

STATE OF NEW YORK: DEPARTMENT OF ENVIRONMENTAL CONSERVATION

In the Matter of the Development and
Implementation of a Remedial
Investigation/Feasibility Study for an
Inactive Hazardous Waste Disposal Site
Under Article 27, Title 13, and
Article 71, Title 27 of the Environmental
Conservation Law of the State of
New York by

ORDER
ON
CONSENT

INDEX #B9-0454-94-04

THE CARBORUNDUM COMPANY
Respondent.

Site Code #932036

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 issued pursuant to the Department's authority under ECL Article 27, Title 13 and ECL 3-0301.

2. The Carborundum Company ("Respondent"), is a corporation organized and existing under the laws of the State of Delaware and has previously done business in the State of New York in that Respondent formerly owned and operated a manufacturing facility located at Hyde Park Boulevard and Rhode

Island Avenue in the Town of Niagara, Niagara County, New York (the "Site"). Respondent continues to do business in the State of New York at various other locations which are not the subject of the terms and conditions of this Order.

3. Effective December 23, 1993, Respondent sold the Site to Cesiwid, Inc. ("Cesiwid"), a corporation organized and existing under the laws of the State of New York.

4. In connection with the sale of the Site to Cesiwid, Respondent and Cesiwid entered into a written agreement (the "Environmental Agreement") dated December 23, 1993. Respondent informed the Department that the Environmental Agreement, among other things, specified Respondent's obligation to conduct an RI/FS consistent with all applicable federal, state, and local laws, rules, regulations and orders and decisions of any governmental agency with jurisdiction over the Site. In addition, Respondent informed the Department that said agreement made provisions for Respondent to provide Cesiwid with copies of all written communications and orders between Respondent and the Department and to provide Cesiwid with an opportunity to comment on any proposed order on consent with respect to the Site, the proposed RI/FS Work Plan and any proposed remediation plan for the Site.

5. The Department is not a party to the Environmental

Agreement between Cesiwid and Respondent. Cesiwid is not subject to this Order. Respondent's obligations under the Environmental Agreement with Cesiwid are not a part of this Order, and do not in any way alter Respondent's obligations under this Order.

6. The Site is an inactive hazardous waste disposal site, as that term is defined at ECL 27-1301.2. The Site has been listed in the Registry of Inactive Hazardous Waste Disposal Sites in New York State as Site Number 932036. The Department has classified the Site as a Classification "2" pursuant to ECL 27-1305.4.b. Respondent denies that the Site presents a "significant threat to the public health or environment" and Respondent does not agree with the classification "2" for the Site by the Department. Respondent, nevertheless, consents to the issuance of, and agrees to abide by, the terms of this Order.

7. A. Pursuant to ECL 27-1313.3.a, whenever the Commissioner of Environmental Conservation (the "Commissioner") "finds that hazardous wastes at an inactive hazardous waste disposal site constitute a significant threat to the environment, he may order the owner of such site and/or any person responsible for the disposal of hazardous wastes at such site (i) to develop an inactive hazardous waste disposal site

remedial program, subject to the approval of the department, at such site, and (ii) to implement such program within reasonable time limits specified in the order."

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

8. The Department and Respondent agree that the goals of this Order are for Respondent to (i) develop a Department-approved Remedial Investigation/Feasibility Study ("RI/FS") Work Plan for the Site; (ii) implement a Department-approved RI/FS for the Site and (iii) reimburse the State's administrative costs in accordance with Paragraph XI of this Order.

9. Respondent, having waived Respondent's right to a hearing herein as provided by law, and having consented to the issuance and entry of this Order, 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.

