

STATE OF NEW YORK: DEPARTMENT OF ENVIRONMENTAL CONSERVATION

In the Matter of the
Development and Implementation
of a Remedial Program 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

ORDER
ON
CONSENT

STEUBEN COUNTY
TOWN OF LINDLEY

Respondents.

INDEX #B8-0376-91-06
Site Code # 851008

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 and ECL 3-0301, and 42 U.S.C. 9607 and 9613.

2. Respondent, Town of Lindley, owned the landfill during its period of operation, and currently owns that property south of Gibson Road, Town of Lindley, County of Steuben, NY, known as the Lindley Landfill Site (the "Site"). Respondent, Steuben County, operated the Site from approximately 1977-1983. On July 26, 1993, the Steuben County Legislature adopted a resolution releasing the Town of Lindley from any financial obligation to remediate the Site. The Town of Lindley has agreed to provide Steuben County with all authorizations necessary to perform Steuben County's obligations under this

Order. The Town of Lindley and Steuben County are collectively referred to as "Respondents", or separately as "Lindley" or "Steuben".

3. The Site is an inactive hazardous waste disposal site, as that term is defined at ECL 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 851008. The Department has classified the Site as a Classification "2" pursuant to ECL 27-1305.4.b.

4. 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. Any person under order pursuant to ECL 27-1313.3.a has a duty imposed by ECL Article 27, Title 13 to carry out the remedial program committed to under order. 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. The Department also has the power, inter alia, to provide for the prevention and abatement of all water, land, and air pollution. ECL Section 3-0301.1.i.

5. The Department and Respondents agree that the goals of this Order shall be a) Steuben's development and implementation of an interim remedial measure ("IRM") for the Site under Department oversight, and b) development and implementation by Steuben of an inactive hazardous waste disposal site remediation program ("Remedial Program") for the Site that shall include a Remedial Investigation/Feasibility Study ("RI/FS"), design and implementation of the selected remedial alternative, and operation, maintenance and monitoring of the selected remedial alternative.

The activities conducted pursuant to this Order shall be consistent with the NCP.

6. Steuben entered into an Order on Consent with the Department on July 30, 1986, whereby Steuben consented to, among other things, undertake certain activities related to leachate collection at the Site. The July 30, 1986 Order on Consent was modified on June 2, 1987. By fulfilling the terms of this Order as hereinafter set forth, Steuben shall have satisfied any continuing and/or outstanding obligations under the aforesaid July 30, 1986 and June 2, 1987 Orders on Consent as they relate to leachate collection at the Site. Any such continuing or outstanding obligations shall hereafter be governed solely by the terms of this Order.

7. Steuben reserves the right to pursue legally other responsible parties to compel participation in the development and implementation of the Remedial Program. The State of New York reserves the right to pursue legally any responsible party to compel participation in the development and implementation of the Remedial Program for this Site.

8. Steuben has entered into this Order as a precondition to eligibility for financial assistance pursuant to ECL Article 52, Title 3. Pursuant to Steuben's obligations under ECL Article 52, Title 3, Steuben has placed its insurer on notice of the Department's determination that the Site constitutes a significant threat to the environment and of the Department's claim, pursuant to ECL Article 27, Title 13, against Respondent Steuben County. Steuben has agreed to continue to exercise all reasonable efforts, as required by the Department, to seek indemnification or a commitment to indemnify from its insurance carriers. Further, Steuben has agreed to assist the Department in identifying all other responsible parties and compelling other responsible persons to participate in the cost of the Remedial Program at the Site.

9. Respondents, without making any admissions of fact or law, having waived their rights to a hearing herein as provided by law, and having consented to the issuance and entry of this Order, agree to be bound by its terms. Respondents consent to and agree not to contest the authority or jurisdiction of the Department to issue or enforce this Consent Order, and agree not

to contest the validity of this Order or its terms.

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

I. Site Information

Within 30 days after the effective date of this Order, each Respondent shall submit to the Department all data within such Respondent's possession or control regarding environmental conditions on-Site and off-Site, and other information described below, unless the Department advises the Respondents that such data have 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;

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, including but not limited to names, addresses, dates of disposal, and any proof linking each such person 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. State Assistance Contract Submittal

A. Within 90 days after the effective date of this Order, Steuben shall submit to the Department an application, in a format acceptable to the Department, for State assistance pursuant to ECL Article 52, Title 3, and a resolution, in a format acceptable to the Department, authorizing the execution of a contract for such State assistance.

B. Within 30 days after its receipt of the State Assistance Contract, Steuben shall submit to the Department an executed State Assistance Contract.

