

New York State Department of Environmental Conservation

Office of General Counsel, Region 9

270 Michigan Avenue, Buffalo, New York 14203-2915

Phone: (716) 851-7190 • Fax: (716) 851-7296

Website: www.dec.ny.gov



Joe Martens
Commissioner

February 10, 2014

Jean McCreary, Esq.
Nixon Peabody, LLP
1300 Clinton Square
Rochester, New York 14604-1792

Dear Ms. McCreary:

Moench Company
Palmer Street Landfill
DEC Registry Site #905004

Transmitted herewith please find an Order on Consent in the above captioned matter.

Respondent Moench Company, as successor to the Moench Tanning Company, has been conducting Operation Maintenance & Monitoring (OM&M) of the Palmer Street Landfill under the auspices of a Post-Closure Plan, dated December 2006.

The Order does not allege or reflect any known violations in conjunction with the Facility. Rather, its purpose is to establish a legal framework for continued fulfillment of the OM&M requirements, as set forth at Exhibit B to the Order, to establish financial assurance relative to this obligation, and to provide for the addition of a deed restriction for the Facility.

Please arrange for your client to execute this Order and return it to this Office by March 27, 2014. If you have any questions or comments, please contact me at 716-851-7190.

Very truly yours,

David F. Stever
Assistant Regional Attorney

DFS:jaf

cc: Dennis Weiss
Stan Radon

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION
RESOURCE CONSERVATION AND RECOVERY ACT ("RCRA")
ECL §27-0900 *et seq.*

In the Matter of the Development and Implementation of
a Remedial Program for a RCRA Facility

**ORDER ON CONSENT AND
ADMINISTRATIVE SETTLEMENT
Index No.:**

DEC Facility Name: Moench Company

DEC Registry Site No.: 905004
EPA RCRA ID #: NYS002126910

Facility Address: 465 Palmer Street
Gowanda, New York 14070
Cattaraugus County

Hereinafter referred to as "Facility" or "Site"

by:
Moench Company

Hereinafter referred to as "Respondent"

1. A. i. The New York State Department of Environmental Conservation ("Department") is responsible for the administration of the Resource Conservation and Recovery Act ("RCRA") Program (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").

ii. The Department is responsible for the administration of inactive hazardous waste disposal site remedial programs pursuant to Article 27, Title 13 of the ECL and 6 NYCRR 375 and may issue orders consistent with the authority granted to the Commissioner by such statute.

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 Article 27 of this chapter, or which has or had 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 3, Title 3 of the ECL.

D. This Order on Consent and Administrative Settlement ("Order") is issued pursuant to the Department's authority under, *inter alia*, ECL Article 27, Title 9 and ECL § 71-2727.

2. There are no known violations at the Facility giving rise to this Order; rather, the goals of this Order are to establish the terms and conditions under which Respondent (i) continue and complete post-closure operating maintenance and monitoring requirements in lieu of obtaining a post-closure permit, (ii) provide financial assurance for completing such post-closure requirements, and (iii) provide a deed restriction for the Facility site.

3. The aforesaid OM&M requirements are set forth in a Post-Closure Plan ("PCP"), dated December 2006, under which Respondent has been conducting post-closure maintenance and monitoring of the Facility.

4. 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.

5. 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, operates, and maintains the facility subject to this Order, - that is, the twenty-five-acre Palmer Street Landfill - which has been assigned Division of Environmental Remediation Registry Site #: 905004, which served as an on-site landfill for Respondent's predecessor, The Moench Tanning Company, and is located at 265 Palmer Street, Cattaraugus County, Gowanda, New York. Respondent Moench Company is now a Division of Brown Shoe Company. A map of the Facility is attached as Exhibit "A."

II. Site Work Plans and Financial Assurance

A. Respondent shall perform the post closure activities in accordance with the Site Management Plan, to be developed and submitted to Department in accordance with Schedule attached as Exhibit "B."

B. Within ninety (90) days after the effective date of this Order, Respondent shall submit to the Department the necessary documentation to demonstrate financial responsibility for the above referenced monitoring and maintenance obligations. The estimate and mechanism used to demonstrate financial responsibility must conform with the requirements set forth in 6 NYCRR 373-2.8 and be updated on an annual basis.

III. Payment of State Costs

A. For the purposes of this Order, Respondent shall pay costs in accordance with Paragraph V of Exhibit C and ECL § 72-0402 (hazardous waste program fees).