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

I. Site Information

Within 30 days after the effective date of this Order, Respondent, to the extent that Respondent has not previously provided the data to the Department, shall submit to the Department all data within Respondent's possession or control regarding environmental conditions on-Site and off-Site, and other information described below. 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 Respondent's attorneys and consultants with respect to all persons responsible for such disposal of hazardous wastes, including but not limited to names, addresses, dates of disposal and any proof linking each such person responsible with hazardous wastes identified pursuant to subparagraph I.A; and

C. A comprehensive list and copies of all existing relevant reports with titles, authors, and subject matter, as well as a description of the results of all previous investigations of the Site and areas in the vicinity of the Site performed by Respondent, including copies of all available topographic and property surveys, engineering studies and aerial photographs.

D. The Department and Respondent recognize the investigative actions taken by Respondent prior to the effective date of this Order in accordance with the Preliminary Site Assessment Order on Consent effective June 17, 1992 ("PSA Order"). The Department agrees that said actions have been approved and/or accepted by the Department as complying with the PSA Order. Furthermore, the Department agrees that the data contained in the report entitled "Report on the Preliminary Site Assessment of the Carborundum Company - Electric Products Division, Hyde Park Facility, Town of Niagara, Niagara County, New York; May 1993" may be utilized in the performance and reporting of the RI/FS.

II. RI/FS Work Plan Contents and Submittals

A. Within 30 days after the effective date of this Order, Respondent shall submit to the Department a detailed work plan describing the methods and procedures to be implemented in

performing an RI/FS for the Site ("RI/FS Work Plan").

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

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

b. A Sampling and Analysis Plan that shall include:

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

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

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

persons at or in the vicinity of the Site during the performance of any work pursuant to this Order; 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 in effect at the time of the submittal of the RI/FS Work Plan, and 6 NYCRR Part 375.

(2) The RI/FS Work Plan shall incorporate all elements of a RI/FS as set forth in the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA") [42 U.S.C. 9601 et seq.], as amended, the National Contingency Plan ("NCP") of March 8, 1990 [40 CFR Part 300], the USEPA guidance document entitled "Guidance for Conducting Remedial Investigations and Feasibility Studies under CERCLA," dated October 1988, and any subsequent revisions to 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 30 days after Respondent receives written notification of the Department's approval of the RI/FS Work Plan, Respondent shall commence the Remedial Investigation.

B. Respondent shall perform the Remedial Investigation in accordance with the Department-approved RI/FS Work Plan which will be attached hereto as an Appendix and will be incorporated as an enforceable part of this Order.

C. During the performance of the Remedial Investigation, Respondent 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, Respondent 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 CERCLA, the NCP, and the guidance documents identified in Subparagraph II.B.2 as specified by the approved RI/FS Work Plan;

(3) identify any additional data that must be collected; and

(4) include a certification by the individual or firm with primary responsibility for the day to day performance of the Remedial Investigation that all activities that comprised the Remedial Investigation were performed in full accordance with the Department-approved RI/FS Work Plan.

IV. Feasibility Study

A. Within 60 days after receipt of the Department's approval of the Remedial Investigation Report, Respondent shall submit to the Department a Feasibility Study evaluating on-Site and off-Site remedial actions to eliminate, to the maximum extent practicable, all health and environmental hazards and potential hazards attributable to hazardous waste disposal at the Site. The Feasibility Study shall be prepared by and have the signature and seal of a professional engineer who shall certify that the Feasibility Study was prepared in accordance with this Order.

B. Respondent shall perform and prepare the Feasibility Study in accordance with the Department-approved RI/FS Work Plan and in a manner consistent with CERCLA, the NCP, and the guidance documents identified in Subparagraph II.B.2.

C. Within 30 days after receipt of the Department's written approval of the Feasibility Study, Respondent shall cooperate 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, the guidance documents identified in Subparagraph II.B.2, and with any Department policy and guidance documents in effect at the time the public comment period is initiated. After the close of the

public comment period, the Department shall select a final remedial alternative for the Site in a Record of Decision ("ROD").

