

STATE OF NEW YORK: DEPARTMENT OF ENVIRONMENTAL CONSERVATION

In the Matter of the
Development and Implementation
of a Remedial Investigation/Feasibility ORDER
Study for an Inactive Hazardous Waste ON
Disposal Site, Under Article 27, Title 13, CONSENT
and Article 71, Title 27 of the
Environmental Conservation Law INDEX # B9-0407-92-05
of the State of New York by

Envirotek Generator Response Group
Respondents.

Site Code # 9-15-056

WHEREAS,

1. The New York State Department of Environmental Conservation (the "Department") is responsible for enforcement of Article 27, Title 13 of the Environmental Conservation Law of the State of New York ("ECL"), entitled "Inactive Hazardous Waste Disposal Sites." This Order is entered into pursuant to the Department's authority under ECL Article 27, Title 13 and ECL Section 3-0301.

2. The Envirotek Generator Response Group ("Respondents") is a portion of the generators who delivered hazardous wastes to the former Envirotek facility for treatment, storage, or disposal, and who participated in a removal action pursuant to an Administrative Order on Consent with the United States Environmental Protection Agency (Index No. II CERCLA-00206) upon Envirotek's failure to comply with proper hazardous waste handling procedures, resulting in releases to the environment.

3. The Envirotek facility was located within a portion of

the Roblin Steel complex, located at 4000 River Road, Tonawanda, New York, adjacent to the Niagara River. The Roblin Steel complex was formerly the Wickwire Spencer complex and had been used for years as a steel production facility (the "Site") which may have resulted in the release of hazardous wastes during its operations.

4. 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 listed it in the Registry of Inactive Hazardous Waste Disposal Sites in New York State as Site Number 9-15-056. The Department has classified the Site as a Classification "2" pursuant to ECL Section 27-1305.4.b.

5. A. 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."

B. Any person under order pursuant to ECL Section 27-1313.3.a has a duty imposed by ECL Article 27, Title 13 to carry out the program committed to under the Order. ECL Section

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

C. The Department is also authorized, inter alia, to provide for the prevention and abatement of all water, land, and air pollution. ECL Section 3-0301.1.i.

6. The Department and Respondents agree that the goals of this Order are for Respondents to (i) develop and implement a Remedial Investigation and Feasibility Study ("RI/FS") for the Site, limited to and in accordance with the Department-approved RI/FS Scope of Work, which is attached to this Order and is made an enforceable part hereof; and (ii) reimburse the State for its administrative costs associated with such RI/FS.

7. Respondents, having each waived each Respondent's right to a hearing herein as provided at ECL § 27-1313.4, and having consented to the issuance and entry of this Order, agree to be bound by its terms. Respondents consent to this Order and its terms and agree not to contest the authority or jurisdiction of the Department to issue or enforce this Order, and agree not to contest the validity of this Order or the validity of its terms. Nothing contained in this Order shall be construed as or constitute an admission as to liability or as to any finding of fact or conclusion of law by Respondents, or any one or more of them, in any action or proceeding not brought to enforce this Order.

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

I. Background Information

Within 30 days after the effective date of this Order, Respondents shall make available to the Department all data within any Respondent's possession or control regarding environmental conditions on-Site and off-Site, and other information described below, unless such data have been previously provided to the Department. The data and other information shall include, to the extent known by Respondents:

A. A brief history and description of the Site, including the ownership and operation and the types, quantities, physical state, location, and dates of releases of hazardous wastes including the methods of such releases.

B. A concise summary of available information held by Respondents and Respondents' attorneys or consultants with respect to all other owners, operators, and persons responsible for releases of hazardous wastes, including but not limited to names, addresses, dates of releases, and any proof or information linking each such person as a person alleged to be responsible for the disposal of hazardous waste.

C. A comprehensive list and copies of all existing relevant reports with titles, authors, and subject matters, 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 available to Respondents.

