

STATE OF NEW YORK : DEPARTMENT OF ENVIRONMENTAL CONSERVATION

In the Matter of the
HUNTINGTON/ EAST NORTHPORT LANDFILL SITE
Huntington, New York

ORDER ON CONSENT
Index # A1-0510-1104
Site # 1-52-040

BAE Systems Aerospace, Inc.; Emerson Electric Co.; Estée Lauder Inc.; General Electric Company; Huntington Hospital; Lambda Americas Inc. successor by merger to Lamda Electronics Inc.; Long Island Lighting Co./KeySpan Corporation; Newsday, Inc.; Northrop Grumman Corp.; NSI, Inc.; Pitney Bowes Inc.; Scott Technologies Inc.; Sears, Roebuck and Co.; South Side Carting Co., Inc.; Town of Huntington; and Verizon New York, Inc., f/k/a New York Telephone,

Respondents

WHEREAS, the State of New York (State) alleges that all the Respondents, except the Town of Huntington (Town), arranged for the disposal of hazardous substances at, or transported hazardous substances to, the Huntington/East Northport Landfill (Site) located on Town Line Road, Suffolk County, State of New York (these Respondents, except the Town, shall be referred to as the Settling Respondents¹);

WHEREAS, the Settling Respondents deny the State's allegations;

WHEREAS, the Town operated the Site as a municipal landfill from 1935 to 1989 and, during that time, received municipal solid waste, commercial waste, and industrial waste;

WHEREAS, the Site is listed in the New York State Registry of Inactive Hazardous Waste Disposal Sites as No. 152040, pursuant to ECL § 27-1305;

WHEREAS, the Town and the New York State Department of Environmental

¹ Settling Respondents are BAE Systems Aerospace, Inc.; Emerson Electric Co.; Estée Lauder Inc.; General Electric Company; Huntington Hospital; Lambda Americas Inc. successor by merger to Lamda Electronics Inc.; Long Island Lighting Co./KeySpan Corporation; Newsday, Inc.; Northrop Grumman Corp.; NSI, Inc.; Pitney Bowes Inc.; Scott Technologies Inc.; Sears, Roebuck and Co.; South Side Carting Co., Inc.; and Verizon New York, Inc., f/k/a New York Telephone.

Conservation (NYSDEC) entered into an Administrative Order on Consent (Index No. W1-254-88-06), requiring investigative, removal, remedial and response measures at the Site, as those terms are defined or used in Sections 101(23), 101(24), 101(25), 104(d) and 107(a) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 U.S.C. §§ 9601(23), 9601(24), 9601(25), 9604(d) and 9607(a) (Response Measures), which Response Measures were undertaken in accordance with the National Contingency Plan for the Removal of Oil and Hazardous Substances, 40 CFR Part 300 (NCP);

WHEREAS, NYSDEC and the Town entered into a State Assistance Contract (No. C300259), pursuant to the Environmental Quality Bond Act of 1986, whereby the State agreed to reimburse the Town for 75% of the eligible costs for investigation, remedial design, construction of the remedial action and construction oversight to be incurred by the Town at the Site;

WHEREAS, NYSDEC has made reimbursements to the Town pursuant to such agreement in an amount in excess of \$18,000,000, and the State alleges that it has incurred other response costs, including interest and enforcement costs at the Site;

WHEREAS, the Town implemented Response Measures at the Site to remedy the alleged release and/or threatened release of hazardous substances into the environment, and incurred response costs, including but not limited to, costs of investigation, removal, remedial activity, and operation and maintenance, as those terms are defined or used in Sections 101(23), 101(24), 101(25), 104(d), 107(a) and 113 of CERCLA, 42 U.S.C. §§ 9601(23), 9601(24), 9601(25), 9604(d), 9607, and 9613, in relation to the Site, which unreimbursed costs are alleged by the State to total in excess of \$10,000,000.00;

WHEREAS, the Town is the owner and operator of the Site and is a necessary party to

these proceedings;

WHEREAS, the Parties have agreed to forego any claims which they may or could have asserted against each other, subject to the provisions of this Order on Consent;

WHEREAS, the New York State Department of Law (DOL) is empowered to take legal action through the Attorney General for the State of New York (Attorney General) to protect the health and safety of the residents of the State and to protect and preserve the environment and to abate a public nuisance;

WHEREAS, by signing this Order on Consent, the Attorney General binds the State of New York and its Departments and Agencies by the terms hereof, and the Commissioner of the New York State Department of Environmental Conservation specifically acknowledges that NYSDEC is bound by the terms hereof;

