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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION II

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 :
 IN THE MATTER OF :
 : ADMINISTRATIVE ORDER
 :
 AVX CORPORATION, :
 MCGRAW-EDISON COMPANY, :
 COOPER INDUSTRIES, INC., : Index No. II CERCLA-60201
 ALCAS CUTLERY CORPORATION, :
 ALUMINUM COMPANY OF AMERICA, :
 W. R. CASE & SONS CUTLERY :
 COMPANY, :
 :
 Respondents. :
 :
 Proceeding Under Section 106(a) :
 of the Comprehensive Environ- :
 mental Response, Compensation :
 and Liability Act, 42 U.S.C. :
 §9606(a) (Olean Well Field :
 Site). :
 :
 -----X

JURISDICTION

This Administrative Order ("Order") is issued to the above-captioned Respondents ("Respondents") pursuant to the authority vested in the President of the United States by Section 106(a) of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. §9606(a), which authority was delegated to the Administrator of the United States Environmental Protection Agency ("EPA") by Executive Order 12316, August 20, 1981, 46 Fed. Reg. 42237, and duly redelegated to the Regional Administrator, Region II, by Delegation Order 14-14, March 31, 1983. The State of New York has been notified of the issuance of this Order.

FINDINGS

1. The Olean Well Field Site ("site") is included on the National Priorities List of known or threatened releases of hazardous substances ("NPL"). The NPL, codified at 40 CFR Part 300, Appendix B, has been promulgated pursuant to Section 105(8)(b) of CERCLA, 42 U.S.C. §9605(8)(b). The site is

located in Cattaraugus County, New York, and is characterized by contaminated groundwater underlying the City of Olean, the Town of Olean and the Town of Portville, and by contaminated soil in the City and the Town of Olean. The Allegheny River and two of its tributaries, the Olean and Haskell Creeks, flow through the site, which is depicted in Figure 1. The boundaries of the site are generally defined by the extent of the contaminant plume.

2. Between 1951 and the present, McGraw-Edison Corporation ("McGraw-Edison" or "M-E"), a Delaware corporation, has been the owner and operator of premises located at Dugan Road in the Town of Olean, including a plant for the manufacture of protective equipment for electrical power distribution lines. Between 1950 and the present, AVX Corporation ("AVX"), a Delaware corporation, has owned and operated premises located at Seneca Avenue in the Town of Olean, including a plant for the manufacture of electrical and electronic components. Between 1949 and the present, Alcas Cutlery Corporation ("Alcas"), a New York corporation, has owned and operated premises located at 1116 East State Street in the City of Olean, New York, including a plant for the manufacture of cutlery.

3. The premises respectively owned and operated by McGraw-Edison, AVX and Alcas each constitutes a facility within the meaning of Section 101(9) of CERCLA, 42 U.S.C. §9601(9).

4. On November 24, 1980 the Cattaraugus County Department of Health ("CCDH") collected a water sample from the Richmond Avenue public water supply well ("Well 18M" or "18M"), which had been servicing the City of Olean, population approximately 20,000, since 1975. The results of the analysis of that sample, received on January 16, 1981, showed 160 parts per billion ("ppb") Trichloroethylene ("TCE"). Another sample, taken on January 19, 1981, was analyzed and found to contain 99 ppb TCE.

5. On January 26, 1981 the CCDH sampled other Olean public water supply wells. The results of analyses of those samples revealed that the two Torrey Farm Wells ("Well 37M" or "37M" and "Well 38M" or "38M"), each of which had been on line since January 1980, were contaminated with 130 ppb TCE.

6. The levels of TCE contamination discovered in Wells 18M, 37M and 38M were in excess of applicable guidelines established by the New York State Department of Health ("NYSDOH"). At the urging of the NYSDOH, in February 1981 the City of Olean discontinued use of those wells. An antiquated surface water

filtration plant was reactivated to satisfy the City's water demands. That plant remains in service although it is in a condition of decay and its ability to remain operational as a continuous water supply for the City of Olean is questionable.

7. During 1981 the CCDH expanded its monitoring program to include private wells, most of which were located in the Town of Olean (population approximately 2,200), which is contiguous to the northern, eastern and southern borders of the City of Olean. The CCDH found that many of those wells, most of which serve private residences, also were contaminated with potentially dangerous levels of TCE. In response to the detection of those unacceptable concentrations, EPA performed an Immediate Removal Action pursuant to Section 300.65 of the National Oil and Hazardous Substances Contingency Plan ("NCP"), 40 CFR 300.65, whereby EPA installed carbon adsorption filters on a number of contaminated wells. The results of additional monitoring efforts necessitated two further Immediate Removal Actions, in 1984 and 1985, whereby additional carbon adsorption units were installed. By 1984 it became apparent that a plume of TCE was threatening and would continue to threaten additional private wells before a permanent remedy could be implemented. Accordingly, in conformance with Section 300.68 of the NCP, 40 CFR 300.68, and in cooperation with the State of New York Department of Environmental Conservation ("DEC"), EPA prepared a focused feasibility study to examine and recommend interim remedial options to reduce the threat to public health which would result from exposure of private well users to contaminated ground water. In 1985, DEC initiated an Interim Remedial Measure ("IRM") implementing the selected option. This ongoing IRM provides for regular monitoring and further carbon adsorption unit installation as necessary until the permanent remedy is in place. The response actions described in this paragraph have resulted in the emplacement of carbon adsorption units on 32 private wells in the City and Town of Olean. The majority of these private wells are hydraulically downgradient of the McGraw-Edison facility; some also are hydraulically downgradient of the AVX facility. The locations of properties where carbon adsorption units were installed are depicted in Figure 2. Table 1 summarizes the most recent private well TCE sampling results, for private wells with carbon adsorption units. Figure 3 is a plot of TCE concentrations in private wells with carbon adsorption units downgradient of M-E and AVX.

