance/quality control personnel and data validators acceptable to the Department to perform the technical, engineering and analytical obligations required by this Order. The experience, capabilities and qualifications of the firms or individuals selected by Respondents has been submitted to the Department with the Department-approved work plans attached hereto. The Department's approval of any change in these firms or individuals shall be obtained prior to initiation of any activities for which the Respondents and such firms or individuals will be responsible.

C. The Department shall have the right to obtain split samples, duplicate samples, or both, of all substances and materials sampled by Respondents, and the Department also shall have the right to take its own samples. Respondents shall make available to the Department the results of all sampling and/or tests or other data generated by Respondents with respect to implementation of this Order and shall submit these results in the progress reports required by this Order.

D. Respondents shall notify the Department at least 10 working days in advance of any field activities to be

conducted pursuant to this Order.

E. Respondents shall use best efforts to obtain all permits, easements, rights-of-way, rights-of-entry, approvals, or authorizations necessary to perform Respondents' obligations under this Order. For purposes of this Paragraph "best efforts" include the payment of reasonable sums of money in consideration. If any access required to perform this Order is not obtained despite best efforts within 45 days of the effective date of this Order, or within 45 days of the date the Department notifies the Respondents in writing that additional access beyond that previously secured is necessary, Respondents shall promptly notify the Department, and shall include in that notification a summary of the steps Respondents have taken to attempt to obtain access. The Department may, as it deems appropriate, assist Respondents in obtaining access.

Respondents shall reimburse the Department in accordance with the procedures in Paragraph X, for all costs incurred by the Department in obtaining access, including, but not limited to, attorneys fees. If neither Respondents nor the Department can, despite their best efforts, obtain such permits or authorizations, the time for the performance of any obligation dependent on such permit or authorizations shall be appropriately extended or this Order shall be modified.

F. Respondents and Respondents' officers, directors, agents, servants and employees in their corporate capacity, and Respondents' successors and assigns shall be

bound by this Order. Any change in ownership or corporate status of Respondents including, but not limited to, any transfer of assets or real or personal property shall in no way alter Respondents' responsibilities under this Order. Nothing herein shall be construed to bind any other entity.

G. Respondents shall provide a copy of this Order to each contractor hired to perform work required by this Order and to each person representing Respondents with respect to the Site. Respondents or Respondents' contractors shall provide written notice of this Order to all subcontractors hired to perform any portion of the work required by this Order. Respondents shall nonetheless be responsible for ensuring that Respondents' contractors and subcontractors perform the work to be done under this Order in accordance with this Order.

H. All references to "professional engineer" in this Order are to an individual registered as a professional engineer in accordance with Article 145 of the New York State Education Law.

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

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

K. (1) The terms of this Order shall constitute the complete and entire Order between Respondents and the

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

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

Assistant Counsel, Division of Environmental
Enforcement
New York State Department of Environmental
Conservation
270 Michigan Avenue
Buffalo, New York 14203

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

XVI. Dispute Resolution

A. The Department and Respondents shall attempt to resolve expeditiously and informally at the Regional level any disagreements concerning implementation of this Order or any work required under this Order.

B. In the event any dispute arising under this

Order is not resolved expeditiously through informal means, and if the parties fail to resolve such disagreement pursuant to Paragraph VII at the Regional level, either party desiring dispute resolution under this Paragraph shall give prompt written notice to the other party and its counsel as set forth in Paragraph XIV. Such notice given to the Department's Director of Hazardous Waste Remediation ("the Director") shall invoke the dispute resolution mechanism in this paragraph containing a written statement of the issues in dispute, the relevant facts upon which the dispute is based, and factual data, analysis or opinion supporting its position, and all supporting documentation on which Respondents rely (hereinafter called the "Statement of Position"). If the disagreement involves a revised submittal that the Department has disapproved, unless Respondents served their Statement of Position on the Director within ten (10) business days of receipt of the Department's notice of disapproval, Respondents shall be in violation of this Order as set forth in Paragraph VII(A)(2)(b). The Department shall serve its Statement of Position, including supporting documentation no later than ten business (10) days after receipt of Respondents' Statement of Position. In the event that these 10-day time periods for exchange of Statements of Position may cause a delay in the work being performed under this Order, the time periods may be shortened upon and in accordance with notice by the Department as agreed to by the Respondent.

