

**Valerie Woodward - Re: Old Bath Landfill 851014**

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**From:** Elissa Armater  
**To:** Woodward, Valerie  
**Date:** 5/23/2013 12:03 PM  
**Subject:** Re: Old Bath Landfill 851014  
**Attachments:** Bath#2.pdf; Bath LF.pdf

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Valerie - attached is the order 1990. Bath#2 is an amended order from 1994 that clarifies a mistake in the effective date of the 1990 order - it was actually 1991 rather than 1990. Must have been one of those time-space continuum warps :)

>>> Valerie Woodward 5/23/2013 11:46 AM >>>  
Elissa

I just got a number for the CO..... B8-293-89-08

Thank You and Have a Nice Day :-)

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STATE OF NEW YORK: DEPARTMENT OF ENVIRONMENTAL CONSERVATION

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In the Matter of the  
Development and Implementation  
of a Remedial Program for an  
Inactive Hazardous Waste Disposal  
Site, Under Article 27, Title 13,  
of the Environmental Conservation  
Law of the State of New York  
by

ORDER  
ON  
CONSENT

COUNTY OF STEUBEN

Respondent

INDEX #B8-293-89-08  
SITE #851014

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WHEREAS,

1. The New York State Department of Environmental Conservation (the "Department") is responsible for enforcement of Article 27, Title 13 of the Environmental Conservation Law of the State of New York ("ECL"), entitled "Inactive Hazardous Waste Disposal Sites". This Order is entered into under authority of ECL §27-1301 et seq. and §§71-2705(1) and 71-2727.

2. The County of Steuben ("Respondent") owns and formerly operated an inactive hazardous waste disposal site on Turnpike Road in the Town of Bath, Steuben County, New York, known as the "Bath Landfill" (the "Site").

3. The Department has determined 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 851014. The

Department has classified the Site as a Classification "2" pursuant to ECL Section 27-1305(4)(b).

4. Pursuant to ECL Section 27-1313(3)(a), whenever the Commissioner of Environmental Conservation (the "Commissioner") "finds that hazardous wastes at an inactive hazardous waste disposal site constitute a significant threat to the environment, he may order the owner of such site and/or any person responsible for the disposal of hazardous wastes at such site (i) to develop an inactive hazardous waste disposal site remedial program, subject to the approval of the Department, at such site, and (ii) to implement such program within reasonable time limits specified in the order."

5. Respondent entered into an Order on Consent with the Department on September 19, 1988, whereby Respondent consented to undertake certain activities related to the Site. By fulfilling the terms of this Order as hereinafter set forth, Respondent shall have satisfied any of its continuing and/or outstanding obligations under the aforesaid September 19, 1988 Order on Consent, and any such continuing or outstanding obligations shall hereafter be governed solely by the terms of this Order.

6. The Department and Respondent agree that the goals of this Order shall be (a) the development and implementation of a Remedial Program for the Site by Respondent, which program shall include a Remedial Investigation/Feasibility Study and design and implementation of the selected remedial

alternative; and, (b) the implementation of an Interim Remedial Program (hereinafter the "Interim Remedial Program") for the site, which shall include the installation of an interim perimeter leachate collection system which meets the requirements of 6 NYCRR 360-2.15(g); the installation of a conditional final cover system for the landfill which meets the requirements of 6 NYCRR 360-2.15(b); and the preparation of an engineering report addressing, for the duration of the Interim Remedial Measure, vector migration and control and those matters identified in 6 NYCRR 360-2.15(i).

7. Respondent has entered into this Order as a precondition to eligibility for financial assistance pursuant to ECL Article 52, Title 3 and Article 27, Title 13. Respondent 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. Respondent has agreed to continue to exercise all reasonable efforts to obtain indemnification or a commitment to indemnify from its insurance carriers. Further, Respondent has agreed to assist the Department to identify all other responsible parties and to compel other responsible persons to bear the cost of the development and implementation of an inactive hazardous waste disposal site remedial program at the Site. Based on current knowledge of Site conditions, Respondent and the Department recognize that the interim remedial measures described in paragraph 6(b) of

this Order constitute an integral part of the remedial program for the Site that the interim remedial measures described in paragraph 6(b) herein are consistent with the definition of an "inactive hazardous waste disposal site remedial program" in Environmental Conservation Law Section 27-1301(3), and that Respondent may be reimbursed for seventy-five percent of the work performed pursuant to paragraph 6(b) herein from Environmental Quality Bond Act Funds provided all necessary requirements are met.

