UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2

IN THE MATTER OF THE APPLE VALLEY SHOPPING CENTER SUPERFUND SITE Apple Valley Corporation, The Estate of James A. Klein, Settling Parties, PROCEEDING UNDER SECTION 122(h)(1) OF CERCLA, 42 U.S.C. § 9622(h)(1).	SETTLEMENT AGREEMENT FOR RECOVERY OF PAST RESPONSE COSTS U.S. EPA Region 2 Docket No. CERCLA 02-2021-2025

I. JURISDICTION

1. This Settlement Agreement for Recovery of Past Response Costs ("Settlement Agreement") is entered into pursuant to the authority vested in the Administrator of the U.S. Environmental Protection Agency ("EPA") by Section 122(h)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. § 9622(h)(1), which authority has been delegated to the Regional Administrators of EPA by EPA Delegation No. 14-14-D, and was further delegated in Region 2 to the Director of the Emergency and Remedial Response Division by Regional Order No. R-1200, dated January 19, 2017. Effective April 28, 2019, the Emergency and Remedial Response Division has been renamed the Superfund and Emergency Management Division. All delegations to the Director of the Emergency and Remedial Response Division were conferred upon the Director of the Superfund and Emergency Management Division in a memorandum of the EPA Regional Administrator dated March 27, 2019.

2. This Settlement Agreement is made and entered into by Apple Valley Corporation ("Apple Valley") and The Estate of James A. Klein (the "Estate"), (hereinafter collectively referred to as "Settling Parties") and EPA.

II. BACKGROUND

3. This Settlement Agreement concerns the Apple Valley Shopping Center Superfund Site located in the Town of LaGrange, Dutchess County, New York (the "Site"). EPA alleges that the Site is a "facility" as defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

4. In response to the release or threatened release of hazardous substances at or from the Site, EPA undertook various response activities at the Site including oversight of a removal action undertaken by James A. Klein pursuant to Administrative Order on Consent for a Removal Action, Index Number II-CERCLA-10224 ("AOC"), issued by EPA on September 30, 1991,

pursuant to Section 106 of CERCLA, 42 U.S.C. § 9606, attached hereto as Appendix A. The removal action included but was not limited to: 1) the installation, operation, and maintenance of groundwater extraction and treatment wells; 2) construction, operation, and maintenance of air stripping units and activated carbon units; 3) performance of air monitoring; and 4) performance of groundwater monitoring.

5. On November 5, 2004, Apple Valley entered into an Order on Consent with the New York State Department of Environmental Conservation, attached hereto as Appendix B, under New York State authorities to implement the cleanup of the Site including continued operation and maintenance of the extraction wells, air strippers, and activated carbon units provided for under the AOC and as a consequence of which, EPA intends to terminate the AOC.

6. EPA alleges that Settling Parties are responsible parties for the Site pursuant to Section 107(a) of CERCLA and are jointly and severally liable for response costs incurred in connection with the Site.

7. EPA and Settling Parties recognize that this Settlement Agreement has been negotiated in good faith and that this Settlement Agreement is entered into without the admission or adjudication of any issue of fact or law, including liability. Settling Parties consent to and will not contest EPA's authority to enter into this Settlement Agreement or to implement or enforce its terms.

III. PARTIES BOUND

8. This Settlement Agreement shall be binding upon EPA and upon Settling Parties and their successors and assigns. Any change in ownership or corporate or other legal status of Settling Parties, including but not limited to, any transfer of assets or real or personal property, shall in no way alter Settling Parties' responsibilities under this Settlement Agreement. Each signatory to this Settlement Agreement certifies that he or she is authorized to enter into the terms and conditions of this Settlement Agreement and to legally bind the party represented by him or her.

IV. DEFINITIONS

9. Unless otherwise expressly provided herein, terms used in this Settlement Agreement that are defined in CERCLA or in regulations promulgated under CERCLA shall have the meanings assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Settlement Agreement, the following definitions shall apply:

a. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601-9675.

b. "Day" shall mean a calendar day. In computing any period of time under this Settlement Agreement, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next working day.

c. "Effective Date" shall mean the date specified in Section XVI, below.

d. "EPA" shall mean the United States Environmental Protection Agency and any successor departments, agencies, or instrumentalities of the United States.

e. "Estate" shall mean the decedent estate of the individual named James A. Klein, who died on May 9, 2021. At the time of his death, James A. Klein resided in Mount Pleasant, South Carolina. James A. Klein's will was admitted to probate in the Surrogate's Court of Charleston County, in the State of South Carolina, and the Estate of James A. Klein is subject to the jurisdiction of that Court.

f. "Interest" shall mean interest at the rate specified for interest on investments of the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year.

g. "Paragraph" shall mean a portion of this Settlement Agreement identified by an Arabic numeral or a lowercase letter.

h. "Parties" shall mean EPA and Settling Parties.

i. "Past Response Costs" shall mean all costs, including but not limited to direct and indirect costs, that EPA has paid at or in connection with the Site through the Effective Date.

j. "Section" shall mean a portion of this Settlement Agreement identified by a Roman numeral.

k. "Settlement Agreement" shall mean this Settlement Agreement.

l. "Settling Parties" shall mean Apple Valley and the Estate.

m. "Site" shall mean the Apple Valley Shopping Center Superfund Site, located at Route 55, Town of LaGrange, Dutchess County, New York.

n. "United States" shall mean the United States of America, including its departments, agencies and instrumentalities.

V. PAYMENT OF PAST RESPONSE COSTS

10. Settling Parties shall pay EPA the sum of $75,000 plus Interest as described in this Paragraph. At the option of Settling Parties, this payment shall be made within 30 days of the Effective Date or by making three consecutive monthly payments of $25,000 each with the first payment due 30 days after the Effective Date, and subsequent payments due monthly thereafter. The first installment payment shall include an additional amount for Interest accrued at the rate of

2.22% per annum on the total payment amount from the Effective Date through the date of payment. Each subsequent payment of $25,000 shall include an additional amount for Interest accrued at the rate of 2.22% per annum on the unpaid balance from the date of the previous payment through the date of the payment. A payment schedule with the principal and interest due for each installment payment is attached as Appendix C.

11. Settling Parties may pay any installment payment prior to the due date but must contact the EPA Site Attorney at the email address listed in Paragraph 35 below in advance for a determination regarding the amount of Interest to be included with the payment. In the event any installment payment includes an overpayment, the amount of the overpayment shall be applied to the remaining principal.

12. Settling Parties shall make payment at https://www.pay.gov in accordance with the following payment instructions: enter "sfo 1.1" in the search field to access EPA's Miscellaneous Payment Form – Cincinnati Finance Center. Complete the form including the following information: debtors name, address, phone, and email; type of payment (**Superfund**); Site ID or Bill No. (**026Q**); Payment Amount (**insert amount of each installment**); Installments (**yes – if paying in installments**); Region **(2)**; and, "Are you paying for yourself or another party" (**Self_ Payment**). Please insert the Site Name (**Apple Valley Shopping Center Superfund Site)** and the Docket No: (**CERCLA-02-2021-2025**) in the Comment field. Settling Parties shall send to EPA in accordance with Section XII (Notices and Submissions), a notice of each payment including the above information.

VI. FAILURE TO COMPLY WITH SETTLEMENT AGREEMENT

13. Interest on Payments and Accelerated Payments. If Settling Parties fail to make any payment required by Paragraph 10 by the required due date, all remaining installment payments and all accrued Interest thereon shall become due immediately upon such failure. If the first payment is not timely made, Interest shall accrue from the Effective Date. Interest shall continue to accrue on any unpaid amounts until the total amount due has been received by EPA.

14. Stipulated Penalties.

a. If any amounts due to EPA under Paragraph 10 are not paid by the required date, Settling Parties shall be in violation of this Settlement Agreement and shall pay to EPA, as a stipulated penalties, in addition to the Interest required by Paragraph 13, $1,000 per violation per day that such payment is late.

b. Stipulated penalties are due and payable within 30 days after the date of demand for payment of the penalties by EPA. Settling Parties shall make all payments at https://www.pay.gov using the following instructions: enter "sfo 1.1" in the search field to access EPA's Miscellaneous Payment Form - Cincinnati Finance Center. Complete the form including the Site Name, docket number, and Site/Spill ID Number_026Q, and indicate in the comment field that the payment is for stipulated penalties. Settling Parties shall send to EPA, in accordance with Section XII (Notices and Submissions), a notice of this payment including these references.

c. Stipulated penalties shall accrue as provided in this Paragraph regardless of whether EPA has notified Settling Parties of the violation or made a demand for payment but need only be paid upon demand. All stipulated penalties shall begin to accrue on the day after payment is due and shall continue to accrue through the date of payment. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Settlement Agreement.

15. In addition to the Interest and stipulated penalty payments required by this Section and any other remedies or sanctions available to the United States by virtue of Settling Parties' failure to comply with the requirements of this Settlement Agreement, if Settling Parties fail or refuse to comply with any term or condition of this Settlement Agreement, Settling Parties shall be subject to enforcement action pursuant to Section 122(h)(3) of CERCLA, 42 U.S.C. § 9622(h)(3). If the United States brings an action to enforce this Settlement Agreement, Settling Parties shall reimburse the United States for all costs of such action, including but not limited to costs of attorney time.

16. Notwithstanding any other provision of this Section, EPA may, in its unreviewable discretion, waive payment of any portion of the stipulated penalties that have accrued pursuant to this Settlement Agreement. Payment of stipulated penalties shall not excuse Settling Parties from payment as required by Section VI or from performance of any other requirements of this Settlement Agreement.

VII. COVENANTS BY EPA

17. Covenants by EPA. Except as specifically provided in Section VIII (Reservations of Rights by EPA), EPA covenants not to sue or take administrative action against Settling Parties pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), to recover Past Response Costs. These covenants shall take effect upon the Effective Date. These covenants are conditioned upon the satisfactory performance by Settling Parties of their obligations under this Settlement Agreement. These covenants extend only to Settling Parties and do not extend to any other person.

VIII. RESERVATIONS OF RIGHTS BY EPA

18. EPA reserves, and this Settlement Agreement is without prejudice to, all rights against Settling Parties with respect to all matters not expressly included within the Covenants by EPA in Paragraph 17. Notwithstanding any other provision of this Settlement Agreement, EPA reserves all rights against Settling Parties with respect to:

a. liability for failure of Settling Parties to meet a requirement of this Settlement Agreement;

b. liability for costs not included within the definition of Past Response Costs;

c. liability for injunctive relief or administrative order enforcement under Section 106 of CERCLA, 42 U.S.C. § 9606;

d. criminal liability;

e. liability, based on the ownership or operation of the Site by Settling Parties when such ownership or operation commences after signature of this Settlement Agreement by Settling Parties; and

f. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments.

