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October 22, 1993

Rick W. Kennedy, Esq.
Hodgson, Russ, Andrews, Woods
& Goodyear
1800 One M & T Plaza
Buffalo, New York 14203-2391

RE: Leica, Inc. Order on Consent
Site No. 915156

Dear Mr. Kennedy:

Enclosed is a fully executed original of the subject Order on Consent, without appendices.

As you know, Appendix A to the Order is the site map which also appears as Figure 2.2 of the approved Remedial Investigation/Feasibility Study Work Plan. The RI/FS Work Plan is Appendix B to the Order. Appendix B, entitled "Remedial Investigation/Feasibility Study Work Plan, Leica, Inc., Cheektowaga, New York, Re-Printed on September 29, 1993", is a re-print of the May 4, 1993 RI/FS Work Plan which was the last draft submitted to the Department. It is my understanding from your October 1, 1993 letter that you have a copy of the Work Plan to append to the enclosed Order.

Thank you for your efforts in connection with this matter. If you have any questions, please contact me.

Very truly yours,

James M. Hazel
Senior Attorney
Division of Environmental
Enforcement

JMH:H:jab
H191LEIC

Enclosure

cc: M. Doster (with enclosure)
G. Sutton (with enclosure)
A. Carlson (with enclosure)

STATE OF NEW YORK: 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

LEICA, INC.

Respondent.

INDEX #B9-0396-92-01

Site Code #915156

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. Leica, Inc. ("Respondent") is a corporation organized and existing under the laws of the State of New York, and owns and operates an industrial facility in the Town of Cheektowaga, State of New York.

3. Respondent's facility in the Town of Cheektowaga is located at the intersection of Eggert Road and Sugar Road (the "Site"). A map of the Site is attached hereto as Appendix "A". Respondent has conducted an investigation to determine whether and to what extent hazardous waste or other contamination exists

at the Site. Respondent's investigation revealed soil and groundwater contaminated by volatile organic compounds including, but not limited to, trichloroethene and 1,2-dichloroethene and soil contaminated by petroleum hydrocarbons.

4. Respondent has submitted and the Department has approved a work plan for a Remedial Investigation/Feasibility Study ("RI/FS") at the Site (Appendix "B").

5. The Department has determined that the Site is an inactive hazardous waste disposal site, as that term is defined at ECL Section 27-1301.2, and 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 915156. The Department has classified the Site as a Classification "2" pursuant to ECL Section 27-1305.4.b.

6. A. Pursuant to ECL Section 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 Section 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 Section 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 Section 3-0301.1.i.

7. 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 implementation of the approved 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 reasonable and necessary oversight costs.

8. Respondent, having waived Respondent's right to a hearing as provided by ECL Section 27-1313, 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. Information Requests

Respondent, within 15 days after receipt of a written request of the Department, will provide in accordance with and to the extent required by ECL Section 27-1307, information and data, if any, within Respondent's possession or control, which is in addition to the information and data submitted to the Department in the RI/FS Work Plan or otherwise.

II. Performance and Reporting of Remedial Investigation

A. Within 30 days after the effective date of the Order, 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 applicable assessments and evaluations set forth in CERCLA, the NCP, and the guidance documents identified in the Department-approved RI/FS Work Plan;

(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.

III. Feasibility Study

A. Pursuant to the schedule set forth in the Department-approved RI/FS Work Plan, Respondent shall submit 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 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 the Department-approved RI/FS Work Plan.

C. Within 60 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 resulting proposed remedial action plan in accordance with law. 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.

IV. Remedial Design Contents

A. Unless the ROD selects the "no action" alternative, or Respondent has challenged the ROD in an Article 78 proceeding, within 30 days after the ROD is signed, Respondent shall submit to the Department a scope of work document ("Scope of Work") which shall include a schedule for submission of a remedial design to implement the remedial alternative for the Site selected by the Department in the ROD (the "Remedial Design"). If Respondent unsuccessfully challenges the ROD in an Article 78 proceeding, Respondent shall submit the Scope of Work within 30 days of the final resolution of the Article 78 proceeding. The Scope of Work and the Remedial Design shall be prepared by and have the signature and seal of a professional engineer who shall certify that the documents were prepared in accordance with this Order.

