

**SAIBER LLC**

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Attorneys for Third-Party Defendant  
Veolia ES Technical Solutions, L.L.C.

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NEW JERSEY DEPARTMENT OF  
ENVIRONMENTAL PROTECTION and  
THE ADMINISTRATOR OF THE NEW  
JERSEY SPILL COMPENSATION FUND,

Plaintiffs,

v.

OCCIDENTAL CHEMICAL CORPORATION,  
TIERRA SOLUTIONS, INC., MAXUS ENERGY  
CORPORATION, REPSOL YPF, S.A., YPF, S.A.,  
YPF HOLDINGS, INC. and CLH HOLDINGS,  
INC.,

Defendants.

MAXUS ENERGY CORPORATION and TIERRA  
SOLUTIONS,  
INC.,

Third-Party Plaintiffs,

vs.

3M COMPANY, *et al.*,

Third-Party Defendants.

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SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION: ESSEX COUNTY

DOCKET NO. L-9868-05 (PASR)

CIVIL ACTION

**CMO XII SUPPLEMENT TO THIRD-  
PARTY INITIAL DISCLOSURE**

In accordance with the Court's Case Management Order XII ("CMO XII") entered June 28, 2010 and the New Jersey Rules of Court, Third-Party Defendant Veolia ES Technical Solutions, L.L.C. ("Veolia")<sup>1</sup>, hereby provides its Supplement to Initial Disclosure.

Veolia's investigation in this matter is continuing. Accordingly, it reserves the right to supplement, clarify, and revise these disclosures to the extent additional information becomes available or is obtained through discovery. Further, Veolia reserves the right to amend these disclosures to the extent the claims brought by or alleged against Veolia in this litigation are amended.

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<sup>1</sup> Please note that the actual owner of the site at issue was Marisol, Inc. ("Marisol"), which was subsequently acquired by Veolia in 2007 and that all references to Veolia for events prior to 2007 are references to Marisol.

## Reservations

1. Veolia reserves the right to object to the production of any documents or other information on any ground, including relevance and undue burden, and to assert any applicable privilege, including the attorney-client privilege, the work product doctrine, the common interest doctrine, confidentiality, trade secret, State and Federal Homeland Security confidentiality, and any other applicable privilege or protection. These disclosures are not intended to prejudice or waive any privileges or objections Veolia may have with respect to any outstanding or subsequent requests for discovery.

2. Veolia reserves the right to object to the use of these disclosures, in whole or in part, at any time (including at trial of this or any other action) and for any purpose on the grounds of relevancy, competency, materiality, admissibility, hearsay, privilege, work-product immunity, or for any other reason.

3. The time period covered by the allegations in the Plaintiffs' Second Amended Complaint is quite long and encompasses at least six decades. The geographic scope of the Second Amended Complaint is also quite broad, covering the "Newark Bay Complex," which spans the "lower 17 miles of the Passaic River, Newark Bay, the lower reaches of the Hackensack River, the Arthur Kill, the Kill van Kull, and into adjacent waters and sediments." Second Amended Complaint, ¶ 1. The scope of inquiry required by Plaintiffs and Third-Party Defendants is accordingly quite broad and potentially burdensome. Further, the brief period of ownership of 80 Lister Avenue (the "Site") alleged by Third Party Plaintiffs in the Third Party Complaint ended approximately twenty five (25) years ago. Third Party Complaint "B", ¶ 238. Accordingly, Veolia is continuing its efforts to locate any and all available relevant documents. Veolia is therefore engaged in a continuing investigation and reserves the right to supplement and modify these disclosures.

4. "Documents", excluding electronic mail, shall have the meaning set forth in this Court's August 11, 2009 Order for Preservation of Documents and Data.

## Supplemental Initial Disclosures

a. A copy of all Documents relating to the following information for the site(s), properties and/or operations with which the Third-Party Defendant is associated in the Third-Party Complaint:

i. the release or discharge of Hazardous Materials from or at that Third Party Defendant's properties or operations;

**Response** - Veolia objects to this request to the extent that it suggests or implies there was any discharge either at the Site or offsite of the Site or that there was a release of Hazardous Materials during the time of Veolia's ownership/operation of the 80 Lister Avenue Site (the "Site") and to the extent that it suggests or implies that Veolia operated at the Site. To the best of Veolia's knowledge and belief, there was no operation at this Site and no discharge at the Site during Veolia's brief ownership and hence there are no responsive documents respecting same in Veolia's possession,

custody or control. Veolia's responses are subject to the exceptions set forth in the preceding sentences, and to the exceptions set forth in Case Management Order VIII ("CMO VIII").

ii. the operations, manufacturing and/or production processes, any Hazardous Materials stored or utilized on the Site, and any sampling that took place on the Site and any sampling or testing of the materials, by products or waste products used in connection therewith;

**Response** –Veolia objects to this request to the extent that it requires production of documents relating to “operations, manufacturing and/or production processes” and “sampling” or “testing” not related to an alleged release or discharge of a Hazardous Material. To the best of Veolia's knowledge and belief, there are no documents responsive to this request in Veolia's possession, custody or control. Veolia's responses are subject to the exceptions set forth in the preceding sentences, and to the exceptions set forth in CMO VIII.

iii. sampling results from environmental, chemical, or biological testing conducted at that Third Party Defendant's properties; and

**Response** – Veolia objects to this request to the extent that it suggests or implies that Veolia conducted sampling on the Site. To the best of Veolia's knowledge and belief, there was no sampling at the Site by Veolia during Veolia's brief ownership and hence there are no responsive documents respecting same in Veolia's possession, custody or control. Veolia's responses are subject to the exceptions set forth in the preceding sentences, and to the exceptions set forth in CMO VIII.

iv. any communications involving that Third-Party Defendant and any branch, department, agency or instrumentality of municipal, State or federal government relating to any discharges or releases of Hazardous Materials or this litigation.

**Response** – Veolia objects to this request to the extent that it pertains to any communication not related to the Site which is the subject of the Third-Party Plaintiffs' allegations against Veolia. Subject to the exceptions set forth in the preceding sentence, and to the exceptions set forth in CMO VIII, other than the attached 1984 Administrative Consent Order, there are no responsive documents respecting same in Veolia's possession, custody or control.

b. Any Documents relating to any industrial waste containing Hazardous Materials that was transported to, processed or treated at, or discharged from any of the sites and/or properties with which a Third Party Defendant is associated in the Third Party Complaints.

**Response** - Veolia objects to this request to the extent that it suggests or implies there were any Hazardous Materials transported to, processed or treated at, or discharged on the Site during the time period Veolia owned the Site, and to the extent that it suggests or implies that Veolia operated on/manufactured on the Site. To the best of Veolia's knowledge and belief, there are no documents responsive to this request in Veolia's possession, custody or control. Veolia's responses are subject to the exceptions set forth in the preceding sentences, and to the exceptions set forth in CMO VIII.

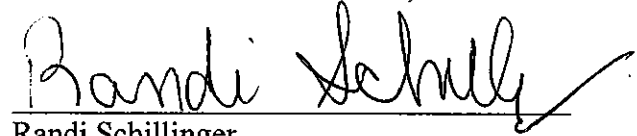
c. Any insurance or indemnity agreement under which another person or entity may be liable to satisfy all or part of a possible judgment in this action or to indemnify or reimburse for payments made to satisfy said judgment.

**Response** – Subject to the exceptions set forth in CMO VIII, the privilege log produced herewith, and to the Confidentiality Order, see attached documents.

Dated: August 30, 2010

Respectfully submitted,

SAIBER LLC  
Attorney for Third-Party Defendant  
Veolia ES Technical Solutions, L.L.C.

  
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Randi Schillinger

Randi Schillinger, Esq.  
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Veolia ES Technical Solutions, L.L.C.

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NEW JERSEY DEPARTMENT OF  
ENVIRONMENTAL PROTECTION and  
THE ADMINISTRATOR OF THE NEW  
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OCCIDENTAL CHEMICAL  
CORPORATION, TIERRA SOLUTIONS,  
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REPSOL YPF, S.A., YPF, S.A., YPF  
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SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION: ESSEX COUNTY

DOCKET NO. L-9868-05 (PASR)

CIVIL ACTION

**CERTIFICATE OF SERVICE**

**RANDI SCHILLINGER, ESQ.** hereby certifies as follows:

1. I am an attorney-at-law of the State of New Jersey, and a partner at the law firm of Saiber LLC, which firm represents Third-Party Defendant Veolia ES Technical Solutions, L.L.C. ("Veolia").

2. I hereby certify that Veolia's Supplement to Third-Party Initial Disclosures was served electronically on all parties which have consented to service by posting on www.cvg.ctsummation.com on August 30, 2010, pursuant to Case Management Order XII.

3. I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

  
Randi Schillinger

Dated: August 30, 2010

**NJDEP v. Occidental Chemical Corp., et al.**  
**Docket No. ESX-L-9868-05 (PASR)**

**VEOLIA ES TECHNICAL SOLUTIONS, L.L.C. PRIVILEGE LOG**

DOCUMENT DATE	AUTHOR	RECIPIENT(S)	SUBJECT MATTER	PROTECTION/ PRIVILEGE ASSERTED
September 6, 2006 Correspondence	Randi Schillinger, Esq., Saiber, Schlesinger, Satz & Goldstein, LLC	Greig Siedor, Esq., Veolia ES Technical Solutions, L.L.C.	Lister Avenue Property	Attorney-client privilege and work product privilege
December 8, 2006 Correspondence	Randi Schillinger, Esq., Saiber, Schlesinger, Satz & Goldstein, LLC	Greig Siedor, Esq., Veolia ES Technical Solutions, L.L.C.	Lister Avenue Property	Attorney-client privilege and work product privilege
January 8, 2007 Correspondence	Randi Schillinger, Esq., Saiber, Schlesinger, Satz & Goldstein, LLC	Greig Siedor, Esq., Veolia ES Technical Solutions, L.L.C.	Lister Avenue Property	Attorney-client privilege and work product privilege
January 19, 2007 Memorandum	Lauren M. Limauro, Esq., Saiber, Schlesinger, Satz & Goldstein, LLC	Randi Schillinger, Esq., Saiber, Schlesinger, Satz & Goldstein, LLC, and Greig Siedor, Esq., Veolia ES Technical Solutions, L.L.C.	Memorandum regarding interview with Marisol employee	Attorney-client privilege and work product privilege
February 1, 2007 Memorandum	Randi Schillinger, Esq., and Lauren M. Limauro, Esq., Saiber, Schlesinger, Satz & Goldstein, LLC	James Bell, Greig Siedor, Esq., Peter Mattem, Veolia ES Technical Solutions, L.L.C.	Insurance for Marisol	Attorney-client privilege and work product privilege
February 6, 2007 Memorandum	Randi Schillinger, Esq., and Lauren M. Limauro, Esq., Saiber Schlesinger Satz & Goldstein, LLC	James Bell, Greig Siedor, Esq., Veolia ES Technical Solutions, LLC	Due Diligence for Stock Purchase	Attorney-client privilege and work product privilege
May 1, 2007 Memorandum	Randi Schillinger, Esq., and Lauren M. Limauro, Esq., Saiber Schlesinger Satz & Goldstein, LLC	James Bell, Greig Siedor, Esq., Veolia ES Technical Solutions, LLC	Due Diligence for Stock Purchase	Attorney-client privilege and work product privilege
August 20, 1998 Settlement Agreement	Insurance Company and Marisol, Inc.		Settlement Agreement	Confidential Information

# ADMIRAL



# INSURANCE COMPANY

A STOCK COMPANY

(herein called "the Company")

## GENERAL LIABILITY POLICY

Standard Provisions

NAMED INSURED

Marisol, Inc.  
125 Factory Lane  
Middlesex, NJ 08846

MAILING ADDRESS

### Kohler-Mac Bean Agency

126 SOUTH AVENUE, EAST  
CRANFORD, N.J. 07016  
201-276-3000

*Representing The Travelers*

In consideration of the payment of the premium, in reliance upon the statements in the declarations made a part hereof and subject to all of the terms of this policy, the Company agrees with the Named Insured as follows:

### COVERAGE

"Coverage is afforded under this policy in accordance with the specific Coverage Parts identified in the Declarations as being a part of this policy and only to Bodily Injury or Property Damage which occurs within the policy territory during the policy period."

### SUPPLEMENTARY PAYMENTS

The Company will pay, in addition to the applicable limit of liability:

- (a) all expenses incurred by the Company all costs taxed against the insured in any suit defended by the Company and all interest on the entire amount of any judgment therein which accrues after entry of the judgment and before the Company has paid or tendered or deposited in court that part of the judgment which does not exceed the limit of the Company's liability thereon;
- (b) premiums on appeal bonds required in any such suit, premiums on bonds to release attachments in any such suit for an amount not in excess of the applicable limit of liability of this policy, and the cost of bail bonds required

of the Insured because of accident or traffic law violation arising out of the use of any vehicle to which this policy applies, not to exceed \$250 per bail bond, but the Company shall have no obligation to apply for or furnish any such bonds.

- (c) expenses incurred by the Insured for first aid to others at the time of an accident, for bodily injury to which this policy applies;
- (d) reasonable expenses incurred by the Insured at the Company's request in assisting the Company in the investigation or defense of any claim or suit, including actual loss of earnings not to exceed \$25 per day

### DEFINITIONS

When used in this policy (including endorsements forming a part hereof)

"automobile" means a land motor vehicle, trailer or semitrailer designed for travel on public roads (including any machinery or apparatus attached thereto), but does not include mobile equipment.

"loading or unloading" with respect to an automobile means the handling of property after it is moved from the place where it is accepted for movement into or onto an automobile or while it is in or on an automobile or while it is being moved from an automobile to the place where it is finally delivered, but "loading or unloading" does not include the movement of property by means of a mechanical device (other than a hand truck) not attached to the automobile.

"bodily injury" means bodily injury, sickness or disease sustained by any person which occurs during the policy period, including death at any time resulting therefrom;

"collapse hazard" includes "structural property damage" as defined herein and property damage to any other property at any time resulting therefrom. "Structural property damage" means the collapse of or structural injury to any building or structure due to (1) grading or land excavating, borrowing, filling, back-filling, tunnelling, pile driving, cofferdam work or caisson work or (2) moving, shoring, underpinning, raising or demolition of any building or structure or removal or rebuilding of any structural support thereof. The collapse hazard does not include property damage (1) arising out of operations performed for the Named Insured by independent contractors, or (2) included within the completed operations hazard or the underground property damage hazard, or (3) for which liability is assumed by the Insured under an incidental contract.

"completed operations hazard" includes bodily injury and property damage arising out of operations or reliance upon a representation or warranty made at any time with respect thereto, but only if the bodily injury or property damage occurs after such operations have been completed or abandoned and occurs away from premises owned by or rented to the Named Insured. "Operations" include materials, parts or equipment furnished in connection therewith. Operations shall be deemed completed at the earliest of the following times:

- (1) when all operations to be performed by or on behalf of the Named Insured under the contract have been completed.
- (2) when all operations to be performed by or on behalf of the Named Insured at the site of the operations have been completed, or
- (3) when the portion of the work out of which the injury or damage arises has been put to its intended use by any person or organization other than another contractor or subcontractor engaged in performing operations for a principal as a part of the same project.

Operations which may require further service or maintenance work, or correction, repair or replacement because of any defect or deficiency, but which are otherwise complete, shall be deemed completed.

The completed operations hazard does not include bodily injury or property damage arising out of

- (a) operations in connection with the transportation of property, unless the bodily injury or property damage arises out of a condition in or on a vehicle created by the loading or unloading thereof.
- (b) the existence of tools, uninstalled equipment or abandoned or unused materials, or
- (c) operations for which the classification stated in the policy or in the Company's manual specifies "including completed operations".

"elevator" means any hoisting or lowering device to connect floors or landings, whether or not in service, and all appliances thereof including any car, platform, shaft, hoistway, stairway, runway, power equipment and machinery; but does not include an automobile servicing hoist, or a hoist without a platform outside a building if without mechanical power or if not attached to building walls, or a hoist or material hoist used in alteration, construction or demolition operations, or an inclined conveyor used exclusively for carrying property or a dumbwaiter used exclusively for carrying property and have a compartment height not exceeding four feet.



## DEFINITIONS

(Continued)

"explosion hazard" includes property damage arising out of blasting or explosion. The explosion hazard does not include property damage (1) arising out of the explosion of air or steam vessels, piping under pressure, prime movers, machinery or power transmitting equipment, or (2) arising out of operations performed for the Named Insured by independent contractors, or (3) included within the completed operations hazard or the underground property damage hazard, or (4) for which liability is assumed by the Insured under an incidental contract;

"incidental contract" means any written (1) lease of premises, (2) easement agreement, except in connection with construction or demolition operations on or adjacent to a railroad, (3) undertaking to indemnify a municipality required by municipal ordinance, except in connection with work for the municipality, (4) side-track agreement, or (5) elevator maintenance agreement.

"Insured" means any person or organization qualifying as an Insured in the "Persons Insured" provision of the applicable insurance coverage. The insurance afforded applies separately to each Insured against whom claim is made or suit is brought, except with respect to the limits of the Company's liability.

"mobile equipment" means a land vehicle (including any machinery or apparatus attached thereto), whether or not self-propelled, (1) not subject to motor vehicle registration, or (2) maintained for use exclusively on premises owned by or rented to the Named Insured, including the ways immediately adjoining, or (3) designed for use principally off public roads, or (4) designed or maintained for the sole purpose of affording mobility to equipment of the following types forming an integral part of or permanently attached to such vehicle: power cranes, shovels, loaders, diggers and drills; concrete mixers (other than the mix-in-transit type); graders, scrapers, rollers and other road construction or repair equipment; air-compressors, pumps and generators, including spraying, welding and building cleaning equipment, and geophysical exploration and well servicing equipment.

"Named Insured" means the person or organization named in the declarations of this policy.

"Named Insured's products" means goods or products manufactured, sold, handled or distributed by the Named Insured or by others trading under his name, including any container thereof (other than a vehicle), but "Named Insured's products" shall not include a vending machine or any property other than such container, rented to or located for use of others but not sold;

"occurrence" means an accident, including continuous or repeated exposure to conditions, which results in bodily injury or property damage neither expected nor intended from the standpoint of the Insured.

"policy territory" means

- (1) the United States of America, its territories or possessions, or Canada, or
- (2) international waters or air space, provided the bodily injury or property damage does not occur in the course of travel or transportation to or from any other country, state or nation, or
- (3) anywhere in the world with respect to damages because of bodily injury or property damage arising out of a product which was sold for use or consumption within the territory described in paragraph (1) above, provided the original suit for such damages is brought within such territory.

"products hazard" includes bodily injury and property damage arising out of the Named Insured's products or reliance upon a representation or warranty made at any time with respect thereto, but only if the bodily injury or property damage occurs away from premises owned by or rented to the Named Insured and after physical possession of such products has been relinquished to others.

"property damage" means (1) physical injury to or destruction of tangible property which occurs during the policy period, including the loss of use thereof at any time resulting therefrom, or (2) loss of use of tangible property which has not been physically injured or destroyed provided such loss of use is caused by an occurrence during the policy period.

"underground property damage hazard" includes underground property damage as defined herein and property damage to any other property at any time resulting therefrom. "Underground property damage" means property damage to wires, conduits, pipes, mains, sewers, tanks, tunnels, any similar property, and any apparatus in connection therewith, beneath the surface of the ground or water, caused by and occurring during the use of mechanical equipment for the purpose of grading land, paving, excavating, drilling, borrowing, filling, back-filling or pile driving. The underground property damage hazard does not include property damage (1) arising out of operations performed for the Named Insured by independent contractors, or (2) included within the completed operations hazard, or (3) for which liability is assumed by the Insured under an incidental contract.

DEFINITIONS

(Only Appl)

As respects bodily injury liability coverage and property damage liability coverage, the provision of this policy requiring the Insured to give notice of action, occurrence or loss shall not bar liability under this policy.

IN WITNESS WHEREOF, ADMIRAL INSURANCE COMPANY has caused this policy to be countersigned by a duly authorized representative of the Company.

VES00000053

# ADMIRAL

A STOCK COMPANY  
(herein called "the Company")



## INSURANCE COMPANY

### GENERAL LIABILITY POLICY

A 1 CG 6097

### DECLARATIONS

NAMED INSURED

Marisol, Inc.  
125 Factory Lane  
Middlesex, NJ 08846

MAILING ADDRESS

POLICY PERIOD: From 8/29/81 To 8/29/82  
At 12.01 A.M. Standard Time at the address of the Named Insured as stated herein

THE NAMED INSURED IS  Individual;  Partnership;  Corporation;  Joint Venture;  Other

AUDIT PERIOD:  Annual;  Other

The insurance afforded is only with respect to such of the following Parts and Coverages therein as are indicated by  The limit of the Company's liability against each such Coverage shall be as stated herein, subject to all of the terms of the policy having reference thereto.

COVERAGE PARTS	LIMITS OF LIABILITY			
	Bodily Injury Liability		Property Damage Liability	
	each occurrence	aggregate	each occurrence	aggregate
<input type="checkbox"/> Comprehensive General Liability Insurance	\$	\$	\$	\$
<input type="checkbox"/> Owners', Landlords' and Tenants' Liability Insurance				
<input type="checkbox"/> Manufacturers' and Contractors' Liability Insurance				
<input type="checkbox"/> Owners' and Contractors' Protective Liability Insurance				
<input checked="" type="checkbox"/> Completed Operations and Products Liability Insurance		\$500,000. Combined Single Limit (Refer to Endorsement #1)		
<input type="checkbox"/> Contractual Liability Insurance				
<input type="checkbox"/> Personal Injury Liability Insurance			aggregate	\$
<input type="checkbox"/> Premises Medical Payments Insurance	\$	each person aggregate	\$	each accident

Endorsements attached to policy at inception

- #1-Combined Single Limit of Liability
- #2-Deductible Liability Insurance
- #3-Minimum Premium Endorsement

TOTAL ADVANCE PREMIUM \$ 13,800.00

If the Policy Period is more than one year and the premium is to be paid in installments, premium is payable on

Effective Date	\$
1st Anniversary	\$
2nd Anniversary	\$

\$ .....  
% S.L. Tax

Countersigned On: September 10, 1981

At: Haddonfield, NJ

By: [Signature]  
Authorized Representative

This Certificate and Coverage Parts, with Policy Standard Provisions and Endorsements, when issued to form a part thereof, completes the above numbered policy

INSURING COMPANY Admiral Insurance Co.  
(herein called "the Company")

**COMPLETED OPERATIONS AND PRODUCTS  
LIABILITY INSURANCE  
COVERAGE PART**

**ADDITIONAL DECLARATIONS**

Policy No. **A1CG6097**

**SCHEDULE**

**GENERAL LIABILITY HAZARDS**

Description of Hazards	Premium Bases	Rates	Advance Premiums
<p>Completed Operations</p> <p>Included</p>		<p>Included</p> <p>(a) Receipts</p>	<p>(a) Per \$1,000 of Receipts</p>
<p>Products</p> <p>Reclamation of solvents &amp; fluids R/A: Chemicals Mfg.</p> <p>This is an N.O.C. classification Code 28905s</p>	<p>(b) \$6,000,000.</p> <p>(b) Sales</p>	<p>(b) \$2.30</p> <p>(b) Per \$1,000 of Sales</p>	<p>\$13,800.00</p>
<p>Minimum Premium(s): <b>\$13,800.00</b></p>		<p><b>TOTAL ADVANCE PREMIUM = \$13,800.00</b></p>	

When used as a premium basis:

- (1) the word "receipts" means the gross amount of money charged by the Named Insured for such operations by the Named Insured or by others during the policy period as are rated on a receipts basis other than receipts from telecasting, broadcasting or motion pictures, and includes taxes, other than taxes which the Named Insured collects as a separate item and remits directly to a governmental division,
- (2) the word "sales" means the gross amount of money charged by the Named Insured or by others trading under his name for all goods and products sold or distributed during the policy period and charged during the policy period for installation, servicing or repair, and includes taxes, other than taxes which the Named Insured and such others collect as a separate item and remit directly to a governmental division

12-0000 8/79

## I. COVERAGE A—BODILY INJURY LIABILITY

### COVERAGE B—PROPERTY DAMAGE LIABILITY

The Company will pay on behalf of the insured all sums which the insured shall become legally obligated to pay as damages because of

- A. bodily injury or B. property damage

to which the insurance applies, caused by an occurrence, if the bodily injury or property damage is included within the completed operations hazard or the products hazard, and the Company shall have the right and duty to defend any suit against the insured seeking damages on account of such bodily injury or property damage, even if any of the allegations of the suit are groundless, false or fraudulent, and may make such investigation and settlement of any claim or suit as it deems expedient, but the Company shall not be obligated to pay any claim or judgment or to defend any suit after the applicable limit of the Company's liability has been exhausted by payment of judgments or settlements

#### Exclusions

This insurance does not apply.

- (a) to liability assumed by the insured under any contract or agreement; but this exclusion does not apply to a warranty of fitness or quality of the Named Insured's products or a warranty that work performed by or on behalf of the Named Insured will be done in a workmanlike manner;
- (b) to bodily injury or property damage for which the insured may be held liable
  - (1) as a person or organization engaged in the business of manufacturing, distributing, selling or serving alcoholic beverages, or
  - (2) if not so engaged, as an owner or lessor of premises used for such purposes, if such liability is imposed
    - (i) by, or because of the violation of, any statute, ordinance or regulation pertaining to the sale, gift, distribution or use of any alcoholic beverage, or
    - (ii) by reason of the selling, serving or giving of any alcoholic beverage to a minor or to a person under the influence of alcohol or which causes or contributes to the intoxication of any person; but part (ii) of this exclusion does not apply with respect to liability of the insured as an owner or lessor described in (2) above;
- (c) to any obligation for which the insured or any carrier as his insurer may be held liable under any workmen's compensation, unemployment compensation or disability benefits law, or under any similar law;
- (d) to bodily injury to any employee of the insured arising out of and in the course of his employment by the insured or to any obligation of the insured to indemnify another because of damages arising out of such injury;
- (e) to loss of use of tangible property which has not been physically injured or destroyed resulting from
  - (1) a delay in or lack of performance by or on behalf of the Named Insured of any contract or agreement, or
  - (2) the failure of the Named Insured's products or work performed by or on behalf of the Named Insured to meet the level of performance, quality, fitness or durability warranted or represented by the Named Insured,but this exclusion does not apply to loss of use of other tangible property resulting from the sudden and accidental physical injury to or destruction of the Named Insured's products or work performed by or on behalf of the Named Insured after such products or work have been put to use by any person or organization other than an insured;
- (f) to property damage to the Named Insured's products arising out of such products or any part of such products;
- (g) to property damage to work performed by or on behalf of the Named Insured arising out of the work or any portion thereof, or out of materials, parts or equipment furnished in connection therewith;

(h) to damage claimed for the withdrawal, inspection, repair, replacement, or loss of use of the Named Insured's products or work completed by or for the Named Insured or of any property of which such products or work form a part, if such products, work or property are withdrawn from the market or from use because of any known or suspected defect or deficiency therein,

(i) to bodily injury or property damage arising out of the discharge, dispersal, release or escape of smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, liquids or gases, waste materials or other irritants, contaminants or pollutants into or upon land, the atmosphere or any water course or body of water, but this exclusion does not apply if such discharge, dispersal, release or escape is sudden and accidental.

## II. PERSONS INSURED

Each of the following is an insured under this insurance to the extent set forth below:

- (a) if the Named Insured is designated in the declarations as an individual, the person so designated but only with respect to the conduct of a business of which he is the sole proprietor, and the spouse of the Named Insured with respect to the conduct of such a business;
- (b) if the Named Insured is designated in the declarations as a partnership or joint venture, the partnership or joint venture so designated and any partner or member thereof but only with respect to his liability as such;
- (c) if the Named Insured is designated in the declarations as other than an individual, partnership or joint venture, the organization so designated and any executive officer, director or stockholder thereof while acting within the scope of his duties as such;
- (d) any person (other than an employee of the Named Insured) or organization while acting as real estate manager for the Named Insured

This insurance does not apply to bodily injury or property damage arising out of the conduct of any partnership or joint venture of which the insured is a partner or member and which is not designated in this policy as a Named Insured.

## III. LIMITS OF LIABILITY

Regardless of the number of (1) insureds under this policy, (2) persons or organizations who sustain bodily injury or property damage, or (3) claims made or suits brought on account of bodily injury or property damage, the Company's liability is limited as follows.

**Coverage A**—The total liability of the Company for all damages, including damages for care and loss of services, because of bodily injury sustained by one or more persons as the result of any one occurrence shall not exceed the limit of bodily injury liability stated in the declarations as applicable to "each occurrence".

Subject to the above provision respecting "each occurrence", the total liability of the Company for all damages because of all bodily injury to which this coverage applies shall not exceed the limit of bodily injury liability stated in the declarations as "aggregate".

**Coverage B**—The total liability of the Company for all damages because of all property damage sustained by one or more persons or organizations as the result of any one occurrence shall not exceed the limit of property damage liability stated in the declarations as applicable to "each occurrence".

Subject to the above provision respecting "each occurrence", the total liability of the Company for all damages because of all property damage to which this coverage applies shall not exceed the limit of property damage liability stated in the declarations as "aggregate".

**Coverages A and B**—For the purpose of determining the limit of the Company's liability, all bodily injury and property damage arising out of continuous or repeated exposure to substantially the same general conditions shall be considered as arising out of one occurrence.

INSURING COMPANY <b>Admiral Insurance Co.</b> <small>(herein called "the Company")</small>	ENDORSEMENT NO . I TO POLICY NO . . . A1CG6093 EFFECTIVE DATE . . . 8/29/81 . . .
NAMED INSURED . <b>Marisol, Inc.</b>	<b>COMBINED SINGLE LIMIT OF LIABILITY</b>

A. The LIMITS OF LIABILITY on the DECLARATIONS are amended to read as follows:

- \$ 500,000 each occurrence as respects Bodily Injury Liability or Property Damage Liability or both combined.
- \$ 500,000 aggregate.

B. It is further understood and agreed that Insuring Agreement III—"LIMITS OF LIABILITY," as contained in any Coverage Part attached to this policy is deleted and the following substituted therefor:

**III. LIMITS OF LIABILITY**

Regardless of the number of (1) Insureds under this policy, (2) persons or organizations who sustain bodily injury or property damage, or (3) claims or suits brought on account of bodily injury or property damage, the Company's liability is limited as follows:

The total liability of the Company for all damages, including damages for care and loss of services, because of bodily injury sustained by one or more persons as the result of any one occurrence and the total liability of the Company for all damages because of all property damage sustained by one or more persons or organizations as a result of any one occurrence shall not exceed the limit of liability stated herein as applicable to "each occurrence."

For the purpose of determining the limit of the Company's liability, all bodily injury and property damage arising out of continuous or repeated exposure to substantially the same general conditions shall be considered as arising out of one occurrence.

C. The aggregate limit of liability stated above is only with respect to such of the following COVERAGE PARTS as indicated by  :

COMPREHENSIVE GENERAL LIABILITY COVERAGE PART (Form JC-0019)

Subject to the above provision respecting "each occurrence," the total liability of the Company for all damages because of all bodily injury and property damage to which this coverage applies and which is described in any of the numbered subparagraphs below shall not exceed the limit of liability stated in this endorsement as "aggregate":

- (1) all property damage arising out of premises or operations rated on a remuneration basis or contractor's equipment rated on a receipts basis, including property damage for which liability is assumed under any incidental contract relating to such premises or operations, but excluding property damage included in subparagraph (2) below;
- (2) all property damage arising out of and occurring in the course of operations performed for the named insured by independent contractors and general supervision thereof by the Named Insured, including any such property damage for which liability is assumed under any incidental contract relating to such operations, but this subparagraph (2) does not include property damage arising out of maintenance or repairs at premises owned by or rented to the named insured or structural alterations at such premises which do not involve changing the size of or moving buildings or other structures.

(3) all bodily injury and property damage included within the completed operations hazard and the products hazard combined.

Such aggregate limit shall apply separately to the property damage described in subparagraphs (1), (2) and (3) above, and under the subparagraphs (1) and (2), separately with respect to each project away from premises owned by or rented to the Named Insured.

**CONTRACTUAL LIABILITY COVERAGE PART (Form JC-0024 or JC-0025)**

Subject to the above provision respecting "each occurrence," the total liability of the Company for all damages because of all property damage to which this coverage applies shall not exceed the limit of liability stated in this endorsement as "aggregate." Such aggregate limit of liability applies separately with respect to each project away from premises owned by or rented to the Named Insured.

**COMPLETED OPERATIONS AND PRODUCTS LIABILITY INSURANCE COVERAGE PART (Form JC-0023)**

Subject to the above provision respecting "each occurrence," the total liability of the Company for all damages because of all bodily injury or property damage to which this coverage applies and arising out of the products hazard and the completed operations hazard combined shall not exceed the limit of liability stated herein as "aggregate."

**OWNERS' AND CONTRACTORS' PROTECTIVE LIABILITY INSURANCE COVERAGE PART (Form JC-0022)**

Subject to the above provision respecting "each occurrence," the total liability of the Company for all damages because of all property damage to which the coverage applies shall not exceed the limit of property damage liability stated herein as "aggregate." If more than one project is designated in the schedule, such aggregate limit shall apply separately with respect to each project.

**OWNERS', LANDLORDS' AND TENANTS' LIABILITY INSURANCE COVERAGE PART (Form JC-0020)**

Subject to the above provisions respecting "each occurrence," the total liability of the Company for all damages because of all property damage to which this coverage applies and arising out of and occurring in the course of structural alterations which involve changing the size of or moving buildings or other structures, new construction or demolition operations performed by or on behalf of the Named Insured (including any such property damage for which liability is assumed under any incidental contract relating to such operations) shall not exceed the limit of property damage liability stated herein as "aggregate."

**MANUFACTURERS' AND CONTRACTORS' LIABILITY INSURANCE COVERAGE PART (Form JC-0021)**

Subject to the above provision respecting "each occurrence," the total liability of the Company for all damages because of all property damage to which this coverage applies and described in either of the numbered subparagraphs below shall not exceed the limit of property damage liability stated herein as "aggregate":

- (1) all property damage arising out of premises or operations rated on a remuneration basis or contractor's equipment rated on a receipts basis, including property damage for which liability is assumed under any incidental contract relating to such premises or operations, but excluding property damage included in subparagraph (2) below.
- (2) all property damage arising out of and occurring in the course of operations performed for the Named Insured by independent contractors and general supervision thereof by the Named Insured, including any such property damage for which liability is assumed under any incidental contract relating to such operations, but this subparagraph (2) does not include property damage arising out of maintenance or repairs at premises owned by or rented to the Named Insured or structural alterations at such premises which do not involve changing the size of or moving buildings or other structures.

Such aggregate limit shall apply separately to the property damage described in subparagraphs (1) and (2) above and separately with respect to each project away from premises owned by or rented to the Named Insured.

By: \_\_\_\_\_  
Authorized Representative

INSURING COMPANY Admiral Insurance Co.  
(herein called "the Company")

ENDORSEMENT  
NO 2 TO POLICY NO. AICG6097  
EFFECTIVE DATE 8/29/81

NAMED INSURED Marisol, Inc.

DEDUCTIBLE LIABILITY INSURANCE

It is agreed that:

1. The company's obligation under the Bodily Injury Liability and Property Damage Liability Coverages to pay damages on behalf of the Insured applies only to the amount of damages in excess of any deductible amounts stated in the schedule below as applicable to such coverages.
2. The deductible amounts stated in the schedule apply as follows:
  - (a) PER CLAIM BASIS - If the deductible is on a "per claim" basis, the deductible amount applies under the Bodily Injury Liability or Property Damage Liability Coverage, respectively, to all damages because of bodily injury sustained by one person, or to all property damage sustained by one person or organization, as the result of any one occurrence.
  - (b) PER OCCURRENCE BASIS - If the deductible is on a "per occurrence" basis, the deductible amount applies under the Bodily Injury Liability Property Damage Liability Coverage, respectively, to all damages because of all bodily injury or property damage as the result of any one occurrence.
3. The terms of the policy, including those with respect to (a) the company's rights and duties with respect to the defense of suits and (b) the insured's duties in the event of an occurrence apply irrespective of the application of the deductible amount.
4. The company may pay any part or all of the deductible amount to effect settlement of any claim or suit and, upon notification of the action taken, the named insured shall promptly reimburse the company for such part of the deductible amount as has been paid by the company.

SCHEDULE

COVERAGE	AMOUNT AND BASIS OF DEDUCTIBLE
Bodily Injury Liability	\$ 1,000.00 per claim \$ _____ per occurrence
Property Damage Liability	\$ 1,000.00 per claim \$ _____ per occurrence

BY: *[Signature]*  
Authorized Representative

INSURING COMPANY ..... Admiral Insurance Co. ....  
(herein called "the Company")

ENDORSEMENT  
NO. .... 3. .... TO POLICY NO ..... AICG6097 .....  
EFFECTIVE DATE ..... 8/29/81 .....

NAMED INSURED ..... Marisol, Inc. ....

MINIMUM PREMIUM ENDORSEMENT

The final sentence of the second paragraph of CONDITION 1. is amended to read as follows:

"If the total earned premium for the policy period is less than the premium previously paid, the Company shall return to the Named Insured the unearned portion paid by the Named Insured, but the Company shall receive and retain no less than the minimum premium(s) listed in this policy."

BY. *J. Paul ...*  
Authorized Representative



INSURING COMPANY	Admiral Insurance Co. (herein called "the Company")	ENDORSEMENT
		NO .....4..... TO POLICY NO. ... AICG6097.....
		EFFECTIVE DATE . . . 10/19/81.....
NAMED INSURED	Marisol, Inc.	

In consideration of an additional flat charge of \$2,150.00, it is hereby understood and agreed that the following coverage parts become a part of this policy:

- CONTRACTUAL LIABILITY INSURANCE  
COVERAGE PART (Blanket Coverage) - Form JC-0025
- MANUFACTURER'S AND CONTRACTORS'  
LIABILITY INSURANCE COVERAGE PART - Form JC-0021
- PERSONAL INJURY LIABILITY  
INSURANCE COVERAGE PART - Form JC0026  
(see endorsement #5)

It is further understood and agreed that Endorsement #5 & #6 also become a part of this policy.

ALL OTHER PROVISIONS AND STIPULATIONS REMAIN UNCHANGED

Date of Issuance: October 22, 1981

BY: *Richard H. Brown*  
Authorized Representative

**CONTRACTUAL LIABILITY INSURANCE  
COVERAGE PART  
(BLANKET COVERAGE)**

INSURING COMPANY Admiral Insurance Co.  
(herein called "the Company")

ADDITIONAL DECLARATIONS

Policy No. AICG6097

**SCHEDULE**

It is agreed that the Limits of Liability set forth in the Policy Declarations for the Contractual Liability Coverage Part shall apply as respects any coverage afforded hereunder unless other specific limits are set forth below

Coverage	Limits of Liability (this Coverage Part only) Refer to
Y Bodily Injury Liability	\$ <u>Endorsement</u> <u>\$1</u> each occurrence
Z Property Damage Liability	\$ <u>Refer to</u> each occurrence \$ <u>Endorsement</u> <u>\$1</u> aggregate

Designation of Contracts on file or known to ADMIRAL	Premium Bases	Rates	Advance Premiums
<p>∴ Intermediate Form Contracts</p> <p>This classification applies to agreements requiring indemnification of the indemnitee for all occurrences arising out of the indemnitor's operations, excluding only the liability of the indemnitee resulting from his sole negligence except in connection with general supervision of work performed by the indemnitor.</p> <p align="center">Code 16295</p>	<p>(a) Sales (b) Cost</p>	<p>(a) Per \$1,000 of Sales (b) Per \$100. of Cost</p>	<p>TOTAL ADVANCE PREMIUM ▶ \$ <u>Included</u></p>
Minimum Premium(s): <u>Included</u>			

The following exclusions do not apply with respect to any "construction agreements":

When used as a premium basis:

- The word "cost" means the total cost of all work in connection with all contracts of the type designated in the schedule for this insurance with respect to which "cost" is the basis of premium, regardless of whether any liability is assumed under such contracts by the insured. It includes the cost of all labor, materials and equipment furnished, used or delivered for use in the execution of such work, whether furnished by the insured, or others including all fees, allowances, bonuses or commissions made, paid or due. It shall not include the cost of any operations to which exclusions (o) or (p) apply, unless such exclusions are voided in the schedule.
- The word "sales" means the gross amount of money charged by the Named Insured or by others trading under his name for all goods and products sold or distributed during the policy period and charged during the policy period for installation, servicing or repair, and includes taxes, other than taxes which the Named Insured and such others collect as a separate item and remit directly to a governmental division.

The Company will pay on behalf of the insured all sums which the insured, by reason of contractual liability assumed by him under any written contract of the type designated in the schedule for this insurance, shall become legally obligated to pay as damages because of:

- Y. bodily injury or
- Z. property damage

to which this insurance applies, caused by an occurrence, except the liability of the indemnitee resulting from his sole negligence and the Company shall have the right and duty to defend any suit against the insured seeking damages on account of such bodily injury or property damage, even if any of the allegations of the suit are groundless, false or fraudulent, and may make such investigation and settlement of any claim or suit as it deems expedient, but the Company shall not be obligated to pay any claim or judgment or to defend (1) any arbitration proceeding wherein the Company is not entitled to exercise the insured's rights in the choice of arbitrators and in the conduct of such proceedings, or (2) any suit after the applicable limit of the Company's liability has been exhausted by payment of judgments or settlements.

#### Exclusions

This insurance does not apply:

- (a) to liability assumed by the insured under any incidental contract;
- (b) (1) if the insured is an architect, engineer or surveyor, to bodily injury or property damage arising out of professional services performed by such insured, including (i) the preparation or approval of maps, drawings, opinions, reports, surveys, change orders, designs or specifications, and (ii) supervisory, inspection or engineering services; (2) if the indemnitee of the insured is an architect, engineer or surveyor, to the liability of the indemnitee, his agents or employees, arising out of (i) the preparation or approval of maps, drawings, opinions, reports, surveys, change orders, designs or specifications, or (ii) the giving of or failure to give directions or instructions by the indemnitee, his agents or employees, provided such giving or failure to give is the primary cause of the bodily injury or property damage;
- (c) to bodily injury or property damage due to war, whether or not declared, civil war, insurrection, rebellion or revolution or to any act or condition incident to any of the foregoing;
- (d) to bodily injury or property damage for which the indemnitee may be held liable:

- (1) as a person or organization engaged in the business of manufacturing, distributing, selling or serving alcoholic beverages, or
- (2) if not so engaged, as an owner or lessor of premises used for such purposes,

if such liability is imposed:

- (i) by, or because of the violation of, any statute, ordinance or regulation pertaining to the sale, gift, distribution or use of any alcoholic beverage, or
- (ii) by reason of the selling, serving or giving of any alcoholic beverage to a minor or to a person under the influence of alcohol or which causes or contributes to the intoxication of any person; but part (ii) of this exclusion does not apply with respect to liability of the indemnitee as an owner or lessor described in (2) above;
- (e) to any obligation for which the insured or any carrier as his insurer may be held liable under any workmen's compensation, unemployment compensation or disability benefits law, or under any similar law;
- (f) to any obligation for which the insured may be held liable in an action on a contract by a third party beneficiary for bodily injury or property damage arising out of a project for a public authority; but this exclusion does not apply to an action by the public authority of any other person or organization engaged in the project;
- (g) to property damage to (1) property owned or occupied by or rented to the insured, (2) property used by the insured, or (3) property in the care, custody or control of the insured or as to which the insured is for any purpose exercising physical control;
- (h) to property damage to premises alienated by the Named Insured arising out of such premises of any part thereof;
- (i) to loss of use of tangible property which has not been physically injured or destroyed resulting from:
  - (1) a delay in or lack of performance by or on behalf of the Named Insured of any contract or agreement, or
  - (2) the failure of the Named Insured's products or work performed by or on behalf of the Named Insured to meet the level of performance, quality, fitness or durability warranted or represented by the Named Insured; but this exclusion does not apply to loss of use of other tangible property resulting from the sudden and accidental physical injury to or destruction of the Named Insured's products or work performed by or on behalf of the Named Insured after such products or work have been put to use by any person or organization other than an insured;
- (j) to property damage to the Named Insured's products arising out of such products or any part of such products;
- (k) to property damage to work performed by or on behalf of the Named Insured arising out of the work or any portion thereof, or out of materials, parts or equipment furnished in connection therewith;
- (l) to damages claimed for the withdrawal, inspection, repair, replacement, or loss of use of the Named Insured's products or work completed by or for the Named Insured or of any property of which such products or work form a part, if such products, work or property are withdrawn from the market or from use because of any known or suspected defect or deficiency therein;

test or in any starting activity or in practice or preparation for any such contest or activity;

(n) to bodily injury or property damage arising out of the discharge, dispersal, release or escape of smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, liquids or gases, waste materials or other irritants, contaminants or pollutants into or upon land, the atmosphere or any water course or body of water; but this exclusion does not apply if such discharge, dispersal, release or escape is sudden and accidental;

Unless stated in the schedule as not applicable, the following exclusions also apply to contractual liability assumed by the insured under any agreement relating to construction operations.

