

V 00080-3

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

In the Matter of the
Implementation of a
Final Corrective Measure for
Star Expansion Company Site
Mountainville, New York by

ORDER

INDEX NUMBER: D3-0001-96-12

Star Newco, Inc.,

Respondent.

CONSIDERING,

1. The New York State Department of Environmental Conservation (the "Department") is responsible for enforcement of the Environmental Conservation Law of the State of New York ("ECL"). This Order is issued pursuant to the Department's authority under ECL 3-0301, Article 27, Titles 9 and 13 of the ECL, and Article 71, Title 27 of the ECL.

2. A. i. The property subject to this Order (the "Site") is approximately 37 acres of land and is part of a larger property (the "Facility"), which is currently owned and/or operated by Star Expansion Company ("STAR") and in Orange County, in a hamlet of the Town of Cornwall, New York known as Mountainville, New York. Exhibit "A" of this Order is a map of the Site which shows its general location and relationship to the Facility. The Site is described in Appendix "A" of Exhibit A.

ii. Star Newco, Inc. (the "Respondent") is a Delaware corporation which desires to purchase certain assets of STAR, including the Site and other operating assets. To effect such purchase of the Site, Star Newco, Inc. and STAR, inter alia, are parties to a certain Asset Purchase and Liability Assumption Agreement, dated August 14, 1996 and amended thereafter (the "Purchase Agreement"). Upon purchase of the Site, Respondent will continue operations to manufacture fasteners, an activity anticipated to employ over 100 people.

B. i. The Site has been the subject of environmental investigations, the most recent of which is documented in a Soil Sampling and Analysis Plan, dated October 19, 1996, and undertaken by Innovative Recycling Technologies, Inc. (the "SSAP") on behalf of Respondent. The results of investigation undertaken pursuant to the SSAP, contained in a report entitled Site Investigation and Remedial Action Plan (Interim) Star Expansion Company Mountainville, Orange County, New York and dated November 29, 1996, indicated that contaminants, including but not limited to certain volatile and semi-volatile organic compounds and certain hydrocarbons and metals, exist on the Site.

ii. Respondent and the Department recognize that additional investigation must be undertaken to characterize adequately the nature and extent of contamination of the Site's ground water.

iii. Accordingly, as part of this Order, Respondent shall implement a work plan that, inter alia, requires Respondent to undertake additional investigation of ground water contamination, to expand existing facilities at the Site which treat ground water contamination, and to remediate on-Site soils known to be contaminated. The nature and extent of contamination as demonstrated by the results of the above referenced investigation to date, and by the results of the testing to be undertaken under this Order, shall collectively constitute "Existing Contamination" for the purposes of this Order.

3. A. STAR is a New York corporation with offices in Mountainville, New York and has manufactured fasteners at the Facility for approximately 40 years. STAR is currently operating the Facility, which bears United States Environmental Protection Agency ("EPA") identification number NYD001223338, as a debtor-in-possession in a case under Chapter 11 of the United States Bankruptcy Code pending in the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court") and docketed in such Bankruptcy Court as Case No. 96-312PJW (the "Bankruptcy Case"). STAR is currently operating the Facility under a post-closure permit issued under the federal Resource Conservation and Recovery Act, as amended ("RCRA"), 42 U.S.C. §6901 et seq. and Article 27 of the ECL, and bearing permit number 3-3324-00024-0 (the "RCRA Permit"). The Department issued the RCRA Permit, effective August 19, 1994, and retains at all times jurisdiction to interpret and enforce the RCRA Permit.

B. In a letter dated November 22, 1996, from Gary D. Casper of the Department's Division of Solid & Hazardous Materials, Bureau of Hazardous Waste Facilities to Adrian M. Joyce of STAR, the Department referred to a solid waste management unit ("SWMU"), located across the New York State Thruway from the Site, which is considered by the Department, pursuant to the requirements for corrective action under the RCRA Permit, to be contiguous to the Site (the "Sludge Placement Area SWMU"). Pursuant to its November 22, 1996 letter to STAR, the Department has required STAR to submit to the Department information regarding the Sludge Placement Area SWMU and any other SWMUs or areas of concern known to exist by STAR at the Facility.

C. Respondent represents, and for the purposes of this Order, the Department relies on those representations, that Respondent's involvement with the Site and with the structures and activities on that Site is limited to the following: Respondent has not yet taken title to the Site, has not previously owned or operated the Site, is not a successor-in-interest to STAR, and is not otherwise responsible under law to remediate or investigate the Existing Contamination. Respondent further represents, and, for the purposes of this Order, the Department relies on Respondent's representation, that the Respondent does not now own or operate the Sludge Placement Area SWMU, has never owned or operated the Sludge Placement Area SWMU, is not purchasing, and does not intend to purchase, the Sludge Placement Area SWMU under either the

Purchase Agreement or any other written or oral agreement, has never transported any substance whatsoever to, or arranged for any disposal of any substance whatsoever at, the Sludge Placement Area SWMU, and has not, any time, held any legal, financial, or equitable interest whatsoever in either the Sludge Placement Area SWMU or any business thereon.

D. As an inducement to purchase the Site from STAR, Respondent has received or will receive from STAR pursuant to the Purchase Agreement a payment, authorized by the Bankruptcy Court, of Six Hundred Thousand Dollars (\$600,000.00) (the "Cleanup Trust Fund"), Five Hundred and Twenty-Five Thousand Dollars (\$525,000.00) of which is to be used to remediate or investigate the Site and has been or will be deposited in an account designated for this sole purpose. The remaining Seventy-Five Thousand Dollars will be used for financial assurance, as specified under Subparagraph II.E of this Order, after being placed in the Cleanup Trust Fund. Any additional expenses incurred during investigation or remediation of the Site will be born by the Respondent.

4. The Department has the power, inter alia, to provide for the prevention and abatement of all water, land, and air pollution. ECL 3-0301.1.i.

5. A. The Department determined that the Facility is a hazardous waste management facility, as that term is defined at Section 370.2(b)(84) of Title 6 of the Official Compilation of the Codes, Rules, and Regulations of the State of New York ("NYCRR"), based upon past management activities involving hazardous waste, and is subject to the RCRA Permit. Accordingly, the Site is subject to RCRA requirements .

B. Pursuant to ECL 71-2727.3, the Commissioner of the Department (the "Commissioner") may issue Orders requiring corrective action, including corrective action beyond the Facility boundary where necessary to protect human health and the environment, for all releases of hazardous waste or constituents from any solid waste management unit at any treatment, storage or disposal facility which is either permitted or seeking a permit under Title 7 or 9 of Article 27 of the ECL.

6. A. The Department alleges that the Site is an inactive hazardous waste disposal site, as that term is defined at ECL 27-1301.2.

B. ECL 27-1313.3 provides that the Department shall be responsible for inactive hazardous waste disposal site remedial programs, except as provided in Section 1389-b of the Public Health Law. ECL 27-1313.3.a provides that whenever the Commissioner of Environmental Conservation 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.

