

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION II

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IN THE MATTER OF THE TUTU WELLS :
SUPERFUND SITE, ANNA'S RETREAT, :
ST. THOMAS, U.S.V.I. :
: :
L'HENRY, INC., d/b/a O'HENRY CLEANERS, :
: :
RESPONDENT : ADMINISTRATIVE :
: ORDER ON CONSENT :
: FOR REMOVAL ACTION :
: :
Proceeding under Section 106(a) of : Index Number :
the Comprehensive Environmental : II-CERCLA-95-0401 :
Response, Compensation, and Liability : :
Act, as amended, 42 U.S.C. § 9606(a) : :
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I. JURISDICTION AND GENERAL PROVISIONS

1. This Administrative Order on Consent ("Order") is entered into voluntarily by the United States Environmental Protection Agency ("EPA") and L'Henry, Inc., d/b/a O'Henry Cleaners ("Respondent"). This Order provides for the performance of a removal action by Respondent and the reimbursement of certain costs incurred by EPA in connection with the L'Henry, Inc. (d/b/a O'Henry Cleaners) facility (hereinafter, the "Facility"), which is part of the Tutu Wells Superfund Site ("Site"), located at the eastern end of St. Thomas at the Estate Anna's Retreat area of the island.
2. This Order is issued pursuant to the authority vested in the President of the United States by Section 106(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. § 9606(a), and delegated to the Administrator of EPA on January 23, 1987, by Executive Order No. 12580 (52 Federal Register 2926, January 29, 1987) and further delegated to the EPA Regional Administrators by EPA Delegation Nos. 14-14-A and 14-14-C.
3. EPA has notified the Department of Planning and Natural Resources ("DPNR") of the United States Virgin Islands ("U.S.V.I.") of this Order pursuant to Section 106(a) of CERCLA, 42 U.S.C. § 9606(a).
4. Respondent's participation in this Order shall not constitute or be construed as an admission of liability or of EPA's findings or determinations contained in this Order. Respondent agrees to comply with and be bound by the terms of this Order. Respondent further agrees that it will not contest the validity of this

Order or its terms in any proceeding to enforce the terms of this Order.

II. PARTIES BOUND

5. This Order applies to and is binding upon Respondent and its successors and assigns. Respondent agrees to instruct its officers, directors, employees and agents involved in the performance of the Work required by this Order to cooperate in carrying out Respondent's obligations under this Order. Respondent agrees that its 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. The individual who has signed this Order on behalf of Respondent certifies that he or she is authorized to bind Respondent to this Order. Any change in the ownership or corporate status of Respondent, including, but not limited to, any transfer of assets or real or personal property, shall not alter the responsibilities of Respondent under this Order.

6. Respondent shall provide a copy of this Order to any prospective owners or successors before a controlling interest in Respondent's assets, property rights, or stock are transferred to the prospective owner or successor.

7. Not later than sixty (60) days prior to the transfer by Respondent of any real property interest in any property included within the Facility, Respondent shall submit a true and correct copy of the transfer document(s) to EPA, and shall identify the transferee by name, principal business address and effective date of the transfer.

III. DEFINITIONS

8. Unless otherwise expressly provided herein, terms used in this Order which are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or its implementing regulations. Whenever terms listed below are used in this Order or in an attachment to this Order, the following definitions shall apply:

a. "Day" means a calendar day unless otherwise expressly stated. "Working day" shall mean a day other than a Saturday, Sunday, or Federal holiday. In computing any period of time under this Order, where the last day would fall on a Saturday, Sunday, or Federal Holiday, the period shall run until the close of business on the next working day.

b. "Facility" shall mean the L'Henry, Inc. facility (d/b/a O'Henry Cleaners), located on the eastern side of Highway 38 at

#5 Anna's Retreat, St. Thomas, U.S.V.I.

c. "Hazardous substance" shall have the meaning provided in Section 101(14) of CERCLA, 42 U.S.C. §9601(14).

d. "National Contingency Plan" ("NCP") shall mean the National Oil and Hazardous Substances Pollution Contingency Plan promulgated by EPA pursuant to Section 105 of CERCLA, 42 U.S.C. §9605, and codified at 40 C.F.R. Part 300, and all amendments or modifications thereof.

e. "Project Coordinator" shall mean the person designated by EPA to be responsible for on-scene monitoring of all actions and activities required pursuant to this Order. The Project Coordinator shall additionally be responsible for coordinating and directing any EPA actions which may be conducted at the Facility.

f. "Party" or "Parties" means the United States Environmental Protection Agency and/or Respondent.

g. "Removal Action" shall have the meaning set forth in Section 101(23) of CERCLA, 42 U.S.C. §9601(23).

h. "Site" shall mean the Tutu Wells Superfund Site located at the eastern end of St. Thomas at the Estate Anna's Retreat area of the island.

i. "Waste" means (1) any "hazardous substance" under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); (2) any "pollutant or contaminant" under Section 101(33) of CERCLA, 42 U.S.C. § 9601(33); (3) any "solid waste" under Section 1004(27) of the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. § 6903(27); and (4) any mixture containing any of the constituents noted in (1), (2) or (3), above.

j. "Work" means all work and other activities required by and pursuant to this Order.

IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW

9. EPA involvement at the Site began on or about July 7, 1987, when Mr. Eric Tillett contacted the U.S.V.I. DPNR regarding an odor emanating from the raw well water on his property located at Anna's Retreat, St. Thomas, U.S.V.I. Mr. Tillett's well provided the eastern portion of St. Thomas with its main source of drinking water. The Facility, located at #5 Anna's Retreat, St. Thomas, U.S.V.I., is in the southern portion of the Site, several hundred feet downgradient from the Tillett wells.

10. On July 16, 1987 the EPA received a verbal request from the U.S.V.I. DPNR to sample and analyze Mr. Tillett's well. DPNR made a written confirmation of this request to EPA dated

August 10, 1987.

