

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

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

ORDER
ON
CONSENT

INDEX # W1-0813-98-05

Burmah Castrol Holdings, Inc.,
Respondent.

Site # 1-30-052

WHEREAS,

1. The New York State Department of Environmental Conservation (the "Department") is responsible for enforcement of Article 27, Title 13 of the Environmental Conservation Law of the State of New York ("ECL"), entitled "Inactive Hazardous Waste Disposal Sites." This Order is issued pursuant to the Department's authority under, *inter alia*, ECL Article 27, Title 13 and ECL 3-0301.
2. Burmah Castrol Holdings, Inc. ("Respondent"), is the parent corporation of OMD 87, Inc., formerly known as Columbia Cement Company, Inc., the former owner and operator of a cement manufacturing facility located at 159 Hanse Avenue, Village of Freeport, Town of Hempstead, County of Nassau, New York (hereinafter referred to as "the Site") and recorded in the Nassau County Land Records as Lot 3, Block 230. The Site is approximately 0.5 acres. A Site Location Map for the Site is attached as Appendix "A".
3. The Department has determined that the Site is an inactive hazardous waste disposal site, as that term is defined at ECL 27-1301.2, which presents a significant threat to the public health or environment. The Site has been listed in the Registry of Inactive Hazardous Waste Disposal Sites in New York State as Site Number 1-30-052. The Department has classified the Site as a Classification "2" pursuant to ECL 27-1305.4.b. According to the Department, a Classification 2 Site presents a significant threat to the public health or environment.
4. A. Pursuant to ECL 27-1313.3.a, whenever the Commissioner of Environmental Conservation (the "Commissioner") "finds that hazardous wastes at an inactive hazardous waste disposal site constitute a significant threat to the environment, he may order the owner of such site and/or any person responsible for the disposal of hazardous wastes at such site (i)

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

B. Any person under order pursuant to ECL 27-1313.3 a has a duty imposed by ECL Article 27, Title 13 to carry out the remedial program committed to under order. ECL 71-2705 provides that any person who fails to perform any duty imposed by ECL Article 27, Title 13 shall be liable for civil, administrative and/or criminal sanctions.

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

5. The Department and Respondent agree that the goals of this Order are for Respondent to (i) develop and implement an inactive hazardous waste disposal site remedial program ("Remedial Program") for the Site that shall include a Remedial Investigation/Feasibility Study ("RI/FS"), design and implementation of the selected remedial alternative, and operation, maintenance and monitoring of the selected remedial alternative; and (ii) reimburse the State's administrative costs.

6. Respondent, having waived Respondent's right to a hearing herein as provided by law, and having consented to the issuance and entry of this Order, agrees to be bound by its terms. Respondent consents to and agrees not to contest the authority or jurisdiction of the Department to issue or enforce this Order, and agrees not to contest the validity of this Order or its terms.

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

I. Initial Submittal

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

A. A brief history and description of the Site, including the types, quantities, physical state, location, and dates of disposal of hazardous waste including methods of disposal and spillage of such wastes;

B. A concise summary of information held by Respondent and Respondent's attorneys and consultants with respect to all persons responsible for such disposal of hazardous wastes, including but not limited to names, addresses, dates of disposal and any proof linking each such person responsible with hazardous wastes identified pursuant to Subparagraph I.A; and

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

II. RI/FS Work Plan Contents and Submittals

A. Within 30 days after the effective date of this Order, Respondent shall submit to the Department a detailed work plan describing the methods and procedures to be implemented in performing an RI/FS for the Site ("RI/FS Work Plan").

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

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

b. A Sampling and Analysis Plan that shall include:

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

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

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

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

2. The RI/FS Work Plan shall incorporate all elements of a RI/FS as set forth in the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA") [42 USC 9601 et seq.], as amended, the National Contingency Plan

("NCP") of March 8, 1990 [40 CFR Part 300], the USEPA guidance document entitled "Guidance for Conducting Remedial Investigations and Feasibility Studies under CERCLA," dated October 1988, and any subsequent revisions to that guidance document in effect at the time the RI/FS Work Plan is submitted, and appropriate USEPA and Department technical and administrative guidance documents.