C. The regulations implementing ECL Article 27, Title 13 authorize at 6 NYCRR 375-1.2(e)(2)(ii) the proponents of any activity to demonstrate to the Department that such activity will not have the effect described in 6 NYCRR 375-1.2(e)(2)(i) by such demonstration as the Department may find acceptable.

7. A. Respondent selected an Interim Remedial Measure ("IRM") to investigate Existing Contamination of the Site's ground water and to remedy Existing Contamination of the Site's soils. The IRM includes, but is not limited to, further sampling and characterization of the Site's ground water, removal of sources of contamination of the Site's ground water through excavation of certain Site soils, expansion of pump and treat operations already underway at the Site, and groundwater monitoring to assess the performance of the IRM.

B. Respondent submitted to the Department a work plan for implementation of the IRM. The work plan was modified by the Department, prior to the effective date of this Order, to include required remedial work which had been omitted from the work plan. Such modifications were detailed in a written document (the "Work Plan Addendum") and attached to the work plan. The work plan and Work Plan Addendum, attached to this Order as Exhibit "B," shall constitute the Work Plan ("Work Plan") and are made an enforceable part of this Order.

8. A. Respondent consents to the issuance of this Order in order to ensure, and the Department hereby determines that this Order constitutes a demonstration, that the IRM's implementation under this Order will be in compliance with the ECL and will not:

i. prevent or interfere significantly with any proposed, ongoing or completed remedial program at the Site, nor

ii. expose the public health or the environment to a significantly increased threat of harm or damage.

B. Respondent also consents to the issuance of this Order in order to resolve its potential liability as an owner and/or operator under ECL Article 27, Titles 9 and 13 for remediating the Existing Contamination of soils at the Site and for investigating the quality of ground water at or from the Site. The Department finds that resolution of all issues relating to the remediation of Existing Contamination of soils and to the investigation of ground water quality, undertaken in accordance with the terms of this Order, is in the public interest.

C. Respondent, desirous of implementing a response program acceptable to the Department sufficient to allow Respondent to proceed with its plans to use the Site for the contemplated industrial use, consents to the terms and conditions of this Order.

9. The Department and Respondent agree that the goals of this Order are:

A. for Respondent to (i) implement the Work Plan and any Department-approved modification of same made in accordance with the terms of this Order, and (ii) operate and

maintain remedial measures installed or expanded at the Site by Respondent pursuant to the Work Plan; and

B. for the Department and the Trustee of New York State's natural resources (the "Trustee"), under the conditions set forth in this Order, to release Respondent, and its successors and assigns from, and to settle with Respondent, any and all claims, actions, suits, and proceedings by the Department or by the Trustee, which may arise under any applicable law for any liability or potential liability which Respondent may have to the State of New York for any Existing Contamination of soils at the Site and for any investigation of the quality of ground water at or from the Site.

10. Respondent agrees to be bound by the terms of this Order. Respondent consents to and agrees not to contest the authority or jurisdiction of the Department to enter into or enforce this Order, and agrees not to contest the validity of this Order or its terms.

UPON BEING DULY ADVISED, IT IS HEREBY ORDERED THAT:

Respondent shall incorporate, into a single consolidated document, all requirements detailed in the work plan and the Work Plan Addendum, collectively known as the Work Plan, and attached to this Order as Exhibit B. Respondent shall provide the consolidated document to the Department for its review, within seven (7) days of the effective date of this Order. The Department shall have ten (10) days from submission of the consolidated document to review such document. Prior to Respondent's implementation of any remedial work, the Department must approve the consolidated document. Once Department approval is granted, the consolidated document shall become the Work Plan, shall be attached to this Order as Exhibit B, replacing the work plan and the Work Plan Addendum, collectively known as the Work Plan, and shall be an enforceable part of this Order.

I. A. Upon the effective date of this Order, Respondent agrees to the Department's issuance of a new permit (the "New Permit"), to be issued pursuant to the Resource Conservation and Recovery Act, as amended ("RCRA"), 42 U.S.C. § 6901 et seq., and Article 27 of the ECL. Between the effective date of this Order and the issuance date of the New Permit, Respondent shall not be liable under the RCRA Permit, but shall instead be liable for corrective action at and from the Site as required by this Order and 6 NYCRR Part 373. Under the New Permit, Respondent, as owner and operator of the Site, shall be liable for corrective action pursuant to the requirements of 6 NYCRR Part 373, which the New Permit will embody in a manner consistent with this Order. In the event that this Order should terminate before the issuance of the New Permit, the issuance to Respondent by the Department of both a "no further action" letter on Site soils pursuant to Paragraph II.F.1 of this Order, and the issuance of a "no further action" letter on Site ground water pursuant to Paragraph II.H of this Order, Respondent will be liable to prepare and submit to the Department an application for a RCRA permit as required pursuant to 6 NYCRR Part 373 for corrective action and post closure care. The RCRA Permit issued to STAR will continue to address the Facility, and will be modified, pursuant to 6 NYCRR Part 621, to exclude the portion of the Facility which constitutes the Site, and associated responsibilities.

Authority for maintenance of the RCRA Permit continues to be based on the facility-wide corrective action requirements initiated upon issuance of the RCRA Permit and existing prior to transfer of the Site. The Facility, as defined at the effective date of the RCRA Permit, excluding the portion of the Facility which constitutes the Site, will remain subject to corrective action pursuant to the RCRA Permit, and STAR will remain liable for such corrective action and associated responsibilities.

B. The Department hereby acknowledges that the issuance to Respondent of the New Permit as owner and operator of the Site, does not and shall not subject Respondent to any liability whatsoever, under any applicable law, including but not limited to RCRA or the New Permit, for the Sludge Placement Area SWMU. Should any event, including but not limited to the dissolution of STAR, the discharge of STAR in or from the Bankruptcy, or the liquidation of STAR subject to or outside of the Bankruptcy Court's jurisdiction, occur the Department hereby acknowledges that Respondent shall not, by reason of such event, become subject in any way to liability for the Sludge Placement Area SWMU under any applicable law.

II. A. Respondent shall carry out the Work Plan in accordance with its terms. Respondent shall notify the Department of any significant difficulties that may be encountered in implementing (i) the Work Plan as attached hereto, or as may be modified pursuant to this Order, or (ii) any detailed document or specification prepared by or on behalf of Respondent pursuant to the Work Plan as attached hereto or as subsequently modified pursuant to this Order. Respondent shall not modify any obligation under this Order unless first approved by the Department.

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

C. In accordance with the schedule contained in the Work Plan, Respondent shall submit to the Department a final engineering report. The final engineering report shall not be submitted to the Department until Respondent has taken all actions set forth in the Work Plan regarding any investigation, delineation, removal, remediation, transport, or disposal of Existing Contamination of Site soils and shall include the following items:

1. a statement that all actions proposed in the Work Plan regarding Site soils have been taken pursuant to this Order;
2. a detailed post-remedial operation and maintenance plan ("O&M Plan");
3. "as-built" drawings showing all changes made during construction undertaken or completed pursuant to the Work Plan to the extent necessary; and

4. a certification that all activities were completed in full accordance with the Work Plan or any approved detail, document, or specification prepared by or on behalf of Respondent pursuant thereto, and this Order.

