

STATE OF NEW YORK: DEPARTMENT OF ENVIRONMENTAL CONSERVATION

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

ORDER
ON
CONSENT
INDEX #B9-0270-89-05

ENV 4020

RESPONDENT COMPANIES
(Listed in Appendix "A")

Respondents

Site Code #9-32-043

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. Frontier Chemical Waste Process, Inc. owns and operated a treatment, storage and disposal facility in a twenty-two acre parcel of property located on Townline Road, in the Town of Pendleton, Niagara County (the "Site"). A map delineating the Site appears as Figure 1-1 in the Work Plan attached to this Order as Appendix "B".

3. The companies listed in Appendix "A" to this Order (hereinafter referred to as "Respondent Companies") are

doing business in the State of New York and allegedly generated, transported or arranged for transportation of hazardous wastes and/or hazardous substances to the Site.

4. As a result of Frontier Chemical Waste Process, Inc.'s operations at the Site, soil, sediment, groundwater and surface water have allegedly been contaminated with high concentrations of inorganic and organic chemicals that exceed applicable standards. Under previous Orders on Consent, Frontier Chemical Waste Process, Inc., was required to investigate and remediate certain areas within the Site; however, it did not fulfill its obligations as required by these orders. Consequently, the Department implemented a Remedial Investigation/Feasibility Study ("RI/FS") at the Site.

5. As a result of the information gathered during the RI/FS and following a period of public comment, the Department selected a final remedial alternative for the Site in a Record of Decision dated March 2, 1992 ("ROD"). The ROD, attached to this Order as Appendix "C", is incorporated as an enforceable part of this Order.

6. The Site is presently classified by the Department as an inactive hazardous waste disposal site, as that term is defined at ECL 27-1301.2, and presents a significant threat to the public health or environment. The Site has been listed in the Registry of Inactive Hazardous Waste Disposal Sites in New York State as Site Number 9-32-043.

The Department has classified the Site as a Classification "2" pursuant to ECL 27-1305.4.b.

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 Companies agree that the goals of this Order are for Respondent Companies to (i) develop and implement, in accordance with the ROD and Work

Plan for the Remedial Design, an inactive hazardous waste disposal site remedial program ("Remedial Program") for the Site that shall include design and implementation, and operation, maintenance and monitoring of the selected remedial alternative; and (ii) reimburse the State's administrative costs pursuant to paragraph VI herein. This Order is entered into by Respondent Companies in order to, among other things, avoid the protracted costs of litigation and the Respondent Companies do so without any admission of facts or law. The Work Plan, attached to this Order as Appendix "B", is entitled "Remedial Design/Remedial Action Work Plan, Revision No. 2, Frontier Chemical-Pendleton Site" (dated: November 3, 1993). The Work Plan is incorporated as an enforceable part of this Order.

9. Respondent Companies hereby waive their right to a hearing herein as provided by law in regard to the implementation of this Order, and having consented to the issuance and entry of this Order, agree to be bound by its terms. Respondent Companies consent to 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 its terms.

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

I. Remedial Design Contents

A. Pursuant to the schedule included in the appended Work Plan, Respondent Companies shall submit to the Department a remedial design to implement the remedial alternative for the Site as selected by the Department in the ROD (the "Remedial Design") and as set forth in the Work Plan. The Remedial Design shall be prepared by and have the signature and seal of a professional engineer selected by the Respondent Companies and approved by the Department pursuant to subparagraph XIII.B. (such approval not to be unreasonably withheld), who shall certify that the Remedial Design was prepared in accordance with this Order.

B. The Remedial Design shall include the following:

1. A Remedial Design Report detailing a description of the remedial objectives and the means by which each essential element of the selected remedial alternative will be implemented to achieve those objectives, including, but not limited to:

a. the construction and operation of any structures;

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

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

d. physical security and posting of the Site;

e. health and safety of persons living and/or working at or in the vicinity of the Site;

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

g. monitoring which integrates needs which are present on-Site and off-Site during implementation of the Department-selected remedial alternative;

h. identification of all local, State or Federal permits or authorizations required to implement the Site remedy, including access agreements required for any access to off-Site property that may be required and a schedule for seeking and obtaining such access;

i. a plan to restore off-Site areas impacted by the remedial activities as required by the Remedial Design.

2. "Biddable Quality" documents for the Remedial Design including, but not limited to, documents and specifications prepared, signed, and sealed by a professional engineer selected by Respondent Companies and

approved by the Department pursuant to paragraph XIII.B. (such approval not to be unreasonably withheld). These plans shall satisfy all applicable local, state and federal laws, rules and regulations;

3. A time schedule to implement the Remedial Design. Such schedule shall include periodic meetings with Department personnel to assess the progress of the design as required in the Work Plan;

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

5. A description of operation, maintenance, and monitoring activities to be undertaken after the Department has approved construction of the Remedial Design. Operation, maintenance and monitoring activities shall be performed for an estimated period of thirty years after completion of construction of the remedy, during which time the conditions will be monitored pursuant to the operation and maintenance plan required by subparagraph II.C. It shall be the responsibility of Respondent Companies to justify cessation of these activities after thirty years;

6. A contingency plan describing organized, planned, and technically coordinated courses of action to be followed in case of emergency or other special conditions, including but not limited to equipment breakdowns, fire,

odor, explosion, spills, release of hazardous or toxic materials or substances, and other incidents that could threaten human health or safety or the environment;

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

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

II. Remedial Design Construction and Reporting

A. Within 90 days of the Department's approval of the Remedial Design (such approval not to be unreasonably withheld), Respondent Companies shall award a contract for the Remedial Design in accordance with the Department approved Remedial Design. Respondent Companies shall mobilize and begin construction activities within 30 days of award of a contract pursuant to this subparagraph II.A.

