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Project Site numbers will be preceded by the following:

Municipal Brownfields - B

Superfund - HW

Spills - SP

ERP - E

VCP - V

BCP - C



120 LONG RIDGE ROAD, P.O. BOX 1355, STAMFORD CT 06904-1355

VIA FEDERAL EXPRESS

March 12, 1985

Albert M. Bronson, Esq.  
State of New York  
Department of Law  
State Office Building  
65 Court Street  
Buffalo, New York 14202

Gordon J. Johnson, Esq.  
State of New York  
Department of Law  
Environmental Protection Bureau  
Two World Trade Center  
47th Floor, Room 4772  
New York, New York 10047

Re: Pine & Tuscarora, Niagara Falls, New York

Dear Albert and Gordon:

Enclosed herein is the final draft of the Consent Judgment for the above-referenced matter for your final review.

Please call Rick Kennedy or me if you have any questions.

Very truly yours,

A handwritten signature in cursive script that reads "George H. Pain".

George H. Pain  
Counsel

GHP:mvc

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF NEW YORK

THE STATE OF NEW YORK,

Plaintiff,

v.

OLIN CORPORATION,  
ARTHUR BATROUNY,  
BEVERLY JANE BATROUNY,  
JOHN ZITO, and  
ELIZABETH ZITO,

Defendants.

Civil Action No. 83-1400

STIPULATION AND CONSENT JUDGMENT  
APPROVING SETTLEMENT AGREEMENT

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF NEW YORK

THE STATE OF NEW YORK,

Plaintiff,

v.

OLIN CORPORATION,  
ARTHUR BATROUNY,  
BEVERLY JANE BATROUNY,  
JOHN ZITO, and  
ELIZABETH ZITO,

Defendants.

Civil Action No. 83-1400

STIPULATION AND CONSENT JUDGMENT  
APPROVING SETTLEMENT AGREEMENT

The undersigned, having agreed and stipulated that a consent judgment can be entered in this action incorporating a settlement agreement containing the following terms and conditions, and the Court having reviewed such terms and conditions, and having determined that they are reasonable and adequate to resolve the issues raised in this action, and constitute appropriate programs, using requisite remedial technology, to effectively protect the public health and environment consistent with the goals of the field investigations and remedial programs, and the Court being fully advised in the premises and having subject matter jurisdiction herein pursuant to 28 U.S.C. §1331, and 28 U.S.C. §1345,

NOW, THEREFORE, IT IS ORDERED AND ADJUDGED AS FOLLOWS:

## INTRODUCTION

1. (a) The parties to this Agreement are:

(i) THE STATE OF NEW YORK, on behalf of the People of New York (hereinafter the "State");

(ii) OLIN CORPORATION, a corporation organized and existing under the laws of the State of Virginia (hereinafter "Olin");

(iii) JOHN and ELIZABETH ZITO, both residents of Niagara County, New York (hereinafter "Zito"); and

(iv) ARTHUR and BEVERLY JANE BATROUNY, both residents of Niagara County, New York (hereinafter "Batrouny").

(b) This Agreement pertains to the matter entitled The State of New York v. Olin Corp., Arthur Batrouny, et al., Civil Action No. CIV 83-1400 (hereinafter the a "Action") filed in the United States District Court, Western District of New York (hereinafter the "Court").

2. The Gibson site (hereinafter the "Site"), shown in Attachment 1, consists of two contiguous parcels of land owned respectively by Zito and Batrouny, including all rights of way within the boundaries of said two parcels. These two parcels consist of approximately four acres of land in Niagara County, bordered on the south by Pine Avenue, on the west by Tuscarora Road, and on the north and east by Cayuga Creek.

3. (a) In order to fulfill the purposes of this Agreement, Zito

and Batrouny shall cooperate fully with the State and Olin in allowing access to the Site and all structures and facilities erected thereon, as necessary, and in allowing and permitting the use and/or installation of appropriate sampling and testing devices, and excavations and borings on the Site, and in allowing necessary remedial actions, appropriate and necessary to fulfill the field investigations and remedial programs hereinafter described. Zito and Batrouny each shall execute and deliver to Olin, on a timely basis, such easements, rights of way, rights of entry, or other authorizations and approvals necessary to carry out any of Olin's obligations pursuant to this Agreement.

(b) Olin and the State will give Zito and Batrouny reasonable notice of all significant investigation and remedial activities to be conducted on the Site.