19. Nothing in this Settlement Agreement is intended to be nor shall it be construed as a release, covenant not to sue, or compromise of any claim or cause of action, administrative or judicial, civil or criminal, past or future, in law or in equity, which the United States may have against any person, firm, corporation or other entity not a signatory to this Settlement Agreement.

IX. COVENANTS BY SETTLING PARTIES

20. Settling Parties covenant not to sue and agree not to assert any claims or causes of action against the United States, or its contractors or employees, with respect to Past Response Costs or this Settlement Agreement, including but not limited to:

a. any direct or indirect claim for reimbursement from the EPA Hazardous Substance Superfund based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;

b. any claims arising out of the response actions at the Site for which the Past Response Costs were incurred, including any claim under the United States Constitution, the Constitution of the State of New York, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended, or at common law; and

c. any claim against the United States pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, for Past Response Costs.

21. Nothing in this Settlement Agreement shall be deemed to constitute approval or preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).

22. Waiver of Claims by Settling Parties. Settling Parties agree not to assert any claims and to waive all claims or causes of action (including but not limited to claims or causes of action under Sections 107(a) and 113 of CERCLA) that they may have:

a. De Micromis Waiver. for all matters relating to the Site against any person where the person's liability to Settling Parties with respect to the Site is based solely on having arranged for disposal or treatment, or for transport for disposal or treatment, of hazardous

substances at the Site, or having accepted for transport for disposal or treatment of hazardous substances at the Site, if all or part of the disposal, treatment, or transport occurred before April 1, 2001, and the total amount of material containing hazardous substances contributed by such person to the Site was less than 110 gallons of liquid materials or 200 pounds of solid materials; and

b. The waiver in this Paragraph shall not apply with respect to any defense, claim, or cause of action that Settling Parties may have against any person otherwise covered by such waivers if such person asserts a claim or cause of action relating to the Site against Settling Parties.

X. EFFECT OF SETTLEMENT/CONTRIBUTION PROTECTION

23. Except as provided by Paragraph 22, above, nothing in this Settlement Agreement shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Settlement Agreement. Except as provided in Section IX (Covenants by Settling Parties), the Parties expressly reserve any and all rights (including, but not limited to, any right to contribution), defenses, claims, demands, and causes of action that they may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto. Nothing in this Settlement Agreement diminishes the right of the United States, pursuant to Sections 113(f)(2) and (3) of CERCLA, 42 U.S.C. §§ 9613 (f)(2) and (3), to pursue any such persons to obtain additional response costs or response action and to enter into settlements that give rise to contribution protection pursuant to CERCLA Section 113(f)(2).

24. The Parties agree that this Settlement Agreement constitutes an administrative settlement pursuant to which Settling Parties have, as of the Effective Date, resolved liability to the United States within the meaning of Sections 113(f)(2) and 122(h)(4) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(h)(4), and are entitled, as of the Effective Date, to protection from contribution actions or claims as provided by Sections 113(f)(2) and 122(h)(4) of CERCLA, or as may be otherwise provided by law, for the "matters addressed" in this Settlement Agreement. The "matters addressed" in this Settlement Agreement are Past Response Costs.

25. The Parties further agree that this Settlement Agreement constitutes an administrative settlement pursuant to which Settling Parties have, as of the Effective Date, resolved liability to the United States within the meaning of Section 113(f)(3)(B) of CERCLA, 42 U.S.C. § 9613(f)(3)(B).

26. Each Settling Party agrees that with respect to any suit or claim for contribution brought by it for matters related to this Settlement Agreement, it will notify EPA in writing no later than 60 days prior to the initiation of such suit or claim. Each Settling Party also agrees that, with respect to any suit or claim for contribution brought against it for matters related to this Settlement Agreement, it will notify EPA in writing within 10 days of service of the complaint or claim upon it. In addition, each Settling Party shall notify EPA within 10 days of service or receipt of any Motion for Summary Judgment and within 10 days of receipt of any order from a court setting a case for trial, for matters related to this Settlement Agreement.

27. In any subsequent administrative or judicial proceeding initiated by EPA, or by the United States on behalf of EPA, for injunctive relief, recovery of response costs, or other relief relating to the Site, Settling Parties shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, *res judicata*, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this Paragraph affects the enforceability of the covenants by EPA set forth in Section VII.

XI. ACCESS TO INFORMATION & RECORD RETENTION

28. Settling Parties shall provide to EPA, upon request, copies of all records reporting and other information (including records, reports, documents, and other information in electronic form) (hereinafter referred to as "Records") within their possession or control or that of their contractors or agents relating to activities at the Site or to the implementation of this Settlement Agreement, including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information regarding the Site.

29. Until 10 years after the Effective Date, Settling Parties shall preserve and retain all non-identical copies of Records now in their possession or control, or that come into their possession or control, that relate in any manner to liability of any person under CERCLA with respect to the Site. Settling Parties must also retain, and instruct their contractors and agents to preserve, for the same period of time specified above all non-identical copies of the last draft or final version of any Records (including Records in electronic form) now in their possession or control or that come into their possession or control that relate in any manner to the performance of response actions at the Site including all data generated during such response actions and not contained in the aforementioned Records required to be retained. Each of the above record retention requirements shall apply regardless of any corporate retention policy to the contrary.

30. After the conclusion of the 10-year record retention period, Settling Parties shall notify EPA at least 90 days prior to the destruction of any such Records and, upon request by EPA, and except as provided in Paragraph 31 (Privileged and Protected Claims), Settling Parties shall deliver any such Records to EPA.

31. Privileged and Protected Claims

a. Settling Parties may assert that all or part of a Record is privileged or protected as provided under federal law, provided it complies with Paragraph 31.b. and except as provided in Paragraph 31.c.

b. If Settling Parties assert a claim of privilege or protection, they shall provide EPA with the following information regarding such Record: its title; its date; the name, title, affiliation (e.g., company or firm), and address of the author, each addressee, and of each

recipient; a description of the Record's contents; and the privilege or protection asserted. If a claim of privilege or protection applies only to a portion of a Record, Settling Parties shall provide the Record to EPA in redacted form to mask the privileged or protected information only. Settling Parties shall retain all Records that they claim to be privileged or protected until the United States has had a reasonable opportunity to dispute the privilege or protection claim and any such dispute has been resolved in Settling Parties' favor.

c. Settling Parties may make no claim of privilege or protection regarding:

i. any data regarding the Site, including but not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, radiological, or engineering data, or the portion of any other Record that evidences conditions at or around the Site; or

ii. the portion of any Record that Settling Parties are required to create or generate pursuant to this Settlement Agreement.

32. Business Confidential Claims. Settling Parties may assert that all or part of a Record submitted to EPA under this Section is business confidential to the extent permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. 2.203(b). Settling Parties shall segregate and clearly identify all Records or parts thereof submitted under this Settlement Agreement for which Settling Parties assert a business confidentiality claim. Records submitted to EPA determined to be confidential by EPA will be accorded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies Records when they are submitted to EPA, or if EPA has notified Settling Parties that the Records are not confidential under the standards of Section 104(e)(7) of CERCLA or 40 C.F.R. Part 2 Subpart B, the public may be given access to such Records without further notice to Settling Parties.

33. Each Settling Party certifies that, to the best of its knowledge and belief, after thorough inquiry, it has not altered, mutilated, discarded, destroyed, or otherwise disposed of any Records (other than identical copies) relating to its potential liability regarding the Site since notification of potential liability by the United States or the State and that it has fully complied with any and all EPA and State requests for information regarding the Site pursuant to Sections 104(e) and 122(e)(3)(B) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e)(3)(B), Section 3007 of RCRA, 42 U.S.C. § 6927, and state law.

34. Notwithstanding any provision of this Settlement Agreement, the United States retains all of its information gathering and inspection authorities and rights, including enforcement actions relating thereto, under CERCLA, RCRA, and any other applicable statutes or regulations.

XII. NOTICES AND SUBMISSIONS

35. Whenever, under the terms of this Settlement Agreement, notice is required to be given or a document is required to be sent by one Party to another, it shall be made by email and regular mail to the individuals at the email and regular mail addresses specified below, unless the one Party gives notice of a change to the other Parties in writing. Written notice as specified herein shall constitute complete satisfaction of any written notice requirement of this Settlement Agreement with respect to EPA and Settling Parties.

As to EPA:

U.S. EPA, Region 2
Superfund and Emergency Management Division
2890 Woodbridge Avenue, MS-211
Edison, NJ 08837
bushra.gezahegne@epa.gov
Attn: Gezahegne Bushra
Apple Valley Shopping Center Superfund Site On-Scene Coordinator

and to:

U.S. EPA, Region 2
Office of Regional Counsel
290 Broadway, 17th Floor
New York, NY 10007-1866
kivowitz.sharon@epa.gov
Attn: Sharon E. Kivowitz
Apple Valley Shopping Center Superfund Site Attorney

As to Settling Parties:

David Engel, Esq.
Gilchrist Tingley, PC
251 River Street
Suite 201
Troy, NY 12180
dengel@gilchristtingley.com

XIII. INTEGRATION

36. This Settlement Agreement constitutes the final, complete and exclusive agreement and understanding among the Parties with respect to the settlement embodied in this Settlement Agreement. The Parties acknowledge that there are no representations, agreements or understandings relating to the settlement other than those expressly contained in this Settlement Agreement.

XIV. PUBLIC COMMENT

37. This Settlement Agreement shall be subject to a public comment period of at least 30 days pursuant to Section 122(i) of CERCLA, 42 U.S.C. § 9622(i). In accordance with

Section 122(i)(3) of CERCLA, EPA may modify or withdraw its consent to this Settlement Agreement if comments received disclose facts or considerations that indicate that this Settlement Agreement is inappropriate, improper, or inadequate.

XV. EFFECTIVE DATE

38. The Effective Date of this Settlement Agreement shall be the date upon which EPA issues written notice that the public comment period pursuant to Paragraph 37 has closed and that comments received, if any, do not require modification of or EPA withdrawal from this Settlement Agreement.

