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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION II

JACOB K. JAVITS FEDERAL BUILDING

NEW YORK, NEW YORK 10278-0012

October 3, 1994

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Lori Singer, Esq.
Sills, Cummis, Zuckerman, Radin, Tischman, Epstein & Gross
One Riverfront Plaza
Newark, NJ 07102-5400

Re: Virgin Island Chemical Site; Administrative Order on Consent
Index No. II CERCLA-94-0401

Dear Ms. Singer:

Enclosed is a fully-executed copy of the above-referenced Order.
This Order is effective upon your receipt of this letter.

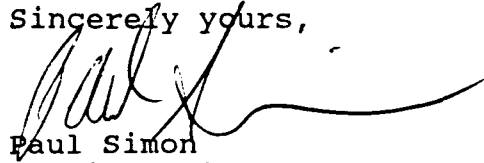
As you or your client noted, the page number of the second page
of the order was incorrect. You will see that I fixed that error
in the enclosed copy.

Exhibit A of the Order is the two-volume Draft Remedial
Investigation Work Plan prepared by Harding Lawson Associates,
dated August 5, 1994 but containing revisions through
September 19, 1994. By this letter, EPA notifies you of its
approval of that Work Plan. Because it is quite voluminous and
you already have a copy of it, I am not enclosing a copy of
Exhibit A herewith.

700001

Should you have any questions, please feel free to call me. We look forward to working with you during the performance of the RI/FS.

Sincerely yours,

A handwritten signature in dark ink, appearing to read 'Paul Simon', with a long, sweeping horizontal line extending to the right.

Paul Simon
Section Chief
New York/Caribbean Superfund Branch
Office of Regional Counsel

Enclosure

cc: Sherrel Henry, ERRD

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION II

-----X
IN THE MATTER OF
THE VIRGIN ISLAND CHEMICAL SITE

Island Chemical Co., Inc.,
Berlex Laboratories, Inc.,

Respondents.

Proceeding under Sections 104 and
122 of the Comprehensive Environ-
mental Response, Compensation and
Liability Act, as amended, 42 U.S.C.
§§ 9604, 9622.
-----X

Index No. II CERCLA-94-0401

ADMINISTRATIVE ORDER ON CONSENT FOR REMEDIAL
INVESTIGATION/FEASIBILITY STUDY

700003

I. INTRODUCTION

1. This Administrative Order on Consent ("Consent Order" or "Order") is entered into voluntarily by the United States Environmental Protection Agency ("EPA") and the above-captioned Respondents (hereinafter, "Respondents"). The Consent Order concerns the preparation and performance of a remedial investigation and feasibility study (hereinafter, the "RI/FS") concerning the Virgin Island Chemical Site (hereinafter, the "Site"), located on Plot 13Q of Estate Bethlehem Middle Works off of the Melvin Evans Highway (Route 66) in St. Croix, United States Virgin Islands. This Consent Order also concerns reimbursement by Respondents to EPA for certain costs, specified in Section XX below, which have been and will be incurred by EPA in connection with the Site.

II. JURISDICTION

2. This Consent Order is issued to Respondents pursuant to the authority vested in the President of the United States under Sections 104(a) and (b), 122(a) and (d)(3) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. §§ 9604(a) and (b), 9622(a) and (d)(3), which authority was delegated to the Administrator of EPA on January 23, 1987 by Executive Order 12580, 52 Fed. Reg. 2926 (1987), and further delegated to the Regional Administrators of EPA on September 13, 1987, by EPA Delegation 14-14-C.

3. Respondents agree to undertake all actions required by the terms and conditions of this Consent Order. Respondents consent to and agree not to contest the authority or jurisdiction of the Regional Administrator of EPA Region II to issue or enforce this Consent Order, and also agree not to contest the validity or terms of this Consent Order in any action to enforce its provisions.

III. PARTIES BOUND

4. This Consent Order shall apply to and be binding upon the Respondents and their successors and assigns. Respondents agree to instruct their officers, directors, employees and agents involved in the performance of the work required under this Order to cooperate in carrying out the obligations of Respondents under this Order. Respondents agree that their officers, directors, employees and agents involved in the performance of the work required by this Order shall take all necessary steps to accomplish the performance of said work in accordance with this Order. Respondents are jointly and severally responsible for carrying out all actions required of them by this Consent Order. The signatories to this Consent Order certify that they are authorized to execute and legally bind Respondents to this

Consent Order. No change in the ownership or corporate status of Respondents or of their facilities or the Site shall alter Respondents' responsibilities under this Consent Order.

5. Respondents shall provide a copy of this Consent Order to any subsequent owners or successors before ownership rights or stock or assets in a corporation are transferred. Respondents shall provide a copy of this Consent Order to all contractors, subcontractors, laboratories, and consultants which are retained to conduct any work performed under this Consent Order, within fourteen (14) days after the effective date of this Consent Order or the date of retaining their services, whichever is later. Respondents shall condition any such contracts upon satisfactory compliance with this Consent Order. Notwithstanding the terms of any contract, Respondents are responsible for compliance with this Consent Order and for ensuring that their employees, contractors, consultants, subcontractors and agents comply with this Consent Order.

IV. STATEMENT OF PURPOSE

6. In entering into this Consent Order, the objectives of EPA and the Respondents are: (a) to determine the nature and extent of contamination, if any, and any threat to the public health, welfare, or the environment caused by any release or threatened release of hazardous substances, pollutants, or contaminants in connection with the Site, by conducting a remedial investigation ("RI"); (b) to determine and evaluate, through the conduct of a feasibility study ("FS"), alternatives for the remediation or control of any release or threatened release of hazardous substances, pollutants or contaminants, in connection with the Site; and (c) to provide for the reimbursement to EPA of certain response costs which have been and will be incurred by EPA with respect to the Site, as specified in Section XX below.

7. The activities conducted under this Consent Order are subject to approval by EPA and shall provide all appropriate necessary information for the RI/FS and for a record of decision that is consistent with CERCLA and the National Oil and Hazardous Substances Pollution Contingency Plan ("NCP"), 40 C.F.R. Part 300. The activities conducted by or on behalf of Respondents under this Consent Order shall be conducted in compliance with all applicable EPA guidance, policies, and procedures and any amendments thereto.

V. FINDINGS OF FACT AND CONCLUSIONS OF LAW

8. The Site is located on Plot 13Q of Estate Bethlehem Middle Works, St. Croix, U.S. Virgin Islands. The Site encompasses approximately 3.5 acres. A quarter of the facility is covered by buildings and/or process equipment. The Site ranges in elevation from 10 to 30 feet above sea level. The Site is bordered on the

north by an intermittent stream, River Gut, which originates north of the Site and discharges to the Caribbean Sea. The location of the Site is shown in Exhibit B, attached hereto.

9. The surrounding area is predominantly commercial with five businesses adjacent to the Site. The closest residence is located approximately 0.1 mile south of the Site. The St. Croix Prison at Golden Grove is approximately one quarter of a mile north of the Site. Finally, south of the Site is a quarry, the Melvin Evans Highway and Alexander Hamilton Airport.

10. Charles H. Steffey, Inc. purchased the Site in 1968. At some point prior to 1982, the company changed its name to CHS Holding Corporation (hereinafter referred to as "CHS"). The Site is currently owned by CHS.

11. In May 1969, CHS entered into a 30-year lease concerning the Site with Houston Chemical Industries ("Houston Chemical"). Caribe Chemical Company ("Caribe"), a wholly owned subsidiary of Houston Chemical, operated the facility. In March, 1972, Pierrel International S.A., a subsidiary of Pierrel S.p.a., acquired all the shares of Caribe. On March 20, 1972, Houston Chemical assigned the lease to the Site to Caribe, which subsequently became known as Pierrel America, Inc. ("Pierrel America"). In 1978, Pierrel America assigned the lease to Cooper Laboratories, Inc. ("Cooper Laboratories"). On July 21, 1978, Cooper Laboratories incorporated Island Chemical Company, Inc. ("Island Chemical") as Cooper Laboratories' subsidiary. Island Chemical assumed Cooper Laboratories' operations at the Site. On November 1, 1979, Cooper Laboratories sold 100% of the stock of Island Chemical to Berlex Laboratories, Inc. ("Berlex"). On September 14, 1984, Berlex sold Island Chemical's assets and assigned the lease to the Site to Virgin Island Chemical Company ("Virgin Island Chemical"). The Site is currently unoccupied.