8. Respondent is entering into this Order and agrees to be bound by its terms without admitting any fact, conclusion or inference set forth in the preceding or succeeding paragraphs and without any admission of liability or waiver of any rights, except the right to a hearing on the terms of this Order.

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

I. Respondent shall retain professional consultants, contractors and laboratories acceptable to the Department to perform the technical, engineering and analytical obligations required by this Order. Respondent will submit to the Department documentation that the professional consultants were procured through a competitive selection process. The experience, capabilities and qualifications of the firms or individuals selected by Respondent, together with copies of the contracts (and supporting cost data in a format acceptable to the Department) between the Respondent and

their consultants shall be submitted within 30 days after the effective date of this Order, consultant selection or contract execution, whichever is later to the Department for approval prior to initiation of any activities for which the Respondent and their consultants will be responsible.

II. Within 30 days after the effective date of this Order, Respondent shall submit to the Department their scoping effort for the Remedial Investigation and Feasibility Study (the "scoping effort") completed in accordance with EPA's "Guidance for Conducting Remedial Investigations and Feasibility Studies under CERCLA", dated March 1988, and all data within its 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;

b. A concise summary of information held by Respondent and its attorneys 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 responsible with hazardous wastes identified pursuant to Paragraph III (a) herein;

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.

d. An application for the Interim Remedial Program and the Remedial Program in a format acceptable to the Department for State assistance pursuant to ECL Article 52, Title 3 and Article 27, Title 13, together with a resolution in a format acceptable to the Department which authorizes the signing of a contract for State assistance pursuant to ECL Article 52, Title 3 and Article 27, Title 13.

IV. The Department shall notify Respondent in writing of its approval or disapproval of the scoping effort. If the Department approves the scoping effort, Respondent shall perform the Remedial Program in accordance with it.

If the Department disapproves the scoping effort, the Department shall notify Respondent in writing of the Department's specific objections. Within 30 days after receipt of notice of disapproval, Respondent shall revise the scoping effort in accordance with the Department's specific comments and submit a revised scoping effort.

The Department shall notify Respondent in writing of its approval or disapproval of the revised scoping effort. If the Department approves the revised scoping effort, Respondent shall perform the Remedial Program in accordance with the scoping effort.

If the Department disapproves the revised scoping effort, the Respondent shall be in violation of this Order, unless the Respondent invokes the dispute resolution mechanism in paragraph XXXVII of this Order within ten (10) days of receiving written notice of such disapproval.

The approved scoping effort shall be attached as Appendix "A".

V. Within 45 days after the effective date of this Order, Respondent shall submit to the Department its conceptual design for the Interim Remedial Program together with a signed copy of the State Assistance Contract.

The Department shall notify Respondent in writing of its approval or disapproval of the conceptual design for the Interim Remedial Program. If the Department approves the conceptual design, Respondent shall submit the work plan for the Interim Remedial Program in accordance with it.

If the Department disapproves the conceptual design, the Department shall notify Respondent in writing of the Department's specific objections. Within 21 days after receipt of notice of disapproval, Respondent shall revise the conceptual design in accordance with the Department's specific comments and submit a revised conceptual design.

The Department shall notify Respondent in writing of its approval or disapproval of the revised conceptual design. If the Department approves the revised conceptual design, Respondent shall submit the work plan for the Interim Remedial Program in accordance with the conceptual design.



If the Department disapproves the revised conceptual design, the Respondent shall be in violation of this Order unless the Respondent invokes the dispute resolution mechanism in paragraph XXXVII of this Order within ten (10) days of receiving written notice of such disapproval.

The approved conceptual design shall be attached as Appendix "B".

VI. Pursuant to the approved schedule in the conceptual design, Respondent shall submit to the Department a signed work plan for the Interim Remedial Program (the "IRM Work Plan") certified by an individual licensed to practice professional engineering by the State of New York that the Work Plan meets the requirements of all applicable statutes and regulations.

The IRM Work Plan shall include, but not be limited to:

a. (1) certified engineering plans and specifications for construction and installation of an interim perimeter leachate collection system for the Bath Landfill meeting the requirements of 6 NYCRR 360-2.15(g); and (2) certified engineering plans and specifications for construction of a conditional final cover system for the landfill which meets the requirements of 6 NYCRR 360-2.15(b).

b. an engineering report addressing, for duration of Interim Remedial Program, vector migration and control, gas migration and control, and those matters identified in 6 NYCRR 360-2.15(i);

c. a chronological description of the anticipated

Interim Remedial Program activities together with an anticipated schedule for the performance of the Interim Remedial Program activities.

d. a Sampling and Analysis Plan which shall include:

(i) A quality assurance project plan that describes the quality assurance and quality control protocols necessary to assure the construction and certification requirements of 6 NYCRR 360-2.13(p),(q),(r) and (s) relating to the construction of the conditional final cover system and the construction and certification requirements of 6 NYCRR 360-2.8, 360-2.15(g) and, if the system includes the construction and operation of a leachate storage facility, subpart 360-6 relating to the construction of the interim perimeter leachate collection system; and

(ii) A field sampling plan that defines the sampling and data gathering methods in a manner consistent with the "Compendium of Superfund Field Operations Method" (EPA/540/P-87-001, OSWER Directive 9355.0-14, December 1987) as supplemented by the Department.

e. a health and safety plan for the protection of persons at and in the vicinity of the Site during the performance of the Interim Remedial Program which shall be prepared in accordance with 29 C.F.R. 1910 by a certified health and safety professional.

VII. The Department shall notify Respondent in writing of its approval or disapproval of the IRM Work Plan. If the Department approves the IRM Work Plan, Respondent shall

perform the Interim Remedial Program in accordance with it.

If the Department disapproves the IRM Work Plan, the Department shall notify Respondent in writing of the Department's specific objections. Within 45 days after receipt of notice of disapproval, Respondent shall revise the IRM Work Plan in accordance with the Department's specific comments and submit a revised IRM Work Plan.

The Department shall notify Respondent in writing of its approval or disapproval of the revised IRM Work Plan. If the Department approves the revised IRM Work Plan, Respondent shall perform the Interim Remedial Program in accordance with the IRM Work Plan.

If the Department disapproves the revised IRM Work Plan, the Respondent shall be in violation of this Order unless the Respondent invokes the dispute resolution mechanism in paragraph XXXVIII of this Order within ten (10) days of receiving written notice of such disapproval.

The approved IRM Work Plan shall be attached as Appendix "C" and incorporated into this Order. Respondent agrees to perform the Interim Remedial Program without prejudice to the Department's right to further remedial activity pursuant to the Remedial Program approved by the Department pursuant to this Order.

VIII. In accordance with the time schedule contained in the approved IRM Work Plan, Respondent shall perform the Interim Remedial Program and submit the status reports and other deliverables (as defined in the IRM Work Plan) and the

IRM Certification Report. During the Interim Remedial Program Respondent shall have on-Site a full-time representative who is qualified to inspect the work. The IRM Certification Report shall include all data generated and all other information obtained during the Interim Remedial Program, as built drawings, deviations from the approved plans and specifications, daily inspection reports, color photographs of major construction areas, and certification under seal and signature of an individual licensed to practice professional engineering by the State of New York that all construction was done in accordance with the approved IRM Work Plan, and that IRM Certification Report shall identify any additional data that must be collected.

IX. After receipt of the IRM Certification Report, the Department shall determine if the Interim Remedial Program was conducted and the IRM Certification Report prepared in accordance with the Work Plan and this Order, and shall notify Respondent in writing of its approval or disapproval of the IRM Certification Report.

If the Department disapproves the IRM Certification Report, the Department shall notify Respondent in writing of the Department's specific objections. Respondent shall revise the IRM Certification Report and/or re-perform or supplement the Interim Remedial Program in accordance with the Department's specific comments and shall submit a revised IRM Certification Report. The period of time within which the IRM Certification Report must be revised or the Interim

Remedial Program re-performed or supplemented shall be specified by the Department in its notice of disapproval.

After receipt of the revised IRM Certification Report, the Department shall notify the Respondent in writing of its approval or disapproval of the revised IRM Certification Report.

If the Department disapproves the revised IRM Certification Report, the Respondent shall be deemed to be in violation of this Order unless the Respondent invokes the dispute resolution clause in paragraph XXXVIII of this Order within the (10) days of receiving written notice of such disapproval.

The approved IRM Certification Report shall be attached as Appendix "D" and incorporated into this Order.

X. Respondent shall operate, maintain and monitor all elements of the Interim Remedial Program as approved by the Department.

XI. Within ninety (90) days after the effective date of this Order, Respondent shall submit to the Department a Work Plan for the Remedial Investigation/Feasibility Study.