NOW, THEREFORE, it is ORDERED that:

1. This Order on Consent shall apply to and be binding upon the State, the Town, and each of the Settling Respondents. Each signatory to this Order represents that she or he is fully authorized to enter into the terms and conditions of this Order and to bind the party represented by her or him. Any change in governance, ownership or corporate status of a Settling Respondent including, but not limited to, any transfer of assets or real or personal property shall in no way alter such Settling Respondent's responsibilities under this Order.
2. Neither this Order on Consent, nor any terms thereof, nor the entry into this Order, nor performance of the terms thereof, by any of the Settling Respondents or the Town shall constitute or be construed as an admission or acknowledgment by any of the Settling

Respondents or the Town of the factual or legal assertions contained in this Order, and the Settling Respondents and the Town retain the right to controvert in any subsequent proceedings, other than proceedings for the purpose of implementing or enforcing this Order, the validity of the facts, allegations or determinations contained in this Order. Neither this Order, nor the terms thereof, nor the entry into this Order, nor performance of the terms thereof, by any of the Settling Respondents or the Town shall constitute or be construed as an admission or acknowledgment by any of the Settling Respondents or the Town of any liability, responsibility or fault with respect to the conditions at or arising from past or future conditions, activities or operations at the Site, or an admission of violation of any law, by any Settling Respondent or the Town.

3. a. Within five (5) business days of the date on which notice of the Effective Date of this Order on Consent is given (as provided in paragraphs 14 and 17 hereof), Settling Respondents shall remit to the State the amount of \$6,735,000, by wire transfer or by certified or cashier's check made payable to the State of New York and delivered to:

Robert Emmet Hernan, Esq.
Assistant Attorney General
New York State Department of Law
Environmental Protection Bureau
120 Broadway - 26 Floor
New York, New York 10271

Prior to the Effective Date of this Order, the State may request that Settling respondents remit a portion of this total of \$6,735,000 to the Town of Huntington, by certified or cashier's check. Nothing herein, however, shall require payment prior to the expiration of the five (5) day time period set forth above.

3. b. Within twelve (12) months of the date on which notice of the Effective Date of this

Order on Consent is given (as provided in paragraphs 14 and 17 hereof), Settling Respondent Huntington Hospital shall remit to the State the amount of \$50,000, by wire transfer or by certified or cashier's check made payable to the State of New York and delivered to:

Robert Emmet Herman, Esq.
Assistant Attorney General
New York State Department of Law
Environmental Protection Bureau
120 Broadway - 26 Floor
New York, New York 10271

4. a. Failure to make the payment required in Paragraph 3.a. in a timely fashion shall constitute a default. If Settling Respondents so default under this Order on Consent, the State shall be entitled to a penalty of \$5,000 per day, and Settling Respondents shall pay attorneys' fees and costs incurred by the State to enforce these provisions, in addition to the \$6,735,000 payment and any interest.

4. b. Failure of the Settling Respondent Huntington Hospital to make the payment required in Paragraph 3.b. in a timely fashion shall constitute a default. If Settling Respondent Huntington Hospital so defaults under this Order on Consent, the State shall be entitled to a penalty of \$5,000 per day, and Settling Respondent Huntington Hospital shall pay attorneys' fees and costs incurred by the State to enforce these provisions, in addition to the \$50,000 payment and any interest. The Settling Respondents other than Huntington Hospital shall have no liability for any failure of the Huntington Hospital to make payment under Paragraph 3.b.

COVENANT NOT TO SUE

5. In consideration of, and contingent upon, the payment to be made by the Settling

Respondents pursuant to this Order on Consent, and subject to the provisions of this Order, the State and the Town covenant not to sue, execute judgment, or take any civil, judicial or administrative action under any federal, state, local or common law (other than enforcement of this Order) against any of the Settling Respondents, or their affiliates, subsidiaries, related entities, predecessors, successors and assigns, and their employees, officers and directors, for any matter arising out of or relating to the Matters Addressed by this Order, including without limitation, any claims or causes of action for costs, damages, contribution or attorneys' fees.

