

STATE OF NEW YORK : DEPARTMENT OF ENVIRONMENTAL CONSERVATION  
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In the Matter of the Development and  
Implementation of A Remedial Investigation  
and Feasibility Study for an Inactive Hazardous  
Waste Disposal Site Under Article 27, Title 13  
of the Environmental Conservation Law of the  
State of New York (the "ECL") by:

ORDER  
ON  
CONSENT

STAUFFER MANAGEMENT COMPANY

Index # B9-0137-86-04  
Site I.D. #932053

Respondent  
-----X

WHEREAS:

1. The New York State Department of Environmental Conservation (the "Department") is responsible for the enforcement of Article 27, Title 13 of the ECL entitled "Inactive Hazardous Waste Disposal Sites".

2. Respondent, Stauffer Management Company, a corporation organized and existing under the laws of the State of Delaware, is the parent of a wholly owned subsidiary which is the current owner of the facility which was formerly owned and operated by Stauffer Chemical Company ("SCC") as an industrial facility in Lewiston, New York from approximately 1930 - 1976 (the "Site"). A map of the Site is attached to this Order as Appendix "A".

3. The Site is an inactive hazardous waste disposal site, as that term is defined in ECL Section 27-1301(2); and has been listed in the Registry of Inactive Hazardous Waste Disposal Sites in New York as Site Number 932053, the

Stauffer Chemical plant - PASNY Site.

4. The Department has identified and classified the Site pursuant to ECL Section 27-1305 under classification 2, a "significant threat to the public health or environment - action required".

5. 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 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".

6. The Department alleges that Respondent or its predecessor is a "person responsible" pursuant to ECL 27-1313 in that Respondent is the parent of a wholly owned subsidiary which is a successor in interest to the Stauffer Chemical Company, the owner of a portion of the Site at which certain hazardous wastes were disposed beginning in approximately 1930 and continuing until approximately 1976.

7. In 1980, the New York Power Authority (NYPA) began studies of the Site in connection with a proposed expansion of their facilities. In 1986, a final report was issued by NYPA discussing a completed chemical contamination

investigation at and around the Site.

8. While Respondent does not admit that it is responsible under law for the conditions at the Site, Respondent has nonetheless, submitted to the Department a plan for supplemental investigation entitled "Work Plan Stauffer Management Company" dated May, 1988, and addendum thereto dated August 23, 1988, (the "Work Plan") such that the report of NYPA and Respondent's Work Plan shall constitute a Remedial Investigation. The Work Plan has been approved by the Department and is attached to and incorporated into this Order as Appendix "B".

9. The Department and Respondent acknowledge that the goal of this Order shall be that the Respondent shall undertake and complete the Remedial Investigation and Feasibility Study for the Site as contained in the Work Plan subject to review, oversight and approval by the Department as is provided below.

10. Respondent, having waived its right to a hearing herein to which it is entitled prior to the Commissioner's issuance of an order as provided by law, and having consented to the issuance and entry of this Order without any admission or denial of liability, agrees to be bound by its terms.

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

I. Within 30 days of the effective date of this Order, Respondent shall commence the Remedial Investigation as set forth in the Work Plan subject to oversight by the Department

and approval by the Department in accordance with the relevant provisions hereof. The Department must approve any specific procedures and protocols proposed by Respondent that are not delineated in the Work Plan including any modifications or revisions. Respondent shall complete the Remedial Investigation in accordance with the schedule contained in the Work Plan.

II. Any such procedures, protocols, modifications or revisions submitted for Departmental approval pursuant to paragraph I shall be prepared, designed and implemented in accordance with Requisite Technology. As used in this Order, Requisite Technology means engineering, scientific and construction principles and practices, which (a) are technologically feasible, and (b) will cost effectively identify, mitigate and/or eliminate, as appropriate, any significant threat to health or the environment posed by the disposal of hazardous wastes at the Site. The Department will not withhold approval of any such procedures, protocols, modifications or revisions which are in accordance with Requisite Technology. Any procedures, protocols, modifications or revisions in addition to Appendix "B" shall be in writing and incorporated into this Order as Appendix "C".