V. Interim Remedial Measures

Respondent may propose interim remedial measures ("IRMs") for the Site on an as-needed basis. In proposing each IRM, Respondent shall submit to the Department an IRM 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 IRM work plan, the IRM work plan shall be incorporated into and become an enforceable part of this Order; and Respondent shall submit to the Department for its review and (as appropriate) approval, in accordance with the schedule contained in the Department-approved IRM 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, contingency plan, and (if the Department requires such) a citizen participation plan that incorporates appropriate activities outlined in the Department's publication, "New York State Inactive Hazardous Waste Citizen Participation Plan,"

dated August 30, 1988, and any subsequent revisions in affect at the time the IRM Work Plan is submitted, and 6 NYCRR Part 375 . Respondent shall then carry out such IRM in accordance with the requirements of the approved IRM work plan, detailed documents and specifications, and this Order. Within the schedule contained in the Department-approved IRM work plan, Respondent 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 IRM work plan, detailed documents and specifications, and this Order. Within the schedule contained in the Department-approved IRM work plan, Respondent shall submit to the Department a report or reports documenting the performance of the IRM. Respondent shall notify the Department of any significant difficulties that may be encountered in implementing the Department-approved IRM work plan, detailed documents, or specifications and shall not modify any obligation unless first approved by the Department.

VI. Progress Reports

Respondent shall submit to the parties identified in Subparagraph XIV.B. in the numbers specified therein copies of written monthly progress reports that: (i) describe the actions

which have been taken toward achieving compliance with this Order during the previous month; (ii) include all results of sampling and tests and all other data received or generated by Respondent or Respondent's contractors or agents in the previous month, including quality assurance/quality control information, whether conducted pursuant to this Order or conducted independently by Respondent; (iii) identify all work plans, reports, and other deliverables required by this Order that were completed and submitted during the previous month; (iv) 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 progress at the Site; (v) include information regarding percentage of completion, unresolved delays encountered or anticipated that may affect the future schedule for implementation of the Respondent's obligations under the Order, and efforts made to mitigate those delays or anticipated delays; (vi) include any modifications to any work plans that Respondent has proposed to the Department or that the Department has approved; and (vii) describe all activities undertaken in support of the Citizen Participation Plan during the previous month and those to be undertaken in the next month. Respondent shall submit these progress reports to the Department by the tenth day of every

month following the effective date of this Order.

Respondent also shall allow the Department to attend, and shall provide the Department at least five days advance notice of, any of the following: prebid meetings, job progress meetings, substantial completion meeting and inspection, and final inspection and meeting. In accordance with the Environmental Agreement between Respondent and Cesiwid, Respondent intends to allow Cesiwid to attend the listed meetings and intends to provide Cesiwid at least five days advance notice of those meetings.

VII. Review of Submittals

A. (1) The Department shall review each of the submittals Respondent makes pursuant to this Order to determine whether it was prepared, and whether the work done to generate the data and other information in the submittal was done, in accordance with this Order and generally accepted technical and scientific principles. The Department shall notify Respondent 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 Respondent in writing and shall specify the reasons for its disapproval. Within 20 days after

receiving written notice that Respondent's submittal has been disapproved, Respondent shall make a revised submittal to the Department that addresses each of the Department's stated reasons for disapproving the first submittal.

(b) After receipt of the revised submittal, the Department shall notify Respondent in writing of its approval or disapproval. If the Department disapproves the revised submittal, Respondent shall be in violation of this Order and the Department may take any action or pursue whatever rights it has pursuant to any provision of statutory or common law unless Respondent has invoked the dispute resolution mechanism set forth in Paragraph VIII of this Order. If the Department approves the revised submittal, it shall be incorporated into and become an enforceable part of this Order.

B. Respondent shall modify and/or amplify and expand a submittal upon the Department's direction to do so if the Department determines, as a result of reviewing data generated by an activity required under this Order or as a result of reviewing any other data or facts, that further work is necessary.

