

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION
RESOURCE CONSERVATION AND RECOVERY ACT (RCRA)

ECL §27-0900 *et seq.*

In the Matter of Implementation of Corrective
Action for a Hazardous Waste Management
Facility, Pursuant to Article 27, Titles 9 and 13;
and Article 71, Title 27 of the Environmental
Conservation Law of the State of New York by:

**RCRA CORRECTIVE ACTION
ORDER ON CONSENT
Index No.**

DEC Facility Name: G.T.E. Products Corporation

DEC Facility No.: 850003

EPA RCRA ID No.: NYD002246015

Facility Address: 50 Johnston Street
Seneca Falls, NY 11980
Seneca County

Hereinafter referred to as “Facility” or “Site”

by: GTE Operations Support Incorporated

Hereinafter referred to as “Respondent”

1. A. The New York State Department of Environmental Conservation (“Department”) is responsible for the Resource Conservation and Recovery Act (a/k/a the “Industrial Hazardous Waste Management Program”) pursuant to Article 27, Title 9 of the Environmental Conservation Law (“ECL”) and Parts 370 – 373 of Title 6 of the Official Compilation of Codes, Rules and Regulations (“6 NYCRR”).

B. The Department may issue orders pursuant to, *inter alia*, ECL Article 27, Title 9 and ECL § 71-2727(3) consistent with the authority granted to the Commissioner requiring corrective action, including corrective action beyond the facility boundary where necessary to protect human health and the environment, for all releases of hazardous waste or constituents from any solid waste management unit at any treatment, storage or disposal facility which is either permitted or seeking a permit under Title 7 or 9 of ECL Article 27, or which has interim status according to regulations adopted thereunder, regardless of the time at which the waste was placed in such unit.

C. The Department is responsible for carrying out the policy of the State of New York to conserve, improve and protect its natural resources and environment and control water, land, and air pollution consistent with the authority granted to the Department and the Commissioner by Article 1, Title 3 of the ECL. The Department is also responsible for inactive hazardous waste disposal site remedial programs pursuant to Article 27, Title 13 of the ECL and 6 NYCRR Part 375 and may issue orders consistent with the authority granted to the Department and the Commissioner by such statute.

D. This Order is issued pursuant to the Department's authority under, *inter alia*, ECL Article 27, Titles 13 and 9, ECL § 3-0301 and ECL § 71-2727.

2. A. The Site, which encompasses approximately 64.2 acres, has been assigned EPA RCRA ID No. NYD002246015 and DEC Facility No. 850003.

B. The Site was initially developed by Rumsey Pump Company circa 1914. Sylvania acquired the Site in 1948 and manufactured television picture tubes at the Facility. Sylvania subsequently merged with General Telephone and eventually changed its name to GTE. GTE sold the Site to Philips Display Company ("Philips") in 1981.

C. From 1948 to 1972, the Facility's sewers discharged process waters to Van Cleef Lake and the Seneca River/Barge Canal via several outfalls along the escarpment south of the Site. In 1971 and 1972, GTE segregated the sewer lines that handled non-process wastewater (storm water and floor drains) from those that handled process wastewater requiring treatment. At the same time GTE constructed an industrial wastewater treatment plant ("IWWTP"), and a sewer line was installed on the south side of the Facility to divert wastewater to the IWWTP. Facility wastewater was conveyed from the IWWTP to a settling lagoon prior to discharge to the Seneca River. The IWWTP and the settling lagoon were decommissioned by 1992.

D. Philips submitted a RCRA Part B application for the Site in 1984. Philips withdrew the Part B application in 1986 when Philips elected to close the hazardous waste management units, including the lagoons, incinerator, incinerator feed tanks and container storage areas, at the Site. The decision to withdraw the Part B application triggered, among other things, RCRA Corrective Action at solid waste management units ("SWMUs") at the Site.

E. Respondent conducted several soil, sediment, groundwater, and soil vapor investigations and interim corrective measures at the Site under its RCRA Corrective Action program. Based upon investigations, the primary contaminants of concern for this site include TCE, its breakdown products (cis-1,2-dichloroethene and vinyl chloride), and cadmium. Soils and groundwater at the Site are contaminated with TCE. Sediments in Van Cleef Lake and the Seneca River are contaminated with heavy metals, primarily cadmium, nickel, and zinc.

F. In March 2018 the Department issued a Statement of Basis that presents the selected remedy for the Site. The Statement of Basis is attached to this Order as Exhibit B.