III. Performance and Reporting of Remedial Investigation

A. Respondent shall commence the Remedial Investigation in accordance with the schedule contained in the Department-approved RI/FS Work Plan.

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

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

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

1. include all data generated and all other information obtained during the Remedial Investigation;

2. provide all of the assessments and evaluations set forth in CERCLA, the NCP, and the guidance documents identified in Subparagraph II.B.2;

3. identify any additional data that must be collected; and

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

IV. Feasibility Study

A. In accordance with the schedule contained in the Department-approved RI/FS Work Plan, Respondent shall submit a complete Feasibility Study evaluating on-Site and off-Site remedial actions to eliminate, to the maximum extent practicable, all health and environmental hazards and potential hazards at the Site. The Feasibility Study shall be prepared by and have the signature and seal of a professional engineer who shall certify that the Feasibility Study was prepared in accordance with this Order.

B. Respondent shall perform and prepare the Feasibility Study in accordance with

the Department-approved RI/FS Work Plan and in a manner consistent with CERCLA, the NCP, and the guidance documents identified in Subparagraph II.B.2.

C. After the Department's approval of the Feasibility Study, Respondent shall cooperate and assist the Department in soliciting public comment on the RI/FS and on the proposed remedial action plan, in accordance with CERCLA, the NCP, the guidance documents identified in Subparagraph II.B.2, and with any Department policy and guidance documents in effect at the time the public comment period is initiated. After the close of the public comment period, the Department shall select a final remedial alternative for the Site in a Record of Decision ("ROD"). The ROD shall be incorporated into and become an enforceable part of this Order.

V. Remedial Design Contents

A. Unless the ROD selects the "no action" alternative, within such period of time after the ROD is signed that the Department shall prescribe in writing, Respondent shall submit to the Department a remedial design to implement the remedial alternative for the Site selected by the Department in the ROD (the "Remedial Design"). The Remedial Design shall be prepared by and have the signature and seal of a professional engineer who shall certify that the Remedial Design was prepared in accordance with this Order.

B. The Remedial Design shall include the following:

- I. A detailed description of the remedial objectives and the means by which each element of the selected remedial alternative will be implemented to achieve those objectives, including, but not limited to:
 - a. the construction and operation of any structures;
 - b. the collection, destruction, treatment, and/or disposal of hazardous wastes and substances and their constituents and degradation products, and of any soil or other materials contaminated thereby;
 - c. the collection, destruction, treatment, and/or disposal of contaminated groundwater, leachate, and air;
 - d. physical security and posting of the Site;
 - e. quality control and quality assurance procedures and protocols to be applied during implementation of the Remedial Construction; and
 - f. monitoring which integrates needs which are present on-Site and off-Site during implementation of the Department-selected remedial alternative.

2. "Biddable Quality" documents for the Remedial Design including, but not limited to, documents and specifications prepared, signed, and sealed by a professional engineer. These plans shall satisfy all applicable local, state and federal laws, rules and regulations;
3. A time schedule to implement the Remedial Design;
4. The parameters, conditions, procedures, and protocols to determine the effectiveness of the Remedial Design, including a schedule for periodic sampling of groundwater monitoring wells on-Site and, if necessary, off-Site;
5. A description of operation, maintenance, and monitoring activities to be undertaken after the Department has approved construction of the Remedial Design, including the number of years during which such activities will be performed (where appropriate) a specific description of the criteria to be used to decide when an operation of the remedy may be discontinued.
6. A contingency plan to be implemented if any element of the Remedial Design fails to achieve any of its objectives or otherwise fails to protect human health or the environment;
7. A health and safety plan for the protection of persons at and in the vicinity of the Site during construction and after completion of construction. This plan shall be prepared in accordance with 29 CFR 1910 by a certified health and safety professional; and
8. A citizen participation plan which incorporates appropriate activities outlined in the Department's publication, "New York State Inactive Hazardous Waste Citizen Participation Plan," dated August 30, 1988, and any subsequent revisions thereto, and 6 NYCRR Part 375.