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

C. Within 90 days after completion of the construction activities identified in the Remedial Design, Respondent Companies shall submit to the Department a detailed and final post-remedial operation and maintenance plan ("O & M Plan"); "as-built" drawings and a final engineering report (each including all changes made to the Remedial Design during construction); and a certification by a professional engineer selected by the Respondent Companies and approved by the Department pursuant to subparagraph XIII.B., that the Remedial Design was implemented and all construction activities were completed in accordance with the Department-approved Remedial Design. The O & M Plan, "as built" drawings, final engineering report, and certification must be prepared, signed, and sealed by a professional engineer selected by the Respondent Companies and approved by the Department pursuant to subparagraph XIII.B.

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

E. Within 60 days after receipt of the "as-built" drawings, final engineering report, and certification, the Department shall notify Respondent Companies in writing whether the Department is satisfied that all construction activities have been completed in compliance with the

approved Remedial Design, such approval shall not be unreasonably withheld.

F. If the Department concludes that any element of the Remedial Program fails to achieve the objectives set forth in the ROD or otherwise fails to protect human health or the environment, Respondent Companies shall take whatever action the Department determines necessary to achieve those objectives or to ensure that the Remedial Program otherwise protects human health. Respondent Companies shall be in violation of this Order and the ECL if they fail to take whatever action the Department determines necessary to be undertaken under this subparagraph II.F. unless, within ten days of receipt of the Department's determination, Respondent Companies invoke the dispute resolution proceedings pursuant to paragraph XI of this Order.

III. Progress Reports

~~Respondent Companies shall submit to the parties set forth in subparagraph X.B., in the numbers identified therein, eight 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 Companies or their contractors or agents in the previous month, including quality assurance/quality control information, whether conducted pursuant to this Order or conducted~~

~~independently by Respondent Companies; (iii) identify all 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 Companies' obligations under the Order, and efforts made to mitigate those delays or anticipated delays; (vi) include any modifications to any work plans that Respondent Companies have 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 Companies shall submit these progress reports to the Department by the tenth day of every month following the effective date of this Order.

IV. Review of Submittals

A. 1. The Department shall review each of the submittals Respondent Companies 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 is

acceptable to the Department. The Department shall notify Respondent Companies in writing of its approval or disapproval of each such submittal, except for the submittal discussed in subparagraph I.B.(7). 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 Companies in writing and shall specify the reasons for its disapproval. Within 30 days after receiving written notice that Respondent Companies' submittal has been disapproved, or within such additional time set forth in the notice of disapproval, Respondent Companies shall make a revised submittal to the Department that addresses and resolves all of the Department's stated reasons for disapproving the first submittal. Respondent Companies may request additional time for making revised submittals.

(b) After receipt of the revised submittal, the Department shall notify Respondent Companies in writing of its approval or disapproval. The Department shall make reasonable efforts to provide such notification within 30 days of receipt of the revised submittal. If the Department disapproves the revised submittal, Respondent Companies shall be in violation of this Order unless within 20 days of the receipt of the notice of disapproval, the Respondent Companies invoke the dispute resolution

proceedings pursuant to paragraph XI of this Order. If the Department approves the revised submittal, it shall be incorporated into and become an enforceable part of this Order.

B. The Department may seek to require Respondent Companies 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 is necessary.

If Respondent Companies are unable to agree with the Department on the appropriateness of the modification, amplification or expansion then Respondent Companies shall implement the modification, amplification or expansion as required by the Department. Failure to implement such activities by Respondent Companies shall be a violation of this Order unless within 10 days of receipt of the implementation directive from the Department, the Respondent Companies invoke the dispute resolution proceedings pursuant to paragraph XI of this Order.

V. Penalties

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

B. Respondent Companies shall not suffer any penalty under this Order or be subject to any proceeding or

action if they cannot comply with any requirement hereof because of war, Act of God, riot, or any condition or event entirely beyond the control of Respondent Companies, their agents or agents carrying out Respondent Companies' obligation under this Order. Respondent Companies shall, within five days of when they obtain knowledge of any such condition, notify the Department in writing. Respondent Companies shall include in such notice the measures taken and to be taken by Respondent Companies 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 Companies shall have the burden of proving that an event is a defense to compliance with this Order pursuant to subparagraph V.B.

Increased costs or expenses of any work to be performed under this Order, the financial inability of Respondent Companies to perform such work, the failure of Respondent Companies to make complete and timely application for any required approval or permit, and non-attainment of the goals, standards and requirements of this Order do not constitute conditions or events warranting the relief set forth in subparagraph V.B.