This insurance does not apply:

- (o) to bodily injury or property damage arising out of construction, maintenance or repair of watercraft or loading or unloading thereof;
- (p) to bodily injury or property damage arising out of operations, within fifty feet of any railroad property, affecting any railroad bridge or trestle, tracks, road beds, tunnel, underpass or crossing;
- (q) to bodily injury or property damage included within the completed operations hazard or the products hazard;
- (r) to property damage included within (1) the explosion hazard, (2) the collapse hazard, or (3) the underground property damage hazard.

#### II. PERSONS INSURED

Each of the following is an insured under this insurance to the extent set forth below:

- (a) if the Named Insured is designated in the declarations as an individual, the person so designated and his spouse;
- (b) if the Named Insured is designated in the declarations as a partnership or joint venture, the partnership or joint venture so designated and any partner or member thereof but only with respect to his liability as such;
- (c) if the Named Insured is designated in the declarations as other than an individual, partnership or joint venture, the organization so designated and any executive officer, director or stockholder thereof while acting within the scope of his duties as such.

This insurance does not apply to bodily injury or property damage arising out of the conduct of any partnership or joint venture of which the insured is a partner or member and which is not designated in this policy as a Named Insured.

#### III. LIMITS OF LIABILITY

Regardless of the number of (1) insureds under this policy, (2) persons or organizations who sustain bodily injury or property damage, or (3) claims made or suits brought on account of bodily injury or property damage, the Company's liability is limited as follows:

**Coverage Y**—The total liability of the Company for all damages, including damages for care and loss of services, because of bodily injury sustained by one or more persons as a result of any one occurrence shall not exceed the limit of bodily injury liability stated in the declarations as applicable to "each occurrence."

**Coverage Z**—The total liability of the Company for all damages because of all property damage sustained by one or more persons or organizations as the result of any one occurrence shall not exceed the limit of property damage liability stated in the declarations as applicable to "each occurrence."

Subject to the above provision respecting "each occurrence," the total liability of the Company for all damages because of all property damage to which this coverage applies shall not exceed the limit of property damage liability stated in the declarations as "aggregate." Such aggregate limit of liability applies separately with respect to each project away from premises owned by or rented to the Named Insured.

**Coverages Y and Z**—For the purpose of determining the limit of the Company's liability, all bodily injury and property damage arising out of continuous or repeated exposure to substantially the same general conditions shall be considered as arising out of one occurrence.

#### IV. POLICY TERRITORY

This insurance applies only to bodily injury or property damage which occurs within the policy territory.

#### V. ADDITIONAL DEFINITIONS

When used in reference to this insurance (including endorsements forming a part of the policy):

"contractual liability" means liability expressly assumed under a written contract or agreement; provided, however, that contractual liability shall not be construed as including liability under a warranty of the fitness or quality of the Named Insured's products or a warranty that work performed by or on behalf of the Named Insured will be done in a workmanlike manner;

"suit" includes an arbitration proceeding to which the insured is required to submit or to which the insured has submitted with the Company's consent.

#### VI. ADDITIONAL CONDITION

##### Arbitration

ADMIRAL shall be entitled to exercise all of the insured's rights in the choice of arbitrators and in the conduct of any arbitration proceeding.

##### Premium

The advance premium stated in the schedule is the estimated premium on account of such written contracts as are on file with or known to the Company. The Named Insured shall notify the Company of all other written contracts entered into during the policy period to which this insurance applies.

INSURING COMPANY Admiral Insurance Co.  
(herein called "the Company")

**MANUFACTURERS' AND CONTRACTORS'  
LIABILITY INSURANCE  
COVERAGE PART**

**ADDITIONAL DECLARATIONS**

Policy No. A1CG6097

**SCHEDULE**

Description of Hazards	Premium Bases	Rates	Advance Premiums
Premises—Operations			
Included	(a) Remuneration (b) Receipts	(a) Per \$100 of Remuneration (b) Per \$100 of Receipts	Included
Elevators (Number at Premises)	Number Insured	Per Elevator	
Independent Contractors (Coverage applies only if a premium charge is shown for this hazard.)	Cost	Per \$100 of Cost	
Minimum Premium(s):	Included	TOTAL ADVANCE PREMIUM ▶ \$ Included	

When used as a premium basis:

- (1) "remuneration" means the entire remuneration earned during the policy period by proprietors and by all employees of the Named Insured other than chauffeurs (except operators of mobile equipment) and aircraft pilots and co-pilots, subject to any overtime earnings or limitation of remuneration rule applicable in accordance with the manuals in use by the Company;
- (2) "receipts" means the gross amount of money charged by the Named Insured for such operations by the Named Insured or by others during the policy period as are rated on a receipts basis other than receipts from telecasting, broadcasting or motion pictures, and includes taxes, other than taxes which the Named Insured collects as a separate item and remits directly to a governmental division;
- (3) "cost" means the total cost to the Named Insured with respect to operations performed for the Named Insured during the policy period by independent contractors, of all work let or sub-let in connection with each specific project, including the cost of all labor, materials and equipment furnished, used or delivered for use in the execution of such work, whether furnished by the owner, contractor or sub-contractor, including all fees, allowances, bonuses or commissions made, paid or due.

**I. COVERAGE A—BODILY INJURY LIABILITY**

**COVERAGE B—PROPERTY DAMAGE LIABILITY**

The Company will pay on behalf of the insured all sums which the insured shall become legally obligated to pay as damages because of

A. bodily injury or B. property damage

to which this insurance applies, caused by an occurrence and the Company shall have the right and duty to defend any suit against the insured seeking damages on account of such bodily injury or property damage, even if any of the allegations of the suit are groundless, false or fraudulent, and may make such investigation and settlement of any claim or suit as it deems expedient, but the Company shall not be obligated to pay any claim or judgment or to defend any suit after the applicable limit of the Company's liability has been exhausted by payment of judgments or settlements.

**Exclusions**

This insurance does not apply:

- (a) to liability assumed by the insured under any contract or agreement except an incidental contract; but with respect to bodily injury or property damage occurring while work performed by or on behalf of the Named Insured is in progress, this exclusion does not apply to a warranty that such work will be done in a workmanlike manner;
- (b) to bodily injury or property damage arising out of the ownership, maintenance, operation, use, loading or unloading of (1) any automobile or aircraft owned or operated by or rented or loaned to any insured, or (2) any other automobile

or aircraft operated by any person in the course of his employment by any insured, but this exclusion does not apply to the parking of an automobile on premises owned by, rented to or controlled by the Named Insured or the ways immediately adjoining, if such automobile is not owned by or rented or loaned to any insured;

- (c) to bodily injury or property damage arising out of (1) the ownership, maintenance, operation, use, loading or unloading of any mobile equipment while being used in any prearranged or organized racing, speed or demolition contest or in any stunting activity or in practice or preparation for any such contest or activity or (2) the operation or use of any snowmobile or trailer designed for use therewith;
- (d) to bodily injury or property damage arising out of and in the course of the transportation of mobile equipment by an automobile owned or operated by or rented or loaned to any insured;
- (e) to bodily injury or property damage arising out of the ownership, maintenance, operation, use, loading or unloading of (1) any watercraft owned or operated by or rented or loaned to any insured, or (2) any other watercraft operated by any person in the course of his employment by any insured; but this exclusion does not apply to watercraft while ashore on premises owned by, rented to or controlled by the Named Insured;
- (f) to bodily injury or property damage arising out of the discharge, dispersal, release or escape of smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, liquids or gases, waste materials or other irritants, contaminants or pollutants into or upon land, the atmosphere or any water course or body of water; but this exclusion does not apply if such discharge, dispersal, release or escape is sudden and accidental.

- (g) to bodily injury or property damage due to war, whether or not declared, civil war, insurrection, rebellion or revolution or to any act or condition incident to any of the foregoing, with respect to (1) liability assumed by the insured under an incidental contract, or (2) expenses for first aid under the Supplementary Payments provision;
- (h) to bodily injury or property damage for which the insured or his indemnitee may be held liable (1) as a person or organization engaged in the business of manufacturing, distributing, selling or serving alcoholic beverages, or (2) if not so engaged, as an owner or lessor of premises used for such purposes, if such liability is imposed (i) by, or because of the violation of, any statute, ordinance or regulation pertaining to the sale, gift, distribution or use of any alcoholic beverage, or (ii) by reason of the selling, serving or giving of any alcoholic beverage to a minor or to a person under the influence of alcohol or which causes or contributes to the intoxication of any person; but part (ii) of this exclusion does not apply with respect to liability of the insured or his indemnitee as an owner or lessor described in (2) above;
- (i) to any obligation for which the insured or any carrier as his insurer may be held liable under any workers' compensation, unemployment compensation or disability benefits law, or under any similar law;
- (j) to bodily injury to any employee of the insured arising out of and in the course of his employment by the insured or to any obligation of the insured to indemnify another because of damages arising out of such injury; but this exclusion does not apply to liability assumed by the insured under an incidental contract;
- (k) to property damage to (1) property owned or occupied by or rented to the insured, (2) property used by the insured, or (3) property in the care, custody or control of the insured or as to which the insured is for any purpose exercising physical control, but parts (2) and (3) of this exclusion do not apply with respect to liability under a written sidetrack agreement and part (3) of this exclusion does not apply with respect to property damage (other than to elevators) arising out of the use of an elevator at premises owned by, rented to or controlled by the Named insured;
- (l) to property damage to premises alienated by the Named insured arising out of such premises or any part thereof;
- (m) to loss of use of tangible property which has not been physically injured or destroyed resulting from (1) a delay in or lack of performance by or on behalf of the Named insured of any contract or agreement, or (2) the failure of the Named insured's products or work performed by or on behalf of the Named insured to meet the level of performance, quality, fitness or durability warranted or represented by the Named insured; but this exclusion does not apply to loss of use of other tangible property resulting from the sudden and accidental physical injury to or destruction of the Named insured's products or work performed by or on behalf of the Named insured after such products or work have been put to use by any person or organization other than an insured;
- (n) to property damage to the Named insured's products arising out of such products or any part of such products;
- (o) to property damage to work performed by or on behalf of the Named insured arising out of the work or any portion thereof, or out of materials, parts or equipment furnished in connection therewith;
- (p) to bodily injury or property damage included within the completed operations hazard or the products hazard;
- (q) to property damage included within: (1) the explosion hazard in connection with operations identified in this policy by a classification code number which includes the symbol "a", (2) the collapse hazard in connection with operations identified in this policy by a classification code number which includes the symbol "c", (3) the underground property damage hazard in connection with operations identified in this policy by a classification code number which includes the symbol "u".

**H. PERSONS INSURED**

Each of the following is an insured under this insurance to the extent set forth below:

- (a) if the Named insured is designated in the declarations as an individual, the person so designated but only with respect to the conduct of a business of

which he is the sole proprietor, and the spouse of the Named insured with respect to the conduct of such a business;

- (b) if the Named insured is designated in the declarations as a partnership or joint venture, the partnership or joint venture so designated and any partner or member thereof but only with respect to his liability as such;
- (c) if the Named insured is designated in the declarations as other than an individual, partnership or joint venture, the organization so designated and any executive officer, director or stockholder thereof while acting within the scope of his duties as such;
- (d) any person (other than an employee of the Named insured) or organization while acting as real estate manager for the Named insured; and
- (e) with respect to the operation, for the purpose of locomotion upon a public highway, of mobile equipment registered under any motor vehicle registration law, (i) an employee of the Named insured while operating any such equipment in the course of his employment, and (ii) any other person while operating with the permission of the Named insured any such equipment registered in the name of the Named insured and any person or organization legally responsible for such operation, but only if there is no other valid and collectible insurance available, either on a primary or excess basis, to such person or organization, provided that no person or organization shall be an insured under this paragraph (e) with respect to: (1) bodily injury to any fellow employee of such person injured in the course of his employment, or (2) property damage to property owned by, rented to, in charge of or occupied by the Named insured or the employer of any person described in subparagraph (ii).

This insurance does not apply to bodily injury or property damage arising out of the conduct of any partnership or joint venture of which the insured is a partner or member and which is not designated in this policy as a Named insured.

**III LIMITS OF LIABILITY**

Regardless of the number of (1) insureds under this policy, (2) persons or organizations who sustain bodily injury or property damage, or (3) claims made or suits brought on account of bodily injury or property damage, the Company's liability is limited as follows:

**Coverage A**—The total liability of the Company for all damages, including damages for care and loss of services, because of bodily injury sustained by one or more persons as the result of any one occurrence shall not exceed the limit of bodily injury liability stated in the declarations as applicable to "each occurrence"

**Coverage B**—The total liability of the Company for all damages because of all property damage sustained by one or more persons or organizations as the result of any one occurrence shall not exceed the limit of property damage liability stated in the declarations as applicable to "each occurrence"

Subject to the above provision respecting "each occurrence", the total liability of the Company for all damages because of all property damage to which this coverage applies and described in either of the numbered subparagraphs below shall not exceed the limit of property damage liability stated in the declarations as "aggregate": (1) all property damage arising out of premises or operations rated on a remuneration basis or contractor's equipment rated on a receipts basis, including property damage for which liability is assumed under any incidental contract relating to such premises or operations, but excluding property damage included in subparagraph (2) below; (2) all property damage arising out of and occurring in the course of operations performed for the Named insured by independent contractors and general supervision thereof by the Named insured, including any such property damage for which liability is assumed under any incidental contract relating to such operations, but this subparagraph (2) does not include property damage arising out of maintenance or repairs at premises owned by or rented to the Named insured or structural alterations at such premises which do not involve changing the size of or moving buildings or other structures.

Such aggregate limit shall apply separately to the property damage described in subparagraphs (1) and (2) above, and separately with respect to each project away from premises owned by or rented to the Named insured.

**Coverages A and B**—For the purpose of determining the limit of the Company's liability, all bodily injury and property damage arising out of continuous or repeated exposure to substantially the same general conditions shall be considered as arising out of one occurrence.

INSURING  
COMPANY

Admiral Insurance Co.  
(herein called "the Company")

**PERSONAL INJURY  
LIABILITY INSURANCE  
COVERAGE PART**

**ADDITIONAL DECLARATIONS**

Policy No. ALCG6097

**SCHEDULE**

The insurance afforded is only with respect to personal injury arising out of an offense included within such of the following groups of offenses as are indicated by specific premium charge or charges.

**GROUPS OF OFFENSES**

**ADVANCE PREMIUM**

- A. False Arrest, Detention or Imprisonment, or Malicious Prosecution . . . . . \$ Included
- B. Libel, Slander, Defamation or Violation of Right of Privacy . . . . . \$ Included
- C. Wrongful Entry or Eviction or Other Invasion of Right of Private Occupancy . . . . . \$ Included

Insured's Participation 0 % Minimum Premium \$ Included TOTAL ADVANCE PREMIUM ► \$ Included

**I. COVERAGE P—PERSONAL INJURY LIABILITY**

The Company will pay on behalf of the insured all sums which the insured shall become legally obligated to pay as damages because of injury (herein called "personal injury") sustained by any person or organization and arising out of one or more of the following offenses committed in the conduct of the Named Insured's business:

- Group A—false arrest, detention or imprisonment, or malicious prosecution;
- Group B—the publication or utterance of a libel or slander or of other defamatory or disparaging material, or a publication or utterance in violation of an individual's right of privacy; except publications or utterances in the course of or related to advertising, broadcasting or telecasting activities conducted by or on behalf of the Named Insured;
- Group C—wrongful entry or eviction, or other invasion of the right of private occupancy;

if such offense is committed during the policy period within the United States of America, its territories or possessions, or Canada, and the Company shall have the right and duty to defend any suit against the insured seeking damages on account of such personal injury even if any of the allegations of the suit are groundless, false or fraudulent, and may make such investigation and settlement of any claim or suit as it deems expedient, but the Company shall not be obligated to pay any claim or judgment or to defend any suit after the applicable limit of the Company's liability has been exhausted by payment of judgments or settlements.

**Exclusions**

This insurance does not apply:

- (a) to liability assumed by the insured under any contract or agreement;
- (b) to personal injury arising out of the willful violation of a penal statute or ordinance committed by or with the knowledge or consent of any insured;
- (c) to personal injury sustained by any person as a result of an offense directly or indirectly related to the employment of such person by the Named Insured;
- (d) to personal injury arising out of any publication or utterance described in Group B, if the first injurious publication or utterance of the same or similar material by or on behalf of the Named Insured was made prior to the effective date of this insurance;

(e) to personal injury arising out of a publication or utterance described in Group B, concerning any organization or business enterprise, or its products or services, made by or at the direction of any insured with knowledge of the falsity thereof.

**II. PERSONS INSURED**

Each of the following is an insured under this insurance to the extent set forth below:

- (a) if the Named Insured is designated in the declarations as an individual, the person so designated and his spouse;
- (b) if the Named Insured is designated in the declarations as a partnership or joint venture, the partnership or joint venture so designated and any partner or member thereof but only with respect to his liability as such;
- (c) if the Named Insured is designated in the declarations as other than an individual, partnership or joint venture, the organization so designated and any executive officer, director or stockholder thereof while acting within the scope of his duties as such.

This insurance does not apply to personal injury arising out of the conduct of any partnership or joint venture of which the insured is a partner or member and which is not designated in this policy as a Named Insured.

**III. LIMITS OF LIABILITY; INSURED'S PARTICIPATION**

Regardless of the number of (1) insureds under this policy, (2) persons or organizations who sustain personal injury, or (3) claims made or suits brought on account of personal injury, the total liability of the Company under this coverage for all damages shall not exceed the limit of personal injury liability stated in the declarations as "aggregate".

If a participation percentage is stated in the schedule for the insured, the Company shall not be liable for a greater proportion of any loss than the difference between such percentage and one hundred percent and the balance of the loss shall be borne by the insured, provided, the Company may pay the insured's portion of a loss to effect settlement of the loss, and, upon notification of the action taken, the Named Insured shall promptly reimburse the Company therefor.

**IV. ADDITIONAL DEFINITION**

When used in reference to this insurance.

"damages" means only those damages which are payable because of personal injury arising out of an offense to which this insurance applies.

INSURING COMPANY Admiral Insurance Co. (herein called "the Company")	ENDORSEMENT NO 5 TO POLICY NO AICG6097 EFFECTIVE DATE 10/19/81
NAMED INSURED Marisol, Inc.	AMENDMENT TO PERSONAL INJURY LIABILITY INSURANCE COVERAGE PART

It is hereby understood and agreed that (c) of Exclusions, as shown on PERSONAL INJURY LIABILITY INSURANCE COVERAGE PART, is deleted in its entirety.

Date of Issuance: October 22, 1981

BY: *Friedrich H. Brown*  
 Authorized Representative

ENDORSEMENT

INSURING COMPANY Admiral Insurance Co. (therein called "the Company")

NO. 5 TO POLICY NO AICG6097

EFFECTIVE DATE 10/19/81

NAMED INSURED Marisol, Inc.

BROAD FORM LIABILITY ENDORSEMENT (Page 1 of 4)

Such insurance as is afforded by the policy for Comprehensive General Liability is amended to include the following additions and extensions of coverage:

I. ADDITIONAL INSURED - EMPLOYEES

The "Persons Insured" provision is amended to include any employee of the Named Insured while acting within the scope of his duties as such but the insurance afforded to such employee does not apply:

- 1. to bodily injury to (a) another employee of the Named Insured arising out of or in the course of his employment or (b) the Named Insured or, if the Named Insured is a partnership or joint venture, any partner or member thereof;
2. to property damage to property owned, occupied or used by, rented to, in the care, custody or control of, or over which physical control is being exercised for any purpose by (a) another employee of the Named Insured or (b) the Named Insured or, if the Named Insured is a partnership or joint venture, any partner or member thereof;
3. to injury to which Incidental Malpractice Coverage, Section VI. of this endorsement, applies.

II. BROAD FORM PROPERTY DAMAGE (Including Completed Operations)

It is agreed that the insurance for property damage liability applies, subject to the following additional provisions:

A. The exclusions relating to property damage to (1) property owned, occupied or used by or rented to the Insured or in the care, custody or control of the Insured or as to which the Insured is for any purpose exercising physical control and (2) work performed by or on behalf of the Named Insured arising out of the work or any portion thereof, or out of materials, parts or equipment furnished in connection therewith, are replaced by the following exclusions (y) and (z):

(y) to property damage

- (1) to property owned or occupied by or rented to the Insured, or except with respect to the use of elevators, to property held by the Insured for sale or entrusted to the Insured for storage or safekeeping,

BY [Signature] Authorized Representative



ENDORSEMENT

INSURING COMPANY Admiral Insurance Co. (herein called "the Company")

NO 6 CON'T. TO POLICY NO. AICG6097 EFFECTIVE DATE 10/19/81

NAMED INSURED Marisol, Inc.

Page 2 of 4

- (2) except with respect to liability under a written sidetrack agreement or the use of elevators to (a) property while on premises owned by or rented to the Insured for the purpose of having operations performed on such property by or on behalf of the Insured, (b) tools or equipment while being used by the Insured in performing his operations, (c) property in the custody of the Insured which is to be installed, erected or used in construction by the Insured, (d) that particular part of any property, not on premises owned by or rented to the Insured, (i) upon which operations are being performed by or on behalf of the Insured at the time of the property damage arising out of such operations, or (ii) out of which any property damage arises, or (iii) the restoration, repair or replacement of which has been made or is necessary by reason of faulty workmanship thereon by or on behalf of the Insured; (2) with respect to the completed operations hazard, to property damage to work performed by the Named Insured arising out of the work or any portion thereof, or out of materials, parts or equipment furnished in connection therewith.

8. The insurance afforded hereby shall be excess insurance over any valid and collectible property insurance (including any deductible portion thereof) available to the Insured, such as but not limited to Fire and Extended Coverage, Builder's Risk Coverage or Installation Risk Coverage, and the "Other Insurance" Condition is amended accordingly.

III. WATERCRAFT NON-OWNERSHIP (UNDER 33 FEET IN LENGTH)

It is agreed that the policy exclusion relating to the ownership, maintenance, operation, use, loading or unloading of watercraft shall not apply to any watercraft under 33 feet in length provided such watercraft is not owned by the Named Insured and is not being used to carry persons for a charge.

The insurance afforded hereby shall be excess insurance over any other valid and collectible insurance available to the Insured.

IV. WORLDWIDE PRODUCTS LIABILITY (Claims or Suits Brought Within the U.S.A. or Canada)

BY [Signature] Authorized Representative

ENDORSEMENT

INSURING COMPANY ..... Admical Insurance Co. (herein called "the Company")

NO 6. con't TO POLICY NO. A1006097

EFFECTIVE DATE 10/19/81

NAMED INSURED ..... Marisol, Inc.

Page 3 of 4

It is agreed that the definition of policy territory is amended to read as follows:

"policy territory" means:

- (1) the United States of America, its territories or possessions or Canada, or
- (2) international waters or air space, provided the bodily injury, personal injury or property damage does not occur in the course of travel or transportation to or from any other country, state or nation, or,
- (3) anywhere in the world with respect to damages because of bodily injury or property damage arising out of the Named Insured's products, but only as respects claims or suits brought within the United States of America, its territories or possessions, or Canada.

V. AUTOMATIC COVERAGE - NEWLY ACQUIRED ENTITIES (30 DAYS)

The word Insured shall include any entity which is acquired or formed after the effective date of this endorsement by any Named Insured and over which such Named Insured maintains ownership or financial control, provided this insurance does not apply to bodily injury or property damage with respect to which such a new Insured under this policy is also an Insured under any other liability or indemnity policy or would be an Insured under any such policy but for exhaustion of its limits of liability. The insurance afforded hereby shall terminate 30 days from the date any such entity is acquired or formed by such Named Insured unless this policy is endorsed to include such new Insured as a Named Insured effective as of the date of such acquisition.

VI. INCIDENTAL MALPRACTICE COVERAGE

It is agreed that the definition of "bodily injury" is amended to include Incidental Medical Malpractice Injury.

Incidental Medical Malpractice Injury means injury arising out of the rendering of or failure to render during the policy period, the following services:

- (a) medical, surgical, dental, x-ray or nursing service or treatment or the furnishing of food or beverages in connection therewith; or
- (b) the furnishing or dispensing of drugs or medical, dental or surgical supplies or appliances.

This coverage does not apply to:

BY: [Signature]  
Authorized Representative

ENDORSEMENT

INSURING COMPANY Admiral Insurance Co. (herein called "the Company")

NO 6 con't. TO POLICY NO AICG6097 EFFECTIVE DATE 10/19/81

NAMED INSURED Marisol, Inc.

Page 4 of 4

- (1) expenses incurred by the Insured for first-aid to others at the time of an accident and the "Supplementary Payments" provision and the "Insured's Duties in the Event of Occurrence, Claim or Suit" Condition are amended accordingly;
(2) any insured engaged in the business or occupation of providing any of the services described under (a) and (b) above;
(3) injury caused by any indemnitee if such indemnitee is engaged in the business or occupation of providing any of the services described under (a) and (b) above.

VII. HOST LIQUOR LIABILITY

The exclusion contained in the policy with respect to the manufacturing, distributing, selling or serving alcoholic beverages does not apply to bodily injury or property damage arising out of serving or giving of alcoholic beverages by or on behalf of the Named Insured provided the Named Insured is not a person or organization engaged in the business of manufacturing, distributing, selling or serving alcoholic beverages, or is not an owner or lessor of premises used for such purposes.

BY [Signature] Authorized Representative

## CONDITIONS

**1. Premium**

All premiums for this policy shall be computed in accordance with the Company's rules, rates, rating plans, premiums and minimum premiums applicable to the insurance afforded herein.

Premium designated in this policy as "advance premium" is a deposit premium only which shall be credited to the amount of the earned premium due at the end of the policy period. At the close of each period (or part thereof terminating with the end of the policy period) designated in the declarations as the audit period the earned premium shall be computed for such period and, upon notice thereof to the Named Insured, shall become due and payable. If the total earned premium for the policy period is less than the premium previously paid, the Company shall return to the Named Insured the unearned portion paid by the Named Insured.

The Named Insured shall maintain records of such information as is necessary for premium computation, and shall send copies of such records to the Company at the end of the policy period and at such times during the policy period as the Company may direct.

**2. Inspection and Audit**

The Company shall be permitted but not obligated to inspect the Named Insured's property and operations at any time. Neither the Company's right to make inspections nor the making thereof nor any report thereon shall constitute an undertaking, on behalf of or for the benefit of the Named Insured of others, to determine or warrant that such property or operations are safe or healthful, or are in compliance with any law, rule or regulation.

The Company may examine and audit the Named Insured's books and records at any time during the policy period and extensions thereof and within three years after the final termination of this policy, as far as they relate to the subject matter of this insurance.

**3. Financial Responsibility Laws**

When this policy is certified as proof of financial responsibility for the future under the provisions of any motor vehicle financial responsibility law, such insurance as is afforded by this policy for bodily injury liability or for property damage liability shall comply with the provisions of such law to the extent of the coverage and limits of liability required by such law. The Insured agrees to reimburse the Company for any payment made by the Company which it would not have been obligated to make under the terms of this policy except for the agreement contained in this paragraph.

**4. Insured's Duties in the Event of Occurrence, Claim or Suit**

(a) In the event of an occurrence, written notice containing particulars sufficient to identify the Insured and also reasonably obtainable information with respect to the time, place and circumstances thereof, and the names and addresses of the injured and of available witnesses, shall be given by or for the Insured to the Company's authorized representative as soon as practicable.

(b) If claim is made or suit is brought against the Insured, the Insured shall immediately forward to the Company's authorized representative every demand, notice, summons or other process received by him or his representative.

(c) The Insured shall cooperate with the Company and, upon the Company's request, assist in making settlements, in the conduct of suits and in enforcing any right of contribution or indemnity against any person or organization who may be liable to the Insured because of injury or damage with respect to which insurance is afforded under this policy, and the Insured shall attend hearings and trials and assist in securing and giving evidence and obtaining the attendance of witnesses. The Insured shall not, except at his own cost, voluntarily make any payment, assume any obligation or incur any expense other than for first aid to others at the time of accident.

**5. Action Against The Company**

No action shall lie against the Company unless, as a condition precedent thereto, there shall have been full compliance with all of the terms of this policy, nor until the amount of the Insured's obligation to pay shall have been finally determined either by judgment against the Insured after actual trial or by written agreement of the Insured, the claimant and the Company.

Any person or organization or the legal representative thereof who has secured such judgment or written agreement shall thereafter be entitled to recover under this policy to the extent of the insurance afforded by this policy. No person or organization shall have any right under this policy to join the Company as a party to any action against the Insured to determine the Insured's liability, nor shall the Company be impeded by the Insured or his legal representative. Bankruptcy or insolvency of the Insured or of the Insured's estate shall not relieve the Company of any of its obligations hereunder.

**6. Other Insurance**

The insurance afforded by this policy is primary insurance, except when stated to apply in excess of or contingent upon the absence of other insurance. When this insurance is primary and the Insured has other insurance which is stated to be applicable to the loss on an excess or contingent basis, the amount of the Company's liability under this policy shall not be reduced by the existence of such other insurance.

When both this insurance and other insurance apply to the loss on the same basis, whether primary, excess or contingent, the Company shall not be liable under this policy for a greater proportion of the loss than that stated in the applicable contribution provision below:

(a) **Contribution by Equal Shares.** If all of such other valid and collectible insurance provides for contribution by equal shares, the Company shall not be liable for a greater proportion of such loss than would be payable if each insurer contributes an equal share with the share of each insurer equals the lowest applicable limit of liability under any one policy or the full amount of the loss is paid, and with respect to any amount of loss not so paid the remaining insurers then continue to contribute equal shares of the remaining amount of the loss until each such insurer has paid its limit in full or the full amount of the loss is paid.

(b) **Contribution by Limits.** If any of such other insurance does not provide for contribution by equal shares, the Company shall not be liable for a greater proportion of such loss than the applicable limit of liability under this policy for such loss bears to the total applicable limit of liability of all valid and collectible insurance against such loss.

**7. Subrogation**

In the event of any payment under this policy, the Company shall be subrogated to all the Insured's rights of recovery therefor against any person or organization and the Insured shall execute and deliver instruments and papers and do whatever else is necessary to secure such rights. The Insured shall do nothing after loss to prejudice such rights.

**8. Changes**

Notice to, or knowledge possessed by, any representative of the Company or by any other person shall not effect a waiver or a change in any part of this policy or exempt the Company from asserting any right under the terms of this policy; nor shall the terms of this policy be waived or changed, except by endorsement issued to form a part of this policy.

**9. Assignment**

Assignment of interest under this policy shall not bind the Company until its consent is endorsed hereon; if, however, the Named Insured shall die, such insurance as is afforded by this policy shall apply (1) to the Named Insured's legal representative, as the Named Insured, but only while acting within the scope of his duties as such, and (2) with respect to the property of the Named Insured, to the person having proper temporary custody thereof, as Insured, but only until the appointment and qualification of the legal representative.

**10. Three Year Policy**

If this policy is issued for a period of three years any limit of the Company's liability stated in this policy as "aggregate" shall apply separately to each consecutive annual period thereof.

**11. Cancellation**

This policy may be cancelled by the Named Insured by surrender thereof to the Company's authorized representative or by mailing to the Company's authorized representative written notice stating when thereafter the cancellation shall be effective. This policy may be cancelled by the Company by mailing to the Named Insured at the address shown in this policy, written notice stating when not less than 10 days thereafter such cancellation shall be effective. The mailing of notice as aforesaid shall be sufficient proof of notice. The time of surrender or the effective date and hour of cancellation stated in the notice shall become the end of the policy period. Delivery of such written notice either by the Named Insured or by the Company shall be equivalent to mailing.

If the Named Insured cancels, earned premium shall be computed in accordance with the customary short rate table and procedure. If the Company cancels, earned premium shall be computed pro rata. Premium adjustment may be made either at the time cancellation is effected or as soon as practicable after cancellation becomes effective, but payment or tender of unearned premium is not a condition of cancellation.

**12. Declarations**

By acceptance of this policy, the Named Insured agrees that the statements in the declarations are his agreements and representations, that this policy is issued in reliance upon the truth of such representations and that this policy embodies all agreements existing between himself and the Company or any of its representatives relating to this insurance.

## NUCLEAR ENERGY LIABILITY EXCLUSION

This policy does not apply:

- a. Under any Liability Coverage, to bodily injury or property damage:
- (1) with respect to which an insured under the policy is also an insured under a nuclear energy liability policy issued by Nuclear Energy Liability Insurance Association, Mutual Atomic Energy Liability Underwriters, or Nuclear Insurance Association of Canada, or would be an insured under any such policy but for its termination upon exhaustion of its limit of liability; or
  - (2) resulting from the hazardous properties of nuclear material and with respect to which (a) any person or organization is required to maintain financial protection pursuant to the Atomic Energy Act of 1954, or any law amendatory thereof, or (b) the insured is, or had this policy not been issued would be, entitled to indemnity from the United States of America, or any agency thereof, under any agreement entered into by the United States of America, or any agency thereof, with any person or organization;
- b. Under any Medical Payments Coverage, or under any Supplementary Payments provision relating to first aid, to expenses incurred with respect to bodily injury resulting from the hazardous properties of nuclear material and arising out of the operation of a nuclear facility by any person or organization;
- c. Under any Liability Coverage, to bodily injury or property damage resulting from the hazardous properties of nuclear material, if:
- (1) the nuclear material (a) is at any nuclear facility owned by, or operated by or on behalf of, an insured, or (b) has been discharged or dispersed therefrom;
  - (2) the nuclear material is contained in spent fuel or waste at any time possessed, handled, used, processed, stored, transported or disposed of by or on behalf of an insured; or
  - (3) the bodily injury or property damage arises out of the furnishing by an insured of services, materials, parts or equipment in connection with the planning, construction, maintenance, operation or use of any nuclear facility, but if such facility is located within the United States of America, its territories or possessions, or Canada, this exclusion (3) applies only to property damage to such nuclear facility and any property thereof;

d. As used in this Exclusion:

- (1) "Hazardous properties" include radioactive, toxic, or explosive properties;
- (2) "Nuclear material" means source material, special nuclear material or byproduct material;
- (3) "Source material", "special nuclear material", and "byproduct material" have the meanings given them in the Atomic Energy Act of 1954 or in any law amendatory thereof;
- (4) "Spent fuel" means any fuel element or fuel component, solid or liquid, which has been used or exposed to radiation in a nuclear reactor;
- (5) "Waste" means any waste material (a) containing byproduct material and (b) resulting from the operation by any person or organization of any nuclear facility included within the definition of nuclear facility under paragraph (6), (a) or (b) thereof;
- (6) "Nuclear facility" means: (a) any nuclear reactor; (b) any equipment or device designed or used for (i) separating the isotopes of uranium or plutonium, (ii) processing or utilizing spent fuel or (iii) handling, processing, or packaging waste; (c) any equipment or device used for the processing, fabricating or alloying of special nuclear material if at any time the total amount of such material in the custody of the insured at the premises where such equipment or device is located consists of or contains more than 25 grams of plutonium or uranium 233 or any combination thereof, or more than 250 grams of uranium 235; (d) any structure, basin, excavation, premises or place prepared or used for the storage or disposal of waste; and (e) includes the site on which any of the foregoing is located, all operations conducted on such site, and all premises used for such operations;
- (7) "Nuclear reactor" means any apparatus designed or used to sustain nuclear fission in a self-supporting chain reaction or to contain a critical mass of fissionable material;
- (8) "Property damage" includes all forms of radioactive contamination of property.

## SERVICE OF SUIT

It is agreed that in the event of the failure of the Company to pay any amount claimed to be due hereunder, the Company, at the request of the insured, will submit to the jurisdiction of any court of competent jurisdiction within the United States of America or Canada and will comply with all requirements necessary to give such Court jurisdiction and all matters arising hereunder shall be determined in accordance with the law and with the practice of such Court.

It is further agreed that service of process in such suit may be made upon JERE J. DUFFETT, Senior Vice President of ADMIRAL INSURANCE COMPANY, 89 Haddon Avenue, P.O. Box 3030, Haddonfield, New Jersey 08033 and that in any suit instituted against any one of them upon this policy, the Company will abide by the final decision of such Court or by the final decision of the Appellate Court in the event of an appeal.

The above-named is authorized and directed to accept service of process on behalf of the Company in any such suit and/or upon the request of the insured to give a written undertaking to the insured that it or they will enter a general appearance upon the Company's behalf in the event such a suit shall be instituted.

Further, pursuant to any statute of any state, territory or district of the United States of America or province of Canada, which makes provision therefore, the Company hereby designates the Superintendent, Commissioner or Director of Insurance or other officer specified for that purpose in the statute, or his successor or successors in office, as their true and lawful attorney upon whom may be served any lawful process in any action, suit or proceeding instituted by or on behalf of the insured or any beneficiary hereunder arising out of this contract of insurance, and hereby designates the above-named as the person to whom the said officer is authorized to mail such process or a true copy thereof.

## AMENDATORY CONDITION — NOTICE

(Only Applicable in Texas)

As respects bodily injury liability coverage and property damage liability coverage, unless the Company is prejudiced by the insured's failure to comply with the requirement, any provision of this policy requiring the insured to give notice of action, occurrence or loss, or requiring the insured to forward demands, notices, summons or other legal process, shall not bar liability under this policy.

IN WITNESS WHEREOF, ADMIRAL INSURANCE COMPANY has caused this policy to be signed by its President and Secretary, but this policy shall not be valid unless countersigned by a duly authorized representative of the Company.



Secretary



President

VES00000073

# ADMIRAL

A STOCK COMPANY  
(herein called "the Company")



## INSURANCE COMPANY

replacing MICROBUY

### GENERAL LIABILITY POLICY

2

### DECLARATIONS

WALTON 0110

NAMED INSURED  
MAILING ADDRESS

**Marisol, Inc.**  
**125 Factory Lane**  
**Middlesex, N.J. 08846**

PRODUCER'S NAME AND ADDRESS	
PRODUCER CODE	COMMISSION

POLICY PERIOD: From 8/29/82 to 8/29/83  
At 12:01 A.M. Standard Time at the address of the Named Insured as stated herein

THE NAMED INSURED IS:  Individual;  Partnership;  Corporation;  Joint Venture;  Other

AUDIT PERIOD  Annual;  Other

The insurance afforded is only with respect to such of the following Parts and Coverages therein as are indicated by . The limit of the Company's liability against each such Coverage shall be as stated herein, subject to all of the terms of the policy having reference thereto.

COVERAGE PARTS	LIMITS OF LIABILITY			
	Bodily Injury Liability		Property Damage Liability	
	each occurrence	aggregate	each occurrence	aggregate
<input checked="" type="checkbox"/> Comprehensive General Liability Insurance	\$	\$	\$	\$
<input type="checkbox"/> Owners', Landlords' and Tenants' Liability Insurance				
<input type="checkbox"/> Manufacturers' and Contractors' Liability Insurance				
<input type="checkbox"/> Owners' and Contractors' Protective Liability Insurance				
<input checked="" type="checkbox"/> Completed Operations and Products Liability Insurance				
<input checked="" type="checkbox"/> Contractual Liability Insurance (Blanket)				
<input type="checkbox"/>				
<input type="checkbox"/>				

**\$500,000. Combined Single Limit**  
**(Refer to Endorsement #1)**

<input checked="" type="checkbox"/> Personal Injury Liability Insurance		aggregate \$ 500,000.	
<input type="checkbox"/> Premises Medical Payments Insurance	\$	each person aggregate	\$ each accident

Endorsements attached to policy at inception #1 - Combined Single Limit of Liability, #2 - Deductible Liability Insurance, #3 - Amendment to Personal Injury Liability Insurance Coverage Part, #4 - Broad Form Liability Endorsement, #5 - Minimum Premium Endorsement.

TOTAL ADVANCE PREMIUM \$ 12,000.00

If the Policy Period is more than one year and the premium is to be paid in installments, premium is payable on

Effective Date	\$	\$
1st Anniversary	\$	\$
2nd Anniversary	\$	\$

% S.L. Tax

Countersigned On: 9/10/82

At: Haddonfield, N.J.

By: *[Signature]*  
Authorized Representative

This declaration and Coverage Part(s) with Policy Standard Provisions and Endorsements, if any, issued to form a contract, completes the above numbered policy.

VES00000074

INSURING COMPANY Admiral Insurance Company  
(herein called "the Company")

**COMPREHENSIVE GENERAL LIABILITY INSURANCE COVERAGE PART**

**ADDITIONAL DECLARATIONS**

Policy No. A28G0116

**SCHEDULE**

The following discloses all hazards insured hereunder known to exist at the effective date of this policy, unless otherwise stated herein:

Description of Hazards	Premium Bases	Rates	Advance Premiums
<b>Premises—Operations</b>			
Reclamation of solvents & fluids R/A: Chemicals Mfg. Code 28905 This is an N.O.C. classification.	(b) \$6,000,000.	(b) \$2.00	\$12,000.00
	(a) Remuneration (b) <del>SALES</del> Sales (c) Units	(a) Per \$100 of Remuneration (b) Per <del>SALES</del> SALES (c) Per Unit	\$1,000. of Sales
<b>Completed Operations—Products</b>			
Included	(a) Receipts (b) Sales	(a) Per \$1000 of Receipts (b) Per \$1000 of Sales	
<b>Escalators (Number at Premises)</b>	Number Insured	Per Landing	
No Known Exposure			
<b>Independent Contractors</b>	Cost	Per \$100 of Cost	
No Known Exposure			
<b>Minimum Premium(s): \$12,000.00</b>		<b>TOTAL ADVANCE PREMIUM ▶ \$12,000.00</b>	

When used as a Premium Basis:

- "remuneration" means the entire remuneration earned during the policy period by proprietors and by all employees of the Named Insured other than chauffeurs (except operators of mobile equipment) and aircraft pilots and co-pilots, subject to any overtime earnings or limitation of remuneration rule applicable in accordance with the manuals in use by the Company.
- "receipts" means the gross amount of money charged by the Named Insured for such operations by the Named Insured or by others during the policy period as are rated on a receipts basis other than receipts from telecasting, broadcasting or motion pictures, and includes taxes, other than taxes which the Named Insured collects as a separate item and remits directly to a governmental division;
- "cost" means the total cost to the Named Insured with respect to operations performed for the Named Insured during the policy period by independent contractors of all work let or sub-let in connection with each specific project, including the cost of all labor, materials and equipment furnished, used or delivered for use in the execution of such work, whether furnished by the owner, contractor or sub-contractor, including all fees, allowances, bonuses or commissions made, paid or due;
- "sales" means the gross amount of money charged by the Named Insured or by others trading under his name for all goods and products sold or distributed during the policy period and charged during the policy period for installation, servicing or repair, and includes taxes, other than taxes, which the Named Insured and such others collect as a separate item and remit directly to a governmental division.

**I. COVERAGE A—BODILY INJURY LIABILITY**

**COVERAGE B—PROPERTY DAMAGE LIABILITY**

The Company will pay on behalf of the Insured all sums which the Insured shall become legally obligated to pay as damages because of

A. bodily injury or B. property damage

to which this insurance applies, caused by an occurrence and the Company shall have the right and duty to defend any suit against the Insured seeking damages on account of such bodily injury or property damage, even if any of the allegations of

the suit are groundless, false or fraudulent, and may make such investigation and settlement of any claim or suit as it deems expedient, but the Company shall not be obligated to pay any claim or judgment or to defend any suit after the applicable limit of the Company's liability has been exhausted by payment of judgments or settlements.

**Exclusions**

This insurance does not apply:

- (a) to liability assumed by the Insured under any contract or agreement except an incidental contract, but this exclusion does not apply to a warranty of fitness or

quality of the Named Insured's products or a warranty that work performed by or on behalf of the Named Insured will be done in a workmanlike manner.