III. Within 120 days of the date specified for completion of the Remedial Investigation as provided pursuant to the approved Work Plan, Respondent shall submit to the Department a Remedial Investigation report (the

"Report"), founded upon its performance of the Remedial Investigation in accordance with the approved Work Plan. The Report shall include all data generated, and all other information obtained, during the Remedial Investigation and shall provide all assessments and evaluations as set forth in the Work Plan which has been developed in accordance with the United States Environmental Protection Agency ("EPA") guidance documents for Remedial Investigations.

IV. The Department reserves the right to require a modification and/or amplification and expansion of the Remedial Investigation and Report by Respondent to address specific areas if the Department determines that further investigation is necessary, as a result of reviewing data generated by the Remedial Investigation or as a result of reviewing other data or facts. The parties shall confer together in good faith to resolve any differences regarding the need for or scope of any such modification, amplification or expansion of the Remedial Investigation or Report.

In the event the parties are unable to agree on the need for, or the scope of the requested modification, amplification or expansion, the matter shall be resolved in accordance with the dispute resolution procedures described in paragraph XXIV.

V. A. Within sixty (60) days after its receipt of the Report, the Department shall determine if the Investigation was conducted, and the Report prepared in accordance with

the terms of this Order, and shall provide written notification to Respondent of its approval or disapproval of the Report.

B. If the Department disapproves the Report, the Department shall notify Respondent in writing of the Department's objections. Within sixty (60) days after its receipt of notice of disapproval or within such longer period as the Department shall grant for negotiation or review, Respondent shall either (a) revise the Report, and, if necessary re-perform or supplement the Remedial Investigation in accordance with the terms of this Order, and within thirty (30) days after its completion of any supplemental work, submit to the Department a Report which responds to the Department's objections (the "Revised Report"), or (b) notify the Department in writing that it believes that the Report meets the requirements of this Order.

C. Within thirty (30) days after its receipt of the Revised Report, if any, the Department shall determine if the revised Report is acceptable and shall provide written notification to Respondent of its approval or disapproval of the Revised Report.

D. Within 20 days of receipt of notification that Respondent believes the Report meets the requirements of this Order, the Department shall re-notify the Respondent in writing of its approval or disapproval of the Report.

E. If the Department disapproves the Revised

Report or if the Respondent elects not to submit a Revised Report, the parties shall confer together in good faith to resolve their differences.

F. If after conferring in good faith pursuant to paragraph E, there remains a dispute between Respondent and the Department concerning the terms of the Revised Report or the need to revise the Report, Respondent shall be in violation of this Order unless it has invoked the dispute procedures set forth in paragraph XXIV within twenty (20) days of receipt of the Department's written notification of disapproval of the Revised Report, or within twenty (20) days of receipt of the Department's written re-notification of disapproval of the Report.

G. The Report or the Revised Report, whichever is approved by the Department or resolved in the dispute resolution process, shall be attached to and incorporated into this Order as Appendix "D" (the "Approved Report").

VI. Within 90 days after receipt of the Department's approval of the report, or within such greater period as the Department may allow for good cause shown, Respondent shall, in accordance with the Work Plan, submit to the Department a feasibility study (the "Feasibility Study") evaluating on-Site and off-Site remedial actions to abate and eliminate the significant threat to the environment or public health attributable to the Site. The Feasibility Study shall be consistent with the Comprehensive Environmental Response, Compensation, and Liability Act, 42 USC §9601 et seq.

(CERCLA), as amended by the Superfund Amendments and Reauthorization Act of 1986 ("SARA"), the most current U.S. E.P.A. guidance documents on Feasibility Studies Under CERCLA. The E.P.A. guidance documents shall be applied in a manner reflecting reasonable technical considerations.

VII. A. Within sixty (60) days after its receipt of the Feasibility Study, the Department shall determine if the Feasibility Study was prepared in accordance with the terms of this Order, and shall provide written notification of its approval or disapproval.