(c) Olin and the State will, to the maximum extent practicable, minimize interference with Zito's and Batrouny's use and enjoyment of the Site caused by actions called for by this Agreement and associated plans.

4. (a) The field investigations and remedial programs described in this Agreement have been or shall be designed to provide for, and shall have as goals, (i) the generation and analysis of data necessary to determine adequately the extent of chemical contamination of the Site and its environs which may have resulted from materials deposited or caused to be deposited on-Site by Olin or which may have migrated from the Site

following their deposit by Olin; and (ii) the design and implementation, in accordance with the schedule set forth herein, of remedial plans, based on the information generated through the field investigations, which to the extent achievable through the use of "requisite remedial technology" (as that phrase is defined below) will result in the removal from the Site and its environs or the isolation from people and the environment of contaminants which were deposited or caused to be deposited on-Site by Olin or of such contaminants which have migrated from the Site so as to effectively protect the public health and environment.

(b) Olin shall utilize requisite remedial technology to achieve the purposes set forth in this Agreement. As used in this Agreement, "requisite remedial technology" refers to known engineering and construction practices, used or acceptable for use in the cleanup or containment of chemical contamination applicable to materials and hydrogeological conditions found at the Site, which will effectively protect the public health and environment.

(c) Olin shall be required to apply the requisite remedial technology approved by the State in accordance with the terms and conditions of this Agreement, unless, upon evidence, the Court determines that application of such technology is unnecessary to satisfy the goals described in subparagraph (a).

(d) Any judicial review concerning the application of requisite remedial technology pursuant to this Agreement shall be based on the standards and considerations described in this paragraph.

(e) For purposes of this Agreement, "chemical contamination" or "contaminants" means the presence of any of the following "listed chemicals" at or near the Site: benzene, mono-through hexachlorobenzene, pentachloronitrobenzene, tetrachloroethylene, all isomers of hexachlorocyclohexane, heptachlorocyclohexane, trichloroanisole, phenylmethyl ether (anisole), formaldehyde, mercury, chlorinated biphenyls, phenol, and di- and trichlorophenols.

(f) The State, solely at its own option but without prejudice to a claim that costs incurred in the testing may be reimbursable pursuant to paragraph 12 below, may test for additional chemicals at the Site. If the State's analysis demonstrates that chemicals other than "listed chemicals" are present at the Site and such chemicals either (i) resulted from manufacturing operations at Olin's Niagara Falls plant, or (ii) are intermixed with contaminants deposited or caused to be deposited on the Site by Olin, such chemicals shall be deemed "listed chemicals" for the purpose of subparagraph 4(e) and Appendix 6 of Plan A, which plan is described in paragraph 5, below. The State shall notify Olin of (i) the chemical(s) for which it intends to conduct additional tests, and (ii) the samples, as provided pursuant to Paragraph 7(d) of this Agreement, which it intends to so analyze, within thirty (30) days after receipt of the results of Olin's analysis of soil samples collected and analyzed pursuant to Plan A hereto, as provided for by Paragraph 5(c) of this Agreement and paragraphs I.C.3(d) and III.A of Plan A hereto. Upon such notification, the State shall retain a qualified laboratory to perform such analyses, which laboratory shall perform such analyses



without unnecessary delay. The State shall promptly report the results of said analyses to Olin, and shall, within 30 days of receipt of its laboratory analyses, designate those chemicals which its analyses demonstrates are present at the Site and either (i) resulted from manufacturing operations at Olin's Niagara Falls plant, or (ii) are intermixed with contaminants deposited or caused to be deposited on the Site by Olin. Upon the State's designation of such chemical(s), Olin shall amend Plan A (and, as appropriate, Plans B-F, which plans are described in paragraph 5, below) to determine the areal and vertical extent of such chemical contamination and the appropriate remedial measures consistent with the goals set forth at paragraph 4(a) above. The State and Olin shall then agree upon new reasonable dates for the completion of the activities described in Paragraph 5, below. Olin shall not be required to begin any remedial work before the State completes its designation of other "listed chemicals" under this provision or notifies Olin that it will not designate any other chemical as "listed chemicals" under this provision.

(g) For purposes of this Agreement, the following chemicals shall be deemed to have been deposited or caused to be deposited on-site by Olin if such chemicals are found to be present at the site:  
hexachlorobenzene and all isomers of hexachlorocyclohexane.