C. Within 90 days after the effective date of this Order and every six months thereafter (unless the Department informs Steuben otherwise), Steuben shall provide a written report to the Department of the efforts that it has made to obtain indemnification from its insurers and to assist the Department in identifying and compelling other responsible parties to participate in the costs associated with the development and implementation of a Remedial Program at the Site.

III. Interim Remedial Measures

Within 90 days after the effective date of this Order, Steuben shall submit to the Department an Interim Remedial Measure ("IRM") work plan and schedule for the landfill's leachate control measures in accordance with the Department Technical and Administrative Guidance Memorandum

("TAGM") No. HWR-4048 titled "Interim Remedial Measures - Procedures" dated December 9, 1992, and any revisions thereto. The IRM will consist of the design and construction of enhancements to the existing leachate collection system in order to effectively collect, store and load leachate from the landfill. The IRM shall also consist of active leachate collection, transport and treatment. The work plan shall include a chronological description of the anticipated IRM activities together with a schedule for the performance of those activities. Upon the Department's approval of such work plan, the work plan shall be incorporated into and become an enforceable part of this Order; and Steuben shall submit to the Department for its review and (as appropriate) approval, in accordance with the schedule contained in the Department-approved work plan, detailed plans and specifications prepared, signed, and sealed by a professional engineer to implement the Department-approved IRM. Such plans shall include a health and safety plan, contingency plan, and a plan for appropriate citizen participation activities consistent with TAGM 4048, and any subsequent revisions thereto. Steuben shall then carry out such IRM in accordance with the requirements of the approved work plan, detailed plans and specifications, and this Order. Within the schedule contained in the Department-approved work plan, Steuben 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 plans and specifications, and this Order. Consistent with the schedule contained in the Department-approved work plan, Steuben shall submit to the Department a report or reports documenting the performance of the IRM. Steuben shall notify the Department of any significant difficulties that may be encountered in implementing the Department-approved work plan or detailed plans and specifications and shall not modify any obligation unless first approved by the Department.

IV. RI/FS Work Plan Contents and Submittals

A. Within 90 days after the effective date of this Order, Respondent shall submit to the Department a detailed work plan describing the methods and procedures to be implemented in performing an RI/FS for the Site ("RI/FS Work Plan").

B. (1) The RI/FS Work Plan shall include, but not be limited to, the following:

a. A chronological description of the anticipated RI/FS activities together with a schedule for the performance of these activities.

b. A Sampling and Analysis Plan that shall include:

(i) A quality assurance project plan that describes the quality assurance and quality control protocols necessary to achieve the initial data quality objectives. This plan shall designate a data validation expert

and must describe such individual's qualifications and experience.

(ii) A field sampling plan that defines sampling and data gathering methods in a manner consistent with the "Field Methods Compendium," OSWER Directive 9285.2-11 (draft June 1993), as supplemented by the Department.

c. A health and safety plan to protect persons at and in the vicinity of the Site during the performance of the RI/FS which shall be prepared in accordance with 29 CFR 1910 and all other applicable standards by a certified health and safety professional. Respondent shall add supplemental items to this plan necessary to ensure the health and safety of all persons at or in the vicinity of the Site during the performance of any work pursuant to this Order.

d. A citizen participation plan that is, at a minimum, consistent with the Department's publication, "New York State Inactive Hazardous Waste Site Citizen Participation Plan," dated August 30, 1988, and any subsequent revisions thereto, and 6 NYCRR Part 375.

(2) The RI/FS Work Plan shall incorporate all elements of an RI/FS as 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 the guidance document in effect at the time the RI/FS Work Plan is submitted, and appropriate USEPA and Department technical and administrative guidance documents. The RI/FS Work Plan must be prepared in a manner which allows for early landfill closure should early closure be determined to be appropriate pursuant to TAGM No. HWR-4044 titled "Accelerated Remedial Actions at Class 2, Non-RCRA Regulated Landfills" dated March 9, 1992, and the USEPA guidance document titled "EPA Guidance on Presumptive Remedy for CERCLA Municipal Landfill Sites" dated September 1993, and any subsequent revisions to those documents.

V. Performance and Reporting of Remedial Investigation

A. Steuben shall commence the Remedial Investigation in accordance with the schedule contained in the Department-approved RI/FS Work Plan.

B. Steuben shall perform the Remedial Investigation in accordance with the Department-approved RI/FS Work Plan.

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

D. In accordance with the schedule in the RI/FS Work Plan, Steuben shall prepare a Remedial Investigation Report that shall:

- (1) include all data generated and all other information obtained during the Remedial Investigation;
- (2) be consistent with the requirements of

CERCLA as amended, the NCP, the guidance documents identified in subparagraph IV.B.2, and any subsequent revisions to those guidance documents in effect at the time the RI Report is submitted, and appropriate USEPA and Department technical and administrative guidance documents as specified in 6 NYCRR 375-1.10(c), which guidance the Department will endeavor to identify to the Respondents before or during the course of the RI;

(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.