VI. Payment of State Costs

A. Within 60 days of the effective date of this Order, Respondent Companies shall make payment to the Department in the amount of \$1,326,450.00 which represents the past response costs incurred by the State of New York up to January 31, 1993, for the site that are not disputed by the Respondent Companies. These costs are itemized as set forth in subparagraph VI.B. Payment shall be made in the manner as set forth below.

B. Thereafter, the Department will periodically submit itemized invoices to Respondent Companies and ~~within 60 days after receipt of an itemized invoice from the Department,~~ Respondent Companies 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 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 reimbursements pursuant to subparagraph VI.B., in total, shall not exceed ~~\$350,000.00.~~ 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.

C. If Respondent Companies object to any expenditure as set forth in subparagraph VI.B., they must do so in writing within 45 days of receipt of the invoice. If Respondent Companies' objections cannot be resolved within 30 days of the Department's receipt of the written objections, Respondent Companies shall pay the undisputed amount no later than 40 days after the Department's receipt of the written objections. Thereafter, Respondent Companies may invoke the dispute resolution proceedings pursuant to paragraph XI of this Order to resolve the disputed amounts still owing. Unless the dispute resolution proceedings is invoked within 10 days of payment of the undisputed amounts by Respondent Companies, Respondent Companies shall be in

violation of this Order for failure to pay any amount still owing.

D. Nothing in this Order shall be construed as relieving any responsible party, other than Respondent Companies, from any liabilities for any response costs related to the Site incurred by the State of New York that shall not have been recovered by the State of New York under the provisions of this Order.

E. The State considers the response costs it incurs at the Site as not inconsistent with the National Contingency Plan ("NCP").

VII. 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 including, but not limited to nor exemplified by, the following:

1. the Department's right to bring any action or proceeding against anyone other than Respondent Companies and/or any of Respondent Companies' successors, and assigns;

2. the Department's right to enforce this Order against Respondent Companies and/or any of Respondent Companies' successors, and assigns if Respondent Companies fail to satisfy any of the terms of this Order;

3. the Department's right to bring any action or proceeding against Respondent Companies and/or any

of Respondent Companies' successors, and assigns with respect to claims for natural resources damages as a result of the release or threatened release of hazardous substances or constituents at or from the Site or areas in the vicinity of the Site;

4. the Department's right to bring any action or proceeding against Respondent Companies and/or any of Respondent Companies' successors, and assigns with respect to hazardous substances that are present at the Site or that have migrated from the Site to the extent not otherwise released herein;

5. the Department's right to gather information and enter and inspect property and premises.

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

VIII. Releases

A. This Order and the completion of the Remedial Program by Respondent Companies and approval by the Department of the engineer's certification that construction of the Remedial Program was completed in accordance with the approved Remedial Design and payment of the monies pursuant to paragraphs VI.A. and VI.B. shall, unless after the approval of the engineer's certification, a supplementary Remedial Program is determined to be necessary pursuant to

paragraph II.F., and except for paragraph IX, and except for any Natural Resource Damage claims that may arise, constitute a full discharge and release of Respondent Companies, their officers, directors, employees and agents by the State of New York for all claims, injunctions, and damages, including past and present claims under the common law or any State or Federal statutes, administered or enforced by the State of New York arising out of or relating to; (a) the past releases of hazardous wastes at the Site; (b) all past State response costs incurred in connection with the Site as set forth in paragraph VI.A., and all State response costs related to the remedial activities carried out pursuant to this Order to the completion of the Remedial Program as set forth in paragraph VI.B., to the extent all such costs are paid by Respondent Companies; (c) the lawful, non-negligent implementation of the Remedial Program in accordance with this Order.

B. 1. Nothing in this release shall preclude the State of New York from taking such action as is authorized by law with respect to any contaminated soil, contaminated debris, waste water and any other contaminated material should these materials be removed from the Site.

2. Nothing in this release shall in any way constitute or be construed as a release of claims by any person not a party to this order.

3. Nothing in this release or Order shall in any way constitute or be construed as an agreement by the Department and the State of New York to indemnify or hold harmless Respondent Companies from any claims, damages, suits or actions by any person not a party to this Order.

4. Nothing in this release shall be effective or extend to any investigation or remediation the Department deems necessary due to:

(a) environmental conditions on-Site or off-Site which are related to the disposal of hazardous wastes at the Site and were unknown to the Department at the time of its approval of the Remedial Design Report; or

(b) information received, in whole or in part, after the Department's approval of the Remedial Design Report; and

(c) such unknown environmental conditions or information indicates that the Remedial Program is not protective of human health or the environment. The Department shall notify Respondent Companies of such environmental conditions or information and its basis for determining that the Remedial Program is not protective of human health and the environment.

5. This release shall inure only to the benefit of Respondent Companies, their directors, officers, employees, agents, successors and assigns.

6. Nothing herein shall be construed as barring, diminishing, adjudicating or in any way affecting any legal or equitable rights or claims, actions, suits, causes of action or demands whatsoever that the Department may have against anyone other than Respondent Companies, their directors, officers, employees, agents, successors and assigns.

IX. Indemnification

Respondent Companies 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 Companies, and/or Respondent Companies' directors, officers, employees, servants, agents, successors, and assigns. This provision does not provide indemnification for the grossly negligent or unlawful acts of the Department or the State of New York and their representatives and employees.