The O&M Plan, "as built" drawings, final engineering report, certification, and any other engineering documents, required pursuant to this Order or the New Permit, must be prepared, signed, and sealed by a professional engineer.

D. Respondent shall develop and implement the O&M Plan in accordance with the schedule and requirements of the New Permit, as modified by this Order, and submissions to the Department thereunder.

E. Within sixty (60) days of the effective date of this Order, Respondent shall withdraw Seventy-Five Thousand Dollars from the Cleanup Trust Fund, and post same as financial assurance in a form allowed by 6 NYCRR 373-2.8, for the purpose of financially assuring the Department of Respondent's ability to pay for the cost of five (5) years monitoring, which will commence following the completion of all construction at the Site undertaken pursuant to this Order. Respondent shall detail, and submit to the Department in writing, the expenses covered by the financial assurance, and demonstrate the sufficiency of a five year monitoring period. This sum may be adjusted annually, as necessary, to maintain compliance with 6 NYCRR 373-2.8.

F. Within one (1) year after the Department's acceptance of the final engineering report and certification, described in Subparagraph II.C of this Order, the Department shall evaluate the final engineering report and determine, and communicate in writing to Respondent, whether those provisions of the Work Plan regarding the investigation, delineation, excavation, removal, remediation, transport or disposal of Existing Contamination of Site soils have been fully implemented.

1. If the Department determines that the provisions of the Work Plan regarding the investigation, delineation, excavation, removal, remediation, transport or disposal of Existing Contamination of Site soils have been fully implemented, the Department shall provide Respondent, within one (1) month of such determination, a "no further action" letter derived from the model letter attached to this Order and incorporated into this Order as Exhibit "C."

2. If the Department determines that the provisions of the Work Plan regarding the investigation, delineation, excavation, removal, remediation, transport or disposal of Existing Contamination of Site soils have not been fully implemented, the Department shall provide Respondent, upon and as part of such determination, a written statement citing Respondent to those portions of the Work Plan concerning soil which have not been fully implemented in the manner prescribed by the Work Plan. Respondent shall not receive from the Department a "no further action" letter derived from the model letter attached to this Order and incorporated into this Order as Exhibit C unless and until Respondent performs to the

Department's satisfaction those portions of the Work Plan cited to Respondent by the Department.

G. Nothing contained in this Order shall prevent the Department from issuing to the Respondent an additional and separate order, apart from this Order, to remediate ground water at, or from, the Site which is found to be contaminated pursuant to the investigation of ground water quality to be performed in accordance with the Work Plan attached hereto or to any modification, made pursuant to this Order, of such Work Plan. Respondent shall not be required by the Department to remediate any groundwater contamination at the Site which is caused or threatened by the Sludge Placement Area SWMU provided:

1. Respondent demonstrate that such groundwater contamination is caused or threatened by the Sludge Placement Area SWMU; and
2. Respondent undertakes any emergency measures that are necessary to maintain sufficient protection of human health for the current use until such conditions are addressed; and
3. Respondent shall not use such groundwater underlying the Site without treatment rendering it safe for drinking water or industrial purposes, as appropriate; and
4. Respondent grants access to any duly designated officer or employee of the Department, or of any state agency, and any agent, consultant, contractor or other person so authorized in writing by the Commissioner, for the purpose of investigation and remediation, if necessary, of such contamination.

H. The Department and Respondent agree that the provisions of the Work Plan and the O&M Plan which require any sampling, analysis, pumping, treatment, recovery, monitoring, or discharge of ground or surface water at the site shall constitute all investigation, delineation, or monitoring of the quality of ground water at the Site which the Department shall require Respondent to undertake at this time, and that any further sampling, analysis, or monitoring of the Site's ground water necessary to characterize fully the extent of groundwater contamination at or from the Site, as required by the New Permit, and Article 27 of the ECL and the rules and regulations pursuant thereto, shall be performed by Respondent as necessary for the determination of a final ground water remedy by the Department for releases from the Site in accordance with the provisions of Subparagraph II.G of this Order. In the event that

1. For three (3) consecutive years, including four (4) consecutive quarters in year one and thereafter as necessary, Respondent obtains, while operating a ground water remedial system either installed or expanded by the Respondent pursuant to this Order, analytical results from sampling of Site ground water, at and from the Site, which demonstrate attainment of the applicable ground water standard; and
2. Respondent submits and Department approves a post-termination monitoring program, consisting of, inter alia, sampling protocol, to verify the continued compliance with

applicable ground water standards, then the Department shall approve shutdown of the ground water remedial system(s), subject to implementation of further ground water remedial measures in the event that contaminant concentrations detected during post-termination monitoring do not remain below applicable ground water standards. Monitoring shall continue, pursuant to the approved post-termination monitoring plan until Respondent successfully demonstrates to the Department, pursuant to such plan, that the remediation has been successful and that contaminant concentrations will remain below applicable ground water standards. At such time the Department shall issue to Respondent, in a form derived from the model which is Exhibit C-1 as attached to this Order, a "No Further Action" letter concerning any further investigation, sampling, analysis, treatment, or remediation of ground water at the Site, and Respondent shall be entitled to conclude all monitoring of the quality of Site ground water and to terminate any financial assurance posted pursuant to this Order.

I. The issuance of this Order, on the consent of Respondent, by the Commissioner or his designee shall be deemed, before the publication of any notice in the Environmental Notice Bulletin, a demonstration that the performance of the Work Plan as attached to the Order as Exhibit B will not have the effect described in 6 NYCRR 375-1.2(e)(2)(i).

III. Public Notice

A. The Department hereby represents and warrants to Respondent that, upon the issuance of this Order, and prior to the public notice period, the Department has not received, from any person, information concerning any action proposed to be taken by Respondent pursuant to the Order which has led the Department to conclude or to consider that any action or actions proposed to be taken at the Site by Respondent must be revised due to (i) environmental conditions related to the Site or (ii) the failure of such action or actions to protect human health or the environment for the reasonably anticipated industrial uses of the Site.

B. Upon the issuance of this Order by the Department, the Department shall publish expeditiously in the Environmental Notice Bulletin a notice which will inform the public that the Department prepared a draft Statement of Basis ("Statement of Basis") and Respondent has consented to, and that the Department has issued, an Order requiring Respondent to execute a Work Plan which, if completed as required by the Order, will (i) remediate any significant contamination of soils at the Site and (ii) complete all investigation which the Department may require in order to determine whether further action, beyond that already taken at the Site pursuant to the Order, is required. The notice shall inform the public of an opportunity to comment on the contents therein by no later than thirty (30) days after the issue of the Environmental Notice Bulletin in which the notice shall appear. Concurrent with publication of the notice, Respondent shall provide notice of the publication of the Statement of Basis via radio announcement and local newspaper. The Department shall mail a copy of the notice to the Town of Cornwall and to the County of Orange, and make copies of the Order, all attachments thereto, and the Statement of Basis available at offices of the Department and local repositories.

Following the close of the period for public comment on the Statement of Basis , the Department shall review expeditiously all comments received on the Statement of Basis and communicate the results of its review to Respondent.