(h) The presence of any or all of the listed chemicals at the Site does not constitute an admission or evidence that Olin generated or disposed of such chemicals. The State is not precluded from claiming that chemicals other than those specifically named in paragraph (e) were

deposited at the Site by Olin or were reaction products of deposited chemicals.

FIELD INVESTIGATION AND REMEDIAL PROGRAM

5. Olin shall conduct a field investigation and undertake remedial work in accordance with the following provisions:

(a) Olin shall commence an initial field investigation, in accordance with "Plan A" attached hereto, according to the Schedule set out below. Implementation of Plan A shall be accomplished by appropriate personnel, approved by the State, with expertise in hydrogeology and environmental engineering. Disapproval of personnel selected by Olin shall be upon a showing of good cause by the State within 15 days after the State is given written notice by Olin of the personnel selected.

(b) Olin shall select a consultant, and the consultant shall submit to the State for approval a health and safety plan for the implementation of Plan A by May 1, 1985. The State will respond to the health and safety plan as provided in paragraph 8. The field investigation program shall commence by May 15, 1985, weather permitting, but in no event later than June <sup>27</sup> 15, 1985. The field investigation program, including the metal detection program, soil boring program, well installation, collection of groundwater samples, determination of groundwater levels, creek levels, etc., shall be conducted in accordance with the provisions of Plan A. The metal detection program, soil boring program, and well installation shall be concluded by September 1, 1985.

The field investigation program shall be concluded as soon as practicable, but in no event later than June 1, 1986.

(c) Preliminary data from the field investigation and sampling program described in the foregoing paragraph shall be submitted to the State as they are obtained by Olin, its contractors, or consultants in accordance with a schedule to be developed by the parties. A preliminary feasibility study of remedial options ("preliminary study") shall be submitted to the State as soon as practicable, but in no event later than December 1, 1985, unless said date is changed pursuant to paragraph 4(f) above.

(d) Olin shall submit a final report and feasibility study of remedial options ("final report") to the State as soon as practicable after data are collected which are sufficient to comprehensively evaluate the possible remedial alternatives and recommend a remediation plan alternative adequate to isolate or remove the on-site chemical contamination as provided by the goals set forth at paragraph 4(a) above, but in no event later than August 1, 1986, unless that date is changed pursuant to paragraph 4(f). Unless the final study is submitted by March 1, 1986, Olin shall submit, by March 1, 1986, an interim report identifying the additional data necessary to prepare the final report and stating the reasons the additional data are needed. The interim report shall update the evaluation of remedial options identified in the preliminary study if additional data collected since December 1, 1985, so warrant. The final report shall include all available data and results obtained during the field investigation and, except as provided by

subparagraph (e), below, shall describe possible remedial alternatives and shall recommend a remediation plan alternative adequate to isolate or remove the on site chemical contamination as provided by the goals as set forth at paragraph 4(a) above. The final report shall specify the reasons for which the alternative methods of remediation identified in the final study have been rejected. Such final report or any subsequent versions of it, shall be modified if data collected after its preparation so warrant.

(e) If the feasibility study proposes containment of some or all of the contaminants on the Site as the recommended remedial plan, then the requirements of subparagraph 5(f) do not apply and Olin shall design and submit to the State a field investigation ("Plan B"), consistent with the findings of Plan A, designed to determine the extent of and potential for off-Site migration of contaminants which were deposited or caused to be deposited on-Site by Olin, unless Olin can demonstrate by clear and convincing evidence that such off-Site investigation is unnecessary to the design of a remedial plan consistent with the goals set forth at paragraph 4(a). The information gathered in the course of implementation of Plan A and Plan B shall then be used to design and submit to the State the required remediation plan for the Site ("Plan C"). Plan C shall include, at a minimum, the following elements:

- (i) quarterly groundwater monitoring for 30 years;
- (ii) sample collection and analysis of creek water during high and low water periods annually, and of creek sediments annually for 30 years;

(iii) establishment of an upward hydraulic gradient within the containment area, unless Olin demonstrates by clear and convincing evidence that the establishment of the same is unnecessary or inappropriate to the accomplishment of the goals set forth at paragraph 4(a) herein;

(iv) acquisition by Olin of easements which would permit the required monitoring;

(v) provisions for protection of the Site from disturbance which might increase the threat of contamination migration, including regular inspection of the Site;

(vi) provisions for the design and implementation of a contingency plan in the event that migration of contaminants occurs despite the implementation of the containment remediation plan; such contingency plan shall be consistent with the goals set forth at paragraph 4(a);

(vii) containment or removal of contaminants deposited or caused to be deposited by Olin which have migrated off-Site consistent with the goals of paragraph 4(a) above;

(viii) fiscal arrangements, guarantees, or the provision of financial assurances sufficient to ensure that Olin possesses the financial ability to perform the containment remedial plan and monitoring.