IT IS SO AGREED:

U.S. Environmental Protection Agency

By: Evangelista, Pat Digitally signed by Evangelista, Pat Date: 2021.08.13 09:38:30 -04'00'

Pat Evangelista, Director
Superfund and Emergency Management Division

Date

THE UNDERSIGNED SETTLING PARTY enters into this Settlement Agreement for Payment of Past Response Costs, U.S. EPA Region 2 Docket No. CERCLA 02-2021-2025, in the matter of the Apple Valley Shopping Center Superfund Site located in LaGrange, Dutchess County, New York:

For the Estate of James A. Klein

By: Dorothy V. Klein 8/11/21
Date

Title: Executrix & Personal Representative

Print Name: Dorothy V. Klein

THE UNDERSIGNED SETTLING PARTY enters into this Settlement Agreement for Payment of Past Response Costs, U.S. EPA Region 2 Docket No. CERCLA 02-2021-2025, in the matter of the Apple Valley Shopping Center Superfund Site located in LaGrange, Dutchess County, New York:

For Apple Valley Corporation:

By: Dorothy V Klein 8/1/21
Date

Title: President

Print Name: Dorothy V Klein

APPENDIX A

Administrative Order on Consent for a Removal Action
Index Number II-CERCLA-10224

U.S. ENVIRONMENTAL PROTECTION AGENCY
REGION II

IN THE MATTER OF THE APPLE VALLEY SHOPPING CENTER SUPERFUND SITE	
JAMES A. KLEIN, Respondent	ADMINISTRATIVE ORDER ON CONSENT
Proceeding under Section 106(a) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, 42 U.S.C. § 9606(a)	Index Number II-CERCLA-10224

I. JURISDICTION

1. This Administrative Order on Consent ("Order") is issued to the above-captioned Respondent (hereinafter referred to as the "Respondent") pursuant to the authority vested in the President of the United States under Section 106(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. § 9606(a), which authority was delegated to the Administrator of the United States Environmental Protection Agency ("EPA") pursuant to Executive Order 12580 and duly redelegated to the Regional Administrators of EPA. Notice of this Order and the negotiations preceding its issuance were provided to the New York State Department of Environmental Conservation ("NYSDEC").

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

2. The Apple Valley Shopping Center Site (hereinafter, the "Site") is located in the Town of LaGrange in Dutchess County, New York. The Site consists of the Apple Valley Shopping Center (the "Shopping Center"), located on Route 55 in the Town of LaGrange, New York, and also includes those portions of the residential community of Woodbridge Estates which are within the areal extent of contamination, as well as all suitable areas in very close proximity to the contamination necessary for implementation of the response action. The Site is mixed residential and commercial.

3. A municipal well of the Titusville Water District is located approximately 1600 feet downgradient of the Shopping Center and is directly across Titusville Road from Woodbridge Estates. Approximately 150 homes are served by this well.

4. The Site constitutes a "facility" within the meaning of Section 101(9) of CERCLA.

5. In July, 1967, Respondent James A. Klein purchased the real property upon which the Shopping Center is located from Union Vale Sales, Ltd. The Shopping Center was constructed on the property between 1967 and 1968. Mr. Klein has owned the Shopping Center and the associated real property from 1967 through the present.

6. Various types of businesses, including dry cleaning operations, have been ongoing at the shopping center from 1968 through the present. Two businesses, the Apple Valley Dry Cleaners and Apple Valley Norgetown Laundromat, presently conduct dry cleaning operations at the shopping center.

7. Tetrachloroethene ("perchloroethene" or "perc") has been disposed of and/or otherwise released onto the ground at the Shopping Center in connection with dry cleaning operations at the Shopping Center.

8. Between May and October, 1990, the Dutchess County Health Department ("DCHD") sampled private drinking water wells at the Site. Three of the sampled wells exceeded the EPA Removal Action Level ("RAL") of 68.6 parts per billion ("ppb") for perc, and an additional three wells contained perc at levels above the Maximum Contaminant Level ("MCL") of 5 ppb promulgated under the Safe Drinking Water Act, 42 U.S.C. § 300f, et. seq. Four of the sampled wells contained levels of vinyl chloride above the MCL of 2 ppb, and two wells exceeded the MCL for trichloroethene ("TCE") of 5 ppb. Four of the sampled wells also contained significant quantities of cis 1,2-dichloroethene. TCE, vinyl chloride and cis 1,2-dichloroethene can be created by the degradation of perc in the groundwater.

9. Confirmatory private well sampling conducted by EPA on December 4, 1990 revealed concentrations of perc, vinyl chloride, TCE and cis 1,2-dichloroethene which generally corresponded with DCHD's results.

10. On February 13-14, 1991, a soil gas survey was performed at the Shopping Center by Respondent's consultant Dunn Geoscience Corporation. Soil gas samples collected at the Shopping Center identified levels of perc ranging up to 330,000 ppb of perc and 1800 ppb of TCE. The highest level of perc was detected beneath the floor inside the Apple Valley Dry Cleaners' store, and the highest level of TCE was detected in a sample taken directly outside that establishment.

11. The releases of perc at the Shopping Center are a likely source of the aforementioned groundwater contamination.

12. At the time of DCHD's and EPA's sampling of the residential wells, residents at the Site were relying on private groundwater wells as their sole source of drinking water.

13. The plume of contamination in the groundwater at the Site poses a threat of future contamination of the Titusville Water District's municipal well.

14. From late November, 1990 through the present, Respondent has been supplying residences at the Site with bottled water as an interim source of potable water.

15. Perc, TCE, vinyl chloride and cis 1,2-dichloroethane are hazardous substances within the meaning of Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

16. Exposure to perc, TCE, vinyl chloride and cis 1,2-dichloroethane by direct contact, inhalation or ingestion can result in a variety of adverse human health effects.

17. Respondent is a "person" within the meaning of Section 101(21) of CERCLA, 42 U.S.C. § 9601(21). Respondent is the present owner of the Apple Valley Shopping Center and also owned the Shopping Center during the time that hazardous substances were disposed of there. Respondent James Klein is thus a responsible party under Sections 107(a)(1) and 107(a)(2) of CERCLA, 42 U.S.C. §§ 9607(a)(1) and 9607(a)(2).

18. Releases, as the term "release" is defined in Section 101(22) of CERCLA, 42 U.S.C. § 9601(22), have occurred at the Site in that, among other things, hazardous substances have been disposed of into the environment.

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

III. DETERMINATION

20. Based upon the Findings of Fact and Conclusions of Law set forth above and other information available to EPA, EPA has determined that the release and threat of release of hazardous substances into the environment from the Site may present an imminent and substantial endangerment to the public health, welfare, and the environment, within the meaning of Section 106(a) of CERCLA, 42 U.S.C. § 9606(a).

IV. ORDER

21. Based upon the foregoing Findings of Fact and Conclusions of Law, Determination, and other information available to EPA, it is hereby ordered and agreed that Respondent shall undertake a response action at the Site in accordance with the requirements

specified below. All activities specified below shall be initiated and completed as soon as possible even though maximum time periods for their completion are specified herein.

Description of Work

22. Within fifty (50) business days of the effective date of this Order, the Respondent shall submit to EPA for review and approval a detailed work plan (hereinafter, the "Work Plan") and implementation schedule for the performance of the following activities:

a. Installation and operation and maintenance of a system of extraction wells for the extraction of contaminated groundwater from the aquifer at the Site in order to prevent further migration of the contamination plume and to provide a source of potable water to residents at the Site. This system of extraction wells shall consist of private residential wells presently in use in Woodbridge Estates and, if necessary, the installation of one or more additional extraction wells on the Shopping Center property.

b. On-Site treatment of the extracted contaminated groundwater by air stripping so that the effluent from the air strippers does not exceed the federal Maximum Contaminant Levels ("MCLs") and New York State groundwater standards for organic and inorganic contaminants. Groundwater which has been treated by air stripping shall be provided to residents at the Site as potable water. Groundwater treated by air stripping also may be supplied to the Shopping Center as potable water. If required by the NYSDEC, NYSDOH, or DCHD, groundwater which has been treated by air stripping also shall be decontaminated by passage through carbon filters and/or sterilized by exposure to ultraviolet light prior to being provided to the residents and Shopping Center;

c. The total volume of groundwater to be extracted by each extraction well pursuant to this Order shall not exceed an average of 2 gallons per minute. The volume specified in this paragraph shall not apply to any extraction wells or air strippers installed on the Shopping Center property. Nothing in this paragraph shall preclude EPA from issuing a separate administrative order to Respondent under Section 106 of CERCLA or any other provision of law or from initiating other proceedings to require Respondent (or any other entities) to perform or pay the costs of additional removal, analysis, treatment, and disposal of groundwater from the extraction wells;

d. Construction of the air stripping units, identified above, and activated carbon units identified in Paragraph 22.j., below, in accordance with fabrication sketches to be provided by EPA. Respondent shall be responsible for operation and maintenance of the air strippers;

e. Respondent shall continue operation and maintenance of the extraction wells and air stripping units as long as EPA determines to be necessary;

f. Treated water which is not being provided to residences or the Shopping Center shall be reinjected into the ground, discharged to surface water, and/or otherwise disposed of, as approved by EPA;

g. Performance of air monitoring and calculation of maximum ambient emission levels prior to, during, and following construction at the Site, as required, to ensure that air emissions from the groundwater treatment units will meet the air emission applicable or relevant and appropriate requirements;

h. Periodic monitoring to help assess groundwater and surface water conditions and the effectiveness of the groundwater treatment system; and

i. Treatment/disposal of all residuals generated from the treatment of the groundwater (such as filtered suspended solids and spent carbon) in accordance with applicable regulations and requirements.

j. In the event that one or more homeowners in Woodbridge Estates refuse to allow Respondent to install air stripping units on their respective private residential wells, EPA may, in its discretion, require Respondent to install an activated carbon treatment unit on each such residential well, and an organic absorption unit for vinyl chloride removal (if vinyl chloride is present), to provide potable water and to assist in management of the contamination plume. Each activated carbon treatment unit installed pursuant to this paragraph shall be operated on a 24-hour basis, and shall be monitored, operated and maintained by Respondent as EPA determines to be necessary;

23. The Work Plan also shall include, among other things, the following:

a. Selection of contractors, subcontractors, consultants and other professionals followed by notification to EPA of the contractors, subcontractors consultants and

other professionals selected, their respective responsibilities with respect to the project, and their qualifications to perform such work;

b. Obtaining the consent of property owners for access for the purpose of installing and maintaining groundwater treatment units;

c. Preparation and submittal to EPA of all design, construction, operation and maintenance plans and design specifications for all work required under this Order (with copies to NYSDEC, NYSDOH, and DCHD), and identification of all equipment, to be utilized during the activities required by this Order;

d. Installation of the extraction wells and groundwater treatment units following EPA approval of the design plans and specifications;

e. A detailed time schedule for the performance of the work required hereunder and for submitting plans and reports to EPA, consistent with this Order; and a detailed description of how these tasks will be accomplished.

f. A Quality Assurance/Quality Control ("QA/QC") Plan and a description of Chain of Custody Procedures to be followed, which shall satisfy the following requirements:

   i. The QA/QC Plan shall be completed in accordance with Section 10 of Test Methods for Evaluating Solid Waste (SW-846) (November 1986, or as updated), and "Guidance for Preparation of Combined Work/Quality Assurance Project Plans for Environmental Monitoring" (U.S. EPA, Office of Water Regulations and Standards, May, 1984);

   ii. The Respondent shall use QA/QC procedures in accordance with the QA/QC Plan submitted and approved by EPA pursuant to this Order and shall use standard EPA Chain of Custody procedures, as set forth in the National Enforcement Investigations Center Policies and Procedures Manual, as revised in May 1986 and the National Enforcement Investigations Center Manual for the Evidence Audit, published in September, 1981, and SW-846, for all sample collection and analysis activities conducted pursuant to this Order;

   iii. If performance of any subsequent phase of the work required by this Order requires alteration of the

QA/QC Plan, the Respondent shall submit to EPA for review and approval proposed amendments to the QA/QC Plan.

g. A Health and Safety Plan, which shall satisfy the requirements of 29 CFR Part 1910.120, Hazardous Waste Operations Standards, 29 CFR Part 1910.134, Respiratory Protection Standards, 29 CFR Part 1910.1001, General Industry Standards, 29 CFR Part 1926.58, Construction Standards, and EPA's "Standard Operating Safety Guides" (OSWER, 1988). If performance of any subsequent phase of the work required by this Order requires alteration of the Health and Safety Plan, the Respondent shall submit to EPA for review and approval proposed amendments to the Health and Safety Plan.