An administrative record of any dispute under this paragraph shall be maintained by the Department. The record shall include the Statement of Position of each party served pursuant to the preceding subparagraph, and any relevant information. The record shall be available for review of all parties and the public.

Upon review of the administrative record as developed pursuant to this paragraph, the Director shall issue a final decision and order resolving the dispute. With respect to the final determination of the Director, Respondents shall have those rights granted pursuant to Article 78 of the Civil Practice Law and Rules of New York (CPLR), provided that a Petition is filed within thirty (30) business days of receipt of the final decision and order issued by the Director.

In review by the Director of any dispute pursued under this paragraph, Respondents shall have the burden of proving that there is no rational basis for the Department's position.

The invocation of the procedures stated in this paragraph shall not extend, postpone or modify Respondents' obligations under this Order with respect to any disputed items, unless and until the Department agrees or a court determines otherwise.

XVII. Respondent's Disclaimer

By entering into or taking actions under this Order, Respondents do not admit, adopt, accept, concede or acknowledge

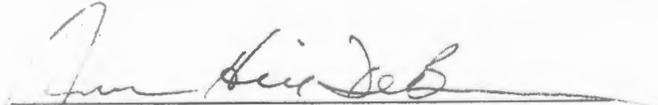
the recitals, provisions, conditions, findings of fact, alleged rights of the Department, conclusions of law or other terms of this Order. Except in an action brought by the Department to enforce this Order, Respondents reserve the right to contest, at any proceeding, hearing or action regarding or relating to the Site, any terms of this Order, any allegation that hazardous waste has been disposed at the Site, the Site constitutes a significant threat to the environment, or the necessity of a remedial program for the Site. Furthermore, the existence of this Order or the fact that Respondents participated in activities pursuant to this Order shall not constitute, be construed as, nor be considered an admission of liability.

DATED: *Albany*, New York

September 29 1993

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

By:


Ann Hill DeBarbieri
Deputy Commissioner

ATTACHMENT A

New York State Department of Environmental Conservation
Division of Hazardous Waste Remediation
6274 East Avon-Lima Road, Avon, New York 14414
Telephone: (716) 226-2466



Thomas C. Jorling
Commissioner

REC'D

AUG 6 1993

August 2, 1993

Mr. John DeBrock
Crosmen Corporation
Routes 5 & 20
East Bloomfield, New York 14443

Dear Mr. DeBrock:

RE: RI/FS and IRM Work Plan
Crosmen Corporation (#835012)

I have reviewed the July 23, 1993 response to the New York State Department of Environmental Conservation (NYSDEC) comments. The response letter adequately addresses the remaining NYSDEC comments, and a copy of the letter must be attached to the June 1993 work plan. Upon Department signature of the Order on Consent, the work plan can be considered approved.

Please provide a copy of Volume I of the June 1993 work plan to each person on the attached mailing list, and place a copy of the entire work plan in the local document repository. The Department will be preparing a Fact Sheet for distribution to the concerned public announcing the availability of the RI and IRM work plan. I will provide you with a final draft of the Fact Sheet prior to distribution.

Please contact me at 716/226-2466 if you have any question.

Sincerely,

Todd M. Caffoe
Environmental Engineer I
Division of Hazardous
Waste Remediation

attachment

c: M.J. Peachey/J. Craft
C. Peterson - DEE, Buffalo
D. Crosby - BWRA, Section C
A. Chakraborti - QA Section
D. Hettrick - NYSDOH, Albany
R. Koeppicus - DFW

**REMEDIAL INVESTIGATION / FEASIBILITY STUDY
AND
INTERIM REMEDIAL MEASURES WORKPLAN**

Location:

**CROSMAN CORPORATION
ROUTE 5 & 20
EAST BLOOMFIELD, NEW YORK**

Prepared For:

CROSMAN CORPORATION

LaBella Project No. 91243

Revised August, 1993

LABELLA

LaBella Associates, P.C.
300 State Street
Rochester, New York 14614