VI. Remedial Construction

- A. Within such period of time after the Department's approval of the Remedial Design as the Department shall prescribe, Respondent shall commence construction of the Department-approved Remedial Design.
- B. Respondent shall implement the Remedial Design in accordance with the Department-approved Remedial Design.
- C. During implementation of all construction activities identified in the Remedial Design, Respondent shall have on-Site a full-time representative who is qualified to supervise the work done.

D. Within 30 days after completion of the construction activities identified in the Department-approved Remedial Design, Respondent shall submit to the Department a detailed post-remedial operation and maintenance plan ("O&M Plan"); "as-built" drawings and a final engineering report (each including all changes made to the Remedial Design during construction); and a certification that the Remedial Design was implemented and that all construction activities were completed in accordance with the Department-approved Remedial Design and were personally witnessed by him or her or by a person under his or her direct supervision. The O&M Plan, "as built" drawings, final engineering report, and certification must be prepared, signed, and sealed by a professional engineer.

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

F. After receipt of the "as-built" drawings, final engineering report, and certification, the Department shall notify Respondent in writing whether the Department is satisfied that all construction activities have been completed in compliance with the Department-approved Remedial Design.

G. If the Department concludes that any element of the Department-approved Remedial Program fails to achieve its objectives or otherwise fails to protect human health or the environment, Respondent shall take whatever action the Department determines necessary to achieve those objectives or to ensure that the Remedial Program otherwise protects human health and the environment.

VII. Interim Remedial Measures

A. 1. Respondent may propose one or more IRMs for the Site.

2. In proposing each IRM, Respondent shall submit to the Department a work plan that includes a chronological description of the anticipated IRM activities together with a schedule for performance of those activities (an "IRM Work Plan" for that Site).

3. Upon the Department's determination that the proposal is an appropriate IRM and upon the Department's approval of such work plan, the IRM Work Plan shall be incorporated into and become an enforceable part of this Order; and Respondent shall submit to the Department for its review and (as appropriate) approval, in accordance with the schedule contained in the Department-approved IRM Work Plan, detailed documents and specifications prepared, signed, and sealed by a professional engineer to implement the Department-approved IRM. Such documents shall include a health and safety plan, contingency plan, and (if the Department requires such) a citizen participation plan that incorporates appropriate activities outlined in the Department's publication, "New York State Inactive Hazardous Waste Citizen Participation Plan," dated August 30, 1988, and any

subsequent revisions thereto, and 6 NYCRR Part 375. Respondent shall then carry out such IRM in accordance with the requirements of the approved IRM Work Plan, detailed documents and specifications, and this Order. Respondent shall notify the Department of any significant difficulties that may be encountered in implementing the Department-approved work plan, detailed documents, or specifications and shall not modify any obligation unless first approved by the Department.

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

5. Within the schedule contained in the Department-approved IRM Work Plan, Respondent shall submit to the Department a final engineering report prepared by a professional engineer that includes a certification by that individual that all activities that comprised the Department-approved IRM were completed in accordance with the Department-approved IRM Work Plan and this Order.

a. If the performance of the Department-approved IRM encompassed construction activities, the final engineering report also shall include a detailed post-remedial operation and maintenance plan ("IRM O&M Plan"); "as-built" drawings and a final engineering report (each including all changes made to the Remedial Design during construction); and a certification by a professional engineer that the IRM was implemented and all construction activities were completed in accordance with the Department-approved detailed documents and specifications for the IRM and all such activities were personally witnessed by him or her or by a person under his or her direct supervision. The IRM O&M Plan, "as built" drawings, final engineering report, and certification must be prepared, signed, and sealed by a professional engineer.