II. RI/FS Work Plan Contents and Submittals

A. Within 60 days of the effective date of this Order, Respondents shall submit to the Department a detailed work plan describing the methods and procedures to be implemented in performing an RI/FS for the Site (the "RI/FS Work Plan") based upon and in accordance with the Department-approved RI/FS Scope of Work.

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

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

b. A Sampling and Analysis Plan that shall include:

(i) A quality assurance project plan that describes the quality assurance and quality control protocols necessary to achieve the initial data quality objectives. This Plan shall designate a data validation expert and must describe such individual's qualifications and experience, and

(ii) A field sampling plan that defines sampling and data gathering methods in a manner consistent with the "Compendium of Superfund Field Operations Methods"

(EPA/540/P-87/001, OSWER Directive 9355.0-14, December 1987) as supplemented by the Department;

c. A Health and Safety Plan to protect persons at and in the vicinity of the Site during the performance of the RI/FS which plan shall be prepared in accordance with 29 C.F.R. 1910 and all other applicable standards by a qualified health and safety professional. Respondents shall add supplemental items to this plan to ensure the health and safety of all persons at or in the vicinity of the Site during the performance of any work pursuant to this Order; and

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

2. The RI/FS Work Plan shall incorporate all applicable elements of an RI/FS as set forth in the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA") [42 USC 9601 et seq.], as amended; the National Contingency Plan ("NCP") of March 8, 1990 [40 CFR Part 300]; the USEPA guidance document entitled "Guidance for Conducting Remedial Investigations and Feasibility Studies under CERCLA," dated October, 1988, and any subsequent revisions to that guidance document in effect at the time the RI/FS Work Plan is submitted; and appropriate USEPA and Department technical and administrative guidance documents.

III. Performance and Reporting of Remedial Investigation

A. Within 45 days after the Department's approval of the

RI/FS Work Plan, Respondents shall commence the performance of the activities identified in the Department-approved RI/FS Work Plan ("the Remedial Investigation").

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

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

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

1. include all data generated and all other information obtained during the Remedial Investigation;
2. provide all of the assessments and evaluations set forth in the Work Plan, CERCLA, the NCP and the guidance documents identified in Subparagraph II.B.2;
3. identify any additional data that must be collected; and
4. include a certification by the individual or firm with the primary responsibility for the day-to-day performance of the Remedial Investigation that all activities that comprised the RI were performed in full accordance with the Department-approved RI/FS Work Plan.

IV. Feasibility Study

A. Within 90 days after receipt of the Department's approval of the Remedial Investigation Report, Respondents shall

have prepared, and shall submit to the Department a Feasibility Study evaluating remedial actions to eliminate, to the maximum extent practicable, all health and environmental hazards and potential hazards identified and characterized through the Remedial Investigation. The Feasibility Study shall be prepared by and have the signature and seal of a professional engineer who shall certify that the Feasibility Study was prepared in accordance with this Order.

B. Respondents shall conduct and prepare the Feasibility Study in accordance with the Department-approved RI/FS Work Plan and in a manner consistent with the applicable provisions of CERCLA, the NCP, and appropriate guidance documents.

C. Within 90 days after the Department's approval of the Feasibility Study, Respondents shall cooperate with and assist the Department in soliciting public comment on the RI/FS and the proposed remedial action plan identified therein, in accordance with CERCLA, the NCP, 6 NYCRR 375-1.5, and with any Department policy and guidance documents in effect at the time the public comment period is initiated. After the close of the public comment period, the Department shall select a final remedial alternative for the Site in a Record of Decision ("ROD").