12. Island Chemical conducted production operations at the Site between 1978 and 1980 or later. These operations included the production of quinidine gluconate. During the period when Island Chemical operated at the Site, hazardous substances within the meaning of Section 101(14) of CERCLA, 42 U.S.C. § 9601(14) (hereinafter, "CERCLA hazardous substances"), including pyridine, acids, and solvents, were disposed of at the Site. Island Chemical is currently a wholly-owned subsidiary of Berlex.

13. Virgin Island Chemical's operations at the Site included the production of, among other things, benzyl chloride, benzyl salicylate, and solvent for synthetic musk. Virgin Island Chemical also subleased portions of the Site to various entities, including U.S. Resources and Chemicals, Inc. and, later, VIAG Fuels, Inc. ("VIAG"), both of which conducted an alcohol dehydration operation at the Site.

14. In 1984, Berlex hired Enviro-Sciences, Inc. ("ESI") to survey the Site. Sampling conducted by ESI revealed four areas of contamination. Two areas within the tank farm located at the Site were contaminated with toluene, among other things. The other two areas, underneath the concrete loading dock and a nearby trench, were contaminated with pyridine, among other things. Toluene and pyridine are CERCLA hazardous substances.

15. Test results obtained during an investigation conducted by the EPA's Surveillance and Monitoring Branch between 1985 and 1986 showed the presence of various contaminants in soil at the Site, including phthalates, benzene, chloroform, polynuclear aromatic hydrocarbons, cadmium, chromium and zinc. EPA's investigation also indicated that process water from the facility was discharged into the intermittent stream adjacent to the Site. Analysis of the sediments from the creek bed downstream of the discharge point showed contamination consisting of xylene, di-n-octyl phthalate, 1,4-dichlorobenzene, 1,2-dichlorobenzene, naphthalene, fluorene, phenanthrene, aliphatic and aromatic hydrocarbons, arsenic, beryllium, chromium, copper, lead, nickel, antimony and zinc. Additionally, an on-site production well showed contamination by arsenic, beryllium, cadmium, chromium, copper, mercury, antimony, chloroform, and zinc. The various contaminants referred to in this paragraph are CERCLA hazardous substances.

16. During March and November 1988, EPA's Response and Prevention Branch conducted well sampling and analyses at the nearby Fairplains wells. These wells, which are a major source of drinking water on the island, are located approximately one-half mile south of the Site. Chloroform contamination was found in three of the Fairplains wells. Additionally, chloroform contamination was found in a Virgin Island Port Authority well which is located between the Site and the St. Croix prison.

17. In early 1989, EPA inspected the Site and found, among other things deteriorated drums and other containers of hazardous substances in the main building and warehouse. Some of the containers had released some of their contents, and further releases were threatened. Holes in the warehouse roof had led to rain water flooding the warehouse, which in turn had led to spills from the containers discharging onto the ground east of the warehouse. Incompatible hazardous materials were being stored in close proximity in the warehouse and the laboratories at the Site. EPA determined that a removal action was necessary in order to, among other things, abate the threat of adverse chemical reactions, fire, explosion or other releases of hazardous substances from drums and other containers at the Site.

18. On August 8, 1989 an Action Memorandum was signed by EPA's Acting Regional Administrator, Region II, for the performance of the aforementioned removal action at the Site. EPA conducted the

removal action at the Site from 1989 to 1991. The action included, among other things, removal and disposal of lab pack material and drums from the Site.

19. Exposure to the various hazardous substances detected at the Site by direct contact, inhalation, or ingestion may cause a variety of adverse human health effects.

20. The Site constitutes a "facility" within the meaning of Section 101(9) of CERCLA, 42 U.S.C. §9601(9).

21. On January 18, 1994 the Site was proposed for inclusion on the National Priorities List ("NPL"), 40 CFR Part 300, Appendix B.

22. There have been and continue to be releases and/or threats of releases, within the meaning of Section 101(22) of CERCLA, 42 U.S.C. §9601(22), of hazardous substances into the environment at and from the Site.

23. Respondents are "persons" within the meaning of Section 101(21) of CERCLA, 42 U.S.C. §9601(21). Respondents owned and/or operated the Site during a portion of the period when hazardous substances were disposed of at the Site. In addition, CHS is the current owner of the Site. Accordingly, Respondents are responsible parties under Sections 104, 107 and 122 of CERCLA, 42 U.S.C. §§9604, 9607, and 9622.

24. Respondents have been given an opportunity to discuss with EPA the basis for issuance of this Consent Order and its terms.

25. The actions required by this Consent Order are necessary to protect the public health or welfare or the environment, are in the public interest, are consistent with CERCLA and the NCP, and are expected to expedite remedial action, if any, and minimize litigation.

VI. NOTICE

26. By providing a copy of this Consent Order to the Virgin Islands Department of Planning and Natural Resources ("VIDPNR"), EPA is notifying the United States Virgin Islands ("USVI") that this Consent Order is being issued and that EPA is the lead agency for coordinating, overseeing, and enforcing the response action required by this Consent Order.

VII. WORK TO BE PERFORMED

27. All work performed under this Consent Order shall be under the direction and supervision of qualified personnel.

Respondents have selected Harding Lawson Associates, Inc. as their prime contractor for performance of the RI/FS, and EPA has approved the use of that contractor for this work. At least thirty (30) days prior to the commencement of field work by the subcontractor to be used by Respondents for the drilling of wells for the RI/FS, Respondents shall provide written notice to EPA of the name and qualifications of that subcontractor. The qualifications of said subcontractor and other persons undertaking the work required hereunder for Respondents shall be subject to EPA's review, for verification that such persons meet minimum technical background and experience requirements. The Consent Order is contingent upon Respondents' demonstration to EPA's satisfaction that Respondents are qualified to perform properly and promptly the actions set forth in the Consent Order. If EPA disapproves, in writing, of any person(s)' technical qualifications, Respondents shall notify EPA of the identity and qualifications of the replacement(s) within fourteen (14) days of the written notice. If EPA subsequently disapproves of the replacement(s), EPA reserves the right to terminate this Order and to conduct a complete RI/FS, and to seek reimbursement for costs and penalties from Respondents. During the course of the RI/FS, Respondents shall notify EPA in writing of any changes in or additions to the personnel used to carry out such work, providing their names, titles, and qualifications. EPA shall have the same right to approve changes in and additions to personnel as it has hereunder regarding the initial notification.

28. Respondents shall conduct the work required hereunder in accordance with CERCLA, the NCP, and guidance which EPA identifies to Respondents, including, but not limited to, the Interim Final Guidance for Conducting Remedial Investigations and Feasibility Studies under CERCLA (OSWER Directive No. 9355.3-01) (hereinafter, the "RI/FS Guidance"), Guidance for Data Useability in Risk Assessment, (OSWER Directive #9285.7-05), guidance referenced therein, as they may be amended or modified by EPA, and the EPA-approved RI/FS Work Plan. The activities and deliverables identified below shall be developed as provided for in the RI/FS Work Plan and shall be submitted to EPA. All work performed under this Consent Order shall be in accordance with the schedules herein, and in full accordance with the schedules, standards, specifications, and other requirements of the RI/FS Work Plan and Field Operations Plan, as initially approved by EPA, and as they may be amended or modified by EPA prior to completion of the RI/FS. For purposes of this Consent Order, day means calendar day unless otherwise noted in this Consent Order.