8. EPA has funded studies at the site in an effort to determine the nature and extent of contamination, including contaminant sources and migration pathways. In addition, M-E, AVX and Alcas have entered into administrative consent orders with EPA, pursuant to which they have conducted studies at their respective facilities and submitted the resulting data to EPA. Two of those

Respondents have also generated data independent of any formal EPA administrative process and have submitted all or part of that data to EPA.

a. In 1981-1982, EPA, through the consulting firm Camp Dresser and McKee ("CDM"), performed a preliminary hydrogeologic investigation which included, inter alia, installation of monitoring wells to characterize site geology, sampling and analysis of those wells in order to evaluate ground water quality. The locations of CDM monitoring wells are depicted in Figure 4. CDM also performed an aquifer pump test using municipal wells 18M and 37M. Water levels were measured in various monitoring wells in order to assess the cones of depression of the municipal wells. By determining the cones of depression of the municipal wells the areas from which contaminants could reach the municipal wells can be defined (this can then be used in evaluating contaminant migration away from suspected sources). At the end of the test, the system had not yet reached steady state (water levels were still dropping). However, the effects of the municipal wells were measured as far east as CDM-11 (approximately 200 feet southwest from the McGraw-Edison facility), north of the AVX facility at CDM 14 and west of the Alcas facility at CDM-6 (See Figure 4). These results demonstrate that the combined pumping of 18M and 37M is sufficient to enhance the migration of contaminants away from the ME, AVX and Alcas facilities.

b. In 1983, EPA, through its Field Investigation Team ("FIT"), installed two monitoring wells and sampled and analyzed water from those wells, which were located hydraulically upgradient of the McGraw-Edison facility.

c. In 1984-1985, DEC, pursuant to a Cooperative Agreement with EPA and through its consultants and contractors, performed a Remedial Investigation and Feasibility Study ("RI/FS") as provided by 40 CFR 300.68. The remedial investigation entailed well installation, ground water and surface water sampling and analyses, an investigation of an industrial sewer owned by M-E, and other work intended to further characterize the site and support the cost-effectiveness analysis of remedial action alternatives in the feasibility study. Figure 5 depicts the locations of monitoring wells installed under the RI/FS. Tables 2a and 2b summarize the ground water quality data collected under the RI/FS.

d. In April 1985, EPA, also through its FIT, performed an aquifer pump test and sampling and analyses of monitoring and municipal wells to obtain more information on the hydrogeologic features at the Alcas and AVX facilities and the influence of well 18M.

e. In 1985, EPA, through its contractor INTERA Technologies, performed ground water modelling, to simulate the relative

influences of area pumping wells and to predict the direction and velocity of ground water flow under different pumping conditions.

9. The geology of the area in which the site is located is characterized by a subsurface consisting of unconsolidated sediments overlying shale bedrock. Ground water occurs primarily in two aquifers, which lie within the upper 100 feet of these unconsolidated sediments in the Allegheny River, Olean Creek and Haskell Creek valleys. A relatively thin upper aquifer, which does not extend throughout the entire site, and a thick lower aquifer, which does exist throughout the entire site are separated by a less permeable glacial till unit referred to as the upper aquitard. Figure 6 depicts the extent of the upper aquifer and the locations where the upper aquitard outcrops in the affected area. Although the upper aquitard has a low permeability and hydraulically acts as a confining bed, leakage does occur through the upper aquitard into the lower aquifer. Wells 18M, 37M, 38M and many of the contaminated private wells are screened in (i.e., draw water from) the lower aquifer. Ground water flow in the upper aquifer is generally perpendicular to and towards the Allegheny River from both sides of the valley, and discharges to the River. Ground water flow in the lower aquifer under natural, unstressed conditions is to the west and south, generally parallel to rather than perpendicular to the major stream and river valleys. When the municipal wells are pumping (a condition which stresses the lower aquifer), the flow regime in the lower aquifer is drastically changed. The cones of depression created by these wells extend over the entire site, i.e., flow in the area is directed almost entirely towards the municipal wells.

10. In its response dated September 14, 1984 to a DEC Hazardous Waste Disposal Questionnaire, M-E stated that an undetermined quantity of TCE was disposed of "[o]n-site via unintentional leaks, spills in drum storage area." According to M-E's response dated October 11, 1982 to an EPA Request for Information pursuant to Section 3007 of RCRA, 42 U.S.C. §6927, since 1953 industrial processes at the M-E plant have included solvent vapor degreasing utilizing TCE to clean and degrease metal parts; beginning in 1962, 1,1,1-trichloroethane also was used for metal cleaning and degreasing; and, beginning in 1979, methylene chloride was employed for that purpose as well. All three of these volatile organic compounds have been detected in soil, and in the upper and lower aquifers at the facility, as indicated below. In 1984, M-E and EPA entered into an administrative order under the authority of Section 3013 of the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. §6934, pursuant to which M-E performed an investigation at its facility. That investigation included, inter alia, geophysical work; installation of ground

water monitoring wells and collection and analysis of water samples from those wells; soil sampling and analysis; and an aquifer pump test. Thereafter, M-E proceeded with additional investigative work at its facility. These studies revealed that soil and ground water (upper and lower aquifers) at the facility were contaminated with TCE, 1,1,1-trichloroethane, 1,1-dichloroethylene, 1,1-dichloroethane, trans-1,2-dichloroethylene, tetrachloroethylene and methylene chloride. Table 3 summarizes the water and soil quality data obtained during those studies; Figure 7 depicts sampling locations.

Examples of the high TCE concentrations detected at the M-E facility are 2,400,000 ppb in the soil; 5900 ppb in the upper aquifer; 16,000 ppb in the upper part of the lower aquifer; and, in the lower part of the lower aquifer (70-80 feet in depth, approximately the same screen depth as the municipal wells), 6400 ppb.

Under the RI, CW-1, a cluster of two monitoring wells (one screened in the upper aquifer, the other screened in the lower aquifer), was installed to help determine if any contaminant source exists upgradient of the M-E facility. Samples from those wells showed no significant amounts of TCE or other volatile organics. These results were consistent with those obtained from samples of the wells installed by the FIT (see paragraph 8.b, above), leading to the conclusion that a significant source of volatile organic contamination does not exist upgradient of the M-E facility.

Evaluation of the ground water quality data for private wells and monitoring wells hydraulically downgradient of the M-E facility in conjunction with the ground water flow regime establishes a pathway for horizontal migration of contaminants away from the M-E facility and toward the contaminated private and municipal wells. The highest TCE concentrations measured in a private well consistently have been in a well located less than 100 feet west and downgradient of the M-E facility. Those concentrations have ranged from 12,000 ppb, detected in July 1982, to 3,100 ppb, detected in June 1985. This well is screened in the same aquifer (the lower aquifer) as the municipal well and the monitoring wells at the M-E facility which have shown concentrations of up to 6400 ppb.

The RI/FS included an investigation of the M-E industrial sewer, including flow studies which indicate that the sewer exfiltrates in some sections and infiltrates in other sections. Although this information does not precisely identify areas of interaction between the sewer and the ground water, it does demonstrate that the sewer can act as a conduit for migration of contaminated ground water. The sewer also may be a source of TCE contamination. A TCE concentration of 14,000 ppb was detected in the sewer in 1985.

The available information demonstrates that TCE and other volatile organic compounds have been disposed of at the McGraw-Edison facility; have been migrating downward and contaminating the ground water in both the upper and lower aquifers; and, therefore, have been released from the McGraw-Edison facility.