24. EPA either will approve the Work Plan, or will require modifications thereto pursuant to Paragraphs 45-47, below. Upon its approval by EPA, the Work Plan shall be deemed to be incorporated into and an enforceable part of this Order.

25. Within five (5) business days of Respondent's receipt of EPA's approval of the Work Plan, the Respondent shall commence implementation of the EPA-approved Work Plan. Respondent shall fully implement the EPA-approved Work Plan in accordance with the implementation schedule therein.

26. Respondent shall not commence construction or actual operation of the groundwater treatment and distribution system until the respective design, construction, operation and maintenance plans and specifications are approved by EPA, and EPA notifies Respondent that construction or actual operation of the system may begin. Respondent shall conduct operation and maintenance in accordance with the EPA-approved operation and maintenance plan(s) prepared and finalized pursuant to this Order.

Designated Coordinator, Other Personnel

27. Within seven (7) days of the effective date of this Order, Respondent shall select a coordinator, to be known as the Designated Coordinator, and submit the name, address, and telephone number of the Designated Coordinator to EPA. The Designated Coordinator shall be responsible for oversight of the implementation of this Order. He or she shall have technical expertise sufficient to adequately oversee all aspects of the work contemplated by this Order. EPA correspondence to the Respondent will be sent to the Designated Coordinator. Respondent shall have the right to change its Designated Coordinator. However, Respondent shall notify EPA in writing at least seven (7) days prior to any such change.

28. Respondent shall provide a copy of this Order to each contractor and subcontractor 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.

29. All activities required of Respondent under the terms of this Order shall be performed only by well-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.

Insurance/Financial Responsibility

30. Prior to commencing any on-Site work, Respondent shall secure and shall maintain for the duration of the work under this Order general liability and automobile insurance with limits of three (3) million dollars, combined single limit, naming as insured the United States. In addition, for the duration of the work under this Order, Respondent shall satisfy all applicable laws and regulations regarding the provision of workmen's compensation insurance. Such insurance shall name as insured all contractors and subcontractors acting on behalf or under the control of Respondent in connection with any work at the Site. Prior to the commencement of work under this Order, Respondent shall provide EPA with a certificate of insurance and a copy of the insurance policy or policies for approval. If Respondent demonstrates by evidence satisfactory to EPA that any contractor or subcontractor maintains insurance equivalent to that described above, or insurance covering the same risks but in a lesser amount, Respondent needs only provide that portion of the insurance described above which is not maintained by such contractor or subcontractor.

Reporting Requirements

31. All reports and other documents submitted by Respondent to EPA (other than the biweekly progress reports referred to below) which purport to document Respondent's compliance with the terms of this Order shall be signed by Respondent or by Respondent's Designated Coordinator, provided that the Designated Coordinator has been authorized to sign the reports and other documents by Respondent and EPA has received notification of that authorization prior to Respondent's submittal of the reports and documents to EPA.

32. During the implementation of this Order, Respondent shall provide written progress reports to EPA which fully describe all actions and activities undertaken pursuant to this Order. Respondent shall submit the progress reports to EPA every two weeks, unless EPA notifies Respondent that less frequent submission of such progress reports is acceptable. Such progress reports shall, among other things, (a) describe the actions taken toward achieving compliance with this Order during the previous two-week 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-week 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.

33. All work plans, reports, notices and other documents required to be submitted to EPA under this Order shall be sent to the following addressees:

2 copies to:

Robert Cobiella, On-Scene Coordinator
Removal Action Branch
Emergency and Remedial Response Division
U.S. Environmental Protection Agency
Woodbridge Avenue
Edison, New Jersey 08837

1 copy to:

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: Apple Valley Shopping Center Site Attorney

7 copies to:

Michael O'Toole, P.E.
Director, Hazardous Waste Remediation
New York State Department of Environmental Conservation
50 Wolf Road, Room 212
Albany, New York 12233-7010

34. Upon the occurrence of any event during performance of the work required hereunder which, pursuant to Section 103 of CERCLA, requires reporting to the National Response Center, Respondent shall immediately orally notify the EPA On-Scene Coordinator at (908) 321-6646 (or, in the event of the unavailability of the EPA On-Scene Coordinator, the Chief of the Removal Action Branch of the Emergency and Remedial Response Division of EPA, Region II at (908) 321-6621), in addition to the reporting required by Section 103. Within twenty (20) days of the onset of such an event, Respondent shall furnish EPA with a written report setting forth the events which occurred and the measures taken, and to be taken, in response thereto.

35. As appropriate during the course of implementing the actions required of Respondent pursuant to this Order, Respondent or its consultant(s) or contractor(s), acting through the Designated Coordinator, may confer with EPA concerning the required actions. Based on new circumstances or new information not in the possession of EPA on the date of issuance of this Order, the Designated Coordinator may submit a request to the EPA On-Scene Coordinator, in writing, for approval of a modification to the EPA-approved Work Plan. If approved by EPA in writing, such modification shall be deemed incorporated into this Order.

36. In the event of a significant change in conditions at the Site, or in the event of emergency circumstances relating to public health, welfare or the environment associated with contamination at the Site, Respondent shall immediately notify the EPA On-Scene Coordinator at (908) 321-6646 (or, in the event of the unavailability of the EPA On-Scene Coordinator, the Chief of the Removal Action Branch of EPA's Emergency and Remedial Response Division at (908) 321-6621). In the event that EPA determines that (a) the activities performed pursuant to this Order, (b) significant changes in conditions at the Site, or (c) emergency circumstances occurring at the Site 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. This provision is not to be construed so as to limit any powers EPA has under the National Contingency Plan ("NCP") or under any other applicable law or regulation.

37. Respondent shall include in the written progress reports required in Paragraph 32, 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 one week advance notice of any change in that schedule.

Oversight

38. 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 inspections by EPA at and around the Site and at laboratories where analytical work is being done hereunder as EPA may determine are necessary to adequately oversee the work being carried out or to be carried out by Respondent.

39. 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.

Access and Availability of Data

40. To the extent that any area where Work is to be performed hereunder presently is owned by parties other than Respondent, Respondent shall use its best efforts to obtain access agreements from the present owners within thirty (30) 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 authorized representatives or agents, as well as DEC and its authorized representatives or agents. Such agreements shall specify that Respondent is not EPA's representative with respect to liability associated with Site activities. If such access agreements are not obtained by Respondent within the time period specified herein, Respondent shall immediately notify EPA of its 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.

41. EPA and its designated representatives, including but not limited to employees, agents, contractor(s) and consultant(s) thereof, shall be permitted to observe the work carried out pursuant to this Order. Respondent shall permit EPA and its designated representatives full access to and freedom of movement at the Site and any other premises where work under this Order is to be performed, at all times, including, but not limited to, any time that work under this Order is being 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 Site, or for any other purpose EPA determines to be reasonably related to EPA oversight of the implementation of this Order.

42. 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. EPA shall be permitted to copy all such documents. No such data, information, or records shall be destroyed for six (6) years after completion of the work required by this Order without either the express written approval of EPA or a written offer by Respondent to provide such material to EPA, followed by EPA's written rejection of that offer. Following said six-year period, Respondent shall notify EPA at least thirty (30) days prior to the destruction of any such documents.

43. 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.

44. Notwithstanding any other provision of this Order, EPA hereby retains all of its information gathering, access, and inspection authority under CERCLA, the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. §§ 6901-6991, and any other applicable statute or regulations.

Plans and Reports Requiring EPA Approval

45. 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 fifteen (15) business 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.

46. 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.

47. 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.

Community Relations

48. Respondent shall cooperate with EPA in providing information relating to the work required hereunder to the public. 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.

General Provisions

49. This Order shall apply to and be binding upon Respondent and Respondent's officers, directors, employees, agents, contractors, consultants, receivers, trustees, successors, and assigns.

50. All actions and activities carried out by Respondent pursuant to this Order shall be performed in accordance with all applicable federal, state, and local laws, regulations, and requirements, including the NCP and any amendments thereto that are promulgated while this Order is in effect.

51. Notwithstanding any other provision in this Order, and in accordance with Section 121(e)(1) of CERCLA, no federal, state, or local permits shall be required for any portion of the work required hereunder that is conducted entirely on-Site, although Respondent must comply with the substantive requirements that would otherwise be included in such a permit. Respondent shall obtain all permits necessary for off-Site work under federal, state, or local laws and shall submit timely applications and requests for any such permits. This Order is not, nor shall it act as, a permit issued pursuant to any federal or state statute or regulation.

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

53. All waste disposal conducted by Respondent pursuant to this Order shall be performed in compliance with all requirements of CERCLA, including Section 121(d)(3), 42 U.S.C. § 9621(d)(3), RCRA, the Toxic Substances Control Act ("TSCA"), 15 U.S.C. §§ 2601-2629, and all regulations promulgated pursuant thereto, and all other applicable federal and state laws and regulations. In addition, all waste disposal conducted by Respondent pursuant to this Order shall be carried out in compliance with all applicable EPA policies and guidance documents, including the EPA guidance document entitled, "Superfund Removal Procedures" (OSWER, 1988). In addition, if hazardous substances from the Site are to be shipped to a waste management facility outside of New York State, Respondent shall insure that the environmental agency of the accepting state is notified 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; and (d) the method of transportation. Respondent shall provide such notification to the affected state in writing as soon as practicable, but in any event at least five (5) business days prior to the said shipments.

54. At the time of completion of all activities required by this Order, demobilization shall include sampling and proper disposal or decontamination of protective clothing, remaining laboratory samples, and any equipment or structures constructed to facilitate the work hereunder.

55. 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 NYSDEC, and NYSDEC may make those documents available to the public unless Respondent conforms with applicable New York 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.

56. Neither EPA nor the United States, by issuance of this Order, assumes any liability for any injuries or damages to persons or property resulting from acts or omissions by Respondent or Respondent's employees, agents, contractor(s), or consultant(s) in carrying out any action or activity pursuant to this Order, nor shall EPA or the United States be held as or be held out to be a party to any contract entered into by Respondent or Respondent's officers, employees, agents, contractor(s), or consultant(s) in carrying out any action or activity pursuant to this Order.