1. If, as a result of its review of the comments received, the Department determines that the Statement of Basis need not be revised, Respondent shall proceed to execute the Work Plan according to the schedule contained therein.

2. If, as a result of its review of the comments received, the Department determines that the Statement of Basis must be revised:

i. due to environmental conditions related to the Site that were unknown to the Department at the time of its approval of the Work Plan; or

ii. due to information received after the issuance of this Order, which indicates that the activities carried out in accordance with the Work Plan are not sufficiently protective of human health and the environment for the reasonably anticipated industrial uses of the Site, then the Department will so notify Respondent in a written statement (the "Deficiency Notice") and will immediately commence negotiations with Respondent to revise the Work Plan and, if necessary, other components of this Order accordingly. If after good faith negotiations concerning the Deficiency Notice, revisions to the Work Plan cannot be agreed to, this Order shall terminate upon the Department's so informing Respondent in writing. In such case, Respondent shall be entitled, but not obligated, to perform the Work Plan as such plan was originally attached to this Order and originally available for public comment. If Respondent and the Department agree to a revised Work Plan, then the revised Work Plan shall be attached to this Order as Exhibit "B-2," Respondent shall implement such revised Work Plan, and all references to "Work Plan" in this Order shall refer to the revised Work Plan contained in Exhibit "B-2." The Department will revise the Statement of Basis accordingly, send a copy of the revised Statement of Basis to any persons having made comments during the comment period, and Respondent will implement the revised Work Plan.

IV. After issuance by the Department of this Order, the New Permit will be issued to require corrective action for Existing Contamination on, or from, the Site, and in accordance with any remediation of Site soils, the completion of investigation of Existing Contamination of ground water at and from the Site, or the remediation of Site ground water, as appropriate.

V. A. At all times during Respondent's diligent and timely performance of the Work Plan as such document is revised in accordance with the Deficiency Notice, the Department and the Trustee shall, except for the reservation identified below, forbear from bringing any action, proceeding, or suit against Respondent for the further investigation and remediation of the Site or for natural resources damages, based upon the release or threatened release of any Existing Contamination. Nonetheless, the Department and the Trustee hereby reserve all of their rights concerning, and such forbearance shall not extend to, any further investigation or remedial action

the Department deems necessary due to the exercise by the Department of summary abatement powers.

Additionally, the Department and Trustee hereby reserve all of their respective rights concerning, and any such forbearance shall not extend to, any further investigation or abatement the Department deems necessary to be undertaken in the event that Respondent causes or suffers the release or threat of release at the Site of any hazardous substance (as that term is defined at 42 U.S.C. §9601[14]) or petroleum (as that term is defined in Navigation Law §172[15]) after the effective date of this Order other than Existing Contamination; or Respondent causes a, or suffers the use of the Site to, change from the reasonably anticipated industrial use of the Site to a use requiring a lower level of residual contamination before that use can be implemented with sufficient protection of human health and the environment.

B. Notwithstanding any other provision in this Order, if with respect to the Site there exists or may exist a claim of any kind or nature on the part of the New York State Environmental Protection and Spill Compensation Fund against any party, nothing in this Order shall be construed, or deemed, to preclude the State of New York from recovering such claim.

C. The Department hereby waives any right which it may have under applicable law, to recover from the Respondent any costs incurred by the Department in overseeing, revising, reviewing, or assuring the completion of any document prepared, or work performed, pursuant to this Order.

VI. A. 1. Notwithstanding any other provision of this Order, with respect to any claim or cause of action asserted by the Department with respect to Site soils, the person seeking the benefit of the forbearance, covenant not to sue, or release set forth in Paragraph V or in any "no further action" letter issued under this Order shall bear the burden of proving that the claim or cause of action, or any part thereof, is attributable solely to Existing Contamination of Site soils.

2. Notwithstanding any other provision of this Order, with respect to any claim or cause of action asserted by the Department with respect to Site ground water, the person seeking the benefit of the forbearance, covenant not to sue, or release set forth in Paragraph V or in any "no further action" letter issued under this Order shall bear the burden of proving that the claim or cause of action, or any part thereof, is attributable solely to Existing Contamination of Site ground water.

B. Except as provided in Paragraph V of this Order and in any "no further action" letter issued under this Order, nothing in this Order is intended as a release, forbearance, or covenant not to sue for any claim or cause of action, administrative or judicial, civil or criminal, past or future, in law or in equity, which the Department, the Trustee, or the State of New York may have against any person not a party to this Order. In addition, notwithstanding any other provision of this Order, any forbearance, covenant not to sue, and release described in Paragraph V or in any "no further action" letter issued under this Order shall not extend to parties that were responsible under law before the effective date of this Order to address the Existing Contamination.

VII. Progress Reports

A. Respondent shall submit copies of reports ("Reports") to those identified in Paragraph XV in the numbers mentioned in that Paragraph. Following the effective date of this Order, Reports will be submitted each month on or before the tenth day of the month until completion of any construction at the Site required by the Work Plan. Thereafter, whenever Respondent either causes samples to be taken in accordance with the Work Plan or the O&M Plan for purposes of analysis or receives analytical results from such samples, the Respondent shall submit to the Department, no later than the tenth day of the first month following any such sampling or analysis, a Report either detailing such sampling or containing such analytical results. Reports submitted pursuant to this Paragraph will:

1. describe the actions which have been taken toward achieving compliance with this Order during the previous month;
2. include all results of sampling and tests and all other data received or generated by Respondent or Respondent's contractors or agents in the previous month, including quality assurance/quality control information, whether conducted pursuant to this Order or conducted independently by Respondent;
3. identify all work plans, reports, and other deliverables required by this Order that were completed and submitted during the previous month;
4. describe all actions, including, but not limited to, data collection and implementation of the Work Plan, that are scheduled for the next month and provide other information relating to the progress at the Site;
5. include information regarding percentage of completion, unresolved delays encountered or anticipated that may affect the future schedule for implementation of Respondent's obligations under the Order, and efforts made to mitigate those delays or anticipated delays;
6. include any modifications to any work plans, including the Work Plan, that Respondent has proposed to the Department and any that the Department has approved.

B. Respondent also shall allow the Department to attend, and shall provide the Department at least five (5) days advance notice of, any of the following: prebid meetings, job progress meetings, substantial completion meeting and inspection, and final inspection and meeting. Notification shall be made to the Chief, Bureau of Hazardous Waste Facilities, and to the Regional Solid & Hazardous Materials Engineer at the addresses identified in Paragraph XV.

VIII. Review of Submittals

A. 1. The Department shall review each of the submittals Respondent makes pursuant to this Order to determine whether it was prepared, and whether the work done to

generate the data and other information in the submittal was done, in accordance with this Order and generally accepted technical and scientific principles. The Department shall notify Respondent in writing of its approval or disapproval of the submittal. All approved submittals shall be incorporated into and become an enforceable part of this Order.