The Work Plan shall address all elements of a Remedial Investigation/Feasibility Study as set forth in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. Section 9601 et seq., as amended ("CERCLA"), the National Contingency Plan then in effect ("NCP"), the USEPA interim final guidance document entitled "Guidance for Conducting Remedial Investigations and

Feasibility Studies under CERCLA" dated October 1988, and any subsequent revisions thereto, and appropriate technical and administrative guidelines. In addition, the Work Plan shall include:

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

b. A Sampling and Analysis Plan which 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, and

(ii) A field sampling plan that defines the sampling and data gathering methods in a manner consistent with the "Compendium of Superfund Field Operations Method" (EPA/540/P-87/001, OSWER Directive 9355.0-14, December 1987) as supplemented by the Department;

c. A health and safety plan for the protection of persons at and in the vicinity of the Site during the performance of the Remedial Investigation which shall be prepared in accordance with 29 C.F.R. 1910 by a certified health and safety professional; and

d. A citizen participation plan which is prepared in a manner consistent with the Department's publication "New York State Inactive Hazardous Waste Site Citizen Participation Plan".

XII. The Department shall notify Respondent in writing of its approval or disapproval of the Work Plan. If the

Department approves the Work Plan, Respondent shall perform the Remedial Investigation/Feasibility Study in accordance with it.

If the Department disapproves the Work Plan, the Department shall notify Respondent in writing of the Department's specific objections. Within 45 days after receipt of notice of disapproval, Respondent shall revise the Work Plan in accordance with the Department's specific comments and submit a revised Work Plan.

The Department shall notify Respondent in writing of its approval or disapproval of the revised Work Plan. If the Department approves the revised Work Plan, Respondent shall perform the Remedial Investigation/Feasibility Study in accordance with the Work Plan.

If the Department disapproves the revised Work Plan, the Respondent shall be in violation of this Order unless the Respondent invokes the dispute resolution clause in paragraph XXXVIII of this Order within the (10) days of receiving written notice of such disapproval from the Department.

The approved Work Plan shall be attached as Appendix "E" and incorporated into this Order.

XIII. In accordance with the time schedule contained in the approved Work Plan, Respondent shall perform the Remedial Investigation and submit the status reports and other deliverables (as defined in the Work Plan) and the Remedial Investigation Report. During the Remedial Investigation, Respondent shall have on-site a full-time representative who

is qualified to inspect the work. The Report shall include all data generated and all other information obtained during the Remedial Investigation, provide all of the assessments and evaluations set forth in CERCLA, the NCP then in effect, and in the guidance documents referred to above and identify any additional data that must be collected. The Remedial Investigation shall be prepared and certified by an individual licensed to practice professional engineering by the State of New York, who may be an employee of Respondent, or an individual or member of a firm which is authorized to offer engineering services in accordance with Article 145 of the New York State Education Law who shall certify that all activities that comprised the Remedial Investigation were performed in full accordance with the approved Work Plan.

XIV. After receipt of the Report, the Department shall determine if the Remedial Investigation was conducted and the Report prepared in accordance with the Work Plan and this Order, and shall notify Respondent in writing of its approval or disapproval of the Report.

If the Department disapproves the Report, the Department shall notify Respondent in writing of the Department's objections. Respondent shall revise the Report and/or re-perform or supplement the Remedial Investigation in accordance with the Department's specific comments and shall submit a revised Report. The period of time within which the Report must be revised or the Remedial Investigation re-performed or supplemented shall be specified by the



Department in its notice of disapproval.

After receipt of the revised Report, the Department shall notify the Respondent in writing of its approval or disapproval of the revised Report.

If the Department disapproves the revised Report, the Respondent shall be in violation of this Order, unless the Respondent invokes the dispute resolution clause in paragraph XXXVIII of this Order within the (10) days of receiving written notice of such disapproval from the Department.

The approved Report shall be attached as Appendix "F" and incorporated into this Order.

XV. The Department reserves the right to require a modification and/or an amplification and expansion of the Remedial Investigation and Report by Respondent if the Department determines, as a result of reviewing data generated by the Remedial Investigation or as a result of reviewing any other data or facts, that further work is necessary. If a dispute arises concerning such requirement, either party may invoke the dispute resolution mechanism in paragraph XXXVIII of this Order within 10 days after the other party receives written notice of such dispute.

XVI. Within 90 days after receipt of the Department's approval of the Report, Respondent shall 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 the Site, and shall take into account the Interim Remedial

Program that shall be implemented under this Order and all matters contained in 6 NYCRR Part 360 pertaining to the closure, post-closure, monitoring and maintenance of a landfill. The Feasibility Study shall be prepared and certified by an individual licensed to practice professional engineering by the State of New York, and approved by the Department who may be an employee of Respondent, or an individual or member of a firm which is authorized to offer engineering services in accordance with Article 145 of the New York State Education Law.

The Feasibility Study shall be performed in a manner that is consistent with CERCLA, the NCP then in effect, the USEPA interim final guidance document entitled "Guidance for Conducting Remedial Investigations and Feasibility Studies under CERCLA" dated October 1988 and any subsequent revisions thereto and appropriate technical and administrative guidelines.