- (b) to bodily injury or property damage arising out of the ownership, maintenance, operation, use, loading or unloading of (1) any automobile or aircraft owned or operated by or rented or loaned to any insured, or (2) any other automobile or aircraft operated by any person in the course of his employment by any insured, but this exclusion does not apply to the parking of an automobile on premises owned by, rented to or controlled by the Named Insured or the ways immediately adjoining, if such automobile is not owned by or rented or loaned to any insured.
- (c) to bodily injury or property damage arising out of (1) the ownership, maintenance, operation, use, loading or unloading of any mobile equipment while being used in any prearranged or organized racing, speed or demolition contest or in any stunting activity or in practice or preparation for any such contest or activity or (2) the operation or use of any snowmobile or trailer designed for use therewith;
- (d) to bodily injury or property damage arising out of and in the course of the transportation of mobile equipment by an automobile owned or operated by or rented or loaned to any insured;
- (e) to bodily injury or property damage arising out of the ownership, maintenance, operation, use, loading or unloading of (1) any watercraft owned or operated by or rented or loaned to any insured, or (2) any other watercraft operated by any person in the course of his employment by any insured, but this exclusion does not apply to watercraft while ashore on premises owned by, rented to or controlled by the Named Insured.
- (f) to bodily injury or property damage arising out of the discharge, dispersal, release or escape of smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, liquids or gases, waste materials or other irritants, contaminants or pollutants into or upon land, the atmosphere or any water course or body of water; but this exclusion does not apply if such discharge, dispersal, release or escape is sudden and accidental;
- (g) to bodily injury or property damage due to war, whether or not declared, civil war, insurrection, rebellion or revolution or to any act or condition incident to any of the foregoing, with respect to (1) liability assumed by the insured under an incidental contract, or (2) expenses for first aid under the Supplementary Payments provision;
- (h) to bodily injury or property damage for which the insured or his indemnitee may be held liable (1) as a person or organization engaged in the business of manufacturing, distributing, selling or serving alcoholic beverages, or (2) if not so engaged, as an owner or lessor of premises used for such purposes, if such liability is imposed (i) by, or because of the violation of, any statute, ordinance or regulation pertaining to the sale, gift, distribution or use of any alcoholic beverages, or (ii) by reason of the selling, serving or giving of any alcoholic beverage to a minor or to a person under the influence of alcohol or which causes or contributes to the intoxication of any person; but part (ii) of this exclusion does not apply with respect to liability of the insured or his indemnitee as an owner or lessor described in (2) above.
- (i) to any obligation for which the insured or any carrier as his insurer may be held liable under any workers' compensation, unemployment compensation or disability benefit law, or under any similar law.
- (j) to bodily injury to any employee of the insured arising out of and in the course of his employment by the insured or to any obligation of the insured to indemnify another because of damages arising out of such injury, but this exclusion does not apply to liability assumed by the insured under an incidental contract;
- (k) to property damage to (1) property owned or occupied by or rented to the insured, (2) property used by the insured, or (3) property in the care, custody or control of the insured or as to which the insured is for any purpose exercising physical control, but parts (2) and (3) of this exclusion do not apply with respect to liability under a written sidetrack agreement and part (3) of this exclusion does not apply with respect to property damage (other than to elevators) arising out of the use of an elevator at premises owned by, rented to or controlled by the Named Insured.
- (l) to property damage to premises alienated by the Named Insured arising out of such premises or any part thereof.
- (m) to loss of use of tangible property which has not been physically injured or destroyed resulting from (1) a delay in or lack of performance by or on behalf of the Named Insured of any contract or agreement, or (2) the failure of the Named Insured's products or work performed by or on behalf of the Named Insured to meet the level of performance, quality, fitness or durability warranted or represented by the Named Insured; but this exclusion does not apply to loss of use of other tangible property resulting from the sudden and accidental physical injury to or destruction of the Named Insured's products or work performed by or on behalf of the Named Insured after such products or work have been put to use by any person or organization other than an insured;
- (n) to property damage to the Named Insured's products arising out of such products or any part of such products;
- (o) to property damage to work performed by or on behalf of the Named Insured arising out of the work or any portion thereof, or out of materials, parts or equipment furnished in connection therewith;
- (p) to damages claimed for the withdrawal, inspection repair, replacement, or loss of the use of the Named Insured's products or work completed by or for the Named Insured or of any property of which such products or work form a part, if such products, work or property are withdrawn from the market or from use because of any known or suspected defect or deficiency therein;
- (q) to property damage included within (1) the explosion hazard in connection with operations identified in this policy by a classification code number which includes the symbol "a", (2) the collapse hazard in connection with operations identified in this policy by a classification code number which includes the symbol "c", (3)

the underground property damage hazard in connection with operations identified in this policy by a classification code number which includes the symbol "u".

## II. PERSONS INSURED.

Each of the following is an insured under this insurance to the extent set forth below:

- (a) if the Named Insured is designated in the declarations as an individual, the person so designated but only with respect to the conduct of a business of which he is the sole proprietor, and the spouse of the Named Insured with respect to the conduct of such a business;
- (b) if the Named Insured is designated in the declarations as a partnership or joint venture, the partnership or joint venture so designated and any partner or member thereof but only with respect to his liability as such;
- (c) if the Named Insured is designated in the declarations as other than an individual, partnership or joint venture, the organization so designated and any executive officer, director or stockholder thereof while acting within the scope of his duties as such;
- (d) any person (other than an employee of the Named Insured) or organization while acting as real estate manager for the Named Insured; and
- (e) with respect to the operation, for the purpose of locomotion upon a public highway, of mobile equipment registered under any motor vehicle registration law, (i) an employee of the Named Insured while operating any such equipment in the course of his employment, and (ii) any other person while operating with the permission of the Named Insured any such equipment registered in the name of the Named Insured and any person or organization legally responsible for such operation, but only if there is no other valid and collectible insurance available, either on a primary or excess basis, to such person or organization; provided that no person or organization shall be an insured under this paragraph (e) with respect to (1) bodily injury to any fellow employee of such person injured in the course of his employment, or (2) property damage to property owned by, rented to, in charge of or occupied by the Named Insured or the employer of any person described in subparagraph (i).

This insurance does not apply to bodily injury or property damage arising out of the conduct of any partnership or joint venture of which the insured is a partner or member and which is not designated in this policy as a Named Insured.

## III. LIMITS OF LIABILITY

Regardless of the number of (1) insureds under this policy, (2) persons or organizations who sustain bodily injury or property damage, or (3) claims made or suits brought on account of bodily injury or property damage, the Company's liability is limited as follows:

**Coverage A—**The total liability of the Company for all damages, including damages for care and loss of services, because of bodily injury sustained by one or more persons as the result of any one occurrence shall not exceed the limit of bodily injury liability stated in the declarations as applicable to "each occurrence."

Subject to the above provisions respecting "each occurrence", the total liability of ADMIRAL for all damages because of (1) all bodily injury included within the completed operations hazard and (2) all bodily injury included within the products hazard shall not exceed the limit of bodily injury liability stated in the declarations as "aggregate".

**Coverage B—**The total liability of the Company for all damages because of all property damage sustained by one or more persons or organizations as the result of any one occurrence shall not exceed the limit of property damage liability stated in the declarations as applicable to "each occurrence".

Subject to the above provision respecting "each occurrence", the total liability of the Company for all damages because of all property damage to which this coverage applies and described in any of the numbered subparagraphs below shall not exceed the limit of property damage liability stated in the declarations as "aggregate".

- (1) all property damage arising out of premises or operations rated on a remuneration basis or contractor's equipment rated on a receipts basis, including property damage for which liability is assumed under any incidental contract relating to such premises or operations, but excluding property damage included in subparagraph (2) below;
- (2) all property damage arising out of and occurring in the course of operations performed for the Named Insured by independent contractors and general supervision thereof by the Named Insured, including any such property damage for which liability is assumed under any incidental contract relating to such operations, but this subparagraph (2) does not include property damage arising out of maintenance or repairs at premises owned by or rented to the Named Insured or structural alterations at such premises which do not involve changing the size of or moving buildings or other structures;
- (3) all property damage included within the products hazard and all property damage included within the completed operations hazard.

Such aggregate limit shall apply separately to the property damage described in subparagraphs (1), (2) and (3) above, and under subparagraphs (1) and (2), separately with respect to each project away from premises owned by or rented to the Named Insured.

**Coverages A and B—**For the purpose of determining the limit of the Company's liability, all bodily injury and property damage arising out of continuous or repeated exposure to substantially the same general conditions shall be considered as arising out of one occurrence.



INSURING COMPANY <u>Admiral Insurance Company</u> <small>(herein called "the Company")</small>	<b>CONTRACTUAL LIABILITY INSURANCE          COVERAGE PART</b> (BLANKET COVERAGE)
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<b>ADDITIONAL DECLARATIONS</b>	Policy No. <u>A2EG0116</u>
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**SCHEDULE**

It is agreed that the Limits of Liability set forth in the Policy Declarations for the Contractual Liability Coverage Part shall apply as respects any coverage afforded hereunder unless other specific limits are set forth below.

<b>Coverage</b>	<b>Limits of Liability (this Coverage Part only)</b>
	<b>Refer to</b>
Y. Bodily Injury Liability - . . . . .	<b>Endorsement #1</b> . . . . . each occurrence
Z. Property Damage Liability - . . . . .	<b>Refer to</b> . . . . . each occurrence
	<b>Endorsement #1</b> . . . . . aggregate

Designation of Contracts on file or known to ADMIRAL	Premium Bases	Rates	Advance Premiums
<b>R/A: Intermediate Form Contracts</b>  This classification applies to agreements requiring indemnification of the indemnitee for all occurrences arising out of the indemnitor's operations, excluding only the liability of the indemnitee resulting from his sole negligence except in connection with general supervision of work performed by the indemnitor.  <p style="text-align: center;">Code 16295</p>			
	(a) Sales (b) Cost	(a) Per \$1,000 of Sales (b) Per \$100. of Cost	
Minimum Premium(s): <b>Included</b>		<b>TOTAL ADVANCE PREMIUM ▶ \$ Included</b>	

The following exclusions do not apply with respect to any "construction agreements":

When used as a premium basis:

1. the word "cost" means the total cost of all work in connection with all contracts of the type designated in the schedule for this insurance with respect to which "cost" is the basis of premium, regardless of whether any liability is assumed under such contracts by the insured. It includes the cost of all labor, materials and equipment furnished, used or delivered for use in the execution of such work, whether furnished by the insured, or others including all fees, allowances, bonuses or commissions made, paid or due. It shall not include the cost of any operations to which exclusions (c) or (p) apply, unless such exclusions are voided in the schedule.
2. the word "sales" means the gross amount of money charged by the Named Insured or by others trading under his name for all goods and products sold or distributed during the policy period and charged during the policy period for installation, servicing or repair, and includes taxes, other than taxes which the Named Insured and such others collect as a separate item and remit directly to a governmental division.

**1. LAURENCE Y—CONTRACTUAL BODILY INJURY LIABILITY  
COVERAGE Z—CONTRACTUAL PROPERTY DAMAGE LIABILITY**

The Company will pay on behalf of the Insured all sums which the Insured, by reason of contractual liability assumed by him under any written contract of the type designated in the schedule for this insurance, shall become legally obligated to pay as damages because of

- Y. bodily injury or
- Z. property damage

to which this insurance applies, caused by an occurrence, except the liability of the indemnitee resulting from his sole negligence and the Company shall have the right and duty to defend any suit against the Insured seeking damages on account of such bodily injury or property damage, even if any of the allegations of the suit are groundless, false or fraudulent, and may make such investigation and settlement of any claim or suit as it deems expedient, but the Company shall not be obligated to pay any claim or judgment or to defend (1) any arbitration proceeding wherein the Company is not entitled to exercise the Insured's rights in the choice of arbitrators and in the conduct of such proceedings, or (2) any suit after the applicable limit of the Company's liability has been exhausted by payment of judgments or settlements.

**Exclusions**

This insurance does not apply.

- (a) to liability assumed by the Insured under any incidental contract;
- (b) (1) if the Insured is an architect, engineer or surveyor, to bodily injury or property damage arising out of professional services performed by such Insured, including (i) the preparation or approval of maps, drawings, opinions, reports, surveys, change orders, designs or specifications, and (ii) supervisory, inspection or engineering services; (2) if the indemnitee of the Insured is an architect, engineer or surveyor, to the liability of the indemnitee, his agents or employees, arising out of (i) the preparation or approval of maps, drawings, opinions, reports, surveys, change orders, designs or specifications, or (ii) the giving of or failure to give directions or instructions by the indemnitee, his agents or employees, provided such giving or failure to give is the primary cause of the bodily injury or property damage;
- (c) to bodily injury or property damage due to war, whether or not declared, civil war, insurrection, rebellion or revolution or to any act or condition incident to any of the foregoing;
- (d) to bodily injury or property damage for which the indemnitee may be held liable

- (1) as a person or organization engaged in the business of manufacturing, distributing, selling or serving alcoholic beverages, or
- (2) if not so engaged, as an owner or lessor of premises used for such purposes,

if such liability is imposed

- (i) by, or because of the violation of, any statute, ordinance or regulation pertaining to the sale, gift, distribution or use of any alcoholic beverage, or
- (ii) by reason of the selling, serving or giving of any alcoholic beverage to a minor or to a person under the influence of alcohol or which causes or contributes to the intoxication of any person; but part (ii) of this exclusion does not apply with respect to liability of the indemnitee as an owner or lessor described in (2) above;

- (e) to any obligation for which the Insured or any carrier as his insurer may be held liable under any workmen's compensation, unemployment compensation or disability benefits law, or under any similar law;
- (f) to any obligation for which the Insured may be held liable in an action on a contract by a third party beneficiary for bodily injury or property damage arising out of a project for a public authority, but this exclusion does not apply to an action by the public authority or any other person or organization engaged in the project;
- (g) to property damage to (1) property owned or occupied by or rented to the Insured, (2) property used by the Insured, or (3) property in the care, custody or control of the Insured or as to which the Insured is for any purpose exercising physical control;
- (h) to property damage to premises alienated by the Named Insured arising out of such premises or any part thereof;
- (i) to loss of use of tangible property which has not been physically injured or destroyed resulting from
  - (1) a delay in or lack of performance by or on behalf of the Named Insured of any contract or agreement, or
  - (2) the failure of the Named Insured's products or work performed by or on behalf of the Named Insured to meet the level of performance, quality, fitness or durability warranted or represented by the Named Insured, but this exclusion does not apply to loss of use of other tangible property resulting from the sudden and accidental physical injury to or destruction of the Named Insured's products or work performed by or on behalf of the Named Insured after such products or work have been put to use by any person or organization other than an Insured,

- (j) to property damage to the Named Insured's products arising out of such products or any part of such products;
- (k) to property damage to work performed by or on behalf of the Named Insured arising out of the work or any portion thereof, or out of materials, parts or equipment furnished in connection therewith;
- (l) to damages claimed for the withdrawal, inspection, repair, replacement, or loss of use of the Named Insured's products or work completed by or for the Named Insured or of any property of which such products or work form a part, if such products, work or property are withdrawn from the market or from use because of a known or suspected defect or deficiency therein;

(m) to bodily injury or property damage arising out of the ownership, maintenance, operation, use, loading or unloading of any mobile equipment while being used in any prearranged or organized racing, speed or demolition contest or in any stunting activity or in practice or preparation for any such contest or activity;

(n) to bodily injury or property damage arising out of the discharge, dispersal, release or escape of smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, liquids or gases, waste materials or other irritants, contaminants or pollutants into or upon land, the atmosphere or any water course or body of water; but this exclusion does not apply if such discharge, dispersal, release or escape is sudden and accidental;

Unless stated in the schedule as not applicable, the following exclusions also apply to contractual liability assumed by the Insured under any agreement relating to construction operations.

This insurance does not apply.

- (o) to bodily injury or property damage arising out of construction, maintenance or repair of watercraft or loading or unloading thereof;
- (p) to bodily injury or property damage arising out of operations, within fifty feet of any railroad property, affecting any railroad bridge or trestle, tracks, road beds, tunnels, underpasses or crossings;
- (q) to bodily injury or property damage included within the completed operations hazard or the products hazard;
- (r) to property damage included within (1) the explosion hazard, (2) the collapse hazard, or (3) the underground property damage hazard.

**II. PERSONS INSURED**

Each of the following is an Insured under this insurance to the extent set forth below:

- (a) if the Named Insured is designated in the declarations as an individual, the person so designated and his spouse;
- (b) if the Named Insured is designated in the declarations as a partnership or joint venture, the partnership or joint venture so designated and any partner or member thereof but only with respect to his liability as such;
- (c) if the Named Insured is designated in the declarations as other than an individual, partnership or joint venture, the organization so designated and any executive officer, director or stockholder thereof while acting within the scope of his duties as such.

This insurance does not apply to bodily injury or property damage arising out of the conduct of any partnership or joint venture of which the Insured is a partner or member and which is not designated in this policy as a Named Insured.

**III. LIMITS OF LIABILITY**

Regardless of the number of (1) Insureds under this policy, (2) persons or organizations who sustain bodily injury or property damage, or (3) claims made or suits brought on account of bodily injury or property damage, the Company's liability is limited as follows:

**Coverage Y**—The total liability of the Company for all damages, including damages for care and loss of services, because of bodily injury sustained by one or more persons as a result of any one occurrence shall not exceed the limit of bodily injury liability stated in the declarations as applicable to "each occurrence"

**Coverage Z**—The total liability of the Company for all damages because of all property damage sustained by one or more persons or organizations as the result of any one occurrence shall not exceed the limit of property damage liability stated in the declarations as applicable to "each occurrence."

Subject to the above provision respecting "each occurrence," the total liability of the Company for all damages because of all property damage to which this coverage applies shall not exceed the limit of property damage liability stated in the declarations as "aggregate." Such aggregate limit of liability applies separately with respect to each project away from premises owned by or rented to the Named Insured.

**Coverages Y and Z**—For the purpose of determining the limit of the Company's liability, all bodily injury and property damage arising out of continuous or repeated exposure to substantially the same general conditions shall be considered as arising out of one occurrence.

**IV. POLICY TERRITORY**

This insurance applies only to bodily injury or property damage which occurs within the policy territory.

**V. ADDITIONAL DEFINITIONS**

When used in reference to this insurance (including endorsements forming a part of the policy).

"contractual liability" means liability expressly assumed under a written contract or agreement; provided, however, that contractual liability shall not be construed as including liability under a warranty of the fitness or quality of the Named Insured's products or a warranty that work performed by or on behalf of the Named Insured will be done in a workmanlike manner;

"suit" includes an arbitration proceeding to which the Insured is required to submit or to which the Insured has submitted with the Company's consent.

**VI. ADDITIONAL CONDITION**

**Arbitration**

ADMIRAL shall be entitled to exercise all of the Insured's rights in the choice of arbitrators and in the conduct of any arbitration proceeding

**Premium**

The advance premium stated in the schedule is the estimated premium on account of such written contracts as are on file with or known to the Company. The Named Insured shall notify the Company of all other written contracts entered into during the policy period to which this insurance applies.

INSURING  
COMPANY

**Admiral Insurance Company**  
(herein called "the Company")

**PERSONAL INJURY  
LIABILITY INSURANCE  
COVERAGE PART**

ADDITIONAL DECLARATIONS

Policy No. **AZRC0116**

**SCHEDULE**

The insurance afforded is only with respect to personal injury arising out of an offense included within such of the following groups of offenses as are indicated by specific premium charge or charges.

**GROUPS OF OFFENSES**

**ADVANCE PREMIUM**

- A. False Arrest, Detention or Imprisonment, or Malicious Prosecution - - - - - \$ Included
- B. Libel, Slander, Defamation or Violation of Right of Privacy - - - - - \$ Included
- C. Wrongful Entry or Eviction or Other Invasion of Right of Private Occupancy - - - - - \$ Included

Insured's Participation - 0 % Minimum Premium \$ Included TOTAL ADVANCE PREMIUM \$ Included

**I. COVERAGE P—PERSONAL INJURY LIABILITY**

The Company will pay on behalf of the Insured all sums which the Insured shall become legally obligated to pay as damages because of injury (herein called "personal injury") sustained by any person or organization and arising out of one or more of the following offenses committed in the conduct of the Named Insured's business:

- Group A—false arrest, detention or imprisonment, or malicious prosecution;
- Group B—the publication or utterance of a libel or slander or of other defamatory or disparaging material, or a publication or utterance in violation of an individual's right of privacy, except publications or utterances in the course of or related to advertising, broadcasting or telecasting activities conducted by or on behalf of the Named Insured;
- Group C—wrongful entry or eviction, or other invasion of the right of private occupancy;

if such offense is committed during the policy period within the United States of America, its territories or possessions, or Canada, and the Company shall have the right and duty to defend any suit against the Insured seeking damages on account of such personal injury even if any of the allegations of the suit are groundless, false or fraudulent, and may make such investigation and settlement of any claim or suit as it deems expedient, but the Company shall not be obligated to pay any claim or judgment or to defend any suit after the applicable limit of the Company's liability has been exhausted by payment of judgments or settlements.

**Exclusions**

This insurance does not apply:

- (a) to liability assumed by the Insured under any contract or agreement;
- (b) to personal injury arising out of the willful violation of a penal statute or ordinance committed by or with the knowledge or consent of any Insured;
- (c) to personal injury sustained by any person as a result of an offense directly or indirectly related to the employment of such person by the Named Insured;
- (d) to personal injury arising out of any publication or utterance described in Group B, if the first injurious publication or utterance of the same or similar material by or on behalf of the Named Insured was made prior to the effective date of this insurance;

(e) to personal injury arising out of a publication or utterance described in Group B, concerning any organization or business enterprise, or its products or services, made by or at the direction of any Insured with knowledge of the falsity thereof

**II. PERSONS INSURED**

Each of the following is an Insured under this insurance to the extent set forth below:

- (a) if the Named Insured is designated in the declarations as an individual, the person so designated and his spouse;
- (b) if the Named Insured is designated in the declarations as a partnership or joint venture, the partnership or joint venture so designated and any partner or member thereof but only with respect to his liability as such;
- (c) if the Named Insured is designated in the declarations as other than an individual, partnership or joint venture, the organization so designated and any executive officer, director or stockholder thereof while acting within the scope of his duties as such.

This insurance does not apply to personal injury arising out of the conduct of any partnership or joint venture of which the Insured is a partner or member and which is not designated in this policy as a Named Insured.

**III. LIMITS OF LIABILITY: INSURED'S PARTICIPATION**

Regardless of the number of (1) Insureds under this policy, (2) persons or organizations who sustain personal injury, or (3) claims made or suits brought on account of personal injury, the total liability of the Company under this coverage for all damages shall not exceed the limit of personal injury liability stated in the declarations as "aggregate".

If a participation percentage is stated in the schedule for the Insured, the Company shall not be liable for a greater proportion of any loss than the difference between such percentage and one hundred percent and the balance of the loss shall be borne by the Insured; provided, the Company may pay the Insured's portion of a loss to effect settlement of the loss, and, upon notification of the action taken, the Named Insured shall promptly reimburse the Company therefor.

**IV. ADDITIONAL DEFINITION**

When used in reference to this insurance

"damages" means only those damages which are payable because of personal injury arising out of an offense to which this insurance applies.

INSURING COMPANY <u>Admiral Insurance Company</u> <small>(herein called "the Company")</small>	NO <u>1</u> EFFECTIVE DATE <u>8/29/82</u>	ENDORSEMENT TO POLICY NO <u>A2EG0116</u> <u>8/29/82</u>
NAMED INSURED <u>Marisol, Inc.</u>	<b>COMBINED SINGLE LIMIT OF LIABILITY</b>	

A. The LIMITS OF LIABILITY on the DECLARATIONS are amended to read as follows:

- \$ 500,000. each occurrence as respects Bodily Injury Liability or Property Damage Liability or both combined.
- \$ 500,000. aggregate.

B. It is further understood and agreed that Insuring Agreement III—"LIMITS OF LIABILITY," as contained in any Coverage Part attached to this policy is deleted and the following substituted therefor:

**III. LIMITS OF LIABILITY**

Regardless of the number of (1) Insureds under this policy, (2) persons or organizations who sustain bodily injury or property damage, or (3) claims or suits brought on account of bodily injury or property damage, the Company's liability is limited as follows:

The total liability of the Company for all damages, including damages for care and loss of services, because of bodily injury sustained by one or more persons as the result of any one occurrence and the total liability of the Company for all damages because of all property damage sustained by one or more persons or organizations as a result of any one occurrence shall not exceed the limit of liability stated herein as applicable to "each occurrence."

For the purpose of determining the limit of the Company's liability, all bodily injury and property damage arising out of continuous or repeated exposure to substantially the same general conditions shall be considered as arising out of one occurrence.

C. The aggregate limit of liability stated above is only with respect to such of the following COVERAGE PARTS as indicated by  :

**COMPREHENSIVE GENERAL LIABILITY COVERAGE PART (Form JC-0019)**

Subject to the above provision respecting "each occurrence," the total liability of the Company for all damages because of all bodily injury and property damage to which this coverage applies and which is described in any of the numbered subparagraphs below shall not exceed the limit of liability stated in this endorsement as "aggregate":

- (1) all property damage arising out of premises or operations rated on a remuneration basis or contractor's equipment rated on a receipts basis, including property damage for which liability is assumed under any incidental contract relating to such premises or operations, but excluding property damage included in subparagraph (2) below;
- (2) all property damage arising out of and occurring in the course of operations performed for the named insured by independent contractors and general supervision thereof by the Named Insured, including any such property damage for which liability is assumed under any incidental contract relating to such operations, but this subparagraph (2) does not include property damage arising out of maintenance or repairs at premises owned by or rented to the named insured or structural alterations at such premises which do not involve changing the size of or moving buildings or other structures;

(3) all bodily injury and property damage included within the completed operations hazard and the products hazard combined.

Such aggregate limit shall apply separately to the property damage described in subparagraphs (1), (2) and (3) above, and under the subparagraphs (1) and (2), separately with respect to each project away from premises owned by or rented to the Named Insured.

**CONTRACTUAL LIABILITY COVERAGE PART (Form JC-0024 or JC-0025)**

Subject to the above provision respecting "each occurrence," the total liability of the Company for all damages because of all property damage to which this coverage applies shall not exceed the limit of liability stated in this endorsement as "aggregate." Such aggregate limit of liability applies separately with respect to each project away from premises owned by or rented to the Named Insured.

**COMPLETED OPERATIONS AND PRODUCTS LIABILITY INSURANCE COVERAGE PART (Form JC-0023)**

Subject to the above provision respecting "each occurrence," the total liability of the Company for all damages because of all bodily injury or property damage to which this coverage applies and arising out of the products hazard and the completed operations hazard combined shall not exceed the limit of liability stated herein as "aggregate."

**OWNERS' AND CONTRACTORS' PROTECTIVE LIABILITY INSURANCE COVERAGE PART (Form JC-0022)**

Subject to the above provision respecting "each occurrence," the total liability of the Company for all damages because of all property damage to which the coverage applies shall not exceed the limit of property damage liability stated herein as "aggregate." If more than one project is designated in the schedule, such aggregate limit shall apply separately with respect to each project.

**OWNERS', LANDLORDS' AND TENANTS' LIABILITY INSURANCE COVERAGE PART (Form JC-0020)**

Subject to the above provisions respecting "each occurrence," the total liability of the Company for all damages because of all property damage to which this coverage applies and arising out of and occurring in the course of structural alterations which involve changing the size of or moving buildings or other structures, new construction or demolition operations performed by or on behalf of the Named Insured (including any such property damage for which liability is assumed under any incidental contract relating to such operations) shall not exceed the limit of property damage liability stated herein as "aggregate."

**MANUFACTURERS' AND CONTRACTORS' LIABILITY INSURANCE COVERAGE PART (Form JC-0021)**

Subject to the above provision respecting "each occurrence," the total liability of the Company for all damages because of all property damage to which this coverage applies and described in either of the numbered subparagraphs below shall not exceed the limit of property damage liability stated herein as "aggregate":

- (1) all property damage arising out of premises or operations rated on a remuneration basis or contractor's equipment rated on a receipts basis, including property damage for which liability is assumed under any incidental contract relating to such premises or operations, but excluding property damage included in subparagraph (2) below;
- (2) all property damage arising out of and occurring in the course of operations performed for the Named Insured by independent contractors and general supervision thereof by the Named Insured, including any such property damage for which liability is assumed under any incidental contract relating to such operations, but this subparagraph (2) does not include property damage arising out of maintenance or repairs at premises owned by or rented to the Named Insured or structural alterations at such premises which do not involve changing the size of or moving buildings or other structures.

Such aggregate limit shall apply separately to the property damage described in subparagraphs (1) and (2) above and separately with respect to each project away from premises owned by or rented to the Named Insured.

By: \_\_\_\_\_



Authorized Representative


VES00000081

INSURING COMPANY <b>Admiral Insurance Co.</b> <small>(herein called "the Company")</small>	NO <b>2</b> EFFECTIVE DATE	ENDORSEMENT TO POLICY NO. <b>AZEG0116</b> <b>8/29/82</b>
NAMED INSURED <b>Marisol, Inc.</b>	<b>DEDUCTIBLE LIABILITY INSURANCE</b>	

**It is agreed that:**

1. The company's obligation under the Bodily Injury Liability and Property Damage Liability Coverages to pay damages on behalf of the Insured applies only to the amount of damages in excess of any deductible amounts stated in the schedule below as applicable to such coverages.
2. The deductible amounts stated in the schedule apply as follows:
  - (a) **PER CLAIM BASIS** - If the deductible is on a "per claim" basis, the deductible amount applies under the Bodily Injury Liability or Property Damage Liability Coverage, respectively, to all damages because of bodily injury sustained by one person, or to all property damage sustained by one person or organization, as the result of any one occurrence.
  - (b) **PER OCCURRENCE BASIS** - If the deductible is on a "per occurrence" basis, the deductible amount applies under the Bodily Injury Liability Property Damage Liability Coverage, respectively, to all damages because of all bodily injury or property damage as the result of any one occurrence.
3. The terms of the policy, including those with respect to (a) the company's rights and duties with respect to the defense of suits and (b) the insured's duties in the event of an occurrence apply irrespective of the application of the deductible amount.
4. The company may pay any part or all of the deductible amount to affect settlement of any claim or suit and, upon notification of the action taken, the named insured shall promptly reimburse the company for such part of the deductible amount as has been paid by the company.

COVERAGE	SCHEDULE	
	AMOUNT AND BASIS OF DEDUCTIBLE	
Bodily Injury Liability	\$1,000. \$ _____	per claim per occurrence
Property Damage Liability	\$1,000. \$ _____	per claim per occurrence

BY:   
 Authorized Representative

INSURING COMPANY <b>Admiral Insurance Company</b> <small>(herein called "the Company")</small>	NO <b>3</b> EFFECTIVE DATE <b>8/29/82</b>	<b>ENDORSEMENT</b> TO POLICY NO. <b>A28G0116</b>
NAMED INSURED <b>Marisol, Inc.</b>	<b>AMENDMENT TO PERSONAL INJURY LIABILITY  INSURANCE COVERAGE PART</b>	

It is hereby understood and agreed that (c) of Exclusions as shown on the PERSONAL INJURY LIABILITY INSURANCE COVERAGE PART (form JC0026) is deleted in its entirety.

BY *[Signature]*  
Authorized Representative

INSURING COMPANY Admiral Insurance Company <small>(herein called "the Company")</small>	NO 4 EFFECTIVE DATE	ENDORSEMENT TO POLICY NO A2EG0116 8/29/82
NAMED INSURED Marisol, Inc.	BROAD FORM LIABILITY ENDORSEMENT (Page 1 of 5)	

Such insurance as is afforded by the policy for Comprehensive General Liability is amended to include the following additions and extensions of coverage:

**I. ADDITIONAL INSURED — EMPLOYEES**

The "Persons Insured" provision is amended to include any employee of the Named Insured while acting within the scope of his duties as such but the insurance afforded to such employee does not apply:

1. to bodily injury to (a) another employee of the Named Insured arising out of or in the course of his employment or (b) the Named Insured or, if the Named Insured is a partnership or joint venture, any partner or member thereof;
2. to property damage to property owned, occupied or used by, rented to, in the care, custody or control of, or over which physical control is being exercised for any purpose by (a) another employee of the Named Insured or (b) the Named Insured or, if the Named Insured is a partnership or joint venture, any partner or member thereof;
3. to injury to which Incidental Malpractice Coverage, Section VI, of this endorsement, applies.

**II. BROAD FORM PROPERTY DAMAGE (Including Completed Operations)**

It is agreed that the insurance for property damage liability applies, subject to the following additional provisions:

A. The exclusions relating to property damage to (1) property owned, occupied or used by or rented to the Insured or in the care, custody or control of the Insured, or as to which the Insured is for any purpose exercising physical control and (2) work performed by or on behalf of the Named Insured arising out of the work or any portion thereof, or out of materials, parts or equipment furnished in connection therewith, are replaced by the following exclusions (y) and (z):

(y) to property damage

- (1) to property owned or occupied by or rented to the Insured, or except with respect to the use of elevators, to property held by the Insured for sale or entrusted to the Insured for storage or safekeeping,



(2) except with respect to liability under a written sidetrack agreement or the use of elevators to

- (a) property while on premises owned by or rented to the Insured for the purpose of having operations performed on such property by or on behalf of the Insured,
- (b) tools or equipment while being used by the Insured in performing his operations,
- (c) property in the custody of the Insured which is to be installed, erected or used in construction by the Insured,
- (d) that particular part of any property, not on premises owned by or rented to the Insured,
  - (i) upon which operations are being performed by or on behalf of the Insured at the time of the property damage arising out of such operations, or
  - (ii) out of which any property damage arises, or
  - (iii) the restoration, repair or replacement of which has been made or is necessary by reason of faulty workmanship thereon by or on behalf of the Insured;

(z) with respect to the completed operations hazard, to property damage to work performed by the Named Insured arising out of the work or any portion thereof, or out of materials, parts or equipment furnished in connection therewith.

B. The insurance afforded hereby shall be excess insurance over any valid and collective property insurance (including any deductible portion thereof) available to the Insured, such as but not limited to Fire and Extended Coverage, Builder's Risk Coverage or Installation Risk Coverage, and the "Other Insurance" Condition is amended accordingly.

### III. WATERCRAFT NON-OWNERSHIP (UNDER 33 FEET IN LENGTH)

It is agreed that the policy exclusion relating to the ownership, maintenance, operation, use, loading or unloading of watercraft shall not apply to any watercraft under 33 feet in length provided such watercraft is not owned by the Named Insured and is not being used to carry persons for a charge.

The insurance afforded hereby shall be excess insurance over any other valid and collectible insurance available to the Insured.

### IV. WORLDWIDE PRODUCTS LIABILITY (Claims or Suits Brought Within the U.S.A. or Canada)

It is hereby understood and agreed that the definition of "policy territory" as shown on the GENERAL LIABILITY POLICY Standard Provisions (form JD-0014) is amended to read as follows:

"policy territory" means:

anywhere in the world with respect to damages because of bodily injury or property damage arising out of the Named Insured's product, provided the original suit for such damages is brought within the United States of America, its territories or possessions, or Canada.

## V. AUTOMATIC COVERAGE — NEWLY ACQUIRED ENTITIES (30 DAYS)

The word Insured shall include any entity which is acquired or formed after the effective date of this endorsement by any Named Insured and over which such Named Insured maintains ownership or financial control, provided this insurance does not apply to bodily injury or property damage with respect to which such a new Insured under this policy is also an Insured under any other liability or indemnity policy or would be an Insured under any such policy but for exhaustion of its limits of liability. The insurance afforded hereby shall terminate 30 days from the date any such entity is acquired or formed by such Named Insured unless this policy is endorsed to include such new Insured as a Named Insured effective as of the date of such acquisition.

## VI. INCIDENTAL MALPRACTICE COVERAGE

It is agreed that the definition of "bodily injury" is amended to include Incidental Medical Malpractice Injury.

Incidental Medical Malpractice Injury means injury arising out of the rendering of or failure to render during the policy period, the following services:

- (a) medical, surgical, dental, x-ray or nursing service or treatment or the furnishing of food or beverages in connection therewith; or
- (b) the furnishing or dispensing of drugs or medical, dental or surgical supplies or appliances.

This coverage does not apply to:

- (1) expenses incurred by the Insured for first-aid to others at the time of an accident and the "Supplementary Payments" provision and the "Insured's Duties in the Event of Occurrence, Claim or Suit" condition are amended accordingly;
- (2) any insured engaged in the business or occupation of providing any of the services described under (a) and (b) above;
- (3) injury caused by any indemnitee if such indemnitee is engaged in the business or occupation of providing any of the services described under (a) and (b) above.

## VII. HOST LIQUOR LIABILITY

The exclusion contained in the policy with respect to the manufacturing, distributing, selling or serving alcoholic beverages does not apply to bodily injury or property damage arising out of serving or giving of alcoholic beverages by or on behalf of the Named Insured provided the Named Insured is not a person or organization engaged in the business of manufacturing, distributing, selling or serving alcoholic beverages, or is not an owner or lessor of premises used for such purposes.

### **VIII. EXTENDED BODILY INJURY COVERAGE**

The definition of occurrence includes any intentional act by or at the direction of the Insured which results in bodily injury, if such injury arises solely from the use of reasonable force for the purpose of protecting persons or property.

### **XI. FIRE LEGAL LIABILITY COVERAGE — REAL PROPERTY**


The Property Damage Liability Coverage applies to property damage to structures or portions thereof rented to or occupied by the Named Insured, including fixtures permanently attached thereto, if such property damage arises out of fire subject to the following additional provisions.

- (A) With respect to the insurance provided by these provisions, all of the exclusions of the policy, other than the Nuclear Energy Liability Exclusion (Broad Form), are deleted and replaced by the following:
  - (1) This insurance does not apply to liability assumed by the Insured under any contract or agreement.
- (B) The limit of property damage liability in the declarations of the policy as applicable to "each occurrence" is, as respects this Fire Legal Liability Coverage — Real Property, amended to read \$50,000, each occurrence.
- (C) The Insurance afforded hereby shall be excess insurance over any valid and collectible property insurance (including any deductible portion thereof) available to the Insured, such as, but not limited to, Fire, Extended Coverage, Builder's Risk Coverage or Installation Risk Coverage, and the "Other Insurance" Condition of the policy is amended accordingly.

INSURING COMPANY <b>Admiral Insurance Company</b> <small>(herein called "the Company")</small>	NO. <b>5</b> EFFECTIVE DATE <b>8/29/82</b>	<b>ENDORSEMENT</b> TO POLICY NO. <b>A22C0116</b>
NAMED INSURED <b>Marisol, Inc.</b>	<b>MINIMUM PREMIUM ENDORSEMENT</b>	

The final sentence of the second paragraph of **CONDITION 1**. is amended to read as follows:

"If the total annual earned premium for the policy period is less than the premium previously paid, the Company shall return to the Named Insured the unearned portion paid by the Named Insured, but the Company shall receive and retain no less than the annual minimum premium(s) listed in this policy.

BY   
Authorized Representative

INSURING COMPANY <b>Admiral Insurance Company</b> <small>(herein called "the Company")</small>	NO <b>6</b> EFFECTIVE DATE <b>1/1/83</b>	ENDORSEMENT POLICY NO. <b>A2EG0116</b>
NAMED INSURED <b>Marisol, Inc.</b>	<b>HAZARDOUS WASTE FACILITY          LIABILITY ENDORSEMENT</b>	

It is hereby understood and agreed that in consideration of the premium charged, the following endorsement wording applies to this policy:

1. This endorsement certifies that the policy to which the endorsement is attached provides liability insurance covering bodily injury and property damage in connection with the Insured's obligation to demonstrate financial responsibility under 40 CFR 264.147 or 265.147. The coverage applies to all operations and locations of Marisol, Inc. for "Sudden Accidental Occurrences". The limits of liability are \$500,000. Combined Single Limits, Bodily Injury and Property Damage combined with a \$1,000. deductible per claim BI/PD exclusive of loss adjustment and legal expenses.
2. The insurance afforded with respect to such occurrences is subject to all of the terms and conditions of this policy; provided, however, that any provisions of the policy inconsistent with subsections (A) through (E) of this paragraph 2 are hereby amended to conform with subsections (A) through (E):
  - (A) Bankruptcy or insolvency of the Insured shall not relieve the Insurer of its obligations under the policy to which this endorsement is attached.
  - (B) The Insurer is liable for the payment of amounts within any deductible applicable in the policy, with a right to reimbursement by the Insured for any such payment made by the Insurer. This provision does not apply with respect to that amount of any deductible for which coverage is demonstrated as specified in 40 CFR 264.147 (F) or 265.147 (F).
  - (C) Whenever requested by a regional administrator of the U.S. Environmental Protection Agency (EPA), the Insurer agrees to furnish to the regional administrator a signed duplicate original of the policy and all endorsements.
  - (D) Cancellation of this endorsement, whether by the Insurer or the Insured, will be effective only upon written notice and only after the expiration of sixty (60) days after a copy of such written notice is received by the regional administrator(s) of the EPA region(s) in which the facility(ies) is(are) located.
  - (E) Any other termination of this endorsement will be effective only upon written notice and only after the expiration of thirty (30) days after a copy of such written notice is received by the regional administrator(s) of the EPA region(s) in which the facility(ies) is(are) located.

BY \_\_\_\_\_

Authorized Representative

PRODUCER COPY 31

VES00000089

INSURING COMPANY <u>Admiral Insurance Company</u> <small>(herein called "the Company")</small>	NO <u>6 (Con't.)</u>	<b>ENDORSEMENT</b> TO POLICY NO <u>A2EG0116</u> EFFECTIVE DATE <u>1/1/83</u>
NAMED INSURED <u>Marisol, Inc.</u>	<b>HAZARDOUS WASTE FACILITY  LIABILITY ENDORSEMENT  (continued)</b>	

Attached to and forming a part of Policy No. A2EG0116 issued by ADMIRAL INSURANCE COMPANY, herein called the Insurer of:

c/o JERSEY INTERNATIONAL UNDERWRITING MANAGERS, INC.  
1255 Caldwell Road  
P. O. Box 5725  
Cherry Hill, N.J. 08034

TO Marisol, Inc.  
125 Factory Lane  
Middlesex, N.J. 08846

this 1st day of January, 1983. The effective date of said policy is 8/29/82.

I hereby certify that the wording of this endorsement is identical to the wording specified in 40 CFR 264.151 (1) as such regulation was constituted on the date first above written, and that the insurer is licensed to transact the business of insurance, or eligible to provide insurance at an excess or surplus lines insurer, in one or more states.

Leonard J. Mikulski  
Vice President

Authorized Representative of Admiral Insurance Company  
1255 Caldwell Road  
Cherry Hill, New Jersey

Date of Issuance: 2/19/83

BY: 

Authorized Representative

PRODUCER COPY #1

VES00000090

# ADMIRAL

A STOCK COMPANY  
(herein called "the Company")



## INSURANCE COMPANY

Replacing AZ66U11E

### GENERAL LIABILITY POLICY

3

### DECLARATIONS

NAMED INSURED

**Marisol, Inc.**  
125 Factory Lane  
Middlesex, N.J. 08846

MAILING ADDRESS

PRODUCER'S NAME AND ADDRESS	
PRODUCER CODE:	COMMISSION: %

POLICY PERIOD: From: 8/29/83 To: 8/29/84  
At 12:01 A.M. Standard Time at the address of the Named Insured as stated herein

THE NAMED INSURED IS:  Individual,  Partnership,  Corporation,  Joint Venture,  Other

AUDIT PERIOD:  Annual,  Other

The insurance afforded is only with respect to such of the following Parts and Coverages therein as are indicated by . The limit of the Company's liability against each such Coverage shall be as stated herein, subject to all of the terms of the policy having reference thereto.