VIII. Dispute Resolution

A. If the Department disapproves a revised submittal, Respondent shall be in violation of this Order

unless, within 10 days of receipt of the Department's notice of disapproval, Respondent requests to meet with the Director of the Division of Hazardous Waste Remediation ("the Director") in order to discuss the Department's objections and Respondent is available to meet immediately thereafter. At this meeting, Respondent shall be given an opportunity to present its responses to the Department's objections, and the Director shall have the authority to modify and/or withdraw such objections.

B. Following such meeting, Respondent shall revise any submittal in accordance with the Department's specific comments, as may be modified by the Director except for those which have been withdrawn by the Director, and shall submit a revised submittal. The period of time within which the submittal must be revised as specified by the Department in its notice of disapproval shall control unless the Director revises the time frame during or after the meeting referred to in Subparagraph VIII.A.

C. After receipt of the revised submittal, the Department shall notify Respondent in writing of its approval or disapproval of the revised submittal. If the revised submittal fails to address the Department's specific comments, as modified, and the Department disapproves the revised submittal for this reason, the Department and Respondent shall have the

right to pursue whatever remedies may be legally available to them, without prejudice to either's right to contest the same.

D. The invocation of formal dispute resolution under this Paragraph VIII shall suspend and toll only those obligations of Respondent under this Order which are in dispute or necessarily dependent upon resolution of the matter(s) in dispute.

IX. Penalties

A. (1) Respondent's failure to comply with any term of this Order constitutes a violation of this Order and the ECL.

(2) Respondent shall be liable for payment to the Department of the sums set forth below as stipulated penalties for each day or part thereof that Respondent is in violation of the terms of this Order. All penalties begin to accrue on the first day Respondent is in violation of the terms of this Order and continue to accrue through the final day of correction of any violation. Such sums shall be due and payable within 15 days after receipt of notification from the Department assessing the penalties. If such payment is not received within 15 days after Respondent receives 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, date of payment. Penalties 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 the penalties shall not in any way alter Respondent's obligation to complete performance under the terms of this Order. Stipulated penalties shall be due and payable under Subparagraph IX.A.(2) pursuant to the following schedule:

Period of Non-Compliance

Penalty Per Day

First through 8th day	\$ 500
9th through 15th day	\$ 1,000
16th through 30th day	\$ 2,000
31st day and thereafter	\$ 5,000

B. Respondent shall not suffer any penalty under this Order or be subject to any proceeding or action if it cannot comply with any requirement hereof because of war, riot, strikes, an unforeseeable disaster arising exclusively from natural causes which the exercise of ordinary human prudence could not have prevented, or any other condition not within the reasonable control of Respondent. Respondent shall, within five days of when it obtains knowledge of any such condition, notify

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

X. Entry upon Site

All duly designated employee[s], consultant[s], contractor[s], or agent[s] of the Department or any State agency shall be provided access to the Site for purposes of inspection, sampling, and testing and to ensure Respondent's compliance with this Order. A representative of Respondent shall be entitled to escort the Department or any duly designated employee, consultant, contractor or agent of the Department. Entry upon the Site shall in no way be restricted or denied based on Respondent's inability to provide an escort. In all cases, persons entering onto the Site shall comply with Respondent's applicable Site safety regulations.

XI. Payment of State Costs

A. Within 30 days after receipt of an itemized invoice from the Department, Respondent shall make payment to

the Department in the amount of \$32,048.92, which represents costs incurred by the Department in connection with the Site from April 1, 1990 through November 17, 1993. Payment shall be made in the manner set forth in Subparagraph XI.B.

B. The Department will periodically submit itemized invoices to Respondent for costs incurred by the State after November 17, 1993. Within 30 days after receipt of an itemized invoice from the Department, Respondent shall pay to the Department a sum of money which shall represent reimbursement for the State's expenses 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 after November 17, 1993, as well as for negotiating this Order, reviewing and revising submittals made pursuant to this Order, overseeing activities conducted pursuant to this Order, collecting and analyzing samples, and administrative costs associated with this Order. Such payment 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, NY 12233-7010. Itemization of the costs shall include an accounting 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 quarterly 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 the New York State Office of the State Comptroller's quarterly expenditure reports. Charges for costs incurred by the State for contractor services shall be supported by either a Contractor's Application for Payment form (with Cost Control Report, if available), or a New York State Standard Voucher (with a copy of the contractor's invoice).