11. According to AVX's response of December 10, 1982 to an EPA Request for Information pursuant to Section 104(e) of CERCLA and Section 3007 of RCRA, TCE was used in degreasing operations at the AVX facility from 1950 to 1973, and again in 1977 and 1978; and, beginning in 1970, 1,1,1-trichloroethane and tetrachloroethylene also were used in degreasing operations at the facility. As part of its operations AVX utilizes a production well which, according to AVX, has pumped continuously since July, 1959. (AVX has reported to EPA that the only known incident of well shut down occurred for three days in July 1979 so that the pump could be replaced and the screen cleaned.)

In 1984, AVX and EPA entered into an administrative order under the authority of Section 3013 of RCRA, pursuant to which AVX performed an investigation at its facility. That investigation included, inter alia, installation of ground water monitoring wells and collection and analysis of water samples from those wells, soil sampling and analysis, and an aquifer pump test. AVX subsequently performed additional investigative work at its facility. Table 4 summarizes the analytical results for both of these investigations; Figure 8 depicts sampling locations. As indicated below, the analytical data obtained during these investigations indicated that soils and ground water at the AVX facility are contaminated with TCE, 1,1,1-trichloroethane, tetrachloroethylene and other volatile organic compounds.

Analyses of soil samples drawn from an area close to and south of the fence line south of the plant building revealed total volatile organic concentrations of up to 39,380 ppb at a depth of 12 to 18 inches. Concentrations of up to 119,700 ppb total volatile organics, including 15,000 ppb TCE, have been detected in ground water in the till at a depth of approximately 15 feet.

The data collected by AVX under these studies demonstrate that contamination is travelling downward from the surficial soils through the till and then entering the lower aquifer. Concentrations of up to 119,700 ppb total volatile organics have been detected in water samples from the till.

As part of the RI, as discussed in Paragraph 8.c, above, CW-19, a cluster of two monitoring wells (one screened in the upper part, the other in the lower part of the lower aquifer), was installed to determine if any source exists upgradient of AVX. Samples from those wells showed no significant amounts of TCE or other

volatile organic compounds, indicating that a significant source of contamination does not exist upgradient of the AVX facility.

EPA has examined the ability of the AVX production well to capture and control contaminants once they enter the lower aquifer. Based on both aquifer testing and ground water modelling, the pumping of municipal well 18M alone (i.e., without 37M or 38M) can draw volatile organic contamination from areas on AVX's property where such contamination is documented to be present (e.g., 250 feet south of the AVX production well). In addition, the modelling study has demonstrated that the effect of the AVX production well is rendered insignificant when all three of these municipal wells are pumping simultaneously (as they were in the year prior to their February 1981 shutdown), to a point where much of the contamination on the AVX facility already is outside the cone of influence of AVX's production well upon entering the lower aquifer. Upon installation of the air strippers in accordance with the EPA Record of Decision, all three of these wells once again will be placed on line and under normal operating conditions are expected to be pumping simultaneously for the foreseeable future.

The available information demonstrates that TCE and other volatile organic compounds have been disposed of at the AVX facility; have been migrating downward through the till; and have been released from the AVX facility.

12. According to Alcas' response of January 7, 1983 to an EPA Request for Information pursuant to Section 104(e) of CERCLA and Section 3007 of RCRA, beginning in 1949 Alcas has consistently used TCE in vapor degreasing operations as part of its cutlery finishing process; and, between approximately 1975 and 1979, Alcas used 25 to 40 gallons of TCE annually as a weed killer along the facility fence line (see Figure 9). Alcas also disposed of waste TCE sludges mixed with sawdust in an area south of the present plant parking lot.

In 1984, EPA and Alcas entered into an administrative order under the authority of Section 3013 RCRA, pursuant to which Alcas performed an investigation on its premises. Table 5 summarizes the analytical results; Figure 8 depicts the sampling locations. The investigation revealed that soil at the Alcas facility is contaminated with volatile organic compounds, and ground water under the Alcas facility is contaminated with TCE and its breakdown product trans-1,2-dichloroethylene.

As part of that investigation, split spoon soil samples were collected at five-foot intervals as Alcas monitoring well B-2 was being drilled. These soil samples were scanned in the field with an Organic Vapor Analyzer ("OVA"), revealing total volatile organic concentrations ranging from 10 to 20 ppm (10,000 to

20,000 ppb) in the upper 5 feet of soil. Further, as shown in Table 5, analyses of ground water drawn from the lower aquifer under the Alcas facility revealed TCE as high as 4140 ppb. Moreover, separate EPA analyses have found TCE concentrations of up to 12,000 ppb in monitoring well B-2, which is screened in the lower aquifer at the Alcas facility approximately 100 yards away from municipal well 18M.

Pump tests have established that when 18M is pumping it has an influence at (draws water from) the Alcas facility. Furthermore, when 18M, 37M and 38M are pumped simultaneously, the movement of contamination toward the municipal wells is accelerated. Table 5a summarizes the results of ground water quality analyses from samples taken shortly before and after EPA's pump test of April 1985. The samples were collected from Alcas monitoring wells screened in the lower aquifer.

The available information demonstrates that TCE has been disposed of at the Alcas facility; has been migrating downward and contaminating the ground water in the upper and lower aquifers; and has been released from the Alcas facility.

13. TCE and the other volatile organic compounds detected at the site are hazardous substances within the meaning of Section 101(14) of CERCLA, 42 U.S.C. §9601(14).

14. Based on the information available to date, health effects of various chlorinated hydrocarbons detected at the site are summarized as follows:

- a. TCE is a suspected carcinogen, and it can cause Central Nervous System (CNS) depression. Other areas affected include the myocardium, liver, and kidney. TCE can induce acute ventricular arrhythmias, including ventricular fibrillation which can result in cardiac failure. TCE can induce nausea, anorexia and fatigue and can cause visual impairment, pain in joints, dermatitis, and wheezing.
- b. Tetrachloroethylene is a known carcinogen. Adverse health effects of tetrachloroethylene include CNS depression, fatty infiltration of the liver and kidneys, and subsequent tissue damage to those organs.
- c. Adverse health effects of 1,1,1-trichloroethane include CNS depression, increased liver weight and cardiovascular changes.
- d. Adverse health effects of 1,1-dichloroethylene include liver and kidney damage, renal toxicity, CNS depression, and sensitization of the heart.

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e. Adverse health effect of 1,2-dichloroethylene include CNS depression. 1,2-Dichloroethylene can induce nausea, vomiting, weakness, tremors and cramps.

f. Adverse health effects of 1,1-dichloroethane include CNS depression, liver and kidney damage, and skin irritation.