A. Task I: Scoping. Respondents have prepared and EPA has approved a Work Plan for the performance of the RI/FS of the Site (hereinafter, the "RI/FS Work Plan" or the "Work Plan"). The Work Plan is attached hereto as Exhibit "A", and is incorporated herein by reference.

i. Quality Assurance, Sampling and Analysis

- (1) While conducting sampling and analysis under the Work Plan, the Respondents shall implement quality assurance, quality control and chain of custody procedures in accordance with "Guidance for Conducting Remedial Investigations and Feasibility Studies under CERCLA," OSWER Directive 9355.3-01 (1988); the guidance provided in "EPA NEIC Policies and Procedures Manual" (dated May 1978, revised November 1984 [EPA 330/978-001-R]); "Interim Guidelines and Specifications for Preparing Quality Assurance Project Plan" (December 1980 [QAMS-005/80]); "A Compendium of Superfund Field Operations Methods" (December 1987 [OSWER Directive 9355-0-14]); and "Data Quality Objectives for Remedial Response Activities" (March 1987 [OSWER Directive 9355.0-7B]).
- (2) The Respondents shall consult with EPA in planning for, and prior to, all sampling and analysis required by the approved Work Plan.
- (3) In order to provide quality assurance and maintain quality control regarding all samples collected pursuant to this Consent Order, the Respondents shall at a minimum:
 - (a) Use a laboratory(ies) which has a documented Quality Assurance Program that complies with EPA guidance document QAMS-005/80.
 - (b) Ensure that EPA personnel and EPA authorized representatives are allowed access during normal business hours to the laboratory(ies), records and personnel utilized by the Respondent for analysis of samples collected pursuant to this Consent Order.
 - (c) Abide by the Quality Assurance Project Plan ("QAPP") prepared for the sample collection and analysis to be conducted pursuant to this Consent Order, as approved by EPA. The purpose of the QAPP is to present, in detail, the data quality objectives, sample collection procedures, and data analysis processes

and the procedures to ensure that the objectives are met.

- (d) Ensure that the laboratory(ies) analyzing samples required by this Consent Order use the methods and submit deliverables delineated in the current "Statement of Work of the EPA Contract Lab Program" (current copies are available from the Environmental Services Division QA Section, Annapolis, Maryland at (410) 266-9180). If any parameter to be analyzed is not one of the parameters for which CLP methods are available, the laboratory(ies) used by Respondents shall use methods which are EPA-approved (and which are to be described in the QAPP).
- (e) Ensure that the laboratory(ies) analyzing samples pursuant to this Consent Order agrees to demonstrate its capability to perform analysis in compliance with Contract Lab Program requirements through the analysis of Performance Evaluation ["PE"] samples prior to conducting any analysis. Analysis of PE samples may be waived if the laboratory has satisfactorily analyzed PE samples submitted by EPA or the appropriate state agency within the past six (6) months. Documentation of such PE samples analysis must be submitted to the EPA Project Manager for verification.
- (f) Conduct an audit of the laboratory(ies) that will analyze samples from the Site at some point during the time the laboratory(ies) is(are) conducting analyses (to be specified in the QAPP). The audit will be conducted to verify analytical capability. Auditors shall conduct lab audits according to procedures available from the Environmental Services Division QA Section. Audit reports must be submitted to the EPA Project Manager , within fifteen (15) days of completion of the audit. The Respondents must report serious deficiencies, including all those which adversely impact data

quality, reliability or accuracy, and take corrective actions to correct such deficiencies within two (2) business days of the time the Respondents knew or should have known of the deficiency. Laboratories which are Superfund Contract Labs ["CLP" Labs] need not be audited.

- (g) Conduct at least one appropriate field audit (to be described in the QAPP) during initial sampling activities to verify that field samplers are correctly following the QAPP and/or sampling plans. A report of the field audit must be sent to the EPA Project Manager within fifteen (15) days of completion of the audit. Respondents must report deficiencies and take corrective actions to correct such deficiencies within two (2) business days of the time the Respondents knew or should have known of the deficiency.
- (h) Provide data validation of analyses done by the laboratory(ies) (to be described in the QAPP). This data validation shall determine data usability and shall be performed in accordance with the Functional Guidelines and Region II validation SOP for Data Review (available from Environmental Services Division QA Section) for data derived by CLP methods, or if another method is used, the data validation shall be performed in accordance with the QA/QC data validation criteria set forth in that method. For methods lacking QA/QC data validation protocols, the Respondents must establish validation criteria such as those in Section 8 of the EPA Series Methods in 40 C.F.R. §136. The appropriate quality assurance data validation summary reports shall be submitted along with sample data and summary sheets, to the EPA Project Manager at the time sample results are provided to EPA.
- (i) Respondents shall be permitted to use non-CLP methods and procedures only as provided in "Data Quality Objectives for

Remedial Response Activities" (OSWER
Directive 9355.0-7B).

- B. Task II: Community Relations Plan. EPA will prepare a community relations plan. To the extent requested by EPA, Respondents shall provide information supporting EPA's community relations program. As requested by EPA, Respondent shall participate in the preparation of all appropriate information disseminated to the public and in public meetings which may be held or sponsored by EPA to explain activities at or concerning the Site.
- C. Task III: Data Summary Report. Respondents shall implement the provisions of the RI/FS Work Plan to characterize the nature, quantity, and concentrations of hazardous substances, pollutants, or contaminants at the Site.

Respondents shall provide EPA with a Data Summary Report ("DSR") in accordance with the schedule provided in the EPA-approved RI/FS Work Plan. The Data Summary Report shall include validated data in an electronic format (i.e., an IBM-compatible computer disk), in a form showing the location, medium and results. A clear summary of any QA/QC problems that are encountered, if any, shall be provided as part of the DSR which documents field and laboratory blank contamination, those samples which indicated elevated detection limits (above ARARs) due to sample dilution requirements, and those analyses which were rejected.

In addition, the DSR shall contain a brief summary of the interpretation of the data, with maps showing sampling locations, data results in a table format, delineation of contaminant source areas, and, if possible, groundwater plume maps and soil contamination maps.

In accordance with the schedule provided in the EPA-approved RI/FS Work Plan, Respondents shall make a presentation to EPA and VIDPNR on the findings of the DSR and discuss EPA's and VIDPNR's preliminary comments and concerns associated with the DSR. If EPA disapproves or requires revisions to the DSR, in whole or in part, or requires additional field work, Respondents shall perform such additional field work and insure that the Draft RI Report submitted pursuant to paragraph 28.E. below is responsive to the directions in all of EPA's comments on the DSR. Respondents may invoke the Dispute Resolution procedures set forth in Section XVII below in the event

of a dispute between Respondents and EPA regarding the need for such additional field work.

D. Task IV: Baseline Risk Assessment.

Respondents shall conduct a baseline risk assessment which identifies and characterizes the actual and potential risks that the Site poses to human health and the environment. Respondents shall conduct this risk assessment in accordance with EPA guidance set forth in the documents entitled: The Risk Assessment Guidance for Superfund, Volume 1, Human Health Evaluation Manual (EPA/540/1-89/002, December, 1989) and Volume 2, Environmental Evaluation Manual (EPA/540/1-89/001, April 1988); The Superfund Exposure Assessment Manual (EPA/540/1-88/001, April, 1988); the Exposure Factors Handbook (EPA/600/8-89/043, March, 1989); Guidance for Data Useability in Risk Assessment (EPA/540/G-90/008, October, 1990) and Risk Assessment Guidance for Superfund, Volume I, Supplemental Guidance: Standard Default Exposure Factors, Interim Final (Office of Emergency and Remedial Response, U.S. EPA, 1991). The major components of the baseline risk assessment shall include contaminant identification, exposure assessment, toxicity assessment, and human health and ecological risk characterization. During the risk assessment, Respondents shall provide EPA with the following deliverables:

i. Pathway Analysis Report.

Respondents shall submit to EPA a Pathway Analysis Report, in accordance with the schedule provided in the EPA-approved RI/FS Work Plan, describing indicator chemicals, the exposure scenarios, assumptions, and fate and transport models. If EPA disapproves of or requires revisions to the Pathway Analysis Report, in whole or in part, Respondents shall amend and submit to EPA a revised Pathway Analysis Report which is responsive to the directions in all EPA comments, within fifteen (15) days of receiving EPA's comments.

ii. Baseline Risk Assessment Report

Respondents shall submit to EPA a baseline risk assessment report in accordance with the schedule provided in the EPA-approved RI/FS Work Plan. If EPA disapproves of or requires revisions to the baseline risk assessment report, in whole or in parts, Respondents shall amend and submit to EPA a

revised baseline risk assessment report which is responsive to the directions in all EPA comments, within twenty-one (21) days of receiving EPA's comments. The approved baseline risk assessment report shall be incorporated into the RI Report.