V. Interim Remedial Measures

Before the effective date of the ROD, Respondents may propose interim remedial measures ("IRMs") for the Site on an as-needed basis. In proposing each IRM, Respondents shall submit to the Department a work plan which includes a

chronological description of the anticipated IRM activities together with a schedule for the performance of those activities. Upon the Department's determination that the proposal is an appropriate interim remedial measure and upon the Department's approval of such work plan, the work plan shall be incorporated into and become an enforceable part of this Order; and Respondents shall submit to the Department for its review and (as appropriate) approval, in accordance with the schedule contained in the Department-approved work plan, detailed documents and specifications prepared, signed, and sealed by a professional engineer to implement the Department-approved IRM. Such documents shall include a health and safety plan, and (if the Department requires it) a citizen participation plan that incorporates appropriate activities outlined in the Department's citizen participation program for the Site. Respondents shall then carry out the IRM in accordance with the requirements of the approved work plan, detailed documents and specifications, and this Order. Within the schedule contained in the Department-approved work plan, Respondents shall submit to the Department a final engineering report prepared by a professional engineer that includes a certification by that individual that all activities that comprised the IRM were performed in full accordance with the Department-approved work plan, detailed documents and specifications, and this Order. Within the schedule contained in the Department-approved work plan, Respondents shall submit to the Department a report or reports

documenting the performance of the IRM. Respondents shall notify the Department of any significant difficulties that may be encountered in implementing the Department-approved work plan with its detailed documents and specifications, and shall not modify any element unless first approved by the Department.

VI. Progress Reports

A. Respondents shall submit to the parties identified in Subparagraph XIV.B, in the numbers specified therein, copies of written monthly progress reports that:

1. describe the actions which have been taken toward achieving compliance with this Order during the previous month;
2. include all results of sampling and tests and all other data received or generated by Respondents or Respondents' contractors or agents in the previous month, including quality assurance/quality control information, whether conducted pursuant to this Order or conducted independently by Respondents and relevant to this Order;
3. identify all work plans, reports, and other deliverables required by this Order that were completed and submitted during the previous month;
4. describe all actions, including, but not limited to, data collection and implementation of work plans, that are scheduled for the next month and provide other information relating to the compliance with this Order;
5. include information regarding percentage of completion, unresolved delays encountered or anticipated that

may affect the future schedule for implementation of the Respondents' obligations under the Order, and efforts made to mitigate those delays or anticipated delays;

6. include any modifications to any work plans that Respondents have proposed to the Department or that the Department has approved; and

7. describe all activities undertaken in support of the Citizen Participation Plan during the previous month and those to be undertaken in the next month.

B. Respondents shall submit these progress reports to the Department by the tenth day of every month following the effective date of this Order.

C. Respondents also shall allow the Department to attend, and shall provide the Department at least seven days advance notice of, any of the following: prebid meetings that entail descriptions of performance necessary to comply with this Order, job progress meetings, substantial completion meetings and inspections, and final meetings and inspections.

VII. Review of Submittals

A. 1. The Department shall review each of the submittals Respondents make pursuant to this Order to determine whether it was prepared and whether the work done to generate the data and other information in the submittal was done in accordance with this Order and generally accepted technical and scientific principles. The Department shall notify Respondents in writing of its approval or disapproval of the submittal. All

Department-approved submittals shall be incorporated into and become an enforceable part of this Order.

2. a. If the Department disapproves a submittal, it shall so notify Respondents in writing and shall specify the reasons for its disapproval. The Department and Respondents shall attempt to resolve expeditiously and informally any disagreements concerning any submittal required under this Order. Within 30 days after receiving written notice that Respondents' submittal has been disapproved or within such longer period as the Department may allow, Respondents shall make a revised submittal to the Department that addresses all of the Department's stated reasons for disapproving the first submittal.

b. After receipt of the revised submittal, the Department shall notify Respondents in writing of its approval or disapproval. If the Department disapproves the revised submittal, Respondents may invoke the dispute resolution provisions of Subparagraph VII.C hereof, if Respondents dispute such determination. Respondents shall be in violation of this Order unless Respondents have invoked the dispute resolution provisions of Subparagraph VII.C within the time provided therein. If the Department disapproves the revised submittal and Respondents fail to invoke the dispute resolution provisions of Subparagraph VII.C, the Department may take any action or pursue whatever rights it has pursuant to any provision of statutory or common law. If the Department approves the revised

submittal, it shall be incorporated into and become an enforceable part of this Order.