G. The Department and Respondent agree that the purpose of executing this comprehensive Order is to satisfy Respondent's RCRA Corrective Action obligations by implementing the remedy selected in the Statement of Basis for the Site.

3. Respondent consents to the issuance of this Order without (i) an admission or finding of liability, fault, wrongdoing, or violation of any law, regulation, permit, order, requirement, or standard of care of any kind whatsoever; and/or (ii) an acknowledgment that there has been a release or threatened release of hazardous waste at or from the Site.

4. Solely with regard to the matters set forth below, Respondent hereby waives any right to a hearing as may be provided by law, consents to the issuance and entry of this Order, and agrees

to be bound by its terms. Respondent consents to and agrees not to contest the authority or jurisdiction of the Department to issue or enforce this Order, and agrees not to contest the validity of this Order or its terms or the validity of data submitted to the Department by Respondent pursuant to this Order.

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

I. Facility

Respondent owns and maintains the Site subject to this Order, which has been assigned EPA RCRA ID No. NYD002246015 and DEC Facility No. 850003, consists of approximately 64.2 acres, is located at 50 Johnston Street, Seneca Falls, Seneca County, New York and is described as follows:

Subject Property Description (A Map of the Facility is attached as Exhibit “A”)

Tax Map of the Municipality of Seneca Falls
Tax Map/Parcel No.: Section 7 Block 1 Lot 2

50 Johnston Street
Seneca Falls, NY

Owner: Seneca County Industrial Development Agency

Under the site conceptual model developed in Respondent’s Corrective Measures Study and its addendum (June 28, 2013 and October 11, 2016), the Site is divided into five areas of concern (“AOCs”):

- AOC 1 – Soil and groundwater in the area of Building 2 and Building 5.
- AOC 2 – Soil and groundwater in the area of Building 7 and Building 9.
- AOC 3 – Soil and groundwater south of Building 11.
- AOC 4 – Soil Vapor Intrusion Pathways.
- AOC 5 – Historical Outfalls.

AOCs 1 through 4, which are located entirely on-Site, comprise Operable Unit 1 (“OU1”), and AOC 5 and the canal sediments comprise Operable Unit 2 (“OU2”). OU2 consists of both on-Site and off-Site corrective actions.

II. Submission of Work Plans and Reports

- A. Respondent shall, within 90 days of the effective date of this Order, submit for the Department’s review and approval a Corrective Action Work Plan for the implementation of the Statement of Basis. The Corrective Action Work Plan shall be prepared and submitted in accordance with the standards conditions in Appendix A.

- B. The Department may request, subject to dispute resolution pursuant to Paragraph XIII of Appendix A, that Respondent submit additional or supplemental Work Plans for the Site to complete the corrective action relative to the Site.
- C. Pursuant to the standard conditions in Appendix A, Respondent may elect to submit additional work plans, including one or more Interim Remedial Measure (“IRM”) work plans, at any time.
- D. Upon the Department's written approval of a work plan, such Department-approved work plan shall be deemed to be incorporated into and made a part of this Order and shall be implemented in accordance with the schedule contained therein.
- E. In accordance with the schedule contained in a Work Plan, Respondent shall submit a final report that meets the requirements set forth at 6 NYCRR 375-1.6(b) and (c).

III. RCRA Integration and Requirements

This Order, *inter alia*, incorporates the requirements of 6 NYCRR 373-2.6(l) including corrective action and financial assurance and requirements, for the Site.

The investigative and remedial obligations under this Order are intended to, and if implemented in accordance with this Order shall, satisfy the corrective action requirements in 6 NYCRR 373-2.6(l). The Department and Respondent intend that any remedial action selected, implemented and/or completed under this Order shall be protective of human health and the environment such that remediation of releases covered by this Order shall obviate the need for further Corrective Action under RCRA as to those releases. Compliance with this Order, therefore, shall fulfill Respondent’s RCRA corrective action obligations.

Provided the Department-approved remedial design achieves the remedial action objectives set forth in the Statement of Basis, Respondent’s implementation to the Department’s satisfaction of the Department-approved Corrective Action Work Plan will constitute Respondent’s satisfactory performance of the RCRA Corrective Action requirements.

IV. Financial Assurance

As the Site is a RCRA facility subject to Corrective Action, the Department pursuant to 6 NYCRR 373-2.6(l)(2) – (3) requires financial assurance for the remediation of contaminated soils and sediments and implementation of long-term groundwater treatment/recovery and monitoring.