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

6. After receipt of the final engineering report and certification, the Department shall notify Respondent in writing whether the Department is satisfied that the IRM was completed in compliance with the Department-approved IRM Work Plan and design.

VIII. Progress Reports

Respondent shall submit to the parties identified in Subparagraph XVIII.2 in the numbers specified therein copies of written monthly progress reports that:

A. describe the actions which have been taken toward achieving compliance with

this Order during the previous month;

B. 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;

C. identify all work plans, reports, and other deliverables required by this Order that were completed and submitted during the previous month;

D. describe all actions, including, but not limited to, data collection and implementation of work plans, that are scheduled for the next month and provide other information relating to the progress at the Site;

E. 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;

F. include any modifications to any work plans that Respondent has proposed to the Department or that the Department has approved; and

G. describe all activities undertaken in support of the Citizen Participation Plan during the previous month and those to be undertaken in the next month. Respondent shall submit these progress reports to the Department by the tenth day of every month following the month which includes the effective date of this Order.

Respondent also shall allow the Department to attend, and shall provide the Department at least seven days advance notice of, any of the following: prebid meetings, job progress meetings, substantial completion meeting and inspection, and final inspection and meeting. --

IX. 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, except for the submittals discussed in Subparagraph II.B.1c and in Subparagraph V.B.7. All Department-approved submittals shall be incorporated into and become an enforceable part of this Order.

2. a. If the Department disapproves a submittal, it shall so notify

Respondent in writing and shall specify the reasons for its disapproval. Within 30 days after receiving written notice that Respondent's submittal has been disapproved, Respondent shall make a revised submittal to the Department that addresses and endeavors to resolve all of the Department's stated reasons for disapproving the first submittal.

b. After receipt of the revised submittal, the Department shall notify Respondent in writing of its approval or disapproval. If the Department disapproves the revised submittal, Respondent may notify the Department within ten (10) business days of receipt of notification of disapproval from the Department that it will further revise the submittal and Respondent may submit one further submittal within 21 days of receipt of notification of Disapproval from the Department. If the Department disapproves the revised submittal once made, unless Respondent requests within 10 days of receipt of notice of the Department's disapproval of the revised submittal or further revised submittal, an opportunity to respond to the Department's objections pursuant to the dispute resolution procedure in Subparagraph X.B, Respondent may be held in violation of this Order and the Department may take any action or pursue whatever rights it has pursuant to any provisions of statutory or common law. If the Department approves the revised submittal or second revised submittal, it shall be incorporated into and become an enforceable part of this Order.

B. Respondent shall modify and/or amplify and expand a submittal upon the Department's direction to do so if the Department determines, as a result of reviewing data generated by an activity required under this Order or as a result of reviewing any other data or facts, that further work is necessary to ensure that the submittal is completed in accordance with this Order and generally accepted technical and scientific principles; provided, however, that the matters to be addressed by such modification or expansion are within the specific scope of the work described in the Work Plan.

X. Dispute Resolution

A. Respondent's failure to comply with any term of this Order constitutes a violation of this Order and the ECL, subject to the provisions of Subparagraph X.B, with respect to disputes arising over the approvability by the Department of a submittal of Respondent pursuant to Paragraph IX of this Order, and subject to the provisions of Subparagraph X.C, with respect to disputes arising over the reimbursement by Respondent of State costs pursuant to Paragraph XIII of this Order.

B. 1. If the Department disapproves a revised submittal, Respondent shall be in violation of this Order unless, within 10 days of receipt of the Department's notice of disapproval, Respondent serves on the Department's Director of Environmental Remediation ("the Director") a written statement of the issue in dispute, the relevant facts upon which the dispute is based, and factual data, analysis or opinion supporting its position, and all supporting documentation on which the Respondent relies (hereinafter called the "Statement of Position"). The Department shall serve its Statement of Position, including supporting

documentation no later than ten (10) business days after receipt of Respondent's Statement of Position. Respondent shall have five (5) business days after receipt of the Department's Statement of Position within which to serve upon the Department a reply to the Department's Statement of Position, and in the event the Respondent serves such a reply, the Department shall have five (5) business days after receipt of Respondent's reply to the Department's Statement of Position within which to serve upon Respondent the Department's reply to Respondent's reply to the Department's Statement of Position. In the event that the periods for exchange of Statements of Position and replies may cause a delay in the work being performed under this Order, the time periods may be shortened upon and in accordance with notice by the Department as agreed to by Respondent.