6. Each Settling Respondent agrees not to assert any claims or causes of action under any federal, state, local or common law against the State, or its employees, agencies or departments, or against the Town, or its employees or departments, or against any other Settling Respondent, or its affiliates, subsidiaries, related entities, predecessors, successors and assigns, and their employees, officers and directors, or to seek against the State or Town any costs, damages, contribution or attorneys' fees arising out of any Matters Addressed by this Order on Consent; provided, however that if the State, pursuant to the Reopener or the Reservation of Rights of this Order, asserts a claim or commences or continues a cause of action against a Settling Respondent with respect to the Site, this Paragraph 6 shall not preclude the assertion by such Settling Respondent of any claims, counterclaims, or other causes of action against the State or Town or any other Settling Respondent, but only to the same extent and for the same matters, transactions, or occurrences as are raised in the claims or causes of action of the State or Town or any other Settling Respondent. Notwithstanding the foregoing, any Settling Respondent may assert any claims or causes of action against any other person, to the extent permitted by law, for any costs, damages, contribution or attorney fees arising out of any Matters

Addressed by this Order.

7. In consideration of the payments made by the Town, for the investigation and remediation of the Site, and subject to the Reopener and the Reservation of Rights of this Order on Consent, the State covenants not to sue, execute judgment, or take any civil, judicial or administrative action under any federal or state law (other than enforcement of this Order) against the Town for any matter arising out of or relating to the Matters Addressed by this Order; provided, however, that if the State, pursuant to the Reopener or the Reservation of Rights of this Order, asserts a claim or commences or continues a cause of action against the Town with respect to the Site, this Paragraph 7 shall not preclude the assertion by the Town of any claims, counterclaims, or other causes of action against the State or Settling Respondents, but only to the same extent and for the same matters, transactions, or occurrences as are raised in the claims or causes of action of the State. Notwithstanding this Paragraph or any other provision of this Order on Consent, the Town shall continue to be solely responsible for the Operation, Maintenance and Monitoring at the site, and all other terms and obligations of the parties set forth in Consent Decree No. W1-254-88-06, and the State Assistance Contract, No. C300259, both of which agreements were entered into between the State and the Town, remain in full force and effect.

REOPENERS

8. Notwithstanding any other provision of this Order on Consent, the State reserves, and this Order is without prejudice to, the right to institute proceedings, or to issue an administrative order seeking to compel the Town and Settling Respondents: (a) to perform further response.

actions relating to the Site, or (b) to reimburse the State for additional costs of response, in either case only if:

- (i) conditions at the Site existing as of the Effective Date, previously unknown to the State, are discovered after the Effective Date, or
- (ii) information existing as of the Effective Date in whole or in part previously unknown to the State, is received after the Effective Date,

and these previously unknown conditions or information together with any other relevant information indicates that the Response Measures selected for the Site are not protective of human health or the environment. For purposes of this Reopener, previously known conditions at the Site and previously known information include all conditions and information known to the State as of the Effective Date including, but not limited to, all conditions identified and information contained or submitted for inclusion in the DEC Administrative Record, attached as Exhibit A to the Record of Decision (ROD) for the Site, or in the files and records of the NYSDEC. Settling Respondents and the Town reserve all their rights and defenses to liability and to any Reopener.

MATTERS ADDRESSED AND RESERVATION OF RIGHTS

9. Except as specifically reserved in Paragraphs 7, 8, and 12 of this Order on Consent, the State is settling all claims against Settling Respondents and the Town for the Matters Addressed by this Order which include (a) claims for all response costs, past and future, that have been incurred or will be incurred for the investigation and remediation of the Site, no matter when or by whom incurred, including any and all response costs incurred by any party to

this action or by any other responsible party, (b) any natural resource damages at or associated with the Site, and (c) any other claims or causes of action under any federal, state, local or common law relating to the disposal or alleged disposal of hazardous substances at the Site.

10. The payment being made by the Settling Respondents represent a reasonable contribution by Settling Respondents toward the total past response costs that have been incurred by the State and the Town and the total anticipated future response costs that will be incurred by the State, or by the Town, for the implementation of the remedial program set forth in the State Record of Decision for the Site, including post-construction, operation and maintenance, and monitoring response costs. Settling Respondents believe that the amount paid pursuant to this Order on Consent constitutes more than their fair share of the total past response costs that have been incurred by the State and the Town, and reserve the right to assert claims for contribution against non-settling third parties.

11. The payments that already have been made by the Town, as well as the reduction of the State's claim to reflect the share of liability potentially allocated to the Town, represent the fair and reasonable contribution by the Town toward the total past response costs that have been incurred by the State and the Town and the total anticipated future response costs that will be incurred by the State, or by the Town, for the implementation of the remedial program set forth in the State Record of Decision for the Site, including post-construction, operation and maintenance, and monitoring response costs.