X. 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 Companies shall be sent 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. Joseph P. Ryan, Esq.
Division of Environmental Enforcement
New York State Department of
Environmental Conservation
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
Craig Jackson, P.E.
Division of Hazardous Waste Remediation
2. ~~Two copies~~ to the Director, Bureau of
Environmental Exposure Investigation.
3. ~~One copy to~~ Edward Belmore, P.E.
Division of Hazardous Waste Remediation
New York State Department of
Environmental Conservation
50 Wolf Road
Albany, New York 12233
4. ~~One copy~~ Joseph P. Ryan, Esq.

C. ~~Within 30 days~~ of the Department's approval of any report submitted pursuant to this Order, Respondent Companies shall submit to Craig Jackson, P.E. a computer readable magnetic media copy of the approved report in

American Standard Code for Information Interchange (ASCII)
format.

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

David Cook, Esq.
Nixon, Hargrave, Devans & Doyle
900 Clinton Square
Rochester, New York 14603

Brent W. Schindler, Esq.
Legal Department
2030 Dow Center
Midland, Michigan 48674-2030

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

XI. Dispute Resolution

A. Any dispute that arises between the
Department and Respondent Companies under paragraphs II.F.,
IV or VI of this Order, shall, in the first instance, be the
subject of informal negotiations between the Department and
Respondent Companies for a period of up to 15 calendar days
from the time notice of a dispute is received by any of the
parties. The period of negotiations may be extended by
written agreement between the Department and Respondent
Companies. In the event that the parties are unable to
resolve a dispute by informal negotiations, Respondent
Companies may request to meet with the Director of the
Division of Hazardous Waste Remediation (the "Director") in
order to discuss the Department's objections/determinations

and Respondent Companies must meet with the Director immediately thereafter. At this meeting, Respondent Companies shall be given an opportunity to present their responses to the Department's objections/determinations, and the Director shall have the authority to modify and/or withdraw such objections/determinations. After the Director makes his decision(s), Respondent Companies shall either:

(a) within thirty days of receipt of written notice of the Director's determinations, commence a proceeding pursuant to Article 78 of the CPLR (the Director's decision(s) shall be deemed to be final agency action for the purposes of such a proceeding) or (b) notify the Department that they intend to comply with the Director's decision(s) within the time frame provided in the Director's decision(s). If Respondent Companies fail to comply with Director's decision(s) within the time frame provided in the Director's decision(s), each shall be in violation of this Order.

B. The invocation of formal dispute resolution procedures under this paragraph shall suspend and toll only those obligations of Respondent Companies under this Order which are in dispute or necessarily dependent on resolution of the matter(s) in dispute.

XII. Admissions

This Order was executed in good faith to avoid, among other things, protracted litigation and is a settlement of claims that were vigorously contested.

Respondent Companies deny any allegations of fact or law or any liability to the Department or the State arising out of the transactions or occurrences alleged with respect to the Site. Nothing in this Order shall constitute an admission of any liability. Respondent Companies also reserve and retain their rights to assert all defenses to any claim that any other party asserts in any action or proceeding to the extent otherwise provided in this Order.

XIII. Miscellaneous

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

B. Respondent Companies shall retain professional consultants, contractors, laboratories, quality assurance/quality control personnel, and data validators acceptable to the Department to perform the technical, engineering, and analytical obligations required by this Order. The experience, capabilities, and qualifications of the firms or individuals selected by Respondent Companies shall be submitted to the Department within 30 days after the effective date of this Order. The Department's approval of these firms or individuals shall be obtained before the start of any activities for which Respondent Companies and such firms or individuals will be responsible. The responsibility for the performance of the professionals

retained by Respondent Companies shall rest solely with Respondent Companies.

C. The Department shall have the right to obtain split samples, duplicate samples, or both, of all substances and materials sampled by Respondent Companies, and the Department also shall have the right to take its own samples. Respondent Companies shall make available to the Department the results of all sampling and/or tests or other data generated by Respondent Companies with respect to implementation of this Order and shall submit these results in the progress reports required by this Order.

D. Respondent Companies shall have the right to obtain split samples, duplicate samples or both, of all substances or materials sampled by the Department and the Respondent Companies also shall have the right to take their own samples. The Department shall make available to the Respondent Companies the results of all sampling and/or tests and other data generated by the Department with respect to the implementation of this Order.

E. ~~Respondent Companies shall notify the Department at least 10 working days in advance of the initial field activities to be conducted pursuant to this Order.~~

F. Except as provided in paragraph XIII.I., Respondent Companies shall ~~obtain all permits, easements, rights-of-way, rights-of-entry, approvals, or authorizations~~

necessary to perform Respondent Companies' obligations under this Order. Respondent Companies shall promptly notify the Department in the event of their inability to obtain such authorizations on a timely basis. In the event Respondent Companies are unable to obtain such authorizations, the Department shall, consistent with its legal authority, assist in obtaining all such authorizations Respondent Companies were unable to obtain.