11. On July 21, 1987 representatives of EPA and its Technical Assistance Team ("TAT") mobilized to perform sampling of Mr. Tillet's well and six additional commercial wells which served residential customers and commercial establishments throughout St. Thomas.

12. The analytical results from the July 1987 TAT sampling indicated that Mr. Tillet's well was highly contaminated with gasoline and chlorinated organics and that the additional six wells in the Anna's Retreat area contained elevated levels of chlorinated volatile organic compounds ("VOCs").

13. Based on these results, the DPNR declared that an imminent health threat existed which could affect 20,000 people living in St. Thomas and an indefinite number of tourists who vacation in St. Thomas.

14. In order to protect public health, DPNR closed thirteen commercial wells and five private wells. Specifically, DPNR closed: the Tutu Water Wells located at #126 Estate Anna's Retreat on July 31, 1987; the Plaza Associate Wells at #392 Estate Anna's Retreat on August 7, 1987; the Gene Eglin Wells at #2 Estate Anna's Retreat on August 7, 1987; the A.A.S.A. Water Supply (Hartman Wells) at #3 Estate Anna's Retreat on August 7, 1987; the Harvey Well at #5c Estate Anna's Retreat on September 2, 1987; and the Steel Well at #5A Estate Anna's Retreat on September 2, 1987.

15. Subsequently, EPA expanded its sampling plan due to the threat of more widespread contamination.

16. On August 10 and 11, 1987 EPA sampled a total of twenty-four wells identified in the Tutu Section of Anna's Retreat within the Tutu Water/Turpentine Run Aquifer.

17. The analytical results revealed the presence of 1,2-trans-dichloroethylene ("DCE"), trichloroethylene ("TCE"), tetrachloroethylene ("PCE"), toluene ("TOL"), benzene ("BEX") and terbutylmethylether ("TBME") in concentrations ranging from 61 parts per billion ("ppb") to 120,000 ppb in the twenty-four (24) wells. The analytical results also revealed that the EPA 10-Day Health Advisory Level of 175 ppb was exceeded in three of the twenty four wells sampled, with two of the three contaminated wells being private residential wells. The concentrations found ranged from 240 to 7,600 ppb with seven additional wells being below the EPA 10-Day Health Advisory, but above the U.S.V.I. interim maximum permissible concentration levels set on September 1, 1987 by DPNR for volatile organics in drinking water in the Turpentine Run Aquifer (50 ppb for a single compound or 100 ppb for total volatile organic compounds ("VOCs")). Three of the previously mentioned seven wells were residential wells.

18. In addition to sampling twenty-four wells, EPA sampled and analyzed 123 cisterns serviced by water haulers from this area. Three cisterns were found to be contaminated with VOCs in excess of 1000 ppb.

19. To confirm the previous data, in October 1987, EPA conducted additional sampling for the Hazardous Substance List ("HSL") in the same twenty-four wells. The major contaminants found were DCE, TCE, PCE and TBME. In addition, metals such as arsenic (15 ppb), selenium (15 ppb) and zinc (460 ppb) were detected in some of the wells.

20. On August 1-2, 1989, EPA and TAT conducted photovac sampling of the Tutu Wells Superfund Site. Analysis of these samples included, among others, the following results:

All values are in (PPB)

<u>WELL</u>	<u>TCE</u>	<u>PCE</u>
Steele	280	>1000
Smith	73	181
Mathias	48	720
Tillet	135	
VIHA #1	80	316

21. In January 1988, EPA initiated a limited CERCLA Removal Action which included the decontamination and cleaning of five residential cisterns contaminated by hazardous substances, the modification of plumbing, the delivery of water by tank trucks as a temporary alternative water supply and a well water monitoring program.

22. On November 25, 1987, EPA sent Respondent an Information Request letter under Sections 104(e) of CERCLA and 3007 of RCRA regarding its Facility, which is located at #5 Anna's Retreat, St. Thomas, U.S.V.I., on the eastern side of Highway 38.

23. On December 4, 1987, Respondent, in response to EPA's Information Request, stated in a letter signed by Leo T. Barbel, President, that PCE is "used, stored and handled in the facility."

24. On September 8, 1988, three soil samples were taken and composited at the Facility. The analysis revealed 440 parts per million ("ppm") of PCE.

25. Health effects of some of the contaminants found at the Tutu Wells Superfund Site are listed below:

a. Chronic inhalation exposure to DCE causes liver degeneration, and acute exposure to high levels has adverse effects on the central nervous system. Exposure to high vapor concentrations has been found to cause nausea, vomiting, weakness, tremor, and cramps in humans.

b. The prime toxic effect of PCE in humans and animals from acute and chronic exposure at high doses includes central nervous system depression and liver and kidney changes (tissue damage).

c. TCE has been shown to cause liver and kidney effects, central nervous system effects and depression in myocardial contractility at high doses.

26. Respondent is the "owner" and/or "operator" of the Facility, as those terms are defined in Section 101 of CERCLA, 42 U.S.C. § 9601, and EPA finds that it was the owner and/or operator of the Facility at a time when hazardous substances were disposed of there. EPA finds that Respondent thus is a potentially responsible party under Section 107 of CERCLA, 42 U.S.C. § 9607.

27. The disposal of hazardous substances at the Facility and their migration to surrounding soil, sediments, surface water and groundwater constitute a "release," as defined in Section 101(22) of CERCLA, 42 U.S.C. § 9601(22). In addition, there is a threat of further releases of hazardous substances at and from the Facility.

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

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

30. Respondent is a "person" within the meaning of Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

31. The Respondent has been given the opportunity to discuss with EPA the basis for issuance of this Order and its terms.