E. Task V: Remedial Investigation Report.

Within sixty (60) days of EPA's approval of the baseline risk assessment report, Respondents shall submit to EPA a draft RI Report consistent with the RI/FS Work Plan and the RI/FS Guidance and which incorporates EPA's comments on the DSR. If EPA disapproves of or requires revisions to the RI report, in whole or in part, Respondents shall amend and submit to EPA a revised RI Report which is responsive to the directions in all EPA's written comments, within twenty-one (21) days of receiving EPA's comments. Respondents may invoke the Dispute Resolution procedures set forth in Section XVII below in the event of a dispute between Respondents and EPA regarding EPA's disapproval of or required revisions to the RI report.

F. Task VI: Development of Remedial Action Objectives, and Screening of Alternatives. In accordance with the schedule provided in the EPA-approved RI/FS Work Plan, Respondents shall submit a report to EPA setting forth proposed Remedial Action Objectives ("RAO") and Screening of Alternatives ("SOA") as a preview of what will be contained in the Draft FS Report. The RAO (part of Chapter 1 of FS) must include the criteria and standards that form the basis for remedial actions. The SOA (Chapter 2 of FS) must include all alternatives appropriate for meeting remedial action objectives and shall contain a Screening of Alternatives according to effectiveness, implementability, and cost.

In accordance with the schedule provided in the EPA-approved RI/FS Work Plan, Respondents shall make a presentation to EPA and VIDPNR on the findings of the RAO and SOA and discuss EPA's and VIDPNR's preliminary comments and concerns associated with the reports. If EPA disapproves of or requires revisions to the report, in whole or in part, Respondents shall incorporate EPA's comments in the Draft FS Report, as discussed below.

G. Task VII: Draft Feasibility Study Report. Subject to subparagraph i. below, Respondents shall, in accordance with the schedule provided in the EPA-approved RI/FS Work Plan, submit to EPA a draft FS Report which

reflects the findings in the EPA-approved baseline risk assessment and which incorporates EPA's comments on the RAO and SOA report. Respondents shall refer to the RI/FS Work Plan and the RI/FS Guidance for FS Report content and format. If EPA disapproves of or requires revisions to the draft FS Report, in whole or in part, Respondents shall amend and submit to EPA a revised draft FS Report which is responsive to the directions in all EPA comments, within twenty-one (21) days of receiving EPA's written comments. Respondents may invoke the Dispute Resolution procedures set forth in Section XVII below in the event of a dispute between Respondents and EPA regarding EPA's disapproval of or required revisions to the FS Report.

i. If EPA determines, based on the results of the EPA-approved RI Report and EPA-approved baseline risk assessment, that no contamination is present at the Site at levels which pose a current or potential threat to human health or the environment, then EPA will inform Respondents in writing that they need not prepare an FS Report. If Respondents believe that the results of the EPA-approved RI Report and EPA-approved baseline risk assessment indicate that no contamination is present at the Site at levels which pose a current or potential threat to human health or the environment, but EPA has declined to inform Respondents that an FS Report is unnecessary, then Respondents may invoke the Dispute Resolution procedures set forth in Section XVII below.

29. EPA reserves the right to comment on, modify and direct changes for all deliverables. Subject to Respondents' right to invoke the Dispute Resolution procedures set forth in Section XVII below as to certain types of disputes which are specifically identified elsewhere in this Order, Respondents must fully correct all deficiencies and incorporate and integrate all information and comments supplied by EPA either in subsequent or resubmitted deliverables.

30. EPA reserves the right to stop Respondents from proceeding further, either temporarily or permanently, on any task, activity or deliverable at any point during the RI/FS.

31. In the event that Respondents amend or revise a report, plan or other submittal upon receipt of EPA comments, if EPA in its discretion subsequently disapproves of the revised submittal or, any portion thereof, or if subsequent submittals do not fully reflect EPA's directions for changes, EPA retains the right in its sole discretion to seek stipulated or statutory penalties, perform its own studies, complete the RI/FS (or any portion of

the RI/FS) under CERCLA and the NCP, and seek reimbursement from the Respondents and/or other potentially responsible parties for its costs; and/or seek any other appropriate relief.

32. In the event that EPA takes over some of the tasks, but not the preparation of the RI and FS reports, Respondents shall incorporate and integrate information supplied by EPA into the final RI and FS reports.

33. The failure of EPA to either expressly approve, disapprove, or comment upon Respondents' submissions within a specified time period(s) shall not be construed as approval by EPA.

34. Respondents shall assure that all work performed, samples taken and analyses conducted conform to the requirements of the RI/FS Work Plan, the EPA-approved QAPP and guidances identified therein. Respondents shall assure that field personnel used by Respondents are properly trained in the use of field equipment and in chain of custody procedures.

35. Respondents shall, prior to any off-Site shipment of hazardous substances from the Site to an out-of-state waste management facility, provide written notification to the appropriate state environmental official in the receiving state and to EPA's Project Coordinator of such shipment of hazardous substances. However, the notification of shipments shall not apply to any such off-Site shipments when the total volume of such shipments will not exceed 10 cubic yards.

A. The notification shall be in writing, and shall include the following information, where available: (1) the name and location of the facility to which the hazardous substances are to be shipped; (2) the type and quantity of the hazardous substances to be shipped; (3) the expected schedule for the shipment of the hazardous substances; and (4) the method of transportation. Respondents shall notify the receiving state of major changes in the shipment plan, such as a decision to ship the hazardous substances to another facility within the same state, or to a facility in another state.

B. The identity of the receiving facility and state to which any hazardous substances from the Site will be shipped will be determined by Respondents following the award of the contract for the RI/FS. Respondents shall provide all relevant information, including information under the categories noted in subparagraph A., above, on the off-Site shipments, as soon as practical after the award of the contract and before the hazardous substances are actually shipped.

VIII. NOTIFICATION AND REPORTING REQUIREMENTS

36. All reports and other documents submitted by Respondents to EPA (other than the monthly progress reports referred to below) which purport to document Respondents' compliance with the terms of this Consent Order shall be signed by a responsible corporate official(s) of one or more of the Respondents or by the Project Manager who has been delegated this responsibility by the Respondents and whose qualifications have been found by EPA to be acceptable pursuant to paragraph 27 of this Order.

Notwithstanding such a delegation of responsibility, Respondents shall remain liable for the proper performance of the work required by this Order. For purposes of this Consent Order, a responsible corporate official is an official who is in charge of a principal business function.

37. Until the termination of this Consent Order, Respondents shall prepare and provide EPA with written monthly progress reports which: (1) describe the actions which have been taken toward achieving compliance with this Consent Order during the previous month; (2) include all results of sampling, tests, modelling and all other data (including raw data) received or generated by or on behalf of Respondents during the previous month in the implementation of the work required hereunder; (3) describe all actions, data and plans which are scheduled for the next two months and provide other information relating to the progress of work as is customary in the industry; (4) include information regarding percentage of completion, all delays encountered or anticipated that may affect the future schedule for completion of the work required hereunder, and a description of all efforts made to mitigate those delays or anticipated delays. These progress reports shall be submitted to EPA by Respondents by the fifteenth (15) day of every month following the effective date of this Consent Order.

38. Upon the occurrence of any event during performance of the work required herein which event, pursuant to Section 103 Of CERCLA, requires reporting to the National Response Center, Respondents shall, within twenty-four (24) hours, orally notify the EPA Project Coordinator (or, in the event of the unavailability of the EPA Project Coordinator, the Chief of the Eastern New York/Caribbean Superfund Section II of the Emergency and Remedial Response Division of EPA Region II), in addition to the reporting required by Section 103. Within twenty (20) days of the onset of such an event, Respondents shall furnish EPA with a written report setting forth the events which occurred and the measures taken, and to be taken, in response thereto.

39. All work plans, reports, notices and other documents required to be submitted to EPA under this Consent Order shall be sent by certified mail, return receipt requested, to the following addressees:

7 copies:
including
1 un-bound
copy)

Chief, Eastern New York/Caribbean Superfund
Section II
Emergency and Remedial Response Division
United States Environmental Protection Agency
26 Federal Plaza, Room 747
New York, New York 10278

Attention: Virgin Island Chemical Site
Project Coordinator

1 copy:

Chief, New York/Caribbean Superfund Branch
Office of Regional Counsel
United States Environmental Protection Agency
26 Federal Plaza, Room 437
New York, New York 10278

Attention: Virgin Island Chemical Site
Attorney

1 copy:

Government of the Virgin Islands of the
United States
Department of Planning and Natural Resources
Division of Environmental Protection
Nisky Center, Suite 45
Charlotte Amalie
St. Thomas, U.S Virgin Islands 00802

Attention: Virgin Island Chemical Site
Project Manager

40. Respondents shall give EPA at least fourteen (14) days advance notice of all field work or field activities to be performed by Respondents pursuant to this Consent Order.