B. The Remedial Design shall include the following:

1. A detailed description of the remedial objectives and the means by which each essential 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. health and safety of persons living and/or working at or in the vicinity of the Site;

f. quality control and quality assurance procedures and protocols to be applied during implementation of the Remedial Design; and

g. 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 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;

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 C.F.R. 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.

V. Remedial Design Construction and Reporting

A. Within 60 days of the Department's approval of the Remedial Design, Respondent shall commence construction of the 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 45 days after completion of the construction activities identified in the 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 by a professional engineer that the Remedial Design was implemented and all construction activities were completed in accordance with the Department-approved Remedial Design. 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 approved Remedial Design.

G. If the Department concludes that any element of the Remedial Program fails to achieve its objectives or otherwise fails to protect human health or the environment, Respondent and the Department shall meet promptly to determine what is

necessary to achieve those objectives or to ensure that the Remedial Program otherwise protects human health and the environment. If the parties cannot agree, the dispute resolution procedures set forth in subparagraph VIII. D. shall be followed.

VI. Interim Remedial Measures

Before the effective date of the ROD, 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 interim remedial measure 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.

Respondent shall then carry out such IRM in accordance with the requirements of the approved work plan, detailed documents and specifications, and this Order. Within the schedule contained in the Department-approved 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 performed in full accordance with the Department-approved work plan, detailed documents and specifications, and this Order. Within the schedule contained in the Department-approved work plan, Respondent shall submit to the department a report or reports documenting the performance of the IRM. 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.

VII. Progress Reports

Respondent shall submit to the parties identified in subparagraph XV. B. in the numbers specified therein copies of written bi-monthly progress reports that: (i) describe the actions which have been taken toward achieving compliance with this Order during the previous reporting period; (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 reporting period, including quality

assurance/quality control information, whether conducted pursuant to this Order or conducted independently by Respondent; (iii) identify all work plans, reports, and other deliverables required by this Order that were completed and submitted during the previous reporting period; (iv) describe all actions, including, but not limited to, data collection and implementation of work plans, that are scheduled for the next reporting period 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 reporting period and those to be undertaken in the next reporting period. Respondent shall submit these progress reports to the Department by the tenth day following each bi-monthly reporting period following the effective date of this Order.

VIII. Review of Submittals

A. 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 Department-approved prior submissions. The Department shall notify Respondent in writing of its approval or disapproval of the submittal, except for the submittal discussed in Paragraph IV.B.7. All Department-approved submittals 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. (1) If the Department disapproves a submittal, the Department shall notify the Respondent, in writing, of the specific bases for the Department's determination. Respondent shall be available to meet with the Department within 10 days of its receipt of the Department's notice to discuss the bases for the Department's determination. Within thirty (30) days after the meeting between the parties, or such other period of time agreed to by the Department, the Respondent shall address the Department's objections by revising the submittal or by undertaking any additional necessary work. If additional work is necessary to adequately address the Department's objections, Respondent shall propose such work to the Department for its concurrence. Respondent will then submit a revised submittal within thirty (30) days after its completion of any additional

work, or within such other time period agreed to by the Department.

(2) After its receipt of the Revised Submittal, the Department shall provide written notification to Respondent of its approval or disapproval of the Revised Submittal. The Revised Submittal shall be approved if it has been revised in accordance with the Department's objections and/or to reflect any agreed additional work.

(3) If the Department disapproves a Revised Submittal, Respondent shall be available to meet with the Department within 10 days of Respondent's receipt of the Department's notice. If the parties hereto cannot agree to the terms or content of the Revised Submittal, Respondent shall be in violation of this Order unless the Respondent invokes the dispute resolution mechanism set forth in subparagraph VIII.D. herein. If the Department approves the Revised Submittal, it shall be attached to and incorporated into this Order.