V. DETERMINATIONS

32. EPA finds that the conditions present at the Facility constitute a threat to public health, welfare, or the environment based upon factors set forth in Section 300.415(b)(2) of the National Oil and Hazardous Substances Pollution Contingency Plan ("NCP"). These factors include, but are not limited to, the following conditions:

- a. actual or potential exposure to nearby human populations, animals or the food chain from hazardous substances or pollutants or contaminants;
- b. actual or potential contamination of sensitive ecosystems;
- c. high levels of hazardous substances or pollutants or contaminants in soils largely at or near the surface, that may migrate;
- d. weather conditions that may cause hazardous substances or pollutants or contaminants to migrate or be released; and
- e. the availability of other appropriate federal or state response mechanisms to respond to the release.

33. The actual or threatened release of hazardous substances from the Facility may present an imminent and substantial endangerment to the public health, welfare, or the environment within the meaning of Section 106(a) of CERCLA, 42 U.S.C. § 9606(a).

34. The actions required by this Order are necessary to protect the public health or welfare or the environment, are in the public interest, and are consistent with CERCLA and the National Contingency Plan ("NCP"), 40 CFR Part 300.

VI. ORDER

35. Based upon the foregoing Findings of Fact, Conclusions of Law, Determinations, and other information available to EPA, it is hereby ordered and agreed that Respondent shall, in accordance with the requirements specified below, undertake a response action at the Facility in accordance with the Work Plan for Evaluation and Interim Remediation of Soil, prepared by IT Corporation and dated June 1994, as modified by IT Corporation's Responses to EPA's Comments on and Addendum for the Work Plan, dated July 25, 1994, and the Amendment to the Work Plan, dated February 2, 1995 -- all of which are attached to this Order and incorporated herein, and are collectively hereinafter referred to as "the Work Plan." Respondent shall conduct such response action to abate the release and/or threat of release into the environment of hazardous substances at the Facility. The attached Work Plan is deemed by EPA to be consistent with the NCP. All such activities shall be initiated and completed as soon as possible even though maximum time periods for their completion are specified herein.

Designation of Contractor and Designated Coordinator

36. Respondent has proposed and EPA has accepted Belinda Price from IT Corporation, as the Designated Coordinator for purposes of this Order. The Designated Coordinator shall be responsible for oversight of the implementation of this Order. To the greatest extent possible, the Designated Coordinator shall be present at the Facility or readily available during Site work. EPA retains the right to disapprove of any Designated Coordinator proposed by Respondent. Respondent may change its Designated Coordinator, subject to approval by EPA as set forth in this paragraph. Respondent shall notify EPA at least seven (7) days before such a change is made. The initial notification may be orally made but it shall be promptly followed by a written notice.

37. Respondent has proposed and EPA has accepted IT Corporation, as contractor to perform the Work. Respondent may change its designated contractor, subject to approval by EPA as set forth in this paragraph. Respondent shall notify EPA at least seven (7) days before such a change is made. The initial notification may be orally made but it shall be promptly followed by a written notice. Respondent shall also notify EPA of the name and qualifications of any other contractor or subcontractor proposed to perform work under this Order at least five (5) days prior to commencement of such work.

38. Subject to the provisions of paragraph 36 and 37, above, EPA retains the right to disapprove of any, or all, subsequent Designated Coordinators and contractors and/or subcontractors proposed by the Respondent to conduct the Work. If EPA disapproves of any of Respondent's proposed contractors to conduct the Work, Respondent shall propose a different contractor within seven (7) days of EPA's disapproval.

39. Respondent shall provide a copy of this Order to each contractor and subcontractor approved and retained to perform the work required by this Order. Respondent shall include in all contracts or subcontracts entered into for work required under this Order provisions stating that such contractors or subcontractors, including their agents and employees, shall perform activities required by such contracts or subcontracts in compliance with this Order and all applicable laws and regulations. Respondent shall be responsible for ensuring that its contractors and subcontractors perform the work contemplated herein in accordance with this Order.

40. Respondent shall direct all submissions required by this Order to the EPA Project Coordinator by certified mail at the address provided in paragraph 56 of this Order.

Description of Work

41. Within fourteen (14) days of the effective date of this Order, Respondent shall begin implementation of the EPA- approved Work Plan. Respondents shall fully implement the EPA-approved Work Plan in accordance with the terms and schedule therein, which includes but is not limited to proper on-site storage of excavated materials, pursuant to Subpart I of 40 CFR Part 264, and in accordance with this Order.

42. Respondent shall notify EPA of the names and addresses of all off-site waste treatment, storage, or disposal facilities selected by Respondent to receive wastes from the Facility. Respondent shall provide such notification to EPA at least five (5) days prior to shipment of such wastes.

43. At the time of completion of all activities required by this Order, demobilization shall include sampling if deemed necessary by EPA, and proper disposal or decontamination of protective clothing, remaining laboratory samples taken pursuant to this Order, and any equipment or structures constructed to facilitate the cleanup.

On-scene Coordinator, Other Personnel, and Modifications to EPA-Approved Work Plan

44. All activities required of Respondents under the terms of this Order shall be performed only by qualified persons possessing all necessary permits, licenses, and other authorizations required by federal, state, and local governments, and all work conducted pursuant to this Order shall be performed in accordance with prevailing professional standards.

45. All waste storage and disposal conducted by Respondent pursuant to this Order shall comply with the requirements of RCRA, 42 U.S.C. § 6901, et seq., including but not limited to RCRA Land Ban Requirements found at Subpart I of 40 CFR Part 264, 40 CFR Part 268.45 Table I and/or 40 CFR 261.3(3)(2), the debris treatment standards for extraction or destruction technology; the Toxic Substances Control Act ("TSCA"), 15 U.S.C. § 2601 et seq., and all applicable regulations promulgated pursuant thereto, as well as all other applicable federal, U.S.V.I., local laws and regulations.