IX. MODIFICATION OF THE WORK PLAN

41. If at any time during the RI/FS process, Respondents identify a need for additional data, a memorandum documenting the need for additional data shall be submitted to the EPA Project Coordinator within twenty (20) days of identification. EPA in its discretion will determine whether the additional data will be collected by Respondents and whether it will be incorporated into reports and deliverables.

42. In the event of conditions posing an immediate threat to human health or welfare or the environment, Respondents shall notify EPA and VIDPNR immediately. In the event of unanticipated or changed circumstances at the Site, Respondents shall notify the EPA Project Coordinator (or, in the event of the unavailability of the EPA Project Coordinator, the Chief of the Eastern New York/Caribbean Superfund Section II of the Emergency

and Remedial Response Division of EPA Region II) by telephone within twenty-four (24) hours of discovery of the unanticipated or changed circumstances. In addition to the authorities in the NCP, in the event that EPA determines that the immediate threat or the unanticipated or changed circumstances warrant changes in the approved RI/FS Work Plan, EPA will modify or amend or direct Respondents to modify or amend the RI/FS Work Plan in writing accordingly. Respondents shall implement the RI/FS Work Plan as modified or amended.

43. EPA may determine that in addition to tasks defined in the initially-approved RI/FS Work Plan, other additional work may be necessary to accomplish the objectives of the RI/FS. EPA may require, pursuant to this Order, that the Respondents perform these response actions in addition to those required by the initially-approved RI/FS Work Plan, including any approved modifications, if EPA determines that such actions are necessary for a complete RI/FS. Subject to EPA resolution of any dispute pursuant to Section XVII, Respondents shall implement the additional tasks which EPA determines are necessary. The additional work shall be completed according to the standards, specifications and schedule set forth or approved by EPA in a written modification to the RI/FS Work Plan or written Work Plan supplement. EPA reserves the right to conduct the work itself at any point, to seek reimbursement for the costs associated with the work from Respondents, and/or to seek any other appropriate relief.

X. FINAL RI/FS, PROPOSED PLAN, PUBLIC COMMENT,
RECORD OF DECISION, ADMINISTRATIVE RECORD

44. EPA retains the responsibility for the release to the public of the RI and FS reports. EPA retains responsibility for the preparation and release to the public of the proposed plan for remedial action and the record of decision, in accordance with CERCLA and the NCP.

45. EPA will provide Respondents with the final RI and FS reports (to the extent that Respondents do not already have these reports), proposed plan for remedial action, and record of decision.

46. EPA will assemble the administrative record file for selection of the remedial action. Respondents shall submit to EPA documents developed during the course of the RI/FS upon which selection of the remedial action may be based. Respondents shall provide copies of plans, task memoranda including documentation, of field modifications, recommendations for further action, quality assurance memoranda and audits, raw data, field notes, laboratory analytical reports, and other reports. Respondents shall additionally submit any previous studies, conducted under

state, local or other federal authorities relating to selection of the response action and all communications between Respondents and state, local or other federal authorities concerning selection of the response action.

XI. PROJECT COORDINATORS, OTHER PERSONNEL

47. EPA has designated the following individual as its Project Coordinator with respect to the Site:

Sherrel D. Henry
U.S. Environmental Protection Agency
New York\Caribbean Superfund Branch II
Emergency and Remedial Response Division
26 Federal Plaza, Room 747
New York, NY 10278
(212) 264-8675

Not later than seven (7) days after the effective date of this Consent Order, Respondents shall select their own Project Coordinator and shall notify EPA in writing of the name, address, qualifications, job title and telephone number of that Project Coordinator. He or she shall have technical expertise sufficient to adequately oversee all aspects of the work contemplated by this Consent Order. Respondents' Project Coordinator shall be responsible for overseeing the implementation of this Consent Order and shall help coordinate communications between EPA and Respondents. EPA and Respondents may change their respective Project Coordinators. Such a change shall be accomplished by notifying the other party in writing at least ten (10) days prior to the change where possible, and concurrently with the change or as soon thereafter as possible in the event that advance notification is not possible.

48. EPA's Project Coordinator shall have the authority lawfully vested in a Remedial Project Manager and On-Scene Coordinator by the NCP. In addition, EPA's Project Coordinator shall have the authority, consistent with the NCP, to halt any work required by this Consent Order, and to take any necessary response action when he/she determines that conditions at the Site may present an immediate endangerment to public health or welfare or the environment. The absence of the EPA Project Coordinator from the area under study pursuant to this Consent Order shall not be cause for the stoppage or delay of work.

49. All activities required of Respondents under the terms of this Consent Order shall be performed only by qualified persons possessing all necessary permits, licenses, and other authorizations required by applicable law.

XII. OVERSIGHT

50. During the implementation of the requirements of this Consent Order, Respondents and their contractors and subcontractors shall be available for such conferences and inspections with EPA as EPA may determine are necessary for EPA to adequately oversee the work being carried out and/or to be carried out.

51. Respondents and their employees, agents, contractors and consultants shall cooperate with EPA in its efforts to oversee Respondents' implementation of this Consent Order.

XIII. SAMPLING, ACCESS AND DATA AVAILABILITY/ADMISSIBILITY

52. If any area to which access is necessary to perform work under this Consent Order is owned in whole or in part by parties other than those bound by this Consent Order, Respondents shall obtain, or use their best efforts to obtain, access agreements from the present owner(s) within thirty (30) days of the effective date of this Consent Order. Such agreements shall provide access for EPA, its contractors and oversight officials, VIDPNR and its contractors, and the Respondents or their authorized representatives, and agreements for such access shall specify that Respondents are not EPA's representative with respect to liability associated with Site activities. Copies of such agreements shall be provided to EPA upon request prior to Respondents' initiation of field activities. If access agreements are not obtained within the time referenced above, Respondents shall immediately notify EPA of their failure to obtain access. EPA may, in its sole discretion, obtain access for Respondents, perform those tasks or activities with EPA contractors, or terminate this Consent Order in the event that Respondents cannot obtain access agreements. In the event that EPA performs those tasks or activities with EPA contractors and does not terminate this Consent Order, Respondents shall perform all other activities not requiring access to the given property. Respondents additionally shall integrate the results of any such tasks undertaken by EPA into their reports and deliverables. Furthermore, Respondents agree to indemnify the United States as specified in paragraph 92 of this Consent Order. Respondents also shall reimburse EPA pursuant to paragraph 77 for all costs and attorney fees incurred by the United States in its efforts to obtain access for Respondents.

53. At all reasonable times, EPA and its authorized representatives shall have the authority to enter and freely move about all property at the Site and off-Site areas where work, if any, is being performed, for the purposes of inspecting conditions, activities, the results of activities, records, operating logs, and contracts related to the Site or Respondents

and their contractor pursuant to this Consent Order; reviewing the progress of the Respondents in carrying out the terms of this Consent Order; conducting tests and taking samples, as EPA or its authorized representatives deem necessary; using a camera, sound recording device or other documentary type equipment; and verifying the data submitted to EPA by Respondents. Respondents agree to provide EPA and its designated representatives with access to inspect and copy all records, files, photographs, documents, sampling and monitoring data, and other writings related to work undertaken in carrying out this Consent Order, other than documents subject to the attorney-client or attorney work product privilege. All parties with access to the Site under this paragraph shall comply with all approved health and safety plans.

54. All data, records, photographs and other information created, maintained or received by Respondents or their agents, contractors or consultants in connection with implementation of the work under this Consent Order, including but not limited to contractual documents, quality assurance memoranda, raw data, field notes, laboratory analytical reports, invoices, receipts, work orders and disposal records, except for those items subject to the attorney-client or attorney work product privilege shall, without delay, be made available to EPA on request. EPA shall be permitted to copy all such documents and other items.

55. Upon request by EPA, or its designated representatives, Respondents shall provide EPA or its designated representatives with duplicate and/or split samples of any material sampled in connection with the implementation of this Consent Order, or allow EPA or its designated representatives to take such duplicate or split samples.