COVERAGE PARTS	LIMITS OF LIABILITY			
	Bodily Injury Liability		Property Damage Liability	
	each occurrence	aggregate	each occurrence	aggregate
<input checked="" type="checkbox"/> Comprehensive General Liability Insurance	\$	\$	\$	\$
<input type="checkbox"/> Owners', Landlords' and Tenants' Liability Insurance				
<input type="checkbox"/> Manufacturers' and Contractors' Liability Insurance				
<input type="checkbox"/> Owners' and Contractors' Protective Liability Insurance				
<input type="checkbox"/> Completed Operations and Products Liability Insurance				
<input checked="" type="checkbox"/> Contractual Liability Insurance (Blanket)				
<input type="checkbox"/>				
<input type="checkbox"/>				
<input checked="" type="checkbox"/> Personal Injury Liability Insurance		aggregate		\$ 500,000.
<input type="checkbox"/> Premises Medical Payments Insurance	\$	each person aggregate	\$	each accident

**\$500,000. Combined Single Limit (Refer to Endorsement #1)**

Endorsements attached to policy at inception: #1 - Combined Single Limit of Liability, #2 - Deductible Liability Insurance, #3 - Broad Form Liability Endorsement, #4 - Amendment to Personal Injury Liability Insurance Coverage Part, #5 - Hazardous Waste Facility Liability Endorsement.

INITIAL ADVANCE PREMIUMS: 10,000.00

Policy Period: 12 months from 8/29/83 to 8/29/84

\$

Witnessed On

9/19/83

Cherry Hill, N.J.

VES00000091

INSURING  
COMPANY Admiral Insurance Company  
(herein called "the Company")

**COMPREHENSIVE GENERAL  
LIABILITY INSURANCE  
COVERAGE PART**

**ADDITIONAL DECLARATIONS**

Policy No. A3EG1334

**SCHEDULE**

The following discloses all hazards insured hereunder known to exist at the effective date of this policy, unless otherwise stated herein:

Description of Hazards	Premium Basis	Rates	Advance Premiums
<b>Premises—Operations</b>			
Reclamation of solvents & fluids R/A: Chemicals Mfg.  Code 28905  This is an N.O.C. classification.	(b) \$4,000,000.	(b) \$2.50	\$10,000.00
	(a) Remuneration (b) Receipts (c) Units	(a) Per \$100 of Remuneration (b) Per \$1000 of Receipts (c) Per Unit	\$1,000.
<b>Completed Operations—Products</b>			
Included	(a) Receipts (b) Sales	(a) Per \$1000 of Receipts (b) Per \$1000 of Sales	
<b>Escalators (Number at Premises)</b>	Number Insured	Per Lading	
No Known Exposure			
<b>Independent Contractors</b>	Cost	Per \$100 of Cost	
No Known Exposure			
<b>Minimum Premium(s):</b> \$10,000.00		<b>TOTAL ADVANCE PREMIUM</b>	<b>\$ 10,000.00</b>

When used as a Premium basis:

- "remuneration" means the entire remuneration earned during the policy period by proprietors and by all employees of the Named Insured other than chauffeurs (except operators of mobile equipment) and aircraft pilots and co-pilots, subject to any overtime earnings or limitation of remuneration rule applicable in accordance with the manuals in use by the Company.
- "receipts" means the gross amount of money charged by the Named Insured for such operations by the Named Insured or by others during the policy period as are rated on a receipts basis other than receipts from telecasting, broadcasting or motion pictures, and includes taxes, other than taxes which the Named Insured collects as a separate item and remits directly to a governmental division.
- "cost" means the total cost to the Named Insured with respect to operations performed for the Named Insured during the policy period by independent contractors of all work let or sub-let in connection with each specific project, including the cost of all labor, materials and equipment furnished, used or delivered for use in the execution of such work, whether furnished by the owner, contractor or sub-contractor, including all fees, allowances, bonuses or commissions made, paid or due.
- "sales" means the gross amount of money charged by the Named Insured or by others trading under his name for all goods and products sold or distributed during the policy period and charged during the policy period for installation, servicing or repair, and includes taxes, other than taxes which the Named Insured and such others collect as a separate item and remit directly to a governmental division.

**I. COVERAGE A—BODILY INJURY LIABILITY**

**COVERAGE B—PROPERTY DAMAGE LIABILITY**

Company will pay on behalf of the Insured all sums which the Insured shall become legally obligated to pay as damages because of

A bodily injury or B property damage

to which this insurance applies, caused by an occurrence and the Company shall have the right and duty to defend any suit against the Insured seeking damages on account of such bodily injury or property damage even if any of the allegations of

the suit are groundless, false or fraudulent, and may make such investigation and settlement of any claim or suit as it deems expedient, but the Company shall not be obligated to pay any claim or judgment or to defend any suit after the applicable limit of the Company's liability has been exhausted by payment of judgments or settlements.

**Exclusions**

This insurance does not apply

- (a) to liability assumed by the Insured under any contract or agreement except an incidental contract; but this exclusion does not apply to a warranty of fitness or



quality of the Named Insured's products or a warranty that work performed by or on behalf of the Named Insured will be done in a workmanlike manner.

- (b) to bodily injury or property damage arising out of the ownership, maintenance, operation, use, loading or unloading of (1) any automobile or aircraft owned or operated by or rented or loaned to any Insured, or (2) any other automobile or aircraft operated by any person in the course of his employment by any Insured; but this exclusion does not apply to the parking of an automobile on premises owned by, rented to or controlled by the Named Insured or the ways immediately adjoining, if such automobile is not owned by or rented or loaned to any Insured.
- (c) to bodily injury or property damage arising out of (1) the ownership, maintenance, operation, use, loading or unloading of any mobile equipment while being used in any prearranged or organized racing, speed or demolition contest or in any stunting activity or in practice or preparation for any such contest or activity or (2) the operation or use of any snowmobile or trailer designed for use therewith;
- (d) to bodily injury or property damage arising out of and in the course of the transportation of mobile equipment by an automobile owned or operated by or rented or loaned to any Insured;
- (e) to bodily injury or property damage arising out of the ownership, maintenance, operation, use, loading or unloading of (1) any watercraft owned or operated by or rented or loaned to any Insured, or (2) any other watercraft operated by any person in the course of his employment by any Insured, but this exclusion does not apply to watercraft while ashore on premises owned by, rented to or controlled by the Named Insured.
- (f) to bodily injury or property damage arising out of the discharge, dispersal, release or escape of smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, liquids or gases, waste materials or other irritants, contaminants or pollutants into or upon land, the atmosphere or any water course or body of water, but this exclusion does not apply if such discharge, dispersal, release or escape is sudden and accidental.
- (g) to bodily injury or property damage due to war, whether or not declared, civil war, insurrection, rebellion or revolution or to any act or condition incident to any of the foregoing, with respect to (1) liability assumed by the Insured under an incidental contract, or (2) expenses for first aid under the Supplementary Payments provision.
- (h) to bodily injury or property damage for which the Insured or his indemnitee may be held liable (1) as a person or organization engaged in the business of manufacturing, distributing, selling or serving alcoholic beverages, or (2) if not so engaged, as an owner or lessor of premises used for such purposes, if such liability is imposed (i) by, or because of the violation of, any statute, ordinance or regulation pertaining to the sale, gift, distribution or use of any alcoholic beverages, or (ii) by reason of the selling, serving or giving of any alcoholic beverage to a minor or to a person under the influence of alcohol or which causes or contributes to the intoxication of any person, but part (ii) of this exclusion does not apply with respect to liability of the Insured or his indemnitee as an owner or lessor described in (2) above.  
any obligation for which the Insured or any carrier as his insurer may be held liable under any workers' compensation, unemployment compensation or disability benefits law, or under any similar law.
- (i) to bodily injury to any employee of the Insured arising out of and in the course of his employment by the Insured or to any obligation of the Insured to indemnify another because of damages arising out of such injury; but this exclusion does not apply to liability assumed by the Insured under an incidental contract;
- (k) to property damage to (1) property owned or occupied by or rented to the Insured, (2) property used by the Insured, or (3) property in the care, custody or control of the Insured or as to which the Insured is for any purpose exercising physical control, but parts (2) and (3) of this exclusion do not apply with respect to liability under a written sidetrack agreement and part (3) of this exclusion does not apply with respect to property damage (other than to elevators) arising out of the use of an elevator at premises owned by, rented to or controlled by the Named Insured.
- (l) to property damage to premises alienated by the Named Insured arising out of such premises or any part thereof;
- (m) to loss of use of tangible property which has not been physically injured or destroyed resulting from (1) a delay in or lack of performance by or on behalf of the Named Insured of any contract or agreement, or (2) the failure of the Named Insured's products or work performed by or on behalf of the Named Insured to meet the level of performance, quality, fitness or durability warranted or represented by the Named Insured; but this exclusion does not apply to loss of use of other tangible property resulting from the sudden and accidental physical injury to or destruction of the Named Insured's products or work performed by or on behalf of the Named Insured after such products or work have been put to use by any person or organization other than an Insured;
- (n) to property damage to the Named Insured's products arising out of such products or any part of such products.
- (o) to property damage to work performed by or on behalf of the Named Insured arising out of the work or any portion thereof, or out of materials, parts or equipment furnished in connection therewith.
- (p) to damages claimed for the withdrawal, inspection, repair, replacement, or loss of the use of the Named Insured's products or work completed by or for the Named Insured or of any property of which such products or work form a part, if such products, work or property are withdrawn from the market or from use because of any known or suspected defect or deficiency therein;

any property damage included within (1) the explosion hazard in connection with operations identified in this policy by a classification code number which includes the symbol "u", (2) the collapse hazard in connection with operations identified in this policy by a classification code number which includes the symbol "c", (3)

the underground property damage hazard in connection with operations identified in this policy by a classification code number which includes the symbol "u".

## II PERSONS INSURED

Each of the following is an Insured under this insurance to the extent set forth below

- (a) if the Named Insured is designated in the declarations as an individual, the person so designated but only with respect to the conduct of a business of which he is the sole proprietor, and the spouse of the Named Insured with respect to the conduct of such a business.
- (b) if the Named Insured is designated in the declarations as a partnership or joint venture, the partnership or joint venture so designated and any partner or member thereof but only with respect to his liability as such;
- (c) if the Named Insured is designated in the declarations as other than an individual, partnership or joint venture, the organization so designated and any executive officer, director or stockholder thereof while acting within the scope of his duties as such;
- (d) any person (other than an employee of the Named Insured) or organization while acting as real estate manager for the Named Insured; and
- (e) with respect to the operation, for the purpose of locomotion upon a public highway, of mobile equipment registered under any motor vehicle registration law, (1) an employee of the Named Insured while operating any such equipment in the course of his employment, and (2) any other person while operating with the permission of the Named Insured any such equipment registered in the name of the Named Insured and any person or organization legally responsible for such operation, but only if there is no other valid and collectible insurance available, either on a primary or excess basis, to such person or organization; provided that no person or organization shall be an Insured under this paragraph (e) with respect to (1) bodily injury to any fellow employee of such person in the course of his employment, or (2) property damage to property owned by, rented to, in charge of or occupied by the Named Insured or the employer of any person described in subparagraph (ii).

This insurance does not apply to bodily injury or property damage arising out of the conduct of any partnership or joint venture of which the Insured is a partner or member and which is not designated in this policy as a Named Insured.

## III. LIMITS OF LIABILITY

Regardless of the number of (1) Insureds under this policy, (2) persons or organizations who sustain bodily injury or property damage, or (3) claims made or suits brought on account of bodily injury or property damage, the Company's liability is limited as follows.

**Coverage A**—The total liability of the Company for all damages, including damages for care and loss of services, because of bodily injury sustained by one or more persons as the result of any one occurrence shall not exceed the limit of bodily injury liability stated in the declarations as applicable to "each occurrence."

Subject to the above provisions respecting "each occurrence", the total liability of ADMIRAL for all damages because of (1) all bodily injury included within the completed operations hazard and (2) all bodily injury included within the products hazard shall not exceed the limit of bodily injury liability stated in the declarations as "aggregate".

**Coverage B**—The total liability of the Company for all damages because of all property damage sustained by one or more persons or organizations as the result of any one occurrence shall not exceed the limit of property damage liability stated in the declarations as applicable to "each occurrence."

Subject to the above provision respecting "each occurrence", the total liability of the Company for all damages because of all property damage to which this coverage applies and described in any of the numbered subparagraphs below shall not exceed the limit of property damage liability stated in the declarations as "aggregate".

- (1) all property damage arising out of premises or operations rated on a remuneration basis or contractor's equipment rated on a receipts basis, including property damage for which liability is assumed under any incidental contract relating to such premises or operations, but excluding property damage included in subparagraph (2) below.
- (2) all property damage arising out of and occurring in the course of operations performed for the Named Insured by independent contractors and general supervision thereof by the Named Insured, including any such property damage for which liability is assumed under any incidental contract relating to such operations, but this subparagraph (2) does not include property damage arising out of maintenance or repairs at premises owned by or rented to the Named Insured or structural alterations at such premises which do not involve changing the size of or moving buildings or other structures.
- (3) all property damage included within the products hazard and all property damage included within the completed operations hazard.

Such aggregate limit shall apply separately to the property damage described in subparagraphs (1), (2) and (3) above, and under subparagraphs (1) and (2), separately with respect to each project away from premises owned by or rented to the Named Insured.

**Coverages A and B**—For the purpose of determining the limit of the Company's liability, all bodily injury and property damage arising out of continuous or repeated exposure to substantially the same general conditions shall be considered as arising out of one occurrence.

INSURING COMPANY Admiral Insurance Company  
(herein called "the Company")

**CONTRACTUAL LIABILITY INSURANCE  
COVERAGE PART  
(BLANKET COVERAGE)**

**ADDITIONAL DECLARATIONS**

Policy No. A38C1334

**SCHEDULE**

It is agreed that the Limits of Liability set forth in the Policy Declarations for the Contractual Liability Coverage Part shall apply as respects any coverage afforded hereunder unless other specific limits are set forth below.

Coverage	Limits of Liability (this Coverage Part only)
Y. Bodily Injury Liability - . . . . .	\$ <u>Refer to</u> . . . . . each occurrence
Z. Property Damage Liability - . . . . .	\$ <u>Endorsement</u> . . . . . each occurrence
	\$ <u>#1.</u> . . . . . aggregate

Designation of Contracts on file or known to ADMIRAL	Premium Bases	Rates	Advance Premiums
<b>R/A: Intermediate Form Contracts</b>  This classification applies to agreements requiring indemnification of the indemnitee for all occurrences arising out of the indemnitor's operations, excluding only the liability of the indemnitee resulting from his sole negligence except in connection with general supervision of work performed by the indemnitor.  Code 16295	(a) Sales (b) Cost	(a) Per \$1,000 of Sales (b) Per \$100. of Cost	
<b>Minimum Premium(s): Included</b>		<b>TOTAL ADVANCE PREMIUM ▶ \$</b>	<b>Included</b>

The following exclusions do not apply with respect to any "construction agreements":

When used as a premium basis.

1. the word "cost" means the total cost of all work in connection with all contracts of the type designated in the schedule for this insurance with respect to which "cost" is the basis of premium, regardless of whether any liability is assumed under such contracts by the insured. It includes the cost of all labor, materials and equipment furnished, used or delivered for use in the execution of such work, whether furnished by the insured or others including all fees, allowances, bonuses or commissions made, paid or due. It shall not include the cost of any operations to which exclusions (a) or (b) apply, unless such exclusions are voided in the schedule.
2. the word "sales" means the gross amount of money charged by the Named Insured or by others trading under his name for all goods and products sold or distributed during the policy period and charged during the policy period for installation, servicing or repair, and includes taxes, other than taxes which the Named Insured and such others collect as a separate item and remit directly to a governmental division.

**1. COVERAGE Y—CONTRACTUAL BODILY INJURY LIABILITY**  
**COVERAGE Z—CONTRACTUAL PROPERTY DAMAGE LIABILITY**

The Company will pay on behalf of the Insured all sums which the Insured, by reason of contractual liability assumed by him under any written contract of the type designated in the schedule for this insurance, shall become legally obligated to pay as damages because of

- Y. bodily injury or
- Z. property damage

to which this insurance applies, caused by an occurrence, except the liability of the indemnitee resulting from his sole negligence and the Company shall have the right and duty to defend any suit against the Insured seeking damages on account of such bodily injury or property damage, even if any of the allegations of the suit are groundless, false or fraudulent, and may make such investigation and settlement of any claim or suit as it deems expedient, but the Company shall not be obligated to pay any claim or judgment or to defend (1) any arbitration proceeding wherein the Company is not entitled to exercise the Insured's rights in the choice of arbitrators and in the conduct of such proceedings, or (2) any suit after the applicable limit of the Company's liability has been exhausted by payment of judgments or settlements.

**Exclusions**

This insurance does not apply:

- (a) to liability assumed by the Insured under any incidental contract;
- (b) (1) if the Insured is an architect, engineer or surveyor, to bodily injury or property damage arising out of professional services performed by such Insured, including (i) the preparation or approval of maps, drawings, opinions, reports, surveys, change orders, designs or specifications, and (ii) supervisory, inspection or engineering services; (2) if the indemnitee of the Insured is an architect, engineer or surveyor, to the liability of the indemnitee, his agents or employees, arising out of (i) the preparation or approval of maps, drawings, opinions, reports, surveys, change orders, designs or specifications, or (ii) the giving of or failure to give directions or instructions by the indemnitee, his agents or employees, provided such giving or failure to give is the primary cause of the bodily injury or property damage;
- (c) to bodily injury or property damage due to war, whether or not declared, civil war, insurrection, rebellion or revolution or to any act or condition incident to any of the foregoing;
- (d) to bodily injury or property damage for which the indemnitee may be held liable

- (1) as a person or organization engaged in the business of manufacturing, distributing, selling or serving alcoholic beverages, or
- (2) if not so engaged, as an owner or lessor of premises used for such purposes,

if such liability is imposed

- (i) by, or because of the violation of, any statute, ordinance or regulation pertaining to the sale, gift distribution or use of any alcoholic beverage, or
- (ii) by reason of the selling, serving or giving of any alcoholic beverage to a minor or to a person under the influence of alcohol or which causes or contributes to the intoxication of any person; but part (ii) of this exclusion does not apply with respect to liability of the indemnitee as an owner or lessor described in (2) above;

(e) to any obligation for which the Insured or any carrier as his insurer may be held liable under any workmen's compensation, unemployment compensation or disability benefits law, or under any similar law;

(f) to any obligation for which the Insured may be held liable in an action on a contract by a third party beneficiary for bodily injury or property damage arising out of a project for a public authority; but this exclusion does not apply to an action by the public authority or any other person or organization engaged in the project;

(g) to property damage to (1) property owned or occupied by or rented to the Insured, (2) property used by the Insured, or (3) property in the care, custody or control of the Insured or as to which the Insured is for any purpose exercising physical control;

(h) to property damage to premises alienated by the Named Insured arising out of such premises or any part thereof;

(i) to loss of use of tangible property which has not been physically injured or destroyed resulting from

- (1) a delay in or lack of performance by or on behalf of the Named Insured of any contract or agreement, or
- (2) the failure of the Named Insured's products or work performed by or on behalf of the Named Insured to meet the level of performance, quality, fitness or durability warranted or represented by the Named Insured; but this exclusion does not apply to loss of use of other tangible property resulting from the sudden and accidental physical injury to or destruction of the Named Insured's products or work performed by or on behalf of the Named Insured after such products or work have been put to use by any person or organization other than an Insured;

(j) to property damage to the Named Insured's products arising out of such products or any part of such products;

(k) to property damage to work performed by or on behalf of the Named Insured arising out of the work or any portion thereof, or out of materials, parts or equipment furnished in connection therewith;

(l) to damages claimed for the withdrawal, inspection, repair, replacement, or loss of use of the Named Insured's products or work completed by or for the Named Insured or of any property of which such products or work form a part, if such products, work or property are withdrawn from the market or from use because of any known or suspected defect or deficiency therein;

(m) to bodily injury or property damage arising out of the ownership, maintenance, operation, use, loading or unloading of any mobile equipment while being used in any prearranged or organized racing, speed or demolition contest or in any stunting activity or in practice or preparation for any such contest or activity;

(n) to bodily injury or property damage arising out of the discharge, dispersal, release or escape of smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, liquids or gases, waste materials or other irritants, contaminants or pollutants into or upon land, the atmosphere or any water course or body of water, but this exclusion does not apply if such discharge, dispersal, release or escape is sudden and accidental;

Unless stated in the schedule as not applicable, the following exclusions also apply to contractual liability assumed by the Insured under any agreement relating to construction operations.

This insurance does not apply:

- (o) to bodily injury or property damage arising out of construction, maintenance or repair of watercraft or loading or unloading thereof;
- (p) to bodily injury or property damage arising out of operations, within fifty feet of any railroad property, affecting any railroad bridge or trestle, tracks, road beds, tunnel, underpass or crossing;
- (q) to bodily injury or property damage included within the completed operations hazard or the products hazard;
- (r) to property damage included within (1) the explosion hazard, (2) the collapse hazard, or (3) the underground property damage hazard.

**II. PERSONS INSURED**

Each of the following is an Insured under this insurance to the extent set forth below:

- (a) if the Named Insured is designated in the declarations as an individual, the person so designated and his spouse;
- (b) if the Named Insured is designated in the declarations as a partnership or joint venture, the partnership or joint venture so designated and any partner or member thereof but only with respect to his liability as such;
- (c) if the Named Insured is designated in the declarations as other than an individual, partnership or joint venture, the organization so designated and any executive officer, director or stockholder thereof while acting within the scope of his duties as such.

This insurance does not apply to bodily injury or property damage arising out of the conduct of any partnership or joint venture of which the Insured is a partner or member and which is not designated in this policy as a Named Insured.

**III. LIMITS OF LIABILITY**

Regardless of the number of (1) Insureds under this policy, (2) persons or organizations who sustain bodily injury or property damage, or (3) claims made or suits brought on account of bodily injury or property damage, the Company's liability is limited as follows:

**Coverage Y**—The total liability of the Company for all damages, including damages for care and loss of services, because of bodily injury sustained by one or more persons as a result of any one occurrence shall not exceed the limit of bodily injury liability stated in the declarations as applicable to "each occurrence."

**Coverage Z**—The total liability of the Company for all damages because of all property damage sustained by one or more persons or organizations as the result of any one occurrence shall not exceed the limit of property damage liability stated in the declarations as applicable to "each occurrence."

Subject to the above provision respecting "each occurrence," the total liability of the Company for all damages because of all property damage to which this coverage applies shall not exceed the limit of property damage liability stated in the declarations as "aggregate." Such aggregate limit of liability applies separately with respect to each project away from premises owned by or rented to the Named Insured.

**Coverages Y and Z**—For the purpose of determining the limit of the Company's liability, all bodily injury and property damage arising out of continuous or repeated exposure to substantially the same general conditions shall be considered as arising out of one occurrence.

**IV. POLICY TERRITORY**

This insurance applies only to bodily injury or property damage which occurs within the policy territory.

**V. ADDITIONAL DEFINITIONS**

When used in reference to this insurance (including endorsements forming a part of the policy):

"contractual liability" means liability expressly assumed under a written contract or agreement; provided, however, that contractual liability shall not be construed as including liability under a warranty of the fitness or quality of the Named Insured's products or a warranty that work performed by or on behalf of the Named Insured will be done in a workmanlike manner;

"suit" includes an arbitration proceeding to which the Insured is required to submit or to which the Insured has submitted with the Company's consent.

**VI. ADDITIONAL CONDITION**

**Arbitration**

ADIRAL shall be entitled to exercise all of the Insured's rights in the choice of arbitrators and in the conduct of any arbitration proceeding.

**Premium**

The advance premium stated in the schedule is the estimated premium on account of such written contracts as are on file with or known to the Company. The Named Insured shall notify the Company of all other written contracts entered

INSURING COMPANY Admiral Insurance Company  
(herein called "the Company")

**PERSONAL INJURY  
LIABILITY INSURANCE  
COVERAGE PART**

ADDITIONAL DECLARATIONS

Policy No. A3EG1334

**SCHEDULE**

The insurance afforded is only with respect to personal injury arising out of an offense included within such of the following groups of offenses as are indicated by specific premium charge or charges.

**GROUPS OF OFFENSES**

A. False Arrest, Detention or Imprisonment, or Malicious Prosecution . . . . .	\$ <u>Included</u>
B. Libel, Slander, Defamation or Violation of Right of Privacy . . . . .	\$ <u>Included</u>
C. Wrongful Entry or Eviction or Other Invasion of Right of Private Occupancy . . . . .	\$ <u>Included</u>

**ADVANCE PREMIUM**

Insured's Participation 0 % Minimum Premium \$ Included TOTAL ADVANCE PREMIUM  $\blacktriangleright$  \$ Included

**I. COVERAGE P—PERSONAL INJURY LIABILITY**

The Company will pay on behalf of the Insured all sums which the Insured shall become legally obligated to pay as damages because of injury therein called "personal injury" sustained by any person or organization and arising out of one or more of the following offenses committed in the conduct of the Named Insured's business:

Group A—false arrest, detention or imprisonment, or malicious prosecution;

Group B—the publication or utterance of a libel or slander or of other defamatory or disparaging material, or a publication or utterance in violation of an individual's right of privacy; except publications or utterances in the course of or related to advertising, broadcasting or telecasting activities conducted by or on behalf of the Named Insured;

Group C—wrongful entry or eviction, or other invasion of the right of private occupancy;

if such offense is committed during the policy period within the United States of America, its territories or possessions, or Canada, and the Company shall have the right and duty to defend any suit against the Insured seeking damages on account of such personal injury even if any of the allegations of the suit are groundless, false or fraudulent, and may make such investigation and settlement of any claim or suit as it deems expedient, but the Company shall not be obligated to pay any claim or judgment or to defend any suit after the applicable limit of the Company's liability has been exhausted by payment of judgments or settlements.

**Exclusions**

This insurance does not apply:

- (a) to liability assumed by the Insured under any contract or agreement;
- (b) to personal injury arising out of the willful violation of a penal statute or ordinance committed by or with the knowledge or consent of any Insured;
- (c) to personal injury sustained by any person as a result of an offense directly or indirectly related to the employment of such person by the Named Insured;
- (d) to personal injury arising out of any publication or utterance described in Group B, if the first injurious publication or utterance of the same or similar material by or on behalf of the Named Insured was made prior to the effective date of this insurance;

(e) to personal injury arising out of a publication or utterance described in Group B, concerning any organization or business enterprise, or its products or services, made by or at the direction of any Insured with knowledge of the falsity thereof.

**II. PERSONS INSURED**

Each of the following is an Insured under this insurance to the extent set forth below:

- (a) if the Named Insured is designated in the declarations as an individual, the person so designated and his spouse;
- (b) if the Named Insured is designated in the declarations as a partnership or joint venture, the partnership or joint venture so designated and any partner or member thereof but only with respect to his liability as such;
- (c) if the Named Insured is designated in the declarations as other than an individual, partnership or joint venture, the organization so designated and any executive officer, director or stockholder thereof while acting within the scope of his duties as such.

This insurance does not apply to personal injury arising out of the conduct of any partnership or joint venture of which the Insured is a partner or member and which is not designated in this policy as a Named Insured.

**III. LIMITS OF LIABILITY; INSURED'S PARTICIPATION**

Regardless of the number of (1) Insureds under this policy, (2) persons or organizations who sustain personal injury, or (3) claims made or suits brought on account of personal injury, the total liability of the Company under this coverage for all damages shall not exceed the limit of personal injury liability stated in the declarations as "aggregate".

If a participation percentage is stated in the schedule for the Insured, the Company shall not be liable for a greater proportion of any loss than the difference between such percentage and one hundred percent and the balance of the loss shall be borne by the Insured, provided, the Company may pay the Insured's portion of a loss to effect settlement of the loss, and, upon notification of the action taken, the Named Insured shall promptly reimburse the Company therefor.

**IV. ADDITIONAL DEFINITION**

When used in reference to this insurance:

"damages" means only those damages which are payable because of personal injury arising out of an offense to which this insurance applies.

PRODUCER COPY #2

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INSURING COMPANY <b>Admiral Insurance Company</b> <small>(herein called "the Company")</small>	NO ... <b>1</b> EFFECTIVE DATE...	ENDORSEMENT TO POLICY NO ... <b>A3EG1334</b> <b>8/29/83</b>
NAMED INSURED <b>Marisol, Inc.</b>	<b>COMBINED SINGLE LIMIT OF LIABILITY</b>	

A. The LIMITS OF LIABILITY on the DECLARATIONS are amended to read as follows:

- \$ 500,000. each occurrence as respects Bodily Injury Liability or Property Damage Liability or both combined.
- \$ 500,000. aggregate

B. It is further understood and agreed that Insuring Agreement III—"LIMITS OF LIABILITY," as contained in any Coverage Part attached to this policy is deleted and the following substituted therefor:

**III. LIMITS OF LIABILITY**

Regardless of the number of (1) Insureds under this policy, (2) persons or organizations who sustain bodily injury or property damage, or (3) claims or suits brought on account of bodily injury or property damage, the Company's liability is limited as follows:

The total liability of the Company for all damages, including damages for care and loss of services, because of bodily injury sustained by one or more persons as the result of any one occurrence and the total liability of the Company for all damages because of all property damage sustained by one or more persons or organizations as a result of any one occurrence shall not exceed the limit of liability stated herein as applicable to "each occurrence."

For the purpose of determining the limit of the Company's liability, all bodily injury and property damage arising out of continuous or repeated exposure to substantially the same general conditions shall be considered as arising out of one occurrence.

C. The aggregate limit of liability stated above is only with respect to such of the following COVERAGE PARTS as indicated by .

**COMPREHENSIVE GENERAL LIABILITY COVERAGE PART (Form JC 0019)**

Subject to the above provision respecting "each occurrence," the total liability of the Company for all damages because of all bodily injury and property damage to which this coverage applies and which is described in any of the numbered subparagraphs below shall not exceed the limit of liability stated in this endorsement as "aggregate":

- (1) all property damage arising out of premises or operations rated on a remuneration basis or contractor's equipment rated on a receipts basis, including property damage for which liability is assumed under any incidental contract relating to such premises or operations, but excluding property damage included in subparagraph (2) below;
- (2) all property damage arising out of and occurring in the course of operations performed for the named insured by independent contractors and general supervision thereof by the Named Insured, including any such property damage for which liability is assumed under any incidental contract relating to such operations, but this subparagraph (2) does not include property damage arising out of maintenance or repairs at premises owned by or rented to the named insured or structural alterations at such premises which do not involve changing the size of or moving buildings or other structures;

(3) all bodily injury and property damage included within the completed operations hazard and the products hazard combined.

Such aggregate limit shall apply separately to the property damage described in subparagraphs (1), (2) and (3) above, and under the subparagraphs (1) and (2), separately with respect to each project away from premises owned by or rented to the Named Insured.

CONTRACTUAL LIABILITY COVERAGE PART (Form ~~JC-0024~~ or JC-0025)

Subject to the above provision respecting "each occurrence," the total liability of the Company for all damages because of all property damage to which this coverage applies shall not exceed the limit of liability stated in this endorsement as "aggregate." Such aggregate limit of liability applies separately with respect to each project away from premises owned by or rented to the Named Insured.

COMPLETED OPERATIONS AND PRODUCTS LIABILITY INSURANCE COVERAGE PART (Form JC-0023)

Subject to the above provision respecting "each occurrence," the total liability of the Company for all damages because of all bodily injury or property damage to which this coverage applies and arising out of the products hazard and the completed operations hazard combined shall not exceed the limit of liability stated herein as "aggregate."

OWNERS' AND CONTRACTORS' PROTECTIVE LIABILITY INSURANCE COVERAGE PART (Form JC-0022)

Subject to the above provision respecting "each occurrence," the total liability of the Company for all damages because of all property damage to which the coverage applies shall not exceed the limit of property damage liability stated herein as "aggregate." If more than one project is designated in the schedule, such aggregate limit shall apply separately with respect to each project.

OWNERS', LANDLORDS' AND TENANTS' LIABILITY INSURANCE COVERAGE PART (Form JC-0020)

Subject to the above provisions respecting "each occurrence," the total liability of the Company for all damages because of all property damage to which this coverage applies and arising out of and occurring in the course of structural alterations which involve changing the size of or moving buildings or other structures, new construction or demolition operations performed by or on behalf of the Named Insured (including any such property damage for which liability is assumed under any incidental contract relating to such operations) shall not exceed the limit of property damage liability stated herein as "aggregate."

MANUFACTURERS' AND CONTRACTORS' LIABILITY INSURANCE COVERAGE PART (Form JC-0021)

Subject to the above provision respecting "each occurrence," the total liability of the Company for all damages because of all property damage to which this coverage applies and described in either of the numbered subparagraphs below shall not exceed the limit of property damage liability stated herein as "aggregate."

- (1) all property damage arising out of premises or operations rated on a remuneration basis or contractor's equipment rated on a receipts basis, including property damage for which liability is assumed under any incidental contract relating to such premises or operations, but excluding property damage included in subparagraph (2) below;
- (2) all property damage arising out of and occurring in the course of operations performed for the Named Insured by independent contractors and general supervision thereof by the Named Insured, including any such property damage for which liability is assumed under any incidental contract relating to such operations, but this subparagraph (2) does not include property damage arising out of maintenance or repairs at premises owned by or rented to the Named Insured or structural alterations at such premises which do not involve changing the size of or moving buildings or other structures.

Such aggregate limit shall apply separately to the property damage described in subparagraphs (1) and (2) above and separately with respect to each project away from premises owned by or rented to the Named Insured.

By: \_\_\_\_\_

  
Authorized Representative

INSURING COMPANY <b>Admiral Insurance Co.</b> <small>(herein called "the Company")</small>	NO. <b>2</b> EFFECTIVE DATE	ENDORSEMENT TO POLICY NO. <b>A3EG1334</b> <b>8/29/83</b>
NAMED INSURED <b>Marisol, Inc.</b>	<b>DEDUCTIBLE LIABILITY INSURANCE</b>	

**It is agreed that:**

1. The company's obligation under the Bodily Injury Liability and Property Damage Liability Coverages to pay damages on behalf of the Insured applies only to the amount of damages in excess of any deductible amounts stated in the schedule below as applicable to such coverages.
2. The deductible amounts stated in the schedule apply as follows:
  - (a) PER CLAIM BASIS - If the deductible is on a "per claim" basis, the deductible amount applies under the Bodily Injury Liability or Property Damage Liability Coverage, respectively, to all damages because of bodily injury sustained by one person, or to all property damage sustained by one person or organization, as the result of any one occurrence.
  - (b) PER OCCURRENCE BASIS - If the deductible is on a "per occurrence" basis, the deductible amount applies under the Bodily Injury Liability Property Damage Liability Coverage, respectively, to all damages because of all bodily injury or property damage as the result of any one occurrence.
3. The terms of the policy, including those with respect to (a) the company's rights and duties with respect to the defense of suits and (b) the insured's duties in the event of an occurrence apply irrespective of the application of the deductible amount.
4. The company may pay any part or all of the deductible amount to effect settlement of any claim or suit and, upon notification of the action taken, the named insured shall promptly reimburse the company for such part of the deductible amount as has been paid by the company.

COVERAGE	SCHEDULE		AMOUNT AND BASIS OF DEDUCTIBLE
Bodily Injury Liability	\$	1,000.	per claim
	\$	_____	per occurrence
Property Damage Liability	\$	1,000.	per claim
	\$	_____	per occurrence

BY  \_\_\_\_\_  
 Authorized Representative

INSURING COMPANY Admiral Insurance Company (herein called "the Company")	NO 3 EFFECTIVE DATE	ENDORSEMENT TO POLICY NO A3EG1334 8/29/83
NAMED INSURED Marisol, Inc.	BROAD FORM LIABILITY ENDORSEMENT (Page 1 of 4)	

Such insurance as is afforded by the policy for Comprehensive General Liability is amended to include the following additions and extensions of coverage:

**I. ADDITIONAL INSURED — EMPLOYEES**

The "Persons Insured" provision is amended to include any employee of the Named Insured while acting within the scope of his duties as such but the insurance afforded to such employee does not apply:

1. to bodily injury to (a) another employee of the Named Insured arising out of or in the course of his employment or (b) the Named Insured or, if the Named Insured is a partnership or joint venture, any partner or member thereof;
2. to property damage to property owned, occupied or used by, rented to, in the care, custody or control of, or over which physical control is being exercised for any purpose by (a) another employee of the Named Insured or (b) the Named Insured or, if the Named Insured is a partnership or joint venture, any partner or member thereof;
3. to injury to which Incidental Malpractice Coverage, Section VI. of this endorsement, applies.

**II. BROAD FORM PROPERTY DAMAGE (Including Completed Operations)**

It is agreed that the insurance for property damage liability applies, subject to the following additional provisions:

- A. The exclusions relating to property damage to (1) property owned, occupied or used by or rented to the Insured or in the care, custody or control of the Insured or as to which the Insured is for any purpose exercising physical control and (2) work performed by or on behalf of the Named Insured arising out of the work or any portion thereof, or out of materials, parts or equipment furnished in connection therewith, are replaced by the following exclusions (y) and (z):

(y) to property damage

- (1) to property owned or occupied by or rented to the Insured, or except with respect to the use of elevators, to property held by the Insured for sale or entrusted to the Insured for storage or safekeeping,



(2) except with respect to liability under a written sidetrack agreement or the use of elevators to

- (a) property while on premises owned by or rented to the Insured for the purpose of having operations performed on such property by or on behalf of the Insured.
- (b) tools or equipment while being used by the Insured in performing his operations.
- (c) property in the custody of the Insured which is to be installed, erected or used in construction by the Insured.
- (d) that particular part of any property, not on premises owned by or rented to the Insured.
  - (i) upon which operations are being performed by or on behalf of the Insured at the time of the property damage arising out of such operations, or
  - (ii) out of which any property damage arises, or
  - (iii) the restoration, repair or replacement of which has been made or is necessary by reason of faulty workmanship thereon by or on behalf of the Insured;

(z) with respect to the completed operations hazard, to property damage to work performed by the Named Insured arising out of the work or any portion thereof, or out of materials, parts or equipment furnished in connection therewith.

B. The insurance afforded hereby shall be excess insurance over any valid and collective property insurance (including any deductible portion thereof) available to the Insured, such as but not limited to Fire and Extended Coverage, Builder's Risk Coverage or Installation Risk Coverage, and the "Other Insurance" Condition is amended accordingly.

### III. WATERCRAFT NON-OWNERSHIP (UNDER 33 FEET IN LENGTH)

It is agreed that the policy exclusion relating to the ownership, maintenance, operation, use, loading or unloading of watercraft shall not apply to any watercraft under 33 feet in length provided such watercraft is not owned by the Named Insured and is not being used to carry persons for a charge.

The insurance afforded hereby shall be excess insurance over any other valid and collectible insurance available to the Insured.

### IV. WORLDWIDE PRODUCTS LIABILITY (Claims or Suits Brought Within the U.S.A. or Canada)

It is hereby understood and agreed that the definition of "policy territory" as shown on the GENERAL LIABILITY POLICY Standard Provisions (form JD-0014) is amended to read as follows:

"policy territory" means

anywhere in the world with respect to damages because of bodily injury or property damage arising out of the Named Insured's product, provided the original suit for such damages is brought within the United States of America, its territories or possessions, or Canada.

#### V. AUTOMATIC COVERAGE — NEWLY ACQUIRED ENTITIES (30 DAYS)

The word Insured shall include any entity which is acquired or formed after the effective date of this endorsement by any Named Insured and over which such Named Insured maintains ownership or financial control, provided this insurance does not apply to bodily injury or property damage with respect to which such a new Insured under this policy is also an Insured under any other liability or indemnity policy or would be an Insured under any such policy but for exhaustion of its limits of liability. The insurance afforded hereby shall terminate 30 days from the date any such entity is acquired or formed by such Named Insured unless this policy is endorsed to include such new Insured as a Named Insured effective as of the date of such acquisition.

#### VI. INCIDENTAL MALPRACTICE COVERAGE

It is agreed that the definition of "bodily injury" is amended to include Incidental Medical Malpractice Injury.

Incidental Medical Malpractice Injury means injury arising out of the rendering of or failure to render during the policy period, the following services:

- (a) medical, surgical, dental, x-ray or nursing service or treatment or the furnishing of food or beverages in connection therewith; or
- (b) the furnishing or dispensing of drugs or medical, dental or surgical supplies or appliances.

This coverage does not apply to:

- (1) expenses incurred by the Insured for first-aid to others at the time of an accident and the "Supplementary Payments" provision and the "Insured's Duties in the Event of Occurrence, Claim or Suit" condition are amended accordingly;
- (2) any insured engaged in the business or occupation of providing any of the services described under (a) and (b) above;
- (3) injury caused by any indemnitee if such indemnitee is engaged in the business or occupation of providing any of the services described under (a) and (b) above.

#### VII. HOST LIQUOR LIABILITY

The exclusion contained in the policy with respect to the manufacturing, distributing, selling or serving alcoholic beverages does not apply to bodily injury or property damage arising out of serving or giving of alcoholic beverages by or on behalf of the Named Insured provided the Named Insured is not a person or organization engaged in the business of manufacturing, distributing, selling or serving alcoholic beverages, or is not an owner or lessor of premises used for such purposes

### **VIII. EXTENDED BODILY INJURY COVERAGE**

The definition of occurrence includes any intentional act by or at the direction of the Insured which results in bodily injury, if such injury arises solely from the use of reasonable force for the purpose of protecting persons or property.

### **XI. FIRE LEGAL LIABILITY COVERAGE — REAL PROPERTY**

The Property Damage Liability Coverage applies to property damage to structures or portions thereof rented to or occupied by the Named Insured, including fixtures permanently attached thereto, if such property damage arises out of fire subject to the following additional provisions.

- (A) With respect to the insurance provided by these provisions, all of the exclusions of the policy, other than the Nuclear Energy Liability Exclusion (Broad Form), are deleted and replaced by the following:
  - (1) This insurance does not apply to liability assumed by the Insured under any contract or agreement.
- (B) The limit of property damage liability in the declarations of the policy as applicable to "each occurrence" is, as respects this Fire Legal Liability Coverage — Real Property, amended to read \$50,000, each occurrence.
- (C) The insurance afforded hereby shall be excess insurance over any valid and collectible property insurance (including any deductible portion thereof) available to the Insured, such as, but not limited to, Fire, Extended Coverage, Builder's Risk Coverage or Installation Risk Coverage, and the "Other Insurance" Condition of the policy is amended accordingly.

ENDORSEMENT

INSURING COMPANY Admiral Insurance Company  
(herein called "the Company")

NO. 4 TO POLICY NO. AJEG1334  
EFFECTIVE DATE 8/29/83

NAMED INSURED Marisol, Inc.

AMENDMENT TO PERSONAL INJURY LIABILITY  
INSURANCE COVERAGE PART

It is hereby understood and agreed that (c) of Exclusions as shown on the  
PERSONAL INJURY LIABILITY INSURANCE COVERAGE PART (form JC-0026) is deleted  
in its entirety.

BY



Authorized Representative

INSURING COMPANY <b>Admiral Insurance Company</b> <small>(herein called "the Company")</small>	NO <b>5</b> EFFECTIVE DATE <b>8/29/83</b>	ENDORSEMENT TO POLICY NO <b>A3EG1334</b>
NAMED INSURED <b>Marisol, Inc.</b>	<b>HAZARDOUS WASTE FACILITY          LIABILITY ENDORSEMENT</b>	

It is hereby understood and agreed that in consideration of the premium charged, the following endorsement wording applies to this policy:

1. This endorsement certifies that the policy to which the endorsement is attached provides liability insurance covering bodily injury and property damage in connection with the Insured's obligation to demonstrate financial responsibility under 40 CFR 264.147 or 265.147. The coverage applies to all operations and locations of Marisol, Inc. for "Sudden Accidental Occurrences". The limits of liability are \$500,000. Combined Single Limits, Bodily Injury and Property Damage combined with a \$1,000. Deductible per claim BI/FD exclusive of loss adjustment and legal expenses.
2. The insurance afforded with respect to such occurrences is subject to all of the terms and conditions of this policy; provided, however, that any provisions of the policy inconsistent with subsections (A) through (E) of this paragraph 2 are hereby amended to conform with subsections (A) through (E):
  - (A) Bankruptcy or insolvency of the Insured shall not relieve the Insurer of its obligations under the policy to which this endorsement is attached.
  - (B) The Insurer is liable for the payment of amounts within any deductible applicable in the policy, with a right to reimbursement by the Insured for any such payment made by the Insurer. This provision does not apply with respect to that amount of any deductible for which coverage is demonstrated as specified in 40 CFR 264.147 (F) or 265.147 (F).
  - (C) Whenever requested by a regional administrator of the U.S. Environmental Protection Agency (EPA), the Insurer agrees to furnish to the regional administrator a signed duplicate original of the policy and all endorsements.
  - (D) Cancellation of this endorsement, whether by the Insurer or the Insured, will be effective only upon written notice and only after the expiration of sixty (60) days after a copy of such written notice is received by the regional administrator(s) of the EPA region(s) in which the facility(ies) is(are) located.
  - (E) Any other termination of this endorsement will be effective only upon written notice and only after the expiration of thirty (30) days after a copy of such written notice is received by the regional administrator(s) of the EPA region(s) in which the facility(ies) is(are) located.