46. The current EPA Project Coordinator for the Tutu Wells Superfund Site is: Caroline Kwan, Eastern New York/Caribbean Superfund Section II, Emergency and Remedial Response Division, U.S. Environmental Protection Agency, 290 Broadway, 20th Floor, New York, New York 10007-1866, (212) 637-4275. EPA will notify the Designated Coordinator if EPA's Project Coordinator should change.

47. EPA, including the Project Coordinator, will conduct

oversight of the implementation of this Order. The Project Coordinator shall have the authority vested in an On-Scene Coordinator by the NCP, including the authority to halt, conduct, or direct any work required by this Order, or to direct any other response action undertaken by EPA or Respondent at the Facility consistent with this Order. Absence of the Project Coordinator from the Facility shall not be cause for stoppage of work unless specifically directed by the Project Coordinator.

48. As appropriate during the course of implementation of the actions required of Respondent pursuant to this Order, Respondent or its consultants or contractors, acting through the Designated Coordinator, may confer with EPA concerning the required actions. Based upon new circumstances or new information not in the possession of EPA on the date of this Order, the Designated Coordinator may request, in writing, EPA approval of modification(s) to the EPA-approved Work Plan. Only modifications approved by EPA in writing shall be deemed effective. Upon approval by EPA, such modifications shall be deemed incorporated in this Order and shall be implemented by Respondent.

Plans and Reports Requiring EPA Approval

49. If EPA disapproves or otherwise requires any modifications to any plan, report or other item required to be submitted to EPA for approval pursuant to this Order, Respondent shall have ten (10) days from the receipt of notice of such disapproval or the required modifications to correct any deficiencies and resubmit the plan, report, or other written document to EPA for approval, unless a shorter or longer period is specified in the notice. Any notice of disapproval will include an explanation of why the plan, report, or other item is being disapproved. Respondent shall address each of the comments and resubmit the plan, report, or other item with the required changes within the time stated above. At such time as EPA determines that the plan, report, or other item is acceptable, EPA will transmit to Respondent a written statement to that effect.

50. If any plan, report, or other item required to be submitted to EPA for approval pursuant to this Order is disapproved by EPA, even after being resubmitted following Respondent's receipt of EPA's comments on the initial submittal, Respondent shall be deemed to be out of compliance with this Order. If any resubmitted plan, report, or other item, or portion thereof, is disapproved by EPA, EPA may again direct Respondent to make the necessary modifications thereto, and/or EPA may amend or develop the item(s) and recover the costs from Respondent of doing so. Respondent shall implement any such item(s) as amended or developed by EPA.

51. EPA shall be the final arbiter in any dispute regarding the

sufficiency or acceptability of all documents submitted and all activities performed pursuant to this Order. EPA may modify those documents and/or perform or require the performance of additional work unilaterally. However, as set forth in paragraph 104 of this Order, Respondent does not waive any rights afforded to it pursuant to federal law, except as otherwise expressly provided in this Order.

52. All plans, reports and other submittals required to be submitted to EPA pursuant to this Order, upon approval by EPA, shall be deemed to be incorporated in and an enforceable part of this Order.

Reporting

53. During the implementation of this Order, Respondent shall provide daily verbal progress reports to EPA which fully describe all actions and activities undertaken pursuant to this Order. Such progress reports shall, among other things, (a) describe the actions taken toward achieving compliance with this Order during the previous two day period, (b) include all results of sampling and tests and all other data received by Respondent during that period in the implementation of the Work required hereunder, (c) describe all actions which are scheduled for the next two day period, (d) provide other information relating to the progress of work as is customary in the industry, (e) and 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.

54. Respondent shall include in the progress reports required above, a schedule for the field activities which are expected to occur pursuant to this Order during the upcoming month. Respondent shall, in addition, provide EPA with at least 24 hour verbal advance notice of any change in that schedule, subject to written confirmation within two days.

55. The Final Interim Soil Remediation Report referred to below, and other documents submitted by Respondent to EPA which purport to document Respondent's compliance with the terms of this Order shall be signed by a responsible official of the Respondent or by the Designated Coordinator who has been delegated this responsibility by the Respondent and whose qualifications have been found by EPA to be acceptable pursuant to this Order. For purposes of this paragraph, a responsible official is an official who is in charge of a principal business function.

56. The Work Plan, the Final Report, and other documents, submittals and notifications required to be submitted to EPA under this Order shall be made in writing and sent to the following addressees:

- (4 copies) i. Caroline Kwan, Project Coordinator
Eastern New York/Caribbean Superfund Section
Emergency and Remedial Response Division
U.S. Environmental Protection Agency
Region II
290 Broadway, 20th Floor
New York, New York 10007-1866;
- (2 copies) ii. Andrew Praschak
Assistant Regional Counsel
Office of Region Counsel
U.S. Environmental Protection Agency
1492 Ponce De Leon Ave.
Centro Europa Building, Suite 417
San Juan, Puerto Rico 00907-4127
- (2 copies) iii. Mr. Leonard Reed, Assistant Director
Environmental Protection Agency
Department of Planning & Natural Resources
Nisky Center, Suite 231
45A Estate Nisky
St. Thomas, U.S.V.I. 00801

57. Within thirty (30) days after completion of all removal activities required under this Order, Respondent shall submit for EPA review and approval a Final Interim Soil Remediation Report summarizing the actions taken to comply with this Order. The Final Report shall conform, at a minimum, with the requirements set forth in Section 300.165 of the NCP, entitled "OSC Reports." The Final Report shall include:

- a. a synopsis of all Work, including field work, performed under this Order;
- b. a detailed description of all EPA-approved modifications to the Work Plan which occurred during Respondent's performance of the Work required under this Order;
- c. a listing of quantities and types of materials removed from the Facility or handled at the Facility;
- d. a discussion of removal and disposal options considered for those materials;
- e. a listing of the ultimate destination of those materials;
- f. a presentation of the validated analytical results of all sampling and analyses performed, including QA/QC data and chain of custody records;
- g. accompanying appendices containing all relevant

documentation generated during the work (e.g., manifests, invoices, bills, contracts, and permits).

h. The following certification signed by a person who supervised or directed the preparation of the Final Report:

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

58. EPA either will approve the Final Report or will require modifications thereto pursuant to paragraphs 49 - 52 of this Order.