Within thirty (30) days following the Department’s approval of the Corrective Action Work Plan, Respondent shall provide to the Department a cost estimate and shall provide financial assurance for implementation of the Statement of Basis remedy and the operation, maintenance and monitoring of remedial systems pursuant to one of the methods set forth in 6 NYCRR Part 373-2.8(f). While this Order is in effect, the cost estimate will be subject to adjustment for inflation as provided in 6 NYCRR Part 373-2.8(e).

Respondent must maintain cost estimates for the post-closure care and for corrective action remedy implementation and maintenance in accordance with 6 NYCRR 373-2.8(e).

Respondent must provide, maintain and update its financial assurance mechanism(s), as necessary, in accordance with 6 NYCRR 373-2.8(f).

V. Payment of State Costs

Respondent shall pay future state oversight costs as set forth in Appendix "A." Invoices for future oversight costs only shall be sent to Respondent at the following address(es):

GTE Operations Support Incorporated
Attn: Matthew Walsh
One Verizon Way
Basking Ridge, NJ 07920-1097
matthew.walsh@verizon.com

VI. Communications

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

1. Communication from Respondent shall be sent to:

Christopher Magee (electronic copy)
Department of Environmental Conservation
Division of Environmental Remediation
625 Broadway
Albany, NY 12233
michael.maccabe@dec.ny.gov

Eamonn O'Neil (electronic copy only)
New York State Department of Health
Bureau of Environmental Exposure Investigation
Empire State Plaza
Corning Tower Room 1787
Albany, NY 12237
eamonn.oneil@health.ny.gov

Michael C. Murphy, Esq. (correspondence only)
Department of Environmental Conservation
Office of General Counsel
625 Broadway, 14th Floor
Albany, New York 12233
michael.murphy1@dec.ny.gov

2. Communication from the Department to Respondent shall be sent to:

Matthew Walsh
Manager – Corporate Workplace Safety & Environmental Compliance
GTE Operations Support Incorporated
One Verizon Way
Basking Ridge, NJ 07920-1097
matthew.walsh@verizon.com

B. The Department and Respondent reserve the right to designate additional or different addressees for communication on written notice to the other. Additionally, the Department reserves the right to request that the Respondent provide more than one paper copy of any work plan or report.

C. Each party shall notify the other within ninety (90) days after any change in the addresses listed in this paragraph or in Paragraph III.

VII. Termination of Order

This Order will terminate upon the Department's written determination that Respondent has completed all phases of the Corrective Action Program (including Site Management), in which event the termination shall be effective on the Fifth Day after the date of the Department's approval of the final report relating to the final phase of the Corrective Action Program.

VIII. Miscellaneous

A. Appendix A - "Standard Clauses for All New York State RCRA Corrective Action Orders" is attached to and hereby made a part of this Order as if set forth fully herein.

B. In the event of a conflict between the terms of this Order (including any and all attachments thereto and amendments thereof) and the terms of Appendix A, the terms of this Order shall control.

C. The effective date of this Order is the 10th day after it is signed by the Commissioner or the Commissioner's designee.

DATED:

BASIL SEGGOS
COMMISSIONER
NEW YORK STATE DEPARTMENT OF
ENVIRONMENTAL CONSERVATION

By:

Michael J. Ryan, Director
Division of Environmental Remediation

CONSENT BY RESPONDENT

Respondent hereby consents to the issuing and entering of this Order without further notice, waives any right to a hearing as may be provided by law, and agrees to be bound by the terms, conditions and provisions contained in this Order.

GTE Operations Support Incorporated

By: (Signature): _____

Print Name: _____

Title: _____

Date: _____

State of _____)
) s.s.:
 County of _____)

On this ____ day of _____, 2018, before me, the undersigned personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public

EXHIBIT "A"

SITE MAP

DRAFT

EXHIBIT “B”

STATEMENT OF BASIS

DRAFT

APPENDIX "A"

**STANDARD CLAUSES FOR ALL NEW YORK STATE
RCRA CORRECTIVE ACTION ORDERS**

APPENDIX A

STANDARD CLAUSES FOR ALL NEW YORK STATE CORRECTIVE ACTION ORDERS

The parties to the RCRA Corrective Action Order (hereinafter "Order") agree to be bound by the following clauses which are hereby made a part of the Order. The word "Respondent" herein refers to any party to the Order, other than the New York State Department of Environmental Conservation (hereinafter "Department"). For purposes of this Order, Respondent consents that certain provisions of 6 NYCRR 375 shall apply to the extent expressly provided herein.