D. (1) If the Department disapproves a Revised Submittal, or if the Department and Respondent are unable to reach agreement pursuant to subparagraph V. G., Respondent shall be in violation of this Order unless, within 10 days of receipt of the Department's notice of disapproval or the Department's conclusion pursuant to subparagraph V. G., or a meeting with the Department on the dispute pursuant to subparagraph VIII. C. (3) or subparagraph V. G., whichever is later, Respondent requests to meet with the Director of the Division of Hazardous Waste

Remediation (the "Director") in order to discuss the Department's objections/determinations/conclusions and Respondent is available to meet immediately thereafter. At this meeting, Respondent shall be given an opportunity to present its responses to the Department's objections/determinations/conclusions, and the Director shall have the authority to modify and/or withdraw such objections/determinations/conclusions. After the Director makes his decision(s), Respondent shall either: (a) within thirty days of receipt of written notice of the Director's decision(s), commence a proceeding pursuant to Article 78 of the CPLR (the Director's decision(s) shall be deemed to be final agency action for purposes of such a proceeding); or (b) notify the Department in writing that it intends to revise the submittal in accordance with the Department's specific comments and/or comply with the Department's conclusion pursuant to subparagraph V. G., as either may be modified by the Director, except for those comments/conclusions which have been withdrawn by the Director, and shall submit a Revised Submittal and/or perform any additional work in accordance with the time frames set forth in the Director's decision, or such other time period as agreed to by the Department.

(2) After receipt of the Revised Submittal, the Department shall notify Respondent in writing of its approval or disapproval of the Revised Submittal.

(3) If the Revised Submittal fails to address the

Department's specific comments, as they may be modified by the Director, and the Department disapproves the revised submittal for this reason, or if Respondent fails to comply with the Department's conclusion pursuant to subparagraph V. G., as it may be modified by the Director, Respondent shall be in violation of this Order and the ECL, unless it commences a proceeding to review that decision pursuant to Article 78 of the CPLR within thirty days of receipt of written notice of the disapproval or written notice of Respondent's failure to comply with the Department's conclusion pursuant to subparagraph V. G. (such written notice shall be deemed final agency action for purpose of an Article 78 proceeding).

(4) The invocation of formal dispute resolution procedures under this Paragraph shall suspend and toll only those obligations of the Respondent under this Order which are indispute or necessarily dependent upon resolution of the matter(s) in dispute.

(5) Nothing in this Order shall be construed to allow Respondent to invoke the dispute resolution mechanism set forth in this subparagraph VIII. D. to dispute the validity of the ROD's provisions. IX. Penalties

A. (1) Respondent's failure to comply with any term of this Order constitutes a violation of this Order and the ECL.

(2) Respondent shall be liable for payment to the Department of the sums set forth below as stipulated penalties

for each day or part thereof that the Respondent is in violation of the terms of this Order. All penalties begin to accrue on the first day Respondent is in violation of the terms of this Order and continue to accrue through the final day of correction of any violation. Such sums shall be due and payable within 15 days after receipt of notification from the Department assessing the penalties. If such payment is not received within 15 days after Respondent receives such notification from the Department, interest shall be payable at the annual rate of nine per centum on the overdue amount from the day on which it was due through, and including, date of payment. Penalties shall be paid by certified check or money order, made payable to "New York State Department of Environmental Conservation" and shall be delivered personally or by certified mail, return receipt requested, to the Director, Division of Environmental Enforcement, N.Y.S.D.E.C., 50 Wolf Road, Albany, New York 12233-5500.

Payment of the penalties shall not in any way alter Respondent's obligation to complete performance under the terms of this Order. Stipulated penalties shall be due and payable under subparagraph IX.A. (2) pursuant to the following schedule:

<u>Period of Non-Compliance</u>	<u>Penalty Per Day</u>
First through 15th day	\$ 1,000
16th through 30th day	\$ 5,000
31st day and thereafter	\$ 7,500

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 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 IX.B.

X. Entry upon Site

Respondent hereby consents to the entry upon the Site or areas in the vicinity of the Site which may be under the control of the Respondent by any duly designated employee, consultant, contractor, or agent of the Department or any State agency for purposes of inspection, upon reasonable notice sampling and testing, and to ensure Respondent's compliance with this Order. During implementation of the Remedial Design, 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.

XI. Payment of State Costs

A. Within 30 days after receipt of an itemized invoice from the Department, Respondent shall pay to the Department a sum of money, subject to subparagraph XI.B., which shall represent reimbursement for the State's reasonable and necessary oversight costs including, but not limited to, direct labor, overhead, 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. Such payment shall be made by certified 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 and shall constitute the charge for overhead. 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. A dispute, if any, as to whether any invoice, or a part thereof, is payable under the terms of this provision shall not constitute a violation of this Order.