G. Respondent Companies hereby consent to the entry upon the Site or areas in the vicinity of the Site which may be under the control of the Respondent Companies by any duly designated employee, consultant, contractor, or agent of the Department or any State agency for purposes of inspection, sampling, and testing and to ensure Respondent Companies' compliance with this Order. Respondent Companies shall provide the Department, if available, with suitable office space at the Site, including access to a telephone, and shall permit the Department full access to all records relating to matters addressed by this Order and at a minimum, the following job meetings: pre-bid, pre-construction, job progress, substantial completion and inspection, and final inspection.

H. Respondent Companies, their successors, and assigns shall be bound by this Order. Any change in ownership or corporate status of Respondent Companies including, but not limited to, any transfer of assets or

real or personal property shall in no way alter Respondent Companies' responsibilities under this Order. Respondent Companies' 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 Companies.

I. Respondent Companies shall not be required to obtain permits for certain work conducted under this Order consistent with the criteria set forth in Division Technical and Administrative Guidance Memorandum: Permitting Jurisdiction Over Inactive Hazardous Waste Site Remediation - O & D Memorandum #90.37 (HWR-90-4040) dated December 18, 1990 and 6 NYCRR 375.

J. Respondent Companies shall provide a copy of this Order to each contractor hired to perform work required by this Order and to each person representing Respondent Companies with respect to the Site and shall condition all contracts entered into in order to carry out the obligations identified in this Order upon performance in conformity with the terms of this Order. Respondent Companies or their contractors shall provide written notice of this Order to all subcontractors hired to perform any portion of the work required by this Order. Respondent Companies shall nonetheless be responsible for ensuring that Respondent Companies' contractors and subcontractors perform the work in satisfaction of the requirements of this Order.

K. The obligations of Respondent Companies to finance and perform obligations under this Order and to pay amounts owed to the State under this Order are joint and several. In the event of the insolvency or other failure of any one or more Respondent Companies to implement the requirements of this Order, the remaining Respondent Companies shall complete all such requirements.

L. 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.

M. ~~All references to "days" in this Order are~~ to calendar days unless otherwise specified. If the deadline falls on a weekend or a legal holiday, the deadline will be extended until the following work day.

N. 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.

O. Nothing in this Order shall be construed to allow any dispute by Respondent Companies regarding the validity of the ROD's provisions.

P. 1. The terms of this Order shall constitute the complete and entire Order between Respondent Companies 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 Companies of their obligation to obtain such formal approvals as may be required by this Order.

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

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

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

3. If additional parties seek to be included as signatories to this Order after its effective date, Respondent Companies must submit a request for an amendment to the Order pursuant to this subparagraph XIII.P. The request must identify the party or parties to be added to the list of Respondent Companies set forth at Paragraph 3 of this Order, and include a signature page for each such

party, as well as for each of the parties identified as Respondent Companies as of the date of the request. The Department shall not unreasonably withhold its approval of such amendments. The Department's approval or disapproval of a request for an amendment to this Order pursuant to this subparagraph XIII.P.3. shall not be construed as barring, diminishing, adjudicating, or in any way affecting any of the terms of this Order except by the inclusion of additional parties as signatories upon the Department's approval of such request. The Department's approval or disapproval of such request shall not suspend, toll or otherwise affect any obligations of Respondent Companies under this Order.

Q. This Order may be signed by counterpart.

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

DATED: , New York
 , 1994


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

party, as well as for each of the parties identified as Respondent Companies as of the date of the request. The Department shall not unreasonably withhold its approval of such amendments. The Department's approval or disapproval of a request for an amendment to this Order pursuant to this subparagraph XIII.P.3. shall not be construed as barring, diminishing, adjudicating, or in any way affecting any of the terms of this Order except by the inclusion of additional parties as signatories upon the Department's approval of such request. The Department's approval or disapproval of such request shall not suspend, toll or otherwise affect any obligations of Respondent Companies under this Order.

Q. This Order may be signed by counterpart.

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

DATED: **Albany**, New York
March 28, 1994



J. LANGDON MARSH
Acting Commissioner
New York State Department
of Environmental Conservation

STATE OF NEW YORK: DEPARTMENT OF ENVIRONMENTAL CONSERVATION

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

ORDER ON CONSENT
INDEX #B9-0270-89-05

Site Code #9-32-043

APPENDIX A

LIST OF RESPONDENT COMPANIES AS OF MARCH 1, 1994

AlliedSignal Inc.
The Carborundum Company
Columbus McKinnon Corporation
CWM Chemical Services, Inc.
The Dow Chemical Company
E.I. du Pont de Nemours and Company
Elf Atochem North America, Inc.
General Motors Corporation
GTE Operations Support Incorporated
IBM Corporation
Olin Corporation
Rochester Gas and Electric Corp.
Uniroyal Chemical Company, Inc.

Other parties may be added to this Appendix as provided in Paragraph XIII.P.3
of this Consent Order.

CONSENT BY RESPONDENT COMPANIES

Respondent Companies hereby consent to the issuing and entering of this Order, waive Respondent Companies' rights to a hearing herein as provided by law, and agree to be bound by this Order.

RESPONDENT COMPANY
CWM CHEMICAL SERVICES, INC.