I. Citizen Participation Plan

Within twenty (20) days after the effective date of this Order, Respondent shall submit for review and approval a written citizen participation plan prepared in accordance with Department guidance. Upon approval, the Citizen Participation Plan shall be deemed to be incorporated into and made a part of this Order.

II. Development, Performance, and Reporting of Work Plans

A. Work Plan Requirements

All activities at the Facility that comprise any element of corrective action shall be conducted pursuant to one or more Department-approved work plans ("Work Plan" or "Work Plans"). The Work Plan(s) under this Order shall address both on-Site and off-Site conditions and shall be developed and implemented in accordance with the provisions in 6 NYCRR § 375-1.6(a), 375-3.6, and 375-6. All Department-approved Work Plans shall be incorporated into and become enforceable parts of this Order. Upon approval of a Work Plan by the Department, Respondent shall implement such Work Plan in accordance with the schedule contained therein. Nothing in this Subparagraph shall mandate that any particular Work Plan be submitted.

The Work Plans shall be captioned as follows:

1. Corrective Action Work Plan: a Work Plan which provides for the development and implementation of final plans and specifications for implementing the remedial alternative set forth in the Statement of Basis (SOB);

2. IRM Work Plan: if the Work Plan provides for an interim remedial measure;

3. "Site Management Plan" if the Work Plan provides for the identification and implementation of institutional and/or engineering controls as well as any necessary monitoring and/or operation and maintenance of the remedy; or

4. "Supplemental" if additional work plans other than those set forth in II.A.1-5 are required to be prepared and implemented.

B. Submission/Implementation of Work Plans

1. Respondent may opt to propose one or more additional or supplemental Work Plans (including one or more IRM Work Plans) at any time, which the Department shall review for appropriateness and technical sufficiency.

2. Any proposed Work Plan shall be submitted for the Department's review and approval and shall include, at a minimum, a chronological description of the anticipated activities, a schedule for performance of those activities, and sufficient detail to allow the Department to evaluate that Work Plan.

i. The Department shall notify Respondent in writing if the Department determines that any element of a Department-approved Work Plan needs to be modified in order to achieve the objectives of the Work Plan as set forth in Subparagraph II.A or to ensure that the corrective action otherwise protects human health and the environment. Upon receipt of such notification, Respondent shall, subject to dispute resolution pursuant to Paragraph XIII, modify the Work Plan.

ii. The Department may request, subject to dispute resolution pursuant to Paragraph XIII, that Respondent submit additional or supplemental Work Plans for the Facility to complete the corrective action relative to the Facility within thirty (30) Days after the Department's written request.

3. A Site Management Plan, if necessary, shall be submitted in accordance with the schedule

set forth in the IRM Work Plan or Corrective Action Work Plan.

4. During all field activities conducted under a Department-approved Work Plan, Respondent shall have on-Site a representative who is qualified to supervise the activities undertaken in accordance with the provisions of 6 NYCRR 375-1.6(a)(3).

5. A Professional Engineer must stamp and sign all Work Plans other than Site Characterization or RFI/CMS Work Plans.

C. Submission of Final Reports and Periodic Reports

1. In accordance with the schedule contained in a Work Plan, Respondent shall submit a final report that meets the requirements set forth at 6 NYCRR 375-1.6(b) and (c).

2. Any final report or final engineering report that includes construction activities shall include "as built" drawings showing any changes made to the remedial design or the IRM.

3. In the event that the final engineering report for the Facility requires Site management, Respondent shall submit an initial periodic report in accordance with the schedule in the Site Management Plan and thereafter in accordance with a schedule determined by the Department. Such periodic report shall be signed by a Professional Engineer or by such other qualified environmental professional as the Department may find acceptable and shall contain a certification as provided at 6 NYCRR 375-1.8(h)(3). Respondent may petition the Department for a determination that the institutional and/or engineering controls may be terminated. Such petition must be supported by a statement by a Professional Engineer that such controls are no longer necessary for the protection of public health and the environment. The Department shall not unreasonably withhold its approval of such petition.

4. Within sixty (60) days of the Department's approval of a Final Report, Respondent shall submit such additional Work Plans as is required by the Department in its approval letter of such Final Report. Failure to submit any additional Work Plans within such period shall be a violation of this Order.