XII. Department Reservation of Rights

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

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. As long as Respondent is in compliance with this Order, the Department will not bring any action against Respondent to require Respondent to conduct an RI/FS at the Site

which is duplicative of the RI/FS required pursuant to the terms of this Order.

XIII. Indemnification

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, and/or Respondent's directors, officers, employees, servants, agents, successors, and assigns.

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 Respondent shall be sent to:

Daniel King, P.E.
Division of Hazardous Waste Remediation
New York State Department of Environmental
Conservation
270 Michigan Avenue
Buffalo, New York 14203-2999

with copies to:

1. Craig Jackson, P.E.
Division of Hazardous Waste Remediation
New York State Department of Environmental
Conservation
50 Wolf Road
Albany, New York 12233-7010
2. Director, Bureau of Environmental Exposure
Investigation
New York State Department of Health
2 University Place
Albany, New York 12203
3. John J. Spagnoli, Director
Region 9
New York State Department of
Environmental Conservation
270 Michigan Avenue
Buffalo, NY 14203-2999
4. Joseph P. Ryan, Esq.
Division of Environmental Enforcement
New York State Department of
Environmental Conservation
270 Michigan Avenue
Buffalo, NY 14203-2999

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

1. Three copies to
Daniel King, P.E.
Division of Hazardous Waste Remediation
New York State Department of
Environmental Conservation
270 Michigan Avenue
Buffalo, NY 14203-2999
2. Two copies to the Director, Bureau of
Environmental Exposure Investigation.

3. One copy to Craig Jackson, P.E.
Division of
Hazardous Waste Remediation
New York State Department of Environmental
Conservation
50 Wolf Road
Albany, NY 12233
4. One copy to Joseph P. Ryan, Esq.
Division of Environmental Enforcement
New York State Department of
Environmental Conservation
270 Michigan Avenue
Buffalo, NY 14203-2999

C. In accordance with the Environmental Agreement between Respondent and Cesiwid, Respondent intends to provide Cesiwid with copies of all communication between Respondent and the Department, including copies of work plans and reports.

D. Within 30 days of the Department's approval of any report submitted pursuant to this Order, Respondent shall submit to Daniel King, P.E. a computer readable magnetic media copy of the approved report in a mutually agreeable format.

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

Mr. Ronald F. Spears, Jr.
The Carborundum Company
1625 Buffalo Avenue
P.O. Box 337
Niagara Falls, NY 14302

with a copy to:

Cesiwid, Inc.
Attn: E.P. Oliverio, Jr., Vice President
3425 Hyde Park Boulevard
Niagara Falls, New York 14305

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

XV. Miscellaneous

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

B. Respondent shall retain professional consultants, contractors, laboratories, quality assurance/quality control personnel and data validators acceptable to the Department to perform the technical, engineering and analytical obligations required by this Order. Respondent shall submit to the Department within 15 days after the effective date of this Order a list of the firms or individuals to be used. Within 10 days of receipt of a written request by the Department, Respondent shall submit documentation of the experience, capabilities and qualifications of the firms or individuals selected by Respondent. The Department's approval of these firms or individuals shall be obtained prior to initiation of any

activities for which Respondent and such firms or individuals will be responsible.

C. 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 also shall have the right to take its own samples. In the event the Department takes its own samples, Respondent reserves the right to take a split sample of the Department's samples. Respondent and the Department shall make available to each other the results of all sampling and/or tests or other data generated with respect to implementation of this Order. Respondent shall submit these results in the progress reports required by this Order.