By: Stephen T. Joyce
Stephen T. Joyce
(TYPE NAME OF SIGNER)

Title: Group Remedial Projects Manager

Date: February 25, 1994

STATE OF MASSACHUSETTS
) s.s.:
COUNTY OF MIDDLESEX

On this 25th day of FEBRUARY, 1994,
before me personally came STEPHEN T. JOYCE, to me
known, who being duly sworn, did depose and say that he resides in
BEVERLY, MA; that he is the
GROUP REMEDIAL PROJECTS MANAGER of
CWM CHEMICAL SERVICES, INC. the corporation described in and
which executed the foregoing instrument; that he signed his name
hereto on behalf of said corporation, and that he is authorized to
obligate the corporation in such matters pursuant to the articles
of incorporation, by-laws and duly delegated powers of the
corporation in accordance with his title.

Jan H. Sammar
Notary Public

CONSENT BY RESPONDENT COMPANIES

Respondent Companies hereby consent to the issuing and entering of this Order, waive Respondent Companies' rights to a hearing herein as provided by law, and agree to be bound by this Order.

RESPONDENT COMPANY
ALLIED SIGNAL, INC.

By: Robert J. Ford
Robert J. Ford
(TYPE NAME OF SIGNER)

Title: Director, Site Remediation

Date: February 18, 1994

STATE OF New Jersey)
COUNTY OF Morris) s.s.:

On this 18th day of February, 1994,
before me personally came Robert J. Ford, to me
known, who being duly sworn, did depose and say that he resides in
Succasunna, NJ; that he is the
Director, Site Remediation of
AlliedSignal Inc., the corporation described in and
which executed the foregoing instrument; that he signed his name
hereto on behalf of said corporation, and that he is authorized to
obligate the corporation in such matters pursuant to the articles
of incorporation, by-laws and duly delegated powers of the
corporation in accordance with his title.

Constance D. Niemasz
Notary Public

CONSTANCE D. NIEMASZ
A Notary Public of New Jersey
My Commission Expires Jan. 23, 1995

CONSENT BY RESPONDENT COMPANIES

Respondent Companies hereby consent to the issuing and entering of this Order, waive Respondent Companies' rights to a hearing herein as provided by law, and agree to be bound by this Order.

RESPONDENT COMPANY
COLUMBUS MCKINNON CORPORATION

By: _____

R. L. Montgomery

(TYPE NAME OF SIGNER)

Title: Executive Vice President

Date: February 4, 1994

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

On this 4th day of February, 1994,
before me personally came R. L. Montgomery, to me
known, who being duly sworn, did depose and say that he resides in
Lake View, New York; that he is the
Executive Vice President of
Columbus McKinnon Corporation, the corporation described in and
which executed the foregoing instrument; that he signed his name
hereto on behalf of said corporation, and that he is authorized to
obligate the corporation in such matters pursuant to the articles
of incorporation, by-laws and duly delegated powers of the
corporation in accordance with his title.

Lois H. Demler

Notary Public

LOIS H. DEMLER
Notary Public, State of New York
Qualified in Erie County
My Commission Expires May 31, 1994

CONSENT BY RESPONDENT COMPANIES

Respondent Companies hereby consent to the issuing and entering of this Order, waive Respondent Companies' rights to a hearing herein as provided by law, and agree to be bound by this Order.

RESPONDENT COMPANY
THE DOW CHEMICAL COMPANY

By: Carey W. Brannan
Carey W. Brannan
(TYPE NAME OF SIGNER)

Title: Manager of Earth Sciences

Date: 2-21-94

STATE OF)
COUNTY OF) s.s.:

On this 21st day of February, 1994,
before me personally came Carey W. Brannan, to me
known, who being duly sworn, did depose and say that he resides in
SUGAR LAND, TEXAS; that he is the
MANAGER OF EARTH SCIENCES of
THE DOW CHEMICAL CO., the corporation described in and
which executed the foregoing instrument; that he signed his name
hereto on behalf of said corporation, and that he is authorized to
obligate the corporation in such matters pursuant to the articles
of incorporation, by-laws and duly delegated powers of the
corporation in accordance with his title.

Joyce M. Thompson
Notary Public

CONSENT BY RESPONDENT COMPANIES

Respondent Companies hereby consent to the issuing and entering of this Order, waive Respondent Companies' rights to a hearing herein as provided by law, and agree to be bound by this Order.

RESPONDENT COMPANY

E. I. du PONT de NEMOURS AND COMPANY

By: *William E. Mancini*

William E. Mancini

(TYPE NAME OF SIGNER)

Title: Remediation Program Manager

Date: February 3, 1994

STATE OF)
COUNTY OF) s.s.: Delaware
New Castle

On this 3rd day of February, 1994,
before me personally came William E. Mancini, to me
known, who being duly sworn, did depose and say that he resides in
Chester County, Pennsylvania; that he is the
Remediation Program Manager of
E. I. du Pont de Nemours & Co., the corporation described in and
which executed the foregoing instrument; that he signed his name
hereto on behalf of said corporation, and that he is authorized to
obligate the corporation in such matters pursuant to the articles
of incorporation, by-laws and duly delegated powers of the
corporation in accordance with his title.