D. Review of Submittals

1. The Department shall make a good faith effort to review and respond in writing to each submittal Respondent makes pursuant to this Order within sixty (60) Days. The Department's response shall be consistent with 6 NYCRR 375-1.6(d), and include an approval, modification request, or disapproval of the submittal, in whole or in part.

i. Upon the Department's written approval of a Work Plan, such Department-approved Work Plan shall be deemed to be incorporated into and made a part of this Order and shall be implemented in accordance with the schedule contained therein.

ii. If the Department modifies or requests modifications to a submittal, it shall specify the reasons for such modification(s). Within fifteen (15) Days after the date of the Department's written notice that Respondent's submittal has been disapproved, Respondent shall notify the Department of its election in accordance with 6 NYCRR 375-1.6(d)(3). If Respondent elects to modify or accept the Department's modifications to the submittal, Respondent shall make a revised submittal that incorporates all of the Department's modifications to the first submittal in accordance with the time period set forth in 6 NYCRR 375-1.6(d)(3). In the event that Respondent's revised submittal is disapproved, the Department shall set forth its reasons for such disapproval in writing and Respondent shall be in violation of this Order unless it invokes dispute resolution pursuant to Paragraph XIII and its position prevails. Failure to make an election or failure to comply with the election is a violation of this Order.

iii. If the Department disapproves a submittal, it shall specify the reasons for its disapproval. Within fifteen (15) Days after the date of the Department's written notice that Respondent's submittal has been disapproved, Respondent shall notify the Department of its election in accordance with 6 NYCRR 375-1.6(d)(4). If Respondent elects to modify the submittal, Respondent shall make a revised submittal that addresses all of the Department's stated reasons for disapproving the first submittal in accordance with the time period set forth in 6 NYCRR 375-1.6(d)(4). In the event that Respondent's revised submittal is disapproved, the Department shall set forth its reasons for such

disapproval in writing and Respondent shall be in violation of this Order unless it invokes dispute resolution pursuant to Paragraph XIII and its position prevails. Failure to make an election or failure to comply with the election is a violation of this Order.

2. Within thirty (30) Days after the Department's approval of a final report, Respondent shall submit such final report, as well as all data gathered and drawings and submittals made pursuant to such Work Plan, in an electronic format acceptable to the Department. If any document cannot be converted into electronic format, Respondent shall submit such document in an alternative format acceptable to the Department.

E. Institutional/Engineering Control Certification

In the event that the SOB for the Facility, if any, or any Work Plan for the Facility, requires institutional or engineering controls, Respondent shall submit a written certification in accordance with 6 NYCRR 375-1.8(h)(3) and 375-3.8(h)(2).

III. Penalties

A. 1. Respondent's failure to comply with any term of this Order constitutes a violation of this Order and the ECL. Nothing herein abridges Respondent's right to contest any allegation that it has failed to comply with this Order.

2. Payment of any penalties shall not in any way alter Respondent's obligations under this Order.

B. 1. Respondent shall not suffer any penalty or be subject to any proceeding or action in the event it cannot comply with any requirement of this Order as a result of any Force Majeure Event as provided at 6 NYCRR 375-1.5(b)(4). Respondent must use best efforts to anticipate the potential Force Majeure Event, best efforts to address any such event as it is occurring, and best efforts following the Force Majeure Event to minimize delay to the greatest extent possible. "Force Majeure" does not include Respondent's economic inability to comply with any obligation, the failure of Respondent to make complete and timely application for any required approval or permit, and non-attainment of the goals, standards, and requirements of this Order.

2. Respondent shall notify the Department in writing within five (5) Days of the onset of any Force Majeure Event. Failure to give such notice within such five (5) Day period constitutes a waiver of any claim that a delay is not subject to penalties. Respondent shall be deemed to know of any circumstance which it, any entity controlled by it, or its contractors knew or should have known.

3. Respondent shall have the burden of proving by a preponderance of the evidence that (i) the delay or anticipated delay has been or will be caused by a Force Majeure Event; (ii) the duration of the delay or the extension sought is warranted under the circumstances; (iii) best efforts were exercised to avoid and mitigate the effects of the delay; and (iv) Respondent complied with the requirements of Subparagraph III.B.2 regarding timely notification.

4. If the Department agrees that the delay or anticipated delay is attributable to a Force Majeure Event, the time for performance of the obligations that are affected by the Force Majeure Event shall be extended for a period of time equivalent to the time lost because of the Force Majeure Event, in accordance with 375-1.5(4).

