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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

STAUFFER MANAGEMENT COMPANY
Respondent.

R&RA

ORDER
ON
CONSENT
INDEX #B9-0137-86-04

EFFECTIVE
7/19/93
Site Code #932053

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. 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 as an industrial facility in Lewiston, New York from approximately 1930-1976 (the "Site").

3. The Site is located directly north of the New York Power Authority Forebay. A remedial program is necessary to address Site related soil contamination and resultant groundwater contamination which contravenes New York State groundwater standards.

4. Respondent has performed a Remedial Investigation/ Feasibility Study pursuant to a Consent Order with the Department which was executed on December 22, 1988.

5. Following a period of public comment, the Department selected a final remedial alternative for the Site in a Record of Decision ("ROD") signed by the Department on July 13, 1992. The ROD, attached to this Order as Appendix "A", is incorporated as an enforceable part of this Order.

6. 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 932053. The Department has classified the Site as a Classification "2" pursuant to ECL Section 27-1305.4.b.

7. 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.

8. The Department and Respondent agree that the goals of this Order are for Respondent to (i) develop and implement, in accordance with the ROD, an inactive hazardous waste disposal site remedial program ("Remedial Program") for the Site that shall include design and implementation, and operation, maintenance and monitoring of the selected remedial alternative; and (ii) reimburse the Department's administrative costs subject to the limit set out in Paragraph VII of this Order.

9. 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 without any admission or denial of liability, 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. Remedial Design Work Plan

A. Respondent has submitted to the Department, and contemporaneously with the issuance of this Order, the Department has approved, the Remedial Design Work Plan ("Work Plan") for the development of the Remedial Design for the implementation of the Remedial Program for the Site selected by the Department in the ROD. The submittals under the Work Plan shall be prepared by and have the signature and seal of a professional engineer who shall certify that the submittals under the Work Plan were prepared in accordance with this Order.

B. The Work Plan with the submittals thereunder 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 designed and 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 Work Plan.

2. A schedule for submission to the Department of "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 and provisions for periodic work-in-progress reports;

4. The parameters, conditions, procedures, and protocols to determine the effectiveness of the Remedial Program, 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 the Remedial Design construction activities, including the number of years during which such activities will be performed;

6. A contingency plan describing organized, planned, and technically coordinated courses of action to be followed in case of emergency or other special conditions, including but not limited to equipment breakdowns, fire, odor, explosion, spills, receipt or release of hazardous or toxic materials or substances, and other incidents that could threaten human health or safety 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 6 NYCRR Part 375 and the Department's publication, "New York State Inactive Hazardous Waste Site Citizen Participation Plan," dated August 30, 1988, and any subsequent revisions thereto.

II. Implementation of the Work Plan

A. Respondent shall implement the Work Plan for the Site, which was approved by the Department, in accordance with the approved submittals thereunder, and the schedule contained

therein. The approved Work Plan and the approved submittals shall be attached hereto as Appendix "B."

B. During implementation of all construction activities, Respondent shall have on-Site a full-time representative who is qualified to supervise the work done. In the event that the Respondent, in the course of undertaking the construction activities, determines that modifications are required, the Department shall use its best efforts to review such proposed modifications as expeditiously as possible to enable the construction activities to be completed as scheduled.

C. Within 60 days after completion of the construction activities, Respondent shall submit to the Department a Construction Closeout Report ("Closeout Report"). The Closeout Report will include documentation and sampling test results required by the Work Plan and submittals thereunder, and will also include the final operation, maintenance and monitoring plan ("O & M Plan"), "as-built" drawings, a final engineering report (including all changes made to the approved Remedial Design during construction), and a certification by a professional engineer under his or her signature and seal that the Remedial Design was implemented and all construction activities were completed in accordance with the Department-approved Work Plan, the approved submittals thereunder and any approved modifications thereto ("Approved Work Plan"). The O & M Plan, "as built" drawings and final

engineering report must be prepared, signed, and sealed by a professional engineer.