56. Respondents may assert a claim of business confidentiality under 40 C.F.R. § 2.203, covering part or all of the information submitted to EPA pursuant to the terms of this Consent Order, provided such claim is allowed by section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7). This claim shall be asserted in the manner described by 40 C.F.R. § 2.203(b) and substantiated at the time the claim is made. Information determined to be confidential by EPA will be given the protection specified in 40 C.F.R. Part 2. If no such claim accompanies the information when it is submitted to EPA, it may be made available to the public by EPA or the United States Virgin Islands without further notice to Respondents. Respondents agree not to assert confidentiality claims with respect to any sampling, analytical, monitoring, technical, hydrogeologic, scientific, chemical or engineering data related to conditions at or around the Site.

57. Notwithstanding any other provision of this Consent Order, EPA hereby retains all of its information gathering, access and inspection authority under CERCLA, the Solid Waste Disposal Act,

42 U.S.C. §§ 6901-6991, and any other applicable statute or regulation.

XIV. OTHER APPLICABLE LAWS

58. Respondents shall comply with all laws that are applicable when performing the RI/FS. No local, state, or federal permit shall be required for any portion of the work, including studies, required hereunder which is conducted entirely on-Site, where such work is carried out in compliance with Section 121 of CERCLA. For any work performed pursuant to this Consent Order which is not "on-site", as defined in Sections 300.5 and 300.400(e) of the NCP, Respondents shall obtain all permits necessary under applicable laws and shall submit timely applications and requests for any such permits. This Consent Order is not, nor shall it act as, a permit issued pursuant to any federal or state statute or regulation.

XV. RECORD PRESERVATION

59. All records and documents in Respondents' possession that relate in any way to the Site shall be preserved during the conduct of this Consent Order and for a minimum of ten (10) years after commencement of construction of any remedial action which is selected following the completion of the RI/FS, or if No Action is selected in the ROD, for a minimum of 10 years after issuance of the ROD. Respondents shall acquire and retain copies of all documents that relate to the Site and are in the possession of its employees, agents, accountants, contractors, or attorneys. After this 10-year period, Respondents shall notify EPA at least ninety (90) days before the documents are scheduled to be destroyed. If EPA requests that the documents be saved, Respondents shall, at no cost to EPA, give the documents or copies of the documents that are not subject to the attorney-client or attorney work product privilege, to EPA.

XVI. COMMUNITY RELATIONS

60. Respondents shall cooperate with EPA in providing information relating to the work required hereunder to the public. To the extent requested by EPA, Respondents shall participate in the preparation of all appropriate information disseminated to the public and make presentations at, and participate in, public meetings which may be held or sponsored by EPA to explain activities at or concerning the Site.

XVII. DISPUTE RESOLUTION

61. Any significant dispute concerning activities or deliverables required under this Consent Order, for which dispute resolution has been expressly provided for herein shall be resolved as follows: if Respondents object to an EPA notice of disapproval or determination made pursuant to this Consent Order, and if the given dispute is one for which dispute resolution has been expressly provided for herein, Respondents shall notify EPA's Project Coordinator, in writing, of their objections within fourteen (14) days of receipt of the disapproval notice or determination. Respondents' written objections shall define the dispute, state the basis of Respondents' objections, and be sent to EPA by certified mail, return receipt requested. EPA and Respondents then have an additional fourteen (14) days to reach agreement. If an agreement is not reached within the fourteen (14) days, Respondents may, within seven (7) days of the conclusion of the aforementioned 14-day period, request a determination by the Chief of the New York/Caribbean Superfund Branch II of the Emergency and Remedial Response Division, EPA Region II (hereinafter, the "Chief"). Such a request by Respondents shall be made in writing. The Chief's determination is EPA's final decision. Respondents shall proceed in accordance with EPA's final decision regarding the matter in dispute, regardless of whether Respondents agree with the decision. If Respondents do not agree to perform or do not actually perform the work in accordance with EPA's final decision, EPA reserves the right in its sole discretion to conduct the work itself and seek reimbursement from the Respondents of the costs of that work, to seek enforcement of the decision, to seek stipulated penalties, and/or to seek any other appropriate relief.

62. Respondents are not relieved of their obligations to perform and conduct activities and submit deliverables on the schedules which are approved by EPA and applicable to the work required pursuant to this Consent Order, while a matter is pending in dispute resolution. The invocation of dispute resolution does not, by itself, stay the accrual of stipulated penalties under this Consent Order. However, if the dispute and its resolution cause a delay which makes it impossible for the Respondents to meet a deadline set forth in or established pursuant to this Order, such deadline shall be extended by a period of time not to exceed the time of the delay resulting from the dispute and its resolution. Respondents shall not be entitled to any extension if EPA determines that Respondents' disagreement with EPA's comments or position is not in good faith or otherwise lacks a reasonable basis. EPA will not be arbitrary and capricious in making the determination referred to in the preceding sentence. Notwithstanding any of the foregoing, if Respondents request an extension of any deadline, and if EPA declines to grant such an extension, any delay caused solely by the resolution of such a

dispute over an extension of a deadline shall not entitle Respondents to any extension.

XVIII. DELAY IN PERFORMANCE/STIPULATED PENALTIES

63. For each day that Respondents fail to comply with any of the requirements listed in paragraphs 66, 67, and 68 of this Consent Order, EPA may assess, and if so, Respondents shall pay stipulated penalties in accordance with the terms below. For purposes of this paragraph and paragraphs 66 through 68 below, the term "fail to comply" shall include failure by the Respondents to submit an original or revised deliverable within the time limits set forth in or established pursuant to this Order, failure to revise a deliverable to fully conform with EPA's comments, and submittal of an original deliverable which is of such poor quality as to not even qualify as a bona fide submission. Stipulated penalties begin to accrue on the day that performance is due or a violation occurs, and shall continue to accrue until the noncompliance is corrected, or until EPA notifies Respondents in writing that EPA is assuming responsibility for the portion of work for which penalties are accruing, whichever occurs earlier. Where a revised submission by Respondents is required by EPA, stipulated penalties shall continue to accrue until a deliverable satisfactory to EPA is produced. EPA will provide written notice of those violations for which EPA is assessing stipulated penalties; nevertheless, penalties shall accrue from the day a violation commences. Payment shall be due within thirty (30) days of receipt of a demand letter from EPA, or within 30 days of completion of dispute resolution under Section XVII (should the dispute resolution procedures be timely invoked by Respondents with respect to an EPA assessment of stipulated penalties), whichever is later.

64. Respondents shall pay interest on any unpaid balance, which shall begin to accrue at the end of the 30-day period referred to in paragraph 63, above, at the rate established pursuant to Section 107(a) of CERCLA, 42 U.S.C. §9607(a).

65. Respondents shall make all payments by forwarding a cashier's or certified check to:

EPA - Region 2
Attn: Superfund Accounting
P.O. Box 360188M
Pittsburgh, PA 15251

Checks shall identify the name of the Site, Site number 024V and the index number of this Order. A copy of the check and of the accompanying transmittal letter shall be sent to the first two addressees listed in paragraph 39 above.

66. If Respondents fail to comply with any of the following requirements of the Order, stipulated penalties shall accrue in the amount of \$1000 per day, per violation, for the first seven days of noncompliance; \$2000 per day, per violation, for the 8th through 14th day of noncompliance; \$4000 per day, per violation, for the 15th day through the 30th day of noncompliance; and \$6000 per day, per violation, for the 31st day of noncompliance and beyond.

- A. Submission and, if requested, revision and resubmission of the Draft RI Report.
- B. Submission and, if requested, revision and resubmission of the Draft Feasibility Study Report.
- C. Implementation of the EPA-approved RI/FS Work Plan, and any EPA-approved modification or supplement to that Work Plan, in accordance with the schedule approved by EPA for such work.
- D. Performance of any additional field work required by EPA's comments on the Data Summary Report in accordance with the schedule approved by EPA for such work.
- E. Submission and, if requested, revision and resubmission of the baseline risk assessment report.

67. If Respondents fail to comply with any of the following requirements of this Order, stipulated penalties shall accrue in the amount of \$500 per day, per violation, for the first seven days of noncompliance; \$1000 per day, per violation, for the 8th through 14th day of noncompliance; \$2000 per day, per violation, for the 15th day through the 30th day of noncompliance; and \$3000 per day, per violation, for the 31st day of noncompliance and beyond.