15. The data obtained to date; information submitted by AVX, McGraw-Edison and Alcas pursuant to EPA Requests for Information pursuant to Section 104(e) of CERCLA and Section 3007 of RCRA; and other available information, establish that there have been and continue to be releases and threats of releases of hazardous substances, within the meaning of Section 101(22) of CERCLA, 42 U.S.C §9601(22), from the McGraw-Edison facility, the AVX facility and the Alcas facility. The releases of TCE and other volatile organic chemicals from the Alcas, AVX and McGraw-Edison facilities have adversely affected the soil and ground water quality at the site and have rendered much of the ground water in the area unsuitable for human consumption without treatment for the foreseeable future.

16. At the time of issuance of this Order, McGraw-Edison is a subsidiary of Cooper Industries ("Cooper"), an Ohio corporation. During the period of time that the hazardous substances identified above were disposed of at the Alcas facility, the Aluminum Company of America ("Alcoa"), a Pennsylvania corporation, owned 51 percent of the Alcas common stock, and W. R. Case & Sons Cutlery Company ("Case"), a Pennsylvania corporation, owned 49 percent of the Alcas common stock. Alcoa and Case each controlled the operations of Alcas, which included the disposal of hazardous substances at the Alcas facility.

17. Respondents under this Order, McGraw-Edison, AVX, Alcas, Cooper, Alcoa and Case, all are persons within the meaning of Section 101(21) of CERCLA, 42 U.S.C. §9601(21).

18. Each Respondent is an owner and an operator within the meaning of Section 101(20) of CERCLA, 42 U.S.C. §9601(20).

19. McGraw-Edison, Cooper, AVX and Alcas each is a present owner and an operator of a facility, and, therefore, a liable party within the meaning of Section 107(a)(1) of CERCLA, 42 U.S.C. §9607(a)(1). McGraw-Edison, AVX, Alcas, Alcoa and Case each was an owner and an operator of a facility at the time of disposal of hazardous substances at such facility, and, therefore, each of those Respondents is a liable party within the meaning of Section 107(a)(2) of CERCLA, 42 U.S.C. §9607(a)(2).

20. Each Respondent is jointly and severally liable for implementation of the activities required by this Order.

21. Following the completion of the RI/FS described in paragraph 8.c., above, EPA issued a Record of Decision ("ROD") dated September 24, 1985 which set forth the selected remedial action alternative. The ROD is attached hereto and labelled Attachment I. In summary form, the selected remedial alternative consists of installing air strippers on 18M, 37M and 38M so that these wells may once again serve as a public water supply source; extending a water line from the City into the Town of Olean to provide 93 residences with a water supply alternative to their private wells; inspecting the McGraw-Edison sewer and analyzing repair and/or replacement options; and an additional study to further delineate sources of contamination and to evaluate feasible source control alternatives.

DETERMINATION OF THE REGIONAL ADMINISTRATOR

22. Based on the above Findings and the Administrative Record, and pursuant to Section 106(a) of CERCLA, the Regional Administrator has determined that the release and threatened release of one or more hazardous substances from the McGraw-Edison, AVX and Alcas facilities may present an imminent and substantial endangerment to the public health and welfare and the environment, and the actions required in paragraph 23, below, are necessary to protect the public health and welfare and the environment.

ORDER

23. Based on the foregoing, it is hereby ORDERED that the Respondents shall undertake remedial activities in accordance with the EPA ROD and the requirements specified below. All activities performed pursuant to this Order shall be completed as soon as possible even though maximum time periods for their completion may be specified herein. Whenever the time allocated for performance under this order begins to run upon Respondents' receipt of a document from EPA, such receipt shall be deemed to occur not later than the day upon which Respondents' Project Coordinator receives the EPA document. Except as may otherwise be specified herein, times for performance that are stated in numbers of days should be interpreted to mean calendar days rather than business days.

I. SITE MONITORING

A. As described in the ROD (Attachment I), existing on-site monitoring wells and private wells in Zone 3 shall be monitored. Within twenty-one (21) days of the effective date of this Order, Respondents shall submit to EPA, for review and approval, a Site Monitoring Plan ("SMP").

The SMP shall include, but should not necessarily be limited to, the following items. For items iv. through viii., Respondents have the option of using the plans and procedures developed by Engineering-Science for the Olean Well Field Remedial Investigation and Feasibility Study (Attachment II, hereto). Any decision to implement these plans and procedures should be stated in writing and submitted to EPA as part of the SMP.

- i. a map depicting sampling locations;
- ii. an over-all Management Plan, including identification of contractors and subcontractors and their respective responsibilities for performance of monitoring activities;
- iii. a schedule for performance of specific tasks;
- iv. a Quality Assurance/Quality Control ("QA/QC") Plan, which shall be completed in accordance with Section 10 of the publication, "Test Methods for Evaluating Solid Wastes" (SW-846), and the guidance appended hereto and labelled Attachment III, "Guidance for Preparation of Combined Work/Quality Assurance Project Plans for Water Monitoring" (USEPA, Office of Water Regulations and Standards, May 1983);
- v. provisions for completing and submitting to EPA, within two weeks of completion of each laboratory analysis, the results of each such analysis, as well as, QA/QC evaluation of the laboratory data and sampling and analytical procedures used for each sample obtained;
- vi. a description of chain of custody procedures to be followed, which shall conform to those set forth in Section 1.3 of SW-846;
- vii. a Health and Safety Plan;
- viii. a Contingency Plan;
- ix. a provision that any laboratory used by the Respondents shall subscribe to EPA Quality Assurance procedures.
- x. the curriculum vitae of each professional expected to participate in the on-site monitoring activities, with a provision for submitting further curricula vitae as other

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professionals become or are about to become involved in these activities.

B. EPA will review and comment on the SMP. Within fourteen (14) days of Respondents' receipt of EPA's comments, Respondents shall modify the SMP as required by those comments or as otherwise approved by EPA and resubmit the SMP, as modified, to EPA. At such time as EPA determines that the SMP is acceptable, EPA will transmit to Respondents a written statement to that effect.

C. Within twenty-one (21) days of Respondents' receipt of EPA approval of the SMP, Respondents shall initiate monitoring activities, which shall be conducted in accordance with the schedule and procedures set forth in the EPA-approved SMP.

II. INVESTIGATION OF MCGRAW-EDISON SEWER

A. As described in the ROD, the McGraw-Edison sewer shall be investigated and an evaluation of repair and/or replacement options conducted. Within fourteen (14) days of Respondents' receipt of EPA approval of the SMP, Respondents shall submit to EPA, for review and approval, a work plan describing the activities to be undertaken in such an investigation and evaluation ("Sewer Study Work Plan" or "Work Plan"). The nine (9) items listed above with respect to the SMP shall guide the preparation of the sewer study work plan. As appropriate, portions of the EPA-approved SMP may be included in the Sewer Study Work Plan.

B. EPA will review and comment on the Sewer Study Work Plan. Within fourteen (14) days of Respondents' receipt of EPA's comments, Respondents shall modify the Work Plan as required by those comments or as otherwise approved by EPA and resubmit the Work Plan, as modified, to EPA. At such time as EPA determines that the Work Plan is acceptable, EPA will transmit to Respondents a written statement to that effect.