B. If the Department disapproves the Feasibility Study, the Department shall notify Respondent in writing of the Department's objections. Within sixty (60) days after its receipt of notice of disapproval, Respondent shall either revise the Feasibility Study and shall submit to the Department a Feasibility Study which has been revised in accordance with the Department's objections (the "Revised Feasibility Study"), or notify the Department in writing that it believes that the Feasibility Study meets all the requirements of this Order.

C. Within fifteen (15) days after its receipt of the Revised Feasibility Study, if any, the Department shall determine if the Revised Feasibility Study is acceptable and shall provide written notification to Respondent of its approval or disapproval of the Revised Feasibility Study.

D. Within 20 days of receipt of notification that Respondent believes the Feasibility Study meets the



requirements of this Order, the Department shall re-notify the Respondent in writing of its approval or disapproval of the Feasibility Study.

E. If the Department disapproves the Revised Feasibility Study, or if the Respondent elects not to submit a Revised Feasibility Study, the parties shall confer together in good faith to resolve their differences.

F. If after conferring in good faith pursuant to paragraph E there remains a dispute between Respondent and the Department concerning the terms of the Revised Feasibility Study or the need to revise the Feasibility Study, Respondent shall be in violation of this Order unless it has invoked the dispute resolution procedures set forth in paragraph XXIV within twenty (20) days of receipt of the Department's written notification of disapproval of the Revised Feasibility Study, or within twenty (20) days of receipt of Department's written re-notification of disapproval of the Feasibility Study.

G. The Feasibility Study or the Revised Feasibility Study, whichever is approved by the Department, or resolved in the dispute resolution process, shall be attached to and incorporated into this Order as Appendix "E". (the "Approved Feasibility Study").

VIII. With respect to the portion of the Site owned by Respondent or its subsidiary, any duly designated officer, employee, consultant, contractor or agent of the Department shall be permitted to enter upon the Site or areas in the

vicinity of the Site under the control of Respondent, for inspection purposes and for the purpose of making or causing to be made such sampling and tests as the Department deems necessary, and for ascertaining Respondent's compliance with the provisions of this Order.

IX. The Department shall have the right to obtain "split samples" or "duplicate samples" of all substances and materials sampled by Respondent pursuant to this Order.

X. Respondent and the Department shall mutually agree on an appropriate date for the start of the field activities to be conducted pursuant to the terms of this Order, but in no case shall field activities be scheduled less than five (5) working days in advance of notification of such activities.

XI. Respondent has retained an engineering firm to perform the Remedial Investigation and Feasibility Study required by this Order. The engineering firm shall certify that each phase of the Remedial Investigation and Feasibility Study was performed and completed in accordance with the Order on Consent and the approved Work Plan. The certification shall be by a New York State licensed professional engineer in accordance with applicable New York State law. The analytical obligation shall be performed by a laboratory acceptable to the Department.

XII. Respondent shall submit to the Department a health and safety plan for the protection of persons at

and in the vicinity of the Site during the performance of the Remedial Investigation which shall be prepared and certified by an experienced, qualified health and safety specialist.

XIII. Respondent shall not suffer any penalty under any of the terms of this Order, or be subject to any proceeding or actions for any remedy or relief if it cannot comply with any requirements hereof including the time deadlines set forth in this Order or in the Work Plan, if caused by any of the following: (i) an act of God, (ii) unanticipated dangerous conditions at the Site about which timely notice has been given to the Department, (iii) any delays which result from failure to obtain access to the Site after respondent has exhausted all efforts to obtain site access (iv) any delay caused by the Department's failure to complete its review of plans and reports within the time period specified in this Order, (v) any delays resulting from invocation of the dispute resolution procedures set forth in paragraph XXIV, or (vi) any other condition as to which negligence or willful misconduct on the part of Respondent was not the proximate cause, provided however, that Respondent shall immediately notify the Department in writing when it obtains knowledge of any such condition, and shall identify with specificity the cause or causes of such delay and the estimated duration of the delay, and request an appropriate extension or modification of the terms of this Order. Respondent agrees to use its best efforts to minimize any delay which may result. The Department agrees such request shall not be unreasonably

refused.