2. i. If the Department disapproves a submittal it shall so notify Respondent in writing and shall specify the reasons for its disapproval and may request Respondent to modify or expand the submittal; provided, however, that the matters to be addressed by such modification or expansion are within the specific scope of work as described in the Work Plan. Within thirty (30) days after receiving written notice that Respondent's submittal has been disapproved, Respondent shall make a revised submittal to the Department which endeavors to address and resolve all of the Department's stated reasons for disapproving the first submittal.

ii. After receipt of the revised submittal, the Department shall notify Respondent in writing of its approval or disapproval, either of which shall be based on, as appropriate, the completion of soil remediation or of ground water investigation as either has been set forth in the Work Plan. If the Department disapproves the revised submittal, Respondent shall be deemed to be in violation of this Order. If the Department approves the revised submittal, it shall be incorporated into and become an enforceable part of this Order.

B. Within sixty (60) days after the Department's approval of the final engineering report and certification, Respondent shall submit to the Department one (1) microfilm copy (16 millimeter roll film M type cartridge) of that report and all other approved drawings and submittal. Such submission shall be made to:

Director, Division of Environmental Remediation
New York State Department of Environmental Conservation
50 Wolf Road
Albany, New York 12233-7010

IX. Enforcement

A. Respondent's failure to comply with any term of this Order constitutes a violation of this Order and the ECL, as applicable, and shall deny Respondent any protections afforded by the Order.

B. Respondent shall neither suffer any penalty under this Order nor be subject to any proceeding or action if it cannot comply with any requirement of this Order because of fire, lightning, earthquake, flood, adverse weather conditions, strike, shortages of labor and materials, war, riot, obstruction or interference by adjoining landowners, or any other fact or circumstance beyond Respondent's reasonable control ("force majeure event"). Respondent shall, within ten (10) working days of when it obtains knowledge of any such force majeure event, notify the Department in writing. Respondent shall include in such notice the measures taken and to be

taken by Respondent to prevent or minimize any delays and shall request an appropriate extension or modification of this Order. Respondent shall have the burden of proving by a preponderance of the evidence that an event is a defense to compliance with this Order pursuant to this Subparagraph IX.B of this Order.

X. Entry upon Site

Respondent hereby consents to the entry upon the Site or areas in the vicinity of the Site which may be under the control of Respondent by any duly designated employee, consultant, contractor, or agent of the Department or any State agency having jurisdiction with respect to the Response Program for purposes of inspection, sampling, and testing and to ensure Respondent's compliance with this Order. The Department shall abide by the health and safety rules in effect for work performed at the Site under the terms of this Order. Upon request, Respondent shall provide the Department 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 to job meetings.

XI. Department Reservation of Rights

A. Except as provided in Paragraph V of this Order and in any "no further action" letter issued under this Order, nothing contained in this Order shall be construed as barring, diminishing, adjudicating, or in any way affecting any of the Department's rights with respect to any party other than Respondent.

B. Nothing contained in this Order shall prejudice any rights of the Department to take any investigatory or remedial action it may deem necessary if Respondent fails to comply with this Order or contamination other than Existing Contamination is encountered at the Site.

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

D. Nothing contained in this Order shall be construed to affect the Department's right to terminate this Order during its implementation if Respondent fails to comply substantially with this Order's terms and conditions.

XII. Indemnification

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

XIII. Notice of Sale or Conveyance

A. Within thirty (30) days after the effective date of this Order, Respondent shall file the Notice of Order, which is attached to this Order as Exhibit "D," with the Orange County Clerk to give all parties who may acquire any interest in the Site notice of this Order.

B. If Respondent proposes to convey the whole or any part of Respondent's ownership interest in the Site, Respondent shall, not fewer than ninety (90) days before the date of conveyance, notify the Department in writing of the identity of the transferee and of the nature and proposed date of the conveyance and shall notify the transferee in writing, with a copy to the Department, of the applicability of this Order.

1. The new owner or operator must submit a revised permit application, pursuant to 6 NYCRR Part 373, no later than ninety (90) days prior to the scheduled change, and in accordance with the requirements of 6 NYCRR 373-1.7(a), regarding the Transfer of Permits.

2. This Subparagraph XII.B shall not apply if Respondent grants or intends to grant any right under a mortgage, deed of trust, assignment, judgment lien, pledge, security agreement, or lease, or any right accruing to a person, to secure the repayment of money, the performance of a duty, or any other obligation by a person not affiliated with the Respondent.

XIV. Deed Restriction

A. Within thirty (30) days after the effective date of this Order, Respondent shall record an instrument with the Orange County Clerk, to run with the land, that shall prohibit the Site from ever being used for purposes other than of industrial use without the express written waiver of such prohibition by the Department, or if at such time the Department shall no longer exist, any New York State department, bureau, or other entity replacing the Department.

B. Such instrument also will include a provision

1. Prohibiting the use of groundwater underlying the Site without treatment rendering it safe for drinking water or industrial purposes, as appropriate, unless the user first obtains permission to do so from the Department, or if at such time the Department shall no longer exist, any New York State department, bureau, or other entity replacing the Department; and

2. Prohibiting Respondent and Respondent's successors and assigns from the movement and off-Site placement of any soils from the Site, other than properly managed soil/waste material removed from the Site as part of the Work Plan implementation, unless the soils have been fully evaluated and demonstrated to the satisfaction of the Department to be free of contamination that would restrict such movement; and

3. Requiring that permanent caps or covers be maintained in accordance with the Operation and Maintenance Plan.

C. Respondent shall provide the Department with a copy of such instrument certified by the Orange County Clerk to be a true and faithful copy of the instrument as recorded in the Office of the Orange County Clerk.

XV. Communications

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

1. Communication from Respondent shall be sent to:

Edward Dessatti, Chief, Bureau of Hazardous Waste Facilities
Division of Solid & Hazardous Materials
Department of Environmental Conservation
50 Wolf Road
Albany, New York 12233

Monica L. Abreu, Esq.
Department of Environmental Conservation
Division of Environmental Enforcement
50 Wolf Road, Room 627
Albany, NY 12233-5500

Department of Environmental Conservation
Regional Solid & Hazardous Materials Engineer
21 South Putt Corners Road
New Paltz, NY 12561

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

- Three (3) copies (one unbound), plus one copy on a computer disk in a format acceptable to the Department, to Mr. Dessatti
- One (1) copy to Ms. Abreu,
- One (1) copy to the Regional Hazardous Materials Engineer

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

Mr. Mark R. Ellis
President
Star Newco, Inc.
Route 32
Mountainville, NY 10953

B. The Department and Respondent reserve the right to designate additional or different addressees for communication on written notice to the other given in accordance with this Paragraph XV.

XVI. Miscellaneous

A. Respondent hereby certifies that it has fully and accurately disclosed to the Department all information known to Respondent and all information in the possession or control of Respondent's officers, directors, employees, contractors, and agents which relates in any way to the Existing Contamination. Respondent also certifies that it has not caused or contributed to a release or threat of release of hazardous substances or pollutants or contaminants at, or from, the Site.

B. Respondent shall retain professional consultants, contractors, laboratories, quality assurance/quality control personnel, and data validators acceptable to the Department to perform the technical, engineering, and analytical obligations required by this Order. The responsibility for the performance of the professionals retained by Respondent shall rest solely with Respondent.