C. Respondents shall complete the sewer investigation and evaluation in accordance with the schedule set forth in the EPA-approved Work Plan. Within the time specified in the EPA-approved Work Plan, Respondents shall submit to EPA, for review and approval, a report detailing the results of the sewer study ("Sewer Study Report" or "SSR"). The SSR shall include a work plan with a schedule for performance of the recommended option.

D. EPA will review and comment on the SSR. Within fourteen (14) days of Respondents' receipt of EPA's comments, Respondents shall either modify the SSR as required by those comments, or as otherwise approved by EPA, and resubmit the SSR, as modified, to EPA; or, initiate such other investigative work or studies as specified in EPA's comments. EPA will not approve the SSR until any such other investigative work as required by EPA's comments has been completed and approved by EPA and the results incorporated in that report. At such time as EPA determines that the Sewer Study Report is acceptable, EPA will transmit to Respondents a written statement to that effect. EPA will select the repair/replacement option(s) to be undertaken, and notify Respondents thereof. Respondents shall implement the selected option(s) according to a schedule that EPA will transmit to Respondents.

III. REMEDIAL ACTION (DESIGN)

A. As stated in the ROD, five ppb of TCE is the highest concentration of TCE allowable in drinking water for the remedial action. This concentration is consistent with a 10^{-6} risk level and has been set as close to the Recommended Maximum Contaminant Level ("RMCL")* as feasible considering costs, the best available analytical methods that have a low margin of error, and the best treatment technologies currently available. Furthermore, subsequent to the issuance of the ROD, EPA promulgated a proposed Maximum Contaminant Level ("MCL") of five ppb for TCE**.

Reduction of TCE to a level of five ppb should also reduce other contaminants sufficiently to comply with the 10^{-6} risk level. However, the pilot study and ensuing monitoring program will determine the effectiveness of the treatment systems in meeting this requirement. If EPA determines that the concentration of any one contaminant is above the 10^{-6} risk level in the effluent,

* Federal Register, 40 CFR Part 141, November 13, 1985. National Primary Drinking Water Regulations; Volatile Synthetic Organic Chemicals. The RMCL for TCE is zero.

** Federal Register, 40 CFR Part 141 and 142, November 13, 1985. National Primary Drinking Water Regulations; Volatile Synthetic Organic Chemicals.

Respondents shall be responsible for appropriately adjusting the operating parameters of the treatment systems or modifying the treatment systems to meet or exceed the 10^{-6} requirement.

The goal of this Remedial Action is to reduce each volatile organic contaminant in the drinking water to a concentration which equates to or is less than a 10^{-6} risk level, as determined by EPA.

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B. 1. Within twenty-eight (28) days of the effective date of this Order, and according to the schedule set forth below, Respondents shall submit to EPA for review and approval a detailed Statement of Work ("SOW") for implementation of the following activities: design and construction of the air strippers on the municipal wells; design and construction of two water mains (one main north of the Allegheny River, the other main south of the river, as described in the ROD); hook-ups to the water mains; operation and maintenance of the treatment systems and the water main. Attachment IV of this Order shall be used as a guide in preparing the SOW, although Attachment IV should not be construed as limiting the content of the SOW. The SOW shall address, though should not necessarily be limited to, implementation of the following items:

- a. Pilot Study (see § III. C., below);
- b. Plans and Specifications;
- c. Operation and Maintenance Plan (see § IV. E., below);
- d. Quality Assurance Project Plan;
- e. Site Safety Plan;
- f. Schedule.

2. EPA will review and comment on the SOW. Within fourteen (14) days of Respondents' receipt of EPA's comments, Respondents shall modify the SOW as required by those comments or as otherwise approved by EPA and resubmit the SOW, as modified, to EPA. At such time as EPA determines that the SOW is acceptable, EPA will transmit to Respondents a written statement to that effect. Respondents shall perform the remedial design in conformance with the EPA-approved SOW and Attachment I to this Order.

C. 1. Within thirty-five (35) days of Respondents' receipt of EPA approval of the SOW, Respondents shall conduct a predesign site inspection and the pilot study and submit to EPA a Predesign

Site Inspection Report ("PDI Report") and a Pilot Study Report ("PS Report"). However, in lieu of performing a pilot study Respondents may utilize data from the pilot study performed by EPA in 1982, and other available information to design the air strippers. However, this should not be construed as limiting the Respondents' responsibility for achieving the 10^{-6} risk level for each volatile organic contaminant in the effluent from each air stripper.

The predesign site inspection shall include but shall not necessarily be limited to a survey, an assessment of municipal design requirements, and a determination of any existing construction restrictions. The pilot study shall include field evaluation of design parameters of the air strippers, evaluation of the removal efficiency for all contaminants present in the influent, and assessment of any pretreatment requirements. Pilot study procedures for sampling, analyses, QA/QC, health and safety, chain of custody, and contingencies shall conform with the requirements of the EPA-approved SMP. The PDI Report shall summarize the activities carried out in the predesign inspection and shall include engineering drawings of the existing water supply equipment, flow diagrams of the water distribution system, and a survey report. The PS Report shall present, in detail, the results of pilot study conducted.

2. EPA will review and comment on the PDI Report and the PS Report. Within fourteen (14) days of Respondents' receipt of EPA's comments, Respondents shall modify either or both of these reports as required by the EPA comments or as otherwise approved by EPA and shall resubmit them, as modified, to EPA. At such time as EPA determines that the PDI Report and the PS Report are acceptable, EPA will transmit to Respondents a written statement to that effect.

D. Within forty-two (42) days of Respondents' receipt of the EPA approval of the PDI Report and the PS Report. Respondents shall submit the Final Design to EPA for review and approval. The Final Design shall consist of the remedial design plans and specifications, one hundred percent (100%) complete; the final construction cost estimate; the final draft Operation and Maintenance ("O & M") Plan (the O & M Plan will not be finalized until after the Prefinal Construction Conference); the final Quality Assurance Project Plan; and the Site Safety Plan specifications.

E. EPA will review and comment on the Final Design. Within fourteen (14) days of Respondents' receipt of the EPA comments,

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Respondents shall modify the Final Design as required by those comments or as otherwise approved by EPA and shall submit the modified document to EPA. At such time as EPA determines that the Final Design is acceptable, EPA will transmit to Respondents a written statement to that effect.