XIV. Respondent shall use its best efforts to obtain any permits, easements, rights-of-way, rights-of-entry, approvals or authorizations which are necessary in order to perform the Field Investigation and all of Respondent's other obligations pursuant to this Order.

Respondent shall promptly notify the Department in the event of Respondent's inability to obtain such authorizations on a timely basis. In the event Respondent is unable to obtain the authorizations necessary to implement the Work Plan, the Department shall, consistent with its legal authority, assist in obtaining such authorizations as Respondent was unable to obtain and the Department shall grant appropriate extensions of time for the fulfillment of the terms of this Order.

XV. A. Within ninety (90) days after acceptance by the Department of the Remedial Investigation Report and of the Approved Feasibility Study, a sum of money not to exceed \$35,000.00 shall be paid by Respondents to the Department representing reimbursement of the reasonable administrative costs incurred by the Department for its activities in association with the Remedial Investigation and Feasibility Study, including, but not limited to, reasonable costs incurred for:

(a) reviewing proposals, reports, plans and specifications, and procedures and protocols submitted in accordance with this order;

oversight

(b) overseeing by the Department of the implementation of the Remedial Investigation and preparation of the Feasibility Study including, but not limited to, inspection of construction, monitoring and maintenance activities;

(c) any other activities undertaken by the Department in relation to securing and overseeing implementation of the Remedial Investigation and preparation of the Feasibility Study.

XVI. The failure of Respondent to comply with any provision of this Order may be found to constitute a default and a failure to perform an obligation under this Order.

XVII. Nothing contained in this Order shall be construed as barring, diminishing, adjudicating or in any way affecting (1) any legal or equitable rights or claims, actions, suits, causes of action or demands whatsoever that the Department may have against anyone other than Respondent, its directors, officers, employees, servants, agents, successors and assigns; (2) the Department's right to enforce, at law or in equity, the terms of this Order against Respondent, its directors, officers, employees, servants, agents, successors and assigns in the event that Respondent shall fail to fulfill any of the terms hereof; and (3) the Department's right to bring any action, at law or in equity against Respondent, its directors, officers, employees, servants, agents, successors and assigns with respect to hazardous wastes that are present at the Site or have

migrated from the Site, including but not limited to any actions to require Respondent to implement a remedial program for the Site and any actions for natural resource damages.

XVIII. By undertaking the Work Plan at the Site, Respondent does not admit in any way its liability or obligation for the conditions present on the Site. The Department shall not offer into evidence or otherwise assert the fact that the Respondent developed or performed the Work Plan in order to establish liability for the conditions present at the Site in any motion, discovery proceeding, hearing, administrative proceeding or trial, in this, or any future action or proceeding in any forum in which any claim is asserted against Respondent arising out of any activities relating to the Site. Nothing in the foregoing shall bar the Department from using technical information or data developed in the course of implementation of the Work Plan and this Order.

XIX. The parties agree that the Work Plan is being implemented and funded by the Respondent to aid in determining the extent of contamination at the Site. Respondent's participation in events leading to this Order, its signature on this Order, its agreement to sponsor and fund the Work Plan and its conduct of the Work Plan are not in any way an admission or indication of a willingness and shall not constitute or be construed as a commitment or agreement, either express or implied, to undertake any further activities, including implementation of a remedial

program, at the Site other than those necessary to perform the Work Plan including the Remedial Investigation and Feasibility Study in accordance with this Order.

XX. The terms of this Order shall not be construed to prohibit the Commissioner or his duly authorized representative from exercising any summary abatement powers, either at common law or as granted pursuant to statute or regulation.

XXI. 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 the terms hereof by Respondent, its directors, officers, employees, servants, agents, successors or assigns.

XXII. Nothing in this Order or Work Plan shall be construed to preclude Respondent from pursuing claims, cross-claims, or third-party or fourth-party claims or other actions for contribution or indemnification against any other potentially responsible party not a signatory to this Order.