In the event that after seven years following the delivery of a Release (as described in paragraph 14(a) below) Olin demonstrates by clear and convincing evidence that conditions at the Site are such that the stated frequency or duration of the requirements set forth in the above provisions (i), (ii), or (v) are no longer necessary to a determination of whether the remediation is effective, Olin may reduce the frequency and/or duration of such monitoring or inspections. In addition, in the event that after seven years following delivery of a Release (as described in Paragraph 14(a) below), Olin is able to demonstrate that the above provision (viii) is no longer necessary to ensure performance, Olin may alter the fiscal arrangements appropriately.

(f) If the feasibility study recommends removal of contaminants from the Site, then the requirements of Paragraph 5(e) do not apply and Olin shall design and submit to the State a remedial plan consistent with that recommendation ("Plan D"). Following completion of the remedial work called for by Plan D, Olin shall design and submit to the State a plan for additional field investigations ("Plan E"), consistent with the findings of Plan A, in order to determine the extent of off-Site migration, if any, of contaminants deposited or caused to be deposited by Olin and the effectiveness of the remedial work performed. Plan E may be limited to a determination of the effectiveness of the remedial work performed if Olin can demonstrate by clear and convincing evidence that off-Site investigation is unnecessary to remediation consistent with the goals set forth at paragraph 4(a).

(g) If the information gathered as a result of Plan E reveals off-Site migration of contaminants which were deposited or caused to be deposited on-Site by Olin, Olin shall design and submit to the State a plan ("Plan F"), which is consistent with the goals of Paragraph 4 (a) above.

(h) The Attorney General, on behalf of the State of New York, shall approve or disapprove Plans B, C, D, E, and/or F pursuant to the approval mechanism set forth in Paragraph 8, and Olin shall implement the approved Plans B, C, D, E, and/or F within 60 days after approval, weather permitting.

(i) During the field investigations and remedial programs, Olin shall also implement environmental health and safety plans which shall contain, inter alia, procedures to prevent unauthorized access to the Site and to ensure the safety of persons on and/or in the vicinity of the Site during the field investigations and remedial work.

6. All proposed plans submitted by Olin shall include specific procedures for the cleansing of equipment and the disposal of contaminated materials. Said procedures shall comply with all applicable federal and state laws.

ENTRY AND INSPECTION ★ *State inspection authority*

7. (a) During the implementation of the field investigations and remedial programs, the State shall have authority to enter the Site or

its vicinity controlled (by easement or otherwise) by Olin during regular business hours for the purposes of inspecting and copying records, operating logs, contracts, or other documents or property required to assess Olin's compliance with this Agreement. Olin shall also allow the State to inspect all other property related to the implementation of this Agreement and to inspect and copy all records, operating logs, contracts, or other documents (so long as such property and documents would be subject to inspection and discovery pursuant to Rule 34 of the Federal Rules of Civil Procedure; provided, however, no party shall have been deemed to waive any privilege available under New York State and federal law) which the State requires to assess Olin's compliance with this Agreement. Olin shall honor all reasonable and timely requests for such entry or inspection by the State conditioned only upon presentation of proper credentials and prior written notification to Olin or its agent (as designated pursuant to Paragraph 9) of the purpose of said request.

(b) Olin shall identify to the state all laboratories, whether or not owned by Olin, participating in the performance of the requirements of this Agreement. To the extent provided in and in accordance with Paragraph 7(a), the State may enter and inspect any such laboratory owned or operated by Olin or any subsidiary of Olin and inspect and copy all records located therein required to assess Olin's compliance with this Agreement; in addition, Olin shall consent to the State obtaining such access to laboratories owned by third parties.

(c) The State shall have the right to designate an agent or agents having appropriate qualifications and education in environmental



engineering, chemistry, or hydrogeology to participate in and assist, on and off the Site, in the field investigations and remedial programs. These agents and Olin or its agents or consultants shall confer on a timely basis and cooperate in the accomplishment of the programs' goals and purposes. The State's agents shall be permitted access to the Site and its vicinity controlled by Olin whenever any aspect of a program is being performed or studied.