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

D. Respondent shall notify the Department at least five (5) working days in advance of any field activities to be conducted pursuant to this Order. Notification shall be made to the Chief, Bureau of Hazardous Waste Facilities, and to the Regional Solid & Hazardous Materials Engineer at the addresses identified in Paragraph XV.

E. Respondent shall obtain all permits, easements, rights-of-way, rights-of-entry, approvals, or authorizations necessary to perform the Respondent's obligations under this Order. If any access required to perform this Order is not obtained despite best efforts within 45 days of the effective date of this Order, or within 45 days of the date the Department notifies Respondent in writing that additional access beyond that previously secured is necessary, Respondent shall promptly notify the Department, and shall include in that notification a summary of the steps Respondent has taken to attempt to obtain access. For purposes of this Paragraph, "best efforts" includes the payment of reasonable sums of money in consideration for obtaining same. The Department may, consistent with all laws, rules, regulations, and policies, assist Respondent in obtaining access, as it deems appropriate.

F. Respondent, Respondent's officers, directors, agents, servants, and employees (in the performance of their designated duties on behalf of Respondent), and Respondent's lessees, successors, and assigns shall be bound by this Order. Any change in ownership or corporate

status of Respondent including, but not limited to, any transfer of assets or real or personal property shall in no way alter Respondent's responsibilities under this Order. Respondent's officers, directors, employees, servants, and agents shall be obliged to comply with the relevant provisions of this Order in the performance of their designated duties on behalf of Respondent.

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

H. All references to "professional engineer" in this Order are to an individual either registered as a professional engineer in accordance with Article 145 of the New York State Education Law or recognized as a professional engineer by the State of New York pursuant to the rules and regulations governing reciprocity for professional engineers licensed in other states. If such individual is a member of a firm, that firm must be authorized to offer professional engineering services in the State of New York in accordance with Article 145 of the New York State Education Law.

I. All references to "person" in this Order means an individual, trust, firm, joint stock company, corporation (including but not limited to any government corporation), partnership, association, state, federal government and any agency thereof, municipality, commission, political subdivision of a state, or any interstate body. ECL 27-0901(7).

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

K. The Paragraph headings set forth in this Order are included for convenience of reference only and shall be disregarded in the construction and interpretation of any of the provisions of this Order.

L. 1. No term, condition, understanding, or Order purporting to modify or vary any term of this Order shall be binding unless made in writing and subscribed by the party to be bound. No informal advice, guidance, suggestion, or comment by the Department regarding any report, proposal, plan, specification, schedule, or any other submittal shall be construed as relieving Respondent of Respondent's obligation to obtain such formal approvals as may be required by this Order.

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

delivered or mailed to Mr. Dessatti, to Ms. Abreu, and to the Regional Solid & Hazardous Materials Engineer.

M. Respondent and Respondent's employees, servants, agents, lessees, successors, and assigns hereby affirmatively waive any right they had, have, or may have to make a claim pursuant to Article 12 of the Navigation Law with respect to the Site, and further release and hold harmless the New York State Environmental Protection and Spill Compensation Fund from any and all legal or equitable claims, suits, causes of action, or demands whatsoever that any of same has or may have as a result of Respondent's consenting to or fulfilling the terms of this Order with respect to the Site.

N. This Order shall be deemed an "administrative settlement" with the State of New York within the meaning of 42 U.S.C. §9613(f)(2). To the extent afforded in 42 U.S.C. §9613(f)(2) and any other similar state or federal law, Respondent shall not be liable for claims for contribution regarding matters addressed in this Order, including but not limited to the performance of the Work Plan and any other submission made to the Department pursuant to this Order.

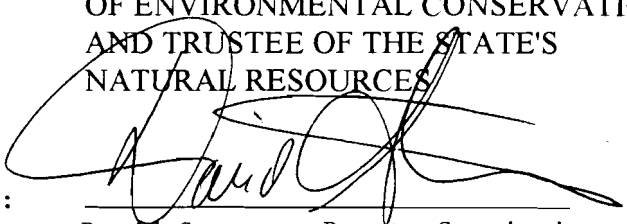
O. The effective date of this Order shall be the date it is signed by the Commissioner or his designee, or upon Respondent's taking title to the Site, whichever occurs later.

P. A facsimile of the original Consent by Respondent, signed by Respondent, will be accepted for execution of this Order. The facsimile will be replaced by the original upon receipt of such by the Department.

DATED: *Albany* New York
January 6, 1997

COMMISSIONER
NEW YORK STATE DEPARTMENT
OF ENVIRONMENTAL CONSERVATION
AND TRUSTEE OF THE STATE'S
NATURAL RESOURCES

BY:


David Sterman, Deputy Commissioner

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.

Star Newco, Inc.

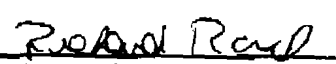
By: 

Robert W. Driscoll, Jr.
Secretary

Date: 2/6/97

STATE OF NEW YORK)
) s.s.:
COUNTY OF New York)

On this 6 day of February, 1997, before me personally came Robert T. Driscoll, Secretary of Star Newco, Inc., to me known, who being duly sworn, did depose and say that he resides in --- that --- is --- the corporation described in and which executed the foregoing instrument; and that --- signed --- name on behalf of --- and was authorized to do so.


Notary Public

RICHARD ROEL
NOTARY PUBLIC, State of New York
No. 016002228
Qualified in Queens County
Commission Expires April 18, 1998

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.

Star Newco, Inc.

By: [Signature]

Robert W. Driscoll, Jr.
Secretary

Date: 2/6/97

STATE OF NEW YORK)
) s.s.:
COUNTY OF New York)

On this 6 day of February, 19 97, before me personally came ^{Robert Driscoll} to me known, who being duly sworn, did depose and say that ^{he} resides in ^{Philadelphia} that --- is ---, the corporation described in and which executed the foregoing instrument; and that --- signed --- name on behalf of --- and was authorized to do so.

[Signature]
Notary Public

RICHARD ROEL
NOTARY PUBLIC, State of New York
No. 01RO5026288
Qualified in Queens County
Commission Expires April 18, 1998

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.

Star Newco, Inc.

By: _____
[name and title of the signatory]

Date: _____

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

On this _____ day of _____, 19____, before me personally came ---, to me known, who being duly sworn, did depose and say that --- resides in ---; that ---is ---, the corporation described in and which executed the foregoing instrument; and that --- signed --- name on behalf of --- and was authorized to do so.