5. If the Department rejects Respondent's assertion that an event provides a defense to non-compliance with this Order pursuant to Subparagraph III.B, Respondent shall be in violation of this Order unless it invokes dispute resolution pursuant to Paragraph XIII and Respondent's position prevails.

IV. Entry upon Facility

A. Respondent hereby consents, upon reasonable notice under the circumstances presented, to entry upon the Facility (or areas in the vicinity of the Facility which may be under the control of Respondent) by any duly designated officer or employee of the Department or any State agency having jurisdiction with respect to matters addressed pursuant to this Order, and by any agent, consultant, contractor, or other person so authorized by the Department, all of whom shall abide by the health and safety rules in effect for the Facility, for inspecting, sampling, copying records related to the contamination at the Facility, testing, and any other activities necessary to ensure Respondent's compliance with this Order. Upon request, Respondent shall (i) provide the Department with suitable work space at the Facility, including access

to a telephone, to the extent available, and (ii) permit the Department full access to all non-privileged records relating to matters addressed by this Order. Raw data is not considered privileged and that portion of any privileged document containing raw data must be provided to the Department on a continuing basis within ninety (90) days of receipt of the data from the lab. In the event Respondent is unable to obtain any authorization from third-party property owners necessary to perform its obligations under this Order, the Department may, consistent with its legal authority, assist in obtaining such authorizations.

B. The Department shall have the right to take its own samples and scientific measurements, and the Department and Respondent shall each have the right to obtain split samples, duplicate samples, or both, of all substances and materials sampled. The Department shall make the results of any such sampling and scientific measurements available to Respondent.

V. Payment of State Costs

A. Within forty-five (45) days after receipt of an itemized invoice from the Department, Respondent shall pay to the Department a sum of money which shall represent reimbursement for State Costs. For purposes of this Order, State Costs shall be defined by 6 NYCRR 375-1.5 (b)(3)(i). Failure to timely pay any invoice will be subject to late payment charge and interest at a rate of 9% from the date the payment is due until the date the payment is made.

B. Costs shall be documented as provided by 6 NYCRR 375-1.5(b)(3). The Department shall not be required to provide any other documentation of costs, provided however, that the Department's records shall be available consistent with, and in accordance with, Article 6 of the Public Officers Law.

C. Each such payment shall be made payable to the New York State Department of Environmental Conservation and shall be sent to:

Director, Bureau of Program Management
Division of Environmental Remediation
New York State Department of Environmental
Conservation
625 Broadway
Albany, New York 12233-7012

D. The Department shall provide written notification to the Respondent of any change in the foregoing addresses.

E. If Respondent objects to any invoiced costs under this Order, the provisions of 6 NYCRR 375-1.5 (b)(3)(v) and (vi) shall apply. Objections shall be sent to the Department as provided under subparagraph V.C above.

F. In the event of non-payment of any invoice within the 45 days provided herein, the Department may seek enforcement of this provision pursuant to Paragraph III or the Department may commence an enforcement action for non-compliance.

VI. Reservation of Rights

A. Except as provided at 6 NYCRR 375-1.9, nothing contained in this Order shall be construed as barring, diminishing, adjudicating, or in any way affecting any of the Department's rights or authorities, including, but not limited to, the right to require performance of further investigations and/or response action(s), to recover natural resource damages, and/or to exercise any summary abatement powers with respect to any person, including Respondent.

B. Except as otherwise provided in this Order, Respondent specifically reserves all rights and defenses under applicable law respecting any Departmental assertion of remedial liability and/or natural resource damages against Respondent, and further reserves all rights respecting the enforcement of this Order, including the rights to notice, to be heard, to appeal, and to any other due process. The existence of this Order or Respondent's compliance with it shall not be construed as an admission of liability, fault, wrongdoing, or breach of standard of care by Respondent, and shall not give rise to any presumption of law or finding of fact, or create any rights, or grant any cause of action, which shall inure to the benefit of any third party. Further, Respondent reserves such rights as it may have to seek and obtain contribution, indemnification, and/or any other form of recovery from its insurers and from other potentially responsible parties or their insurers for past or future response and/or cleanup costs or such other costs or damages arising from the contamination at the Facility as may be provided by law, including but not limited to rights of

contribution under section 113(f)(3)(B) of CERCLA, 42 U.S.C. § 9613(f)(3)(B).

VII. Indemnification

Respondent shall indemnify and hold the Department, the State of New York, the Trustee of the State's natural resources, and their representatives and employees harmless as provided by 6 NYCRR 375-2.5(a)(3)(i).