D. 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.

E. After receipt of the Closeout Report, including "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 Work Plan. In the event the Department determines that all construction activities have not been completed in accordance with the Approved Work Plan, Respondent shall be in violation of this Order and the ECL, unless within the 20 day period immediately following receipt of the written notification of such Department determination, Respondent makes a proposal acceptable to the Department which describes the means by which the Department's concerns will be resolved and includes a schedule by which those means shall be implemented, or Respondent notifies the Department that it believes that the construction activities were completed in accordance with the Approved Work Plan and invokes the dispute resolution mechanism set forth in Paragraph XII.

F. If the Department concludes that any element of the Remedial Program fails to achieve the remedial objectives in the ROD the Department will send written notification

stating which objective is not being met and the basis for the Department's determination. Within the period of time provided in the Department notification Respondent shall propose a measure to achieve the remedial objectives. The Department shall review Respondent's proposal in accordance with Paragraph IV of this Order. Respondent shall be in violation of this Order unless it undertakes the Department approved measure, or, within the 20 day period immediately following receipt of written notification of such Department requirement it invokes the dispute resolution mechanism set forth in Paragraph XII of this Order.

G. To the extent that review and evaluation by the Respondent indicates any or all of the remedial objectives for the Site may have been achieved to the extent possible, Respondent may petition the Department for approval to shut down the remedial systems relating to the achieved objectives.

III. Progress Reports

Respondent shall submit to the individuals identified in subparagraph XI.A. in the number specified in subparagraph XI.B. 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 with respect to the Site in the previous month, 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 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.

IV. 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 I.B.(7). The Department shall make reasonable efforts to provide the written notification to Respondent within the time period specified in the schedule contained in the Work Plan, or if not so specified, within 45 days of receipt of the submittal by the Department. 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. If the Department disapproves a submittal Respondent shall be in violation of this Order unless within 20 days after receiving written notice that Respondent's submittal has been disapproved, Respondent makes a revised submittal to the Department that addresses and resolves all of the Department's stated reasons for disapproving the first submittal or Respondent makes a proposal acceptable to the Department which describes the means by which the Department's reasons for disapproval will be resolved and includes a schedule by which those means shall be implemented, or Respondent notifies the Department that it believes the original submittal was made in compliance with the terms of this Order and invokes the dispute resolution mechanism set forth in Paragraph XII.

(b) After receipt of the revised submittal, the Department shall notify Respondent in writing of its approval or disapproval. If the Department disapproves the revised submittal, Respondent shall be in violation of this Order and the Department may take any action or pursue whatever rights it has pursuant to any provision of statutory or common law unless Respondent notifies the Department that it believes the revised submittal was made in compliance with the terms of this Order and invokes the dispute resolution mechanism set forth in Paragraph XII of this Order within 20 days of receipt of written notice of disapproval. 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 such modification and/or amplification and expansion is necessary.

Respondent shall be in violation of this Order unless it performs such modification and/or amplification and expansion, or, within the 20 day period following receipt of written notification of the Department requirement, it notifies the Department that it believes the original submittal was made in compliance with the terms of this Order and invokes the

dispute resolution mechanism set forth in Paragraph XII of this Order.

V. 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 an act of God, war, or riot or because of any condition or event beyond the control of Respondent or its agent or agents carrying out Respondent's obligations under this Order. Respondent shall immediately notify the Department in writing when it obtains knowledge of any such condition and request an appropriate extension or modification of this Order.

Increased costs or expenses of any work to be performed under this Order, the financial inability of Respondent to perform such work, the failure of Respondent to make complete and timely application for any required approval or permit, and nonattainment of the goals, standards and requirements of this Order do not constitute conditions or events warranting the relief set forth in this Subparagraph.

VI. 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, sampling, and testing and to ensure Respondent's compliance with this Order provided that all such persons comply with the health and safety procedures then in effect at the Site. 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. Pursuant to applicable state laws and regulations Respondent may assert a confidentiality claim with respect to any or all of the information requested or submitted pursuant to the terms of this Order. In documents that are protected by attorney client privilege, are considered to be attorney work-product or are otherwise protected by privilege, Respondent will provide the technical information contained therein.

VII. Payment of Department Costs

Within 30 days after receipt of an itemization of costs from the Department, Respondent shall pay to the Department for such costs a sum of money, not to exceed \$160,000.00 in total, which shall represent reimbursement for the Department's expenses as itemized commencing March 1, 1992 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 in connection with developing and implementing this Order, as well as for negotiating this Order, reviewing and revising submittals made

pursuant to this Order, overseeing activities conducted pursuant to this Order, and collecting and analyzing samples. The Department shall bill Respondent on an annual basis. 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. The Department's approved 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.