(d) Where possible, any samples collected by Olin shall be sufficiently large in quantity to allow for the provision of split samples to the State. Olin shall advise the State of any sample collection at least 48 hours before samples are collected except when such notice is not possible; if such notice cannot be given, notice of sample collection shall be given as soon as possible. Soil borings shall be archived as provided in Plan A and will be split with the State as soon as is practicable after Olin selects samples for analysis as provided in Plan A.

#### SUBMISSION OF PLANS

8. The parties shall proceed as follows whenever this Agreement requires Olin to submit a proposed plan for the State's approval:

(a) The State, through the Attorney General, shall determine whether each proposed plan is in accordance with the applicable purposes and goals of this Agreement.

(b) Throughout the review process, the parties shall attempt in

good faith to resolve any differences regarding an appropriate and acceptable plan.

(c) After receiving a proposed plan, the State shall promptly respond to said proposal. If the proposal is complete and acceptable, the State shall serve written notice of approval to Olin within 30 days after receipt of the proposal. The plan shall become effective on the date the acceptance is served upon Olin.

(d) If the proposal is not complete or acceptable, the State shall serve a written notification of disapproval within 30 days after receipt of the proposal which shall include its particular objections and may include suggested modifications. If the parties cannot agree upon a proposed plan within 30 days of the notice of disapproval of a proposed plan, the State, through the Attorney General, shall present Olin with a plan which shall be implemented by Olin unless Olin moves the court within 15 days after receipt of the State's plan for a determination that the implementation of the State's plan is unreasonable in light of the goals and purposes of the Agreement. On the basis of the Court's determination, the Court may issue any order appropriate to effectuate the purposes and goals of this Agreement.

(e) In each instance in which a plan as proposed or modified becomes effective, the State shall attach it to this Agreement as an appendix, serve copies of the appended document on Olin and file it with the Court in accordance with all other filing requirements set forth herein.

(f) Whenever Olin is required to make significant submissions

to the State, Olin shall make a simultaneous and identical submission to Zito and Batrouny or their legal representatives. Zito and Batrouny shall promptly inform the State of their comments, concerns or objections concerning the proposed plan. The State shall take Zito's and Batrouny's comments, concerns and objections into account in determining whether the proposal is complete and acceptable.

NOTIFICATION

9. Any documents which Olin, Zito, or Batrouny are required to send to the State, pursuant to this Agreement, shall be sent to:

- (a) GLEN BAILEY  
New York State Department of Environmental Conservation  
600 Delaware Avenue  
Buffalo, New York 14202
- (b) GORDON J. JOHNSON  
Assistant Attorney General  
Environmental Protection Bureau  
New York State Department of Law  
Two World Trade Center  
New York, New York 10047
- (c) GREGORY SHKUDA  
Department of Law  
Two World Trade Center  
New York, New York 10047

Any documents which the State, Zito, or Batrouny are required to send to Olin pursuant to this Agreement shall be sent to:

- (d) GEORGE H. PAIN  
Counsel  
Olin Corporation (3-J)  
120 Long Ridge Road  
Stamford, CT 06904

(e) VERRILL M. NORWOOD  
Vice President, Environmental Affairs  
Olin Corporation  
P.O. Box 248  
Lower River Road  
Charleston, TN 37310

(f) DANIEL M. DARRAGH  
RICK W. KENNEDY  
Hodgson, Russ, Andrews, Woods & Goodyear  
1800 One M&T Plaza  
Buffalo, NY 14203

Any documents which Olin or the State are required to send to  
Batrouny and Zito, pursuant to this Agreement, shall be sent to:

(g) JOEL E. SCHWEITZER  
(for Batrouny)  
Gellman, Brydges, Schroff & Schweitzer  
M.P.O. Box 279  
Niagara Falls, NY 14302

(h) STANLEY GROSSMAN  
(for Zito)  
Grossman, Levine & Civiletto  
331 Buffalo Avenue  
Niagara Falls, NY 14302

Any of the persons receiving documents may designate in writing  
a substitute to whom documents will be sent instead.