IV. REMEDIAL ACTION (CONSTRUCTION)

A. 1. Within twenty-eight (28) days of Respondents' receipt of EPA approval of the Final Design, Respondents shall submit to EPA for review and approval the Contractor Quality Control ("CQC") Plan and the Contractor Site Safety ("CSS") Plan. EPA shall review and comment on the CQC Plan and the CSS Plan. Within fourteen (14) days of Respondents' receipt of EPA's comments, Respondents shall modify the CQC Plan and the CSS Plan as required by those comments or as otherwise approved by EPA and shall submit the modified documents to EPA. At such time that EPA determines that the CQC Plan and the CSS Plan are acceptable, EPA will transmit to Respondents a written statement to that effect.

2. Within seven (7) days of Respondents' receipt of EPA approval of the CQC Plan and the CSS Plan, Respondents shall initiate construction in conformance with the EPA accepted Final Design.

B. Progress Reports

Respondents shall submit detailed progress reports to EPA on the fifteenth (15th) day of each month following the day construction is initiated. The progress reports shall develop a chronological record of all site activities and shall include but should not necessarily be limited to the elements set forth in Attachment V.

C. Initial Testing Program

1. Within forty-two days following commencement of construction, Respondents shall submit to EPA for review and approval a draft program for initial testing of the air strippers and water lines (the "Initial Testing Program") to determine their conformance with the Final Design. Testing of the air strippers (influent and effluent sampling and analysis) shall be performed to determine their conformance with all appropriate criteria (e.g., New York State health requirements regarding bacterial concentrations), including the requirement of the ROD and this Order that

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they achieve removal of volatile organic contaminants down to or below a concentration commensurate with the 10^{-6} risk level.

2. EPA will review and comment on the Initial Testing Program. Within fourteen (14) days of Respondents' receipt of EPA's comments, Respondents shall modify the Initial Testing Program as required by those comments or as otherwise approved by EPA, and shall submit the modified document to EPA. At such time as EPA determines that the Initial Testing Program is acceptable, EPA will transmit to Respondents a written statement to that effect.

D. Prefinal Construction Conference

Within ninety (90) days following commencement of construction, Respondents and their contractors shall be available for a conference with EPA (DEC and/or any designated representative of EPA also may attend) (the "Prefinal Construction Conference"). The agenda for the Prefinal Construction Conference will include but will not necessarily be limited to:

1. Final O&M Plan submittal;
2. O&M responsibilities;
3. Facility startup and testing;
4. Operator training.

E. O & M Plan

If EPA determines that the final draft O & M Plan (see III.D., above), as set forth in and as modified according to EPA comments on the Final Design, need not be altered, EPA will provide Respondents with a written statement to the effect that the final draft O & M Plan is acceptable and will be considered to be the final O & M Plan.

If EPA determines that the final draft O & M Plan should be altered, EPA will provide to Respondents a written statement describing the required alterations (the "O & M Comments"). Within fourteen (14) days of Respondents' receipt of the O & M Comments, Respondents shall submit to EPA a final O & M Plan which conforms to the O & M Comments. At such time as EPA determines that the O & M Plan is acceptable, EPA will transmit to Respondents a written statement to that effect.

Implementation of the O & M Plan shall commence immediately upon Respondents' receipt of EPA Startup Approval (see IV. H, below).

F. Within one hundred fifty-four (154) days following commencement of construction, Respondents shall complete construction and operational testing of all equipment, including the air strippers and the water lines, in conformance with the EPA-approved Initial Testing Program. Respondents shall submit to EPA the results of the Initial Testing Program including laboratory data with all pertinent QA/QC documentation, and the certification of a Professional Engineer licensed by the State of New York that the completed remedial action conforms to the Final Design and the requirement that the air strippers achieve removal to the 10^{-6} risk level.

If the remedial action has not achieved Final Design requirements, the 10^{-6} risk level or any other requirement of this Order, the air stripper testing results and QA/QC documentation shall be accompanied by a detailed analysis of nonconforming elements, as well as by a proposal and schedule for bringing those elements into conformance. EPA will review these submittals and Respondents shall proceed as further directed by EPA. Notwithstanding any such actions that Respondents may take to achieve compliance, EPA may construe Respondents' failure to achieve full compliance within the time period set forth above as a violation of this Order. Furthermore, any such failure should be addressed as would any delay in performance under this Order (see Paragraph 29. H., below).

G. Final Inspection

Within one hundred sixty-one (161) days following commencement of construction, Respondents and the contractor shall be available for a Final Inspection in conjunction with EPA and/or EPA's designated representatives. The Final Inspection shall include a walk-through of the entire project to determine project completeness and consistency with the Final Design. During the Final Inspection, all equipment shall be operationally tested.

H. Start-up

Following the Final Inspection, if EPA determines that the remedial action (i.e., excluding O & M) is acceptable, EPA will transmit to Respondents a written statement to that effect. Respondents shall commence operation of the treatment system and water lines as soon as possible following Respondents' receipt of that EPA correspondence. However, Respondents may not commence operations if the project does not comply with substantive State and local health requirements. Respondents are responsible for applying for and obtaining all such authorizations to ensure the earliest possible startup date. Respondents shall provide EPA with a copy of each such application upon preparation and submittal thereof, and each such authorization upon receipt.

I. O & M and Site Monitoring

Respondents shall initiate operation and maintenance ("O & M") of the treatment systems and water supply lines in accordance with the approved O & M Plan. The O & M Plan shall address long-term O & M of the treatment systems and of the water supply lines extended into the towns of Olean and Portville. Respondents shall perform O & M and shall be responsible for any failure of operation or maintenance until treatment of water for drinking purposes at municipal and private wells is no longer necessary, i.e., until EPA determines that source and ground water conditions are such that the 10^{-6} risk level is and will continue to be achieved. The O & M Plan shall provide for monthly submittal of a written report summarizing O & M activities and problems during the preceeding month, as well as water quality data for the preceding month, with QA/QC documentation (the "O & M Reports"). The O & M Reports shall be submitted to EPA by the tenth day of each month following commencement of O & M activities.

Respondents shall continue site monitoring in accordance with the SMP.

24. Availability of Information

A. Upon timely request by EPA, Respondents shall provide EPA or its designated representative with duplicate and/or split samples of any samples collected in furtherance of work performed in accordance with this Order.

B. All information, including all data and records, collected, compiled or created in connection with work conducted under this Order, and also including contractual documents maintained or created by Respondents or their contractors or consultants in connection with the implementation of work under this Order, shall be disclosed to EPA on request and without delay.

C. No information collected, compiled or created by Respondents or any person acting on behalf of Respondents in connection with work conducted under this Order shall be destroyed without either the express written approval of EPA or a written offer by the Respondents to provide such material to EPA, followed by receipt of EPA's written rejection of that offer. EPA's failure to accept the offer of Respondents within 120 days shall constitute a rejection. All contractual documents created for the purpose of or relating to performance of work under this Order shall be similarly maintained.