VIII. 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 criminal action against the Respondent and/or any of Respondent's directors, officers, employees, servants, agents, successors, and assigns.

5. The Department's right to gather information and enter and inspect property and premises.

B. If, after review, the Department accepts and approves the Closeout Report, then, unless a supplementary remedial program is required pursuant to Paragraph II.F, and unless a contingency program is required pursuant to Paragraph I.B.6 and except for the provisions of Paragraph VIII and IX hereof, and except for the future operation and maintenance of the Site, reimbursement of Department expenditures at the Site in accordance with Paragraph VII of this Order, and any Natural Resource Damage claims that may

arise, such acceptance shall constitute a release of each and every claim, demand, remedy or action whatsoever against Respondent, its directors, officers, employees, agents, successors and assigns, which the Department has or may have pursuant to Article 27, Title 13 of the ECL relative to or arising from the disposal of hazardous wastes at the Site; provided, however, that the Department specifically reserves all of its rights concerning, and any such release and satisfaction shall not extend to, any investigation or remediation the Department deems necessary due to: (1) environmental conditions on-Site or off-Site which are related to the disposal of hazardous wastes at the Site and were unknown to the Department at the time of the execution of the ROD by the Department; or (2) information received, in whole or in part, after the execution of the ROD by the Department, and such unknown environmental conditions or information indicates that the Remedial Program is not protective of human health or the environment. The Department shall notify the Respondent of such environmental conditions or information and its basis for determining that the Remedial Program is not protective of human health and the environment.

This release shall inure only to the benefit of the Respondent and its directors, officers, employees, agents, successors and assigns, with respect to the aforesaid matter.

Nothing herein shall be construed as barring, diminishing, adjudicating or in any way affecting 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 and its directors, officers, employees, agents, successors and assigns.

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

IX. 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.

X. Public Notice

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

XI. 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. Peter Buechi
Region 9, Division of Hazardous Waste
Remediation
New York State Department of Environmental
Conservation
270 Michigan Avenue
Buffalo, New York 14203-2999
2. Director, Bureau of Environmental Exposure
Investigation
New York State Department of Health
2 University Place
Albany, New York 12203
3. New York State Department of Environmental
Conservation
Division of Hazardous Waste Remediation
50 Wolf Road
Albany, New York 12233-7010
4. Maura C. Desmond
New York State Department of Environmental
Conservation
Division of Environmental Enforcement
270 Michigan Avenue
Buffalo, New York 14203-2999

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

1. Four copies (one unbound) to Division of
Hazardous Waste Remediation, Buffalo.
2. Two copies to the Director, Bureau of
Environmental Exposure Investigation.

3. One copy to Division of Hazardous Waste Remediation, Albany.
4. One copy to Division of Environmental Enforcement, Buffalo.

C. Within 30 days of the Department's approval of any report submitted pursuant to this Order, Respondent shall submit to the Department a computer readable magnetic media copy of the approved report in American Standard Code for Information Interchange (ASCII) format. The Department shall not modify such report without obtaining the prior written consent of the Respondent.

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

- 1) One copy to:

Stauffer Management Company
Law Department
Concord Pike & New Murphy Road
Wilmington, Delaware 19897
Attention: Joseph C. Kelly

- 2) One copy to:

Stauffer Management Company
Law Department
Concord Pike & New Murphy Road
Wilmington, Delaware 19897
Attention: Michael P. Kelly

- 3) Four copies to:

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

- 4) One copy to:

Stauffer Management Company
Environmental Services & Operations
1391 South 49th Street
Richmond, California 94804
Attention: Carol A. Dickerson

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

XII. If the Respondent chooses to invoke the dispute resolution mechanism where provided for in this Order, Respondent shall invoke the dispute resolution mechanism by serving on the Department a request for an appointment of an Administrative Law Judge ("ALJ"), and a written statement of the issues in dispute, the relevant facts upon which the dispute is based, and factual data, analysis or opinion supporting its position, and all supporting documentation on which Respondent relies (hereinafter called the "Statement of Position"). The Department shall serve its Statement of Position, including supporting documentation no later than twenty business (20) days after receipt of Respondent's Statement of Position. In the event that these 20-day time periods for exchange of Statements of Position may cause a delay in the work being performed under this Order, the time periods may be shortened upon and in accordance with notice by the Department as agreed to by the Respondent.