DELAY OR PREVENTION OF PERFORMANCE

10. (a) Olin and the State shall use their best efforts to minimize  
or avoid any delay or prevention of the performance of their obligations  
pursuant to this Agreement. If any event occurs which delays or  
prevents, or leads Olin to anticipate delays or prevention of, Olin's  
compliance with any appropriate term or condition of this Agreement, Olin

shall promptly so notify the State. As soon thereafter as possible, but in no event later than 20 days after learning of such delay or prevention, Olin shall submit a written statement to the State which shall fully describe the anticipated cause of such delay or prevention, the anticipated length of the delay, the actions Olin has taken, and proposes to take, if any, to minimize the delay and to mitigate the impact of such event, and the schedules of such actions.

(b) To the extent that events which delay or prevent Olin's compliance with any appropriate term or condition of this Agreement have been caused by "force majeure," e.g., an act of God which makes it impossible to perform, and Olin has complied with the notification provision provided in subparagraph (a), the time for such performance hereunder shall be extended for the time period of such delay and if such circumstances prevent such performance, such performance shall be excused unless and until circumstances so change that the performance is no longer prevented; provided, however, that any excused delay or prevention of any intermediate requirement shall not result in the excused delay or prevention of any subsequent requirement if the subsequent step can reasonably be implemented without completion of the prior step.

(c) Reasonably foreseeable increases in costs or expenses associated with the implementation of actions required by this Agreement shall not, in any event, be a basis for extensions of time, excuses of performance, or defenses to a petition for sanctions. Any excused delay or prevention of performance predicated upon unforeseeable increases in costs or expenses shall not result in the excused delay or prevention of

performance of any other requirement which reasonably can be implemented notwithstanding such unforeseeable increases or which reasonably can be modified to take into account such unforeseeable increases, consistent with the goals of Paragraph 4(a). If the performance of an action required by this Agreement is excused on the basis of unforeseeable increases in costs or expenses, such excusal shall not constitute a defense to any claim made or action brought by the State for injunctive relief or for reimbursement of costs it may have incurred performing any such excused action. Increases in costs or expenses resulting from (a) the designation of chemicals, other than those named at paragraph 4(e) of this Agreement, as "listed chemicals" pursuant to paragraph 4(f) of this Agreement, or (b) implementation and performance of a health and safety plan, in connection with each field investigation and remediation plan required pursuant to paragraph 5 of this Agreement, which health and safety plan is necessary to protect the public and the environment from chemical contamination that may otherwise occur in the course of performing any field investigation remediation, are reasonably foreseeable.

(d) If the State and Olin agree that the delay or prevention is excusable under the criteria set forth in subparagraph (b) and agree concerning the length of such delay or prevention, Olin and the State shall file with the Court a stipulation and proposed order to such effect. If, however, within 10 days after Olin's written statement to the State, the State and Olin do not so stipulate or the State advises Olin in writing that it does not consider the aforementioned

circumstances to have been satisfied or does not agree with the length of the delay, the State may immediately advise the Court of any delay or prevention, or anticipated delay or prevention, of Olin's performance of its obligations pursuant to this Agreement. Thereafter, either the State or Olin may submit the matter to the Court for resolution.

#### PERMITS AND EASEMENTS

11. (a) Olin shall use its best efforts, and the State shall cooperate consistent with its legal authority, to obtain on a timely basis, such permits, easements, rights of way, rights of entry, approvals, or other authorizations from any federal, State, or local government entity, or any corporation, partnership, association, or private person which are necessary to carry out any of Olin's obligations pursuant to this Agreement. Olin shall promptly notify the State in the event of Olin's inability to obtain such authorizations on a timely basis or its inability to obtain authorizations which do not contain use restrictions which prohibit or interfere with activities required pursuant to this Agreement, or of Olin's receipt of governmental authorizations containing terms or conditions not specifically required by federal or state statutes or regulations.

(b) In the event Olin is unable to obtain the authorizations required by the preceding paragraph, the State shall, consistent with its legal authority, assist in obtaining, as appropriate, all such authorizations which Olin was unable to obtain or which it could not

obtain without terms and conditions which effectively prevent implementation of this Agreement. If, despite Olin's best efforts, Olin does not obtain the aforementioned authorizations on a timely basis or if Olin obtains authorizations containing terms and conditions which effectively prevent timely compliance with the terms and conditions of this Agreement, the time for performance of any obligations pursuant to this Agreement which are necessarily dependent upon such authorizations shall be extended as appropriate. If, despite Olin's best efforts, such authorizations or access cannot be obtained despite an enlargement of time, this Agreement may be modified by excusing performance of any obligations pursuant to this Agreement which are necessarily dependent upon such authorizations.