57. Respondent agrees to indemnify and hold harmless EPA and the United States Government, its agencies, departments, agents, and employees, from all claims, causes of action, damages, and costs of any type or description by third parties for any injuries or damages to persons or property resulting from acts or omissions of Respondent, its officers, directors, officials, agents, servants, receivers, trustees, successors, or assigns as a result of the fulfillment or attempted fulfillment of the terms and conditions of this Order by Respondent.

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

59. 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).

60. 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 the Hazardous Substance Superfund of costs incurred by Respondent in complying with this Order.

61. Nothing herein shall constitute or be construed as a satisfaction or release from liability for Respondent or Respondent's officers, directors, employees, agents, contractor(s), consultant(s), receivers, trustees, successors, or assigns, or for any other individual or entity. Nothing herein shall constitute a finding that Respondent is the sole responsible party with respect to the release and threatened release of hazardous substances at and from the Site.

62. No informal advice, guidance, suggestions or comments by EPA shall be construed to relieve Respondent of any of it obligations under this Order.

63. Respondent's activities under this Order shall be performed within the time limits set forth herein, or otherwise established or approved by EPA, unless performance is delayed by events which constitute a force majeure. For purposes of this Order, "force majeure" is defined as any event arising from causes beyond Respondent's control. "Force majeure" shall not include inability of Respondent to pay the costs or expenses associated with complying with this Order or increases in such costs or expenses. When an event constituting a force majeure occurs, Respondent shall perform the affected activities within a time period which shall not exceed the time provided in this Order together with the period of delay attributed to the force majeure; provided, however, that no deadline shall be extended beyond a period of time that is reasonably necessary. Respondent

shall use its best efforts to avoid or minimize any delay or prevention of performance of their obligations under this Order.

64. Respondent shall verbally notify the EPA On-Scene Coordinator if circumstances have occurred or are likely to occur which may delay or prevent the performance of any activity required by this Order, regardless of whether those circumstances constitute a force majeure. If the On-Scene Coordinator cannot be reached, Respondent shall leave a message at his or her office. In addition, Respondent shall notify EPA in writing within seven (7) calendar days after the date when Respondent first becomes 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 plans 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 its 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.

65. 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.

66. Except where expressly stated otherwise herein, all time periods specified in this Order shall be construed as calendar days rather than business days.

Enforcement

67. Failure of Respondent to expeditiously and completely carry out the terms of this Order may result in EPA conducting the required actions, pursuant to Section 104(a) of CERCLA, 42 U.S.C. § 9604(a).

68. 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 Paragraphs 63 and 64, above, Respondent shall, upon demand by EPA, pay a stipulated penalty to EPA in the amount indicated below for each day of noncompliance:

Days After Required Date	Stipulated Penalty
1 to 7 days	$ 500.00/day
8 to 15 days	$ 1,000.00/day
16 to 25 days	$ 1,500.00/day
26 to 40 days	$ 2,500.00/day

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, through the 40th day of such noncompliance. Such penalties shall be due and payable ten (10) 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:

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

A letter stating the basis for the penalties, the name and address of the Respondent, the name of the Site, and the EPA Region number shall accompany each such payment; a copy of the letter and the check shall be mailed to the EPA addressees listed in Paragraph 33, above.

69. Notwithstanding any other provision of this Order, failure of Respondent to comply with any provision of this Order may result in the initiation of an enforcement action against Respondent, including enforcement actions pursuant to, Sections 106(b)(1) and/or 107(c)(3) of CERCLA, 42 U.S.C. §§ 9606(b)(1), 9607(c)(3), which may result in the assessment of fines of up to $25,000 for each day of such noncompliance and/or the assessment of punitive damages.

70. Notwithstanding any other provision of this Order, EPA reserves its right to bring an action against Respondent (or any other responsible party) pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), for recovery of any costs which have been or may be incurred by the United States Government with respect to the Site, including, but not limited to, the costs of installation of water mains and residential hookups at the Site.

71. Nothing herein shall preclude EPA from taking any additional enforcement actions and/or other actions, outside of this Order, as it may deem necessary or appropriate for any purpose, including, the investigation, prevention, or abatement of a threat to the public health, welfare, or the environment arising from conditions at the Site. For example, and without limitation, EPA reserves the right to install water mains and

residential hookups at the Site or to take action to require Respondent and/or any other persons or entities to install such water mains and hookups.

Termination and Satisfaction

72. When Respondent is satisfied that the work required by this Order has been completed, Respondent shall submit a written report to EPA specifically setting forth how Respondent has complied with this Order and has satisfactorily implemented the requirements set forth herein. This report shall be accompanied by appropriate documentation which substantiates to EPA's satisfaction Respondent's assertion that the work required hereunder has been satisfactorily completed. The report shall further include a sworn statement by Respondent setting forth the following:

> "To the best of my knowledge, after thorough investigation, I certify that the information contained in or accompanying this submission is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

Upon a determination by EPA, following its receipt of the aforesaid sworn statement and report, 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

73. This Order shall become effective on the date of its receipt by counsel for Respondent. All times for performance of actions or activities required herein will be calculated from said effective date.

74. 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 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

CONSTANTINE SIDAMON-ERISTOFF
Regional Administrator
U.S. Environmental Protection Agency
Region

9/30/91
Date of Issuance

CONSENT

Respondent, James A. Klein, 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.

(signature)

September 27, 1991
DATE

James A. Klein
(printed name of signatory)

(title of signatory)

APPENDIX B

Order on Consent with the New York State Department of Environmental Conservation
Index # A4-0499-1003

NEW YORK STATE DEPARTMENT
OF ENVIRONMENTAL CONSERVATION

In the Matter of the Development and Implementation of an Interim Remedial Measure for an Inactive Hazardous Waste Disposal Site under Article 27 Title 13 of the Environmental Conservation Law by: APPLE VALLEY CORP., Respondent.	**ORDER ON CONSENT** Index # A4-0499-1003 Site # 3-14-084

WHEREAS,

1. A. The New York State Department of Environmental Conservation (the "Department") is responsible for enforcement of Article 27, Title 13 of New York State's Environmental Conservation Law ("ECL") entitled "Inactive Hazardous Waste Disposal Sites." The Department asserts that any person under order pursuant to ECL 27-1313.3.a has a duty imposed by ECL Article 27, Title 13 to carry out the Inactive Hazardous Waste Disposal Site Remedial Program committed to under order. The Department asserts that ECL 71-2705 provides that any person who fails to perform any duty imposed by ECL Article 27, Title 13 shall be liable for civil, administrative, and/or criminal sanctions.

B. The Department also asserts that it has the authority, *inter alia*, to provide for the prevention and abatement of all water, land, and air pollution. *See, e.g.*, ECL 3-0301.1.i.

C. This Order is issued pursuant to the Department's authority under, *inter alia,* ECL Article 27, Title 13, and ECL 3-0301.

2. Apple Valley Corp. ("Respondent") is the owner of the property which is the subject of this Order. The property is located at the intersection of New York State Route 55 and Titusville Road in the Town of LaGrange, New York (hereinafter referred to as the "Site").

3. The Site is listed in the Registry of Inactive Hazardous Waste Disposal Sites in New York State as Site Number 314084 with a Classification "2" pursuant to ECL 27-1305.

4. Respondent consents to the Department's issuance of this Order without (i) an admission or finding of liability, fault, wrongdoing, or violation of any law, regulation, permit, order, requirement, or standard of care of any kind whatsoever, or (ii) an acknowledgment that there has been a release or threatened release of hazardous waste or that a release or threatened release of hazardous waste at or from the Site constitutes a significant threat to the public health or environment.

5. The Site is the subject of an Administrative Order on Consent Index Number II-CERCLA-10224 issued by the United States Environmental Protection Agency Region II (hereinafter referred to as "EPA") on September 30, 1991 to James A. Klein, the predecessor in interest to Apple Valley Corp. as the owner of the Site. Attached hereto as Exhibit "A" is a copy of the EPA Administrative Order on Consent. Pursuant to the EPA Administrative Order on Consent, James A. Klein and his successor, Apple Valley Corp. undertook a response action at the Site which *inter alia* included the installation and operation and maintenance of a system of extraction wells for the removal and treatment of contaminated groundwater.

6. The parties recognize that implementation of this Order will expedite the cleanup of the Site initiated and conducted pursuant to the EPA Administrative Order on Consent and may avoid prolonged and complicated litigation between the parties, and that this Order is mutually acceptable, fair, reasonable, and in the public interest.

7. Solely with regard to the matters set forth below, Respondent hereby waives its right to a hearing herein as provided by law, consents to the issuance of this Order, and agrees to be bound by its terms. Respondent consents to and agrees not to contest the authority or jurisdiction of the Department to issue or enforce this Order, and agrees not to contest the validity of this Order or its terms.

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

I. Performance and Reporting of Work Plan

A. Work Plan

Respondent shall implement an Interim Remedial Measure (IRM), together with any necessary operation, monitoring and maintenance of such program, pursuant to the Department-approved Work Plan ("Work Plan") attached hereto as Exhibit "B" and incorporated into and made an enforceable part of this Order.

During all field activities, Respondent shall have on-Site a representative who is qualified to supervise the activities undertaken. Such representative may be an employee or a consultant retained by Respondent to perform such supervision.

B. Revisions to Work Plans

The Department shall notify Respondent in writing if the Department determines that any element of the Department-approved IRM Work Plan needs to be modified in order to achieve the objectives of the Work Plan or to ensure that the Remedial Program otherwise protects human health and the environment. Upon receipt of such notification, Respondent shall, subject to Respondent's right to invoke dispute resolution pursuant to Paragraph XII, submit a supplement to the IRM Work Plan for such requested work to the Department within 30 Days after the date of the Department's written notice pursuant to this Subparagraph.

C. Submission of Final Reports and Annual Reports

1. In accordance with the schedule contained in the Work Plan, Respondent shall submit a final report that includes the caption of that Work Plan on the cover page and a certification that all requirements of the Work Plan have been complied with and all activities have been performed in full accordance with such Work Plan. Such certification shall be by a Professional Engineer.

2. Any final report that includes construction activities shall include "as built" drawings showing any changes made to the remedial design.