Betty D. Smith
Notary Public

BETTY D. SMITH
NOTARY PUBLIC-DELAWARE
My commission expires December 19, 1995

CONSENT BY RESPONDENT COMPANIES

Respondent Companies hereby consent to the issuing and entering of this Order, waive Respondent Companies' rights to a hearing herein as provided by law, and agree to be bound by this Order.

RESPONDENT COMPANY
THE CARBORUNDUM COMPANY

By: _____

Bradford L. Homer

(TYPE NAME OF SIGNER)

Title: Business Manager

Date: February 28, 1994

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

On this 28th day of February, 1994,
before me personally came Bradford L. Homer, to me
known, who being duly sworn, did depose and say that he resides in
Amherst, New York; that he is the
Business Manager of
The Carborundum Company, the corporation described in and
which executed the foregoing instrument; that he signed his name
hereto on behalf of said corporation, and that he is authorized to
obligate the corporation in such matters pursuant to the articles
of incorporation, by-laws and duly delegated powers of the
corporation in accordance with his title.

Darlene M. Corp
Notary Public

DARLENE M. CORP
Notary Public, State of New York
Qualified in Niagara County
My Commission Expires Sept. 30, 1994

CONSENT BY RESPONDENT COMPANIES

Respondent Companies hereby consent to the issuing and entering of this Order, waive Respondent Companies' rights to a hearing herein as provided by law, and agree to be bound by this Order.

RESPONDENT COMPANY
ELF ATOCHEM NORTH AMERICA

By: _____

F. N. Rutherford

(TYPE NAME OF SIGNER)

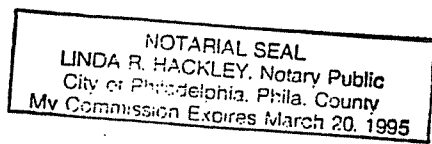
Title: Group President - Fine Chemicals

Date: February 10, 1994

STATE OF _____)
) s.s.:
COUNTY OF _____)

On this 10th day of February, 1994,
before me personally came F. N. Rutherford, to me
known, who being duly sworn, did depose and say that he resides in
_____; that he is the
Group President - Fine Chemicals of
Elf Atochem North America, Inc., the corporation described in and
which executed the foregoing instrument; that he signed his name
hereto on behalf of said corporation, and that he is authorized to
obligate the corporation in such matters pursuant to the articles
of incorporation, by-laws and duly delegated powers of the
corporation in accordance with his title.

Linda R. Hackley
Notary Public



FRONTIER CHEMICAL WASTE PROCESS, INC.

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.

GENERAL MOTORS CORPORATION

By: Don A. Schiemann

Don A. Schiemann
(Type Name of Signer)

Title: Attorney

Date: February 4, 1994

STATE OF MICHIGAN)
: SS
COUNTY OF WAYNE)

On this 4th day of February, 1994, before me personally came Don A. Schiemann, to me known and known to me to be the same person described herein, who, being duly sworn, did depose and say that he resides in the State of Michigan and is on the Legal Staff of General Motors Corporation who executed the foregoing instrument and acknowledged that he has corporate authority to do so.

Janet Maxwell
Notary Public

JANET MAXWELL
Notary Public, Wayne County, Michigan
My Commission Expires April 1, 1995

CONSENT BY RESPONDENT COMPANIES

Respondent Companies hereby consent to the issuing and entering of this Order, waive Respondent Companies' rights to a hearing herein as provided by law, and agree to be bound by this Order.

RESPONDENT COMPANY
GTE OPERATIONS SUPPORT INCORPORATED

By: _____

Vincent Gallogly

(TYPE NAME OF SIGNER)

Title: Counsel

Date: February 15, 1994

STATE OF)
CONNECTICUT)
COUNTY OF)
FAIRFIELD)

s.s.: STAMFORD, February 15, 1994

On this 15th day of February, 1994,
before me personally came Vincent Gallogly, to me
known, who being duly sworn, did depose and say that he resides in
Westport, Fairfield County, Connecticut; that he is the
Counsel of
GTE OPERATIONS SUPPORT INCORPORATED, the corporation described in and
which executed the foregoing instrument; that he signed his name
hereto on behalf of said corporation, and that he is authorized to
obligate the corporation in such matters pursuant to the articles
of incorporation, by-laws and duly delegated powers of the
corporation in accordance with his title.

Notary Public

DAVID F. DAUBENSPECK
NOTARY PUBLIC
MY COMMISSION EXPIRES MAR. 31 1998

CONSENT BY RESPONDENT COMPANIES

Respondent Companies hereby consent to the issuing and entering of this Order, waive Respondent Companies' rights to a hearing herein as provided by law, and agree to be bound by this Order.

RESPONDENT COMPANY
IBM CORPORATION

By: *J. Guerin*

James K. Guerin
(TYPE NAME OF SIGNER)

Title: Senior Counsel

Date: February 18, 1994

STATE OF New York)
COUNTY OF Westchester) S.S.:

On this 18th day of February, 1994,
before me personally came James K. Guerin, to me
known, who being duly sworn, did depose and say that he resides in
Darien, CT; that he is the
Senior Counsel of
IBM Corporation, the corporation described in and
which executed the foregoing instrument; that he signed his name
hereto on behalf of said corporation, and that he is authorized to
obligate the corporation in such matters pursuant to the articles
of incorporation, by-laws and duly delegated powers of the
corporation in accordance with his title.