12. The "Matters Addressed" do not include, and the State reserves all of its rights with regard to:

(a) the State's right to bring any action or proceeding against any person, firm,

corporation, or other entity other than Settling Respondents and the Town; and,

(b) the State's right to enforce the provisions of this Order on Consent against Settling Respondents in the event Settling Respondents fail to satisfy any of the terms of this Order.

CONTRIBUTION PROTECTION

13. The Parties agree that by entering into this Order on Consent the Settling Respondents, and their affiliates, subsidiaries, related entities, predecessors, successors and assigns, and their officers, directors, agents, and employees, and the Town, and its agents and employees, are entitled to the full extent of protection from contribution actions or claims provided by CERCLA Section 113(f)(2), 42 U.S.C. § 9613(f)(2), and/or any other applicable federal or state law, for the Matters Addressed by this Order on Consent.

EFFECTIVE DATE

14. This Order on Consent shall be effective upon the date that all of the Respondents and the State of New York, through both the Attorney General and Commissioner of the New York State Department of Environmental Conservation, have signed below (the Effective Date). Notice of the Effective Date shall be sent by electronic mail to the Respondents as provided in Paragraph 17 hereof, and all times for performance of activities under this Order shall be calculated from the date of such notice.

MISCELLANEOUS PROVISIONS

15. Nothing in this Order on Consent shall inure to the benefit of any other person or entity not a party to this Order.

16. This Order on Consent may not be modified except by express written agreement of all the Parties.

17. Any notification to the Settling Respondents shall be in writing and shall be deemed properly given on receipt thereof if sent to the following, or to such other person as Settling Respondents may designate by written notice to the State:

Paul Milmed, Esq.
White & Case
1155 Avenue of the Americas
New York, New York 10036-2787
pmilmed@ny.whitecase.com

Dated: Albany, New York
December 21, 2004

NEW YORK STATE DEPARTMENT OF
ENVIRONMENTAL CONSERVATION

By: 

DALE A. DESNOYERS

Division Director

Division of Environmental Remediation

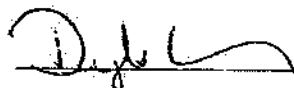
Dated: *October 27, 2004*

ELIOT SPITZER
Attorney General of the State of New York

By: *Robert Emmet Hernan*

ROBERT EMMET HERNAN
Assistant Attorney General
Environmental Protection Bureau
120 Broadway
New York, New York 10271

BAESYSTEMS Information and Electronic System Integration Inc., successor to BAE SYSTEMS Aerospace, Inc., successor to GEC-Marconi Hazeltine Corporation, consents to this Order on Consent relating to the Huntington/East Northport Landfill Site No. 1-52-40, by its duly authorized representative on this 18th day of November 2004.

SIGNATURE: 

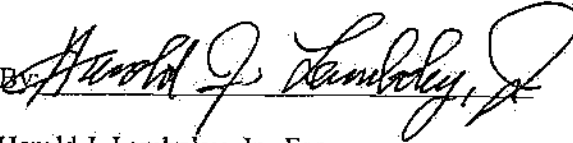
NAME: David Coleman

POSITION: V.P., General Counsel & Asst. Secretary

Order on Consent -- Site # 1-52-40

Dated: Nov. 16, 2004

EMERSON ELECTRIC CO.

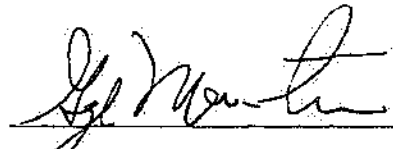
By: 

Harold J. Lamboley, Jr., Esq.
Vice President, Environmental Affairs and Real Estate
8000 W. Florissant
St. Louis, MO 63136

Dated: November , 2004

ESTÉE LAUDER INC.

By: _____


George Martini, Esq.
Vice President & Deputy General Counsel
Estée Lauder Inc.
767 Fifth Avenue
New York, NY 10153
(212) 572-6625

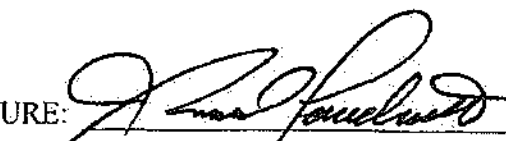
Huntington Landfill Order on Consent

Date: November 18, 2004

GENERAL ELECTRIC COMPANY

By: 
H. Carl Horneman

HUNTINGTON HOSPITAL consents to this Order on Consent relating to the Huntington/East Northport Landfill Site No. 1-52-40, by its duly authorized representative on this 23rd day of November 2004.