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

XXIV. In the event that a dispute arises between the Respondent and the Department relating to the provisions of

Paragraphs IV, V, VII, and XIII of this Order, or payment of administrative costs pursuant to Paragraph XV, the parties agree to confer together in good faith to resolve their differences. If, after such good faith consultation, there remains a dispute, the matter shall be settled in accordance with the following procedures:

A. Either party, upon written notification to the other, may request the Commissioner of Environmental Conservation to appoint an Administrative Law Judge ("ALJ") who shall resolve the dispute after opportunity by the parties to be heard. If the ALJ deems it necessary to convene an evidentiary hearing, the taking of evidence shall be concluded within thirty (30) working days of commencement.

B. In all proceedings hereunder:

1. The parties shall be Respondent and the Department;
2. The burden of going forward shall be on the Respondent;
3. The ALJ shall have all powers conferred by 6 NYCRR §622.12;
4. All proceedings conducted pursuant to this paragraph shall be stenographically recorded. The Respondent, at its expense, shall arrange for an expedited stenographic transcript to be made within three (3) working days after the



conclusion of the proceeding, and for the original and two copies of the transcript to be delivered to the ALJ.

5. The ALJ shall prepare, no later than thirty (30) working days after the receipt of the transcript of the proceeding, a written summary of the documentation and testimony received during the proceeding and a recommended decision. The summary and recommendation shall be hand-delivered to the Department's representative and sent by certified mail, return receipt requested, and another copy by express mail, to Respondent.
6. The ALJ's recommended decision shall become the final decision of the Commissioner unless, within fifteen (15) working days from the receipt of the recommended decision, either Respondent or the Department objects in writing. Any objections shall be submitted in writing to the ALJ with a copy by express mail, telecopier or hand-delivery to the other party, which shall serve and file its response, if any, within two (2) working days of receipt of the objection by Express Mail, telecopier or hand-delivery. Upon receipt of the objections and any response, the ALJ shall refer the matter to the Commissioner for final

determination.

7. The final determination of the Commissioner shall be made as expeditiously as practicable after receipt of the ALJ's recommended decision.
8. Respondent may, within thirty (30) days of the final determination of the Commissioner, initiate judicial review of such determination pursuant to Article 78 of the Civil Practice Law and Rules of the State of New York ("CPLR").

XXV. If, for any reason, Respondent desires that any provision of this Order be changed, including the terms of, or time schedules set forth in, the Work Plan Respondent shall make timely written application therefore to the Commissioner setting forth reasonable grounds for the relief sought. The Department agrees to confer in good faith with Respondent in response to any such request.

XXVI. In the event that Respondent proposes to convey the whole or any part of its ownership interest in the Sites, Respondent shall, not less than 30 days prior to the consummation of such proposed conveyance, notify the Department in writing of the identity of the transferee and of the nature and date of the proposed conveyance. In advance of such proposed conveyance, Respondent shall notify the transferee in writing with a copy to the Department of the applicability of this Order.

XXVII. Except as provided in Paragraph XXIV above, all

communication required hereby to be made between the Department and Respondent shall be made in writing and transmitted by United States Postal Service return receipt requested, or hand delivered to the address listed below. All reports and submissions herein required shall be submitted in duplicate copies to the following addresses:

New York State Department of Environmental Conservation  
Division of Environmental Enforcement  
600 Delaware Avenue  
Buffalo, New York 14202-1073

New York State Department of Environmental Conservation  
Division of Hazardous Waste Remediation  
Attn: John Willson  
50 Wolf Road  
Albany, New York 12233-0001

New York State Department of Environmental Conservation  
Attn: Peter Buechi  
600 Delaware Avenue  
Buffalo, New York 14202-1073

New York State Department of Health  
Bureau of Environmental Exposure Investigation  
2 University Place  
Albany, New York 12237

B. Communication to be made from the Department to Respondent shall be made as follows:

1) Two Copies to:

Stauffer Management Company  
Law Department  
Concord Pike & Murphy Road  
Wilmington, Delaware 19897  
Attn: Melford F. Tietze, Esq.