VI. Feasibility Study

A. In accordance with the schedule in the RI/FS Work Plan, Steuben shall perform, prepare, and submit a Feasibility Study evaluating on-Site and off-Site remedial actions to eliminate, to the maximum extent practicable, 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. Steuben 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.B.2.

C. In accordance with the RI/FS Work Plan, Steuben shall cooperate and assist the Department in soliciting public comment on the RI/FS and any proposed remedial action plan ("PRAP") prepared therefrom; such public participation to be in accordance with CERCLA, the NCP, the guidance documents identified in subparagraph IV.B.2, and with any Department policy and guidance documents in effect at the time the public comment period is initiated. After the close of the public comment period, the Department shall select a final remedial alternative for the site in a Record of Decision ("ROD"). The ROD shall be incorporated into and become an enforceable part of this Order.

VII. Remedial Design Contents

A. Unless the ROD selects the "no action" alternative, within 90 days after the ROD is signed, Steuben shall submit to the Department a remedial design to implement the remedial alternative for the Site selected by the Department in the ROD (the "Remedial Design"). The Remedial Design shall be prepared by and have the signature and seal of a professional engineer who shall certify that the Remedial Design was prepared in accordance with this Order.

B. The Remedial Design shall include the following:

1. A detailed description of the remedial

objectives and the means by which each essential element of the selected remedial alternative will be implemented to achieve those objectives, including, but not limited to:

- a. the construction and operation of any structures;
- b. the collection, destruction, treatment, and/or disposal of hazardous wastes and substances and their constituents and degradation products, and of any soil or other materials contaminated thereby;
- c. the collection, destruction, treatment, and/or disposal of contaminated groundwater, leachate, and air;
- d. physical security and posting of the Site;
- e. health and safety of persons living and/or working at or in the vicinity of the Site;
- f. quality control and quality assurance procedures and protocols to be applied during implementation of the Remedial Design; and
- g. necessary and appropriate monitoring during implementation of the Department-selected remedial alternative.

2. "Biddable Quality" documents for the Remedial Design including, but not limited to, plans and specifications prepared, signed, and sealed by a professional engineer. These plans shall satisfy all applicable local, state and federal laws, rules and regulations;

3. A time schedule to implement the Remedial Design;

4. The parameters, conditions, procedures, and protocols to determine the effectiveness of the Remedial Design, including a schedule for periodic sampling of groundwater monitoring wells on-Site and/or off-Site;

5. A description of operation, maintenance, and monitoring activities to be undertaken after the Department has approved construction of the Remedial Design, including the number of years during which such activities will be performed;

6. A contingency plan to be implemented if any element of the Remedial Design fails to achieve any of its objectives or otherwise fails to protect human health or the environment;

7. A health and safety plan for the protection of persons at and in the vicinity of the Site during construction and after completion of construction. This plan shall be prepared in accordance with 29 C.F.R. 1910 by a certified health and safety professional; and

8. A citizen participation plan which incorporates appropriate activities outlined in the Department's publication, "New York State Inactive Hazardous Waste Citizen Participation Plan," dated August 30, 1988, and any subsequent revisions thereto, and 6 NYCRR Part 375.

VIII. Remedial Design Construction and Reporting

A. Within 60 days of the Department's approval of

the Remedial Design, or within such other period agreed to by the Department in light of weather conditions, Steuben shall commence construction of the Remedial Design.

B. Steuben shall implement the Remedial Design in accordance with the Department-approved Remedial Design.

C. During implementation of all construction activities identified in the Remedial Design, Steuben shall have on-Site a full-time representative who is qualified to supervise the work done.

D. Within 60 days after completion of the construction activities identified in the Remedial Design, Steuben shall submit to the Department a detailed post-remedial operation and maintenance plan ("O & M Plan"); "as-built" drawings and a final engineering report (each including all changes made to the Remedial Design during construction); and a certification by a professional engineer that the Remedial Design was implemented and all construction activities were completed in accordance with the Department-approved Remedial Design. The O & M Plan, "as built" drawings, final engineering report, and certification must be prepared, signed, and sealed by a professional engineer.

E. Upon the Department's approval of the O & M Plan, Steuben shall implement the O & M Plan in accordance with the requirements of the Department-approved O & M Plan.