D. Respondent shall notify the Department at least 5 days in advance of any field activities to be conducted pursuant to this Order. In accordance with the Environmental Agreement between Respondent and Cesiwid, Respondent also intends to notify Cesiwid at least 5 days in advance of any field activities.

E. Respondent shall use best efforts to obtain whatever permits, easements, rights-of-way, rights-of-entry, approvals, or authorizations are necessary to perform Respondent's obligations under this Order. For purposes of this

Subparagraph XV.E "best efforts" includes the payment of reasonable sums of money in consideration. If Respondent is unable to obtain, on a timely basis, any access required to perform its obligations under this Order, Respondent shall promptly notify the Department and shall include in that notification a summary of the steps Respondent has taken to attempt to obtain access. The Department may, as it deems appropriate, assist Respondent in obtaining access. Respondent shall reimburse the Department, in accordance with the procedures in Paragraph XI.B, for all costs incurred by the Department in obtaining access, including, but not limited to, attorneys fees. In the event that Respondent is unable, through best efforts, to obtain the necessary access, the Department shall grant appropriate extensions of time for Respondent's fulfillment of the terms of this Order.

F. Respondent and Respondent's officers, directors, agents, servants, employees, successors, and assigns shall be bound by this Order. Any change in ownership or corporate status of Respondent including, but not limited to, any transfer of assets or real or personal property shall in no way alter Respondent's responsibilities under this Order. Respondent's officers, directors, employees, servants, and agents shall be obliged to comply with the relevant provisions of this Order in

the performance of their designated duties on behalf of Respondent.

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

I. All references to "days" in this Order are to business 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 Respondent 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 Respondent of Respondent's obligation to obtain such formal approvals as may be required by this Order.

(2) If Respondent desires that any provision of this Order be changed, Respondent shall make timely written application, signed by the Respondent, to the Commissioner setting forth reasonable grounds for the relief sought. Copies of such written application shall be delivered or mailed to:

Joseph P. Ryan, Esq.
Division of Environmental Enforcement
New York State Department of
Environmental Conservation
270 Michigan Avenue
Buffalo, NY 14203-2999

and to

Michael Hinton
Division of Hazardous Waste Remediation
New York State Department of
Environmental Conservation
270 Michigan Avenue
Buffalo, NY 14203-2999

L. The effective date of this Order shall be the date Respondent receives a fully executed duplicate original of the Order.

DATED: 9/7, New York
1995

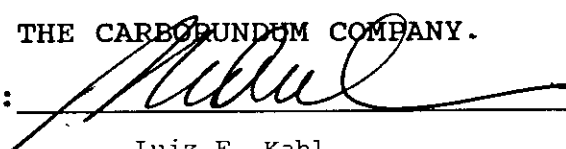
MICHAEL D. ZAGATA
Commissioner
New York State Department
of Environmental Conservation

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

CONSENT BY RESPONDENT

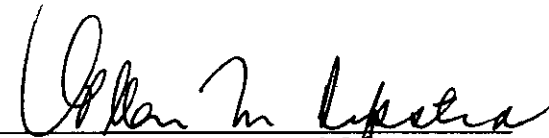
Respondent hereby consents to the issuing and entering of this Order, waives Respondent's right to a hearing herein as provided by law, and agrees to be bound by this Order.

THE CARBORUNDUM COMPANY.

By: 
Luiz F. Kahl
(Type Name of Signer)
Title: President
Date: 11 August 1995

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

On this 11TH day of AUGUST, 1995,
before me personally came LUIZ F. KAHL, to me
known, who, being by me duly sworn, did depose and say that he
resides in WILLIAMSVILLE, NY; that he is the
PRESIDENT of The Carborundum Company, and
he is authorized to execute this Order on Consent on behalf of
The Carborundum Company.


Notary Public

ELLEN M. DYKSTRA
NOTARY PUBLIC, State of New York
Qualified in Erie County
Commissioned in Niagara County
My Commission Expires 3/19/96

October 31, 1994