2. An administrative record of any dispute under this Subparagraph shall be maintained by the Department. The record shall include the Statement of Position of each party pursuant to Subparagraph X.B.1, and any relevant information. The record shall be available for review of all parties and the public. Upon review of the administrative record as developed pursuant to this Paragraph, the Director shall issue a final decision and order resolving the dispute. Respondent shall revise the submittal in accordance with the Department's specific comments, as may be modified by the Director and except for those which have been withdrawn by the Director, and shall submit a revised submittal. The period of time within which the submittal must be revised as specified by the Department in its notice of disapproval shall control unless the Director revises the time frame in the Director's final decision and order resolving the dispute.

3. After receipt of the revised submittal, the Department shall notify Respondent in writing of its approval or disapproval of the revised submittal. If the revised submittal fails to address the Department's specific comments, as modified, and the Department disapproves the revised submittal for this reason, Respondent shall be in violation of this Order and the ECL. In review by the Director of any dispute pursued under this Subparagraph, Respondent shall have the burden of proving that there is no rational basis for the Department's position.

4. The invocation of the procedures stated in this Subparagraph shall not extend, postpone or modify Respondent's obligations under this Order with respect to any disputed items, unless and until the Department agrees or a court of competent jurisdiction determines otherwise. The invocation of the procedures stated in this Subparagraph shall constitute an election of remedies by Respondent, and such election of this remedy shall constitute a waiver of any and all other remedies which may otherwise be available to Respondent regarding the issue in dispute.

C. 1. The dispute resolution procedure of this Subparagraph, which pertains to Paragraph XIII (Payment of State Costs), applies to payment of State costs solely on the following grounds: (1) the cost documentation contains clerical errors; (2) the costs are not related to the Department's activities concerning the Site; (3) the work for which reimbursement is sought was not necessary; or (4) the costs are not reasonably related to the

project.

2. If within 30 days after receipt of an itemized invoice from the Department for reimbursement of State costs as called for in Paragraph XIII (Payment of State Costs) of this Order, Respondent fails to pay the sum indicated in said itemized invoice solely for any or all of the reasons enumerated in Subparagraph X.C.1 of this Order, Respondent shall be in violation of this Order, unless, within ten (10) business days following the 30 day period from Respondent's receipt of said itemized invoice from the Department, Respondent requests to meet with the Director in order to discuss Respondent's basis for its refusal to pay said itemized invoice, and Respondent is available to meet promptly thereafter. At this meeting, Respondent shall be given an opportunity to present its objections to the payment of said itemized invoice. If Respondent subsequently fails to pay said itemized invoice in the amount and within the time period for payment determined by the Director, then Respondent shall be in violation of this Order and the ECL.

3. The invocation of the formal dispute resolution procedures under this Subparagraph shall not of itself extend, postpone or affect in any way any of Respondent's obligations under this Order. The invocation of the procedures stated in this Subparagraph shall constitute an election of remedies by Respondent for disputes pertaining to Paragraph XIII (Payment of State Costs), and such election of this remedy shall constitute a waiver of any and all other remedies which may otherwise be available to Respondent regarding the issue in dispute.

D. Nothing in this Order shall be construed to allow the consideration or resolution of any dispute regarding the Record of Decision.