3. In the event that the IRM Work Plan for the Site requires operation, maintenance, and monitoring (OM&M), including reliance upon institutional or engineering controls, Respondent shall submit an annual report by the 1st Day of the month following the anniversary of the start of the OM&M. Respondent shall submit such annual report until this Order is terminated in accordance with the provisions hereof. Such annual report shall be signed by a Professional Engineer or by such other expert as the Department may find acceptable and shall contain a certification under penalty of perjury that any institutional and/or engineering controls required by this Order are unchanged from the previous certification and that nothing has occurred that would impair the effectiveness of such control or constitute a violation of or failure to comply with the approved OM&M Plan. Respondent shall notify the Department within twenty-four (24) hours of discovery of any upset, interruption, or termination of such controls that occurs without the prior approval of the Department. During such upset, interruption, or termination of controls, Respondent shall take all actions required by the Department to maintain conditions at the Site that achieve the objectives of the Remedial Program and are protective of public health and the environment. An explanation of such upset, interruption, or termination of one or more controls and the steps taken in response shall be included in the foregoing notice and in the annual report required by this Subparagraph, as well as in any progress reports required by Paragraph II. Respondent may petition the Department for a determination that the institutional and/or engineering controls may be terminated. Such petition must be supported by a statement by a Professional Engineer that such controls are no longer necessary for the protection of public health and the environment. The Department shall not unreasonably withhold its approval of such petition.

D. Review of Submittals other than Progress Reports and Health and Safety Plans

1. The Department shall make good faith efforts to review and respond in writing to each of the submittals Respondent makes pursuant to this Order within 60 days. The Department's response shall include an approval or disapproval of the submittal in whole or in part. All Department-approved submittals shall be incorporated into and become an enforceable part of this Order.

2. If the Department disapproves a submittal, it shall specify the reasons for its disapproval. Within 30 days after the date of the Department's written notice that Respondent's submittal has been disapproved, Respondent shall elect, in writing, to either (i) modify the submittal to address the Department's comments or (ii) invoke dispute resolution pursuant to Paragraph XII. If Respondent elects to modify the submittal, Respondent shall, within 60 days after such election, make a revised submittal that addresses all of the Department's stated reasons for disapproving the first submittal. In the event that Respondent's revised submittal is disapproved, the Department shall set

forth its reasons for such disapproval in writing and Respondent shall be in violation of this Order unless Respondent invokes dispute resolution pursuant to Paragraph X and its position prevails.

3. Within 30 days after the Department's approval of a final report, Respondent shall submit such final report as well as all data gathered and drawings and submittals made pursuant to such Work Plan, in an electronic format acceptable to the Department. If any document cannot be converted into electronic format, Respondent shall, submit such document in an alternative format acceptable to the Department.

D. Release and Covenant Not to Sue

Upon the Department's approval of the IRM Work Plan final report evidencing that no further remedial action (other than OM&M activities) is required to meet the goals of the Remedial Program, then, except for the provisions of Paragraphs VI and VIII, and except for the future OM&M of the Site and any Natural Resource Damage claims, such acceptance shall constitute a release and covenant not to sue for each and every claim, demand, remedy, or action whatsoever against Respondent, its directors, officers, employees, agents, servants, successors, and assigns (except successors and assigns who were responsible under law for the development and implementation of a Remedial Program at the Site prior to the effective date of this Order), and their respective secured creditors, which the Department has or may have pursuant to Article 27, Title 13 of the ECL or pursuant to any other provision of statutory or common law involving or relating to investigative or remedial activities relative to or arising from the disposal of hazardous wastes (or other contaminants remediated by Respondent to the Department's satisfaction pursuant to the ROD or Work Plans) at the Site; provided, however, that the Department specifically reserves all of its rights concerning, and any such release and covenant not to sue shall not extend to any further investigation or remediation the Department deems necessary due to environmental conditions on-Site or off-Site which are related to the disposal of hazardous wastes at the Site and which indicate that the Remedial Program is not protective of public health and/or the environment. The Department shall notify Respondent of such environmental conditions or information and its basis for determining that the Remedial Program is not protective of public health and/or the environment. This release and covenant not to sue shall be null and void, *ab initio*, in the event of fraud relating to the execution or implementation of this Order or in the event of Respondent's failure to materially comply with any provision of this Order. The Department's determination that Respondent has committed fraud or has materially failed to comply with this Order shall be subject to dispute resolution.

Nothing herein shall be construed as barring, diminishing, adjudicating, or in any way affecting any legal or equitable rights or claims, actions, suits, causes of action, or demands whatsoever that (i) Respondent may have against anyone other than the Department, and (ii) the Department may have against anyone other than Respondent, its directors, officers, employees, agents, and servants, and those successors and assigns of Respondent that were not responsible under law for the development and implementation of a Remedial Program at the Site prior to the effective date of this Order, and their respective secured creditors.

II. Progress Reports

Respondent shall submit written progress reports to the parties identified in Subparagraph IX.A.1 by the 10th Day of each month commencing with the month subsequent to the approval of the first Work Plan and ending with the Termination Date, unless a different frequency is set forth in a Work Plan. Such reports shall, at a minimum, include: all actions taken pursuant to this Order during the reporting period and those anticipated for the upcoming reporting period; all approved modifications to work plans and/or schedules; all results of sampling and tests and all other data received or generated by or on behalf of Respondent in connection with the Site, during the reporting period, including quality assurance/quality control information; and information regarding percentage of completion, unresolved delays encountered or anticipated that may affect the future schedule, efforts made to mitigate such delays, and information regarding activities undertaken in support of the Citizen Participation Plan during the reporting period and those anticipated for the upcoming reporting period.

III. Penalties

A. 1. Respondent's failure to comply with any term of this Order constitutes a violation of this Order, the ECL, and 6 NYCRR Section 375-1.2(d). Nothing herein abridges Respondent's right to contest, defend against, dispute, or disprove any such claim, assertion, or allegation that it has violated this Order.

2. Within thirty (30) Days after the effective date of this Order, Respondent may elect, in writing, to opt out of the application of statutory penalties and, in lieu thereof, to have the following stipulated penalties apply in the event of Respondent's failure to comply with this Order:

Period of Non-Compliance	Penalty Per Day
1st through 15th day	$ 500.00
16th through 30th day	$ 1,000.00
31st day and thereafter	$ 1,500.00

3. Payment of any penalties shall not in any way alter Respondent's obligations under this Order.

B. 1. Respondent shall not suffer any penalty or be subject to any proceeding or action in the event it cannot comply with any requirement of this Order as a result of any event arising from causes beyond the reasonable control of Respondent, of any entity controlled by Respondent, and of Respondent's contractors, that delays or prevents the performance of any obligation under this Order despite Respondent's best efforts to fulfill the obligation ("Force Majeure Event"). The requirement that Respondent exercise best efforts to fulfill the obligation includes using best efforts to anticipate the potential Force Majeure Event, best efforts to address any such event as it is occurring, and best efforts following the Force Majeure Event to minimize delay to the greatest extent possible. "Force Majeure" does not include Respondent's economic inability to comply with any obligation, the failure of Respondent to make complete and timely application for any required approval or permit, and non-attainment of the goals, standards, and requirements of this Order.

2. Respondent shall notify the Department in writing within seven (7) Days after it obtains knowledge of any Force Majeure Event. Respondent shall include in such notice the measures taken and to be taken to prevent or minimize any delays and shall request an appropriate extension or modification of this Order. Failure to give such notice within such seven (7) Day period constitutes a waiver of any claim that a delay is not subject to penalties. Respondent shall be deemed to know of any circumstance which it, any entity controlled by it, or its contractors knew or should have known.

3. Respondent shall have the burden of proving by a preponderance of the evidence that (i) the delay or anticipated delay has been or will be caused by a Force Majeure Event; (ii) the duration of the delay or the extension sought is warranted under the circumstances; (iii) best efforts were exercised to avoid and mitigate the effects of the delay; and (iv) Respondent complied with the requirements of Subparagraph III.B.2 regarding timely notification.

4. If the Department agrees that the delay or anticipated delay is attributable to a Force Majeure Event, the time for performance of the obligations that are affected by the Force Majeure Event shall be extended for such time as is reasonably necessary to complete those obligations.

5. If the Department rejects Respondent's assertion that an event provides a defense to non-compliance with this Order pursuant to Subparagraph III.B, Respondent shall be in violation of this Order unless it invokes dispute resolution pursuant to Paragraph XII and Respondent's position prevails.

IV. Entry upon Site

A. Respondent hereby consents, upon reasonable notice under the circumstances presented, to entry upon the Site (or areas in the vicinity of the Site which may be under the control of Respondent) by any duly designated officer or employee of the Department or any State agency having jurisdiction with respect to matters addressed pursuant to this Order, and by any agent, consultant, contractor, or other person so authorized by the Commissioner, all of whom shall abide by the health and safety rules in effect for the Site for inspecting, sampling, copying records related to the contamination at the Site, testing, and any other activities necessary to ensure Respondent's compliance with this Order. Upon request, Respondent shall (i) provide the Department with suitable office space at the Site, including access to a telephone, to the extent available; and (ii) permit the Department full access to all non-privileged records relating to matters addressed by this Order. Raw data is not considered privileged and that portion of any privileged document containing raw data must be provided to the Department. In the event Respondent is unable to obtain any authorization from third-party property owners necessary to perform its obligations under this Order, the Department may, consistent with its legal authority, assist in obtaining such authorizations.

B. The Department shall have the right to take its own samples and scientific measurements and the Department and Respondent shall each have the right to obtain split samples, duplicate samples, or both, of all substances and materials sampled. The Department shall make the results of any such sampling and scientific measurements available to Respondent.

V. Payment of State Costs

A. Respondent shall reimburse the Department for costs incurred by the Department in association with the oversight work performed in connection with the implementation of the IRM plan Work Plan at the Site. Within forty-five (45) Days after receipt of an itemized invoice from the Department, Respondent shall pay to the Department a sum of money that shall represent reimbursement for State Costs for work performed in connection with the IRM Work Plan at the Site, through and including the Termination Date.

B. Personal service costs shall be documented by reports of Direct Personal Service, which shall identify the employee name, title, biweekly salary, and time spent (in hours) on the project during the billing period, as identified by an assigned time and activity code. Approved agency fringe benefit and indirect cost rates shall be applied. Non-personal service costs shall be summarized by category of expense (*e.g.*, supplies, materials, travel, contractual) and shall be documented by expenditure reports. The Department shall not be required to provide any other documentation of costs, provided however, that the Department's records shall be available consistent with, and in accordance with, Article 6 of the Public Officers Law.

C. Such invoice shall be sent to Respondent at the following address:

Apple Valley Corp.
1070 Route 9
Fishkill, New York 12524

D. Each such payment shall be made payable to the Department of Environmental Conservation and shall be sent to:

Bureau of Program Management
Division of Environmental Remediation
New York State Department of Environmental Conservation
625 Broadway
Albany, NY 12233-7010.

E. Each party shall provide written notification to the other within ninety (90) Days of any change in the foregoing addresses.