F. After receipt of the "as-built" drawings, final engineering report, and certification, the Department shall

notify Steuben in writing whether the Department is satisfied that all construction activities have been completed in compliance with the approved Remedial Design.

G. If the Department concludes that any element of the Remedial Program fails to achieve its objectives or otherwise fails to protect human health or the environment, Steuben shall take whatever action the Department determines necessary to achieve those objectives or to ensure that the Remedial Program otherwise protects human health and the environment.

IX. Progress Reports

A. Steuben shall submit to the parties set forth in paragraph XVI, one copy of 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 a summary of all results of sampling and tests and all other data received or generated by Steuben or Steuben's contractors or agents in the previous month whether conducted pursuant to this Order or conducted independently by Steuben; (iii) identify all work plans, reports, and other deliverables required by this Order which were completed and submitted during the previous month; (iv) describe all actions, including, but not limited to, data collection and implementation of work plans, which 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 Steuben's obligations under the Order, and description of efforts made to mitigate those delays or anticipated delays; (vi) include any modifications to any work plans that Steuben has proposed to the Department or that have been approved by the Department; 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. Steuben shall submit these progress reports to the Department by the tenth day of every month following the effective date of this Order.

B. Steuben shall allow the Department to attend, and shall provide the Department reasonable advance notice of the occurrence of, any of the following: prebid meetings, regularly scheduled job progress meetings, substantial completion meeting and inspection, and final inspection and meeting.

X. Review of Submittals

A. (1) Within sixty days following receipt, the Department shall review each of the submittals Steuben makes 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 Steuben in writing of its approval or disapproval of the submittal, except for the submittal discussed in subparagraph IV.B.1.c. 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 Steuben in writing and shall specify the reasons for its disapproval. Within the period of time specified in the written notice that Steuben's submittal has been disapproved, Steuben 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) Within sixty days after receipt of the revised submittal, the Department shall notify Steuben in writing of its approval or disapproval. If the Department disapproves the revised submittal, Steuben 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. 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 Steuben 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.

XI. Violations

A. Respondents' failure to comply with any term of this Order shall be 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 if they cannot comply with any requirement hereof because of an act of God, war, or other condition as to which negligence or willful misconduct on the part of Respondents was not a proximate cause, including but not limited to delays attributable solely to weather conditions or difficulties in obtaining necessary easements or rights-of-way. Respondents shall, within five 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 in a timely manner shall constitute a waiver of any claim that a delay is not subject to penalties. Respondents shall have the burden of proving that an event is a defense to compliance with this Order pursuant to this subparagraph.

XII. 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 for purposes of inspection, sampling, and testing and to ensure Respondents' compliance with this Order. During implementation of the Remedial Design, Respondents shall provide the Department with suitable office space at the Site, including access to a telephone, and shall permit the Department full access to all records and job meetings.

XIII. 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 Respondents' directors, officers, employees, servants, agents, successors, and assigns;

2. the Department's right to enforce this Order against Respondents and/or Respondents' directors, officers, employees, servants, agents, successors, and assigns in the event Respondents fail to satisfy any of the terms of this Order applicable to them;

3. the Department's right to bring any action or proceeding against Respondents and/or 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 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 require Respondents and/or their successors and assigns to develop and implement interim remedial measures for the Site if determined to be necessary pursuant to the provisions herein;

6. the Department's rights to gather information and enter and inspect property and premises;

7. the Department's right to bring enforcement proceedings against the Respondents and to assess appropriate penalties based upon any failure of the Respondents to comply with the terms of any existing Consent Orders related to this Site occurring on or before the effective date of this Order.

B. Nothing contained in this Order shall be construed to prohibit the Commissioner or his duly authorized representative from exercising any summary abatement powers.

XIV. 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. Such indemnification shall not apply to the extent that any claim, suit, action, damage or cost arises out of the negligence or other culpable conduct of the Department, the State or any of their contractors, representatives or employees.

XV. Public Notice

A. Within 30 days after the effective date of this Order, Lindley shall file a Declaration of Covenants and Restrictions with the Steuben County Clerk to give all parties who may acquire any interest in the Site notice of this Order.

B. If Lindley proposes to convey the whole or any part of its interest in the Site, it 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 applicability of this Order.