XI. Compliance

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

B. Respondent shall not suffer any penalty under this Order or be subject to any proceeding or action if it cannot comply with any requirement hereof because of war, riot, or an unforeseeable disaster arising exclusively from natural causes which the exercise of ordinary human prudence could not have prevented. Respondent shall, within five (5) business days of when it obtains knowledge of any such condition, notify the Department in writing. Respondent shall include in such notice the measures taken and to be taken by Respondent to prevent or minimize any delays and shall request an appropriate extension or modification of this Order. Failure to give such notice within such five-day period constitutes a waiver of any claim that a delay is not subject to penalties. Respondent shall have the burden of proving that an event is a defense to compliance with this Order pursuant to Subparagraph X.B.

XII. 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 for purposes of inspection, sampling, and testing and to ensure Respondent's compliance with this Order. During Remedial Construction, 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 job meetings.

XIII. Payment of State Costs

Within 30 days after receipt of an itemized invoice from the Department, Respondent shall pay to the Department a sum of money which shall represent reimbursement for the State's expenses including, but not limited to, direct labor, fringe benefits, indirect costs, travel, analytical costs, and contractor costs incurred by the State of New York for work related to the Site to the effective date of this Order, as well as for reviewing and revising submittals made pursuant to this Order, overseeing activities conducted pursuant to this Order, collecting and analyzing samples, and administrative costs associated with this Order. Such payment shall be made by certified check payable to the Department of Environmental Conservation and shall be sent to:

Bureau of Program Management
Division of Hazardous Waste Remediation
New York State Department of Environmental Conservation
50 Wolf Road
Albany, NY 12233-7010.

Personal service costs shall be documented by reports of Direct Personal Service, which shall identify the employee name, title, biweekly salary, and time spent (in hours) on the project during the billing period, as identified by an assigned time and activity code. Approved agency fringe benefit and indirect cost rates shall be applied. Non-personal service costs shall be summarized by category of expense (e.g., supplies, materials, travel, contractual) and shall be documented by expenditure reports.

XIV. Department Reservation of Rights

A. Nothing contained in this Order shall be construed as barring, diminishing, adjudicating, or in any way affecting any of the Department's civil, criminal, or administrative rights (including, but not limited to, nor exemplified by, the right to recover natural resource damages) or authorities.

B. Nothing contained in this Order shall be construed to prohibit the

Commissioner or his duly authorized representative from exercising any summary abatement powers.

XV. Respondent's Reservation of Rights

A. Nothing contained in this Order shall be construed as barring, diminishing, adjudicating, or in any way affecting any rights Respondent may have to:

1. submit a Registry petition to reclassify the Site pursuant to 6 NYCRR 375-1.9;
2. seek judicial review of any decisions of the Department or Commissioner under this Order;
3. seek a stay of enforcement of any order of the Department;
4. oppose the imposition or amount of penalties assessed by the Department pursuant to or with respect to Respondent's obligation under this Order;
5. comply with this Order under protest;
6. assert claims against any of its insurers and/or potentially responsible parties with respect to the matters addressed in this Order, including, without limitation, claims for breach of contract, cost recovery, contribution, tortious conduct, and indemnity.
7. pursue all defenses, claims, demands and causes of action against any other person that Respondent may have with respect to any matter, action, event, claim, or proceeding relating in any way to the Site.

B. To the extent authorized under 42 U.S.C. 9613, and any other applicable law, Respondent, Respondent's successors and assigns, shall not be liable for any claim, now or in the future, in the nature of contribution, indemnity or indemnification, however characterized, by potentially responsible parties regarding the work Respondent shall have done in accordance with this Order and that shall have been approved by the Department. In any future action brought by Respondent against a potentially responsible party under CERCLA, as amended, the provisions of 42 U.S.C. 9613(f)(3) shall apply.

C. The existence of this Order or the fact that Respondent has participated in activities pursuant to this Order shall not constitute, be construed as, nor be considered an admission of liability, fault or wrongdoing, or violation of any law, regulation, permit condition, or common law, by Respondent, and shall not give rise to any presumption of law or finding of fact which shall inure to the benefit of any third party. None of the statements in

this Order shall be construed as a waiver of the attorney client privilege or attorney work product privilege.