Oversight

59. During the implementation of the requirements of this Order, Respondent and its contractor(s) and subcontractors shall be available for such conferences with EPA and DPNR and inspections by DPNR and EPA or their authorized representatives as EPA may determine are necessary to adequately oversee the work being carried out or to be carried out by Respondent, including inspections at the Facility and at laboratories where analytical work is being done hereunder.

60. Respondent and its employees, agents, contractor(s) and consultant(s) shall cooperate with EPA in its efforts to oversee Respondent's implementation of this Order.

61. Respondent shall give EPA at least two (2) working days advance notice of the commencement of the Work under this Order. Advance notice of all sampling to be conducted in connection with the implementation of this Order shall be included in the verbal progress reports required pursuant to paragraph 53.

62. With respect to all chemical analyses and all disposal operations conducted pursuant to this Order, the Respondent shall provide the Project Coordinator with the identity of and, if applicable, licensing identification numbers of (e.g., waste haulers or disposal facilities) all persons or entities performing such work within five (5) working days of selection of such persons, companies, or facilities -- and, with respect to any off-site waste treatment, storage or disposal facilities to be used, at least five (5) days prior to the shipment of such wastes. Respondent shall provide such notification for purposes of establishing that all such activities are performed in accordance with EPA approved methodology or that all hazardous wastes ultimately disposed of are properly transported to, and disposed of at, EPA approved hazardous waste disposal facilities.

Community Relations

63. Respondent shall cooperate with EPA in providing information

relating to the work required hereunder to the public. As requested by EPA, the Respondent shall participate in the preparation of all appropriate information disseminated to the public.

Access to Property and Information

64. EPA, DPNR and their designated representatives, including, but not limited to, employees, agents, contractor(s) and consultant(s) thereof, duly identified, properly attired and in compliance with all applicable Health & Safety Plan requirements, shall be permitted to observe the Work carried out pursuant to this Order. Respondent shall at all times permit EPA, DPNR, and their designated representatives full access to and freedom of movement at the Facility and any other premises where Work under this Order is to be performed for purposes of inspecting or observing Respondent's progress in implementing the requirements of this Order, verifying the information submitted to EPA by Respondent, conducting investigations relating to contamination at the Facility, or for any other purpose EPA determines to be reasonably related to EPA oversight of the implementation of this Order.

65. In the event that action under this Order is to be performed in areas owned by or in possession of someone other than Respondent, Respondent shall use its best efforts to obtain access agreements from the present owners within three (3) days of the effective date of this Order for purposes of implementing the requirements of this Order. Such agreements shall provide access not only for Respondent, but also for EPA and its designated representatives or agents, as well as DPNR and its designated representatives or agents. Such agreements shall specify that Respondent is not EPA's representative with respect to liability associated with activities conducted at or in connection with the Facility. If such access agreements are not obtained by Respondent within the time period specified herein, Respondent shall immediately notify EPA of their failure to obtain access and shall include in that notification a summary of the steps Respondent has taken to attempt to obtain access. Subject to the United States' non-reviewable discretion, EPA may use its legal authorities to obtain access for Respondent, may perform those response actions with EPA contractors at the property in question, or may terminate the Order if Respondent cannot obtain access agreements. If EPA performs those tasks or activities with EPA contractors and does not terminate the Order, Respondent shall perform all other activities not requiring access to that property. Respondent shall integrate the results of any such tasks undertaken by EPA into its reports and deliverables.

66. Upon request, Respondent shall provide EPA with access to all records and documentation related to the conditions at the Facility, hazardous substances found at or released from the

Facility, and the actions conducted pursuant to this Order except for those items, if any, subject to the attorney-client or work product privilege. Nothing herein shall preclude the Respondent from asserting a business confidentiality claim pursuant to 40 C.F.R. Part 2, Subpart B. All data, information and records created, maintained, or received by Respondent or its contractor(s) or consultant(s) in connection with implementation of the Work under this Order, including, but not limited to, contractual documents, invoices, receipts, work orders and disposal records shall, without delay, be made available to EPA upon request, subject to the same privileges specified above in this paragraph. EPA shall be permitted to copy all such documents. Respondent shall submit to EPA upon receipt the results of all sampling or tests and all other technical data generated by Respondent or its contractor(s), or on the Respondent's behalf, in connection with the implementation of this Order.

67. Upon request by EPA, Respondent shall provide EPA or its designated representatives with duplicate and/or split samples of any material sampled in connection with the implementation of this Order.

68. Notwithstanding any other provision of this Order, EPA hereby retains all of its information gathering, access, and inspection authority under CERCLA, RCRA, and any other applicable statute or regulations.

Record Retention, Documentation, Availability of Information

69. Respondent shall preserve all documents and information relating to Work performed under this Order, or relating to the hazardous substances found on or released from the Facility, for six years after completion of the Work required by this Order. At the end of the six year period, Respondent shall notify EPA at least thirty (30) days before any such document or information is destroyed that such documents and information are available for inspection. Upon request, Respondent shall provide EPA with the originals or copies of such documents and information.

70. All documents submitted by Respondent to EPA in the course of implementing this Order shall be available to the public unless identified as confidential by Respondent pursuant to 40 CFR Part 2, Subpart B, and determined by EPA to merit treatment as confidential business information in accordance with applicable law. In addition, EPA may release all such documents to DPNR and DPNR may make those documents available to the public unless Respondent conforms with applicable Virgin Islands law and regulations regarding confidentiality. Respondent shall not assert a claim of confidentiality regarding any monitoring or hydrogeologic data, any information specified under Section 104(e)(7)(F) of CERCLA, or any other chemical, scientific or

engineering data relating to the Work performed hereunder.