B. The Department may require Respondents to modify and/or amplify and expand a submittal if the Department determines, as a result of reviewing data generated by an activity required under this Order or as a result of reviewing any other data or facts, that further work consistent with the previously approved RI/FS Scope of Work is necessary.

C. 1. If the Department disapproves a revised submittal or if Respondents fail to comply with the determination by the Department pursuant to Subparagraph VII.B, Respondents shall be in violation of this Order unless, within ten (10) days of receipt of the Department's written notice of disapproval or determination, Respondents request to meet with the Director of the Division of Hazardous Waste Remediation (the "Director") to discuss the Department's objections and Respondents are available to meet immediately thereafter. At this meeting, Respondents shall be given the opportunity to present their responses to the Department's objections or determinations, and the Director shall have the authority to modify and/or withdraw such objections or determinations. Respondents shall re-revise a disapproved submittal in accordance with the Department's specific comments, as may be modified, except for those which have been withdrawn by the Director and shall submit a re-revised submittal. The period of time within which the submittal must be re-revised shall be specified by the Director.

2. After receipt of a re-revised submittal, the Department shall notify the Respondents in writing of its approval or disapproval of that submittal.

3. If the re-revised submittal fails to address the Department's specific comments, as modified, and the Department disapproves that report for this reason, or if Respondents fail to comply with the Director's decision regarding the Department's determination pursuant to Subparagraph VII.B, the Department and Respondents may pursue whatever legal or equitable remedies may be available to them or either of them, without prejudice to either's right to contest the same.

4. The invocation of the procedures under this subparagraph shall not of itself extend, postpone or affect in any way any of Respondents' other obligations under this Order.

VIII. Penalties

A. 1. Respondents' failure to comply with any term of this Order constitutes a violation of this Order and the ECL.

2. Respondents shall be liable for payment to the Department of the sums set forth below as stipulated penalties for each day or part thereof that Respondents are found to be in violation of the terms of this Order. All penalties begin to accrue on the first day Respondents are found to be in violation of the terms of this Order and continue to accrue through the final day of correction of any violation. Stipulated penalties shall be due and payable within 15 days after receipt of written notification from the Department assessing the penalties. If

such payment is not received within 15 days after Respondents receive such notification from the Department, interest shall be payable at the annual rate of nine per centum on the overdue amount from the day on which it was due through and including the date of payment. Penalties found due shall be paid by certified check or money order, made payable to "New York State Department of Environmental Conservation" and shall be delivered personally or by certified mail, return receipt requested, to the Director, Division of Environmental Enforcement, N.Y.S.D.E.C., 50 Wolf Road, Albany, New York 12233-5500. Payment of penalties shall not in any way alter Respondents' obligation to complete performance under the terms of this Order. Stipulated penalties shall be due and payable under this paragraph pursuant to the following schedule:

<u>Period of Non-Compliance</u>	<u>Penalty Per Day</u>
First through 15th day	\$ 1,000
16th through 30th day	\$ 5,000
31st day and thereafter	\$ 10,000

B. Respondents shall not suffer any penalty under this Order or be subject to any proceeding or action based upon the terms of this Order if they cannot comply with any requirement hereof because of war, riot, or an unforeseeable event which results in conditions which the exercise of ordinary human prudence could not have prevented or avoided. Respondents shall, within ten days of when any of them obtains knowledge of any such condition, notify the Department in writing.

Respondents shall include in such notice the measures taken and to be taken by Respondents to prevent or minimize any delays and shall request an appropriate extension or modification of this Order. Failure to give such notice within such ten-day period constitutes a waiver of any claim that a delay is not subject to penalties. Respondents shall have the burden of proving that an event is a defense to compliance with this Order pursuant to this subparagraph.