2) Two copies to:

Stauffer Management Company  
Environmental Services and Operations  
Concord Pike & Murphy Road  
Wilmington, Delaware 19897  
Attn: S. A. LaRocca

C. The Respondent and the Department respectively reserve the right to designate other or different addresses on notice to the other.

XXVIII. The provisions of this Order shall be deemed to bind Respondent, its officers, directors, agents, servants, employees, successors and assigns.

XXIX. Nothing herein shall be construed to bind any entity not specifically bound by the terms of this Order.

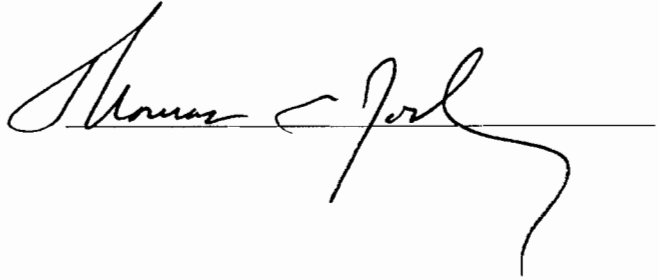
XXX. The provisions hereof shall constitute the complete and entire Order between Respondent and the Department concerning the Site. No terms, conditions, understandings or agreements purporting to modify or vary the terms hereof shall be binding unless made in writing and subscribed by the party to be bound. No informal advice, guidance, suggestions or comments by the Department regarding reports, proposals, plans, specifications, schedules or any

other writing submitted by Respondent shall be construed as relieving Respondent of its obligations to obtain such formal approvals as may be required by this Order.

DATED: Albany, New York

*Dec. 22*, 1988

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

A handwritten signature in cursive script, reading "Thomas C. Jorling", is written over a horizontal line. The signature is fluid and extends to the right of the line.

CONSENT BY RESPONDENT

Respondent hereby consents to the issuing and entering of the foregoing Order, waives its right to a hearing herein as provided by law, and agrees to be bound by the provisions, terms and conditions contained herein.

STAUFFER MANAGEMENT COMPANY

BY: [Signature]

TITLE: Vice President

DATE: October 25, 1988

State of <sup>Delaware</sup> ~~New York~~ )  
County of New Castle ) s.s.:  
)

On this 25<sup>th</sup> day of October, 1988,  
before me personally came A. C. Perrino  
to me known, who, being by me duly sworn, did depose  
and say that he resides in Wilmington, Delaware; that he  
is the Vice President of Stauffer Management Co., 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.