Off-Site Shipments

71. All hazardous substances, pollutants, or contaminants removed from the Facility pursuant to this Order for off-site treatment, storage, or disposal shall be treated, stored, or disposed of in compliance with (a) Section 121(d)(3) of CERCLA, 42 U.S.C. §9621(d)(3), (b) the EPA "Revised Procedures for Implementing Off-Site Response Actions," OSWER Directive Number 9834.11, November 13, 1987, (c) the EPA "Superfund Removal Procedures" (OSWER 1988), (d) RCRA, (e) the Toxic Substances Control Act ("TSCA"), 15 U.S.C. §2601, et seq., and (f) all other applicable federal and state requirements.

72. If hazardous substances from the Facility are to be shipped outside the Virgin Islands, Respondent shall provide prior notification of such out-of-state waste shipments in accordance with OSWER Directive 9330.2-07. At least five (5) working days prior to out-of-state waste shipments, Respondent shall notify the environmental agency of the accepting state of the following: (a) the name and location of the facility to which the wastes are to be shipped; (b) the type and quantity of waste to be shipped; (c) the expected schedule for the waste shipments; (d) the method of transportation and name of transporter; and (e) treatment and/or disposal method of the waste streams.

73. Certificates of destruction must be provided to EPA upon Respondent's receipt of such. These certificates must be included in the biweekly progress reports.

Compliance With Other Laws

74. All actions carried out pursuant to this Order shall be performed in accordance with all applicable local, territorial, and federal laws and regulations except as provided in CERCLA §121(e)(1), 42 U.S.C. §9621(e)(1), and 40 CFR §300.415(i). In accordance with 40 CFR §300.415(i), all on-Site actions required pursuant to this Order shall, to the extent practicable, as determined by EPA, considering the exigencies of the situation, attain applicable or relevant and appropriate requirements ("ARARs") under federal environmental or state environmental or facility siting laws. (See "Superfund Removal Procedures: Guidance on the Consideration of ARARs During Removal Actions," OSWER Directive No. 9360.3-02, August 1991).

75. Except as provided in Section 121(e)(1) of CERCLA, 42 U.S.C. §9621(e)(1), and the NCP, no permit shall be required for any portion of the Work required hereunder that is conducted entirely on-Site. Where any portion of the Work requires a federal or state permit or approval, Respondent shall submit timely

applications and shall take all other actions necessary to obtain and to comply with all such permits or approvals. This Order is not, nor shall it be construed to be, a permit issued pursuant to any federal or state statute or regulation.

Emergency Response and Notification of Releases

76. Upon the occurrence of any event during performance of the Work required hereunder which, pursuant to Section 103 of CERCLA, 42 U.S.C. §9603, requires reporting to the National Response Center [(800) 424-8802], Respondent shall immediately orally notify the Chief of the Removal Action Branch of the Emergency and Remedial Response Division of EPA, Region II, at (908) 321-6621, or the EPA Region II Emergency 24-hour Hot Line at (908) 548-8730, of the incident or Facility conditions. Respondent shall also submit a written report to EPA within seven (7) days after the onset of such an event, setting forth the events that occurred and the measures taken or to be taken, if any, to mitigate any release or endangerment caused or threatened by the release and to prevent the reoccurrence of such a release. The reporting requirements of this paragraph are in addition to, not in lieu of, reporting under CERCLA Section 103, 42 U.S.C. §9603, and Section 304 of the Emergency Planning and Community Right-To-Know Act of 1986, 42 U.S.C. § 11004.

77. In the event of any action or occurrence during Respondent's performance of the requirements of this Order which causes or threatens to cause a release of a hazardous substance or which may present an immediate threat to public health or welfare or the environment, Respondent shall immediately take all appropriate action to prevent, abate, or minimize the threat and shall immediately notify EPA as provided in the preceding paragraph. Respondent shall take such action in accordance with applicable provisions of this Order including, but not limited to, the Health and Safety Plan. In the event that EPA determines that (a) the activities performed pursuant to this Order, (b) significant changes in conditions at the Site or Facility, or (c) emergency circumstances occurring at the Site or Facility pose a threat to human health or the environment, EPA may direct Respondent to stop further implementation of any actions pursuant to this Order or to take other and further actions reasonably necessary to abate the threat.

78. Nothing in the preceding paragraph shall be deemed to limit any authority of the United States to take, direct, or order all appropriate action to protect human health and the environment or to prevent, abate, or minimize an actual or threatened release of hazardous substances on, at, or from the Facility or any other portion of the Tutu Wells Site.

Reimbursement of Costs

79. Respondent hereby agrees to reimburse EPA for Future Response Costs. For purposes of this paragraph, "Future Response Costs" means only: (a) all direct and indirect costs incurred by EPA in overseeing Respondent's implementation of the Work until the date of EPA's written notification pursuant to this Order that the Work has been completed; (b) all direct and indirect costs incurred by EPA in connection with obtaining access for Respondent in accordance with this Order; and (c) all other direct and indirect costs incurred by EPA in connection with the implementation of this Order. EPA will periodically send billings to Respondent for Future Response Costs incurred in connection with this Order. The 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. Respondent 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."

80. The payments that Respondent is required to make pursuant to the preceding paragraph shall be mailed to the following address:

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

Each check shall reference the name of the Facility (the "L'Henry, Inc. Facility, Tutu Wells Superfund Site") and the index number of this Order. A copy of each check and of the accompanying transmittal letter shall be sent to the EPA addressees identified in paragraph 56 of this Order.