XVI. 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. Craig Jackson, Section Chief
Division of Hazardous Waste Remediation
New York State Department of Environmental
Conservation
50 Wolf Road
Albany, New York 12233-7010

2. Director, Bureau of Environmental
Exposure Investigation
New York State Department of Health
2 University Place
Albany, New York 12203
3. New York State Department of Environmental
Conservation, Region 8
6274 E. Avon-Lima Road
Avon, New York 14414
4. Division of Environmental Enforcement ("DEE")
New York State Department of Environmental
Conservation ("NYSDEC")
270 Michigan Avenue
Buffalo, New York 14203

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

1. Four copies (one unbound) to Craig Jackson,
Section Chief
Division of Hazardous Waste Remediation.
2. Two copies to the Director, Bureau of
Environmental Exposure Investigation.
3. One copy to Regional Director, Region 9
4. One copy to assigned Field Unit Case
Attorney, NYSDEC, DEE, Buffalo

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

Mark R. Alger
Steuben County Administrator
Steuben County Office Building
3 East Pulteney Square
Bath, New York 14810

Vincent Spagnoletti
Steuben County
Department of Public Works
3 East Pulteney Square
Bath, New York 14810

Daniel M. Darragh, Esq.
Buchanan Ingersoll, P.C.
600 Grant Street, 58th Floor
Pittsburgh, Pennsylvania 15219

Kent R. Woloson, Esq.
77 Canal Street
P.O. Box 458
Big Flats, NY 14814

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

XVII. Miscellaneous

A. All activities and submittals required by this Order shall address both on-Site and off-Site contamination resulting from the disposal of hazardous wastes at the Site.

B. Steuben shall retain 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 Steuben shall be submitted to the Department within 15 days after the effective date of this Order. The Department's approval of these firms or individuals shall be obtained before the start of any activities for which Steuben and such firms or individuals will be responsible. The responsibility for the performance of the professionals retained by Steuben shall rest solely with Steuben.

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 Steuben with respect to implementation of this Order and shall submit these results in the status 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 obtain whatever permits, easements, rights-of-way, rights-of-entry, approvals, or authorizations are necessary to perform Respondents' obligations under this Order.

F. Respondents and Respondent's officers, directors, agents, servants, employees, 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.

G. Steuben shall provide a copy of this Order to each contractor hired to perform work required by this Order and to each person representing Steuben with respect to the Site and shall condition all contracts entered into hereunder upon performance in conformity with the terms of this Order.

Steuben and Steuben's contractors shall provide written notice of this Order to all subcontractors hired to perform any portion of the work required by this Order. Steuben shall nonetheless be responsible for ensuring that Steuben's contractors and subcontractors perform the work in satisfaction of the requirements of 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. This Order may be signed by counterpart.

L. (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'

obligation to obtain such formal approvals as may be required by this Order.

(2) If Respondents desire 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:

NYS Department of Environmental Conservation
Division of Environmental Enforcement
270 Michigan Avenue
Buffalo, New York 14203-2999

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

DATED: 4/7/95, New York
, 1995

Michael D. Zagata
Commissioner
New York State Department
of Environmental Conservation

By: Michael J. O'Toole, Jr.
Michael J. O'Toole, Jr.

CONSENT BY RESPONDENT

Respondent hereby consents to the issuing and entering of this Order, waives Respondent's right to a hearing herein as provided by law, and agrees to be bound by this Order.

STEUBEN COUNTY

By: _____

John Clifford

(Type Name of Signer)

Title: Chairman Steuben County

Date: Legislature 3/31/95

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

On this 31 day of March, 1995,
before me personally came John Clifford, to me
known, who being duly sworn, did depose and say that he resides
in Town of Horseville; that he is the
Chairman of the Steuben County Legislature
municipality described in and which executed the foregoing
instrument; that he knew the seal of said municipality that the
seal affixed to said instrument was such municipal seal; that
it was so affixed by the order of the Board of said
municipality and that he signed his name thereto by like order.

DONNA J. NEILD
Notary Public No. 4873912
State of New York
Steuben County
My Commission Expires Oct. 20, 1995

Donna J. Neild
Notary Public

CONSENT BY RESPONDENT

Respondent hereby consents to the issuing and entering of this Order, waives Respondent's right to a hearing herein as provided by law, and agrees to be bound by this Order.

TOWN OF LINDLEY

By: Dale R. Davis

Dale R. Davis

(Type Name of Signer)

Title: Supervisor Town of Lindley

Date: 3/31/95

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

On this 31 day of March, 1995,
before me personally came Dale R. Davis, to me
known, who being duly sworn, did depose and say that he resides
in Town of Lindley; that he is the
Supervisor of the Town of Lindley
municipality described in and which executed the foregoing
instrument; that he knew the seal of said municipality that the
seal affixed to said instrument was such municipal seal; that
it was so affixed by the order of the Board of said
municipality and that he signed his name thereto by like order.

DONNA J. NEILD
Notary Public No. 4873912
State of New York
Stauben County
My Commission Expires Oct. 20, 1996

Donna J. Neild
Notary Public,