XVII. After receipt of the Feasibility Study, the Department shall determine if the Feasibility Study was prepared in accordance with this Order, and shall provide written notification of its approval or disapproval.

If the Department disapproves the Feasibility Study, the Department shall notify Respondent in writing of the Department's specific objections. Within 45 days after receipt of notice of disapproval, Respondent shall revise the Feasibility Study in accordance with the Department's specific comments and submit a revised Feasibility Study.

After receipt of the revised Feasibility Study, the Department shall notify Respondent in writing of its approval or disapproval of the revised Feasibility Study.

If the Department disapproves the revised Feasibility Study, the Respondent shall be in violation of this Order, unless the Respondent invokes the dispute resolution clause in paragraph XXXVIII of this Order within the (10) days of receiving written notice of such disapproval from the Department.

The approved Feasibility Study shall be attached as Appendix "G" and incorporated into this Order.

XVIII. Within 60 days after the Department's approval of the Feasibility Study, the Department and Respondent shall solicit public comment on the Remedial Investigation/ Feasibility Study and the recommended remedial program in accordance with CERCLA, the NCP, and any relevant 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 program for the site in a Record of Decision ("ROD"). The ROD shall be attached as Appendix "H" and incorporated into this Order.

XIX. Unless the ROD recommends the "no action" alternative, Respondent shall submit a Remedial Design within 90 days after the ROD is signed.

The Remedial Design shall be prepared and certified by an individual licensed to practice professional engineering

by the State of New York, who may be an employee of Respondent, or an individual or member of a firm which is authorized to offer engineering services in accordance with Article 145 of the New York State Education Law.

The Remedial Design shall include the following:

a. A detailed description of the means by which each essential element of the Remedial Program will be performed, to include as necessary:

1. the collection, destruction, treatment and/or disposal of hazardous wastes, and their constituents and degradation products, and any soil or other materials contaminated thereby;

2. the collection, destruction, treatment, and/or disposal of contaminated groundwater, leachate and air;

b. A detailed description of the means by which each essential element of the Remedial Program will be performed, to include, but not be limited to:

1. physical security and posting of the Site;

2. health and safety of persons living and/or working at or in the vicinity of the site;

3. quality control and quality assurance procedures and protocols to be applied during implementation of the Remedial Program;

4. monitoring which integrates needs which are present both on-Site and off-Site during implementation of the Remedial Program; and

5. all matters contained in 6 NYCRR Part 360

pertaining to the closure and post-closure monitoring and maintenance of a landfill.

c. "Biddable Quality" documents for the Remedial Program, including plans and specifications prepared and certified by an individual licensed to practice professional engineering by the State of New York who may be an employee of the Respondent, or an individual or member of a firm which is authorized to offer engineering services in accordance with Article 145 of the New York State Education Law. These plans shall satisfy all applicable local, state and federal laws, rules and regulations;

d. A time schedule for the Remedial Program and provisions for periodic work-in-progress reports during the Remedial Program;

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

f. A description of operation, maintenance and monitoring activities to be undertaken following completion of the Remedial Program, including the number of years during which such activities will be performed.

g. A contingency plan to be implemented in the event that any element of the Remedial Program fails to operate in accordance with the Remedial Design or otherwise fails to protect human health or the environment; and

h. A health and safety plan for the protection of

persons at and in the vicinity of the Site during construction and after completion of the Remedial Program. The plan shall be prepared in accordance with 29 C.F.R. 1910 by a certified health and safety professional.

XX. After receipt of the Remedial Design, the Department shall notify Respondent in writing of its approval or disapproval of the Remedial Design. If the Department approves the Remedial Design, the Respondent shall implement the Remedial Program in accordance with it.

If the Department disapproves the Remedial Design, the Department shall notify Respondent in writing of the Department's specific objections. Within 45 days after receipt of notice of disapproval, Respondent shall revise the Remedial Design in accordance with the Department's specific comments and submit a revised Remedial Design.

After receipt of the revised Remedial Design, the Department shall notify Respondent in writing of its approval or disapproval of the revised Remedial Design. If the Department approves the revised Remedial Design, Respondent shall implement the Remedial Program in accordance with it.

If the Department disapproves the revised Remedial Design, the Respondent shall be in violation of this Order, unless the Respondent invokes the dispute resolution clause in paragraph XXXVIII of this Order within the (10) days of receiving written notice of such disapproval from the Department.

The approved Remedial Design shall be attached as

Appendix "I" and incorporated into this Order.