D. All records pertinent to this Order which are prepared or compiled by Respondents and delivered to EPA shall be available to the public unless identified as confidential by Respondents in conformance with 40 CFR, Part 2. (Furthermore, it is understood by the parties that EPA may release all such records to DEC, and DEC may make those records available to the public unless Respondent conforms with appropriate New York State law and regulations regarding confidentiality.) Records so identified shall be treated as confidential only in accordance with the applicable confidentiality regulations. Sampling and other monitoring data, and hydrological and geological information, will not be considered confidential.

25. Reporting

The original and two copies of all correspondence pertinent to implementation of the requirements of this Order, and all reports, work plans and other writings required under the terms of this Order to be submitted to EPA, shall be sent by United States Postal Service ("USPS") certified mail or Express Mail, return receipt requested, or by private express carrier, to:

Chief, Site Investigation and Compliance Branch
Emergency and Remedial Response Division
U.S. Environmental Protection Agency
26 Federal Plaza
New York, New York 10278

Attention: Olean Well Fields Project Manager

One copy of each such writing shall be transmitted by USPS certified mail or Express Mail, return receipt requested, or by private express carrier, to:

Chief, New York/Caribbean Superfund Branch
Office of Regional Counsel
U.S. Environmental Protection Agency
26 Federal Plaza
New York, New York 10278

One copy of each such writing shall be transmitted by USPS certified mail or Express Mail, return receipt requested, or by private express carrier, to:

Norman H. Nosenchuck, P.E.
Director, Division of Solid and Hazardous Waste
New York State Department of Environmental
Conservation
50 Wolf Road
Albany, New York 12233-0001

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One copy of each such writing shall be transmitted by USPS certified mail or Express Mail, return receipt requested, or by private express carrier, to:

Gil Faustel, Chief
Design and Construction Section
Bureau of Public Water Supply Protection
New York State Department of Health
Empire State Plaza
Tower Building, 4th Floor
Albany, New York 12237

Ron Tremontano
Bureau of Toxic Substances Assessment
New York State Department of Health
Empire State Plaza
Tower Building, 3rd Floor
Albany, New York 12237

Chester Halgas, Director
Environmental Health Services
Cattaraugus County Department of Health
Box 630
Olean, New York 14760

One copy of each such writing shall be transmitted by USPS certified mail or Express Mail, return receipt requested, or by private express carrier, to:

Peter Marcus, Assistant Director
Department of Public Works
City of Olean
Olean, New York 14760

26. EPA Communications and Decisions

A. Written communications from EPA to Respondents who comply with this Order will be sent to the Project Coordinator designated pursuant to paragraph 27.A. of this Order.

B. All EPA comments respecting deliverables submitted by Respondents under this Order, and all EPA decisions relating to implementation of this Order, will be communicated in writing to Respondents by the Chief, Site Investigation and Compliance Branch, EPA Region II; the Director, Emergency and Remedial Response Division, EPA Region II; or the Regional Administrator, EPA Region II.

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C. No informal advice, guidance, suggestions or comments by EPA or DEC regarding reports, plans, specifications, schedules or any other writings, work outputs or deliverables submitted by Respondents shall be construed as relieving Respondents of their obligation to obtain such formal approvals or acceptances as may be required by this Order.

D. EPA will be the final arbiter as to the sufficiency and/or acceptability of all work conducted under this Order, including but not limited to each required submittal and deliverable, and all design and construction activities. Respondents' conduct or purported conduct of any work under this Order does not entitle Respondents to any rights regarding determinations of sufficiency or acceptability with respect to such work.

E. Respondents who perform work in accordance with this Order may, and are encouraged to confer with EPA during the course of such performance.

27. Respondents' Project Coordinator
and EPA Inspection Authority

A. Within five (5) days of the effective date of this Order, Respondents shall provide EPA with the name, title, address, phone number and qualifications of its designated Project Coordinator, who shall be responsible for oversight of the implementation of this Order, including all activities required hereunder. The Project Coordinator shall have technical expertise sufficient to adequately oversee all aspects of the work contemplated by this Order. All correspondence and other writings from EPA to Respondents which are pertinent to the conduct of work under this Order shall be made available to the Project Coordinator. Respondents shall have the right to change their Project Coordinator. However, Respondents shall notify EPA in writing at least five (5) working days prior to any such change. If such advance notice is not feasible, notice shall be given by the best means and as far in advance as possible under the circumstances.

B. To the extent possible, and recognizing that Respondents do not own, operate, possess or control all premises upon which work under this Order may be performed, Respondents shall provide EPA and EPA's designated representatives, including but not limited to their employees, agents, contractors and consultants, with access to and freedom of movement at the site and any other premises where work under this Order is performed, at all reasonable times, including but not necessarily limited to any

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time that work under this Order actually is being performed, for the purposes of inspecting or observing Respondents' progress in implementing the requirements of this Order, verifying the data submitted to EPA by Respondents, or for any other purpose reasonably related to EPA oversight of the implementation of this Order. Furthermore, Respondents shall permit such persons to inspect and copy all records, including all data, pertinent to work undertaken pursuant to this Order, and to freely utilize cameras and sound recording equipment. Notwithstanding the above, EPA hereby retains all its inspection authority under CERCLA and RCRA. DEC and its designated representatives, as well as any EPA contractor and its representatives, shall be eligible to be designated representatives of EPA under this paragraph. To the extent possible, Respondents shall forthwith honor all such requests for access, and shall not unreasonably interfere with EPA access to or movement about such premises.

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

28. Response and Enforcement Actions

A. In the event that Respondents fail to adhere to any requirement of this Order; or, notwithstanding compliance with the terms of this Order, upon the occurrence or discovery of circumstances as to which EPA would be empowered to take any further response action, including but not limited to a removal action; or in the event of a release or threatened release not addressed by this Order; or upon the determination that action beyond the terms of this Order is necessary to abate an imminent and substantial endangerment to the public health or welfare or the environment; or under any other circumstances authorized by law, EPA may institute federally funded response activities and subsequently pursue cost recovery actions available, and/or EPA may issue orders to Respondents pursuant to available statutory authority.

B. EPA reserves the power to bring actions against Respondents pursuant to Section 107 of CERCLA, 42 U.S.C. §9607, for recovery of past and future costs incurred by EPA in connection with investigative, enforcement, oversight and/or response activities regarding the site.

C. EPA reserves its power to take enforcement actions, including actions for monetary penalties, for any violation of law or this Order. Such enforcement actions may include, though

need not be limited to, actions pursuant to Section 106(b) of CERCLA, 42 U.S.C. §9606(b), seeking up to \$5000 per day in penalties for any willful violation or any failure or refusal of Respondents to comply with this Order or any portion hereof. Failure to comply with this Order or any portion hereof without sufficient cause also may subject Respondents to an action under Section 107(c)(3) of CERCLA, 42 U.S.C. §9607(c)(3), for punitive damages in the amount of three times the total of all costs incurred by the government as a result of Respondents' failure.