An administrative record of any dispute under this Paragraph shall be maintained by the Department. The record shall include the Statement of Position of each party served

pursuant to the preceding subparagraph, and any relevant information. The record shall be available for review of all parties and the public.

Upon review of the administrative record as developed pursuant to this Paragraph, the ALJ shall issue a final decision and order resolving the dispute. With respect to the final determination of the ALJ, Respondent shall have those rights granted pursuant to Article 78 of the Civil Practice Law and Rules of New York (CPLR), provided that a Petition is filed within thirty (30) business days of receipt of the final decision and order issued by the ALJ.

The invocation of the procedures stated in this paragraph shall stay Respondent's obligations under this Order with respect to activities which are dependent on any disputed items.

XIII. Miscellaneous

A. All activities and submittals required by this Order shall address, in accordance with the ROD, both on-Site and off-Site contamination, resulting from the disposal of hazardous waste at the Site.

B. Respondent shall utilize its own personnel acceptable to the Department, or 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 at least 30 days prior to the commencement of any work at the Site by such firms or individuals. 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 will provide a written explanation of any decision not to approve a firm or individual. The responsibility for the performance of the professionals retained by Respondent shall rest solely with Respondent.

C. The Department shall have the right to obtain split samples, duplicate samples, or both, of all substances and materials sampled by Respondent, and the Department also shall have the right to take its own samples. Respondent shall make available to the Department the results of all sampling and/or tests or other data generated by Respondent with respect to implementation of this Order and shall submit these results in the progress reports required by this Order.

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

E. Respondent shall 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. For purposes of this Paragraph

"best efforts" includes the payment of reasonable sums of money in consideration. If any access or authorization required to perform this Order is not obtained despite best efforts of Respondent, or in the event any access or authorization previously obtained is subsequently revoked or terminated, Respondent shall promptly notify the Department, and shall include in that notification a summary of the steps Respondent has taken to attempt to obtain such access or authorization. In the event that Respondent through its best efforts is unable to obtain the access or authorization necessary to perform its obligations under this Order, the Department shall, consistent with its legal authority, assist in obtaining such access or authorizations for or on behalf of Respondent. The Department shall grant appropriate extensions of time for the fulfillment of the terms of this Order.

F. Respondent and Respondent's officers, directors, agents, servants, employees, successors, and assigns shall be bound by this Order. Any change in ownership or corporate status of Respondent including, but not limited to, any transfer of assets or real or personal property shall in no way alter Respondent's responsibilities under this Order.

G. 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.

H. 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.

I. Respondent shall be responsible for ensuring that Respondent's contractors and subcontractors perform the work in satisfaction of the requirements of this Order.

J. 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.

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

L. 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.

M. Respondent's participation in events resulting in this Order, its execution of this Order and its agreement to prepare, implement and fund the Remedial Program as described in this Order are not in any way an admission or indication of a willingness and shall not constitute nor be construed as a commitment or agreement, either express or implied, to undertake any other or further activities at the Site except as described in this Order.

N. (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:

Maura C. Desmond and Peter Buechi

The Department agrees to confer in good faith with Respondent in response to any such application.

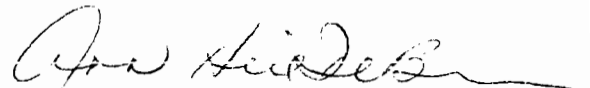
O. The effective date of this Order shall be the date it is signed by the Commissioner or his designee.

DATED: *Albany*, New York

July 19, 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.

STAUFFER MANAGEMENT COMPANY

By: Brian A. Spiller

Brian A. Spiller

(Type Name of Signer)

Title: PRESIDENT

Date: May 25, 1993

STATE OF DELAWARE)
) s.s.:
COUNTY OF NEW CASTLE)

On this 25 day of May, 1993, before me personally came Brian A. Spiller, to me known, who, being by me duly sworn, did depose and say that he resides in Wilmington; that he is the President of the 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.

Abraham Wilson

Notary Public