

STATE OF NEW YORK: DEPARTMENT OF ENVIRONMENTAL CONSERVATION

In the Matter of the Development and Implementation of a Remedial Investigation/Feasibility Study 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 #A6-0314-94-02

Monarch Chemicals, Inc.
Respondent.

Site Code #6-33-030

WHEREAS,

1. The New York State Department of Environmental Conservation (the "Department") is responsible for enforcement of Article 27, Title 13 of the Environmental Conservation Law of the State of New York ("ECL"), entitled "Inactive Hazardous Waste Disposal Sites." This Order is entered into pursuant to the Department's authority under ECL Article 27, Title 13 and ECL Section 3-0301.

2. Monarch Chemicals, Inc. ("Respondent"), operates an industrial chemical manufacturing, storage and repackaging plant at 37 Meadow Street, Utica, New York (hereinafter referred to as "the Site"). Respondent is also the owner of the Site. A preliminary investigation of the Site conducted by the Department's representative resulted in a determination by the Department that spillage and disposal of hazardous wastes occurred at the Site and that, among other contaminants, methylene chloride, 1,1,1-trichloroethane, trichloroethylene,

tetrachloroethylene, toluene, xylene and cyanide salts are present in the soils and/or groundwater at the Site.

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, and that it 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 6-33-030. The Department has classified the Site as a Class "2" site pursuant to ECL 27-1305.4.b.

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. 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 a Remedial Investigation/Feasibility Study ("RI/FS") for the Site; (ii) investigate interim remedial measures (IRMs); and (iii) 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.

7. By consenting to the issuance of this Order, Respondent neither admits the Department's allegations contained herein, nor admits that it has violated any Federal, State, or local law, regulation, or ordinance.

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

I. 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 the 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 nonprivileged (under federal and state procedural rules of evidence) information held by Respondent and Respondent's present 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 of all existing relevant environmental 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 topographic and property surveys, engineering studies and aerial photographs that have not been submitted to the Department.

II. RI/FS Work Plan Contents and Submittals

A. Within 60 days after the Department's approval of Respondent's Consultants, per paragraph XV.B, 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 summary of the information and conclusions which were considered and factored into the RI/FS Work Plan.

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

c. 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 as of the date of this Order.

d. 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 C.F.R.

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.

e. 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 as of the date of this Order, 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 U.S.C. 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 in effect as of the date of this Order.

III. Performance and Reporting of Remedial Investigation

A. Within 60 days after the Department's approval of the RI/FS Work Plan, Respondent shall commence the Remedial Investigation.

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 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. Within 90 days after receipt of the Department's approval of the Remedial Investigation Report, Respondent shall submit to the Department a 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 attributable to hazardous waste disposal at the Site. The Feasibility Study shall include a risk assessment to determine the risks associated with any contamination which may be found at the site, and a determination of the appropriate clean up goals for the site based on the established risks. 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. Within 45 days 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 the proposed remedial action plan identified therein, 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. Interim Remedial Measures

Respondent may propose interim remedial measures ("IRMs") for the Site on an as-needed basis. In proposing each IRM, Respondent shall submit to the Department a work plan which includes a chronological description of the anticipated IRM activities together with a schedule for the performance of those activities. Upon the Department's determination that the proposal is an appropriate IRM, and upon the Department's approval of such work plan, the 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 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 in effect as of the date of this Order 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. 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. 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 IRM were completed in accordance with the Department-approved IRM Work Plan and specifications, and this Order. 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. 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. 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.

VI. Progress Reports

Respondent shall submit to the parties identified in subparagraph XIV.B in the numbers specified therein copies of written monthly progress reports that: (i) describe the actions which have been taken toward achieving compliance with this Order during the previous month; (ii) include all results of sampling and tests and all other data received or generated by Respondent or Respondent's contractors or agents in the previous month relating to the Site, including quality assurance/quality control information, conducted pursuant to this Order; (iii) identify all work plans, reports, and other deliverables required by this Order that were completed and submitted during the previous month; (iv) describe all actions, including, but not limited to, data collection and implementation of work plans, that are scheduled for the next month and provide other information relating to the progress at the Site; (v) include information regarding percentage of completion, unresolved delays encountered or anticipated that may affect the future schedule for implementation of the Respondent's obligations under the Order, and efforts made to mitigate those delays or anticipated delays;

(vi) include any modifications to any work plans that Respondent has proposed to the Department or that the Department has approved; and (vii) describe all activities undertaken in support of the Citizen Participation Plan during the previous month and those to be undertaken in the next month. Respondent shall submit these progress reports to the Department by the tenth day of every month following the effective date of this Order.

VII. 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 submittal discussed in Paragraph II.B.(1)c. 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 attempts to resolve the Department's stated reasons for disapproval of 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, then the matter will be considered in dispute and subject to the provisions of paragraph VII.C regarding dispute resolution. If the Department approves the revised submittal, it shall be incorporated into and become an enforceable part of this Order.

B. The Department may require Respondent to modify and/or amplify and expand a submittal if the Department determines, as a result of reviewing data generated by an activity required under this Order or as a result of reviewing any other data or facts, that further work is necessary.