BY



Authorized Representative

INSURING COMPANY <u>Admiral Insurance Company</u> <small>(herein called "the Company")</small>	NO. <u>5 (Con't.)</u> EFFECTIVE DATE.. <u>8/29/83</u>	<b>ENDORSEMENT</b> TO POLICY NO. <u>A3EG1334</u>
NAMED INSURED <u>Marisol, Inc.</u>	<b>HAZARDOUS WASTE FACILITY  LIABILITY ENDORSEMENT  (continued)</b>	

Attached to and forming a part of Policy No. A3EG1334 issued by ADMIRAL INSURANCE COMPANY, herein called the Insurer of:

c/o JERSEY INTERNATIONAL UNDERWRITING MANAGERS, INC.  
1255 Caldwell Road  
P. O. Box 3725  
Cherry Hill, N.J. 08034

TO Marisol, Inc.  
125 Factory Lane  
Middlesex, N.J. 08846

this 19th day of September, 1983. The effective date of said policy is 8/29/83.

I hereby certify that the wording of this endorsement is identical to the wording specified in 40 CFR 264.151 (1) as such regulation was constituted on the date first above written, and that the insurer is licensed to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer, in one or more states.

*Leonard J. Mikulski*  
Leonard J. Mikulski  
Vice President

Authorized Representative of Admiral Insurance Company  
1255 Caldwell Road  
Cherry Hill, New Jersey

BY: *[Signature]*

Authorized Representative

# CERTIFICATE OF INSURANCE

(Casualty Form)

INSURING COMPANY **Admiral Insurance Company**  
(herein called "the Company")

Date Issued **April 6, 1984**

TO:  
**Department of Environmental Protection -  
State of New Jersey  
Division of Waste Management  
32 E. Hanover Street  
CN 027  
Trenton, New Jersey 08625**

NAMED INSURED & ADDRESS:  
**Marisol, Inc.  
125 Factory Lane  
Middlesex, New Jersey 08846**

This is to certify that the following described policy(ies), providing insurance only for hazards marked by  below, have been issued to the above Named Insured. This certificate or verification of insurance is not an insurance policy and does not amend, extend or alter the coverage afforded by the policies listed herein. Notwithstanding any requirement, term, or condition of any contract or other document with respect to which this certificate or verification of insurance may be issued or may pertain, the insurance afforded by the policies described herein is subject to all the terms, exclusions and conditions of such policies.  
It is the intention of the Company that in the event of the cancellation of the policy(ies) by the Company, 10 days' written notice of such cancellation will be given to the Certificate Holder at the address stated above.

TYPE OF POLICY-HAZARDS	POLICY NUMBER(S)	POLICY PERIOD		LIMITS OF LIABILITY
		FROM	TO	
A. <input type="checkbox"/> Completed Operations/Products B. <input checked="" type="checkbox"/> Comprehensive General Liability (*) <input checked="" type="checkbox"/> Including Completed Operations/Products <input type="checkbox"/> Excluding Completed Operations/Products C. <input checked="" type="checkbox"/> Contractual (As described in footnote below) <input type="checkbox"/> Manufacturers & Contractors Liability (*) <input type="checkbox"/> Owners & Contractors Protective F. <input type="checkbox"/> Owners, Landlords & Tenants Liability (*) G. <input checked="" type="checkbox"/> Personal Injury Liability	<b>A3EG1334</b>	<b>8/29/83</b>	<b>8/29/84</b>	<b>\$500,000. each occurrence as respects Bodily Injury Liability or Property Dam- age or both combined. \$500,000. aggregate.</b>

(\*) Including "Incidental Contracts" Defined.

Contractual Footnote: Subject to all the policy terms applicable, specific contractual liability coverage is provided as respects  a contract /  purchase order agreements /  all contracts (check applicable blocks) between the Insured and

Name of Other Party \_\_\_\_\_  
 Dated (if applicable) \_\_\_\_\_ Contract No. (if any) \_\_\_\_\_  
 Description (or Job) \_\_\_\_\_

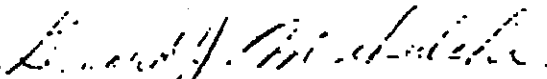
Definitions: "Incidental Contract" means any written (1) lease of premises, (2) easement agreement, except in connection with construction or demolition operations on or adjacent to a railroad, (3) undertaking to indemnify a municipality required by municipal ordinance, except in connection with work for the municipality, (4) sidetrack agreement, or (5) elevator maintenance agreement

By *Fredrick H. Brown*  
 Authorized Representative

Hazardous Waste Facility Certificate of Liability Insurance

1. Admiral Insurance Company, (the "Insurer"), of 1255 Caldwell Road, Cherry Hill, N.J. 08034, hereby certifies that it has issued liability insurance covering bodily injury and property damage to Marisol, Inc., (the "Insured"), of 125 Factory Lane, Middlesex, N.J. 08846, in connection with the Insured's obligation to demonstrate financial responsibility under N.J.A.C. 7:26-9.13. The coverage applies at EPA I.D. #NJD 002454544, Marisol, Inc., 125 Factory Lane, Middlesex, N.J. 08846, for sudden accidental occurrences. The limits of liability are \$500,000. each occurrence/\$500,000. aggregate, exclusive of legal defense costs. The coverage is provided under Policy No. A3EG1334, issued on 9/19/83. The effective date of said policy is 8/29/83.
2. The Insurer further certifies the following with respect to the insurance, described in Paragraph 1.
  - (a) Bankruptcy or insolvency of the Insured shall not relieve the Insurer of its obligations under the policy.
  - (b) The Insurer is liable for the payment of amounts within any deductible applicable to the policy, with a right of reimbursement by the Insured for any such payment made by the Insurer. This provision does not apply with respect to that amount of any deductible for which coverage is demonstrated, as specified in N.J.A.C. 7:26-9.13.
  - (c) The Insurer agrees to furnish to the New Jersey Department of Environmental Protection (hereinafter, the "NJDEP") a signed duplicate original of the policy and all endorsements.
  - (d) Cancellation of the insurance, whether by the Insurer or the Insured, will be effective only upon written notice and only after the expiration of sixty (60) days after a copy of such written notice is received by the NJDEP.
  - (e) Any other termination of the insurance will be effective only upon written notice and only after the expiration of thirty (30) days after a copy of such written notice is received by the NJDEP.

I hereby certify that the wording of this instrument is identical to the wording specified in N.J.A.C. 7:26-9 (Appendix A) as such regulation was constituted on the date first above written, and that the Insurer is licensed to transact the business of insurance or is eligible to provide insurance as an excess or surplus lines insurer in one or more States.

  
Leonard J. Mikulski  
Vice President

Authorized Representative of Admiral Insurance Company  
1255 Caldwell Road  
Cherry Hill, New Jersey



**ENDORSEMENT**

INSURING COMPANY Admiral Insurance Company  
(herein called "the Company")

NO 6 TO POLICY NO A3EG1334

EFFECTIVE DATE 8/29/83

NAMED INSURED Marisol, Inc.

**HAZARDOUS WASTE FACILITY  
LIABILITY ENDORSEMENT**

**THIS IS TO VOID AND SUPERSEDE ENDORSEMENT NO. 5.**

It is hereby understood and agreed that in consideration of the premium charged, the following endorsement wording applies to this policy:

1. This endorsement certifies that the policy to which the endorsement is attached provides liability insurance covering bodily injury and property damage in connection with the Insured's obligation to demonstrate financial responsibility under N.J.A.C. 7:26-9.13. The coverage applies at Marisol, Inc., 125 Factory Lane, Middlsex, N.J. 08846, RFA I.D. #RJD 002454544, for sudden accidental occurrences. The limits of liability are \$500,000. each occurrence/\$500,000. aggregate, exclusive of legal defenses costs.
2. The insurance afforded with respect to such occurrences is subject to all of the terms and conditions of the policy, provided, however, that any provisions of the policy inconsistent with subsections (a) through (e) of this Paragraph 2. are hereby amended to conform with subsections (a) through (e):
  - (a) Bankruptcy or insolvency of the Insured shall not relieve the Insurer of its obligations under the policy to which this endorsement is attached.
  - (b) The Insurer is liable for the payment of amounts within any deductible applicable to the policy, with a right of reimbursement by the Insured for any such payment made by the Insurer. This provision does not apply with respect to that amount of any deductible for which coverage is demonstrated, as specified in N.J.A.C. 7:26-9.13.
  - (c) The Insurer agrees to furnish to the New Jersey Department of Environmental Protection (hereinafter, the NJDEP) a signed duplicate original of the policy and all endorsements.
  - (d) Cancellation of this endorsement, whether by the Insurer or the Insured, will be effective only upon written notice and only after the expiration of sixty (60) days after a copy of such written notice is received by the NJDEP.
  - (e) Any other termination of this endorsement will be effective only upon written notice and only after the expiration of thirty (30) days after a copy of such written notice is received by the NJDEP.

BY

*Frederick H. Brown*

Authorized Representative

INSURING COMPANY <u>Admiral Insurance Company</u> <small>(herein called "the Company")</small>	NO <u>6 (Con't.)</u>	<b>ENDORSEMENT</b> TO POLICY NO. <u>A3EG1334</u> EFFECTIVE DATE <u>8/29/83</u>
NAMED INSURED <u>Marisol, Inc.</u>	<b>HAZARDOUS WASTE FACILITY  LIABILITY ENDORSEMENT  (continued)</b>	

Attached to and forming part of Policy No. A3EG1334 issued by Admiral Insurance Company, herein called the Insurer of:

c/o JERSEY INTERNATIONAL UNDERWRITING MANAGERS, INC.  
1255 Caldwell Road  
P. O. Box 5725  
Cherry Hill, N.J. 08034

TO: Marisol, Inc.  
125 Factory Lane  
Middlesex, N.J. 08846

this 19th day of September, 1983. The effective date of said policy is the 29th day of August, 1983.

I hereby certify that the wording of this endorsement is identical to the wording specified N.J.A.C. 7:26-9 (Appendix A), as such regulation was constituted on the date first above written, and that the insurer is licensed to transact the business of insurance or is eligible to provide insurance as an excess or surplus lines insurer, in one or more states.

*Leonard J. Mikulski*

Leonard J. Mikulski  
Vice President

Authorized Representative of Admiral Insurance Company  
1255 Caldwell Road  
Cherry Hill, New Jersey

*Frederick H. Brown*

BY: \_\_\_\_\_

Authorized Representative

FORMER EX-101 51

VES000000110

# ADMIRAL

A STOCK COMPANY  
(herein called "the Company")



## INSURANCE COMPANY

### GENERAL LIABILITY POLICY

Standard Provisions

**CHARLES F. GILLETTE**

SAND SPRING ROAD  
MORRISTOWN, N.J. 07960  
(201) 285-9628

Representing The Travelers

In consideration of the payment of the premium, in reliance upon the statements in the declarations made a part hereof and subject to all of the terms of this policy, the Company agrees with the Named Insured as follows:

#### COVERAGE

"Coverage is afforded under this policy in accordance with the specific Coverage Parts identified in the Declarations as being a part of this policy and only to Bodily Injury or Property Damage which occurs within the policy territory during the policy period."

#### SUPPLEMENTARY PAYMENTS

The Company will pay, in addition to the applicable limit of liability:

- (a) all expenses incurred by the Company, all costs taxed against the Insured in any suit defended by the Company and all interest on the entire amount of any judgment therein which accrues after entry of the judgment and before the Company has paid or tendered or deposited in court that part of the judgment which does not exceed the limit of the Company's liability thereon.
- (b) premiums on appeal bonds required in any such suit, premiums on bonds to release attachments in any such suit for an amount not in excess of the applicable limit of liability of this policy, and the cost of bail bonds required

of the Insured because of accident or traffic law violation arising out of the use of any vehicle to which this policy applies, not to exceed \$250 per bail bond, but the Company shall have no obligation to apply for or furnish any such bonds.

- (c) expenses incurred by the Insured for first aid to others at the time of an accident, for bodily injury to which this policy applies;
- (d) reasonable expenses incurred by the Insured at the Company's request in assisting the Company in the investigation or defense of any claim or suit, including actual loss of earnings not to exceed \$25 per day

#### DEFINITIONS

When used in this policy (including endorsements forming a part hereof):

"automobile" means a land motor vehicle, trailer or semitrailer designed for travel on public roads (including any machinery or apparatus attached thereto), but does not include mobile equipment.

"loading or unloading" with respect to an automobile, means the handling of property after it is moved from the place where it is accepted for movement into or onto an automobile or while it is in or on an automobile or while it is being moved from an automobile to the place where it is finally delivered but "loading or unloading" does not include the movement of property by means of a mechanical device (other than a hand truck) not attached to the automobile.

"bodily injury" means bodily injury, sickness or disease sustained by any person which occurs during the policy period, including death at any time resulting therefrom.

"collapse hazard" includes "structural property damage" as defined herein and property damage to any other property at any time resulting therefrom. "Structural property damage" means the collapse of or structural injury to any building or structure due to (1) grading of land, excavating, borrowing, filling, back-filling, tunnelling, pile driving, cofferdam work or caisson work or (2) moving, shoring, underpinning, raising or demolition of any building or structure or removal or rebuilding of any structural support thereof. The collapse hazard does not include property damage (1) arising out of operations performed for the Named Insured by independent contractors, or (2) included within the completed operations hazard or the underground property damage hazard, or (3) for which liability is assumed by the Insured under an incidental contract.

"completed operations hazard" includes bodily injury and property damage arising out of operations or reliance upon a representation or warranty made at any time with respect thereto, but only if the bodily injury or property damage occurs after such operations have been completed or abandoned and occurs away from premises owned by or rented to the Named Insured. "Operations" include materials, parts or equipment furnished in connection therewith. Operations shall be deemed completed at the earliest of the following times:

(1) when all operations to be performed by or on behalf of the Named Insured under the contract have been completed.

(2) when all operations to be performed by or on behalf of the Named Insured at the site of the operations have been completed, or

(3) when the portion of the work out of which the injury or damage arises has been put to its intended use by any person or organization other than another contractor or subcontractor engaged in performing operations for a principal as a part of the same project.

Operations which may require further service or maintenance work, or correction, repair or replacement because of any defect or deficiency, but which are otherwise complete, shall be deemed completed.

The completed operations hazard does not include bodily injury or property damage arising out of

(a) operations in connection with the transportation of property, unless the bodily injury or property damage arises but of a condition in or on a vehicle created by the loading or unloading thereof,

(b) the existence of tools, uninstalled equipment or abandoned or unused materials, or

(c) operations for which the classification stated in the policy or in the Company's manual specifies "including completed operations".

"elevator" means any hoisting or lowering device to connect floors or landings, whether or not in service, and all appliances thereof including any car, platform, shaft, hoistway, stairway, runway, power equipment and machinery, but does not include an automobile servicing hoist, or a hoist without a platform outside a building if without mechanical power or if not attached to building walls, or a hoist or material hoist used in alteration, construction or demolition operations, or an inclined conveyor used exclusively for carrying property or a dumbwaiter used exclusively for carrying property and have a compartment height not exceeding four feet.

## DEFINITIONS

(Continued)

"explosion hazard" includes property damage arising out of blasting or explosion. The explosion hazard does not include property damage (1) arising out of the explosion of air or steam vessels, piping under pressure, prime movers, machinery or power transmitting equipment, or (2) arising out of operations performed for the Named Insured by independent contractors, or (3) included within the completed operations hazard or the underground property damage hazard, or (4) for which liability is assumed by the Insured under an incidental contract;

"incidental contract" means any written (1) lease of premises, (2) easement agreement, except in connection with construction or demolition operations on or adjacent to a railroad, (3) undertaking to indemnify a municipality required by municipal ordinance, except in connection with work for the municipality, (4) side-track agreement, or (5) elevator maintenance agreement;

"Insured" means any person or organization qualifying as an insured in the "Persons Insured" provision of the applicable insurance coverage. The insurance afforded applies separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the Company's liability.

"mobile equipment" means a land vehicle (including any machinery or apparatus attached thereto), whether or not self-propelled, (1) not subject to motor vehicle registration, or (2) maintained for use exclusively on premises owned by or rented to the Named Insured, including the ways immediately adjoining, or (3) designed for use principally off public roads, or (4) designed or maintained for the sole purpose of affording mobility to equipment of the following types forming an integral part of or permanently attached to such vehicle: power cranes, shovels, loaders, diggers and drills, concrete mixers (other than the mix-in-transit type), graders, scrapers, rollers and other road construction or repair equipment, air-compressors, pumps and generators, including spraying, welding and building cleaning equipment; and geophysical exploration and well servicing equipment;

"Named Insured" means the person or organization named in the declarations of this policy;

"Named Insured's products" means goods or products manufactured, sold, handled or distributed by the Named Insured or by others trading under his name, including any container thereof (other than a vehicle), but "Named Insured's products" shall not include a vending machine or any property other than such container, rented to or located for use of others but not sold;

"occurrence" means an accident, including continuous or repeated exposure to conditions, which results in bodily injury or property damage neither expected nor intended from the standpoint of the Insured;

"policy territory" means:

- (1) the United States of America, its territories or possessions, or Canada, or
- (2) international waters or air space, provided the bodily injury or property damage does not occur in the course of travel or transportation to or from any other country, state or nation, or
- (3) anywhere in the world with respect to damages because of bodily injury or property damage arising out of a product which was sold for use or consumption within the territory described in paragraph (1) above, provided the original suit for such damages is brought within such territory;

"products hazard" includes bodily injury and property damage arising out of the Named Insured's products or reliance upon a representation or warranty made at any time with respect thereto, but only if the bodily injury or property damage occurs away from premises owned by or rented to the Named Insured and after physical possession of such products has been relinquished to others;

"property damage" means (1) physical injury to or destruction of tangible property which occurs during the policy period, including the loss of use thereof at any time resulting therefrom, or (2) loss of use of tangible property which has not been physically injured or destroyed provided such loss of use is caused by an occurrence during the policy period.

"underground property damage hazard" includes underground property damage as defined herein and property damage to any other property at any time resulting therefrom. "Underground property damage" means property damage to wires, conduits, pipes, mains, sewers, tanks, tunnels, any similar property, and any apparatus in connection therewith, beneath the surface of the ground or water, caused by and occurring during the use of mechanical equipment for the purpose of grading land, paving, excavating, drilling, borrowing, filling, back-filling or pile driving. The underground property damage hazard does not include property damage (1) arising out of operations performed for the Named Insured by independent contractors, or (2) included within the completed operations hazard, or (3) for which liability is assumed by the Insured under an incidental contract.

**ADMIRAL**

A STOCK COMPANY  
(herein called "the Company")



**INSURANCE COMPANY**

**GENERAL LIABILITY POLICY**

A 84EG 2179

**DECLARATIONS**

NAMED INSURED

Marisol, Inc.  
125 Factory Lane  
Middlesex, N.J. 08846

MAILING ADDRESS

POLICY PERIOD: From: 8/29/84 To 8/29/85  
At 12:01 A.M. Standard Time at the address of the Named Insured as stated herein

THE NAMED INSURED IS:  Individual,  Partnership,  Corporation,  Joint Venture,  Other

AUDIT PERIOD  Annual,  Other

The insurance afforded is only with respect to such of the following Parts and Coverages therein as are indicated by such Coverage shall be as stated herein, subject to all of the terms of the policy having reference thereto.  The limit of the Company's liability against each

COVERAGE PARTS	LIMITS OF LIABILITY			
	Bodily Injury Liability		Property Damage Liability	
	each occurrence	aggregate	each occurrence	aggregate
<input checked="" type="checkbox"/> Comprehensive General Liability Insurance	\$	\$	\$	\$
<input type="checkbox"/> Owners', Landlords' and Tenants' Liability Insurance				
<input type="checkbox"/> Manufacturers' and Contractors' Liability Insurance				
<input type="checkbox"/> Owners' and Contractors' Protective Liability Insurance				
<input type="checkbox"/> Completed Operations and Products Liability Insurance				
<input checked="" type="checkbox"/> Contractual Liability Insurance (Blanket)				
	\$500,000. Combined Single Limit (Refer to Endorsement #1)			
<input checked="" type="checkbox"/> Personal Injury Liability Insurance		aggregate	\$ 500,000.	
<input type="checkbox"/> Premises Medical Payments Insurance	\$	each person aggregate	\$	each accident

Endorsements attached to policy at inception: Endorsements #1 through #6.

**TOTAL ADVANCE PREMIUM** ▶ \$ 22,000.00

If the Policy Period is more than one year and the premium is to be paid in installments, premium is payable on

Effective Date	\$	\$
1st Anniversary	\$	\$
2nd Anniversary	\$	\$

Countersigned On: 8/28/84  
At: Cherry Hill, N.J.  
By: *[Signature]*  
Authorized Representative

INSURING  
 COMPANY Admiral Insurance Company  
 (herein called "the Company")

**COMPREHENSIVE GENERAL  
 LIABILITY INSURANCE  
 COVERAGE PART**

**ADDITIONAL DECLARATIONS**

Policy No. A84EG2179

**SCHEDULE**

The following discloses all hazards insured hereunder known to exist at the effective date of this policy, unless otherwise stated herein:

Description of Hazard	Premium Basis	Rate	Advance Premium
<b>Premises—Operations</b>			
Reclamation of solvents & fluids R/A: Chemicals Mfg.  Code 28905  This is an N.O.C. classification.	(b) \$5,500,000.	(b) \$4.00	\$22,000.00
	(a) Remuneration (b) Receipts (c) Units	(a) Per \$100 of Remuneration (b) Per <del>\$100</del> of Receipts \$1,000. (c) Per Unit	
<b>Completed Operations—Products</b>			
Included	(a) Receipts (b) Sales	(a) Per \$1000 of Receipts (b) Per \$1000 of Sales	
<b>Escalators (Number at Premises)</b>	Number Insured	Per Landing	
No Known Exposure			
<b>Independent Contractors</b>	Cost	Per \$100 of Cost	
No Known Exposure			
<b>Minimum Premium(s):</b> \$17,600.00		<b>TOTAL ADVANCE PREMIUM</b> ▶ \$ 22,000.00	

When used as a Premium basis:

- (1) "remuneration" means the entire remuneration earned during the policy period by proprietors and by all employees of the Named Insured other than chauffeurs (except operators of mobile equipment) and aircraft pilots and co-pilots, subject to any overtime earnings or limitation of remuneration rule applicable in accordance with the manuals in use by the Company;
- (2) "receipts" means the gross amount of money charged by the Named Insured for such operations by the Named Insured or by others during the policy period as are rated on a receipts basis other than receipts from telecasting, broadcasting or motion pictures, and includes taxes, other than taxes which the Named Insured collects as a separate item and remits directly to a governmental division;
- (3) "cost" means the total cost to the Named Insured with respect to operations performed for the Named Insured during the policy period by independent contractors of all work let or sub-let in connection with each specific project, including the cost of all labor, materials and equipment furnished, used or delivered for use in the execution of such work, whether furnished by the owner, contractor or sub contractor, including all fees, allowances, bonuses or commissions made, paid or due;
- (4) "sales" means the gross amount of money charged by the Named Insured or by others trading under his name for all goods and products sold or distributed during the policy period and charged during the policy period for installation, servicing or repair, and includes taxes, other than taxes which the Named Insured and such others collect as a separate item and remit directly to a governmental division.

**1. COVERAGE A—BODILY INJURY LIABILITY**

**COVERAGE B—PROPERTY DAMAGE LIABILITY**

The Company will pay on behalf of the Insured all sums which the Insured shall become legally obligated to pay as damages because of

A bodily injury or B property damage

to which this insurance applies, caused by an occurrence and the Company shall have the right and duty to defend any suit against the Insured seeking damages on account of such bodily injury or property damage, even if any of the allegations of

the suit are groundless, false or fraudulent, and may make such investigation and settlement of any claim or suit as it deems expedient, but the Company shall not be obligated to pay any claim or judgment or to defend any suit after the applicable limit of the Company's liability has been exhausted by payment of judgments or settlements.

**Exclusions**

This insurance does not apply

- (a) to liability assumed by the Insured under any contract or agreement except an incidental contract, but this exclusion does not apply to a warranty of fitness or

quality of the Named Insured's products or a warranty that work performed by or on behalf of the Named Insured will be done in a workmanlike manner;

- (b) to bodily injury or property damage arising out of the ownership, maintenance, operation, use, loading or unloading of (1) any automobile or aircraft owned or operated by or rented or loaned to any Insured, or (2) any other automobile or aircraft operated by any person in the course of his employment by any Insured; *it this exclusion does not apply to the parking of an automobile on premises owned by, rented to or controlled by the Named Insured or the ways immediately adjoining, if such automobile is not owned by or rented or loaned to any Insured.*
- (c) to bodily injury or property damage arising out of (1) the ownership, maintenance, operation, use, loading or unloading of any mobile equipment while being used in any prearranged or organized racing, speed or demolition contest or in any stunting activity or in practice or preparation for any such contest or activity or (2) the operation or use of any snowmobile or trailer designed for use therewith.
- (d) to bodily injury or property damage arising out of and in the course of the transportation of mobile equipment by an automobile owned or operated by or rented or loaned to any Insured.
- (e) to bodily injury or property damage arising out of the ownership, maintenance, operation, use, loading or unloading of (1) any watercraft owned or operated by or rented or loaned to any Insured, or (2) any other watercraft operated by any person in the course of his employment by any Insured; but this exclusion does not apply to watercraft while ashore on premises owned by, rented to or controlled by the Named Insured;
- (f) to bodily injury or property damage arising out of the discharge, dispersal, release or escape of smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, liquids or gases, waste materials or other irritants, contaminants or pollutants into or upon land, the atmosphere or any water course or body of water, but this exclusion does not apply if such discharge, dispersal, release or escape is sudden and accidental.
- (g) to bodily injury or property damage due to war, whether or not declared, civil war, insurrection, rebellion or revolution or to any act or condition incident to any of the foregoing, with respect to (1) liability assumed by the insured under an incidental contract, or (2) expenses for first aid under the Supplementary Payments provision.
- (h) to bodily injury or property damage for which the insured or his indemnitee may be held liable (1) as a person or organization engaged in the business of manufacturing, distributing, selling or serving alcoholic beverages, or (2) if not so engaged, as an owner or lessor of premises used for such purposes, if such liability is imposed (i) by, or because of the violation of, any statute, ordinance or regulation pertaining to the sale, gift, distribution or use of any alcoholic beverages, or (ii) by reason of the selling, serving or giving of any alcoholic beverage to a minor or to a person under the influence of alcohol or which causes or contributes to the intoxication of any person, but part (ii) of this exclusion does not apply with respect to liability of the insured or his indemnitee as an owner or lessor described in (2) above.
- \*\* to any obligation for which the insured or any carrier as his insurer may be held liable under any workers' compensation, unemployment compensation or disability benefits law, or under any similar law;
- (i) to bodily injury to any employee of the insured arising out of and in the course of his employment by the insured or to any obligation of the insured to indemnify another because of damages arising out of such injury; but this exclusion does not apply to liability assumed by the insured under an incidental contract.
- (k) to property damage to (1) property owned or occupied by or rented to the insured, (2) property used by the insured, or (3) property in the care, custody or control of the insured or as to which the insured is for any purpose exercising physical control, but parts (2) and (3) of this exclusion do not apply with respect to liability under a written sidetrack agreement and part (3) of this exclusion does not apply with respect to property damage (other than to elevators) arising out of the use of an elevator at premises owned by, rented to or controlled by the Named Insured;
- (l) to property damage to premises alienated by the Named Insured arising out of such premises or any part thereof;
- (m) to loss of use of tangible property which has not been physically injured or destroyed resulting from (1) a delay in or lack of performance by or on behalf of the Named Insured of any contract or agreement, or (2) the failure of the Named Insured's products or work performed by or on behalf of the Named Insured to meet the level of performance, quality, fitness or durability warranted or represented by the Named Insured; but this exclusion does not apply to loss of use of other tangible property resulting from the sudden and accidental physical injury to or destruction of the Named Insured's products or work performed by or on behalf of the Named Insured after such products or work have been put to use by any person or organization other than an Insured.
- (n) to property damage to the Named Insured's products arising out of such products or any part of such products.
- (o) to property damage to work performed by or on behalf of the Named Insured arising out of the work or any portion thereof, or out of materials parts or equipment furnished in connection therewith;
- (p) to damages claimed for the withdrawal, inspection, repair, replacement, or loss of the use of the Named Insured's products or work completed by or for the Named Insured or of any property of which such products or work form a part, if such products, work or property are withdrawn from the market or from use because of any known or suspected defect or deficiency therein.
- \*\* to property damage included within: (1) the explosion hazard in connection with operations identified in this policy by a classification code number which includes the symbol "x", (2) the collapse hazard in connection with operations identified in this policy by a classification code number which includes the symbol "z", (3)

the underground property damage hazard in connection with operations identified in this policy by a classification code number which includes the symbol "y".

## II. PERSONS INSURED

Each of the following is an Insured under this insurance to the extent set forth below:

- (a) if the Named Insured is designated in the declarations as an individual, the person so designated but only with respect to the conduct of a business of which he is the sole proprietor, and the spouse of the Named Insured with respect to the conduct of such a business.
- (b) if the Named Insured is designated in the declarations as a partnership or joint venture, the partnership or joint venture so designated and any partner or member thereof but only with respect to his liability as such.
- (c) if the Named Insured is designated in the declarations as other than an individual, partnership or joint venture, the organization so designated and any executive officer, director or stockholder thereof while acting within the scope of his duties as such.
- (d) any person (other than an employee of the Named Insured) or organization while acting as real estate manager for the Named Insured, and
- (e) with respect to the operation, for the purpose of locomotion upon a public highway, of mobile equipment registered under any motor vehicle registration law, (i) an employee of the Named Insured while operating any such equipment in the course of his employment, and (ii) any other person while operating with the permission of the Named Insured any such equipment registered in the name of the Named Insured and any person, or organization legally responsible for such operation, but only if there is no other valid and collectible insurance available, either on a primary or excess basis, to such person or organization; provided that no person or organization shall be an Insured under this paragraph (e) with respect to (1) bodily injury to any fellow employee of such person injured in the course of his employment, or (2) property damage to property owned by, rented to, in charge of or occupied by the Named Insured or the employer of any person described in subparagraph (i).

This insurance does not apply to bodily injury or property damage arising out of the conduct of any partnership or joint venture of which the insured is a partner or member and which is not designated in this policy as a Named Insured.

## III. LIMITS OF LIABILITY

Regardless of the number of (1) insureds under this policy, (2) persons or organizations who sustain bodily injury or property damage, or (3) claims made or suits brought on account of bodily injury or property damage, the Company's liability is limited as follows:

**Coverage A**—The total liability of the Company for all damages, including damages for care and loss of services, because of bodily injury sustained by one or more persons as the result of any one occurrence shall not exceed the limit of bodily injury liability stated in the declarations as applicable to "each occurrence."

Subject to the above provisions respecting "each occurrence", the total liability of ADMIRAL for all damages because of (1) all bodily injury included within the completed operations hazard and (2) all bodily injury included within the products hazard shall not exceed the limit of bodily injury liability stated in the declarations as "aggregate".

**Coverage B**—The total liability of the Company for all damages because of all property damage sustained by one or more persons or organizations as the result of any one occurrence shall not exceed the limit of property damage liability stated in the declarations as applicable to "each occurrence".

Subject to the above provision respecting "each occurrence", the total liability of the Company for all damages because of all property damage to which this coverage applies and described in any of the numbered subparagraphs below shall not exceed the limit of property damage liability stated in the declarations as "aggregate".

- (1) all property damage arising out of premises or operations rated on a remuneration basis or contractor's equipment rated on a receipts basis, including property damage for which liability is assumed under any incidental contract relating to such premises or operations, but excluding property damage included in subparagraph (2) below.
- (2) all property damage arising out of and occurring in the course of operations performed for the Named Insured by independent contractors and general supervision thereof by the Named Insured, including any such property damage for which liability is assumed under any incidental contract relating to such operations, but this subparagraph (2) does not include property damage arising out of maintenance or repairs at premises owned by or rented to the Named Insured or structural alterations at such premises which do not involve changing the size of or moving buildings or other structures;
- (3) all property damage included within the products hazard and all property damage included within the completed operations hazard

Such aggregate limit shall apply separately to the property damage described in subparagraphs (1), (2) and (3) above, and under subparagraphs (1) and (2), separately with respect to each project away from premises owned by or rented to the Named Insured.

**Coverages A and B**—For the purpose of determining the limit of the Company's liability, all bodily injury and property damage arising out of continuous or repeated exposure to substantially the same general conditions shall be considered as arising out of one occurrence.

INSURING COMPANY <u>Admiral Insurance Company</u> <small>(herein called "the Company")</small>	<b>CONTRACTUAL LIABILITY INSURANCE          COVERAGE PART          (BLANKET COVERAGE)</b>
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<b>ADDITIONAL DECLARATIONS</b>	Policy No. <u>A84EG2179</u>
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**SCHEDULE**

It is agreed that the Limits of Liability set forth in the Policy Declarations for the Contractual Liability Coverage Part shall apply as respects any coverage afforded hereunder unless other specific limits are set forth below

<b>Coverage</b>	<b>Limits of Liability (this Coverage Part only)</b>
Y. Bodily Injury Liability . . . . .	\$ <u>Refer to</u> . . . . . each occurrence
Z. Property Damage Liability . . . . .	\$ <u>Endorsement</u> . . . . . each occurrence
	\$ <u>#1</u> . . . . . aggregate

Designation of Contracts on file or known to ADMIRAL	Premium Bases	Rates	Advance Premiums
<p style="text-align: center;">: Intermediate Form Contracts</p> <p>This classification applies to agreements requiring indemnification of the indemnitee for all occurrences arising out of the indemnitor's operations, excluding only the liability of the indemnitee resulting from his sole negligence except in connection with general supervision of work performed by the indemnitor.</p> <p style="text-align: center;">Code 16295</p>			
	(a) Sales (b) Cost	(a) Per \$1,000 of Sales (b) Per \$100. of Cost	

Minimum Premium(s): Included TOTAL ADVANCE PREMIUM ▶ \$ Included

The following exclusions do not apply with respect to any "construction agreements".

When used as a premium basis.

- the word "cost" means the total cost of all work in connection with all contracts of the type designated in the schedule for this insurance with respect to which "cost" is the basis of premium, regardless of whether any liability is assumed under such contracts by the Insured. It includes the cost of all labor, materials or equipment furnished, used or delivered for use in the execution of such work, whether furnished by the Insured, or others including all fees, allowances, bonuses, commissions made, paid or due. It shall not include the cost of any operations to which exclusions (a) or (b) apply, unless such exclusions are voided in the schedule.
- the word "sales" means the gross amount of money charged by the Named Insured or by others trading under his name for all goods and products sold or distributed during the policy period and charged during the policy period for installation, servicing or repair, and includes taxes, other than taxes which the Named Insured and such others collect as a separate item and remit directly to a governmental division.



**I. COVERAGE Y—CONTRACTUAL BODILY INJURY LIABILITY**  
**COVERAGE Z—CONTRACTUAL PROPERTY DAMAGE LIABILITY**

The Company will pay on behalf of the Insured all sums which the Insured, by reason of contractual liability assumed by him under any written contract of the type designated in the schedule for this insurance, shall become legally obligated to pay as damages because of

- Y. bodily injury or
- Z. property damage

to which this insurance applies, caused by an occurrence, except the liability of the indemnitee resulting from his sole negligence and the Company shall have the right and duty to defend any suit against the Insured seeking damages on account of such bodily injury or property damage, even if any of the allegations of the suit are groundless, false or fraudulent, and may make such investigation and settlement of any claim or suit as it deems expedient, but the Company shall not be obligated to pay any claim or judgment or to defend (1) any arbitration proceeding wherein the Company is not entitled to exercise the Insured's rights in the choice of arbitrators and in the conduct of such proceedings or (2) any suit after the applicable limit of the Company's liability has been exhausted by payment of judgments or settlements.

**Exclusions**

This insurance does not apply:

- (a) to liability assumed by the Insured under any incidental contract;
- (b) (1) if the Insured is an architect, engineer or surveyor, to bodily injury or property damage arising out of professional services performed by such Insured, including (i) the preparation or approval of maps, drawings, opinions, reports, surveys, change orders, designs or specifications, and (ii) supervisory, inspection or engineering services; (2) if the indemnitee of the Insured is an architect, engineer or surveyor, to the liability of the indemnitee, his agents or employees, arising out of (i) the preparation or approval of maps, drawings, opinions, reports, surveys, change orders, designs or specifications, or (ii) the giving of or failure to give directions or instructions by the indemnitee, his agents or employees, provided such giving or failure to give is the primary cause of the bodily injury or property damage;
- (c) to bodily injury or property damage due to war, whether or not declared, civil war, insurrection, rebellion or revolution or to any act or condition incident to any of the foregoing;
- (d) to bodily injury or property damage for which the Indemnitee may be held liable
  - (1) as a person or organization engaged in the business of manufacturing, distributing, selling or serving alcoholic beverages, or
  - (2) if not so engaged, as an owner or lessor of premises used for such purposes, if such liability is imposed
    - (i) by, or because of the violation of, any statute, ordinance or regulation pertaining to the sale, gift, distribution or use of any alcoholic beverage, or
    - (ii) by reason of the selling, serving or giving of any alcoholic beverage to a minor or to a person under the influence of alcohol or which causes or contributes to the intoxication of any person, but part (ii) of this exclusion does not apply with respect to liability of the Indemnitee as an owner or lessor described in (2) above;
- (e) to any obligation for which the Insured or any carrier as his insurer may be held liable under any workmen's compensation, unemployment compensation or disability benefits law, or under any similar law;
- (f) to any obligation for which the Insured may be held liable in an action on a contract by a third party beneficiary for bodily injury or property damage arising out of a project for a public authority; but this exclusion does not apply to an action by the public authority or any other person or organization engaged in the project;
- (g) to property damage to (1) property owned or occupied by or rented to the Insured, (2) property used by the Insured, or (3) property in the care, custody or control of the Insured or as to which the Insured is for any purpose exercising physical control;
- (h) to property damage to premises alienated by the Named Insured arising out of such premises or any part thereof;
- (i) to loss of use of tangible property which has not been physically injured or destroyed resulting from
  - (1) a delay in or lack of performance by or on behalf of the Named Insured of any contract or agreement, or
  - (2) the failure of the Named Insured's products or work performed by or on behalf of the Named Insured to meet the level of performance, quality, fitness or durability warranted or represented by the Named Insured; but this exclusion does not apply to loss of use of other tangible property resulting from the sudden and accidental physical injury to or destruction of the Named Insured's products or work performed by or on behalf of the Named Insured after such products or work have been put to use by any person or organization other than an Insured;
- (j) to property damage to the Named Insured's products arising out of such products or any part of such products;
- (k) to property damage to work performed by or on behalf of the Named Insured arising out of the work or any portion thereof, or out of materials, parts or equipment furnished in connection therewith;
- (l) to damages claimed for the withdrawal, inspection, repair, replacement, or loss of use of the Named Insured's products or work completed by or for the Named Insured or of any property of which such products or work form a part, if such products, work or property are withdrawn from the market or from use because of any known or suspected defect or deficiency therein;

(m) to bodily injury or property damage arising out of the ownership, maintenance, operation, use, loading or unloading of any mobile equipment while being used in any prearranged or organized racing, speed of demolition contest or in any stunting activity or in practice or preparation for any such contest or activity;

(n) to bodily injury or property damage arising out of the discharge, dispersal, release or escape of smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, liquids or gases, waste materials or other irritants, contaminants or pollutants into or upon land, the atmosphere or any water course or body of water, but this exclusion does not apply if such discharge, dispersal, release or escape is sudden and accidental;

Unless stated in the schedule as not applicable, the following exclusions also apply to contractual liability assumed by the Insured under any agreement relating to construction operations.

This insurance does not apply:

- (o) to bodily injury or property damage arising out of construction, maintenance or repair of watercraft or loading or unloading thereof;
- (p) to bodily injury or property damage arising out of operations, within fifty feet of any railroad property, affecting any railroad bridge or trestle, tracks, road beds, tunnel, underpass or crossing;
- (q) to bodily injury or property damage included within the completed operations hazard or the products hazard;
- (r) to property damage included within (1) the explosion hazard, (2) the collapse hazard, or (3) the underground property damage hazard.

**II. PERSONS INSURED**

Each of the following is an Insured under this insurance to the extent set forth below:

- (a) if the Named Insured is designated in the declarations as an individual, the person so designated and his spouse;
- (b) if the Named Insured is designated in the declarations as a partnership or joint venture, the partnership or joint venture so designated and any partner or member thereof but only with respect to his liability as such;
- (c) if the Named Insured is designated in the declarations as other than an individual, partnership or joint venture, the organization so designated and any executive officer, director or stockholder thereof while acting within the scope of his duties as such.

This insurance does not apply to bodily injury or property damage arising out of the conduct of any partnership or joint venture of which the Insured is a partner or member and which is not designated in this policy as a Named Insured.

**III. LIMITS OF LIABILITY**

Regardless of the number of (1) Insureds under this policy, (2) persons or organizations who sustain bodily injury or property damage, or (3) claims made or suits brought on account of bodily injury or property damage, the Company's liability is limited as follows:

**Coverage Y.**—The total liability of the Company for all damages, including damages for care and loss of services, because of bodily injury sustained by one or more persons as a result of any one occurrence shall not exceed the limit of bodily injury liability stated in the declarations as applicable to "each occurrence."

**Coverage Z.**—The total liability of the Company for all damages because of all property damage sustained by one or more persons or organizations as the result of any one occurrence shall not exceed the limit of property damage liability stated in the declarations as applicable to "each occurrence."

Subject to the above provision respecting "each occurrence," the total liability of the Company for all damages because of all property damage to which this coverage applies shall not exceed the limit of property damage liability stated in the declarations as "aggregate." Such aggregate limit of liability applies separately with respect to each project away from premises owned by or rented to the Named Insured.

**Coverages Y and Z.**—For the purpose of determining the limit of the Company's liability, all bodily injury and property damage arising out of continuous or repeated exposure to substantially the same general conditions shall be considered as arising out of one occurrence.

**IV. POLICY TERRITORY**

This insurance applies only to bodily injury or property damage which occurs within the policy territory.

**V. ADDITIONAL DEFINITIONS**

When used in reference to this insurance (including endorsements forming a part of the policy):

"contractual liability" means liability expressly assumed under a written contract or agreement; provided, however, that contractual liability shall not be construed as including liability under a warranty of the fitness or quality of the Named Insured's products or a warranty that work performed by or on behalf of the Named Insured will be done in a workmanlike manner;

"suit" includes an arbitration proceeding in which the Insured is required to submit or to which the Insured has submitted with the Company's consent.

**VI. ADDITIONAL CONDITION**

**Arbitration**

ADMIRAL shall be entitled to exercise all of the Insured's rights in the choice of arbitrators and in the conduct of any arbitration proceeding.

**Premium**

The advance premium stated in the schedule is the estimated premium on account of such written contracts as are on file with or known to the Company. The Named Insured shall notify the Company of all other written contracts entered into during the policy period to which this insurance applies.