B. The aggregate amount which Respondent is obligated to pay pursuant to subparagraph XI.A., for all invoices for all years, will not exceed \$120,000.00. If, in the Department's opinion, the total sum of money paid pursuant to subparagraph XI.A. is insufficient to reimburse the State's reasonable and necessary oversight costs, the Department may, at its option, in a separate proceeding, seek to recover additional reimbursement for reasonable and necessary oversight costs to the extent permitted by law.

XII. 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 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.

XIII. 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, but only to the extent that such claims, suits, actions, damages and costs do not arise out of or result from the culpable conduct of the Department, the State of New York and their representatives and employees.

XIV. Public Notice

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

XV. Communications

A. All written communications required by this Order

shall be transmitted by United States Postal Service, by private courier service, or hand delivered as follows:

Communication from Respondent shall be sent to:

1. Division of Hazardous Waste Remediation
Bureau of Western Remedial Action
New York State Department of Environmental
Conservation
50 Wolf Road
Albany, New York 12233-7010
2. Director, Bureau of Environmental Exposure
Investigation
New York State Department of Health
2 University Place
Albany, New York 12203
3. Regional Engineer, DHWR - Region 9
New York State Department of Environmental
Conservation
270 Michigan Avenue
Buffalo, New York 14203-2999
4. James M. Hazel, Esq.
Division of Environmental Enforcement
New York State Department of Environmental
Conservation
270 Michigan Avenue
Buffalo, New York 14203-2999

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

1. Four copies to
Regional Engineer, DHWR - Region 9
Division of Hazardous Waste Remediation
New York State Department of Environmental
Conservation
270 Michigan Avenue
Buffalo, New York 14203-2999
2. One copy to the Director, Bureau of
Environmental Exposure Investigation
New York State Department of Health
2 University Place
Albany, New York 12203

3. One copy to Division of Hazardous Waste Remediation - Albany
Bureau of Western Remedial Action
New York State Department of Environmental Conservation
50 Wolf Road
Albany, New York 12233-7010
4. One copy to James M. Hazel, Esq.
Division of Environmental Enforcement
New York State Department of Environmental Conservation
270 Michigan Avenue
Buffalo, New York 14203-2999
5. One copy to Cameron O'Connor
New York State Department of Health
584 Delaware Avenue
Buffalo, New York 14202

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

Mr. Bruce Mallot
Facility Manager
Leica, Inc.
P.O. Box 123
Buffalo, New York 14240-0123

with a copy to:

Rick W. Kennedy, Esq.
Hodgson, Russ, Andrews, Woods & Goodyear
1800 One M & T Plaza
Buffalo, New York 14203-2391

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

XVI. 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 wastes 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 firms or individuals selected by Respondent shall be submitted to the Department within 15 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 the Respondent and such firms or individuals will be responsible. The Department's approval shall not be unreasonably withheld. 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. The Department shall make available to Respondent the results of all sampling and/or tests which it takes.

D. Unless otherwise agreed, 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 use its best efforts to obtain all permits, easements, rights-of-way, rights-of-entry, approvals, or authorizations necessary to perform Respondent's obligations under this Order.

F. The terms of this Order shall be deemed to bind Respondent and Respondent's successors and assigns. 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.

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 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:

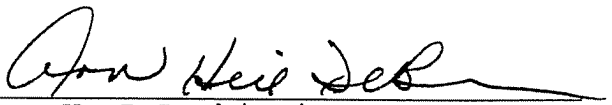
James M. Hazel and Gregory P. Sutton

L. The effective date of this Order shall be the date that Respondent receives written notice that it has been signed by the Commissioner or his designee.

DATED: *Albany* New York
October 18, 1993

THOMAS C. JORLING
Commissioner
New York State Department
of Environmental Conservation

By:


Ann H. 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.

LEICA, INC.

By: Arthur J. Abiz

Arthur J. Atix
(TYPE NAME OF SIGNER)

Title: Vice President

Date: September 24, 1993

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

On this 24th day of September, 1993, before me personally came Arthur J. Alix, to me known, who being duly sworn, did depose and say that he resides in East Amherst, NY; that he is the Vice President of the Leica Inc. 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 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.

Deborah A. Hanson
Notary Public