XXI. Respondent shall implement the Remedial Program in accordance with the approved Remedial Design. Respondent must obtain prior written approval from the Department prior to significantly deviating from the approved Remedial Design. During implementation of the Remedial Program, Respondent shall have on-Site a full-time representative who is qualified to inspect the work.

Within 90 days after completion of the Remedial Program, Respondent shall submit as-built drawings, a final engineering report, final operation, maintenance and monitoring report reflecting all changes made during construction and a certification that the Remedial Program was completed in accordance with the approved Remedial Design, all by an individual licensed to practice professional engineering by the State of New York who may be an employee of the Respondent, or an individual or member of a firm which is authorized to offer engineering services in accordance with Article 145 of the New York State Education Law.

XXII. After receipt of the as-built drawings, final engineering report and certification, the Department shall notify Respondent in writing whether it is satisfied with the quality and completeness of the Remedial Program as being protective of human health and the environment.

If the Department concludes that any element of the Remedial Program fails to operate in accordance with the

Remedial Design or otherwise fails to protect human health or the environment, the Department may take any action or pursue whatever rights it has pursuant to any provision of statutory or common law.

XXIII. Prior to its acceptance and approval of the professional engineer's certification that construction was completed in accordance with the approved Remedial Design, the Department may require the Respondent to modify the Remedial Design and Construction if the Department determines that such modification is necessary due to:

(1) environmental conditions on-Site or off-Site which are related to the presence of hazardous wastes at the Site and were unknown to the Department at the time of the effective date of this Order, or

(2) information received, in whole or in part, after the effective date of this Order, where such unknown environmental conditions or information indicates that the Remedial Program is not protective of human health or the environment.

If the Respondent disputes such requirement, it may invoke the dispute resolution clause in paragraph XXXVIII of this Order within ten days of its receipt of written notice of such requirement.

XXIV. Respondent shall operate, maintain and monitor all elements of the Remedial Program for the period of years set forth in the approved Remedial Design, implement the contingency plan contained in the approved Remedial Design in



the event any element of the Remedial Program fails after completion or otherwise fails to protect human health or the environment, and implement the health and safety plan contained in the approved Remedial Design after completion.

XXV. Within 90 days after the effective date of this Order and every six months thereafter (unless the Department informs Respondent otherwise), Respondent 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 compelling other responsible parties to bear the costs associated with the development and implementation of an inactive hazardous waste disposal site remedial program at the site. Respondent shall provide to the Department any information it obtains which supplements the responsible party data already developed by the Department.

XXVI. The Department shall have the right to obtain split samples, duplicate samples, or both, of all substances and materials sampled by Respondent and the Department shall also have the right to take its own samples.

XXVII. Respondent shall provide notice to the Department at least 10 working days in advance of any field activities to be conducted pursuant to this Order.

XXVIII. Respondent shall obtain whatever permits, easements, rights-of-way, rights-of-entry, approvals or authorizations are necessary to perform Respondent's obligations under this Order. Respondent shall promptly

notify the Department in the event of its inability to obtain such authorizations on a timely basis. In the event Respondent is unable to obtain the necessary authorizations required to perform the requirements of this Order, the Department shall, in its sole discretion and consistent with its legal authority, assist in obtaining all such authorizations Respondent was unable to obtain, and shall make commensurate project schedule changes.

XXIX. Respondent shall permit any duly designated employee, consultant, contractor or agent of the Department or any State agency to enter upon the Site or areas in the vicinity of the Site which may be under the control of Respondent for purposes of inspection, sampling and testing and to assure Respondent's compliance with this Order. During implementation of the Remedial Program, Respondent 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.

XXX. Respondent shall not suffer any penalty under this Order, or be subject to any proceeding or action, if it cannot comply with any requirements hereof because of an act of God, war or other condition as to which negligence or willful misconduct on the part of the Respondent 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. Respondent shall immediately notify the Department in writing when it

obtains knowledge of any such condition and request an appropriate extension or modification of this Order.

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

XXXII. Nothing contained in this Order shall be construed as barring, diminishing, adjudicating or in any way affecting any of the Department's rights, which include, but are not limited to, the following:

a. the right to bring any action or proceeding against anyone other than Respondent, its directors, officers, employees, servants, agents, successors and assigns;

b. the right to enforce this Order against Respondent, its directors, officers, employees, servants, agents, successors and assigns in the event that Respondent shall fail to satisfy any of the terms hereof;

c. the right to bring any action or proceeding against Respondent, its 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 wastes or constituents at or from the Site or areas in the vicinity of the Site, and;

d. the right to bring any action or proceeding against Respondent, its directors, officers, employees, servants, agents, successors and assigns with respect to hazardous wastes that are present at the site or that have migrated from the site and present a significant threat to human

health or the environment.