VIII. Public Notice

A. Within thirty (30) Days after the effective date of this Order, Respondent shall provide notice consistent with the requirements set forth in 6 NYCRR 375-1.5(a). Within sixty (60) Days of such filing, Respondent shall provide the Department with a copy of such instrument certified by the recording officer to be a true and faithful copy.

B. If Respondent proposes to transfer by sale or lease the whole or any part of Respondent's interest in the Facility, or becomes aware of such transfer, Respondent shall, not fewer than forty-five (45) Days before the date of transfer, or within forty-five (45) Days after becoming aware of such conveyance, notify the Department in writing of the identity of the transferee and of the nature and proposed or actual date of the conveyance, and shall notify the transferee in writing, with a copy to the Department, of the applicability of this Order. However, such obligation shall not extend to a conveyance by means of a corporate reorganization or merger or the granting of any rights under any mortgage, deed, trust, assignment, judgment, lien, pledge, security agreement, lease, or any other right accruing to a person not affiliated with Respondent to secure the repayment of money or the performance of a duty or obligation.

IX. Change of Use

Applicant shall notify the Department at least sixty (60) days in advance of any change of use which is proposed for the Facility, in accordance with the provisions of 6 NYCRR 375-1.11(d). For purposes of this Order, "change of use" shall be as defined in 6 NYCRR 375-2.2(a). In the event the Department determines that the proposed change of use is prohibited, the Department shall notify Applicant of such determination within forty-five (45) days of receipt of such notice.

X. Environmental Easement

A. If a Statement of Basis (SOB) or other approved Work Plan for the Facility relies upon one or more institutional and/or engineering controls, Respondent (or the owner of the Facility) shall submit to the Department for approval an Environmental Easement to run with the land in favor of the State which complies with the requirements of ECL Article 71, Title 36, and 6 NYCRR 375-1.8(h)(2). Upon acceptance of the Environmental Easement by the State, Respondent shall comply with the requirements of 6 NYCRR 375-1.8(h)(2).

B. If the SOB provides for no action other than implementation of one or more institutional controls, Respondent shall cause an environmental easement to be recorded under the provisions of Subparagraph X.A.

C. If Respondent does not cause such environmental easement to be recorded in accordance with 6 NYCRR 375-1.8(h)(2), the Department may file an Environmental Notice on the Facility.

XI. Progress Reports

Respondent shall submit a written progress report of its actions under this Order to the parties identified in Subparagraph IV.A.1 of the Order by the 10th day of each month commencing with the month subsequent to the approval of the first Work Plan and ending with the Termination date as set forth in Paragraph XII, unless a different frequency is set forth in a Work Plan. Such reports shall, at a minimum, include: all actions relative to the Facility during the previous reporting period and those anticipated for the next reporting period; all approved activity modifications (changes of work scope and/or schedule); all results of sampling and tests and all other data received or generated by or on behalf of Respondent in connection with this Facility, whether under this Order or otherwise, in the previous reporting period, including quality assurance/quality control information; information regarding percentage of completion; unresolved delays encountered or anticipated that may affect the future schedule and efforts made to mitigate such delays; and information regarding activities undertaken in support of the Citizen Participation Plan during the previous reporting period and those anticipated for the next reporting period.

XII. Termination of Order

A. This Order will terminate upon the Department's written determination that Respondent has completed all phases of the Corrective Action Program (including Site Management), in which event the termination shall be effective on the 5th Day after the date of the Department's letter stating that all phases of the Corrective Action Program have been completed.

B. Notwithstanding the foregoing, the provisions contained in Paragraphs V and VII shall survive the termination of this Order and any violation of such surviving Paragraphs shall be a violation of this Order and the ECL, subjecting Respondent to penalties as provided under Paragraph III so long as such obligations accrued on or prior to the Termination Date.

XIII. Dispute Resolution

A. In the event disputes arise under this Order, Respondent may, within fifteen (15) Days after Respondent knew or should have known of the facts which are the basis of the dispute, initiate dispute resolution in accordance with the provisions of 6 NYCRR 375-1.5(b)(2).

B. All cost incurred by the Department associated with dispute resolution are State costs subject to reimbursement pursuant to this Order.

C. Nothing contained in this Order shall be construed to authorize Respondent to invoke dispute resolution with respect to the remedy selected by the Department in the SOB or any element of such remedy, nor to impair any right of Respondent to seek judicial review of the Department's selection of any remedy.