- A. Submission of the Data Summary Report.
- B. Submission of the report setting forth proposed Remedial Action Objectives and Screening of Alternatives.
- C. Notification to EPA of names, titles, and qualifications of personnel pursuant to paragraph 27 above.
- D. Notification to EPA of proposed Project Coordinator pursuant to paragraph 47 above.
- E. Presentation to EPA and VIDPNR on the findings of the Data Summary Report.

- F. Presentation to EPA and VIDPNR on the findings of the RAO and SAO.
- G. Submission and, if requested, revision and resubmission of the Pathway Analysis Report.

68. If the Respondents fail to comply with the requirements set forth in paragraph 37 above regarding monthly progress reports, stipulated penalties shall accrue in the amount of \$250 per day, per violation, for the first week of noncompliance; \$500 per day, per violation, for the 8th through 14th day of noncompliance; \$1000 per day, per violation, for the 15th day through the 30th day of noncompliance; and \$2000 per day, per violation, for the 31st day of noncompliance and beyond.

69. Respondents may dispute EPA's right to the stated amount of penalties by invoking the dispute resolution procedures under Section XVII herein. Penalties shall accrue but need not be paid during the dispute resolution period. If Respondents do not prevail upon resolution, all penalties shall be due to EPA within 30 days of resolution of the dispute. If Respondents prevail upon resolution, no penalties shall be paid.

70. In the event that EPA requires that corrections to an interim deliverable be reflected in the next deliverable, rather than requiring that the interim deliverable be resubmitted, any stipulated penalties which accrue for that interim deliverable shall cease to accrue on the date of such decision by EPA.

71. The stipulated penalties provisions of this Order do not preclude EPA from pursuing any other remedies or sanctions which are available to EPA because of the Respondents' failure to comply with this Order, including but not limited to conduct of all or part of the RI/FS by EPA. Payment of stipulated penalties does not alter Respondents' obligation to complete performance under this Order.

XIX. FORCE MAJEURE

72. "Force majeure", for purposes of this Consent Order, is defined as any event arising from causes beyond the control of Respondents and of any entity controlling, controlled by, or under common control with Respondents, including their contractors and subcontractors, that delays the timely performance of any obligation under this Consent Order notwithstanding Respondents' best efforts to avoid the delay. The requirement that Respondents exercise "best efforts to avoid the delay" includes using best efforts to anticipate any potential force majeure event and best efforts to address the effects of any potential force majeure event (1) as it is occurring and (2) following the potential force majeure event, such that the delay is minimized to the greatest extent

practicable. Examples of events that are not force majeure events include, but are not limited to, increased costs or expenses of any work to be performed under this Consent Order or the financial difficulty of Respondents to perform such work.

73. If any event occurs or has occurred that may delay the performance of any obligation under this Consent Order, whether or not caused by a force majeure event, Respondents shall notify by telephone the EPA Project Coordinator or, in his or her absence, the Chief of the Eastern New York/Caribbean Superfund Section II of the Emergency and Remedial Response Division, EPA Region II, within forty-eight (48) hours of when Respondents knew or should have known that the event might cause a delay. Within five (5) business days thereafter, Respondents shall provide in writing: the reasons for the delay; Respondents' rationale for interpreting the circumstances as constituting a force majeure event (should that be Respondents' claim); the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to mitigate the effect of the delay; and a statement as to whether, in the opinion of Respondents, such event may cause or contribute to an endangerment to public health, welfare or the environment. Such written notice shall be accompanied by all available pertinent documentation including, but not limited to, third-party correspondence. Respondents shall exercise best efforts to avoid or minimize any delay and any effects of a delay. Failure to comply with the above requirements shall preclude Respondents from asserting any claim of force majeure.

74. If EPA agrees that the delay or anticipated delay is attributable to force majeure, the time for performance of the obligations under this Consent Order that are directly affected by the force majeure event will be extended for a period of time, determined by EPA, not to exceed the actual duration of the delay caused by the force majeure event. An extension of the time for performance of the obligation directly affected by the force majeure event shall not, of itself, extend the time for performance of any subsequent obligation.

75. If EPA does not agree that the delay or anticipated delay has been or will be caused by a force majeure event or if Respondents object to the length of the extension determined by EPA pursuant to paragraph 74, above, the issue shall be subject to the dispute resolution procedures set forth in Section XVII of this Consent Order. In order to qualify for a force majeure defense, Respondents shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a force majeure event, that the duration of the delay was or will be warranted under the circumstances, that Respondents did exercise or are exercising due diligence by using their best efforts to avoid and mitigate

the effects of the delay, and that Respondents complied with the requirements of paragraph 73.

76. Should Respondents carry the burden set forth in paragraph 72, the delay at issue shall not be deemed a violation of the affected obligation of this Consent Order.

XX. REIMBURSEMENT

77. A. Within thirty (30) days of the effective date of this Consent Order, Respondents shall pay EPA \$70,087.45 in reimbursement of certain costs incurred by EPA prior to September 13, 1989 with respect to the investigation of soil and groundwater contamination at the Site.

B. Respondents also hereby agree to reimburse EPA for all response costs, including oversight costs, incurred by the EPA with respect to the RI/FS on or after March 22, 1994. EPA will periodically send billings to Respondents for the costs incurred by EPA. Those billings will be accompanied by a printout of cost data in EPA's financial management system and by a calculation of EPA's indirect costs. EPA's costs may include, but are not limited to, costs incurred by the EPA in overseeing Respondents' implementation of the requirements of this Order and activities performed by the EPA as part of the RI/FS and community relations, including any costs incurred while obtaining access. Such costs will include both direct and indirect costs, including but not limited to, time and travel costs of EPA personnel and associated indirect costs, contractor costs, cooperative agreement costs, costs of compliance monitoring, including the collection and analysis of split samples, inspection of RI/FS activities, Site visits, discussions regarding disputes that may arise as a result of this Order, review and approval or disapproval of reports, and costs of redoing any of Respondents' tasks. Respondents shall, within thirty (30) days of receipt of each such billing, remit a cashier's or certified check for the amount of those costs, made payable to the "Hazardous Substance Superfund".

78. Respondents may invoke the Dispute Resolution procedures of Section XVII of this Consent Order with respect to payment demands submitted to Respondents by EPA under paragraph 77.B. However, Respondents agree to limit any disputes concerning such costs to mathematical errors and the inclusion of costs which are inconsistent with the NCP or are outside the scope of this Consent Order. Respondents shall identify any contested costs and the basis of their objection. All undisputed costs shall be remitted by Respondents in accordance with the schedule set forth above. Disputed costs shall be paid by Respondents into an escrow account while the dispute is pending. Respondents bear the burden of establishing an EPA mathematical error or the inclusion

of costs which are inconsistent with the NCP or are outside the scope of this Consent Order.

79. Each of the payments that Respondents are required to pay shall be mailed to the following address:

EPA - Region II
Attn: Superfund Accounting
P.O. Box 360188M
Pittsburgh, PA 15251

Checks shall include the name of the Site, Site number 024V and the index number of this Consent Order. A copy of each check and of the accompanying transmittal letter shall be sent to the first two addressees listed in paragraph 39, above.

80. Respondents shall pay interest on any amounts overdue under paragraph 77. Such interest shall begin to accrue on the first day that the respective payment is overdue. Interest shall accrue at the rate of interest on investments of the Hazardous Substances Superfund, in accordance with Section 107(a) of CERCLA.

XXI. RESERVATIONS OF RIGHTS AND REIMBURSEMENT OF OTHER COSTS

81. EPA reserves the right to bring an action against Respondents (and/or any other responsible parties) under Section 107 of CERCLA for recovery of all response costs incurred by the United States at the Site that are not reimbursed by Respondents, including, but not limited to, oversight costs, any costs incurred in the event that EPA performs the RI/FS or any part thereof and any future costs incurred by the United States in connection with response activities conducted under CERCLA at the Site.

82. EPA reserves the right to bring an action against Respondents to enforce the requirements of this Consent Order, to collect stipulated penalties assessed pursuant to Section XVIII of this Consent Order, and to seek penalties pursuant to Section 109 of CERCLA, 42 U.S.C. §9609, or any other applicable provision of law.