XVI. 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.

XVII. Public Notice

A. Within 30 days after the effective date of this Order, Respondent shall make all reasonable efforts to effectuate the filing of a Declaration of Covenants and Restrictions with the Clerk of the County wherein the Site is located 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 60 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.

XVIII. Communications

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

I. Communication from Respondent shall be sent to:

Robert Becherer, P.E.
Division of Environmental Remediation
New York State Department of Environmental Conservation
SUNY Campus
Loop Road, Bldg. 40
Stony Brook, NY 11790-2356

with copies to:

G. Anders Carlson, Ph.D.

Director, Bureau of Environmental Exposure Investigation
New York State Department of Health
2 University Place
Albany, New York 12203

Edward F. Devine
New York State Department of Environmental Conservation
Division of Environmental Enforcement
200 White Plains Road, 5th Floor
Tarrytown, NY 10951-5805

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

Dr. Geoffrey M. Roberts
c/o Burmah Castrol Holdings, Inc.
1500 Valley Road
Wayne, New Jersey 07470

With a copy sent to:

John K. Brust
RUST Environmental & Infrastructure, Inc.
12 Metro Park Road
Albany, NY 12205

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

- Four copies (one unbound) to Mr. Becherer
- Two copies to Dr. Carlson ..
- One Copy to Mr. Devine

C. 1. Within 30 days of the Department's approval of any report submitted pursuant to this Order, Respondent shall submit to Director, Division of Hazardous Waste Remediation, a computer readable magnetic media copy of the approved report in American Standard Code for Information Interchange (ASCII) format.

2. Within 30 days after the Department's approval of the drawings and submittals described in Subparagraph III.D of this Order, Respondent shall submit one microfilm copy (16 millimeter roll film M type cartridge) of such Department-approved drawings and submittals, as well as all other Department-approved submittals. Respondent

shall submit same to Mr. Becherer.

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

XIX. Miscellaneous

A. 1. All activities and submittals required by this Order shall address both on-Site and off-Site contamination resulting from the disposal of hazardous wastes at the Site.

2. All activities Respondent is required to undertake under this Order are ordinary and necessary expenses for the continued operation of Respondent.

B. Respondent shall retain professional consultants, contractors, laboratories, quality assurance/quality control personnel, and third party data validators acceptable to the Department to perform the technical, engineering, and analytical obligations required by this Order. The experience, capabilities, and qualifications of the firms or individuals selected by Respondent shall be submitted to the Department within 10 days after the effective date of this Order. The Department's approval of these firms or individuals shall be obtained before the start of any activities for which Respondent and such firms or individuals will be responsible. 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 and shall submit these results in the progress reports required by this Order.

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

E. Respondent shall obtain all permits, easements, rights-of-way, rights-of-entry, approvals, or authorizations necessary to perform Respondent's obligations under this Order.

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

Respondent.

G. Respondent shall provide a copy of this Order to each contractor hired to perform work required by this Order and to each person representing Respondent with respect to the Site and shall condition all contracts entered into 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 registered as a professional engineer in accordance with Article 145 of the New York State Education Law. If such individual is a member of a firm, that firm must be authorized to offer professional engineering services in the State of New York in accordance with Article 145 of the New York State Education Law.

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

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

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

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

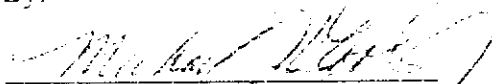
L. The effective date of this Order is the date the Commissioner or his designee signs it.