D. By this Order or any provision hereof, EPA does not intend to preclude or hinder the State of New York from engaging in such response or enforcement actions as may be authorized by law.

29. General Provisions

A. At any time following the effective date of this Order, Respondents shall notify EPA as soon as possible in the event of a sudden or significant change in known conditions at the site, such as (but not limited to) an order of magnitude increase in contamination as exhibited by sampling and analysis pursuant to the Site Monitoring Plan, or if Respondents obtain any information which could lead to a change in activities to be performed under this Order.

B. All actions performed by Respondents in implementing this Order shall be in compliance with all applicable federal, state, and local laws and regulations, including but not limited to the NCP. The NCP, expected to be effective February 18, 1986, provides that Federal, State, and local permits are not required for remedial actions taken pursuant to Federal action under Section 106 of CERCLA. However, Respondents shall conform to substantive State and local health requirements. Respondents shall be responsible for timely obtaining all necessary authorizations, including access to those portions of the site and other premises not under Respondents' ownership or control. This Order does not convey any rights of access to Respondents. However, EPA may assist Respondents in obtaining access. Respondents shall inform the EPA Project Manager as expeditiously as possible if Respondents believe that circumstances regarding access may delay or substantially threaten to delay implementation of this Order.

C. All reports, plans and other deliverables that Respondents are required by this Order to submit to EPA for acceptance or approval shall be deemed to be incorporated into this Order upon EPA acceptance or approval of each such deliverable.

D. Neither the United States Government nor any agency thereof shall be liable for any injuries or damages to persons or property resulting from acts or omissions of Respondents, their officers, directors, employees, agents, servants, receivers, trustees, successors or assigns, or of any persons, including but not limited to firms, corporations, subsidiaries, contractors or consultants, in carrying out activities pursuant to this Order. Neither EPA nor the United States Government nor any agency thereof shall be held out as a party to any contract entered into by Respondents in carrying out activities pursuant to this Order.

E. Nothing contained in this Order is intended to affect any right, claim, interest, defense or cause of action of EPA or any Respondent hereto with respect to third parties.

F. As may be directed by EPA, Respondents shall give EPA advance notice of expected activities under this Order.

G. Respondents' activities under this Order shall be performed within the time limits set forth herein unless performance is delayed by events which constitute a force majeure. For purposes of this Order, a force majeure is defined as any event arising from causes beyond Respondents' reasonable control. Financial considerations of Respondents shall not be considered circumstances beyond the control of Respondents. In the event of a force majeure, Respondents shall be obligated to perform the affected activities within a time period which shall not exceed the time period of the delay attributed to the force majeure, provided, however, that no deadline shall be extended beyond a period of time that is reasonably necessary.

Respondents shall verbally notify EPA's Project Manager as soon as possible following Respondents' awareness that circumstances constituting a force majeure have occurred or are likely to occur. If the EPA Project Manager cannot be contacted, Respondents shall attempt to leave a message at his or her office relating that a force majeure has occurred or is likely to occur. In addition, Respondents shall notify EPA in writing, as soon as possible but not later than ten (10) days after Respondents become aware that circumstances constituting a force majeure have occurred. Such written notice shall be accompanied by all available pertinent documentation, including but not limited to third-party correspondence, and shall contain the following:

- 1) a description of the circumstances, and Respondents' rationale for interpreting such circumstances as being beyond Respondents' control;

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- 2) the actions (including pertinent dates) that Respondents have taken and/or plan to take to minimize any delay; and,
- 3) the date by which or the time period within which Respondents propose to complete the delayed activities.

Respondents' failure to timely notify EPA as required by this subparagraph shall render the remaining provisions of this subparagraph null and void insofar as they may entitle Respondents to an extension of time.

H. Respondents shall use their best efforts to avoid or minimize any delay or prevention of performance of their obligations under this Order. Respondents shall provide written notification to EPA of any circumstance which has caused or which Respondents believe is likely to cause a delay of performance. Such written notice

- 1) shall be provided as soon as possible, but not later than ten (10) days after the date when Respondents knew or should have known of the occurrence of such circumstances;
- 2) shall be accompanied by all available documentation, including but not limited to third-party correspondence; and,
- 3) shall include,
 - a) a description of the circumstances causing or potentially causing the delay;
 - b) the actions (including pertinent dates) that Respondents have taken and/or plan to take to minimize any delay; and,
 - c) the date by which or time period within which Respondents propose to complete delayed activities.

I. To the extent necessary for adequate EPA oversight of Respondents' work under this Order, so that EPA can ensure the protection of the public health and welfare and the environment and that implementation is in conformance with with this Order and the NCP, Respondents shall provide that each employee, agent, consultant and contractor of Respondents who engages in activities under this Order shall, upon reasonable request, be available to and shall cooperate with EPA. Accordingly, each contract (for work under this Order) between Respondents and any consultant or contractor, and between any such consultant or

contractor and its subcontractor, shall contain language providing for such availability and cooperation with EPA.

J. Notwithstanding actions that Respondents may take with respect to the Olean Well Field Site, nothing herein shall constitute or be construed as a satisfaction or release from liability as to any Respondent, and each Respondent is hereby expressly not released from any liability with respect to the Site.

K. Nothing in this Order shall constitute or be construed as a decision on pre-authorization of funds under CERCLA.

30. Opportunity To Confer and Effective Date

A. Within ten (10) business days after receipt of this Order, any Respondent may confer with EPA with respect to this Order, including its applicability, the factual determinations upon which the Order is based, the appropriateness of any actions Respondents are ordered to take, or any other relevant issue or contention regarding this Order.

B. Any request for a conference should be made to:

Lawrence W. Diamond, Chief
New York/Caribbean Superfund Branch
Office of Regional Counsel
U.S. Environmental Protection Agency
Room 437
26 Federal Plaza
New York, New York 10278

(212-264-4434)

Any such request that initially is made orally must be confirmed in writing.

C. With respect to each Respondent, this Order shall be effective on the eleventh (11th) business day following receipt by such Respondent unless otherwise notified in writing by EPA.

D. Within three (3) working days of the effective date of this Order, each Respondent (or any combination(s) of Respondents) shall inform EPA in writing of its intent to comply with the terms of this Order ("Notice of Intent"). If EPA does not receive a Notice of Intent within the specified period, EPA may proceed as if no Respondent intends to comply with this Order.

IT IS SO ORDERED.

U.S. ENVIRONMENTAL PROTECTION AGENCY

Christopher J. Daggett

Christopher J. Daggett
Regional Administrator
U.S. Environmental Protection Agency
Region II

FEBRUARY 7, 1986

Date

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