Notary Public

EXHIBIT "A"

Map of the Site

**Appendix “A”
(to Exhibit A)**

Description of the Site

The land referred to as the Site is described as follows:

ALL that certain plot, piece or parcel of land, situate, lying and being in the Town of Cornwall, County of Orange and State of New York, bounded and described as follows:

BEGINNING at a point on the westerly side of N.Y.S. Route 32 where it is intersected by the northerly line of lands now or formerly of Devitt;

RUNNING THENCE along the same North 59 degrees 49 minutes 00 seconds West a distance of 151.86 feet and South 31 degrees 13 minutes 00 seconds West a distance of 65.62 feet to lands now or formerly of the Estate of Markert;

RUNNING THENCE along the same North 60 degrees 14 minutes 20 seconds West a distance of 228.00 feet and South 33 degrees 43 minutes 40 seconds West a distance of 198.00 feet to a point;

RUNNING THENCE through lands now or formerly of Star Expansion Company the following courses and distances:

North 61 degrees 21 minutes 00 seconds West 305.95 feet;

North 44 degrees 20 minutes 00 seconds West 530.00 feet;

North 36 degrees 35 minutes 34 seconds East 216.82 feet;

North 43 degrees 15 minutes 16 seconds West 50.00 feet;

North 46 degrees 44 minutes 44 seconds East 35.04 feet; and

North 43 degrees 15 minutes 16 seconds West 585.00 feet to the easterly side of the New York State Thruway;

RUNNING THENCE along the same North 51 degrees 00 minutes 59 seconds East a distance of 1824.61 feet and North 51 degrees 46 minutes 35 seconds East a distance of 76.29 feet to a point on the westerly side of Ketchum Road;

RUNNING THENCE along the northeasterly line of premises herein described and thorough Ketchum Road South 35 degrees 05 minutes 25 seconds West a distance of 646.02 feet to a point; thence leaving Ketchum Road and continuing along the Northeasterly line of premises herein described the following courses and distances;

(Continued)

South 3 degrees 27 minutes 25 seconds East 94.30 feet;

South 57 degrees 30 minutes 35 seconds West 130.50 feet; and

South 58 degrees 29 minutes 25 seconds East 44.50 feet to a point in the bed of Creamery Road;

RUNNING THENCE through Creamery Road south 24 degrees 44 minutes 25 seconds East a distance of 45.60 feet and South 48 degrees 58 minutes 17 seconds East a distance of 671.55 feet to a point;

THENCE leaving Creamery Road and continuing along the northeasterly line of premises herein described South 41 degrees 49 minutes 00 seconds West a distance of 23.00 feet and South 39 degrees 59 minutes 18 seconds East a distance of 158.01 feet to a point;

RUNNING THENCE through lands now or formerly of Star Expansion Company South 33 degrees 34 minutes 00 seconds West a distance of 99.00 feet to a point;

RUNNING THENCE through lands now or formerly of Star Expansion Company and along the westerly line of lands now or formerly of Gayton, South 65 degrees 04 minutes 00 seconds West a distance of 440.00 feet to lands now or formerly of Gorbrecht;

RUNNING THENCE along the same the following course and distances;

North 86 degrees 53 minutes 40 seconds West 304.81 feet;

South 33 degrees 50 minutes 55 seconds West 140.00 feet;

South 13 degrees 20 minutes 55 seconds West 153.00 feet; and

South 80 degrees 09 minutes 05 seconds East 436.22 feet to lands now or formerly of Cupano;

RUNNING THENCE along the same South 26 degrees 15 minutes 30 seconds West a distance of 153.37 feet and South 65 degrees 52 minutes 30 seconds East a distance of 350.03 feet to the westerly side of N.Y.S. Route 32;

RUNNING THENCE along the same South 26 degrees 15 minutes 30 seconds West a distance of 158.11 feet to the point or place of BEGINNING.

EXHIBIT "B"

Work Plan

EXHIBIT "C"

**Assignable Release and Covenant Not To Sue
by Department**

[On Department Letterhead]

[Insert Date]

To whom it may concern:

The Department is pleased to report that the Department is satisfied that all provisions of an Approved Work Plan to investigate, delineate, excavate, remove, remediate, transport, and dispose of contaminated soils at a parcel of land which is located between New York State Route 32 and the New York State Thruway in Mountainville, New York and described in Appendix "A" attached hereto, and a map of which is attached hereto as Appendix "B", have been successfully implemented. So long as no information has been withheld from the Department or mistake made as to the hazard posed by any Site-related compound or analyte of concern, the Department believes that no further investigation or response will be required at the Site for any contamination of Site soil existing as of **[insert effective date of this Order]** to render the Site safe for industrial usage.

Assignable Release and Covenant Not To Sue by Department:

The Department and the Trustee of New York State's natural resources (the "Trustee"), therefore, forbear from bringing any action, proceeding, or suit against Star Newco. ("Respondent"), and releases, and covenants not to sue, Respondent, and Respondent's lessees, sublessees, successors, and assigns, and their respective secured creditors, for the further investigation or remediation of Site soils, or for natural resource damages related to Site soils, based upon the release or threatened release at the Site of contaminants, identified as Existing Contamination in the Department's Order issued to Respondent ("Existing Contamination") present or existing in, on, at or under the Site as of **[insert effective date of this Order]** provided that the Respondent and/or its lessees, sublessees, successors, or assigns promptly commence and diligently pursue to completion the Approved post-response operation and maintenance plan.

Nevertheless, the Department and the Trustee hereby reserve all of their rights concerning, and such release, covenant not to sue and forbearance shall not extend to, remedial action the Department deems necessary:

- due to contamination of the ground water.

Additionally, the Department and the Trustee hereby reserve all of their rights concerning, and such releases, covenant not to sue, and forbearance shall not extend to, any further investigation or remedial action the Department deems necessary:

•due to environmental conditions related to the Site that were unknown to the Department at the time of its approval of the remedial work plan contained in the Order (the "Work Plan") which indicates that Site conditions are not sufficiently protective of human health and the environment for the reasonably anticipated industrial uses of the Site;

•due to information received after the Department's issuance of this order which indicates that remedial activities identified in the Work Plan and performed under the Order is not sufficiently protective of human health and the environment for the reasonably anticipated industrial uses of the Site;

•due to Respondent's failure to implement the Order to the Department's satisfaction; or

•due to fraud committed by Respondent in demonstrating that the Site-specific cleanup levels identified in, or to be identified in accordance with, the Work Plan were reached.

Additionally, the Department and Trustee hereby reserve all of their rights concerning, and any such release, covenant not to sue, and forbearance shall not extend to:

•Respondent if it causes a, or suffers the, release or threat of release, to soils at the Site of any hazardous substance (as that term is defined at 42 U.S.C. §9601[14]) or petroleum (as that term is defined in Navigation Law § 172[15]) after **[insert the effective date of this Order]**; or if it causes a, or suffers the use of the Site to, change from the reasonably anticipated industrial use to one requiring a lower level of residual contamination before that use can be implemented with sufficient protection of human health and the environment; nor to

•any of Respondent's lessees, sublessees, successors, or assigns who cause a, or suffer the, release or threat of release to soils at the Site of any hazardous substance (as that term is defined at 42 U.S.C. §9601[14]) or petroleum (as that term is defined in Navigation Law § 172[15]) after **[insert the effective date of this Order]**; who causes a, or suffers the use of the Site to, change from the reasonably anticipated industrial use to one requiring a lower level of residual contamination before that use can be implemented with sufficient protection of human health and the environment; or who are otherwise parties responsible under law for the remediation of the Existing Contamination independent of any obligation they may have respecting same established resulting solely from the Order's execution.

Notwithstanding the above, however, with respect to any claim or cause of action asserted by the Department, the one seeking the benefit of this release shall bear the burden of proving that the claim or cause of action, or any part thereof, is attributable solely to Existing Contamination.