DATED:

5/27/99

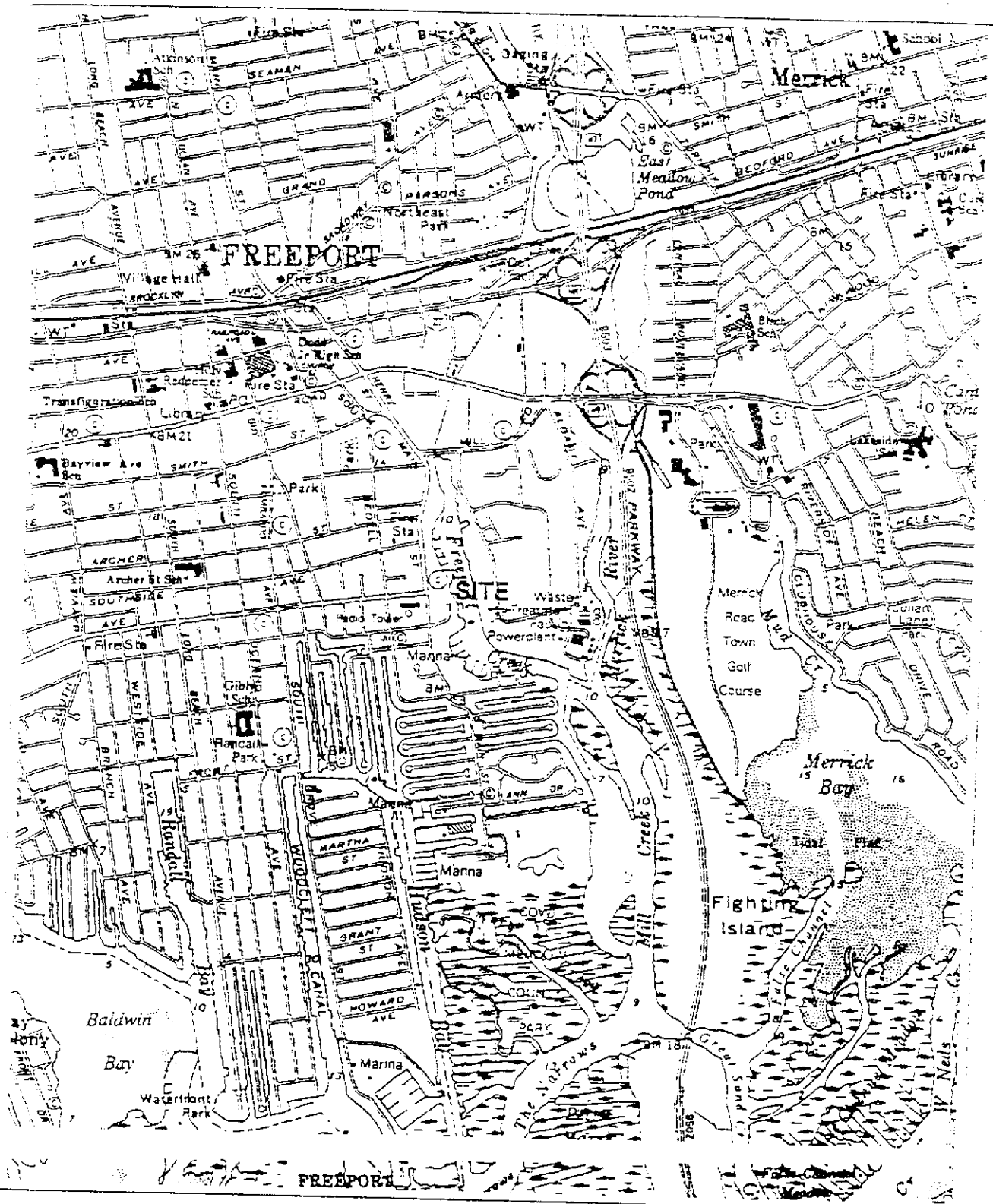
JOHN P. CAHILL
Commissioner
New York State Department
of Environmental Conservation

By:



Michael J. O'Toole, Jr.

Appendix "A"



Site Location Map

130052 Columbia Cement Company, Inc.

NYS DOT Planimetric Quadrangle(s):
 FREEPORT, JONES INLET



0 500 1000 1500 2000



Scale 1:24,000