Force Majeure

81. "Force majeure", for purposes of this Order, is defined as any event arising from causes beyond the control of Respondent and of any entity controlling, controlled by, or under common control with Respondent, including their contractors and subcontractors, that delays the timely performance of any obligation under this Order notwithstanding Respondent's best efforts to avoid the delay. The requirement that Respondent 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 Order or the financial difficulty of Respondent to perform such work.

82. If any event occurs or has occurred that may delay the performance of any obligation under this Order, whether or not caused by a force majeure event, Respondent shall notify by telephone the EPA Project Coordinator or, in her absence, the Chief of the Removal Action Branch of the Emergency and Remedial Response Division of EPA Region II within 48 hours of when Respondent knew or should have known that the event might cause a delay. In addition, Respondent shall notify EPA in writing within seven (7) calendar days after the date when Respondent first becomes aware or should have become aware of the circumstances which may delay or prevent performance. Such written notice shall be accompanied by all available and pertinent documentation, including third-party correspondence, and shall contain the following: (a) a description of the circumstances, and Respondent's rationale for interpreting such circumstances as being beyond their control (should that be Respondent's claim); (b) the actions (including pertinent dates) that Respondent has taken and/or plan to take to minimize any delay; and (c) the date by which or the time period within which Respondent proposes to complete the delayed activities. Such notification shall not relieve Respondent of any of their obligations under this Order. Respondent's failure to timely and properly notify EPA as required by this paragraph shall constitute a waiver of Respondent's right to claim an event of force majeure. The burden of proving that an event constituting a force majeure has occurred shall rest with Respondent.

83. If EPA determines that a delay in performance of a requirement under this Order is or was attributable to a force majeure, the time period for performance of that requirement shall be extended as deemed necessary by EPA. Such an extension shall not alter Respondent's obligation to perform or complete other tasks required by the Order which are not directly affected by the force majeure. Respondent shall use its best efforts to avoid or minimize any delay or prevention of performance of their obligations under this Order.

Stipulated and Statutory Penalties

84. If Respondent fails, without prior EPA approval, to comply with any of the requirements or time limits set forth in or established pursuant to this Order, and such failure is not excused under the terms of the Force Majeure section of this Order, Respondent shall, upon demand by EPA, pay a stipulated penalty to EPA in the amount indicated below:

- a. For all requirements of this Order, other than the timely provision of the progress reports required by paragraph 53 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 15th day of

noncompliance, \$2000 per day, per violation, for the 16th through 25th day of noncompliance, and \$2500 per day, per violation, for the 26th day of noncompliance and beyond.

- b. For the progress reports required by paragraph 53 of this Order, stipulated penalties shall accrue in the amount of \$250 per day, per violation, for the first seven days of noncompliance, \$500 per day, per violation, for the 8th through 15th day of noncompliance, \$1000 per day, per violation, for the 16th through 25th day of noncompliance, and \$2000 per day, per violation, for the 26th day of noncompliance and beyond.

85. Any such penalty shall accrue as of the first day after the applicable deadline has passed and shall continue to accrue until the noncompliance is corrected or EPA notifies Respondent that it has determined that it will perform the tasks for which there is non-compliance. Such penalty shall be due and payable thirty (30) days following receipt of a written demand from EPA. Payment of any such penalty to EPA shall be made by cashier's or certified check made payable to the "Hazardous Substance Superfund," with a notation of the index number of this Order, and shall be mailed to the address set forth in paragraph 80, above. A letter stating the basis for the penalty, the name and address of the Respondent, the name of the Facility, and the EPA Region number shall accompany any such payment; a copy of the letter and the check shall be mailed to the addressees listed in paragraph 56 of this Order. Respondent shall pay interest on any amounts overdue under this paragraph. 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.

86. Even if violations are simultaneous, separate penalties shall accrue for separate violations of this Order. Penalties accrue and are assessed per violation per day. Penalties shall accrue regardless of whether EPA has notified Respondent of a violation or act of noncompliance. The payment of penalties shall not alter in any way Respondent's obligation to complete the performance of the Work required under this Order.

87. Notwithstanding any other provision of this Order, failure of Respondent to comply with any provision of this Order may subject Respondent to civil penalties of up to twenty-five thousand dollars (\$25,000) per violation per day, as provided in Section 106(b)(1) of CERCLA, 42 U.S.C. § 9606(b)(1), unless such failure to comply is excused by EPA under the terms of paragraphs 81 through 83 above. Respondent may also be subject to punitive damages in an amount at least equal to and not more than three times the amount of any costs incurred by the United States as a

result of such failure to comply with this Order, as provided in Section 107(c)(3) of CERCLA, 42 U.S.C. § 9607(c)(3). Should Respondent violate this Order or any portion thereof, EPA may carry out the required actions unilaterally, pursuant to Section 104 of CERCLA, 42 U.S.C. § 9604, and/or may seek judicial enforcement of this Order pursuant to Section 106 of CERCLA, 42 U.S.C. § 9606.

Reservation of Rights

88. Nothing herein shall limit the power and authority of EPA or the United States to take, direct, or order all actions necessary to protect public health, welfare, or the environment or to prevent, abate, or minimize an actual or threatened release of hazardous substances, pollutants or contaminants, or hazardous or solid waste on, at, or from the Facility or any other portion of the Tutu Wells Site. Further, nothing herein shall prevent EPA from seeking legal or equitable relief to enforce the terms of this Order, from taking other legal or equitable action as it deems appropriate, or from requiring the Respondent in the future to perform additional activities pursuant to CERCLA or any other applicable law. EPA reserves the right to bring an action against Respondent under Section 107 of CERCLA, 42 U.S.C. § 9607, for recovery of any response costs incurred by the United States related to this Order or the Site and not reimbursed by Respondent.