MAURIZIO D. MILAZZO
Notary Public, State of New York
No. 4716563
Qualified in Westchester County
Commission Expires March 30, 1996

Maurizio D. Milazzo
Notary Public

CONSENT BY RESPONDENT COMPANIES

Respondent Companies hereby consent to the issuing and entering of this Order, waive Respondent Companies' rights to a hearing herein as provided by law, and agree to be bound by this Order.

RESPONDENT COMPANY
OLIN CORPORATION

By: ^{MDR} Charles W. Newton, III
Charles W. Newton, III
(TYPE NAME OF SIGNER)

Title: Vice President Environment, Health & Toxicology

Date: February 14, 1994

STATE OF Connecticut
COUNTY OF Fairfield S.S.:

On this 14th day of February, 1994,
before me personally came Charles W. Newton, III, to me
known, who being duly sworn, did depose and say that he resides in
Stamford, Connecticut; that he is the
Vice President Environment, Health & Toxicology of
Olin Corporation, the corporation described in and
which executed the foregoing instrument; that he signed his name
hereto on behalf of said corporation, and that he is authorized to
obligate the corporation in such matters pursuant to the articles
of incorporation, by-laws and duly delegated powers of the
corporation in accordance with his title.

Susan Ronson
Notary Public

SUSAN RONSON
NOTARY PUBLIC
MY COMMISSION EXPIRES MARCH 31, 1994

CONSENT BY RESPONDENT COMPANIES

Respondent Companies hereby consent to the issuing and entering of this Order, waive Respondent Companies' rights to a hearing herein as provided by law, and agree to be bound by this Order.

RESPONDENT COMPANY
ROCHESTER GAS & ELECTRIC CORPORATION

By: Bruce A. Snow

BRUCE A. SNOW
(TYPE NAME OF SIGNER)

Title: DIVISION MANAGER AND CHIEF ENGINEER

Date: 2-18-94

STATE OF NEW YORK
COUNTY OF MONROE) S.S.:

On this 18th day of FEBRUARY, 1994,
before me personally came BRUCE A. SNOW, to me
known, who being duly sworn, did depose and say that he resides in
TOWN OF WEBSTER, MONROE COUNTY, NEW YORK; that he is the
DIVISION MANAGER AND CHIEF ENGINEER of
ROCHESTER GAS AND ELECTRIC CORP., the corporation described in and
which executed the foregoing instrument; that he signed his name
hereto on behalf of said corporation, and that he is authorized to
obligate the corporation in such matters pursuant to the articles
of incorporation, by-laws and duly delegated powers of the
corporation in accordance with his title.

James Grim
Notary Public
Notary Public, State of New York
No. 4870178
Qualified in Monroe County
Commission Expires Sept. 2, 1994

RECEIVED

FEB 1 1994

CONSENT BY RESPONDENT COMPANIES

PAMELA I. S. MISSAL

Respondent Companies hereby consent to the issuing and entering of this Order, waive Respondent Companies' rights to a hearing herein as provided by law, and agree to be bound by this Order.

RESPONDENT COMPANY

Uniroyal Chemical Company, Inc. in its own right and on behalf of its subsidiaries and affiliated companies.

By:

Robert J. Mazaika

(TYPE NAME OF SIGNER)

Title: President

Date: February 11, 1994

STATE OF Connecticut

COUNTY OF New Haven

s.s.:

Middlebury

On this 11th day of February, 1994, before me personally came Robert J. Mazaika, to me known, who being duly sworn, did depose and say that he resides in Oxford, Connecticut; that he is the President of Uniroyal Chemical Company, Inc., the corporation described in and which executed the foregoing instrument; that he signed his name hereto on behalf of said corporation, and that he is authorized to obligate the corporation in such matters pursuant to the articles of incorporation, by-laws and duly delegated powers of the corporation in accordance with his title.

Marion L. Murphy
Notary Public

CONSENT BY RESPONDENT COMPANIES

Respondent Companies hereby consent to the issuing and entering of this Order, waive Respondent Companies' rights to a hearing herein as provided by law, and agree to be bound by this Order.

RESPONDENT COMPANY
CWM CHEMICAL SERVICES, INC.

By:

Stephen T. Joyce
Stephen T. Joyce

(TYPE NAME OF SIGNER)

Title: Group Remedial Projects Manager

Date: February 25, 1994

STATE OF MASSACHUSETTS

) S.S.:

COUNTY OF MIDDLESEX

On this 25th day of FEBRUARY, 1994,
before me personally came STEPHEN T. JOYCE, to me
known, who being duly sworn, did depose and say that he resides in
BEVERLY, MA; that he is the
GROUP REMEDIAL PROJECTS MANAGER of
CWM CHEMICAL SERVICES, INC. the corporation described in and
which executed the foregoing instrument; that he signed his name
hereto on behalf of said corporation, and that he is authorized to
obligate the corporation in such matters pursuant to the articles
of incorporation, by-laws and duly delegated powers of the
corporation in accordance with his title.

Jan H. Samuels
Notary Public