F. Respondent may contest, in writing, invoiced costs under Subparagraph V.B if it believes that (i) the cost documentation contains clerical, mathematical, or accounting errors; (ii) the costs are not related to the State's activities with respect to the Remedial Program for the Site; or (iii) the Department is not otherwise legally entitled to such costs. If Respondent objects to an invoiced cost, Respondent shall pay all costs not objected to within the time frame set forth in Subparagraph V.B and shall, within thirty (30) Days after its receipt of an invoice, identify, in writing, all costs objected to and the basis of the objection. This objection shall be filed with the BPM Director. The BPM Director or the BPM Director's designee shall have the authority to relieve Respondent of the obligation to pay invalid costs. Within forty-five (45) Days after the date of the Department's determination of the

objection, Respondent shall either pay to the Department the amount which the BPM Director or the BPM Director's designee determines Respondent is obligated to pay or commence an action or proceeding seeking appropriate judicial relief.

G. In the event any instrument for the payment of any money due under this Order fails of collection, such failure of collection shall constitute a violation of this Order, provided that (i) the Department gives Respondent written notice of such failure of collection, and (ii) the Department does not receive a certified check or bank check in the amount of the uncollected funds within fourteen (14) Days after the date of the Department's written notification.

VI. Reservation of Rights

A. Nothing contained in this Order shall be construed as barring, diminishing, adjudicating, or in any way affecting any of the Department's rights or authorities, including, but not limited to, the right to require performance of further investigations and/or response action(s), to recover natural resource damages, and/or to exercise any summary abatement powers with respect to any person, including Respondent.

B. Except as otherwise provided in this Order, Respondent specifically reserves all rights and defenses under applicable law respecting any Departmental assertion of remedial liability and/or natural resource damages against Respondent, and further reserves all rights respecting the enforcement of this Order, including the rights to notice, to be heard, to appeal, and to any other due process. The existence of this Order or Respondent's compliance with it shall not be construed as an admission of liability, fault, wrongdoing, or breach of standard of care by Respondent, and shall not give rise to any presumption of law or finding of fact, or create any rights, or grant any cause of action, which shall inure to the benefit of any third party. Further, Respondent reserves such rights as it may have to seek and obtain contribution, indemnification, and/or any other form of recovery from its insurers and from other potentially responsible parties or their insurers for past or future response and/or cleanup costs or such other costs or damages arising from the contamination at the Site as may be provided by law.

VII. Indemnification

Respondent shall indemnify and hold the Department, the State of New York, and their representatives and employees harmless for all third-party claims, suits, actions, damages, and costs of every name and description arising out of or resulting from the fulfillment or attempted fulfillment of this Order by Respondent and/or any of Respondent's directors, officers, employees, servants, agents, successors, and assigns except for liability arising from (i) vehicular accidents occurring during travel to or from the Site, or (ii) willful, wanton, or malicious acts or omissions, and acts or omissions constituting gross negligence or criminal behavior by the Department, the State of New York, and/or their representatives and employees during the course of any activities conducted pursuant to this Order. The Department shall provide Respondent with written notice no less than thirty (30) Days prior to commencing a lawsuit seeking indemnification pursuant to this Paragraph.

VIII. Public Notice

A. Within 30 days after the effective date of this Order, Respondent shall cause to be filed a Department-approved Notice of Order, which Notice shall be substantially similar to the Notice of Order attached to this Order as Exhibit "C," with the recording officer of the county wherein the Site is located to give all parties who may acquire any interest in the Site notice of this Order. Within 60 days of such filing, Respondent shall also provide the Department with a copy of such instrument certified by the recording officer to be a true and faithful copy.

B. If Respondent proposes to convey the whole or any part of Respondent's ownership interest in the Site, or becomes aware of such conveyance, Respondent shall, not fewer than 45 days before the date of conveyance, or within 45 days after becoming aware of such conveyance, notify the Department in writing of the identity of the transferee and of the nature and proposed or actual date of the conveyance, and shall notify the transferee in writing, with a copy to the Department, of the applicability of this Order. However, such obligation shall not extend to a conveyance by means of a corporate reorganization or merger or the granting of any rights under any mortgage, deed, trust, assignment, judgment, lien, pledge, security agreement, lease, or any other right accruing to a person not affiliated with Respondent to secure the repayment of money or the performance of a duty or obligation.

IX. Communications

A. All written communications required by this Order shall be transmitted by United States Postal Service, by private courier service, or hand delivered as follows:

1. Communication from Respondent shall be sent to:

Gary Litwin
Bureau of Environmental Exposure Investigation
New York State Department of Health
547 River Street
Troy, New York 12180-2216
Note: two copies of work plans are required to be sent, and

Michael MacCabe
Division of Environmental Remediation
New York State Department of Environmental Conservation
625 Broadway
Albany, New York 12233-7016

Anthony Quartararo, Esq
NYSDEC
625 Broadway
Albany, New York 12233-5500
Note: correspondence only required for attorney

2. Communication from the Department to Respondent shall be sent to:

David A. Engel, Esq.
Tuczinski, Cavalier, Burstein & Collura, P.C.
90 State Street, Suite 1011
Albany, New York 12207

Mark Millspaugh, P.E.
Sterling Environmental
Engineering P.C.
One Columbia Circle
Albany, New York 12203

James A. Klein
Apple Valley Corp.
1070 Route 9
Fishkill, New York 12524

Jon Conrad
Conrad Geoscience
Raymond Avenue
Poughkeepsie, NY 12603

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

C. Each party shall notify the other within 90 Days after any change in the addresses in this Paragraph IX or in Paragraph V.

X. Dispute Resolution

A. If Respondent disagrees with the Department's notice under (i) Subparagraph I.B requesting supplemental Work Plans; (ii) Subparagraph I.C disapproving a submittal, a proposed Work Plan, or a final report; (iii) Subparagraph III.B rejecting Respondent's assertion of a Force Majeure Event; or (iv) Subparagraph XII.G.2.ii requesting modification of a time frame, Respondent may, within 30 days of its receipt of such notice, make a written request for informal negotiations with the Department in an effort to resolve the dispute. A copy of such request shall be sent by Respondent to the appropriate Remedial Bureau Chief in the Department's Central Office. The Department and Respondent shall consult together in good faith and exercise best efforts to resolve any differences or disputes without resort to the procedures described in Subparagraph X.B. The period for informal negotiations shall not exceed 30 days from the date of the Department's initial response to the Respondent's request for informal negotiations. If the parties cannot resolve a dispute by informal negotiations during this period, the Department's position shall be considered binding unless Respondent notifies the Department in writing within 30 days after the conclusion of the 30 day period for informal negotiations that it invokes the dispute resolution provisions provided under Subparagraph X.B.

B. 1. Respondent shall file with the Office of Hearings & Mediation ("OH&M") a request for formal dispute resolution and a written statement of the issues in dispute, the relevant facts upon which the dispute is based, factual data, analysis, or opinion supporting its position, and all supporting documentation upon which Respondent relies (hereinafter called the "Statement of Position"). A copy of such request and written statement shall be provided contemporaneously to the Director and to the parties listed under Subparagraph IX.A.1.

2. The Department shall serve its Statement of Position no later than 20 days after receipt of Respondent's Statement of Position.

3. Respondent shall have the burden of proving by substantial evidence that the Department's position does not have a rational basis and should not prevail. The OH&M may conduct meetings in person or via video or telephone conference, and may request additional information from either party if such activities will facilitate a resolution of the issues.

4. The OH&M shall prepare and submit a report and recommendation to the Director. The Director shall issue a final decision in a timely manner. The final decision shall constitute a final agency action and Respondent shall have the right to seek judicial review of the decision pursuant to Article 78 of the CPLR provided that Respondent notifies the Department within 30 days after receipt of a copy of the final decision of its intent to commence an Article 78 proceeding and commences such proceeding within 60 days after receipt of a copy of the Director's final decision. Respondent shall be in violation of this Order if it fails to comply with the final decision within 45 days after the date of such final decision, or such other time period as may be provided in the final decision, unless it seeks judicial review of such decision within the 60 day period provided. In the event that Respondent seeks judicial review, Respondent shall be in violation of this Order if it fails to comply with the final Court Order or any settlement within 30 days after the effective date of such Order or settlement, unless otherwise directed by the Court. For purposes of this Subparagraph, a Court Order or settlement shall not be final until the time to perfect an appeal of same has expired.

5. The invocation of dispute resolution shall not extend, postpone, or modify Respondent's obligations under this Order with respect to any item not in dispute unless or until the Department agrees or a Court orders otherwise. Except as otherwise provided in this Order, the invocation of the procedures set forth in this Paragraph X shall constitute an election of remedies and such election shall constitute a waiver of any and all other administrative remedies which may otherwise be available to Respondent regarding the issue in dispute.

6. The Department shall keep an administrative record of any proceedings under this Paragraph XII that shall be available consistent with Article 6 of the Public Officers Law.

7. Nothing in this Paragraph X shall be construed as an agreement by the parties to resolve disputes through administrative proceedings pursuant to the State Administrative Procedure Act, the ECL, or 6 NYCRR Part 622 or Section 375-2.1.

8. Nothing contained in this Order shall be construed to authorize Respondent to invoke dispute resolution with respect to the remedy selected by the Department in the ROD or any element of such remedy, nor to impair any right of Respondent to seek judicial review of the Department's selection of any remedy.

XI. Termination of Order

A. This Order will terminate upon the Department's written determination that Respondent has completed all phases of the Interim Remedial Measures Work Plan (including OM&M), in which

event the termination shall be effective on the 5 th Day after the date of the Department's approval of the final report relating to the final phase of the Remedial Program.

B. Notwithstanding the foregoing, the provisions contained in Paragraphs V and VII shall survive the termination of this Order and any violation of such surviving Paragraphs shall be a violation of this Order, the ECL, and 6 NYCRR Section 375-1.2(d), subjecting Respondent to penalties as provided under Paragraph IV so long as such obligations accrued on or prior to the Termination Date.

XII. Miscellaneous

A. Respondent shall retain professional consultants, contractors, laboratories, quality assurance/quality control personnel, and third party data validators ("Respondent's Contractors") acceptable to the Department to perform its obligations under this Order. If the Department has not previously approved Respondent's Contractors for the work required by this Order, Respondent shall submit the Contractors' qualifications to the Department a minimum of 30 days before the start of any activities for which each such Contractor will be responsible. The Department's approval of each such Contractor shall be obtained prior to the start of work by that Contractor. The responsibility for the performance of all Contractors retained by Respondent shall rest solely with Respondent. Subject to the requirements of this Subparagraph, Respondent retains the right to select or change firms or individuals in its sole discretion.

B. Respondent shall allow the Department to attend and shall notify the Department at least 5 days in advance of any field activities as well as any pre-bid meetings, job progress meetings, the substantial completion meeting and inspection, and the final inspection and meeting; nothing in this Order shall be construed to require Respondent to allow the Department to attend portions of meetings where privileged matters are discussed.