B. Invoices shall be sent to Respondent at the following address:

Mr. Jeffrey Smith
Moench Company
465 Palmer Street
Gowanda, New York 14070
Cattaraugus County

IV. Communications

A. The Department has implemented an Environmental Information Management System ("EIMS"). The EIMS requires that electronic data be provided in specific formats. In an effort to better manage environmental data, the Department is requiring that all data submissions be in the Department-approved Electronic Data Deliverable ("EDD") format. All work plans and reports (including all attachments and appendices) shall be submitted in print, as well as in an electronic format which is acceptable to the Department.

1. Communication from Respondent shall be sent to:

Martin Doster, Regional Hazardous Waste Remediation Engineer
NYS Department of Environmental Conservation
Division of Environmental Remediation
270 Michigan Avenue
Buffalo, NY 14203
drweiss@gw.dec.state.ny.us

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

Mr. Jeffrey Smith
Moench Company
465 Palmer Street
Gowanda, New York 14070
Cattaraugus County

(1 hard copy (unbound for work plans) & 1 electronic copy)

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.

IV. Miscellaneous

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

i. Paragraph I of Exhibit C, Citizens Participation Plan, is not applicable to this Order.

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 Exhibit C, 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:

Buffalo, New York

Joseph J. Martens
Commissioner
New York State Department of
Environmental Conservation

By:

Robert W. Schick, P.E., Director
Division of Environmental Remediation

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.

Moench Company

By: _____

Printed Name: _____

Title: _____

Date: _____

ACKNOWLEDGMENT

State of New York)
)ss.:
County of)

On the _____ day of _____ in the year 2014 before me, the undersigned, personally appeared _____

(full name)

personally known to me who, being duly sworn, did depose and say that he/she/they reside at _____ and

(full mailing address)

that he/she/they is (are) the _____

(President or other officer or director or attorney in fact duly appointed)

of Moench Company, the corporation described in and which executed the above instrument, and that he/she/they signed his/her/their name(s) thereto by the authority of the board of directors of said corporation.

Notary Public, State of New York

EXHIBIT A

Map

EXHIBIT B

Corrective Action Requirements and Schedule

The remedial program for this Facility consists of corrective actions that have already been initiated, with on-going operation, monitoring, maintenance, and reporting.

A. Respondent shall comply with all applicable provisions of 6 NYCRR 370-374 and 376.

B. Respondent shall continue to perform post-closure maintenance and monitoring in accordance with a Site Management Plan ("SMP") which shall be submitted to the Department, for review and approval, within sixty (60) days of the effective date of the Order. The SMP shall be developed in accordance with the Department's Technical Guidance for Site Investigation and Remediation (DER-10) and 6 NYCRR Part 373 regulations and shall include, at a minimum, the following components:

1. Monitoring Plan for monitoring the performance and effectiveness of the remedy;
2. Institutional and Engineering Control Plan (IC/EC) to ensure that the controls remain in place and are effective, even upon a transfer of the ownership of the property;
3. Operation and Maintenance Plan; and
4. Periodic Review Reports and Institutional and Engineering Controls Certification.

Until such time that the comprehensive SMP is approved by the Department, Respondent shall continue to perform operation, monitoring, maintenance and reporting per previously approved plans.

C. Compliance Schedule for Assessment of Newly Identified Solid Waste Management Units ("SWMUs") and Areas of Concern ("AOCs")

1. Notification of Assessment. Respondent shall notify the Department, in writing, of any additional SWMUs and/or AOCs which are identified during the course of groundwater monitoring, field investigations, environmental audits, or other means within fifteen days of discovery.
2. SWMU/AOC Assessment Report. Within thirty (30) days after notifying the Department, Respondent shall submit a SWMU/AOC Assessment Report. This Report must provide, at a minimum, the following information for each newly identified SWMU/AOC:
 - a. Type of unit/area;
 - b. Location of each unit/area on a topographic map of appropriate scale;