Other Claims

89. By issuance of this Order, the United States and EPA assume no liability for injuries or damages to persons or property resulting from any acts or omissions of Respondent or Respondent's employees, agents, contractors, or consultants in carrying out any action or activity pursuant to this Order. The United States or EPA shall not be held out as or deemed a party to any contract entered into by the Respondent or its directors, officers, employees, agents, successors, representatives, assigns, contractors, or consultants in carrying out actions pursuant to this Order.

90. Nothing in this Order constitutes or shall be construed as a satisfaction of or release from any claim or cause of action against the Respondent or any person not a party to this Order for any liability that Respondent or other persons may have under CERCLA, other statutes, or the common law, including but not limited to any claims of the United States for injunctive relief, costs, damages, and interest under Sections 106(a) and 107 of CERCLA, 42 U.S.C. §§ 9606(a) and 9607. Nothing herein shall constitute a finding that Respondent is the only responsible party with respect to the release and threatened release of hazardous substances at and from the Site.

91. Nothing in this Order shall affect any right, claim, interest, defense, or cause of action of any party hereto with respect to third parties.

92. Nothing in this Order shall be construed to constitute preauthorization under Section 111(a)(2) of CERCLA, 42 U.S.C. § 9611(a)(2), and 40 CFR § 300.700(d).

93. Respondent hereby waives any rights it 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 Respondent in complying with this Order.

Indemnification

94. Respondent agrees to indemnify, save, and hold harmless the United States, its agencies, departments, officials, agents, contractors, subcontractors, employees, and representatives from any and all claims or causes of action arising from or on account of acts or omissions of Respondent, its employees, officers, directors, agents, servants, receivers, trustees, successors, assigns, or any other persons acting on behalf of Respondent or under their control, as a result of the fulfillment or attempted fulfillment of the terms and conditions of this Order by Respondent.

95. Respondent waives all claims against the United States for damages or reimbursement or for set-off of any payments made or to be made to the United States, arising from or on account of any contract, agreement, or arrangement between Respondent and any person for performance of Work on or relating to the Facility, including, but not limited to, claims on account of construction delays. In addition, Respondent shall indemnify and hold harmless the United States with respect to any and all claims for damages or reimbursement arising from or on account of any contract, agreement, or arrangement between Respondent and any person for performance of Work on or relating to the Facility, including but not limited to, claims on account of construction delays.

96. Further, the Respondent agrees to pay the United States all costs it incurs including, but not limited to, attorneys fees and other expenses of litigation and settlement arising from, or on account of, claims made against the United States based on acts or omissions of Respondent, its officers, directors, employees, agents, contractors, subcontractors, and any persons acting on their behalf or under their control, in carrying out activities pursuant to this Order.

Insurance

97. At least two (2) days prior to commencing any Work at the Facility, Respondent shall submit to EPA a certification that Respondent or its contractors and subcontractors have adequate insurance coverage or have indemnification for liabilities for injuries or damages to persons or property which may result from the activities to be conducted by or on behalf of Respondent pursuant to this Order. Respondent shall ensure that such insurance or indemnification is maintained for the duration of the Work required by this Order.

Contribution Protection

98. At the effective date of this Order, with regard to claims for contribution against Respondent for matters addressed in this Order, the parties hereto agree that the Respondent is entitled to such protection from contribution actions as may be provided by Section 113(f)(2) of CERCLA, 42 U.S.C. §9613(f)(2).

99. Nothing in this Order precludes the United States or the Respondent from asserting any claims, causes of action or demands against any persons not parties to this Order for indemnification, contribution or cost recovery.

Modifications

100. This Order may be amended by mutual agreement of EPA and Respondent. Such amendments shall be in writing and shall have as their effective date that date on which such amendments are signed by EPA.

101. No informal advice, guidance, suggestion, or comment by EPA regarding reports, plans, specifications, schedules, or any other writing submitted by the Respondent shall relieve Respondent of their obligation to obtain such formal approval as may be required by this Order and to comply with all requirements of this Order unless it is formally modified.

Termination and Satisfaction

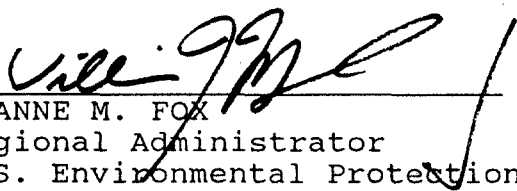
102. Upon a determination by EPA (following its receipt of the Final Interim Soil Remediation Report referred to in this Order) that the Work required pursuant to this Order has been fully carried out in accordance with this Order, EPA will so notify Respondent in writing.

Effective Date and Effect of Consent

103. This Order shall become effective on the date that a fully executed copy of said Order is received by Nancy D'Anna, the attorney of record designated by Respondent. All times for performance of actions or activities required herein will be calculated from said effective date.

104. By signing and taking actions under this Order, Respondent does not necessarily agree with the Findings of Fact and Conclusions of Law contained herein. Respondent does not admit any legal liability or waive any defenses or causes of action with respect to issues addressed in this Order, except as otherwise expressly provided in this Order. However, Respondent agrees not to contest the authority or jurisdiction of the Regional Administrator of EPA Region II to issue this Order, and Respondent also agrees not to contest the validity or terms of this Order in any action to enforce its provisions.

U.S. ENVIRONMENTAL PROTECTION AGENCY


JEANNE M. FOX
Regional Administrator
U.S. Environmental Protection Agency
Region II

3/3/85
Date of Issuance

CONSENT

The Respondent named below has had an opportunity to confer with EPA to discuss the terms and the issuance of this Order. The Respondent hereby consents to the issuance of this Order and to its terms. Furthermore, the individual signing this Order on behalf of Respondent certifies that he or she is fully and legally authorized to agree to the terms and conditions of this Order and to bind Respondent.

Henry Magras
(Name of Respondent)

FOR L'HENRI, INC.

(Signature)

3/1/95
(Date)

HENRY MAGRAS
(Printed Name of Signatory)

OWNER
(Title of Signatory)

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