C. Respondent shall use "best efforts" to obtain all Site access, permits, easements, rights-of-way, rights-of-entry, approvals, institutional controls, or authorizations necessary to perform Respondent's obligations under this Order, except that the Department may exempt Respondent from the requirement to obtain any state or local permit or other authorization for any activity needed to implement this Order that the Department determines is conducted in a manner which satisfies all substantive technical requirements applicable to like activity conducted pursuant to a permit. If, despite Respondent's best efforts, any necessary Site access, permits, easements, rights-of-way, rights-of-entry, approvals, institutional controls, or authorizations required to perform this Order are not obtained within 45 days after the effective date of this Order, or within 45 days after the date the Department notifies Respondent in writing that additional access beyond that previously secured is necessary, Respondent shall promptly notify the Department, and shall include in that notification a summary of the steps Respondent has taken to obtain access. The Department may, as it deems appropriate and within its authority, assist Respondent in obtaining access. If any interest in property is needed to implement an institutional control required by a Work Plan and such interest cannot be obtained, the Department may require Respondent to modify the Work Plan pursuant to Subparagraph II.C of this Order to reflect changes necessitated by the lack of access and/or approvals.

D. Respondent and Respondent's successors and assigns shall be bound by this Order. Any change in ownership or corporate status of Respondent including, but not limited to, any transfer of assets, shall in no way alter Respondent's responsibilities under this Order.

E. Respondent shall provide a copy of this Order to each contractor hired to perform work required by this Order and shall condition all contracts entered into pursuant to this Order upon performance in conformity with the terms of this Order. Respondent or its contractor(s) shall provide written notice of this Order to all subcontractors hired to perform any portion of the work required by this Order. Respondent shall nonetheless be responsible for ensuring that Respondent's contractors and subcontractors perform the work in satisfaction of the requirements of this Order.

F. The paragraph headings set forth in this Order are included for convenience of reference only and shall be disregarded in the construction and interpretation of any provisions of this Order.

G. 1. The terms of this Order shall constitute the complete and entire agreement between the Department and Respondent concerning implementation of the activities required by this Order. No term, condition, understanding, or agreement purporting to modify or vary any term of this Order shall be binding unless made in writing and subscribed by the party to be bound. No informal advice, guidance, suggestion, or comment by the Department shall be construed as relieving Respondent of Respondent's obligation to obtain such formal approvals as may be required by this Order. In the event of a conflict between the terms of this Order and any Work Plan submitted pursuant to this Order, the terms of this Order shall control over the terms of the Work Plan(s) attached as Exhibit "B."

2. i. Except as set forth herein, if Respondent desires that any provision of this Order be changed, other than a provision of a Work Plan or a time frame, Respondent shall make timely written application to the Commissioner with copies to the parties listed in Subparagraph IX.A.1. The Commissioner or the Commissioner's designee shall timely respond.

ii. Changes to a time frame set forth in this Order shall be accomplished by a written request to the Department's project attorney and project manager, which request shall be timely responded to in writing. The Department's decision relative to the request for a time frame change shall be subject to dispute resolution pursuant to Paragraph X.

H. To the extent authorized under 42 U.S.C. Section 9613, New York General Obligations Law § 15-108, and any other applicable law, Respondent shall be deemed to have resolved its liability to the State for purposes of contribution protection provided by CERCLA Section 113(f)(2) for "matters addressed" pursuant to and in accordance with this Order. "Matters addressed" in this Order shall mean all response actions taken by Respondent to implement this Order for the Site and all response costs incurred and to be incurred by any person or party in connection with the work performed under this Order, which costs have been paid by Respondent, including reimbursement of State Costs pursuant to this Order. Furthermore, to the extent authorized under 42 U.S.C. Section 9613(f)(3)(B), by entering into this administrative settlement of liability, if any, for some or all of the response action and/or for some or all of the costs of such action, Respondent is entitled to seek contribution from any person except those who are entitled to contribution protection under 42 U.S.C. Section 9613(f)(2).

I. Unless otherwise expressly provided herein, terms used in this Order which are defined in ECL Article 27, Title 13, or in regulations promulgated under such statute shall have the meaning assigned to them under said statute or regulations. Whenever terms listed in the Glossary attached hereto are used in this Order or in the attached Exhibits, the definitions set forth in the Glossary shall apply. In the event of a conflict, the definition set forth in the Glossary shall control.

J. Respondent's obligations under this Order represent payment for or reimbursement of response costs, and shall not be deemed to constitute any type of fine or penalty.

K. This Order may be executed for the convenience of the parties hereto, individually or in combination, in one or more counterparts, each of which for all purposes shall be deemed to have the status of an executed original and all of which shall together constitute one and the same.

L. The effective date of this Order is the 10th Day after the date the Commissioner or the Commissioner's designee signs this Order.

DATED: NOV - 5 , 2004
Albany, New York

ERIN M. CROTTY
Commissioner
New York State Department
of Environmental Conservation

By: _____
Dale A. Desnoyers
Director
Division of Environmental Remediation

edms 80743

CONSENT BY RESPONDENT

Respondent hereby consents to the issuing and entering of this Order, waives Respondent's right to a hearing herein as provided by law, and agrees to be bound by this Order.

By: _____

Title: Pres.

Date: 10/19/04

STATE OF NEW YORK)
) s.s.:
COUNTY OF [illegible])

On the 19 day of October, in the year 2004, before me personally came James A. Klein, to me known, who being duly sworn, did depose and say that he resides in Goshen NY; that he is the President of Apple Valley Corp., the corporation described in and which executed the foregoing instrument; that he knew the seal of said corporation; that the seal affixed to said instrument was such corporate seal; that it was so affixed by the order of the Board of Directors of said corporation and that he signed his name thereto by like order.

_____
Notary Public

RONALD A. MERMER
Notary Public, State of New York
No. 4721657
Qualified in Westchester County
Commission Expires September 30, 2006

EXHIBIT "A"

Administrative Order on Consent with EPA

EXHIBIT "B"

Department-Approved IRM Work Plan

EXHIBIT "C"

NOTICE OF ORDER

Apple Valley Corporation ("Respondent") is subject to an Order On Consent, Index # A4-0499-1003 (the "Order") issued by the Commissioner of the New York State Department of Environmental Conservation (the "Department") under Article 27, Title 13, and Article 71, Title 27 of the Environmental Conservation Law of the State of New York ("ECL") for a site located at New York State Route 55 and Titusville Road, Town of LaGrange, New York (the "Site").

The Site has been designated by the Department as an inactive hazardous waste disposal site, as that term is defined at ECL Section 27-1301.2, and has been listed in the Registry of Inactive Hazardous Waste Disposal Sites in New York State as Site # 3-14-084. The Department has classified the Site as a Class "2" site pursuant to ECL Section 27-1305.4.b. This classification means that the Department has determined that the Site presents a significant threat to the public health or environment. The Site is more particularly described in the legal description that is attached hereto as Schedule "A."

The purpose of the Order is to provide for the development and implementation of an inactive hazardous waste disposal site remedial program for the Site. The effective date of the Order was _____. A copy of the Order, as well as any and all Department-approved Work Plans under this Order can be reviewed by contacting the project manager, Michael MacCabe, at the Department's Division of Environmental Remediation offices located at 625 Broadway, Albany, NY.

This Notice of Order is being filed with the _____ recording officer in accordance with Paragraph IX of the Order to give all parties who may acquire any interest in the Site notice of this Order.

WHEREFORE, the undersigned has signed this Notice of Order in compliance with the terms of the Order.

By:_____

Title:_____

[acknowledgement]

Glossary of Terms

The following terms shall have the following meanings:

"BPM Director": the Director of the Bureau of Program Management within the Division of Environmental Remediation.

"CERCLA": the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. 9601 et seq.

"Day": a calendar day. In computing any period of time under this Order, where the last day would fall on a Saturday, Sunday or State holiday, the period shall run until the close of business of the next working day.

"Department": the New York State Department of Environmental Conservation.

"Director": the Division Director, Division of Environmental Remediation.

"Force Majeure Event": an event which is brought on as a result of fire, lightning, earthquake, flood, adverse weather conditions, strike, shortages of labor and materials, war, riot, obstruction or interference by adjoining landowners, or any other fact or circumstance beyond Respondent's reasonable control.

"Inactive Hazardous Waste Disposal Site Remedial Program" or "Remedial Program": activities undertaken to eliminate, remove, abate, control, or monitor existing health hazards, existing environmental hazards, potential health hazards, and/or potential environmental hazards in connection with the Site and all activities to manage wastes and contaminated materials at or removed from the Site. (See ECL 27-1301(3) and 6 NYCRR 375-1.3(m))

"Interim Remedial Measure" or "IRM": a discrete set of activities, including removal activities, to address both emergency and non-emergency Site conditions, which can be undertaken without extensive investigation or evaluation, to prevent, mitigate, or remedy environmental damage or the consequences of environmental damage attributable to the Site. (See 6 NYCRR Part 375-1.3(n))

"National Contingency Plan" or "NCP": the National Oil and Hazardous Substances Pollution Contingency Plan promulgated pursuant to Section 105 of CERCLA, and codified at 40 C.F.R. Part 300, and any amendments thereto.

"OH&M": the Office of Hearings and Mediation Services.

"OM&M": post-construction operation, maintenance, and monitoring; the last phase of a remedial program, which continues until the remedial action objectives for the Site are met.

"Order": this Order and all exhibits attached hereto.

"Professional Engineer": an individual registered as a professional engineer in accordance with Article 145 of the New York State Education Law. If such individual is a member of a firm, that firm must be authorized to offer professional engineering services in the State of New York in accordance with Article 145 of the New York State Education Law.

"Record of Decision" or "ROD": the document reflecting the Department's selection of a remedy relative to the Site or any Operable Unit thereof. The ROD shall be attached to and made enforceable under this Order as Exhibit "L."

"Spill Fund": the New York State Environmental Protection and Spill Compensation Fund as established by Article 12, Part Three of the NL.

"State Costs": all the State's response expenses related to this Site, including, but not limited to, direct labor, fringe benefits, indirect costs, travel, analytical costs, and contractor costs incurred by the State of New York for negotiating, implementing, overseeing, administering, or enforcing this Order, and any other response costs as defined under CERCLA. Approved agency fringe benefit and indirect cost rates will be applied.

Termination Date": the date that this Order is terminated pursuant to Paragraph XIII.

Appendix C

	PRINCIPAL (A)	INTEREST (RATE) (B)	*ELAPSED DAYS (RATE) (C)	INTEREST (D) = (A) * (B) * (C)	PAYMENTS (E)	PAYMENTS + INTEREST (F) = (D) + (E)	TOTAL (G) = (A) + (D) - (E)
Payment 1 - 30 days	$75,000 00	2 22%	0 0822	$136 85	$25,000 00	$25,136 85	$50 136 85
Payment 2 - 30 days	$50,136 85	2 22%	0 0822	$91 48	$25,000 00	$25,091 48	$25,228 33
Payment 3 - 30 days	$25,228 33	2 22%	0 0822	$46 03	$25,000 00	$25,046 03	$274 36