IX. Payment of State Costs

A. Within ninety (90) days of the effective date of this Order, Respondents shall pay to the Department the sum of eighty thousand dollars (\$80,000.00) as full reimbursement for all past costs incurred by the State relative to the Respondents' involvement at the Roblin Steel Site.

B. 1. Within ninety (90) days after receipt of an itemized invoice from the Department, Respondents shall pay to the Department a sum of money which shall represent reimbursement for the State's expenses attributed to the Site, including but not limited to: direct labor, fringe benefits, indirect costs, travel, analytical costs, and contractor costs incurred by the State of New York for work performed at the Site pursuant to this Order, reviewing and revising submittals made pursuant to this Order, overseeing activities conducted pursuant to this Order, collecting and analyzing samples, and any other administrative costs associated with this Order. Respondents shall pay the sum sought by the Department unless Respondents

submit objections of any costs in the itemized invoice, in writing, within the 90 day time period.

2. Even in the event that Respondents object to any costs, Respondents shall pay all the undisputed costs within that 90 day time period. If Respondents submit such objections, they shall meet with the Director within 30 days of the date when their objections were submitted to discuss the costs to which they object. The Director shall have the authority to relieve the Respondents of their obligation to pay any disputed costs. Respondents may object only to costs which are (1) clerical errors; or (2) not attributable to the Department's activities pursuant to this Order.

3. Within 30 days of the Director's determination as a result of Respondents' meeting with the Director, Respondents shall pay to the Department the remaining sum for all disputed administrative costs which the Director has determined that Respondents are then obligated to pay.

C. All payments shall be made by certified check payable to the Department of Environmental Conservation. Payment shall be sent to the Bureau of Program Management, Division of Hazardous Waste Remediation, N.Y.S.D.E.C., 50 Wolf Road, Albany, New York 12233-7010. Itemization of the costs shall include a listing of personal services indicating the employee name, title, biweekly salary, and time spent (in hours) on the project during the billing period, as identified by an assigned time and activity code. This information shall be documented by reports

of Direct Personal Service. Approved agency fringe benefit and indirect cost rates shall be applied. Non-personal service costs shall be summarized by category of expense (e.g., supplies, materials, travel, contractual) and shall be documented by expenditure reports.

X. Entry upon Site

Respondents hereby consent to the entry upon those areas of the Site under control of the Respondents by the Department or any duly designated employee, consultant, contractor, or agent of the Department for purposes of inspection, sampling, and testing related to the goals of this Order and to ensure Respondents' compliance with this Order.

XI. Reservation of Rights

A. Nothing contained in this Order shall be construed as barring, diminishing, adjudicating, or in any way affecting any of the Department's civil, criminal, equitable or administrative rights or authority.

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

C. Except as otherwise provided in this Order, nothing contained in this Order shall be construed as barring, diminishing, adjudicating, or in any way affecting any rights of any Respondent.

XII. Indemnification

Respondents shall indemnify and hold the Department, the

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

XIII. Public Notice

A. Within 30 days after the effective date of this Order, Respondents shall request the present owner(s) of the Site to file a Declaration of Covenants and Restrictions with the Erie County Clerk to give all parties who may acquire any interest in the Site notice of this Order.

B. If any Respondent learns of a proposal to convey the whole or any part of an ownership interest in the Site, such Respondent shall notify the Department in writing of the identity of the transferee and of the nature and proposed date of the conveyance and shall notify the transferee in writing, with a copy to the Department, of the applicability of this Order.