(c) In no event shall the State be required to exercise its powers in order to obtain the easements described by paragraph 5(e)(iv), and Olin's failure to obtain such easements shall not constitute a basis for excusing performance.

#### REIMBURSEMENT

12. The term "reimbursable costs" as used in this Agreement, shall mean those costs incurred by the State which the State is legally entitled to recover under the Comprehensive Environmental Response, Compensation and Liability Act, the New York State Environmental Conservation Law and the common law of New York and which are (i) reasonable and (ii) not duplicative of costs previously incurred by the State and reimbursed by Olin.



(a) Payment of past costs.

In order to expedite the execution of this Agreement, and without admitting that any of the costs incurred by the State before the date of execution of this Agreement are reimbursable costs, Olin shall pay to the Hazardous Waste Remedial Fund (established by the New York State Finance Law section 97-b) the sum of \$26,371.31 within sixty days of the effective date of this Agreement. Upon receipt of said sum, the State shall execute and deliver a release of liability to Olin for all claims resulting from or relating to all costs related to the Site incurred by the State or its agent prior to the date of execution of this Agreement.

(b) Periodic payment of reimbursable costs.

Commencing six (6) months from the date this Agreement is executed and every six (6) months thereafter, the State shall submit to Olin a detailed statement of the reimbursable costs incurred during the preceding six months. The Statement shall be sufficiently detailed and documented to allow Olin to assess whether the costs claimed by the State to be reimbursable costs satisfy the criteria set forth in subparagraph (a). The statement shall be submitted to Olin as soon as is practicable after the end of the six month period which it applies. Within sixty (60) days of receipt of the statement, Olin will either pay the sum set forth in the statement or notify the State in writing of its objection(s) to it. If the objection(s) cannot be resolved by the parties within thirty (30) days, the State may move the Court for a determination of the amount of reimbursable costs owed for the six month period in dispute.

FINANCIAL SECURITY

13. (a) If at any time prior to the completion of Plans A through F (i) the consolidated net worth of Olin declines by twenty-five percent (25%) or more in any one fiscal quarter, or (ii) over a period of three consecutive fiscal quarters the consolidated net worth of Olin declines by a total of twenty-five percent (25%) or more as compared with the consolidated net worth of Olin as of the beginning of the first of such quarters, or (iii) if the consolidated net worth of Olin declines by twenty-five percent (25%) or more in any one fiscal year, or (iv) if the consolidated net worth of Olin declines at any time to one hundred million dollars (\$100,000,000) or below, Olin shall immediately notify the State and shall promptly provide security in an amount equal to one hundred and twenty-five percent (125%) of the estimated cost to complete the implementation of the field investigation and remedial plans.

(b) Notwithstanding the foregoing, if because of other circumstances affecting the financial conditions of Olin, the State determines that other or additional financial security is necessary, the State may seek such relief from the Court which shall grant such relief if necessary to insure the availability of funds to complete the implementation of field investigations and remedial plans described in paragraph 5, above.

MISCELLANEOUS PROVISIONS

14. (a) Upon either (i) certification by the State that Olin has completed satisfactorily, in accordance with the goals of the Agreement stated in Paragraph 4(a), the remedial plans required by Paragraphs 5(f) and (g), or (ii) certification by the State that Olin has implemented satisfactorily, in accordance with the goals of Paragraph 4(a) herein, the remedial plans required by Paragraph 5(e) and is performing the monitoring required thereby, the State will execute and deliver a Release of Liability ("Release") to Olin for the following claims:

(i) All claims for civil penalties which were raised or could have been raised in this Action;

(ii) All other claims resulting from or relating to any migration, discharge or release of chemicals or other substances from the Site and all other claims which were raised in this Action, except claims resulting from, or relating to, any migration, discharge or release from the Site of chemicals or other substances occurring after the date of the Release.

Certification of remediation, or the reasons for denial of such certification, shall be delivered in writing by the State to Olin within thirty (30) days after Olin's written request for such certification. If the State denies certification and the parties cannot in good faith resolve the disagreement within thirty (30) days from date of denial, Olin may move the court for an Order directing that the State provide

such certification. Olin shall be entitled to said Order if Olin demonstrates that it has either: (i) completed satisfactorily, in accordance with the goals of the Agreement stated in Paragraph 4(a), the remedial plans required by Paragraphs 5(f) and (g); or (ii) implemented satisfactorily, in accordance with the goals of Paragraph 4(a), the remedial plans required by Paragraph 5(e) and is performing the monitoring required thereby.