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

XXXIV. Respondent shall indemnify and hold the Department, the State of New York, and their representatives and employees harmless for all claims, suits, actions, damages and costs of every name and description arising out of or resulting from the fulfillment or attempted fulfillment of this Order by Respondent, its directors, officers, employees, servants, agents, successors or assigns. Respondent shall not be responsible for the negligence or willful misconduct of the Department, the State of New York, the representatives or employees.

XXXV. The effective date of this Order shall be five (5) days after the date it is signed by the Commissioner or his designee.

XXXVI. Respondent's obligations under this Order shall terminate upon its completion of the program outlined in paragraph XXIV and XXV of this Order.

XXXVII. If Respondent desires that any provision of this Order be changed, it shall make timely written application to the Commissioner, setting forth reasonable grounds for the relief sought. A copy of such written application shall be delivered or mailed to the Department project manager for the Site.

XXXVIII. In the event that a dispute arises between the

Department and Respondent as to any of the terms of any submittals pursuant to paragraphs IV, V, VII, IX, XII, XIV, XVII, and XX hereunder, and if the parties are not able to resolve the dispute through negotiation and settlement, then the dispute may be resolved in accordance with the procedures set forth below. Nothing herein shall be construed as a limitation on, waiver of, or relinquishment of any rights, privileges, defenses, or causes of action otherwise available to any party except as specifically stated.

A. Either party, upon written notice to the others, may request the Commissioner of Environmental Conservation to appoint an administrative law judge (ALJ), and to hold a hearing, if appropriate, to settle the dispute. If the ALJ deems it necessary to convene a hearing, the taking of evidence shall be concluded as soon as possible.

In any proceeding hereunder:

1. The parties shall be limited to Respondent and the Department.
2. The burden of persuasion shall be on the Respondent.
3. The ALJ shall have all powers conferred by 6 NYCRR Part 622.12.
4. All proceedings conducted pursuant to this paragraph shall be stenographically recorded. Respondent, at its expense, shall arrange for an expedited stenographic transcript to be made within three (3) working days after conclusion of the proceeding, and for the original and two

copies of the transcript to be delivered to the ALJ.

B. The ALJ shall prepare a written summary of the documentation and testimony received during the proceedings and a recommended decision as soon as possible after the receipt of the written transcript of the hearing or close of record. The summary and recommendation shall be delivered to Respondent and to the Department's representative at the proceeding by an expedited delivery.

C. The recommended decision of the ALJ shall become final and binding unless one of the parties objects in writing to the ALJ within fifteen (15) days of receipt of the recommended decision. Any objection shall be submitted in writing to the ALJ with copies to the other parties. Each party shall have the opportunity to submit a response to the objection within five (5) days of the date that the ALJ receives the objection.

D. Upon receipt of any objection, the ALJ shall forward the summary and recommendation and any objection and any response thereto to the Commissioner for final determination. The ALJ may propose any modifications to the recommended decision for consideration by the Commissioner.

E. The final determination of the Commissioner shall be made as expeditiously as possible after receipt of the referral by the ALJ.

F. Any motion for judicial review pursuant to Article Seventy-eight of the Civil Practice Laws and Rules of the State of New York shall be filed within thirty (30) days of

the date the final determination is signed by the Commissioner. This time period shall be binding upon the parties hereto, any other time period otherwise available hereby being waived.

XXXIX. Within 30 days after the effective date of this Order, Respondent 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.

XL. In the event Respondent proposes to convey the whole or any part of its ownership interest in the Site, Respondent shall, not fewer than 60 days prior to the proposed conveyance, notify the Department in writing of the identity of the transferee and of the nature and date of the proposed conveyance and shall notify the transferee in writing, with a copy to the Department, of the applicability of this Order.

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

A. Communication from Respondent shall be made as follows:

1. Director, Division of Hazardous Waste  
Remediation  
New York State Department of  
Environmental Conservation  
50 Wolf Road  
Albany, New York 12233

2. Director, Bureau of Environmental  
Exposure Investigation  
New York State Department of Health  
2 University Place  
Albany, New York 12203
3. Regional Engineer  
Region 8  
New York State Department of  
Environmental Conservation  
6274 E. Avon-Lima  
Avon, New York 14414
4. Division of Environmental Enforcement  
New York State Department of  
Environmental Conservation  
600 Delaware Avenue  
Buffalo, New York 14202-1073

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

1. Six copies to the Director, Division of  
Hazardous Waste Remediation.
2. Two copies to the Director, Bureau of  
Environmental Exposure Investigation.
3. One copy to Regional Engineer.
4. One copy to appropriate Field Unit  
Leader, Buffalo Field Unit, Division  
of Environmental Enforcement.