INSURING COMPANY: Admiral Insurance Company  
(herein called "the Company")

**PERSONAL INJURY LIABILITY INSURANCE COVERAGE PART**

ADDITIONAL DECLARATIONS

Policy No. A84EG2179

**SCHEDULE**

The insurance afforded is only with respect to personal injury arising out of an offense included within such of the following groups of offenses as are indicated by specific premium charge or charges

GROUPS OF OFFENSES	ADVANCE PREMIUM
A. False Arrest, Detention or Imprisonment, or Malicious Prosecution . . . . .	\$ Included
B. Libel, Slander, Defamation or Violation of Right of Privacy . . . . .	\$ Included
C. Wrongful Entry or Eviction or Other Invasion of Right of Private Occupancy . . . . .	\$ Included
Insured's Participation 0% Minimum Premium \$ Included	TOTAL ADVANCE PREMIUM \$ Included

**I. COVERAGE P.—PERSONAL INJURY LIABILITY**

The Company will pay on behalf of the Insured all sums which the Insured shall become legally obligated to pay as damages because of injury (herein called "personal injury") sustained by any person or organization and arising out of one or more of the following offenses committed in the conduct of the Named Insured's business

- Group A—false arrest, detention or imprisonment, or malicious prosecution;
- Group B—the publication or utterance of a libel or slander or of other defamatory or disparaging material, or a publication or utterance in violation of an individual's right of privacy, except publications or utterances in the course of or related to advertising, broadcasting or telecasting activities conducted by or on behalf of the Named Insured.
- Group C—wrongful entry or eviction, or other invasion of the right of private occupancy;

if such offense is committed during the policy period within the United States of America, its territories or possessions, or Canada, and the Company shall have the right and duty to defend any suit against the Insured seeking damages on account of such personal injury even if any of the allegations of the suit are groundless, false or fraudulent, and may make such investigation and settlement of any claim or suit as it deems expedient, but the Company shall not be obligated to pay any claim or judgment or to defend any suit after the applicable limit of the Company's liability has been exhausted by payment of judgments or settlements.

**Exclusions**

This insurance does not apply:

- (a) to liability assumed by the Insured under any contract or agreement;
- (b) to personal injury arising out of the willful violation of a penal statute or ordinance committed by or with the knowledge or consent of any Insured;
- (c) to personal injury sustained by any person as a result of an offense directly or indirectly related to the employment of such person by the Named Insured;
- (d) to personal injury arising out of any publication or utterance described in Group B, if the first injurious publication or utterance of the same or similar material by or on behalf of the Named Insured was made prior to the effective date of this insurance;

(e) to personal injury arising out of a publication or utterance described in Group B, concerning any organization or business enterprise, or its products or services, made by or at the direction of any Insured with knowledge of the falsity thereof.

**II. PERSONS INSURED**

Each of the following is an Insured under this insurance to the extent set forth below:

- (a) if the Named Insured is designated in the declarations as an individual, the person so designated and his spouse;
- (b) if the Named Insured is designated in the declarations as a partnership or joint venture, the partnership or joint venture so designated and any partner or member thereof but only with respect to his liability as such;
- (c) if the Named Insured is designated in the declarations as other than an individual, partnership or joint venture, the organization so designated and any executive officer, director or stockholder thereof while acting within the scope of his duties as such.

This insurance does not apply to personal injury arising out of the conduct of any partnership or joint venture of which the Insured is a partner or member and which is not designated in this policy as a Named Insured.

**III. LIMITS OF LIABILITY; INSURED'S PARTICIPATION**

Regardless of the number of (1) Insureds under this policy, (2) persons or organizations who sustain personal injury, or (3) claims made or suits brought on account of personal injury, the total liability of the Company under this coverage for all damages shall not exceed the limit of personal injury liability stated in the declarations as "aggregate".

If a participation percentage is stated in the schedule for the Insured, the Company shall not be liable for a greater proportion of any loss than the difference between such percentage and one hundred percent and the balance of the loss shall be borne by the Insured; provided, the Company may pay the Insured's portion of a loss to effect settlement of the loss, and, upon notification of the action taken, the Named Insured shall promptly reimburse the Company therefor.

**IV. ADDITIONAL DEFINITION**

When used in reference to this insurance:

"damages" means only those damages which are payable because of personal injury arising out of an offense to which this insurance applies.

INSURING COMPANY <u>Admiral Insurance Company</u> <small>(herein called "the Company")</small>	NO <u>1</u> EFFECTIVE DATE .....	ENDORSEMENT TO POLICY NO <u>A84EG2179</u> <u>8/29/84</u>
NAMED INSURED <u>Marisol, Inc.</u>	<b>COMBINED SINGLE LIMIT OF LIABILITY</b>	

A. The LIMITS OF LIABILITY on the DECLARATIONS are amended to read as follows:

- \$ 500,000 each occurrence as respects Bodily Injury Liability or Property Damage Liability or both combined.
- \$ 500,000 aggregate.

B. It is further understood and agreed that Insuring Agreement III—"LIMITS OF LIABILITY," as contained in any Coverage Part attached to this policy is deleted and the following substituted therefor:

**III. LIMITS OF LIABILITY**

Regardless of the number of (1) Insureds under this policy, (2) persons or organizations who sustain bodily injury or property damage, or (3) claims or suits brought on account of bodily injury or property damage, the Company's liability is limited as follows:

The total liability of the Company for all damages, including damages for care and loss of services, because of bodily injury sustained by one or more persons as the result of any one occurrence and the total liability of the Company for all damages because of all property damage sustained by one or more persons or organizations as a result of any one occurrence shall not exceed the limit of liability stated herein as applicable to "each occurrence."

For the purpose of determining the limit of the Company's liability, all bodily injury and property damage arising out of continuous or repeated exposure to substantially the same general conditions shall be considered as arising out of one occurrence

C. The aggregate limit of liability stated above is only with respect to such of the following COVERAGE PARTS as indicated by .

**COMPREHENSIVE GENERAL LIABILITY COVERAGE PART (Form JC-0019)**

Subject to the above provision respecting "each occurrence," the total liability of the Company for all damages because of all bodily injury and property damage to which this coverage applies and which is described in any of the numbered subparagraphs below shall not exceed the limit of liability stated in this endorsement as "aggregate":

- (1) all property damage arising out of premises or operations rated on a remuneration basis or contractor's equipment rated on a receipts basis, including property damage for which liability is assumed under any incidental contract relating to such premises or operations, but excluding property damage included in subparagraph (2) below;
- (2) all property damage arising out of and occurring in the course of operations performed for the named insured by independent contractors and general supervision thereof by the Named Insured, including any such property damage for which liability is assumed under any incidental contract relating to such operations, but this subparagraph (2) does not include property damage arising out of maintenance or repairs at premises owned by or rented to the named insured or structural alterations at such premises which do not involve changing the size of or moving buildings or other structures;

(3) all bodily injury and property damage included within the completed operations hazard and the products hazard combined

Such aggregate limit shall apply separately to the property damage described in subparagraphs (1), (2) and (3) above, and under the subparagraphs (1) and (2), separately with respect to each project away from premises owned by or rented to the Named Insured.

CONTRACTUAL LIABILITY COVERAGE PART (Form ~~JC-0021~~ or JC-0025)

Subject to the above provision respecting "each occurrence," the total liability of the Company for all damages because of all property damage to which this coverage applies shall not exceed the limit of liability stated in this endorsement as "aggregate." Such aggregate limit of liability applies separately with respect to each project away from premises owned by or rented to the Named Insured

COMPLETED OPERATIONS AND PRODUCTS LIABILITY INSURANCE COVERAGE PART (Form JC-0023)

Subject to the above provision respecting "each occurrence," the total liability of the Company for all damages because of all bodily injury or property damage to which this coverage applies and arising out of the products hazard and the completed operations hazard combined shall not exceed the limit of liability stated herein as "aggregate."

OWNERS' AND CONTRACTORS' PROTECTIVE LIABILITY INSURANCE COVERAGE PART (Form JC-0022)

Subject to the above provision respecting "each occurrence," the total liability of the Company for all damages because of all property damage to which the coverage applies shall not exceed the limit of property damage liability stated herein as "aggregate." If more than one project is designated in the schedule, such aggregate limit shall apply separately with respect to each project.

OWNERS', LANDLORDS' AND TENANTS' LIABILITY INSURANCE COVERAGE PART (Form JC-0020)

Subject to the above provisions respecting "each occurrence," the total liability of the Company for all damages because of all property damage to which this coverage applies and arising out of and occurring in the course of structural alterations which involve changing the size of or moving buildings or other structures, new construction or demolition operations performed by or on behalf of the Named Insured (including any such property damage for which liability is assumed under any incidental contract relating to such operations) shall not exceed the limit of property damage liability stated herein as "aggregate."

MANUFACTURERS' AND CONTRACTORS' LIABILITY INSURANCE COVERAGE PART (Form JC 0021)

Subject to the above provision respecting "each occurrence," the total liability of the Company for all damages because of all property damage to which this coverage applies and described in either of the numbered subparagraphs below shall not exceed the limit of property damage liability stated herein as "aggregate":

- (1) all property damage arising out of premises or operations rated on a remuneration basis or contractor's equipment rated on a receipts basis, including property damage for which liability is assumed under any incidental contract relating to such premises or operations, but excluding property damage included in subparagraph (2) below;
- (2) all property damage arising out of and occurring in the course of operations performed for the Named Insured by independent contractors and general supervision thereof by the Named Insured, including any such property damage for which liability is assumed under any incidental contract relating to such operations, but this subparagraph (2) does not include property damage arising out of maintenance or repairs at premises owned by or rented to the Named Insured or structural alterations at such premises which do not involve changing the size of or moving buildings or other structures.

Such aggregate limit shall apply separately to the property damage described in subparagraphs (1) and (2) above and separately with respect to each project away from premises owned by or rented to the Named Insured.

By: \_\_\_\_\_

Authorized Representative

INSURING COMPANY Admiral Insurance Company (herein called "the Company")	NO 2 EFFECTIVE DATE	ENDORSEMENT TO POLICY NO A84EG2179 8/29/84
NAMED INSURED Marisol, Inc.	DEDUCTIBLE LIABILITY INSURANCE	

It is agreed that:

1. The company's obligation under the Bodily Injury Liability and Property Damage Liability Coverages to pay damages on behalf of the Insured applies only to the amount of damages in excess of any deductible amounts stated in the schedule below as applicable to such coverages.
2. The deductible amounts stated in the schedule apply as follows:
  - (a) PER CLAIM BASIS - If the deductible is on a "per claim" basis, the deductible amount applies under the Bodily Injury Liability or Property Damage Liability Coverage, respectively, to all damages because of bodily injury sustained by one person, or to all property damage sustained by one person or organization, as the result of any one occurrence.
  - (b) PER OCCURRENCE BASIS - If the deductible is on a "per occurrence" basis, the deductible amount applies under the Bodily Injury Liability or Property Damage Liability Coverage, respectively, to all damages because of all bodily injury or property damage as the result of any one occurrence.
3. The terms of the policy, including those with respect to (a) the company's rights and duties with respect to the defense of suits and (b) the insured's duties in the event of an occurrence, apply irrespective of the application of the deductible amount.
4. The company may pay any part or all of the deductible amount to effect settlement of any claim or suit and, upon notification of the action taken, the named insured shall promptly reimburse the company for such part of the deductible amount as has been paid by the company.

SCHEDULE

COVERAGE	AMOUNT AND BASIS OF DEDUCTIBLE	
Bodily Injury Liability	\$ 1,000.00	per claim
	\$ -----	per occurrence
Property Damage Liability	\$ 1,000.00	per claim
	\$ -----	per occurrence

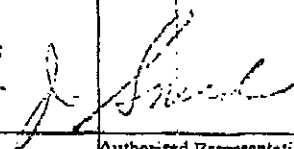
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Authorized Representative

INSURING COMPANY <u>Admiral Insurance Company</u> <small>(herein called "the Company")</small>	NO <u>3</u>	ENDORSEMENT TO POLICY NO <u>A84EG2179</u> EFFECTIVE DATE <u>8/29/84</u>
NAMED INSURED <u>Marisol, Inc.</u>	AMENDMENT TO PERSONAL INJURY LIABILITY INSURANCE COVERAGE PART	

It is hereby understood and agreed that (c) of Exclusions as shown on the PERSONAL INJURY LIABILITY INSURANCE COVERAGE PART (form JC-0026) is deleted in its entirety.

BY



Authorized Representative

INSURING COMPANY Admiral Insurance Company <small>(herein called "the Company")</small>	NO. . . 4 . EFFECTIVE DATE . . . 8/29/84 ..	<b>ENDORSEMENT</b> TO POLICY NO. A84EG2179
NAMED INSURED . . . Marisol, Inc. . . . .	<b>BROAD FORM LIABILITY ENDORSEMENT</b> (Page 1 of 4)	

Such insurance as is afforded by the policy for Comprehensive General Liability is amended to include the following additions and extensions of coverage:

**I. ADDITIONAL INSURED — EMPLOYEES**

The "Persons Insured" provision is amended to include any employee of the Named Insured while acting within the scope of his duties as such but the insurance afforded to such employee does not apply.

1. to bodily injury to (a) another employee of the Named Insured arising out of or in the course of his employment or (b) the Named Insured or, if the Named Insured is a partnership or joint venture, any partner or member thereof;
2. to property damage to property owned, occupied or used by, rented to, in the care, custody or control of, or over which physical control is being exercised for any purpose by (a) another employee of the Named Insured or (b) the Named Insured or, if the Named Insured is a partnership or joint venture, any partner or member thereof.
3. to injury to which Incidental Malpractice Coverage, Section VI of this endorsement, applies.

**II. BROAD FORM PROPERTY DAMAGE (Including Completed Operations)**

It is agreed that the insurance for property damage liability applies, subject to the following additional provisions:

A. The exclusions relating to property damage to (1) property owned, occupied or used by or rented to the Insured or in the care, custody or control of the Insured or as to which the Insured is for any purpose exercising physical control and (2) work performed by or on behalf of the Named Insured arising out of the work or any portion thereof, or out of materials, parts or equipment furnished in connection therewith, are replaced by the following exclusions (y) and (z):

(y) to property damage

- (1) to property owned or occupied by or rented to the Insured, or except with respect to the use of elevators, to property held by the Insured for sale or entrusted to the Insured for storage or safekeeping,

(2) except with respect to liability under a written sidetrack agreement or the use of elevators to

- (a) property while on premises owned by or rented to the Insured for the purpose of having operations performed on such property by or on behalf of the Insured.
- (b) tools or equipment while being used by the Insured in performing his operations.
- (c) property in the custody of the Insured which is to be installed, erected or used in construction by the Insured.
- (d) that particular part of any property, not on premises owned by or rented to the Insured.
  - (i) upon which operations are being performed by or on behalf of the Insured at the time of the property damage arising out of such operations, or
  - (ii) out of which any property damage arises, or
  - (iii) the restoration, repair or replacement of which has been made or is necessary by reason of faulty workmanship thereon by or on behalf of the Insured;

(2) with respect to the completed operations hazard, to property damage to work performed by the Named Insured arising out of the work or any portion thereof, or out of materials, parts or equipment furnished in connection therewith.

B. The insurance afforded hereby shall be excess insurance over any valid and collective property insurance (including any deductible portion thereof) available to the Insured, such as but not limited to Fire and Extended Coverage, Builder's Risk Coverage or Installation Risk Coverage, and the "Other Insurance" Condition is amended accordingly.

### III. WATERCRAFT NON-OWNERSHIP (UNDER 33 FEET IN LENGTH)

It is agreed that the policy exclusion relating to the ownership, maintenance, operation, use, loading or unloading of watercraft shall not apply to any watercraft under 33 feet in length provided such watercraft is not owned by the Named Insured and is not being used to carry persons for a charge.

The insurance afforded hereby shall be excess insurance over any other valid and collectible insurance available to the Insured.

### IV. WORLDWIDE PRODUCTS LIABILITY (Claims or Suits Brought Within the U.S.A. or Canada)

It is hereby understood and agreed that the definition of "policy territory" as shown on the GENERAL LIABILITY POLICY Standard Provisions (form JD-0014) is amended to read as follows:

"policy territory" means.

anywhere in the world with respect to damages because of bodily injury or property damage arising out of the Named Insured's product, provided the original suit for such damages is brought within the United States of America, its territories or possessions, or Canada.



## V. AUTOMATIC COVERAGE — NEWLY ACQUIRED ENTITIES (30 DAYS)

The word Insured shall include any entity which is acquired or formed after the effective date of this endorsement by any Named Insured and over which such Named Insured maintains ownership or financial control, provided this insurance does not apply to bodily injury or property damage with respect to which such a new Insured under this policy is also an Insured under any other liability or indemnity policy or would be an Insured under any such policy but for exhaustion of its limits of liability. The insurance afforded hereby shall terminate 30 days from the date any such entity is acquired or formed by such Named Insured unless this policy is endorsed to include such new Insured as a Named Insured effective as of the date of such acquisition.

## VI. INCIDENTAL MALPRACTICE COVERAGE

It is agreed that the definition of "bodily injury" is amended to include Incidental Medical Malpractice Injury

Incidental Medical Malpractice Injury means injury arising out of the rendering of or failure to render during the policy period, the following services:

- (a) medical, surgical, dental, x-ray or nursing service or treatment or the furnishing of food or beverages in connection therewith; or
- (b) the furnishing or dispensing of drugs or medical, dental or surgical supplies or appliances.

This coverage does not apply to:

- (1) expenses incurred by the Insured for first-aid to others at the time of an accident and the "Supplementary Payments" provision and the "Insured's Duties in the Event of Occurrence, Claim or Suit" condition are amended accordingly;
- (2) any insured engaged in the business or occupation of providing any of the services described under (a) and (b) above;
- (3) injury caused by any indemnitee if such indemnitee is engaged in the business or occupation of providing any of the services described under (a) and (b) above.

## VII. HOST LIQUOR LIABILITY

The exclusion contained in the policy with respect to the manufacturing, distributing, selling or serving alcoholic beverages does not apply to bodily injury or property damage arising out of serving or giving of alcoholic beverages by or on behalf of the Named Insured provided the Named Insured is not a person or organization engaged in the business of manufacturing, distributing, selling or serving alcoholic beverages, or is not an owner or lessor of premises used for such purposes.

### VIII. EXTENDED BODILY INJURY COVERAGE

The definition of occurrence includes any intentional act by or at the direction of the Insured which results in bodily injury, if such injury arises solely from the use of reasonable force for the purpose of protecting persons or property.

### XI. FIRE LEGAL LIABILITY COVERAGE — REAL PROPERTY

The Property Damage Liability Coverage applies to property damage to structures or portions thereof rented to or occupied by the Named Insured, including fixtures permanently attached thereto, if such property damage arises out of fire subject to the following additional provisions.

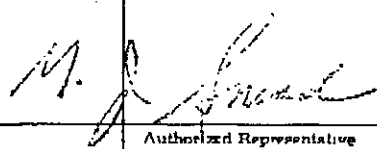
- (A) With respect to the insurance provided by these provisions, all of the exclusions of the policy, other than the Nuclear Energy Liability Exclusion (Broad Form), are deleted and replaced by the following.
  - (1) This insurance does not apply to liability assumed by the Insured under any contract or agreement.
- (B) The limit of property damage liability in the declarations of the policy as applicable to "each occurrence" is, as respects this Fire Legal Liability Coverage — Real Property, amended to read \$50,000, each occurrence.
- (C) The Insurance afforded hereby shall be excess insurance over any valid and collectible property insurance (including any deductible portion thereof) available to the Insured, such as, but not limited to, Fire, Extended Coverage, Builder's Risk Coverage or Installation Risk Coverage, and the "Other Insurance" Condition of the policy is amended accordingly.

INSURING COMPANY Admiral Insurance Company (herein called "the Company")	ENDORSEMENT NO. ... 5 ... TO POLICY NO. ... A84EG2179 EFFECTIVE DATE ... 8/29/84
NAMED INSURED Marisol, Inc.	INSTALLMENT ENDORSEMENT

It is hereby understood and agreed that the TOTAL ADVANCE PREMIUM is payable in the following installments:

Due inception 8/29/84 - \$8,800.00  
 Due 11/29/84 - \$6,600.00  
 Due 2/29/85 - \$6,600.00

BY

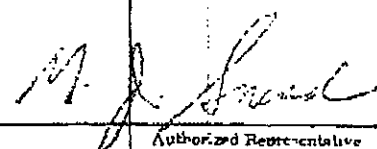


Authorized Representative

INSURING COMPANY <u>Admiral Insurance Company</u> <small>(herein called "the Company")</small>	NO. <u>6</u> EFFECTIVE DATE <u>8/29/84</u>	ENDORSEMENT TO POLICY NO. <u>A84EG2179</u>
NAMED INSURED <u>Marisol, Inc.</u>	HAZARDOUS WASTE FACILITY LIABILITY ENDORSEMENT	

It is hereby understood and agreed that in consideration of the premium charged, the following endorsement wording applies to this policy:

1. This endorsement certifies that the policy to which the endorsement is attached provides liability insurance covering bodily injury and property damage in connection with the Insured's obligation to demonstrate financial responsibility under N.J.A.C. 7:26-9.13. The coverage applies at Marisol, Inc., 125 Factory Lane, Middlesex, N.J. 08846, EPA I.D. #NJD 002454544, for sudden accidental occurrences. The limits of liability are \$500,000. each occurrence/\$500,000. aggregate, exclusive of legal defenses costs.
2. The insurance afforded with respect to such occurrences is subject to all of the terms and conditions of the policy, provided, however, that any provisions of the policy inconsistent with subsections (a) through (e) of this Paragraph 2. are hereby amended to conform with subsections (a) through (e):
  - (a) Bankruptcy or insolvency of the Insured shall not relieve the Insurer of its obligations under the policy to which this endorsement is attached.
  - (b) The Insurer is liable for the payment of amounts within any deductible applicable to the policy, with a right of reimbursement by the Insured for any such payment made by the Insurer. This provision does not apply with respect to that amount of any deductible for which coverage is demonstrated, as specified in N.J.A.C. 7:26-9.13.
  - (c) The Insurer agrees to furnish to the New Jersey Department of Environmental Protection (hereinafter, the NJDEP) a signed duplicate original of the policy and all endorsements.
  - (d) Cancellation of this endorsement, whether by the Insurer or the Insured, will be effective only upon written notice and only after the expiration of sixty (60) days after a copy of such written notice is received by the NJDEP.
  - (e) Any other termination of this endorsement will be effective only upon written notice and only after the expiration of thirty (30) days after a copy of such written notice is received by the NJDEP.

BY:   
 Authorized Representative

INSURING COMPANY <u>Admiral Insurance Company</u> <small>(herein called "the Company")</small>	NO <u>6 (Con't.)</u> EFFECTIVE DATE .....	<b>ENDORSEMENT</b> TO POLICY NO <u>A84EG2179</u> <u>8/29/84</u>
NAMED INSURED <u>Marisol, Inc.</u>	<b>HAZARDOUS WASTE FACILITY  LIABILITY ENDORSEMENT  (continued)</b>	

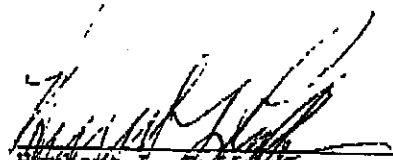
Attached to and forming part of Policy No. A84EG2179 issued by Admiral Insurance Company, herein called the Insurer of:

c/o JERSEY INTERNATIONAL UNDERWRITING MANAGERS, INC.  
1255 Caldwell Road  
P. O. Box 5725  
Cherry Hill, N.J. 08034

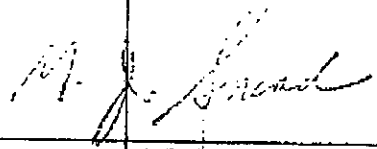
TO: Marisol, Inc.  
125 Factory Lane  
Middlesex, N.J. 08846

this 28th day of August, 1984. The effective date of said policy is the 29th day of August, 1984.

I hereby certify that the wording of this endorsement is identical to the wording specified in N.J.A.C. 7:26-9 (Appendix A), as such regulation was constituted on the date first above written, and that the Insurer is licensed to transact the business of insurance or is eligible to provide insurance as an excess or surplus lines insurer, in one or more states.

  
\_\_\_\_\_  
Herbert L. Ruffe  
Senior Vice President

Authorized Representative of Admiral Insurance Company  
1255 Caldwell Road  
Cherry Hill, New Jersey

BY   
\_\_\_\_\_  
Authorized Representative

## CONDITIONS

**1. Premium**

All premiums for this policy shall be computed in accordance with the Company's rules, rates, rating plans, premiums and minimum premiums applicable to the insurance afforded herein.

Premium designated in this policy as "advance premium" is a deposit premium only which shall be credited to the amount of the earned premium due at the end of the policy period. At the close of each period (or part thereof terminating with the end of the policy period) designated in the declarations as the audit period the earned premium shall be computed for such period and upon notice thereof to the Named Insured, shall become due and payable. If the total earned premium for the policy period is less than the premium previously paid, the Company shall return to the Named Insured the unearned portion paid by the Named Insured, but the Company shall receive and retain no less than the minimum annual premium(s) listed in the Coverage Part(s) attached hereto.

The Named Insured shall maintain records of such information as is necessary for premium computation, and shall send copies of such records to the Company at the end of the policy period and at such times during the policy period as the Company may direct.

**2. Inspection and Audit**

The Company shall be permitted but not obligated to inspect the Named Insured's property and operations at any time. Neither the Company's right to make inspections nor the making thereof nor any report thereon shall constitute an undertaking, on behalf of or for the benefit of the Named Insured or others, to determine or warrant that such property or operations are safe or healthful, or are in compliance with any law, rule or regulation.

The Company may examine and audit the Named Insured's books and records at any time during the policy period and extensions thereof and within three years after the final termination of this policy, as far as they relate to the subject matter of this insurance.

**3. Financial Responsibility Laws**

When this policy is certified as proof of financial responsibility for the future under the provisions of any motor vehicle financial responsibility law, such insurance as is afforded by this policy for bodily injury liability or for property damage liability shall comply with the provisions of such law to the extent of the coverage and limits of liability required by such law. The Insured agrees to reimburse the Company for any payment made by the Company which it would not have been obligated to make under the terms of this policy except for the agreement contained in this paragraph.

**4. Insured's Duties in the Event of Occurrence, Claim or Suit**

(a) In the event of an occurrence, written notice containing particulars sufficient to identify the Insured and also reasonably obtainable information with respect to the time, place and circumstances thereof, and the names and addresses of the injured and of available witnesses, shall be given by or for the Insured to the Company's authorized representative as soon as practicable.

(b) If claim is made or suit is brought against the Insured, the Insured shall immediately forward to the Company's authorized representative every demand, notice, summons or other process received by him or his representative.

(c) The Insured shall cooperate with the Company and, upon the Company's request, assist in making settlements, in the conduct of suits and in enforcing any right of contribution or indemnity against any person or organization who may be liable to the Insured because of injury or damage with respect to which insurance is afforded under this policy; and the Insured shall attend hearings and trials and assist in securing and giving evidence and obtaining the attendance of witnesses. The Insured shall not, except at his own cost, voluntarily make any payment, assume any obligation or incur any expense other than for first aid to others at the time of accident.

**5. Action Against The Company**

No action shall be against the Company unless, as a condition precedent thereto, there shall have been full compliance with all of the terms of this policy, nor until the amount of the Insured's obligation to pay shall have been finally determined either by judgment against the Insured after actual trial or by written agreement of the Insured, the claimant and the Company.

Any person or organization or the legal representative thereof who has secured such judgment or written agreement shall thereafter be entitled to recover under this policy to the extent of the insurance afforded by this policy. No person or organization shall have any right under this policy to join the Company as a party to any action against the Insured to determine the Insured's liability, nor shall the Company be impleaded by the Insured or his legal representative. Bankruptcy or insolvency of the Insured or of the Insured's estate shall not relieve the Company of any of its obligations hereunder.

**6. Other Insurance**

The insurance afforded by this policy is primary insurance, except when stated to apply in excess of or contingent upon the absence of other insurance. When this insurance is primary and the Insured has other insurance which is stated to be applicable to the loss on an excess or contingent basis, the amount of the Company's liability under this policy shall not be reduced by the existence of such other insurance.

When both this insurance and other insurance apply to the loss on the same basis, whether primary, excess or contingent, the Company shall not be liable under this policy for a greater proportion of the loss than that stated in the applicable contribution provision below:

(a) **Contribution by Equal Shares.** If all of such other valid and collectible insurance provides for contribution by equal shares, the Company shall not be liable for a greater proportion of such loss than would be payable if each insurer contributes an equal share until the share of each insurer equals the lowest applicable limit of liability under any one policy or the full amount of the loss is paid, and with respect to any amount of loss not so paid the remaining insurers then continue to contribute equal shares of the remaining amount of the loss until each such insurer has paid its limit in full of the full amount of the loss is paid.

(b) **Contribution by Limits.** If any of such other insurance does not provide for contribution by equal shares, the Company shall not be liable for a greater proportion of such loss than the applicable limit of liability under this policy for such loss bears to the total applicable limit of liability of all valid and collectible insurance against such loss.

**7. Subrogation**

In the event of any payment under this policy, the Company shall be subrogated to all the Insured's rights of recovery therefor against any person or organization and the Insured shall execute and deliver instruments and papers and do whatever else is necessary to secure such rights. The Insured shall do nothing after loss to prejudice such rights.

**8. Changes**

Notice to, or knowledge possessed by, any representative of the Company or by any other person shall not effect a waiver or a change in any part of this policy or estop the Company from asserting any right under the terms of this policy; nor shall the terms of this policy be waived or changed, except by endorsement issued to form a part of this policy.

**9. Assignment**

Assignment of interest under this policy shall not bind the Company until its consent is endorsed hereon; if, however, the Named Insured shall die, such insurance as is afforded by this policy shall apply (1) to the Named Insured's legal representative, as the Named Insured, but only while acting within the scope of his duties as such, and (2) with respect to the property of the Named Insured, to the person having proper temporary custody thereof, as Insured, but only until the appointment and qualification of the legal representative.

**10. Three Year Policy**

If this policy is issued for a period of three years any limit of the Company's liability stated in this policy as "aggregate" shall apply separately to each consecutive annual period thereof.

**11. Cancellation**

This policy may be cancelled by the Named Insured by surrender thereof to the Company's authorized representative or by mailing to the Company's authorized representative written notice stating when thereafter the cancellation shall be effective. This policy may be cancelled by the Company by mailing to the Named Insured at the address shown in this policy, written notice stating when not less than 10 days thereafter such cancellation shall be effective. The mailing of notice as aforesaid shall be sufficient proof of notice. The time of surrender or the effective date and hour of cancellation stated in the notice shall become the end of the policy period. Delivery of such written notice either by the Named Insured or by the Company shall be equivalent to mailing.

If the Named Insured cancels, earned premium shall be computed in accordance with the customary short rate table and procedure. If the Company cancels, earned premium shall be computed pro rata. Premium adjustment may be made either at the time cancellation is effected or as soon as practicable after cancellation becomes effective, but payment or tender of unearned premium is not a condition of cancellation.

**12. Declarations**

By acceptance of this policy, the Named Insured agrees that the statements in the declarations are his agreements and representations, that this policy is issued in reliance upon the truth of such representations and that this policy embodies all agreements existing between himself and the Company or any of its representatives relating to this insurance.

**NUCLEAR ENERGY LIABILITY EXCLUSION**

This policy does not apply:

- a. Under any Liability Coverage, to bodily injury or property damage:
  - (1) with respect to which an Insured under the policy is also an Insured under a nuclear energy liability policy issued by Nuclear Energy Liability Insurance Association, Mutual Atomic Energy Liability Underwriters, or Nuclear Insurance Association of Canada, or would be an Insured under any such policy but for its termination upon exhaustion of its limit of liability, or
  - (2) resulting from the hazardous properties of nuclear material and with respect to which (a) any person or organization is required to maintain financial protection pursuant to the Atomic Energy Act of 1954, or any law amendatory thereof, or (b) the Insured is, or had this policy not been issued would be, entitled to indemnity from the United States of America, or any agency thereof, under any agreement entered into by the United States of America, or any agency thereof, with any person or organization;
- b. Under any Medical Payments Coverage, or under any Supplementary Payments provision relating to first aid, to expenses incurred with respect to bodily injury resulting from the hazardous properties of nuclear material and arising out of the operation of a nuclear facility by any person or organization;
- c. Under any Liability Coverage, to bodily injury or property damage resulting from the hazardous properties of nuclear material, if:
  - (1) the nuclear material (a) is at any nuclear facility owned by, or operated by or on behalf of, an insured, or (b) has been discharged or dispersed therefrom;
  - (2) the nuclear material is contained in spent fuel or waste at any time possessed, handled, used, processed, stored, transported or disposed of by or on behalf of an insured, or
  - (3) the bodily injury or property damage arises out of the furnishing by an insured of services, materials, parts or equipment in connection with the planning, construction, maintenance, operation or use of any nuclear facility, but if such facility is located within the United States of America, its territories or possessions, or Canada, this exclusion (3) applies only to property damage to such nuclear facility and any property thereat;

d. As used in this Exclusion:

- (1) "Hazardous properties" include radioactive, toxic, or explosive properties.
- (2) "Nuclear material" means source material, special nuclear material or byproduct material;
- (3) "Source material", "special nuclear material", and "byproduct material" have the meanings given them in the Atomic Energy Act of 1954 or in any law amendatory thereof;
- (4) "Spent fuel" means any fuel element or fuel component, solid or liquid, which has been used or exposed to radiation in a nuclear reactor;
- (5) "Waste" means any waste material (a) containing byproduct material and (b) resulting from the operation by any person or organization of any nuclear facility included within the definition of nuclear facility under paragraph (6), (a) or (b) thereof;
- (6) "Nuclear facility" means (a) any nuclear reactor; (b) any equipment or device designed or used for (i) separating the isotopes of uranium or plutonium, (ii) processing or utilizing spent fuel, or (iii) handling, processing, or packaging waste; (c) any equipment or device used for the processing, fabricating or alloying of special nuclear material if at any time the total amount of such material in the custody of the Insured at the premises where such equipment or device is located consists of or contains more than 25 grams of plutonium or uranium 233 or any combination thereof, or more than 250 grams of uranium 235; (d) any structure, basin, excavation, premises or place prepared or used for the storage or disposal of waste; and (e) includes the site on which any of the foregoing is located, all operations conducted on such site, and all premises used for such operations;
- (7) "Nuclear reactor" means any apparatus designed or used to sustain nuclear fission in a self-supporting chain reaction or to contain a critical mass of fissionable material;
- (8) "Property damage" includes all forms of radioactive contamination of property.

**SERVICE OF SUIT**

(Not Applicable in Delaware, New Jersey and Texas)

It is agreed that in the event of the failure of the Company herein to pay any amount claimed to be due hereunder, the Company, at the request of the Insured (or Reinsured), will submit to the jurisdiction of any court of competent jurisdiction within the United States of America or Canada and will comply with all requirements necessary to give such Court jurisdiction and all matters arising hereunder shall be determined in accordance with the law and practice of such Court

It is further agreed that service of process in such suit may be made upon Jere J. Duffett, Senior Vice President of Jersey/International Group, Inc., 1255 Caldwell Road, P.O. Box 5725, Cherry Hill, New Jersey 08034, or his designee, and that in any suit instituted against any one of them upon this contract, the Company will abide by the final decision of such Court or of any Appellate Court in the event of an appeal

The above-named is authorized and directed to accept service of process on behalf of the Company in any such suit and/or upon the request of the Insured (or Reinsured) to

give a written undertaking to the Insured (or Reinsured) that it or they will enter a general appearance upon the Company's behalf in the event such a suit shall be instituted.

Further, pursuant to any statute of any state, territory or district of the United States of America or province of Canada, which makes provision therefor, the Company hereby designates the Superintendent, Commissioner or Director of Insurance or other officer specified for that purpose in the statute, or his successor or successors in office, as its true and lawful attorney upon whom may be served any lawful process in any action, suit or proceeding instituted by or on behalf of the Insured (or Reinsured) or any beneficiary hereunder arising out of this contract of insurance (or reinsurance), and the Company hereby designates the above-named as the person to whom the said officer is authorized to mail such process or a true copy thereof.

**AMENDATORY CONDITION — NOTICE**

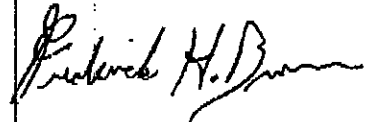
(Only Applicable in Texas)

As respects bodily injury liability coverage and property damage liability coverage, unless the Company is prejudiced by the Insured's failure to comply with the requirement, any provision of this policy requiring the Insured to give notice of action, occurrence or loss, or requiring the Insured to forward demands, notices, summons or other legal process, shall not bar liability under this policy

IN WITNESS WHEREOF, the Company has caused this policy to be signed by its President and Secretary, but this policy shall not be valid unless countersigned by a duly authorized representative of the Company.



Secretary



President



COMMERCIAL UMBRELLA LIABILITY POLICY  
ISSUED BY  
**NORTH STAR REINSURANCE CORPORATION**

STAMFORD, CT 06904

POLICY NO 46012 <b>NSU</b>
RENEWAL OF POLICY <b>NSU</b>

DECLARATIONS

Marisol Incorporated

Item 1 - NAME OF INSURED AND ADDRESS

125 Factory Lane  
Middlesex, New Jersey 08846

The entity first named above on behalf of itself and all Insureds, shall be responsible for payment of premium and receipt of return premium, if any, in accordance with Condition A and as respects cancellation of this policy in accordance with Condition L.

Item 2 - POLICY PERIOD From August 29, 1984 To August 29, 1985  
12:01 AM Standard Time at the address of the Insured as stated above.

Item 3 - LIMITS OF LIABILITY

- (A) Limit in all in respect of each occurrence. \$ 10,000,000
- (B) Limit in the aggregate for each annual period where applicable. \$ 10,000,000

Item 4 - RETAINED LIMIT in respect of each occurrence. \$ 10,000

Item 5 - PREMIUM FOR POLICY  
(a) Flat Charge \$ 11,000.00  
(b) Deposit Premium: \$  
(c) Minimum Premium: \$  
(d) Rate:  
(e) Audit Reporting Period:  
Annual unless otherwise stated.

Item 6 - ENDORSEMENTS ATTACHED CR013, CR017, CR042, CR104, CR139

520 ~~Courtesy~~ signed at New York, New York this 18 day of October, 1984

NORTH STAR REINSURANCE CORPORATION

AUTHORIZED SIGNATURE  
VES000000132



**SCHEDULE A**  
**SCHEDULE OF UNDERLYING INSURANCE**

For attachment to Umbrella Policy No. NSU -46012 between Marisol Incorporated

\_\_\_\_\_ and  
**NORTH STAR REINSURANCE CORPORATION.** Effective date of this Schedule August 29, 1984

<u>CARRIER, POLICY NUMBER &amp; TERM</u>	<u>COVERAGE</u>	<u>LIMITS</u>
A) Admiral Insurance Company	Comprehensive General Liability including Products Liability	\$500,000 each occurrence Bodily Injury and/or Property Damage Liability combined/\$500,000 aggregate (where applicable)
B) National Union Fire Insurance Company	Automobile Liability	\$500,000 each occurrence Bodily Injury and/or Property Damage Liability combined
C) New Jersey Manufacturers Insurance Company	Employers Liability	\$100,000 each occurrence

Countersigned at New York, New York this 12 day of October, 19 84

**NORTH STAR REINSURANCE CORPORATION**

**ENDORSEMENT**

**NO.** 1

For attachment to Contract No. NSU-46012 between Marisol Incorporated  
and  
NORTH STAR REINSURANCE CORPORATION. Effective date of this endorsement August 29, 1984

CARE, CUSTODY OR CONTROL EXCLUSION ENDORSEMENT

This policy does not apply to property damage:

- (a) to property occupied by or leased to the Insured; or
- (b) except with respect to liability under sidetrack agreements, property used by the Insured; or
- (c) except with respect to liability under sidetrack agreements, or the use of elevators or escalators at premises owned by, rented to or controlled by the Insured, property in the care, custody or control of the Insured or property over which the Insured for any purpose is exercising physical control.

CE013

Nothing herein contained shall vary, alter or extend any agreement, provision, general condition or declaration of the Contract other than as above stated.

In Witness Whereof, the NORTH STAR REINSURANCE CORPORATION has caused this Endorsement to be signed by its President and Secretary at Stamford, Connecticut, but the same shall not be binding upon the Reinsurer unless countersigned by an authorized representative of the Reinsurer.

*Edmond F. Rodejone*  
Secretary

*Donald E. Bliskok*  
President

Countersigned at New York, New York this 18 day of October, 19 84

**NORTH STAR REINSURANCE CORPORATION**

\_\_\_\_\_  
Authorized Signature

EC 102 (1/82)  
520-05-02 (1/82)

VES000000134

**ENDORSEMENT**

**NO.** 2

For attachment to Contract No. NSU-46012 between Marisol Incorporated and  
NORTH STAR REINSURANCE CORPORATION. Effective date of this endorsement August 29, 1984

CONTRACTUAL LIABILITY FOLLOWING FORM ENDORSEMENT

Except insofar as coverage is available to the Insured in the underlying policies as set forth in the Schedule of Underlying Insurance, this policy does not apply to personal injury, property damage or advertising liability arising out of liability assumed by the Insured under any contract or agreement.

CE017

Nothing herein contained shall vary, alter or extend any agreement, provision, general condition or declaration of the Contract other than as above stated.

In Witness Whereof, the NORTH STAR REINSURANCE CORPORATION has caused this Endorsement to be signed by its President and Secretary at Stamford, Connecticut, but the same shall not be binding upon the Reinsurer unless countersigned by an authorized representative of the Reinsurer.

*Edmond F. Roudsione*  
Secretary

*Donald E. Blishok*  
President

Countersigned at New York, New York this 13 day of October, 19 84

**NORTH STAR REINSURANCE CORPORATION**

\_\_\_\_\_  
Authorized Signature

EC 102 (1/82)  
520-05-02 (1/82)

VES000000135

**ENDORSEMENT**

**NO.** 3

For attachment to Contract No. NSU-46012 between Marisol Incorporated and  
NORTH STAR REINSURANCE CORPORATION. Effective date of this endorsement August 29, 1984

PERSONAL INJURY FOLLOWING FORM ENDORSEMENT

Except insofar as coverage is available to the Insured in the underlying policies as set forth in the Schedule of Underlying Insurance, this policy does not apply to personal injury arising out of the following offenses:

- (a) false arrest, detention or imprisonment, or malicious prosecution;
- (b) the publication or utterance of a libel or slander or of other defamatory or disparaging material, or a publication or utterance in violation of an individual's right of privacy including publications or utterances in the course of or related to advertising, broadcasting or telecasting activities conducted by or on behalf of the Insured;
- (c) wrongful entry or eviction, or other invasion of the right of private occupancy;
- (d) disability, shock or mental injury.

CE042

Nothing herein contained shall vary, alter or extend any agreement, provision, general condition or declaration of the Contract other than as above stated.

In Witness Whereof, the NORTH STAR REINSURANCE CORPORATION has caused this Endorsement to be signed by its President and Secretary at Stamford, Connecticut, but the same shall not be binding upon the Reinsurer unless countersigned by an authorized representative of the Reinsurer.

*Edmond F. Rondopione*  
Secretary

*Ronald E. Blishok*  
President

Countersigned at New York, New York this 18 day of October, 1984

**NORTH STAR REINSURANCE CORPORATION**

Authorized Signature

EC 102 (1/82)  
520-05-02 (1/82)

VES000000136

**ENDORSEMENT**

**NO.** 4

For attachment to Contract No. NSU-46012 between Marisol Incorporated and  
NORTH STAR REINSURANCE CORPORATION. Effective date of this endorsement August 20, 1984

POLLUTION EXCLUSION - LIMITED ENDORSEMENT

This policy does not apply to personal injury or property damage arising out of the discharge, dispersal, release, escape or seepage of oil, petroleum substances or derivatives (including any oil refuse or oil mixed with wastes), smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, liquids or gases, waste material or other irritants, contaminants or pollutants into or upon land, the atmosphere or any watercourse, body of water, bog, marsh, swamp or wetland; but this exclusion does not apply if such discharge, dispersal, release or escape is sudden and accidental.

CE104

Nothing herein contained shall vary, alter or extend any agreement, provision, general condition or declaration of the Contract other than as above stated.

In Witness Whereof, the NORTH STAR REINSURANCE CORPORATION has caused this Endorsement to be signed by its President and Secretary at Stamford, Connecticut, but the same shall not be binding upon the Reinsurer unless countersigned by an authorized representative of the Reinsurer.

*Edmond F. Rondepierre*  
Secretary

*Ronald E. Blishok*  
President

Countersigned at New York, New York this 18 day of October, 1984

**NORTH STAR REINSURANCE CORPORATION**

\_\_\_\_\_  
Authorized Signature

EC 102 (1/82)  
520-05-02 (1/82)

VES000000137

**ENDORSEMENT**

**NO.** 5

For attachment to Contract No. NSU-45012 between Marisol Incorporated and

NORTH STAR REINSURANCE CORPORATION. Effective date of this endorsement August 29, 1984

New Jersey Investigation, Defense and Settlement

Costs Endorsement

It is agreed that expenses paid by the Company for investigation, defense or settlement of any claim against the Named Insured under this policy shall be in addition to the Limit(s) of Liability shown on the Declarations.