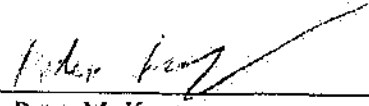
SIGNATURE: 

NAME: J. RONALD GAUDREULT

POSITION: President / CEO

Dated: November 26, 2004

LAMBDA AMERICAS INC.

By: 
Name: Peter M. Kent
Title: Vice President

STATE OF NEW YORK: DEPARTMENT OF ENVIRONMENTAL CONSERVATION

-----X
In the Matter of
HUNTINGTON/EAST NORTHPORT LANDFILL SITE
Huntington, New York

ORDER ON CONSENT

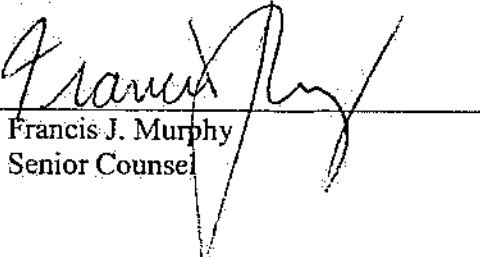
Site # 1-52-40

LONG ISLAND LIGHTING CO/KEYSPAN CORPORATION

Respondents,
-----X

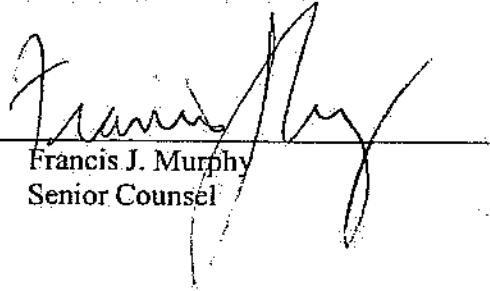
LONG ISLAND LIGHTING COMPANY
d/b/a LIPA

By: _____


Francis J. Murphy
Senior Counsel

KEYSPAN CORPORATION

By: _____



Francis J. Murphy
Senior Counsel

Huntington Landfill Order on Consent

Dated:

Newsday, Inc.

By:


Raymond B. Koupal
Senior Vice President and Chief
Financial Officer

Dated:

NORTHROP GRUMMAN SYSTEMS CORPORATION

By: Jackie Luca

JACKIE LUCA
Director, Corporate Environmental Health & Safety
Northrop Grumman Corporation
1840 Century Park East
Los Angeles, CA 90067-2199

Dated: November 22, 2004

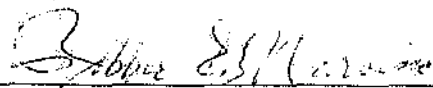
NSI, Inc.

By: W. F. Leikin

William F. Leikin
Secretary, NSI, Inc.
C/O United Technologies Corporation
Legal Department, MS 524
One Financial Plaza
Hartford, CT 06101

Dated: November __, 2004

PITNEY BOWES INC.

By: 

ROBBIE E.B. NARCISSE
Deputy General Counsel-Corporate and
Assistant Secretary
Pitney Bowes Inc.
1 Elmcroft Rd.
Stamford, CT 06926

Dated: 11/29/04

SCOTT TECHNOLOGIES, INC.

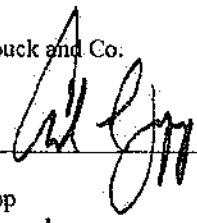
By: Mark N. Benzema

Its: Vice President

Dated: November 25, 2004

Sears, Roebuck and Co.

By: _____

A handwritten signature in black ink, appearing to read 'Andrea Zopp', written over a horizontal line.

Andrea Zopp
General Counsel
3333 Beverly Road, B6-210B
Hoffman Estates, IL 60179

Dated: November 3, 2004

SOUTH SIDE CARTING CO., INC.

A handwritten signature in cursive script, appearing to read "Umberto Velocci", written over a horizontal line.

By: Umberto Velocci
South Side Carting Co., Inc.
62 Cherrywood Drive
New Hyde Park, New York 11040

Dated:

ELIOT SPITZER
Attorney General of the State of New York

By: _____

ROBERT EMMET HERNAN
Assistant Attorney General
Environmental Protection Bureau
120 Broadway
New York, New York 10271

Dated:

TOWN OF HUNTINGTON

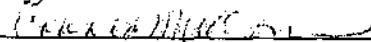
By:  _____

FRANK P. PETRONE
Supervisor

Dated:

November 11, 2004

Verizon New York Inc. (f/k/a New York Telephone
Company)

By: 

Name: Connie Nelson

Title: Vice President-HR Operations & Support