XIV. Communications

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

Communication from Respondents shall be sent to:

1. Daniel King, P.E.
Division of Hazardous Waste Remediation
New York State Department of Environmental
Conservation
270 Michigan Avenue
Buffalo, New York 14203-2999
2. G. Anders Carlson, PhD., Director
Bureau of Environmental Exposure
Investigation
New York State Department of Health
2 University Place
Albany, New York 12203
3. Edward R. Belmore, P.E.
New York State Department of Environmental
Conservation
50 Wolf Road
Albany, New York 12233-7010
4. Glen R. Bailey, Esq.
New York State Department of Environmental
Conservation
Division of Environmental Enforcement
270 Michigan Avenue
Buffalo, New York 14203-2999

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

1. Four copies (one unbound) to Daniel King,
Division of Hazardous Waste Remediation.
2. Two copies to the Director, Bureau of
Environmental Exposure Investigation.
3. One copy to Edward R. Belmore,
Department of Environmental Conservation, Albany.
4. One copy to Glen Bailey,
Division of Environmental Enforcement.

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

William B. Popham
Blasland, Bouck & Lee, Inc.
30 Corporate Woods, Suite 160
Rochester, New York 14623-1477

with copies to:

Jean H. McCreary, Esq.
Nixon, Hargrave, Devans & Doyle
Clinton Square
P. O. Box 1051
Rochester, New York 14603-1051

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

XVI. Miscellaneous

A. Unless otherwise provided or required by the specific terms of this Order, the obligations of Respondents under this Order are joint and several. In the event of the insolvency or failure of any one or more Respondents to implement any obligation entailed in this Order, the remaining Respondents shall complete all such requirements and obligations.

B. Respondents shall retain independent professional consultants, contractors, laboratories, quality assurance/quality control personnel and data validators to perform the technical, engineering and analytical obligations required by this Order. The experience, capabilities and qualifications of the firms or individuals selected by Respondents shall be submitted to the Department. The Department's approval of these firms or individuals shall be obtained prior to initiation of any of the activities for which Respondents and such firms or individuals will be responsible. Respondents shall be solely responsible for assuring that the performance of the professionals retained by Respondents results

in compliance with this Order and approval of the Department.

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

D. Respondents shall notify the Department at least 10 working days in advance of the initiation of any scheduled field activities to be conducted pursuant to this Order.

E. Respondents shall be responsible for obtaining whatever permits, easements, rights-of-way, rights-of-entry, approvals, or authorizations are necessary to perform Respondents' obligations under this Order. Respondents shall promptly notify the Department in the event of Respondents' inability to obtain such authorizations on a timely basis. If Respondents cannot obtain such authorizations on a timely basis, the time for performance of any obligation dependent upon such authorization shall be appropriately extended. If Respondents cannot obtain such authorization, this Order may be appropriately modified.

F. Respondents and Respondents' successors and assigns

shall be bound by this Order. Any change in ownership or corporate status of any Respondent including, but not limited to, any transfer of assets or real or personal property shall in no way alter Respondents' responsibilities under this Order.

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

H. All references to "professional engineer" in this Order are to an individual registered as a professional engineer in accordance with Article 145 of the New York State Education Law. If such individual is a member of a firm, that firm must be authorized to offer professional engineering services in the State of New York in accordance with Article 145 of the New York State Education Law.

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

J. The section headings set forth in this Order are included for convenience of reference only and shall be

disregarded in the construction and interpretation of any of the provisions of this Order.

K. 1. The terms of this Order shall constitute the complete and entire Order between Respondents and the Department concerning the Site. No term, condition, understanding, or agreement purporting to modify or vary any term of this Order shall be binding unless made in writing and subscribed by the party to be bound. No informal advice, guidance, suggestion, or comment by the Department regarding any report, proposal, plan, specification, schedule, or any other submittal shall be construed as relieving Respondents of Respondents' obligation to obtain such written approvals as may be required by this Order.

2. If Respondents desire that any provision of this Order be changed, Respondents shall make timely written application, signed by Respondents, to the Commissioner setting forth the requested changes and reasonable grounds for the relief sought. Copies of such written application shall be delivered or mailed to Daniel King and to Glen Bailey.

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

DATED: , New York
, 1996

MICHAEL D. ZAGATA
Commissioner
New York State Department of
Environmental Conservation

by:

Michael J. O'Toole, Jr.