Notwithstanding any other provision in this release, if with respect to the property there exists or may exist a claim of any kind or nature on the part of the New York State Environmental Protection and Spill Compensation Fund against any party, nothing in this release shall be construed, or deemed, to preclude the State of New York from recovering such claim.

In conclusion, the Department is pleased to be part of this effort to return the subject property to industrial usage, a use of benefit to the entire community.

NEW YORK STATE DEPARTMENT
OF ENVIRONMENTAL CONSERVATION

By: _____

Its: _____

Appendix "A"
(to Exhibit "C")

Description of the Site

Appendix "B"
(to Exhibit "C")

Map of the Site

EXHIBIT "C1"

**Assignable Release and Covenant Not To Sue
by Department**

[On Department Letterhead]

[Insert Date]

To whom it may concern:

The Department is pleased to report that the Department is satisfied that all provisions of an Approved Work Plan to investigate, delineate, excavate, remove, remediate, transport, and dispose of contaminated ground water at a parcel of land which is located between New York State Route 32 and the New York State Thruway in Mountainville, New York and described in Appendix "A" attached hereto, and a map of which is attached hereto as Appendix "B," have been successfully implemented. So long as no information has been withheld from the Department or mistake made as to the hazard posed by any Site-related compound or analyte of concern, the Department believes that no further investigation or response will be required at the Site for any contamination of Site ground water existing as of **[insert effective date of this Order]** to render the Site safe for industrial usage.

Assignable Release and Covenant Not To Sue by Department:

The Department and the Trustee of New York State's natural resources (the "Trustee"), therefore, forbear from bringing any action, proceeding, or suit against Star Newco. ("Respondent"), and releases, and covenants not to sue, Respondent, and Respondent's lessees, sublessees, successors, and assigns, and their respective secured creditors, for the further investigation or remediation of Site ground water, or for natural resource damages related to Site ground water, based upon the release or threatened release at the Site of contaminants, identified as Existing Contamination in the Department's Order issued to Respondent ("Existing Contamination") present or existing in, on, at or under the Site as of **[insert effective date of this Order]** provided that the Respondent and/or its lessees, sublessees, successors, or assigns promptly commence and diligently pursue to completion the Approved post-response operation and maintenance plan.

Nevertheless, the Department and the Trustee hereby reserve all of their rights concerning, and such release, covenant not to sue and forbearance shall not extend to, any further investigation or remedial action the Department deems necessary:

- due to environmental conditions related to the Site that were unknown to the Department at the time of its approval of the remedial work plan contained in the Order (the "Work Plan")

which indicates that Site conditions are not sufficiently protective of human health and the environment for the reasonably anticipated industrial uses of the Site;

- due to information received after the Department's issuance of this order which indicates that remedial activities identified in the Work Plan and performed under the Order is not sufficiently protective of human health and the environment for the reasonably anticipated industrial uses of the Site;

- due to Respondent's failure to implement the Order to the Department's satisfaction; or

- due to fraud committed by Respondent in demonstrating that the Site-specific cleanup levels identified in, or to be identified in accordance with, the Work Plan were reached.

Additionally, the Department and Trustee hereby reserve all of their rights concerning, and any such release, covenant not to sue, and forbearance shall not extend to:

- Respondent if it causes a, or suffers the, release or threat of release, to ground water at the Site of any hazardous substance (as that term is defined at 42 U.S.C. §9601[14]) or petroleum (as that term is defined in Navigation Law § 172[15]) after **[insert the effective date of this Order]**; or if it causes a, or suffers the use of the Site to, change from the reasonably anticipated industrial use to one requiring a lower level of residual contamination before that use can be implemented with sufficient protection of human health and the environment; nor to

- any of Respondent's lessees, sublessees, successors, or assigns who cause a, or suffer the, release or threat of release to ground water at the Site of any hazardous substance (as that term is defined at 42 U.S.C. §9601[14]) or petroleum (as that term is defined in Navigation Law § 172[15]) after **[insert the effective date of this Order]**; who causes a, or suffers the use of the Site to, change from the reasonably anticipated industrial use to one requiring a lower level of residual contamination before that use can be implemented with sufficient protection of human health and the environment; or who are otherwise parties responsible under law for the remediation of the Existing Contamination independent of any obligation they may have respecting same established resulting solely from the Order's execution.

Notwithstanding the above, however, with respect to any claim or cause of action asserted by the Department, the one seeking the benefit of this release shall bear the burden of proving that the claim or cause of action, or any part thereof, is attributable solely to Existing Contamination.

Notwithstanding any other provision in this release, if with respect to the property there exists or may exist a claim of any kind or nature on the part of the New York State Environmental Protection and Spill Compensation Fund against any party, nothing in this release shall be construed, or deemed, to preclude the State of New York from recovering such claim.

In conclusion, the Department is pleased to be part of this effort to return the subject property to industrial usage, a use of benefit to the entire community.

NEW YORK STATE DEPARTMENT
OF ENVIRONMENTAL CONSERVATION

By: _____

Its: _____

**Appendix “A”
(to Exhibit “C1”)**

Description of Site

**Appendix “B”
(to Exhibit “C1”)**

Map of the Site

Exhibit D

NOTICE OF ORDER

This Notice is made as of the _____ day of _____, 1997 by Star Newco, Inc., the fee owner of a parcel of real property located between New York State Route 32 and the New York State Thruway in Mountainville, New York and is described as follows: (INDICATE METES AND BOUNDS) (the "Site"), a map of which is attached hereto as Appendix "A"; and

WHEREAS, there is presently located on the Site contaminants, including but not limited to, volatile and semi-volatile organic compounds, metals, and certain hydrocarbons; and

WHEREAS, Star Newco., Inc., by authorized signature, entered into an administrative Order with the Department, Index # D3-0001-96-12 (the "Order"), concerning the remediation of the Property, which Order was signed by the Commissioner of Environmental Conservation on _____, 1997; and

WHEREAS, in return for the remediation of the Site pursuant to the Order to the satisfaction of the Department, the Department and the Trustee of New York State's natural resources (the "Trustee") will provide Star Newco. with forbearance, and Star Newco., and its successors, assigns, lessees and sublessees, including their respective secured creditors, with a release and covenant not to sue or bring any action, proceeding, or suit related to the further investigation or remediation based upon the release or threatened release of any hazardous substances, pollutants, wastes and/or contaminants present or existing in, on, at or under the Site as of the date of the Order, subject to certain reservations set forth in the Order; and

WHEREAS, pursuant to the Order, Star Newco. agreed that it would give notice of the Order to all parties who may acquire any interest in the Site by filing this Notice with the Orange County Clerk,

NOW, THEREFORE, Star Newco., for itself, its successors and its assigns declares that:

1. Notice of the Order is, hereby, given to all parties who may acquire any interest in the Site.
2. This Notice shall terminate upon the filing by Star Newco., or its successors and assigns, of a termination of notice of Order.

IN WITNESS WHEREOF, Star Newco. has executed this Notice of Order by its duly authorized representative.

Star Newco, Inc.

Dated: _____, 1997

By: _____

Its: _____

[acknowledgement]