(b) This Agreement does not affect any other claims or actions the State may have now or in the future against Olin or any other person.

(c) Nothing herein precludes the State from enforcing any legal or equitable rights or claims whatsoever which it may have now or in the future against anyone other than Olin.

(d) Nothing herein precludes the State from enforcing any legal or equitable rights or claims whatsoever which arise from activities of Olin after the date of the Release.

(e) Nothing herein discharges or releases Olin from any obligations at law or in equity which arise from pollution of soil, groundwater and drinking water which is unrelated to the chemical contamination which is the subject of this Agreement, unless said pollution is identified by Olin in its field investigation conducted pursuant to Paragraph 5 herein and addressed in Olin's remedial plan pursuant to said Paragraph.

(f) Until the Release is given, compliance with the provisions of this Agreement shall be considered a complete defense to the Action or

any other action the State may hereinafter bring against Olin which arises out of or relates to the migration, discharge, or release of contaminants from the Site which migration, discharge, or release is or reasonably should have been known by the State to be occurring or existing as of the date of the Agreement. Nothing herein shall limit the authority of the State or its agencies to order and require Olin to respond to emergencies which constitute an immediate and substantial endangerment to the health and safety of people or to the environment arising from the migration, discharge, or release from the Site of contaminants deposited or caused to be deposited by Olin on the Site.

(g) Nothing herein shall be deemed to waive or release any claims on behalf of Zito or Batrouny against Olin for damages to persons and property which may have resulted from contaminants deposited or caused to be deposited at the Site by Olin.

15. There shall be the following filing requirements:

(a) Within fifteen days after the effective date of this Agreement, the State may file a copy of this Agreement with the Niagara County Clerk to be recorded against the parcels of land which include some or all of the Site;

(b) Within fifteen days after the effective date of any plan approved pursuant to this Agreement, the State may similarly file a copy of the resulting appended version of this Agreement;

(c) Within fifteen days after obtaining an easement pursuant to paragraph 11 of this Agreement, Olin or the State shall file a copy of such easement for recording; and

(d) Within fifteen days of the certification by the State that Olin's remedial program has been successfully completed and that the goals of this Agreement have been met, the State and Olin shall, if notices have been filed pursuant to subparagraphs (a), (b), and (c), also file a notice with the Niagara County Clerk that this Agreement has been fully implemented, to be recorded against all parcels against which a notice has been recorded before.

(e) All property, including real property structures, constructions, and fixtures, owned by Site owner or owners ("Owners") at the site may be freely alienated; provided that forty-five (45) days prior to the date of such alienation the Owners give the State written notice of such alienation and a description of which of the Owners' obligations, if any, pursuant to the Agreement shall be performed by the person or entity to whom the property is alienated. The Owners may proceed with such alienation unless, within 30 days following such notification (i) the State or Olin file a petition with the Court objecting to such alienation on grounds that it would interfere with the performance or any party's obligations pursuant to this Agreement and (ii) in response to such petition, the Court orders such alienation not to proceed pending final determination of the issues raised by such petition or the Court determines that such alienation would interfere with a party's obligations pursuant to this Agreement. In the event of such alienation, all of the Owners' obligations pursuant to this Agreement shall continue to be met either by, at the Owners' option, the owners or the person or entity to whom the property is alienated. Any

deed, title or other instrument of conveyance of property at the Site shall contain notice of such provisions for continuing performance as herein above described and, additionally, shall clearly describe the use for which the property has been subjected.

(f) Owners and any subsequent owners shall comply with the provisions of §27-1317 of the New York State Environmental Conservation Law and nothing herein constitutes a waiver of the provision of said law.

16. The effective date of this Agreement shall be the date on which it is approved by the Court.

17. The provisions, terms and conditions herein shall bind Olin, its successors and assigns.

18. The terms and conditions of this Agreement shall include the terms and conditions of any plan appended to this Agreement pursuant to the provisions herein.

19. The Court shall retain jurisdiction to modify and enforce the terms and conditions of this Agreement and to resolve all disputes arising hereunder as may be necessary or appropriate for the construction or execution of this Agreement. In order to assist the Court in resolving technically complicated and complex issues which may hereinafter be presented to it in this Action, any party hereto may petition the Court, pursuant to Rule 53 of the Federal Rules of Civil