All other terms and conditions relating to these expenses remain unchanged.

CE139

Nothing herein contained shall vary, alter or extend any agreement, provision, general condition or declaration of the Contract other than as above stated.

In Witness Whereof, the NORTH STAR REINSURANCE CORPORATION has caused this Endorsement to be signed by its President and Secretary at Stamford, Connecticut, but the same shall not be binding upon the Reinsurer unless countersigned by an authorized representative of the Reinsurer.

*Edmond F. Rondepierre*  
Secretary

*Donald E. Blishok*  
President

Countersigned at New York, New York this 13 day of October, 19 84

**NORTH STAR REINSURANCE CORPORATION**

\_\_\_\_\_  
Authorized Signature

EC 102 (1/82)  
520-05-02 (1/82)

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VES000000138

# NORTH STAR REINSURANCE CORPORATION

## Umbrella Liability Policy Policy Provisions—Part 1



In consideration of the payment of the premium, in reliance upon the statements in the Declarations made a part hereof and subject to all the terms of this Policy, the Company agrees with the Insured named in the Declarations as follows:

### INSURING AGREEMENTS

#### I. COVERAGE

The Company will indemnify the Insured for all sums which the Insured shall become legally obligated to pay as damages, all as more fully defined by the term "ultimate net loss" on account of:

1. Personal Injury,

2. Property Damage,
3. Advertising Offense

to which this policy applies, caused by an occurrence.

#### II. INVESTIGATION, DEFENSE AND SETTLEMENT

- A. When underlying insurance does not apply to an occurrence:

With respect to an occurrence not covered by the underlying policy(ies) of insurance described in Schedule A hereof or any other underlying insurance collectible by the Insured, but covered by terms and conditions of this Policy except for the amount of retained limits specified in Item 4 of the Declarations, the Company will:

- (1) defend any suit against the Insured seeking damages on account of personal injury, property damage or advertising offense even if such suit is groundless, false or fraudulent; and may make such investigation, negotiation and settlement of any claim or suit as it deems expedient; provided, however, the Company shall have the right but not the duty to investigate, settle or defend any such claim or suit brought against the Insured outside the United States of America, its territories or possessions or Canada;
- (2) pay premiums on bonds to release attachments in any such suit for an amount not in excess of the applicable limits of liability of this Policy, pay premiums on appeal bonds required in any such defended suit, but without any obligation to apply for or furnish any such bonds;
- (3) pay all expenses incurred by the Company, all costs taxed against the Insured in any such suit defended by the Company and all interest on the entire amount of any judgment therein which accrues after entry of judgment and before the Company has paid or tendered or deposited in court that part of the judgment which does not exceed the limits of the Company's liability thereon;
- (4) pay reasonable expenses incurred by the Insured at the Company's request in assisting the Company in the investigation or defense of any claim or suit, including actual loss of earnings not to exceed \$50 per day because of his attendance at hearings or trials at such request.

In jurisdictions where the Company may be prevented by law or otherwise from carrying out this agreement, the Company shall pay any expense incurred with its written consent in accordance with this agreement. The Insured shall promptly reimburse the Company for any amount of ultimate net loss paid on behalf of the Insured within the retained limit specified in Item 4 of the Declarations.

- B. When underlying insurance does apply to an occurrence:

This Policy does not apply to defense, investigation, settlement or legal expenses covered by underlying insurance, but the Company shall have the right and opportunity to associate with the Insured in the defense and control of any claim or proceeding reasonably likely to involve the Company.

In the event that the limits of liability of the underlying insurance listed in Schedule A are exhausted by an occurrence, the Company shall be obligated to assume charge of the settlement or defense of any claim or proceeding against the Insured resulting from the same occurrence, but only where this policy applies and is immediately in excess of such listed underlying insurance without intervening excess insurance with another insurer.

- C. All expenses incurred by the Company or the Insured in the investigation, settlement and defense of claims or suits shall be charged against the limit of the Company's liability with respect to ultimate net loss. The Company shall not be obligated to pay any claim or judgment, defend any claim or suit or reimburse the Insured for the costs of investigating, settling or defending any claim or suit after the applicable limit of the Company's liability for ultimate net loss has been exhausted.

#### III. LIMIT OF LIABILITY

Regardless of the number of (1) Insureds under this Policy, (2) persons or organizations who sustain injury or damage, or (3) claims made or suits brought on account of personal injury, property damage, or advertising offense, the Company's liability is limited as follows:

With respect to personal injury, property damage or advertising offense, or any combination thereof, the Company's liability shall be only for the ultimate net loss in excess of the Insured's retained limit defined as the greater of:

- (a) an amount equal to the limits of liability indicated beside the underlying insurance listed in Schedule A hereof, plus the applicable limits of any other underlying insurance collectible by the Insured; or
- (b) the amount specified in Item 4 of the Declarations as the result of any one occurrence to which the underlying insurance does not apply;

and then for an amount not exceeding the amount specified in Item 3A of the Declarations as the result of any one occurrence.

The Company's liability shall be further limited to the amount stated in

Item 3B of the Declarations on account of all occurrences during each policy year arising out of any hazard for which an aggregate limit of liability applies in the underlying policies.

In the event of reduction or exhaustion of the aggregate limits of liability under said underlying insurance by reason of losses paid thereunder which arise out of occurrences taking place during each annual period of this Policy, this Policy shall, subject to the terms and conditions of the underlying insurance, but in no case for broader coverage than is provided by this Policy,

- (1) in the event of reduction pay the excess of the reduced underlying limits;
- (2) in the event of exhaustion continue in force as underlying insurance.

For the purpose of determining the limit of the Company's liability, all damages arising out of continuous or repeated exposure to substantially the same general conditions shall be considered as arising out of one occurrence.

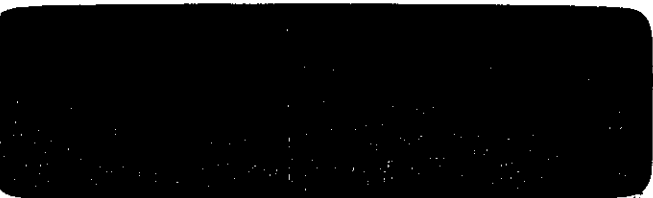
#### IV. POLICY PERIOD, TERRITORY

This Policy applies to personal injury, property damage or advertising offense which occurs anywhere during the policy period.

#### V. PERSONS OR ENTITIES INSURED

Each of the following is an Insured under this Policy to the extent set forth below:

- (a) If the Named Insured is an individual, the person so designated and his spouse, if a resident of the same household, but only with respect to the conduct of a business of which he is the sole proprietor;
- (b) If the Named Insured is a partnership or joint venture, the partnership or joint venture and any partner or member thereof but only with respect to his liability as such; however, if the Named Insured is a partnership, this Policy does not apply to an automobile owned by or registered in the name of a partner thereof. This Policy does not apply to personal injury, property damage or advertising offense arising out of the conduct of any partnership or joint venture of which the Insured is a partner or member and which is not designated in this Policy as a Named Insured;
- (c) If the Named Insured is other than an individual, partnership or joint venture, the organization so designated;
- (d) any person, organization, trustee or estate to whom or to which the Named Insured is obligated by virtue of a written contract to provide insurance such as is afforded by this Policy, but only with respect to operations by or on behalf of the Named Insured or to facilities of or used by the Named Insured;
- (e) subject to the terms and conditions of this Policy, any additional Insured included in the underlying insurance listed in Schedule A but only to the extent that insurance is provided to such additional Insured thereunder;
- (f) except with respect to the ownership, maintenance or use, including loading or unloading of automobiles (i) any executive officer, other employee, director or stockholder of the Named Insured while acting within the scope of his duties as such, (ii) any person or organization while acting as real estate manager for the Named Insured;
- (g) any person while using, with the permission of the Named Insured, any automobile owned by, loaned to or hired for use by or on behalf of the Named Insured and any person or organization legally responsible for the use thereof, provided the actual operation or other actual use is within the scope of such permission, and any executive officer, director or stockholder of the Named Insured with respect to the use of an automobile not owned by the executive officer, director or stockholder or by a member of his household or by the Named Insured but only while such automobile is being used in the business of the Named Insured. The insurance with respect to any person or organization other than the Named Insured does not apply under this paragraph (g):
  - (1) to any person or organization, or to any agent or employee thereof, operating an automobile sales agency, repair shop, service station, storage garage or public parking place, with respect to any occurrence arising out of the operation thereof;
  - (2) with respect to any automobile hired by or loaned to the Named Insured, the owner or a lessee (of whom the Named Insured is a sublessee) thereof or to any agent or employee of such owner or lessee.





## EXCLUSIONS

This Policy shall not apply:

- (a) to any obligation for which the Insured or any company as its Insurer may be held liable under any workers' compensation, unemployment compensation or disability benefits law, or under any similar law;
- (b) to property damage to
  - 1. the Insured's products arising out of such products or any part of such products, or
  - 2. work performed by or on behalf of the Insured arising out of the work or any portion thereof, or out of materials, parts or equipment furnished in connection therewith;
- (c) to loss of use of tangible property which has not been physically injured or destroyed resulting from
  - 1. a delay in or lack of performance by or on behalf of the Named Insured of any contract or agreement, or
  - 2. the failure of the Named Insured's products or work performed by or on behalf of the Named Insured to meet the level of performance, quality, fitness or durability warranted or represented by the Named Insured;but this exclusion does not apply to loss of use of other tangible property resulting from the sudden and accidental physical injury to or destruction of the Named Insured's products or work performed by or on behalf of the Named Insured after such products or work have been put to use by any person or organization other than an Insured;
- (d) to damages claimed for the withdrawal, inspection, repair, replacement or loss of the use of the Insured's products or work completed by or for the Insured or of any property of which such products or work form a part, if such products, work or property are withdrawn from the market or from use because of any known or suspected defect or deficiency therein;
- (e) with respect to advertising activities, to claims made against the Insured for:
  - (1) failure of performance of any contract or agreement, other than the unauthorized appropriation of ideas based upon alleged breach of an implied contract;
  - (2) infringement of trademark, service mark or trade name, other than titles or slogans, by use thereof on or in connection with goods, products or services sold, offered for sale or advertised; or
  - (3) incorrect description or mistake in the advertised price of goods, products or services sold, offered for sale or advertised;
- (f) to personal injury, or property damage arising out of the discharge, dispersal, release or escape of smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, liquids or gases, waste materials or other irritants, contaminants or pollutants into or upon land, the atmosphere or any watercourse, body of water, bog, swamp or wetland; but this exclusion does not apply if such discharge, dispersal, release or escape is sudden and accidental;
- (g) to property damage to (1) property owned by the Insured, or (2) property rented to, occupied or used by, or in the care, custody or control of any Insured, or as to which any Insured is for any purpose exercising physical control, if another Insured is the owner or lessee of the property, or (3) aircraft or watercraft rented to, used by or in the care, custody or control of the Insured, or (4) property rented to, occupied or used by or in the care, custody or control of the Insured to the extent the Insured is under contract to provide insurance thereof.
- (h) to personal injury arising out of discrimination or humiliation directly or indirectly related to the employment or prospective employment of any person or persons by an Insured;
- (i) to bodily injury or property damage due to war, whether or not declared, civil war, insurrection, rebellion or revolution or to any act or condition incident to any of the foregoing, with respect to liability assumed by the Insured under any contract or agreement;
- (j) to any obligation for which the Insured may be held liable as a Fiduciary Administrator, or other party in interest, arising out of any Employee Benefit Plan or Pension Plan, as defined in the Employee Retirement Income Security Act of 1974 or the Pension Reform Act of 1974 or any amendments thereto.

Except insofar as coverage is available to the insured in the underlying insurances as set out in Schedule A and then not for broader coverage than is afforded by such insurance, this Policy shall not apply;

- (k) to personal injury or property damage arising out of the ownership, maintenance, operation, use, loading or unloading of:
  - (1) any aircraft owned or operated by or rented or loaned to the Insured;

- (2) any other aircraft operated by any person in the course of his employment by the Insured;
- (l) to liability arising out of the ownership, maintenance, operation, use, loading or unloading of watercraft over 26 feet in length;
- (m) to any employee with respect to injury to or the death of another employee of the same Employer injured in the course of such employment.

### NUCLEAR ENERGY LIABILITY EXCLUSION (BROAD FORM)

Except with respect to Bodily Injury sustained by an employee of the Insured in the course of his employment, this policy does not apply to Loss, Injury or Damage.

- (a) with respect to which an Insured under this policy is also an Insured under a nuclear energy liability policy issued by the Nuclear Energy Liability Insurance Association, Mutual Atomic Energy Liability Underwriters or Nuclear Insurance Association of Canada, or the successor of any of them, or would be an Insured under any such policy but for its termination upon exhaustion of its limit of liability; or
- (b) resulting from the hazardous properties of nuclear material and with respect to which (a) any person or organization is required to maintain financial protection pursuant to the Atomic Energy Act of 1954, or any law amendatory thereof, or (b) the Insured is, or had this policy not been issued would be, entitled to indemnity from the United States of America, or any agency thereof, under any agreement entered into by the United States of America, or any agency thereof, with any person or organization; or
- (c) resulting from the Hazardous Properties of Nuclear Material, if
  - (1) the Nuclear Material (i) is at any Nuclear Facility owned by, or operated by or on behalf of, an Insured or (ii) has been discharged or dispersed therefrom;
  - (2) the Nuclear Material is contained in Spent Fuel or Waste at any time possessed, handled, used, processed, stored, transported or disposed of by or on behalf of an Insured; or
  - (3) the Loss, Injury or Damage arises out of the furnishing by an Insured of services, materials, parts or equipment in connection with the planning, construction, maintenance, operation or use of any Nuclear Facility, but if such facility is located within the United States of America, its territories or possessions or Canada, this exclusion (c) applies only to Property Damage to such Nuclear Facility and any property thereat.

As used in this exclusion:

**Hazardous Properties** include radioactive, toxic or explosive properties;  
**Nuclear Material** means Source material, Special Nuclear Material or Byproduct Material;

**Source Material, Special Nuclear Material, and Byproduct Material** have the meanings given them in the Atomic Energy Act of 1954 or in any law amendatory thereof;

**Spent Fuel** means any fuel element or fuel component, solid or liquid, which has been used or exposed to radiation in a Nuclear Reactor;

**Waste** means any waste material (1) containing Byproduct Material other than the tailings or Wastes produced by the extraction or concentration of uranium or thorium from any ore processed primarily for its Source Material content and (2) resulting from the operation by any person or organization of any Nuclear Facility included under the first two paragraphs of the definition of Nuclear Facility under (1) or (2) thereof;

**Nuclear Facility** means

- (a) any Nuclear Reactor,
- (b) any equipment or device designed or used for (a) separating the isotopes of uranium or plutonium, (b) processing or utilizing Spent Fuel, or (c) handling, processing or packaging Waste,
- (c) any equipment or device used for the processing, fabricating or alloying of Special Nuclear Material if at any time the total amount of such material in the custody of the Insured at the premises where such equipment or device is located consists of or contains more than 25 grams of plutonium or uranium 233 or any combination thereof, or more than 250 grams of uranium 235,
- (d) any structure, basin, excavation, premises or place prepared or used for the storage or disposal of Waste,

and includes the site on which any of the foregoing is located, all operations conducted on such site and all premises used for such operations;

**Nuclear Reactor** means any apparatus designed or used to sustain nuclear fission in a self-supporting chain reactor or to contain a critical mass of fissionable material;

**Property Damage** includes all forms of radioactive contamination, of property.

## DEFINITIONS

### 1. Advertising Offense

The term "Advertising Offense" whenever used herein shall mean:

- (1) libel, slander or defamation;
- (2) any infringement of copyright or of title or slogan;
- (3) piracy or unfair competition or idea misappropriation under an implied contract;
- (4) any invasion of right of privacy;

committed or alleged to have been committed in any advertisement, publicity article, broadcast or telecast and arising out of the Named Insured's advertising activities.

### 2. Aircraft

The term "Aircraft" whenever used herein, shall mean any heavier than air or lighter than air aircraft designed to transport persons or property.

### 3. Annual Period

The term "each annual period" means each consecutive period of one year commencing from the inception date of this policy.

### 4. Automobile

The term "Automobile" means a land motor vehicle, trailer or semi-trailer.

### 5. Completed Operations Hazard

The term "Completed Operations Hazard" includes personal injury and property damage arising out of operations or reliance upon a representation or warranty made at any time with respect thereto, but only if the personal injury or property damage occurs after such operations have been completed or abandoned and occurs away from premises owned by or rented to the Insured. "Operations" include materials, parts or equipment furnished in connection therewith. Operations shall be deemed completed at the earliest of the following times:

- (a) when all operations to be performed by or on behalf of the Insured under the contract have been completed;
- (b) when all operations to be performed by or on behalf of the Insured at the site of the operations have been completed, or
- (c) when the portion of the work out of which the injury or damage arises has been put to its intended use by any person or organization other than another contractor or subcontractor engaged in performing operations for a principal as a part of the same project.

Operations which may require further service or maintenance work, or correction, repair or replacement because of any defect or deficiency, but which are otherwise completed shall be deemed completed.

The completed operations hazard does not include personal injury or property damage arising out of

- (1) operations in connection with the transportation of property, unless the personal injury or property damage arises out of a condition in or on a vehicle created by the loading or unloading thereof;
- (2) the existence of tools, uninstalled equipment or abandoned or unused materials.

### 6. Insured

The term "Insured" means any person or organization qualifying as an Insured under the Persons or Entities Insured section of this Policy. The insurance afforded applies separately to each Insured against whom claim is made or suit is brought, except with respect to the limits of the Company's liability.

### 7. Insured's Products

The term "Insured's Products" means goods or products manufactured, sold, handled or distributed by the Insured or by others trading under his name, including any container thereof (other than a vehicle) but "Insured's Products" shall not include a vending machine or any property other than such container, rented to or located for use of others but not sold.

### 8. Named Insured

The term "Named Insured" means the organization named in the Declarations of this Policy and any subsidiary, owned or controlled companies as now constituted, or as hereafter constituted, if within 30 days following acquisition of such additional subsidiary, owned or controlled companies, notice of such acquisition is given to the Company.

### 9. Occurrence

The term "Occurrence" means

- (1) with respect to bodily injury or property damage: an accident including continuous or repeated exposure to conditions, which results in bodily injury or property damage neither expected nor intended from the standpoint of the Insured;
- (2) with respect to "advertising offense" and "personal injury": an offense described in one of the numbered subdivisions of the definition of those terms in this Policy which results in injury or damage which is neither expected nor intended from the standpoint of the Insured.

### 10. Personal Injury

The term "Personal Injury" means

- (a) bodily injury, mental injury, mental anguish, shock, sickness or disability, including death resulting therefrom;
- (b) injury or damages arising out of
  - (1) false arrest, false imprisonment, wrongful eviction, detention, malicious prosecution, humiliation;
  - (2) libel, slander, or defamation of character or invasion of rights of privacy, except that which arises out of any advertising activities.

### 11. Products Hazard

The term "Products Hazard" includes personal injury and property damages arising out of the Insured's products or reliance upon a representation or warranty made at any time with respect thereto, but only if the personal injury or property damage occurs away from premises owned by or rented to the Insured and after physical possession of such products has been relinquished to others.

### 12. Property Damage

The term "Property Damage" means (1) physical injury to or destruction of tangible property which occurs during the policy period including the loss of use thereof at any time resulting therefrom, or (2) loss of use of tangible property which has not been physically injured or destroyed, provided that such loss of use is caused by an occurrence during this policy period.

### 13. Ultimate Net Loss

The term "Ultimate Net Loss" means the sum of (1) the amount actually paid or payable in cash in the settlement or satisfaction of losses for which the Insured is liable either by adjudication or compromise with the written consent of the Company, after making proper deduction for all recoveries and salvages collectible, and (2) all expenses incurred by the Company or the Insured in the investigation, settlement and defense of claims of suit (including attorneys' fees, court costs and interest on any judgment or award), but excludes all salaries of the Insured, the Company or any underlying insurer so incurred.

## CONDITIONS

### (A) Premium

If the premium is stated in Item 5 as a flat charge, such premium is applicable to the stated policy period. If the premium is stated in Item 5 as other than a flat charge, such premium is an advance premium only and earned premium shall be computed at the end of the period during which the policy is in force at the rate applicable thereto, subject to the "Minimum Annual Premium" stated in Item 5. Appropriate additional premium shall be payable with respect to any additional Named Insured and any person or organization who becomes an Insured under the provisions of Section V (d). The premium and rate for each successive policy period shall be indicated in a written notice sent to the Named Insured and the premium shall become due on the date stated in such notice.

### (B) Inspection and Audit

The Company shall be permitted but not obligated to inspect the premises and operations of the Insured at any time. Neither the Company's right to make inspections, nor the making thereof, nor any report thereon shall constitute an undertaking on behalf of or for the benefit of the Named Insured or others to determine or warrant that such property or operations are safe or healthful, or are in compliance with any law, rule or regulation:

The Company may examine and audit the Insured's books and records at any time during the policy period and extensions thereof and within three years after the final termination of this policy, as far as they relate to the subject matter of this insurance.

CONDITIONS (continued)

**(C) Insured's Duties In The Event Of Occurrence, Claim or Suit**

- (1) In the event of an occurrence covered hereunder, involving injuries or damages which, without regard to legal liability, appears likely to involve this Policy, written notice containing particulars sufficient to identify the Insured and also reasonably obtainable information with respect to the time, place and circumstances thereof, and the names and addresses of the injured and of available witnesses, shall be given by or for the Insured to the Company or any of its authorized agents as soon as practicable.
- (2) If claim is made or suit is brought against the Insured because of an occurrence which, without regard to legal liability, appears likely to involve this Policy, the Insured shall immediately forward to the Company every demand, notice, summons or other process received by him or his representative.
- (3) The Insured shall cooperate with the Company and, upon the Company's request, assist in making settlements, in the conduct of suits and in enforcing any right of contribution or indemnity against any person or organization who may be liable to the Insured because of personal injury or property damage or advertising offense with respect to which insurance is afforded under this Policy; and the Insured shall attend hearings and trials and assist in securing and giving evidence and obtaining the attendance of witnesses. The Insured shall not, except at his own costs, voluntarily make any payment, assume any obligation or incur any expense; however, in the event that the amount of ultimate net loss becomes certain either through trial court judgment or agreement among the Insured, the claimant and the Company, then, the Insured may pay the amount of ultimate net loss to the claimant to effect settlement and upon submission of due proof thereof, the Company shall indemnify the Insured for the part of such payment which is in excess of the retained limit, or the Company will, upon request of the Insured, make such payment to the claimant on behalf of the Insured.

**(D) Action Against the Company**

No action shall lie against the Company unless, as a condition precedent thereto, there shall have been full compliance with all of the terms of this policy, nor until the amount of the Insured's obligation to pay shall have been finally determined either by judgment against the Insured after actual trial or by written agreement of the Insured, the claimant and the Company.

Any person or organization or the legal representative thereof who has secured such judgment or written agreement shall thereafter be entitled to recover under this policy to the extent of the insurance afforded by this policy. No person or organization shall have any right under this policy to join the Company as a party to any action against the Insured to determine the Insured's liability, nor shall the Company be impleaded by the Insured or his legal representative.

**(E) Bankruptcy and Insolvency**

In the event of the bankruptcy or insolvency of the Insured or any entity comprising the Insured, the Company shall not be relieved thereby of the payment of any claims hereunder because of such bankruptcy or insolvency.

**(F) Appeals**

In the event the Insured or the Insured's underlying insurer elects not to appeal a judgment in excess of the underlying limit or the self-insured retention, the Company may elect to make such appeal at its cost and expense, and shall be liable, in addition to the applicable limit of liability, for the taxable costs and disbursements and interest incidental thereto, but in no event shall the liability of the Company for ultimate net loss exceed the amount herein applicable to any one occurrence plus the cost and expenses of such appeal.

**(G) Other Insurance**

If other valid and collectible insurance with any other insurer is available to the Insured covering a loss also covered by this Policy, other than insurance that is in excess of the insurance afforded by this Policy, the insurance afforded by this Policy shall be in excess of and shall not contribute with such other insurance. Nothing herein shall be construed to make this Policy subject to the terms, conditions, and limitations of other insurance, reinsurance or indemnity.

**(H) Subrogation**

The Company shall be subrogated to the extent of any payment hereunder to all the Insured's rights of recovery therefor; and the Insured shall do nothing after loss to prejudice such rights and shall do everything necessary to secure such rights. Any amount so recovered shall be apportioned as follows:

Any interest (including the Insured's) having paid an amount in excess of the retained limit plus the limit of liability hereunder shall be reimbursed first to the extent of actual payment. The Company shall be reimbursed next to the extent of its actual payment hereunder. If any balance then remains unpaid, it shall be applied to reimburse the Insured or any underlying insurer, as their interest may appear. The expenses of all such recovery proceedings shall be apportioned in the ratio of respective recoveries. If there is no recovery in proceedings conducted solely by the Company, it shall bear the expenses thereof.

**(I) Changes**

Notice to or knowledge possessed by any person shall not effect a waiver or a change in any part of this Policy or estop the Company from asserting any rights under the terms of this Policy; nor shall the terms of this Policy be waived or changed, except by endorsement issued to form a part of this Policy, signed by an authorized representative of the Company.

**(J) Assignment**

Assignment of interest under this Policy shall not bind the Company until its consent is endorsed hereon; if, however, the Named Insured shall die, such insurance as is afforded by this Policy shall apply (1) to the Named Insured's legal representative, as the Named Insured, but only while acting within the scope of his duties as such, and (2) with respect to the property of the Named Insured, to the person having proper temporary custody thereof, as Insured, but only until the appointment and qualification of the legal representative.

(Continued on page 6)

CONDITIONS (continued)

(K) Maintenance of Underlying Insurances

It is a condition of this Policy that the policy or policies referred to in Schedule A, including renewal or replacements thereof not more restrictive, shall be maintained, without alteration of terms or conditions, in full effect during the currency of this Policy except for any reduction or exhaustion of the aggregate limit contained therein solely by payment of claims that arise out of occurrences which take place during the period of this Policy. Failure of the Insured to comply with the foregoing shall not invalidate this Policy, but in the event of such failure the Company shall be liable hereunder only to the extent that it would have been liable had the Insured complied therewith.

In the event there is no recovery available to the Insured as a result of insolvency of the underlying insurer or by reason of the Insured having breached the contract of underlying insurance, the coverage hereunder shall apply in excess of the applicable limit of liability specified in Schedule A.

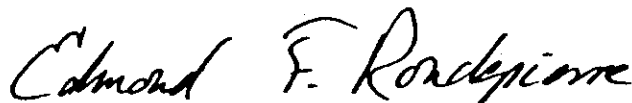
The Named Insured shall give the Company written notice as soon as practicable of any change in the scope of coverage or in the amount of limits of insurance under any underlying insurance, and of the termination of any coverage or exhaustion of aggregate limits of any underlying insurer's liability.

(L) Cancellation

This Policy may be cancelled by the Named Insured by mailing or delivering to the Company written notice stating when thereafter such cancellation shall be effective. This Policy may be cancelled by the Company by mailing or delivering to the Named Insured at the address shown in this Policy written notice stating when, not less than thirty (30) days thereafter or, if the Insured has failed to pay the premium when due, not less than ten (10) days thereafter, such cancellation shall be effective. The mailing of notice as aforesaid shall be sufficient proof of notice and the effective date of cancellation stated in the notice shall become the end of the policy period.

If cancellation is at the request of the Named Insured earned premium shall be computed in accordance with the customary short rate table and procedure. If the Company cancels, earned premium shall be computed pro-rata. If this Policy insures more than one Named Insured, cancellation may be effected by the first of such Named Insureds for the account of all the Named Insureds; notice of cancellation by the Company to such first Named Insured shall be deemed notice to all Insureds and payment of any unearned premium to such first Named Insured shall be for the account of all interests herein. Premium adjustment may be made either at the time cancellation is effected or as soon as practicable after cancellation becomes effective, but payment or tender of unearned premium is not a condition of cancellation.

IN WITNESS WHEREOF the NORTH STAR REINSURANCE CORPORATION has caused this Policy to be signed by its President and Secretary at Stamford, Connecticut, but the same shall not be binding upon the Company unless countersigned on the Declarations Page by an authorized representative of the Company.



Secretary

NORTH STAR REINSURANCE CORPORATION



President

**AMERICAN INTERNATIONAL SPECIALTY LINES INSURANCE COMPANY**

(A Capital Stock Company, herein called the Company)

70 Pine Street  
New York, N.Y. 10270

**POLLUTION LEGAL LIABILITY SELECT® POLICY**

**THIS IS A CLAIMS-MADE AND REPORTED POLICY. PLEASE READ CAREFULLY.**

**DECLARATIONS**

**POLICY NUMBER:** PLS 2337544

**Item 1. NAMED INSURED:** VEOLIA ENVIRONMENTAL SERVICES  
NORTH AMERICA CORPORATION

**ADDRESS:** 700 E BUTTERFIELD RD  
LOMBARD, IL 60148-6006

**Item 2. POLICY PERIOD:** FROM April 30, 2007 TO April 30, 2017  
12:01 AM Standard Time at the Address of the Named Insured shown above

**Item 3. COVERAGES AND COVERAGE SECTION LIMITS AND DEDUCTIBLES:**

This Policy includes only those Coverages as stated in Section I of the Policy for which deductibles and limits of liability appear below. If no deductible or limits of liability appears for a Coverage, that Coverage does not apply.

Coverage	Deductible-Each Incident	Each Incident Limit	Coverage Section Aggregate Limit
A	\$250,000	\$30,000,000	\$30,000,000
B			
C	\$250,000	\$30,000,000	\$30,000,000
D	\$250,000	\$30,000,000	\$30,000,000
E			
F	\$250,000	\$30,000,000	\$30,000,000
G			
H			
I			

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Page 1 of 2

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Coverage	Business Interruption (Days) Limit	Business Interruption (\$) Limit
J		

Item 4. **POLICY AGGREGATE LIMIT:** \$30,000,000

Item 5. **INSURED PROPERTY(S):** See attached Schedule of Insured Properties

Item 6. **POLICY PREMIUM:** \$604,873.00

Premium for Certified Acts of Terrorism Coverage Under Terrorism Risk Insurance Act 2002:  
Not Applicable, Coverage Rejected By Insured

Item 7. **RETROACTIVE DATE:** Under Coverages N/A, the **Pollution Conditions** must commence on or after the date shown below.

Retroactive Date: None  
(Enter date or "none" if no Retroactive Date Applies.)

Item 8. **CONTINUITY DATE:** April 30, 2007

**BROKER:** MARSH USA, INC.  
1000 MAIN ST  
STE 3000  
HOUSTON, TX 77002-2506

By   
**AUTHORIZED REPRESENTATIVE**  
or countersignature (in states where applicable)

**FORMS SCHEDULE**

**Named Insured:** VEOLIA ENVIRONMENTAL SERVICES  
 NORTH AMERICA CORPORATION  
**Policy Number:** PLS 2337544  
**Effective 12:01 AM:** April 30, 2007

<u>End't. No.</u>	<u>Form Name</u>	<u>Form Number/ Edltion Date</u>	
	AISLIC PLS Dec	75321	(08/04)
	AISLIC PLS Policy Coverage	76391	(08/04)
	Notice of Loss/Notice of Claim	91968	(12/06)
1	Multiple Coverages Aggregate Limit Endorsement	83260	(11/03)
2	Service Of Suit - Illinois	80145	(03/04)
3	Schedule of Insured Contracts	72320	(07/00)
4	100% Minimum Earned Premium Endt	78795	(09/01)
5	Optional Extended Reporting Deletion Endorsement	91219	(07/06)
6	Notice of Poss Claim Deletion	76101	(07/00)
7	Microbial Matter Exclusion Endorsement	86293	(02/07)
8	Schedule Of Insured Properties	89557	(07/05)
9	Self-Insured Retention Endorsement	83709	(12/03)
10	Material Change In Use Of Insd Property(s) Excl	81422	(01/03)
11	Named Insured Endt	78791	(09/01)
12	Cov C&F-Pre-Existing Conditions Only	76459	(07/00)
13	Condition Of Payment Endorsement	90365	(01/06)
14	War Exclusion Endorsement	79098	(12/01)
15	Terrorism Excl - All (Incl Cert Acts Of Terrorism)	81268	(12/02)
16	Site Specific Known Conditions Exclusion Endt	MNSCPT	(03/07)
17	Definition of Insured	MNSCPT	(04/07)
18	Definition of Responsible Insured	MNSCPT	(04/07)
19	Continuous Coverage Endorsement	MNSCPT	(03/07)

# AMERICAN INTERNATIONAL SPECIALTY LINES INSURANCE COMPANY

## POLLUTION LEGAL LIABILITY SELECT <sup>®</sup>POLICY

MANY OF THE COVERAGES CONTAIN CLAIMS-MADE-AND-REPORTED REQUIREMENTS. PLEASE READ CAREFULLY. ADDITIONALLY, THIS POLICY HAS CERTAIN PROVISIONS AND REQUIREMENTS UNIQUE TO IT AND MAY BE DIFFERENT FROM OTHER POLICIES THE INSURED MAY HAVE PURCHASED. DEFINED TERMS, OTHER THAN HEADINGS, APPEAR IN BOLD FACE TYPE.

NOTICE: THE DESCRIPTIONS IN ANY HEADINGS OR SUB-HEADINGS OF THIS POLICY ARE INSERTED SOLELY FOR CONVENIENCE AND DO NOT CONSTITUTE ANY PART OF THE TERMS OR CONDITIONS HEREOF.

In consideration of the payment of the premium, in reliance upon the statements in the Declarations and the Application annexed hereto and made a part hereof, and pursuant to all of the terms of this Policy, the Company agrees with the **Named Insured** as follows:

### I. INSURING AGREEMENTS

#### 1. COVERAGES:

THE FOLLOWING COVERAGES ARE IN EFFECT ONLY IF SCHEDULED IN THE DECLARATIONS.

#### COVERAGE A - ON-SITE CLEAN-UP OF PRE-EXISTING CONDITIONS

1. To pay on behalf of the **Insured**, **Clean-Up Costs** resulting from **Pollution Conditions** on or under the **Insured Property** that commenced prior to the **Continuity Date**, if such **Pollution Conditions** are discovered by the **Insured** during the **Policy Period**, provided:
  - (a) The discovery of such **Pollution Conditions** is reported to the Company in writing as soon as possible after discovery by the **Insured** and in any event during the **Policy Period** in accordance with Section III. of the Policy.  
  
Discovery of **Pollution Conditions** happens when a **Responsible Insured** becomes aware of **Pollution Conditions**.
  - (b) Where required, such **Pollution Conditions** have been reported to the appropriate governmental agency in substantial compliance with applicable **Environmental Laws** in effect as of the date of discovery.
2. To pay on behalf of the **Insured**, **Loss** that the **Insured** is legally obligated to pay as a result of **Claims** for **Clean-Up Costs** resulting from **Pollution Conditions** on or under the **Insured Property** that commenced prior to the **Continuity Date**, provided such **Claims** are first made against the **Insured** and reported to the Company in writing during the **Policy Period**, or during the **Extended Reporting Period** if applicable.

#### COVERAGE B - ON-SITE CLEAN-UP OF NEW CONDITIONS

1. To pay on behalf of the **Insured**, **Clean-Up Costs** resulting from **Pollution Conditions** on or under the **Insured Property** that commenced on or after the **Continuity Date**, if such **Pollution Conditions** are discovered by the **Insured** during the **Policy Period**, provided:
  - (a) The discovery of such **Pollution Conditions** is reported to the Company in writing as soon as possible after discovery by the **Insured** and in any event during the **Policy Period** in accordance with Section III. of the Policy.  
  
Discovery of **Pollution Conditions** happens when a **Responsible Insured** becomes aware of **Pollution Conditions**.
  - (b) Where required, such **Pollution Conditions** have been reported to the appropriate governmental agency in substantial compliance with applicable **Environmental Laws** in effect as of the date of discovery.

NOTICE: THIS INSURER IS NOT LICENSED IN THE STATE OF NEW YORK AND IS NOT SUBJECT TO ITS SUPERVISION

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2. To pay on behalf of the Insured, Loss that the Insured is legally obligated to pay as a result of Claims for Clean-Up Costs resulting from Pollution Conditions on or under the Insured Property that commenced on or after the Continuity Date, provided such Claims are first made against the Insured and reported to the Company in writing during the Policy Period, or during the Extended Reporting Period if applicable.

#### **COVERAGE C - THIRD-PARTY CLAIMS FOR ON-SITE BODILY INJURY AND PROPERTY DAMAGE**

To pay on behalf of the Insured, Loss that the Insured becomes legally obligated to pay as a result of Claims for Bodily Injury or Property Damage resulting from Pollution Conditions on or under the Insured Property, if such Bodily Injury or Property Damage takes place while the person injured or property damaged is on the Insured Property, provided such Claims are first made against the Insured and reported to the Company in writing during the Policy Period, or during the Extended Reporting Period if applicable.

#### **COVERAGE D - THIRD-PARTY CLAIMS FOR OFF-SITE CLEAN-UP RESULTING FROM PRE-EXISTING CONDITIONS**

To pay on behalf of the Insured, Loss that the Insured becomes legally obligated to pay as a result of Claims for Clean-Up Costs resulting from Pollution Conditions, beyond the boundaries of the Insured Property, that commenced prior to the Continuity Date, and migrated from the Insured Property, provided such Claims are first made against the Insured and reported to the Company in writing during the Policy Period, or during the Extended Reporting Period if applicable.

#### **COVERAGE E - THIRD-PARTY CLAIMS FOR OFF-SITE CLEAN-UP RESULTING FROM NEW CONDITIONS**

To pay on behalf of the Insured, Loss that the Insured becomes legally obligated to pay as a result of Claims for Clean-Up Costs resulting from Pollution Conditions, beyond the boundaries of the Insured Property, that commenced on or after the Continuity Date, and migrated from the Insured Property, provided such Claims are first made against the Insured and reported to the Company in writing during the Policy Period, or during the Extended Reporting Period if applicable.

#### **COVERAGE F - THIRD-PARTY CLAIMS FOR OFF-SITE BODILY INJURY AND PROPERTY DAMAGE**

To pay on behalf of the Insured, Loss that the Insured becomes legally obligated to pay as a result of Claims for Bodily Injury or Property Damage resulting from Pollution Conditions, beyond the boundaries of the Insured Property, that migrated from the Insured Property, provided such Claims are first made against the Insured and reported to the Company in writing during the Policy Period, or during the Extended Reporting Period if applicable.

#### **COVERAGE G - THIRD-PARTY CLAIMS FOR ON-SITE BODILY INJURY, PROPERTY DAMAGE OR CLEAN-UP COSTS - NON-OWNED LOCATIONS**

To pay on behalf of the Insured, Loss that the Insured becomes legally obligated to pay as a result of Claims for Bodily Injury or Property Damage of parties other than the owners, operators or contractors of the Non-Owned Location, or their employees, or Clean-Up Costs resulting from Pollution Conditions on or under the Non-Owned Location, provided such Claims are first made against the Insured and reported to the Company in writing during the Policy Period, or during the Extended Reporting Period if applicable.

#### **COVERAGE H - THIRD-PARTY CLAIMS FOR OFF-SITE BODILY INJURY, PROPERTY DAMAGE OR CLEAN-UP COSTS - NON-OWNED LOCATIONS**

To pay on behalf of the Insured, Loss that the Insured becomes legally obligated to pay as a result of Claims for Bodily Injury, Property Damage or Clean-Up Costs resulting from Pollution Conditions, beyond the boundaries of the Non-Owned Location, that migrated from the Non-Owned Location, provided such Claims are first made against the Insured and reported to the Company in writing during the Policy Period, or during the Extended Reporting Period if applicable.

#### **COVERAGE I - POLLUTION CONDITIONS RESULTING FROM TRANSPORTED CARGO**

To pay on behalf of the Insured, Loss that the Insured becomes legally obligated to pay as a result of Claims for Bodily Injury, Property Damage or Clean-Up Costs resulting from Pollution Conditions caused by Transported Cargo, provided such Claims are first made against the Insured and reported to the Company in

writing during the **Policy Period**, or during the **Extended Reporting Period** if applicable. This coverage shall not be utilized to evidence financial responsibility of any **Insured** under any federal, state, provincial or local law.

**COVERAGE J - BUSINESS INTERRUPTION COVERAGE - ACTUAL LOSS OR RENTAL VALUE (ONLY AVAILABLE IF COVERAGE A, COVERAGE B OR BOTH COVERAGES A AND B ARE PURCHASED)**

To pay the **Insured's Actual Loss** or loss of **Rental Value**, and **Extra Expense** to the extent it reduces **Actual Loss** or loss of **Rental Value** otherwise payable under this coverage section, resulting from an **Interruption** caused directly by **Pollution Conditions** on or under the **Insured Property**. If the **Interruption** is caused by such **Pollution Conditions** and any other cause, the Company shall pay only for that portion of **Actual Loss** or loss of **Rental Value**, and **Extra Expense** resulting from an **Interruption** caused solely and directly by such **Pollution Conditions**.

**1. Such Pollution Conditions must:**

- (a) (i) commence prior to the **Continuity Date**, if the **Named Insured** has purchased Coverage A, under this Policy; or
- (ii) commence on or after the **Continuity Date**, if the **Named Insured** has purchased Coverage B, under this Policy; and
- (b) be first discovered by the **Insured** during the **Policy Period**. Discovery of **Pollution Conditions** happens when a **Responsible Insured** becomes aware of **Pollution Conditions**.

**2. An Interruption** must be reported to the Company, no later than thirty (30) days after its commencement. The **Insured** shall, as soon as practicable, resume normal operation of the business and dispense with **Extra Expense**.

**3. In determining Actual Loss** or loss of **Rental Value**, the Report/Worksheet annexed to this Policy and made a part of it shall be utilized. If the **Insured** could reduce the **Actual Loss** or loss of **Rental Value**, or **Extra Expense** resulting from an **Interruption**:

- (a) by complete or partial resumption of operations; or
- (b) by making use of other property at the **Insured Property**, or elsewhere,

such reductions shall be taken into account in arriving at **Actual Loss** or loss of **Rental Value** or **Extra Expense**.

**2. LEGAL EXPENSE AND DEFENSE**

The Company shall have the right and the duty to defend any **Claims** covered under Coverages A through I provided the **Named Insured** has purchased such Coverage. The Company's duty to defend or continue defending any such **Claim**, and to pay any **Loss**, shall cease once the applicable limit of liability, as described in Section V. LIMITS OF COVERAGE; DEDUCTIBLE has been exhausted. Defense costs, charges and expenses are included in **Loss** and reduce the applicable limit of liability, as described in Section V., and are included within the Deductible amount for the Coverage Section that applies and is shown in Item 3 of the Declarations.

The Company will present any settlement offers to the **Insured**, and if the **Insured** refuses to consent to any settlement within the limits of liability of this Policy recommended by the Company and acceptable to the claimant, the Company's duty to defend the **Insured** shall then cease and the **Insured** shall thereafter negotiate or defend such **Claim** independently of the Company and the Company's liability shall not exceed the amount, less the Deductible or any outstanding Deductible balance, for which the **Claim** could have been settled if such recommendation was consented to.

**3. INDEPENDENT COUNSEL**

In the event the **Insured** is entitled by law to select independent counsel to defend the **Insured** at the Company's expense, the attorney fees and all other litigation expenses the Company must pay to that counsel are limited to the rates the Company would actually pay to counsel that the Company retains in the

ordinary course of business in the defense of similar **Claims** in the community where the **Claim** arose or is being defended.

Additionally, the Company may exercise the right to require that such counsel have certain minimum qualifications with respect to their competency, including experience in defending **Claims** similar to the one pending against the **Insured**, and to require such counsel to have errors and omissions insurance coverage. As respects any such counsel, the **Insured** agrees that counsel will timely respond to the Company's request for information regarding the **Claim**. The **Insured** may at any time, by its signed consent, freely and fully waive its right to select independent counsel.

## II. EXCLUSIONS

### 1. COMMON EXCLUSIONS - APPLICABLE TO ALL COVERAGES

This Policy does not apply to **Clean-Up Costs, Claims, Loss, Actual Loss, Extra Expense, or loss of Rental Value:**

#### A. CRIMINAL FINES, PENALTIES, AND ASSESSMENTS:

Due to any criminal fines, penalties or assessments.