- c. Dimensions, capacities and structural descriptions of the unit/area (supply available engineering drawings);
 - d. Function of unit/area;
 - e. Dates that the unit/area was operated;
 - f. Description of the wastes that were placed or spilled in the unit/area;
 - g. Description of any known releases from the unit/area (to include groundwater data, soil analyses, air monitoring data, and/or surface water/sediment data);
 - h. The results of any sampling and analysis required for the purpose of determining whether releases of hazardous wastes, including hazardous constituents, have occurred, are occurring or are likely to occur from the unit/area; and
 - i. Whether this unit/area, individually or in combination with other units/areas is a significant source of contaminant release.
3. SWMU/AOC Sampling and Analysis Plan. Within thirty (30) days after submittal of the SWMU/AOC Assessment Report, Respondent shall submit to the Department for approval a Plan in accordance with the most recent version of the Department's RCRA Quality Assurance Project Plan Guidance, for any sampling and analysis of groundwater, land surface and subsurface strata, surface water/sediment or air, as necessary to determine whether a release of hazardous waste, including hazardous constituents, from such unit/area has occurred, is likely to have occurred, or is likely to occur. The SWMU/AOC Sampling and Analysis Plan must demonstrate that the sampling and analyses program, if applicable, is capable of yielding representative samples and must include parameters sufficient to identify migration of hazardous waste, including hazardous constituents, from the newly discovered SWMU(s) and/or AOC(s) to the environment.
4. Subsequent Assessment Actions. Following submission of the SWMU/AOC Assessment Sampling and Analysis Plan, subsequent activities for the Plan shall proceed in accordance with the following schedule:
- a. Meeting between Respondent and the Department to discuss Plan comments, as appropriate;
 - b. Submission of a revised Plan to the Department for approval within thirty (30) days of the above referenced meeting. If the above referenced meeting is determined not to be necessary, Respondent shall submit a revised Plan to the Department, according to a schedule specified by the Department, not to exceed forty-five (45) days after Respondent's receipt of Plan comments from the Department;
 - c. Begin implementation of the SWMU/AOC Sampling and Analysis Plan within thirty (30) days following written approval from the Department for the Plan.

5. **SWMU/AOC Sampling and Analysis Report.** Within thirty (30) days of receipt by Respondent of validated analytical data generated under the approved SWMU/AOC Sampling and Analysis Plan, Respondent shall follow reporting requirements in the approved Plan and submit a SWMU/AOC Sampling and Analysis Report to the Department. The Report shall describe all results obtained from the implementation of the approved Plan.
6. **Assessment Conclusions.** Based on the results of the SWMU/AOC Sampling and Analysis Report, the Department shall determine the need for further investigations at the specific unit(s) covered in the SWMU/AOC Assessment Report. The Department will notify Respondent if the Department determines that such investigations are needed. Thereafter, Respondent shall prepare and submit for approval a RCRA Facility Investigation Work Plan in accordance with the Department's notification.

EXHIBIT C

STANDARD CLAUSES FOR ALL NEW YORK RCRA CORRECTIVE ACTION ORDERS

For purposes of this Order, except as provided otherwise in the 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 consistent with the provisions in 6 NYCRR § 375-1.6(a). 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 (including those elements implemented for post-closure care as outlined in Exhibit B of the Order); or

4. "Supplemental" if additional work plans other than those set forth above 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 as set forth in Subparagraph II(A) needs to be modified in order to achieve the objectives of the Work Plan or to ensure that the Remedial Program otherwise protects human health and the environment. Upon receipt of such notification, Respondent shall, subject to dispute resolution pursuant to Paragraph XIII of this Exhibit, modify the Work Plan.

ii. The Department may request, subject to dispute resolution pursuant to Paragraph XIII of this Exhibit, 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 involving engineering design.

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. 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 contain a certification as provided at 6 NYCRR 373-2.5(e)(10) and 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/are 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 of this Exhibit 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 of this Exhibit 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 remedial program for the Facility 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).

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.

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 of this Exhibit 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 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. Respondent is responsible for the payment of hazardous waste program fees pursuant to ECL §72-0402 and any other later enacted fees associated with the hazardous waste program.

B. Invoices shall be sent to Respondent at the address listed in Paragraph IV of the Order.

VI. Reservation of Rights

A. Except as provided at 6 NYCRR 375-1.9 and 375-2.9, nothing contained in this Order shall be construed as barring, diminishing, adjudicating, or in any way affecting any of the rights or authorities which the Department has under RCRA, CERCLA, or any other statute, regulation or common law under the authority of the State of New York, 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

Respondent 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).

X. Environmental Easement

A. If the remedial program 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 remedial program 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 Paragraph X(A) of this Exhibit.

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 Paragraph IV 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 of this Exhibit, 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 Remedial 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 remedial program have been completed.

B. Notwithstanding the foregoing, the provisions contained in Paragraphs V and VII of this

Exhibit 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 of this Exhibit 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 costs 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 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 of the effective date of this Order, Respondent shall provide to the Department the necessary documentation to demonstrate financial assurance for monitoring and maintenance pursuant to one of the methods set forth in 6 NYCRR Part 373-2.8(f). Respondent must meet the eligibility requirements of 6 NYCRR Part 373-2.8 pertinent to the method that is being used to demonstrate financial assurance. 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) of this Exhibit.

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 Paragraph IV of the 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 Paragraph III of the 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 Paragraphs XV(E)(1) and (2) of this Exhibit, 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.