C. Any dispute concerning activities or submittals required under this Order shall be resolved as follows: if Respondent objects to a notice of disapproval or other determination made by the Department pursuant to this Order, Respondent shall submit written notification to the Department's Project Coordinator within 15 days of receipt of the notice of disapproval or other determination. Respondent's written objections shall define the dispute and state the basis of Respondent's objections. The Department and Respondent shall then have an additional 15 days to reach an agreement. If an agreement is not reached within the 15 days, Respondent may, within 10 days of the conclusion of the 15 day period, request a determination by the Director of the Division of Hazardous Waste

Remediation (the Director). Such request by Respondent shall be made in writing. All deadlines required by this Order, except for monthly progress reports and other matters the undertaking of which does not depend upon the resolution of the dispute in question, will be extended for a period of time equal to the amount of time that the Director is reviewing and responding to the Respondent's request. The Director's decision will be in writing and will summarize the reason for his decision. The Director's determination is the Department's final decision. Respondent shall proceed in accordance with that final decision regardless of whether Respondent agrees with the decision. If Respondent does not proceed in accordance with the Director's determination, the Department reserves the right to undertake any response action and seek reimbursement from Respondent for the costs of that undertaking, to seek judicial enforcement of the decision, to seek penalties and such other relief as may be appropriate.

VIII. Penalties

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, strike, or an unforeseeable disaster or other such cause which the exercise of ordinary human prudence could not have prevented. Respondent shall, within 15 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 15 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 VIII.B.

IX. 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 the Respondent by any duly designated employee, consultant, contractor, subcontractor 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. Entrants will follow the safety rules of the facility.

X. 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 performed at the Site to date, as well as for negotiating this Order, reviewing and revising submittals made pursuant to this

Order, overseeing activities conducted pursuant to this Order, collecting and analyzing samples, and administrative costs associated with this Order. Such payment shall be made by check payable to the Department of Environmental Conservation. Payment shall be sent to the Bureau of Program Management, Division of Hazardous Waste Remediation, N.Y.S.D.E.C., 50 Wolf Road, Albany, NY 12233-7010. Itemization of the costs shall include an accounting of personal services indicating the employee name, title, biweekly salary, and time spent (in hours) on the project during the billing period, as identified by an assigned time and activity code. This information shall be documented by quarterly reports of Direct Personal Service. Approved agency fringe benefit and indirect cost rates shall be applied. Non-personal service costs shall be summarized by category of expense (e.g., supplies, materials, travel, contractual) and shall be documented by the New York State Office of the State Comptroller's quarterly expenditure reports. Arithmetical errors and missbillings shall be subject to dispute resolution in accordance with the terms of paragraph VII.C.

XI. Reservation of Rights

A. Nothing contained in this Order shall be construed as barring, diminishing, adjudicating, or in any way affecting any of the Department's rights including, but not limited to nor exemplified by, the following:

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

Respondent's directors, officers, employees, servants, agents, successors, and assigns;

2. the Department's right to enforce this Order against Respondent and/or any of Respondent's directors, officers, employees, servants, agents, successors, and assigns if Respondent fails to satisfy any of the terms of this Order;

3. the Department's right to bring any action or proceeding against Respondent and/or any of Respondent's directors, officers, employees, servants, agents, successors, and assigns with respect to claims for natural resources damages as a result of the release or threatened release of hazardous substances or constituents at or from the Site or areas in the vicinity of the Site;

4. the Department's right to bring any action or proceeding against Respondent and/or any of Respondent's directors, officers, employees, servants, agents, successors, and assigns with respect to hazardous substances that are present at the Site or that have migrated from the Site;

5. the Department's right to bring any criminal action against the Respondent and/or any of Respondent's directors, officers, employees, servants, agents, successors, and assigns;

6. the Department's right to require Respondent and/or any of Respondent's directors, officers, employees, servants, agents, successors, and assigns to develop and implement IRMs for the Site; and

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

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

C. As long as Respondent is in compliance with the terms of this Order, the Department covenants not to sue or cause to be sued Respondent for carrying out the terms of the work hereunder.

D. Nothing in this Order shall waive Respondent's rights to bring any action against any person, including any party to this Order.

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 Respondent's directors, officers, employees, servants, agents, successors, and assigns, except for those which arise out of or result from the negligence or wilful misconduct of the Department or the Department's employees, agents, or representatives.

XIII. Public Notice

A. Within 30 days after the effective date of this Order, Respondent shall file a Declaration of Covenants and

Restrictions with the Oneida 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 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.