83. Except as expressly provided in this Consent Order, each party reserves all rights and defenses it may have. Nothing in this Consent Order shall be construed to limit, in any way, EPA's response or enforcement authorities including, but not limited to, the right to seek injunctive relief, stipulated penalties, statutory penalties, and/or punitive damages.

84. Following satisfaction of the requirements of this Consent Order, Respondents shall have resolved their liability to EPA for the work performed by Respondents pursuant to this Consent Order.

Respondents are not released from liability, if any, for any response actions taken beyond the scope of this Consent Order regarding removals, other operable units, remedial design/remedial action of this operable unit, or activities arising pursuant to Section 121(c) of CERCLA.

XXII. DISCLAIMER

85. By signing and taking actions under this Consent Order, Respondents do not admit, adopt, accept, concede, or acknowledge EPA's Findings of Fact and Conclusions of Law contained herein. Respondents reserve the right to contest such Findings of Fact and Conclusions of Law in any proceeding regarding the Site other than an action brought by the United States, including EPA, to enforce this Order. Furthermore, the participation of Respondents in this Order shall not be considered an admission of liability. In addition, the participation of Respondents in this Order is not admissible in evidence against Respondents in any judicial or administrative proceeding other than a proceeding by the United States, including EPA, to enforce this Consent Order or a judgement relating to it. Except as otherwise provided in this Order, Respondents do not, by signing this Order, waive any rights they may have. Respondents retain their rights to assert claims against other potentially responsible parties at the Site. However, Respondents agree not to contest the validity or the terms of this Consent Order in any action brought by the United States, including EPA, to enforce its terms.

XXIII. OTHER CLAIMS

86. Respondents hereby waive any rights they may have to seek reimbursement pursuant to Sections 106(b)(2), 111 and/or 112 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9611, 9612, or any other provision of law, either directly or indirectly, from EPA or the Hazardous Substance Superfund of costs incurred by Respondents in complying with this Order. This Consent Order does not constitute any decision on preauthorization of funds under Section 111(a)(2) of CERCLA. Respondents further waive all other statutory and common law claims against EPA, including, but not limited to, contribution and counterclaims, relating to or arising out of conduct of the RI/FS or this Consent Order.

87. Nothing in this Consent Order shall constitute or be construed as a release from any claim, cause of action, or demand in law or equity against any "person," as that term is defined in Section 101(21) of CERCLA, not a signatory to this Consent Order for any liability it may have arising out of or relating in any way to the generation, storage, treatment, handling, transportation, release, or disposal of any hazardous substances, pollutants, or contaminants found at, taken to, or taken from the Site. Nothing herein shall constitute a finding that Respondents

are the sole responsible parties with respect to the release and threatened release of hazardous substances at or from the Site.

88. Respondents shall bear their own costs and attorneys fees.

XXIV. FINANCIAL ASSURANCE, INSURANCE, AND INDEMNIFICATION

89. Within fifteen (15) days of the effective date of this Order, Respondents shall provide EPA with financial information which demonstrates that one or more of the Respondents meets the requirements of 40 C.F.R. §264.143(f) and is thereby financially capable of performing the work and any other obligations required under this Consent Order, including a margin for cost overruns.

90. If EPA determines that the financial assurances provided by the Respondents are inadequate, EPA will so notify Respondents. Respondents shall then have fifteen (15) days to obtain and provide EPA with further financial assurances which demonstrate Respondents' ability to perform the work and other obligations required under this Order, including a margin for cost overruns.

91. (a) Prior to commencement of any work under this Consent Order, Respondents shall provide evidence to EPA demonstrating that one or more of the Respondents pass the financial test described in 40 C.F.R. §264.147(f) corresponding to liability coverage in the amount of ten million dollars.

(b) For the duration of this Consent Order, Respondents shall satisfy, and shall ensure that their contractors or subcontractors satisfy, all applicable laws and regulations regarding the provision of employer's liability insurance and workmen's compensation insurance for all persons performing work on behalf of Respondents, in furtherance of this Consent Order.

92. Respondents agree to indemnify and hold the United States Government, its agencies, departments, agents, and employees harmless from any and all claims or causes of action arising from or on account of acts or omissions of Respondents, their employees, agents, servants, receivers, successors, or assignees, or any other persons acting on behalf of Respondents, including, but not limited to, firms, corporations, parent, subsidiaries and contractors, in carrying out activities under this Consent Order. The United States Government or any agency or authorized representative thereof shall not be held as a party to any contract entered into by Respondents in carrying out activities under this Consent Order.

93. Neither the United States Government nor any agency thereof shall be liable for any injuries or damages to persons or property resulting from acts or omissions by Respondents or Respondents' officers, directors, employees, agents, contractors,

consultants, receivers, trustees, successors or assigns in carrying out any action or activity pursuant to this Consent Order.

XXV. EFFECTIVE DATE AND SUBSEQUENT MODIFICATION

94. After issuance, this Consent Order shall be effective on the date of receipt of a copy hereof by counsel to Respondents.

95. This Consent Order may be amended by mutual agreement of EPA and Respondents. Amendments shall be in writing and shall be effective when signed by EPA. EPA Project Coordinators do not have the authority to sign amendments to this Consent Order.

96. No informal advice, guidance, suggestions, or comments by EPA regarding reports, plans, specifications, schedules, and any other writing submitted by Respondents will be construed as relieving Respondents of its obligation to obtain such formal approval as may be required by this Consent Order. Any deliverables, plans, technical memoranda, reports (other than progress reports), specifications, schedules and other documents required to be submitted to EPA pursuant to this Consent Order shall, upon approval by EPA, be deemed to be incorporated in and an enforceable part of this Consent Order.

XXVI. TERMINATION AND SATISFACTION

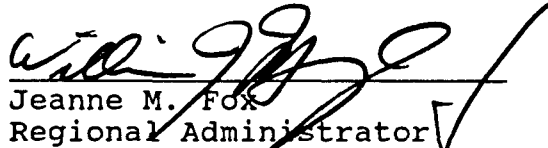
97. This Consent Order shall terminate when Respondents demonstrate in writing and certify to the satisfaction of EPA that all activities required under this Consent Order - including any additional work, payment of costs in accordance with Section XX of this Consent Order, and payment of any stipulated penalties demanded by EPA have been performed and EPA has approved the certification in writing. This notice shall not, however, terminate Respondents' obligation to comply with any of Respondents' remaining obligations under this Consent Order, including record preservation and the payment of any costs specified in Section XX of this Consent Order which have not yet, at that time, been paid by Respondents.

98. The certification referred to in paragraph 97, above, shall be signed by a responsible official(s) representing each Respondent. Such representative shall make the following attestation:

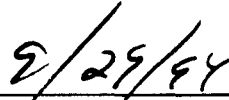
"I certify that the information contained in or accompanying this certification is true, accurate, and complete."

For purposes of this Consent Order, a responsible official is a corporate official who is in charge of a principal business function.

U.S. ENVIRONMENTAL PROTECTION AGENCY



Jeanne M. Fox
Regional Administrator
U.S. Environmental Protection Agency
Region II



Date

CONSENT

The Respondent identified below has had an opportunity to confer with EPA regarding this Consent Order. Respondent hereby consents to the issuance of this Consent Order and to its terms. The individual executing this Consent Order on behalf of Respondent certifies under penalty of perjury under the laws of the United States and of the State of Respondent's incorporation that he or she is fully and legally authorized to agree to the terms and conditions of this Consent Order and to bind Respondent thereto.

Berlex Laboratories Inc.

NAME OF RESPONDENT

September 28, 1994

Date

U. Kunze

(signature)

Wolfgang Kunze

(typed name of signatory)

Vice President

(title of signatory)

700036

CONSENT

The Respondent identified below has had an opportunity to confer with EPA regarding this Consent Order. Respondent hereby consents to the issuance of this Consent Order and to its terms. The individual executing this Consent Order on behalf of Respondent certifies under penalty of perjury under the laws of the United States and of the State of Respondent's incorporation that he or she is fully and legally authorized to agree to the terms and conditions of this Consent Order and to bind Respondent thereto.

Island Chemical Company Inc.

NAME OF RESPONDENT

September 28, 1994

Date

Rae Willis
(signature)

Rae Willis

(typed name of signatory)

President

(title of signatory)

700037