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

1. Steuben County Administrator  
Steuben County Office Building  
3 Pulteney Square, East  
Bath, New York 14810
2. Commissioner, Dept. of Public Works  
Steuben County Office Building  
3 Pulteney Square, East  
Bath, New York 14810

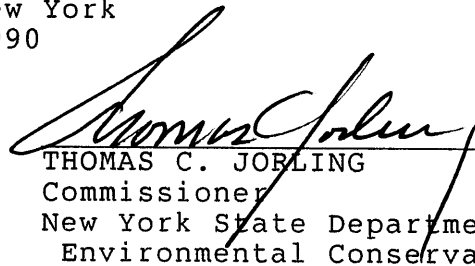


3. Daniel M. Darragh, Esq.  
Saperston & Day, P.C.  
Goldome Center  
One Fountain Plaza  
Buffalo, New York 14203

XLII. Respondent, its officers, directors, agents, servants, employees, successors and assigns shall be bound by the terms of this Order.

XLIII. The terms hereof shall constitute the complete and entire Order between Respondent and the Department concerning the Site. No term, condition, understanding or agreement purporting to modify or vary the terms hereof shall be binding unless made in writing and subscribed by the party to be bound. No informal advice, guidance, suggestion or comment by the Department regarding any report, proposal, plan, specification, schedule or any other submittal shall be construed as relieving Respondent of its obligations to obtain such formal approvals as may be required by this Order.

DATED: *Albany*, New York  
*Feb 11,* 1990

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

CONSENT BY RESPONDENT

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

STEUBEN COUNTY

By: Mark R Alger

Mark P. Alger

(Type Name of Signer)

Title: County Administrator

Date: October 30, 1990

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

On this 30<sup>th</sup> day of October, 1990,  
before me personally came Mark R. Alger,  
to me known, who being duly sworn, did depose and say that he  
resides in Village of Bath; that  
he is the Administrator of the  
County of Steuben, 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 said municipality, that he signed his name  
thereto by like order.

Jeri A. Jussaume  
Notary Public

**JERI A. JUSSAUME**  
Notary Public, State of New York  
Registered in Steuben County No. 4741632  
My Commission Expires July 31, 1991

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 Pursuant to Article 27,  
Title 13 of the Environmental  
Conservation Law of the State  
of New York by

AMENDMENT  
TO ORDER  
ON CONSENT  
INDEX #B8-293-89-08

COUNTY OF STEUBEN  
Respondent.

Site ID #851014

WHEREAS:

A. After Consent Order Index No. B8-293-89-08 was signed by the Department, it was discovered that the original Department signature date of Feb. 11, 1990 specified in the order was incorrect, and that the correct signature date was in fact Feb. 11, 1991. Therefore, the effective date of this Consent Order was February 16, 1991.

B. To remove any ambiguity in the record on this point, Respondent and the Department agree to revise the subject Order to clarify its effective date.

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

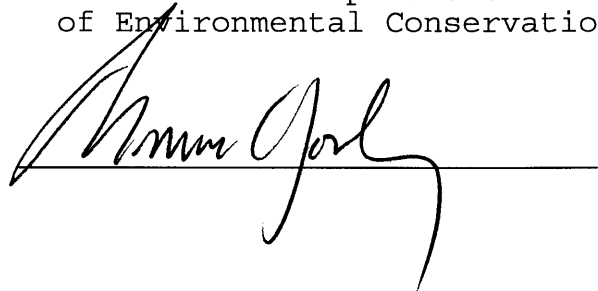
1. Paragraph XXXV of the subject Order is hereby revised to read as follows: The effective date of this Order is February 16, 1991.

2. All other provisions of the subject Order remain in effect.

DATED: Albany, New York

*Feb 16* , 1991

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



CONSENT BY RESPONDENT

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

STEUBEN COUNTY

By: Mark R. Alger

Mark R. Alger  
(Type Name of Signer)

Title: County Administrator

Date: January 24, 1994

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

On this 24th day of January, 1994, before me personally came Mark R. Alger, to me known, who being duly sworn, did depose and say that he resides in Village of Bath, NY; that he is the Administrator of the County of Steuben, NY 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 said municipality, that he signed his name thereto by like order.

Jeri A. Jussaume  
NOTARY PUBLIC

JERI A. JUSSAUME  
Notary Public, State of New York  
Registered in Steuben County No. 4741632  
My Commission Expires July 31, 1995