XIV. Communications

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

A. Communication from Respondent shall be sent to:

1. P. David Smith, P.E.

Project Coordinator

Division of Hazardous Waste Remediation

New York State Department of Environmental

Conservation

50 Wolf Road

Albany, New York 12233-7010

2. G. Anders Carlson, Ph.D.

Director, Bureau of Environmental

Exposure Investigation

New York State Department of Health

2 University Place
Albany, New York 12203

3. Thomas Brown, Regional Director
New York State Department of Environmental
Conservation
State Office Building
Watertown, New York 13601

4. Richard M. Williams, Esq.
New York State Department of Environmental
Conservation
Central Field Unit
1150 North Westcott Road
Schenectady, New York 12306

B. Copies of all submittals except those created under the terms of VII.C shall be distributed as follows:

1. Four copies to P. David Smith, P.E.
2. Two copies to Dr. Carlson
3. One copy to Mr. Brown
4. One copy to Mr. Williams

C. Within 30 days of the Department's approval of the RI/FS, Respondent shall submit to the Department one microfilm copy (16 Millimeter roll film M type cartridge) of the Department-approved RI/FS as well as all other Department-approved submittals other than the Department-approved RI/FS. Respondent shall submit such to Mr. Smith.

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

1. Nicholas Gladding, Esq.
Bryan Cave
One Metropolitan Square
211 North Broadway, Suite 3600
St. Louis, MO 63102-2750
2. Mr. Joseph Applegate
Levine·Fricke, Inc.
3382 Capital Circle N.E., Suite 200
Tallahassee, FL 32308
3. Mr. Timothy Gaffney
Jones Chemicals, Inc.
80 Munson Street
LeRoy, NY 14482

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

XV. Miscellaneous

A. All activities and submittals required by this Order shall address both on-Site and off-site contamination resulting from the disposal of hazardous waste at 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 experience, capabilities and qualifications of the Consultants selected by Respondent shall be submitted to the Department within 30 days after the effective date of this Order. The Department's approval of these Consultants shall be obtained prior to initiation of any activities for which the Respondent and such Consultants will be responsible.

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. If the Department elects to take its own samples, Respondent has the right to obtain split samples, duplicate samples, or both. 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. Likewise, the Department shall make available to Respondent the results of all sampling and/or tests or other data generated by the Department with respect to oversight of this Order.

D. Respondent shall notify the Department at least 15 days in advance of any field activities to be conducted pursuant to this Order.

E. Respondent shall obtain whatever permits, easements, rights-of-way, rights-of-entry, approvals, or authorizations are necessary to perform Respondent's obligations

under this Order. If Respondent is unable to obtain access to undertake off-site activity, the Department will, within its discretion, exercise whatever authority is available to it to obtain access.

F. Respondent and Respondent's officers, directors, agents, servants, employees, successors, and assigns, and the Department and the Department's representatives, agents and employees, 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, and the Department's representatives, agents and employees, shall be obliged to comply with the relevant provisions of this Order in the performance of their designated duties on behalf of Respondent or the Department.

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 hereunder 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

contractor and subcontractors perform the work to be done under this Order in accordance with this Order.

H. Any consultant, contractor or subcontractor who will perform field work shall carry Liability Insurance with the following minimum limits:

(1) Worker's Compensation, Employer's Liability Insurance: \$100,000 per accident

(2) Comprehensive Automobile Liability Insurance:
Bodily Injury Liability \$1,000,000 each occurrence
Property Damage Liability \$1,000,000 each occurrence

(3) General Liability, Contractual Liability, Products/Completed Operations Liability:
Bodily Injury Liability \$1,000,000 each occurrence
Property Damage Liability \$1,000,000 each occurrence

I. 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.

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

K. 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.

L. (1) The terms of this Order shall constitute the complete and entire Order between Respondent and the Department

concerning the Site. No term, condition, understanding, or agreement purporting to modify or vary any term of this Order shall be binding unless made in writing and subscribed by the party to be bound. No informal advice, guidance, suggestion, or comment by the Department regarding any report, proposal, plan, specification, schedule, or any other submittal shall be construed as relieving Respondent 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:

P. David Smith, P.E. and the Project Attorney.

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

DATED: *Albany*, New York
November 30, 1994

LANGDON MARSH
Commissioner
New York State Department
of Environmental Conservation


By Ann Hill DeBarbieri
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.

By: Timothy J. Gaffney

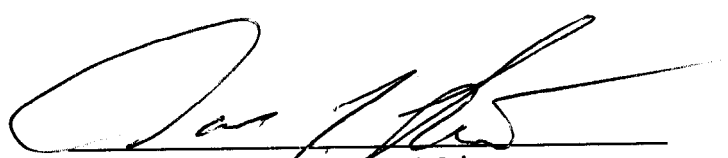
Name: Timothy J. Gaffney

Title: Vice President, Environmental Affairs

Date: 11/8/94

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

On this 8th day of November, 1994, before me personally came Timothy J. Gaffney, to me known, who being duly sworn, did depose and say that he resides in Livingston County, New York; that he is the Vice President, Environmental Affairs of Monarch Chemicals, Inc., the corporation described in and which executed the foregoing instrument; that he knew the seal of said corporation; that the seal affixed to said instrument was such corporate seal; that it was so affixed by the order of the Board of Directors of said corporation and that he signed his name thereto by like order.


 Notary Public
 DONALD J. SMITH
 Notary Public, State of New York
 Qualified in Genesee County
 My Commission Expires Nov. 30 1994