XIV. Financial Assurance

Within thirty (30) Days following the Department's approval of the Corrective Action Work Plan, Respondent shall provide to the Department a cost estimate and shall provide financial assurance for implementation of the Corrective Action Work Plan pursuant to one of the methods set forth in 6 NYCRR Part 373-2.8(f). While this Order is in effect, the cost estimate will be

subject to adjustment for inflation as provided in 6 NYCRR Part 373-2.8(e).

XV. Miscellaneous

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

B. 1. Respondent shall use best efforts to obtain all Facility access, permits, easements, approvals, institutional controls, and/or authorizations necessary to perform Respondent's obligations under this Order, including all Department-approved Work Plans and the schedules contained therein. If, despite Respondent's best efforts, any access, permits, easements, approvals, institutional controls, or authorizations cannot be obtained, Respondent shall promptly notify the Department and include a summary of the steps taken. The Department may, as it deems appropriate and within its authority, assist Respondent in obtaining same.

2. If an interest in property is needed to implement an institutional control required by a Work Plan and such interest cannot be obtained, the Department may require Respondent to modify the Work Plan pursuant to 6 NYCRR 375-1.6(d)(3) to reflect changes necessitated by Respondent's inability to obtain such interest.

C. Respondent shall notify the Department, in writing, of any additional Solid Waste Management Units (SWMUs) which are identified during the course of implementing any activities under this Order within thirty (30) Days of discovery. The Department may request additional remedial activities in accordance with Paragraph II.B.2.ii.

D. 1. The terms of this Order shall constitute the complete and entire agreement between the Department and Respondent concerning the implementation of the activities required by this Order. 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 shall be construed as relieving Respondent of Respondent's obligation to obtain such formal approvals as may be required by this

Order. In the event of a conflict between the terms of this Order and any Work Plan submitted pursuant to this Order, the terms of this Order shall control over the terms of the Work Plan(s). Respondent consents to and agrees not to contest the authority and jurisdiction of the Department to enter into or enforce this Order.

2. i. Except as set forth herein, if Respondent desires that any provision of this Order be changed, Respondent shall make timely written application to the Commissioner with copies to the parties listed in Subparagraph IV.A.1 of this Order.

ii. If Respondent seeks to modify an approved Work Plan, a written request shall be made to the Department's project manager, with copies to the parties listed in Subparagraph IV.A.1 of this Order.

iii. Requests for a change to a time frame set forth in this Order shall be made in writing to the Department's project attorney and project manager; such requests shall not be unreasonably denied and a written response to such requests shall be sent to Respondent promptly.

E. 1. If there are multiple parties signing this Order, the term "Respondent" shall be read in the plural, the obligations of each such party under this Order are joint and several, and the insolvency of or failure by any Respondent to implement any obligations under this Order shall not affect the obligations of the remaining Respondent(s) under this Order.

2. If Respondent is a partnership, the obligations of all general partners (including limited partners who act as general partners) under this Order are joint and several and the insolvency or failure of any general partner to implement any obligations under this Order shall not affect the obligations of the remaining partner(s) under this Order.

3. Notwithstanding the foregoing Subparagraphs XV.E.1 and 2, if multiple parties sign this Order as Respondents but not all of the signing parties elect to implement a Work Plan, all Respondents are jointly and severally liable for each and every obligation under this Order through the completion of activities in such Work Plan that all such parties consented to; thereafter, only those Respondents electing to perform additional work shall be jointly and severally liable under this Order for the obligations and activities under such additional Work Plan(s). The parties electing not to implement the additional Work Plan(s) shall have no obligations under this Order relative to the activities set forth in such Work Plan(s).

F. Respondent shall be entitled to receive contribution protection and/or to seek contribution to the extent authorized by law.

G. Unless otherwise expressly provided herein, terms used in this Order which are defined in ECL Article 27 or in regulations promulgated thereunder shall have the meaning assigned to them under said statute or regulations.

H. Respondent's obligations under this Order represent payment for or reimbursement of response costs, and shall not be deemed to constitute any type of fine or penalty.

I. Respondent and Respondent's successors and assigns shall be bound by this Order. Any change in ownership or corporate status of Respondent shall in no way alter Respondent's responsibilities under this Order.

J. This Order may be executed for the convenience of the parties hereto, individually or in combination, in one or more counterparts, each of which shall be deemed to have the status of an executed original and all of which shall together constitute one and the same.