[Signature]  
NOTARY PUBLIC

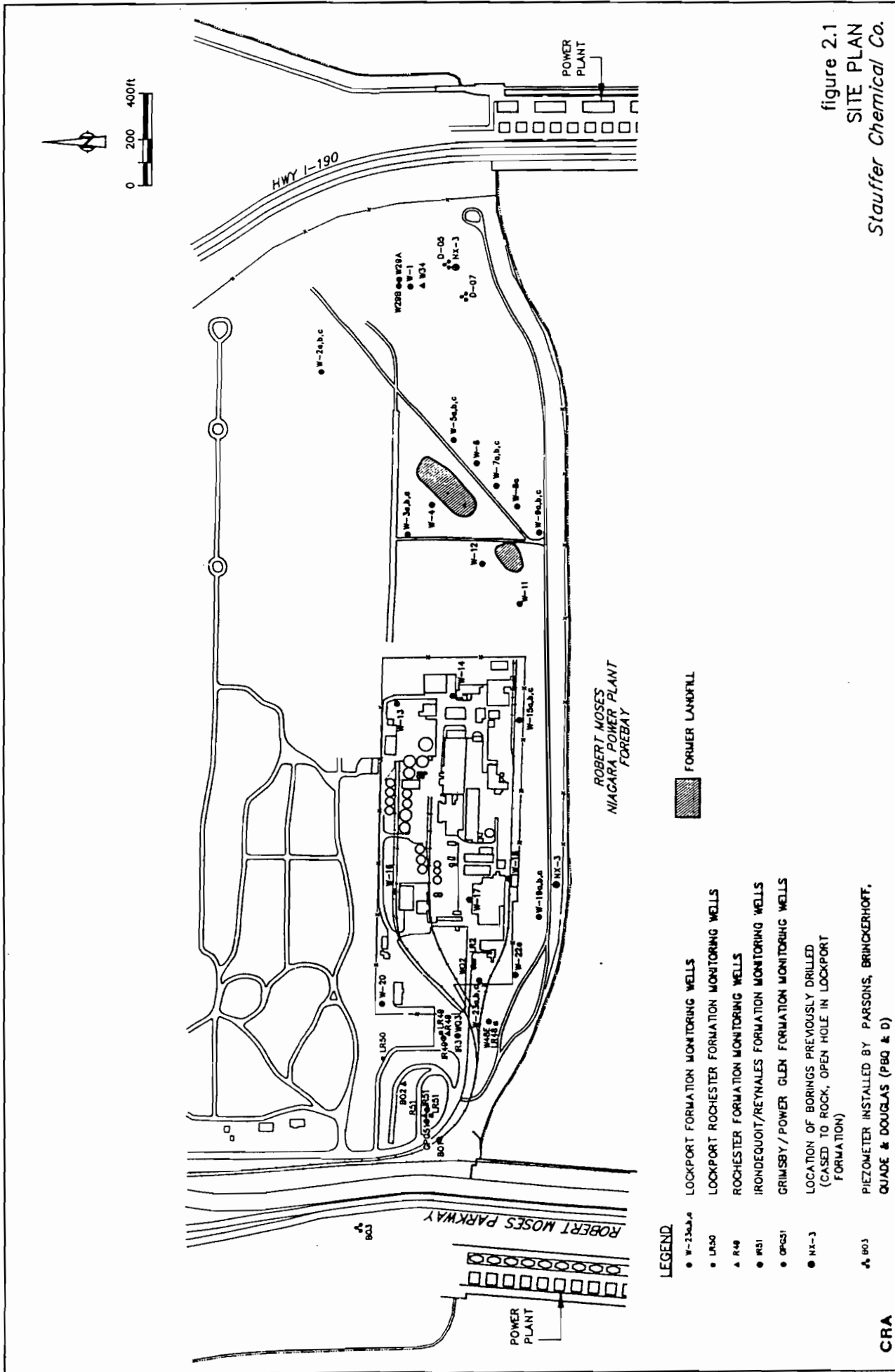


figure 2.1  
SITE PLAN  
Stauffer Chemical Co.

- LEGEND**
- W-23a,b,c LOCKPORT FORMATION MONITORING WELLS
  - LR50 LOCKPORT ROCHESTER FORMATION MONITORING WELLS
  - ▲ R48 ROCHESTER FORMATION MONITORING WELLS
  - W51 IRONDEQUOIT/REYNOLDS FORMATION MONITORING WELLS
  - OFG51 GRIMSBY/POWER GLEN FORMATION MONITORING WELLS
  - NX-3 LOCATION OF BORINGS PREVIOUSLY DRILLED (CASED TO ROCK, OPEN HOLE IN LOCKPORT FORMATION)
  - ▲ B03 PIEZOMETER INSTALLED BY PARSONS, BRINCKERHOFF, QUADE & DOUGLAS (PBQ & D)



G. PIETRASZEK ~~SP~~ 932 053 PM

New York State Department of Environmental Conservation

MEMORANDUM

TO: Distribution  
 FROM: Maura C. Desmond - Div. of Environ. Enforcement, Buffalo *MCD*  
 SUBJECT: Consent Order: Stauffer Chemical Company  
 Site #932053  
 DATE: December 30, 1988

Attached find consent order for the above named site which was signed by the commissioner on 12/22/88.

MCD/mf

*For RI/FS*

Attachment

Distribution:

- ~~Peter~~ Peter Buechi - Region 9
- Michael J. O'Toole - DHWR, Albany
- Ronald Tramontano - NYSDOH, Albany
- Walter Mugdan - EPA