#### B. CONTRACTUAL LIABILITY:

Arising from liability of others assumed by the **Insured** under any contract or agreement, unless the liability of the **Insured** would have attached in the absence of such contract or agreement or the contract or agreement is an **Insured Contract**.

#### C. TRANSPORTATION:

Except with respect to Coverage I, arising out of **Pollution Conditions** that result from the maintenance, use, operation, loading or unloading of any conveyance beyond the boundaries of the **Insured Property**.

#### D. INTENTIONAL NONCOMPLIANCE:

Arising from **Pollution Conditions** based upon or attributable to any **Responsible Insured's** intentional, willful or deliberate noncompliance with any statute, regulation, ordinance, administrative complaint, notice of violation, notice letter, executive order, or instruction of any governmental agency or body.

#### E. INTERNAL EXPENSES:

For costs, charges or expenses incurred by the **Insured** for goods supplied or services performed by the staff or salaried employees of the **Insured**, or its parent, subsidiary or affiliate, except if in response to an emergency or pursuant to **Environmental Laws** that require immediate remediation of **Pollution Conditions**, or unless such costs, charges or expenses are incurred with the prior written approval of the Company in its sole discretion.

#### F. INSURED vs. INSURED:

By any **Insured** against any other person or entity who is also an **Insured** under this Policy. This exclusion does not apply to **Claims** initiated by third parties or **Claims** that arise out of an indemnification given by one **Named Insured** to another **Named Insured** in an **Insured Contract**.

#### G. ASBESTOS AND LEAD:

Solely with respect to Coverages A, B, D, E, G, H and J, arising from asbestos or any asbestos-containing materials or lead-based paint installed or applied in, on or to any building or other structure. This exclusion does not apply to **Clean-Up Costs** for the remediation of soil and groundwater.

**H. EMPLOYER LIABILITY:**

Arising from **Bodily Injury** to an **Insured** or its parent, subsidiary or affiliate arising out of and in the course of employment by the **Insured** or its parent, subsidiary or affiliate. This exclusion applies whether the **Insured** may be liable as an employer or in any other capacity and to any obligation to share damages with or repay third parties who must pay damages because of the injury.

**I. PRIOR KNOWLEDGE/NON-DISCLOSURE:**

Arising from **Pollution Conditions** existing prior to the **Inception Date** and known by a **Responsible Insured** and not disclosed in the application for this Policy, or any previous policy for which this Policy is a renewal thereof.

**J. IDENTIFIED UNDERGROUND STORAGE TANK:**

Arising from **Pollution Conditions** resulting from an **Underground Storage Tank** whose existence is known by a **Responsible Insured** as of the **Inception Date** and which is located on the **Insured Property** unless such **Underground Storage Tank** is scheduled on the Policy by endorsement.

**2. COVERAGE I EXCLUSIONS**

The following exclusions apply to Coverage I.

This Policy does not apply to **Loss**:

**A. PROPERTY DAMAGE TO CONVEYANCES:**

For **Property Damage** to any conveyance utilized during the **Transportation of Transported Cargo**. This exclusion does not apply to **Claims** made by third-party carriers of the **Insured** for such **Property Damage** arising from the **Insured's** negligence.

**B. POLLUTION CONDITIONS PRIOR OR SUBSEQUENT TO TRANSPORTATION OF CARGO:**

Arising from **Pollution Conditions**:

1. That commence prior to the **Transportation of Transported Cargo**; or
2. That commence after **Transported Cargo** reaches its final destination, or while **Transported Cargo** is in storage off-loaded from the conveyance that was transporting it.

**C. THIRD-PARTY CARRIER CLAIMS:**

Made by a third-party carrier, its agents or employees, for **Bodily Injury, Property Damage or Clean-Up Costs**, whether or not the **Bodily Injury, Property Damage or Clean-Up Costs** were directly incurred by such third-party carrier. This exclusion does not apply to **Claims** arising from the **Insured's** negligence.

**III. NOTICE REQUIREMENTS AND CLAIM PROVISIONS**

The **Insured** shall provide the Company with notice of **Pollution Conditions, Claims** or an **Interruption** as follows:

**A. NOTICE OF POLLUTION CONDITIONS, CLAIMS AND AN INTERRUPTION**

1. In the event of **Pollution Conditions** or **Claims** under Coverages A through I, or an **Interruption** under Coverage J, the **Insured** shall give written notice to:

Manager, Pollution Insurance Products Unit  
 AIG Technical Services, Inc.  
 Environmental Claims Department  
 101 Hudson Street, 31st Floor  
 Jersey City, NJ 07302  
 Fax: 201-631-5051

or other address(es) as substituted by the Company in writing.

2. The **Insured** shall give written notice of **Pollution Conditions** as soon as possible. Notice under all coverages shall include, at a minimum, information sufficient to identify the **Named Insured**, the **Insured Property**, the names of persons with knowledge of the **Pollution Conditions** and all known and reasonably obtainable information regarding the time, place, cause, nature of and other circumstances of the **Pollution Conditions**.
3. The **Insured** shall give notice of **Claims** as soon as possible, but in any event during the **Policy Period** or during the **Extended Reporting Period**, if applicable. The **Insured** shall furnish information at the request of the Company. When a **Claim** has been made, the **Insured** shall forward the following to the Company as soon as possible:
  - (a) All reasonably obtainable information with respect to the time, place and circumstances thereof, and the names and addresses of the claimant(s) and available witnesses.
  - (b) All demands, summonses, notices or other process or papers filed with a court of law, administrative agency or an investigative body.
  - (c) Other information in the possession of the **Insured** or its hired experts which the Company reasonably deems necessary.

#### **B. NOTICE OF POSSIBLE CLAIM**

1. If during the **Policy Period**, the **Insured** first becomes aware of a **Possible Claim**, the **Insured** may provide written notice to the Company during the **Policy Period** containing all the information required under Paragraph 2. below. Any **Possible Claim** which subsequently becomes a **Claim** made against the **Insured** and reported to the Company within five (5) years after the end of the **Policy Period** of this Policy or any continuous, uninterrupted renewal thereof, shall be deemed to have been first made and reported during the **Policy Period** of this Policy. Such **Claim** shall be subject to the terms, conditions and limits of coverage of the policy under which the **Possible Claim** was reported.
2. It is a condition precedent to the coverage afforded by this Section III. B that written notice under Paragraph 1. above contain all of the following information: (a) the cause of the **Pollution Conditions**; (b) the **Insured Property** or other location where the **Pollution Conditions** took place; (c) the **Bodily Injury, Property Damage or Clean-Up Costs** which has resulted or may result from such **Pollution Conditions**; (d) the **Insured(s)** which may be subject to the **Claim** and any potential claimant(s); (e) all engineering information available on the **Pollution Conditions** and any other information that the Company deems reasonably necessary; and (f) the circumstances by which and the date the **Insured** first became aware of the **Possible Claim**.

#### **IV. RIGHTS OF THE COMPANY AND DUTIES OF THE INSURED IN THE EVENT OF POLLUTION CONDITIONS**

##### **A. The Company's Rights**

The Company shall have the right but not the duty to clean up or mitigate **Pollution Conditions** upon receiving notice as provided in Section III. of this Policy. Any sums expended in taking such action by the Company will be deemed incurred or expended by the **Insured** and shall be applied against the limits of coverage and deductible under this Policy.

##### **B. Duties of the Insured**

The **Named Insured** shall have the duty to clean up **Pollution Conditions** to the extent required by **Environmental Law**, by retaining competent professional(s) or contractor(s) mutually acceptable to the Company and the **Named Insured**. The Company shall have the right but not the duty to review and approve all aspects of any such clean-up. The **Named Insured** shall notify the Company of actions and measures taken pursuant to this paragraph.

## V. LIMITS OF COVERAGE; DEDUCTIBLE

Regardless of the number of Claims, claimants, Pollution Conditions or Insureds under this Policy, the following limits of liability apply:

### A. Policy Aggregate Limit

The Company's total liability for all Loss, under Coverages A through I, and all Actual Loss, loss of Rental Value and Extra Expense under Coverage J, shall not exceed the "Policy Aggregate" stated in Item 4 of the Declarations. The Company's internal expenses do not erode the limit of liability available for any Loss.

### B. Each Incident Limit - Coverages A Through I

1. Subject to Paragraph V.A. above, the most the Company will pay for all Loss under each Coverage in Coverages A through I arising from the same, related or continuous Pollution Conditions is the "Each Incident" limit of coverage for that particular coverage stated in Item 3 of the Declarations.
2. If the Insured first discovers Pollution Conditions during the Policy Period and reports them to the Company in accordance with Section III., all continuous or related Pollution Conditions reported to the Company under a subsequent Pollution Legal Liability Policy issued by the Company or its affiliate providing substantially the same coverage as this Policy shall be deemed to have been first discovered and reported during the Policy Period.
3. If a Claim for Bodily Injury, Property Damage, or Clean-Up Costs is first made against the Insured and reported to the Company during the Policy Period, all Claims for Bodily Injury, Property Damage or Clean-Up Costs, arising from the same, continuous or related Pollution Conditions that are first made against the Insured and reported under a subsequent Pollution Legal Liability Policy issued by the Company or its affiliate providing substantially the same coverage as this Policy, shall be deemed to have been first made and reported during the Policy Period. Coverage under this Policy for such Claims shall not apply, however, unless at the time such Claims are first made and reported, the Insured has maintained with the Company or its affiliate Pollution Legal Liability coverage substantially the same as this coverage on a continuous, uninterrupted basis since the first such Claim was made against the Insured and reported to the Company.

### C. Coverage Section Aggregate Limit

Subject to Paragraph V. A. above, the Company's total liability for all Loss under each Coverage in Coverages A through I, shall not exceed the "Coverage Section Aggregate" limit of coverage for that particular coverage stated in Item 3 of the Declarations.

### D. Maximum for All Business Interruption

Subject to Paragraph V. A. above, the maximum amount for which the Company is liable for all Actual Loss or loss of Rental Value, and Extra Expense under Coverage J is 80% of the lesser of:

1. The Actual Loss and Extra Expense, or loss of Rental Value and Extra Expense, whichever is applicable, incurred during the number of days of interruption of business stated in Item 3 of the Declarations; and
2. The amount stated in Item 3 of the Declarations.

It is a condition of Coverage J that the remaining 20% of such amount be borne by the Insured at its own risk and remain uninsured.

### E. Multiple Coverages

Subject to Paragraph V. A. above, if the same, related or continuous Pollution Conditions result in coverage under more than one Coverage under Coverages A through J, every applicable "Each Incident," "Coverage Section Aggregate," and "Maximum for All Business Interruption" limit of coverage

among such coverage sections shall apply to the **Clean-Up Costs, Loss, Actual Loss and Extra Expense**, or loss of **Rental Value and Extra Expense**, whichever is applicable, resulting from such **Pollution Conditions**.

**F. Deductible**

1. Coverages A through I

Subject to Paragraphs V. A. through V.E. above, this Policy is to pay covered **Loss** in excess of the Deductible amount stated in Item 3 of the Declarations for the applicable coverage, up to but not exceeding the applicable "Each Incident" limit of coverage.

If the same, related or continuous **Pollution Conditions** result in coverage under more than one coverage section in Coverages A through I, only the highest Deductible amount stated in Item 3 of the Declarations among all the coverage sections applicable to the **Loss** will apply.

The **Insured** shall promptly reimburse the Company for advancing any element of **Loss** falling within the Deductible.

2. Coverage J

Subject to Paragraphs V.A. through V.E. above, this Policy is to pay the **Actual Loss** or loss of **Rental Value**, and **Extra Expense** under Coverage J in excess of the **Actual Loss** or loss of **Rental Value**, and **Extra Expense** sustained during the first seven (7) days of an **Interruption** during the **Period of Restoration**. The seven (7) day period applies to all **Actual Loss**, or loss of **Rental Value**, and **Extra Expense** arising from the same, related or continuous **Pollution Conditions**.

**VI. CONDITIONS**

- A. Assignment** - This Policy may be assigned with the prior written consent of the Company, which consent shall not be unreasonably withheld or delayed. Assignment of interest under this Policy shall not bind the Company until its consent is endorsed thereon.
- B. Subrogation** - In the event of any payment under this Policy, the Company shall be subrogated to all the **Insured's** rights of recovery therefor against any person or organization and the **Insured** shall execute and deliver instruments and papers and do whatever else is necessary to secure such rights including without limitation, assignment of the **Insured's** rights against any person or organization who caused **Pollution Conditions** on account of which the Company made any payment under this Policy. The **Insured** shall do nothing to prejudice the Company's rights under this paragraph subsequent to **Loss**. Any recovery as a result of subrogation proceedings arising out of the payment of **Loss** covered under this Policy shall accrue first to the **Insured** to the extent of any payments in excess of the limit of coverage; then to the Company to the extent of its payment under the Policy; and then to the **Insured** to the extent of its Deductible. Expenses incurred in such subrogation proceedings shall be apportioned among the interested parties in the recovery in the proportion that each interested party's share in the recovery bears to the total recovery.
- C. Cooperation** - The **Insured** shall cooperate with the Company and offer all reasonable assistance in the investigation and defense of **Claims** under the applicable Coverages purchased. The Company may require that the **Insured** submit to examination under oath, and attend hearings, depositions and trials. In the course of investigation or defense, the Company may require written statements or the **Insured's** attendance at meetings with the Company. The **Insured** must assist the Company in effecting settlement, securing and providing evidence and obtaining the attendance of witnesses.
- D. Changes** - Notice to any agent or knowledge possessed by any agent or by any other person shall not effect a waiver or a change in any part of this Policy or estop the Company from asserting any rights under the terms of this Policy; nor shall the terms of this Policy be waived or changed, except by endorsement issued to form a part of this Policy.

- E. Voluntary Payments** - No **Insured** shall voluntarily enter into any settlement, or make any payment or assume any obligation unless in response to an emergency or pursuant to **Environmental Laws** that require immediate remediation of **Pollution Conditions**, without the Company's consent which shall not be unreasonably withheld, except at the **Insured's** own cost.
- F. Concealment or Fraud** - This entire Policy shall be void if, whether before or after **Clean-Up Costs** are incurred or a **Claim** is first made, the **Named Insured** has willfully concealed or misrepresented any fact or circumstance material to the granting of coverage under this Policy, the description of the **Insured Property**, or the interest of the **Insured** therein.
- G. Cancellation** - This Policy may be cancelled by the **Named Insured** by surrender thereof to the Company or any of its authorized agents or by mailing to the Company written notice stating when thereafter the cancellation shall be effective. This Policy may be cancelled by the Company only for the reasons stated below by mailing to the **Named Insured** at the address shown in the Policy, written notice stating when not less than 60 days (10 days for nonpayment of premium) thereafter such cancellation shall be effective. Proof of mailing of such notice shall be sufficient proof of notice.
1. **Material misrepresentation by the Insured;**
  2. The **Insured's** failure to comply with the material terms, conditions or contractual obligations under this Policy, including failure to pay any premium or Deductible when due;
  3. A change in operations at an **Insured Property** during the **Policy Period** that materially increases a risk covered under this Policy.

The time of surrender or the effective date and hour of cancellation stated in the notice shall become the end of the **Policy Period**. Delivery of such written notice either by the **Named Insured** or by the Company shall be equivalent to mailing. If the **Named Insured** cancels, earned premium shall be computed in accordance with the customary short rate table and procedure. If the Company cancels, earned premium shall be computed pro-rata. Premium adjustment may be either at the time cancellation is effected or as soon as practicable after cancellation becomes effective, but payment or tender of unearned premium is not a condition of cancellation.

- H. Other Insurance** - Where other insurance may be available for **Loss, Actual Loss** or loss of **Rental Value**, and **Extra Expense** covered under this Policy, the **Insured** shall promptly upon request of the Company provide the Company with copies of all such policies. If other valid and collectible insurance is available to the **Insured** for **Loss Actual Loss** or loss of **Rental Value**, and **Extra Expense** covered by this Policy, the Company's obligations are limited as follows:
1. This insurance is primary, and the Company's obligations are not affected unless any of the other insurance is also primary. In that case, the Company will share with all such other insurance by the method described in Paragraph 2. below.
  2. If all of the other insurance permits contribution by equal shares, the Company will follow this method also. Under this approach each insurer contributes equal amounts until it has paid its applicable limit of insurance or none of the loss remains, whichever comes first. If any of the other insurance does not permit contribution by equal shares, the Company will contribute by limits. Under this method, each insurer's share is based on the ratio of its applicable limit of insurance to the total applicable limits of insurance of all insurers.
- I. Right of Access and Inspection** - To the extent the **Insured** has such rights, any of the Company's authorized representatives shall have the right and opportunity but not the obligation to interview persons employed by the **Insured** and to inspect at any reasonable time, during the **Policy Period** or thereafter, the **Insured Property**. Neither the Company nor its representatives shall assume any responsibility or duty to the **Insured** or to any other party, person or entity, by reason of such right or inspection. Neither the Company's right to make inspections, sample and monitor, nor the actual undertaking thereof nor any report thereon shall constitute an undertaking on behalf of the **Insured** or others, to determine or warrant that property or operations are safe, healthful or conform to acceptable engineering practices or are in compliance with any law, rule or regulation. The **Named Insured** agrees to provide appropriate personnel to assist the Company's representatives during any inspection.



- J. Access to Information** - The **Named Insured** agrees to provide the Company with access to any information developed or discovered by the **Insured** concerning **Loss** covered under this Policy, whether or not deemed by the **Insured** to be relevant to such **Loss** and to provide the Company access to interview any **Insured** and review any documents of the **Insured**.
- K. Representations** - By acceptance of this Policy, the **Named Insured** agrees that the statements in the Declarations, the Application and the Report/Worksheet are their agreements and representations, that this Policy is issued in reliance upon the truth of such representations and that this Policy embodies all agreements existing between the **Insured** and the Company or any of its agents relating to this insurance.
- L. Action Against Company** - No third-party action shall lie against the Company, unless as a condition precedent thereto there shall have been full compliance with all of the terms of this Policy, nor until the amount of the **Insured's** obligation to pay shall have been finally determined either by judgment against the **Insured** after actual trial or by written agreement of the **Insured**, the claimant and the Company.

Any person or organization or the legal representative thereof who has secured such judgment or written agreement shall thereafter be entitled to recover under this Policy to the extent of the insurance afforded by the Policy. No person or organization shall have any right under this Policy to join the Company as a party to any action against the **Insured** to determine the **Insured's** liability, nor shall the Company be impleaded by the **Insured** or his legal representative. Bankruptcy or insolvency of the **Insured** or of the **Insured's** estate shall not relieve the Company of any of its obligations hereunder.

- M. Arbitration** - It is hereby understood and agreed that all disputes or differences that may arise under or in connection with this Policy, whether arising before or after termination of this Policy, including any determination of the amount of **Loss**, may be submitted to the American Arbitration Association under and in accordance with its then prevailing commercial arbitration rules. The arbitrators shall be chosen in the manner and within the time frames provided by such rules. If permitted under such rules, the arbitrators shall be three disinterested individuals having knowledge of the legal, corporate management, or insurance issues relevant to the matters in dispute.

Any party may commence such arbitration proceeding and the arbitration shall be conducted in the **Insured's** state of domicile. The arbitrators shall give due consideration to the general principles of the law of the **Insured's** state of domicile in the construction and interpretation of the provisions of this Policy; provided, however, that the terms, conditions, provisions and exclusions of this Policy are to be construed in an evenhanded fashion as between the parties. Where the language of this Policy is alleged to be ambiguous or otherwise unclear, the issue shall be resolved in the manner most consistent with the relevant terms, conditions, provisions or exclusions of the Policy (without regard to the authorship of the language, the doctrine of reasonable expectation of the parties and without any presumption or arbitrary interpretation or construction in favor of either party or parties, and in accordance with the intent of the parties).

The written decision of the arbitrators shall set forth its reasoning, shall be provided simultaneously to both parties and shall be binding on them. The arbitrators' award shall not include attorney fees or other costs. Judgment on the award may be entered in any court of competent jurisdiction. Each party shall bear equally the expenses of the arbitration.

- N. Service Of Suit** - Subject to Paragraph M. above, it is agreed that in the event of failure of the Company to pay any amount claimed to be due hereunder, the Company, at the request of the **Insured**, will submit to the jurisdiction of a court of competent jurisdiction within the United States. Nothing in this condition constitutes or should be understood to constitute a waiver of the Company's rights to commence an action in any court of competent jurisdiction in the United States, to remove an action to a United States District Court, or to seek a transfer of a case to another court as permitted by the laws of the United States or of any state in the United States. It is further agreed that service of process in such suit may be made upon Counsel, Legal Department, American International Specialty Lines Insurance Company, 70 Pine Street, New York, New York 10270, or his or her representative, and that in any suit instituted against the Company upon this contract, the Company will abide by the final decision of such court or of any appellate court in the event of any appeal.

Further, pursuant to any statute of any state, territory, or district of the United States which makes provision therefor, the Company hereby designates the Superintendent, Commissioner, Director of Insurance, or other officer specified for that purpose in the statute, or his or her successor or successors in office as its true and lawful attorney upon whom may be served any lawful process in any action, suit or proceeding instituted by or on behalf of the **Insured** or any beneficiary hereunder arising out of this contract of insurance, and hereby designates the above named Counsel as the person to whom the said officer is authorized to mail such process or a true copy thereof.

- O. Acknowledgment of Shared Limits** - By acceptance of this Policy, the **Named Insureds** understand, agree and acknowledge that the Policy contains a Policy Aggregate Limit that is applicable to, and will be shared by, all **Named Insureds** and all other **Insureds** who are or may become insured hereunder. In view of the operation and nature of this shared Policy Aggregate Limit, the **Named Insureds** and all other **Insureds** understand and agree that prior to filing a **Claim** under the Policy, the Policy Aggregate Limit may be exhausted or reduced by prior payments for other **Claims** under the Policy.
- P. Separation of Insureds** - It is hereby agreed that except with respect to the Limit of Liability, Section II. F. (Insured vs. Insured exclusion), and any rights and duties specifically assigned to the first **Named Insured**, this insurance applies: 1. As if each **Named Insured** were the only **Named Insured**; and 2. Separately to each **Named Insured** against who a **Claim** is made. Misrepresentation, concealment, breach of a term or condition, or violation of any duty under this Policy by one **Named Insured** shall not prejudice the interest of coverage for another **Named Insured** under this Policy. Provided, however, that this Condition shall not apply to any **Named Insured** who is a parent, subsidiary or affiliate of the first **Named Insured**.

## **VII. EXTENDED REPORTING PERIOD FOR CLAIMS - COVERAGES A THROUGH I**

The **Named Insured** shall be entitled to an Automatic **Extended Reporting Period**, and (with certain exceptions as described in Paragraph B. of this Section) be entitled to purchase an Optional **Extended Reporting Period** for Coverages A through I collectively, upon termination of coverage as defined in Paragraph B.3. of this Section. Neither the Automatic nor the Optional **Extended Reporting Period** shall reinstate or increase any of the limits of liability of this Policy.

### **A. Automatic Extended Reporting Period**

Provided that the **Named Insured** has not purchased any other insurance to replace this insurance and which applies to a **Claim** otherwise covered hereunder, the **Named Insured** shall have the right to the following: a period of sixty (60) days following the effective date of such termination of coverage in which to provide written notice to the Company of **Claims** first made and reported within the Automatic **Extended Reporting Period**.

A **Claim** first made and reported within the Automatic **Extended Reporting Period** will be deemed to have been made on the last day of the **Policy Period**, provided that the **Claim** arises from **Pollution Conditions** that commenced before the end of the **Policy Period** and is otherwise covered by this Policy. No part of the Automatic **Extended Reporting Period** shall apply if the **Optional Extended Reporting Period** is purchased.

### **B. Optional Extended Reporting Period**

The **Named Insured** shall be entitled to purchase an Optional **Extended Reporting Period** upon termination of coverage as defined herein (except in the event of nonpayment of premium), as follows:

1. A **Claim** first made and reported within the **Optional Extended Reporting Period**, if purchased in accordance with the provisions contained in Paragraph 2. below, will be deemed to have been made on the last day of the **Policy Period**, provided that the **Claim** arises from **Pollution Conditions** that commenced before the end of the **Policy Period** and is otherwise covered by this Policy.
2. The Company shall issue an endorsement providing an **Optional Extended Reporting Period** of up to forty (40) months from termination of coverage hereunder for all **Insured Properties** and **Non-Owned Locations**, if applicable, or any specific **Insured Property** or **Non-Owned Location**, provided that the **Named Insured**:

- (a) makes a written request for such endorsement which the Company receives within thirty (30) days after termination of coverage as defined herein; and
  - (b) pays the additional premium when due. If that additional premium is paid when due, the **Extended Reporting Period** may not be cancelled, provided that all other terms and conditions of the Policy are met.
3. Termination of coverage occurs at the time of cancellation or nonrenewal of this Policy by the **Named Insured** or by the Company, or at the time of the Company's deletion of a location which previously was an **Insured Property** or **Non-Owned Location**.
  4. The Optional **Extended Reporting Period** is available to the **Named Insured** for not more than 200% of the full Policy premium stated in the Declarations.

## VIII. DEFINITIONS

### A. **Actual Loss** means the:

1. Net income (net profit or loss before income taxes) the **Insured** would have earned or incurred had there been no **Interruption**; and
2. Continuing normal operating expenses incurred, including **Ordinary Payroll Expense**.

### B. **Bodily Injury** means physical injury, or sickness, disease, mental anguish or emotional distress, sustained by any person, including death resulting therefrom.

### C. **Claim** means a written demand received by the **Insured** seeking a remedy or alleging liability or responsibility on the part of the **Insured** for **Loss** under Coverages A through I. For purposes of this Policy, a **Claim** does not include a **Possible Claim** that was reported under a prior policy but which has become a **Claim** during the **Policy Period** of this Policy as described in Section III. B.

### D. **Clean-Up Costs** means reasonable and necessary expenses, including legal expenses incurred with the Company's written consent which consent shall not be unreasonably withheld or delayed, for the investigation, removal, remediation including associated monitoring, or disposal of soil, surfacewater, groundwater or other contamination:

1. To the extent required by **Environmental Laws**; or
2. That have been actually incurred by the government or any political subdivision of the United States of America or any state thereof or Canada or any province thereof, or by third parties.

**Clean-Up Costs** also include **Restoration Costs**.

### E. **Continuity Date** means the date stated in Item 8 of the Declarations.

### F. **Environmental Laws** means any federal, state, provincial or local laws (including, but not limited to, statutes, rules, regulations, ordinances, guidance documents, and governmental, judicial or administrative orders and directives) that are applicable to **Pollution Conditions**.

### G. **Extended Reporting Period** means either the automatic additional period of time or the optional additional period of time, whichever is applicable, in which to report **Claims** following termination of coverage, as described in Section VII. of this Policy.

### H. **Extra Expense** means necessary expenses the **Insured** incurs during the **Period of Restoration**:

1. That would not have been incurred if there had not been an **Interruption**; and
2. That avoid or minimize an **Interruption**,

but only to the extent such expenses reduce **Actual Loss** or loss of **Rental Value**, whichever is applicable, otherwise covered under this Policy.

**Extra Expense** will be reduced by any salvage value of property obtained for temporary use during the **Period of Restoration** that remains after the resumption of normal operations.

- I. **Inception Date** means the first date set forth in Item 2 of the Declarations.
- J. **Insured** means the **Named Insured**, and any past or present director, officer, partner or employee thereof, including a temporary or leased employee, while acting within the scope of his or her duties as such.
- K. **Insured Contract** means a contract or agreement submitted to and approved by the Company, and listed on an Endorsement to this Policy.
- L. **Insured Property** means each of the locations identified in Item 5 of the Declarations.
- M. **Interruption** means the necessary suspension of the **Insured's** business operations at an **Insured Property** during the **Period of Restoration**.
- N. **Loss** means, under the applicable Coverages:
  - 1. Monetary awards or settlements of compensatory damages; where allowable by law, punitive, exemplary, or multiple damages; and civil fines, penalties, or assessments for **Bodily Injury** or **Property Damage**;
  - 2. Costs, charges and expenses incurred in the defense, investigation or adjustment of **Claims** for such compensatory damages or punitive, exemplary or multiple damages, and civil fines, penalties or assessments, or for **Clean-Up Costs**; or
  - 3. **Clean-Up Costs**.
- O. **Named Insured** means the person or entity named in Item 1 of the Declarations acting on behalf of all other **Insureds**, if any, for the payment or return of any premium, payment of any deductible, receipt and acceptance of any endorsement issued to form a part of this Policy, giving and receiving notice of cancellation or nonrenewal, and the exercise of the rights provided in the **Extended Reporting Period** clause.
- P. **Natural Resource Damage** means physical injury to or destruction of, including the resulting loss of value of, land, fish, wildlife, biota, air, water, groundwater, drinking water supplies, and other such resources belonging to, managed by, held in trust by, appertaining to, or otherwise controlled by the United States (including the resources of the fishery conservation zone established by the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.)), any state or local government, any foreign government, any Indian tribe, or, if such resources are subject to a trust restriction on alienation, any member of an Indian tribe.
- Q. **Non-Owned Location** means a site that is not owned or operated by the **Named Insured**, and that is identified in a Non-Owned Covered Locations Schedule attached to and made a part of this Policy by endorsement.
- R. **Ordinary Payroll Expense** means the entire payroll expense for all employees of the **Insured**, except officers, executives, department managers and employees under contract.
- S. **Period of Restoration** means the length of time as would be required with the exercise of due diligence and dispatch to restore the **Insured Property** to a condition that allows the resumption of normal business operations, commencing with the date operations are interrupted by **Pollution Conditions** and not limited by the date of expiration of the **Policy Period**. The **Period of Restoration** does not include any time caused by the interference by employees or other persons with restoring the property, or with the resumption or continuation of operations.
- T. **Policy Period** means the period set forth in Item 2 of the Declarations, or any shorter period arising as a result of:
  - 1. Cancellation of this Policy; or

2. With respect to particular **Insured Property(s)** or **Non-Owned Location(s)** designated in the Declarations, the deletion of such location(s) from this Policy by the Company at the **Named Insured's** written request, but solely with respect to that **Insured Property** or **Non-Owned Location**.
- U. Pollution Conditions** means the discharge, dispersal, release or escape of any solid, liquid, gaseous or thermal irritant or contaminant, including, but not limited to, smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, medical waste and waste materials into or upon land, or any structure on land, the atmosphere or any watercourse or body of water, including groundwater, provided such conditions are not naturally present in the environment in the amounts or concentrations discovered.
- V. Possible Claim** means **Pollution Conditions** that commenced on or after the **Inception Date** that the **Insured** reasonably expects may result in a **Claim**.
- W. Property Damage** means:
1. Except with respect to Coverage C, physical injury to or destruction of tangible property of parties other than the **Insured**, including the resulting loss of use and diminution in value thereof;
  2. Loss of use, but not diminution in value, of tangible property of parties other than the **Insured** that has not been physically injured or destroyed;
  3. Solely with respect to Coverage C, physical injury to or destruction of tangible property of parties other than the **Insured**, including the resulting loss of use thereof; and
  4. **Natural Resource Damage**.

**Property Damage** does not include **Clean-Up Costs**.

- X. Rental Value** means the:
1. Total anticipated rental income from tenant occupancy of the **Insured Property** as furnished and equipped by the **Insured**;
  2. Amount of all charges that are the legal obligation of the tenant(s) pursuant to a lease and that would otherwise be the **Insured's** obligations; and
  3. Fair rental value of any portion of the **Insured Property** that is occupied by the **Insured** during the **Period of Restoration**, less any rental income the **Insured** could earn:
    - (a) by complete or partial rental of the **Insured Property**, or
    - (b) by making use of other property on the **Insured Property** or elsewhere.
- Y. Responsible Insured** means the manager or supervisor of the **Named Insured** responsible for environmental affairs, control or compliance, or any manager of the **Insured Property**, or any officer, director or partner of the **Named Insured**.
- Z. Restoration Costs** means reasonable and necessary costs incurred by the **Insured** with the Company's written consent, which consent shall not be unreasonably withheld or delayed, to repair, replace or restore real or personal property to substantially the same condition it was in prior to being damaged during work performed in the course of incurring **Clean-Up Costs**. However, such **Restoration Costs** shall not exceed the net present value of such property prior to incurring **Clean-Up Costs**. **Restoration Costs** do not include costs associated with improvements or betterments.
- AA. Transportation** means the movement of **Transported Cargo** by a conveyance, from the place where it is accepted by a carrier until it is moved:
1. To the place where the carrier finally delivers it; or
  2. In the case of waste, to a waste disposal facility to which the carrier delivers it.

**Transportation** includes the carrier's loading or unloading of **Transported Cargo** onto or from a conveyance provided that the loading or unloading is performed by or on behalf of the **Named Insured**.

**BB. Transported Cargo** means goods, products, or waste transported for delivery by a carrier properly licensed to transport such goods, products, or waste.

**CC. Underground Storage Tank** means any tank that has at least ten (10) percent of its volume below ground in existence at the **Inception Date**, or installed thereafter, including associated underground piping connected to the tank.

The remainder of this page has been intentionally left blank. Policy Signature Page shall immediately follow.

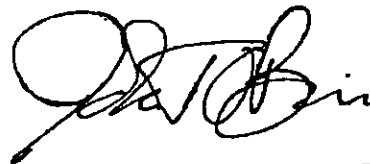
POLICY SIGNATURE PAGE

This Policy Signature Page,  
forms a part of Policy No: PLS 2337544

By signing below, the President and the Secretary of the Insurer agree on behalf of the Insurer to all the terms of this Policy.

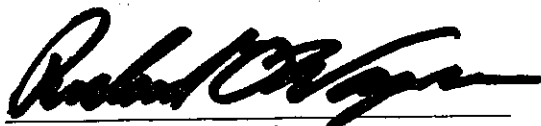


Secretary  
American International Specialty  
Lines Insurance Company



President  
American International Specialty  
Lines Insurance Company

This Policy shall not be valid unless signed at the time of issuance by an authorized representative of the Insurer, either below or on the Declarations page of the Policy.



Authorized Representative

ENDORSEMENT NO. 1

This endorsement, effective 12:01 AM, April 30, 2007

Forms a part of Policy No: PLS 2337544

Issued to: VEOLIA ENVIRONMENTAL SERVICES  
NORTH AMERICA CORPORATION

By: AMERICAN INTERNATIONAL SPECIALTY LINES INS. CO.

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

**MULTIPLE COVERAGES AGGREGATE LIMIT ENDORSEMENT**

It is hereby agreed that Section V. LIMITS OF COVERAGE; DEDUCTIBLE, Paragraph E. Multiple Coverages is deleted in its entirety and replaced with the following:

**E. Multiple Coverages - Each Incident Aggregate Limit**

Subject to Paragraphs V.A. through V.D. above, if the same, related or continuous **Pollution Conditions** result in coverage under more than one Coverage under Coverages A through J, every applicable "Each Incident" limit of coverage among such coverage sections shall apply to the **Loss, Actual Loss, Extra Expense** and loss of **Rental Value**; however, the most the Company will pay for all **Loss, Actual Loss, Extra Expense** and loss of **Rental Value** arising from such **Pollution Conditions** shall not exceed the highest "Each Incident" limit of Coverage stated in Item 3 of the Declarations among all the coverage sections applicable to the **Loss, Actual Loss, Extra Expense** and loss of **Rental Value**.

All other terms, conditions, and exclusions shall remain the same.



AUTHORIZED REPRESENTATIVE  
or countersignature (in states where applicable)



ENDORSEMENT NO. 2

This endorsement, effective 12:01 AM, April 30, 2007

Forms a part of Policy No: PLS 2337544

Issued to: VEOLIA ENVIRONMENTAL SERVICES  
NORTH AMERICA CORPORATION

By: AMERICAN INTERNATIONAL SPECIALTY LINES INS. CO.

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

**SERVICE OF SUIT - ILLINOIS**

It is hereby agreed that in the event of failure of American International Specialty Lines Insurance Company (hereinafter called the "Company") to pay any amount claimed to be due hereunder the Company, at the request of the Insured, will submit to the jurisdiction of a court of competent jurisdiction within the United States. Nothing in this condition constitutes or should be understood to constitute a waiver of the Company's rights to commence an action in any court of competent jurisdiction in the United States to remove an action to a United States District Court or to seek a transfer of a case to another court as permitted by the laws of the United States or of any state in the United States. It is further agreed that service of process in such suit may be made upon Counsel, Legal Department, American International Specialty Lines Insurance Company, 70 Pine Street, New York, New York 10270 or his or her representative, and that in any suit instituted against the Company upon this contract, the Company will abide by the final decision of such court or any appellate court in the event of any appeal.

Further, pursuant to any statute of any state, territory, or district of the United States which makes provision therefore, the Company hereby designates the Superintendent, Commissioner, or Director of Insurance, other officer specified for that purpose in the statute, or his or her successor or successors in office as its true and lawful attorney upon whom may be served any lawful process in any action, suit, or proceeding instituted by or on behalf of the Insured or any beneficiary hereunder arising out of this contract of insurance, and hereby designates President, Midwestern Risk Specialists, Inc., 300 South Riverside Plaza, Chicago, Illinois 60606, or the above named Counsel as the person to whom the said officer is authorized to mail such process or a true copy thereof.

All other terms, conditions, and exclusions shall remain the same.



AUTHORIZED REPRESENTATIVE  
or countersignature (in states where applicable)

**ENDORSEMENT NO. 3**

This endorsement, effective 12:01 AM, April 30, 2007

Forms a part of Policy No: PLS 2337544

Issued to: VEOLIA ENVIRONMENTAL SERVICES  
NORTH AMERICA CORPORATION

By: AMERICAN INTERNATIONAL SPECIALTY LINES INS. CO.

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

**SCHEDULE OF INSURED CONTRACTS**

It is hereby agreed that the following are scheduled as Insured Contracts to this Policy:

**INSURED CONTRACTS**

Purchase Agreement between Veolia ES Technical Solutions, L.L.C. and Therese A. Nerger, James R. Nerger, Frederick L. Nerger, John P. Nerger, Thomas J. Nerger, Mary T. Herila, Joanne T. Mild and Steven F. Nerger, dated 5/4/2007

Master Transportation Contract REG-NS-C-18410 between Marisol, Inc. and Norfolk Southern Railway Company and Consolodated Subsidiaries, dated 11/26/2001

Chemical Waste Transportation Contract, Contract Number ICC CR-C21874 between Consolidated Rail Corporation and CSX Transportation Inc., Indiana Hi-Rail Corporation and Marisol Inc., dated 10/12/1998

All other terms, conditions, and exclusions shall remain the same.



**AUTHORIZED REPRESENTATIVE**  
or countersignature (in states where applicable)

72320 (7/00)  
CI1128

PAGE 1 OF 1

INSURED'S COPY

VES000000166

ENDORSEMENT NO. 4

This endorsement, effective 12:01 AM, April 30, 2007

Forms a part of Policy No: PLS 2337544

Issued to: VEOLIA ENVIRONMENTAL SERVICES  
NORTH AMERICA CORPORATION

By: AMERICAN INTERNATIONAL SPECIALTY LINES INS. CO.

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

**100% MINIMUM EARNED PREMIUM ENDORSEMENT**

1. It is hereby agreed that the following minimum earned premium applies:

Inception Date	Minimum Premium Earned	100 %
----------------	------------------------	-------

2. It is hereby agreed that Section VI. **CONDITIONS**, Paragraph G., **Cancellation** is deleted in its entirety and replaced with the following:

**G. Cancellation** - This Policy may be cancelled by the **Named Insured** by surrender thereof to the Company or any of its authorized agents or by mailing to the Company written notice stating when thereafter the cancellation shall be effective. This Policy may be cancelled by the Company only for the reasons stated below by mailing to the **Named Insured** at the address shown in the Policy, written notice stating when not less than 60 days (10 days for nonpayment of premium) thereafter such cancellation shall be effective. Proof of mailing of such notice shall be sufficient proof of notice.

1. **Material misrepresentation by the Insured;**
2. **The Insured's failure to comply with the material terms, conditions or contractual obligations under this Policy, including failure to pay any premium or Deductible when due;**
3. **A change in operations at an Insured Property during the Policy Period that materially increases a risk covered under this Policy.**

The time of surrender or the effective date and hour of cancellation stated in the notice shall become the end of the **Policy Period**. Delivery of such written notice either by the **Named Insured** or by the Company shall be equivalent to mailing. If the **Named Insured** cancels, no return premium will be calculated and the premium shall be 100% earned at the **Inception Date**. If the Company cancels, earned premium shall be computed on a pro rata basis. Premium adjustment may be either at the time cancellation is effected or as soon as practicable after cancellation becomes effective, but payment or tender of unearned premium is not a condition of cancellation.

All other terms, conditions and exclusions shall remain the same.



**AUTHORIZED REPRESENTATIVE**  
or countersignature (in states where applicable)

ENDORSEMENT NO. 5

This endorsement, effective 12:01 AM, April 30, 2007

Forms a part of Policy No: PLS 2337544

Issued to: VEOLIA ENVIRONMENTAL SERVICES  
NORTH AMERICA CORPORATION

By: AMERICAN INTERNATIONAL SPECIALTY LINES INS. CO.

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

**OPTIONAL EXTENDED REPORTING DELETION ENDORSEMENT**

It is hereby agreed that Section VII. EXTENDED REPORTING PERIOD FOR CLAIMS - COVERAGES A THROUGH I, Paragraph B. Optional Extended Reporting Period, is deleted in its entirety.

All other terms, conditions, and exclusions shall remain the same.



AUTHORIZED REPRESENTATIVE  
or countersignature (in states where applicable)

ENDORSEMENT NO. 6

This endorsement, effective 12:01 AM, April 30, 2007

Forms a part of Policy No: PLS 2337544

Issued to: VEOLIA ENVIRONMENTAL SERVICES  
NORTH AMERICA CORPORATION


By: AMERICAN INTERNATIONAL SPECIALTY LINES INS. CO.

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

**NOTICE OF POSSIBLE CLAIM DELETION ENDORSEMENT**

It is hereby agreed that Section III. NOTICE REQUIREMENTS AND CLAIM PROVISIONS, Paragraph B. NOTICE OF POSSIBLE CLAIM is deleted in its entirety.

All other terms, conditions, and exclusions shall remain the same.



AUTHORIZED REPRESENTATIVE  
or countersignature (in states where applicable)

ENDORSEMENT NO. 7

This endorsement, effective 12:01 AM, April 30, 2007

Forms a part of Policy No: PLS 2337544

Issued to: VEOLIA ENVIRONMENTAL SERVICES  
NORTH AMERICA CORPORATION

By: AMERICAN INTERNATIONAL SPECIALTY LINES INS. CO.

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

**MICROBIAL MATTER EXCLUSION ENDORSEMENT**

It is hereby agreed that the Policy is amended as follows:

1. Section VIII. DEFINITIONS, Paragraph U. Pollution Conditions, is deleted in its entirety and replaced with the following:

**U. Pollution Conditions** means the discharge, dispersal, release or escape of any solid, liquid, gaseous or thermal irritant or contaminant, including, but not limited to, smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, medical waste and waste materials into or upon land, or any structure on land, the atmosphere or any watercourse or body of water, including groundwater, provided such conditions are not naturally present in the environment in the amounts or concentrations discovered. **Pollution Conditions** shall not include **Microbial Matter**.

2. Section VIII. DEFINITIONS, is amended by the addition of the following:

**Microbial Matter** means fungi, mold or mildew, whether or not such **Microbial Matter** is living.

All other terms, conditions, and exclusions shall remain the same.

  
\_\_\_\_\_  
AUTHORIZED REPRESENTATIVE  
or countersignature (in states where applicable)

**ENDORSEMENT NO. 8**

This endorsement, effective 12:01 AM, April 30, 2007

Forms a part of Policy No: PLS 2337544

Issued to: VEOLIA ENVIRONMENTAL SERVICES  
NORTH AMERICA CORPORATION

By: AMERICAN INTERNATIONAL SPECIALTY LINES INS. CO.

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

**SCHEDULE OF INSURED PROPERTIES**

It is hereby agreed that the following location(s) is (are) included in Item 5 of the Declarations as **INSURED PROPERTY(S)**, subject to all of the terms and conditions of the Policy.

**Item 5: INSURED PROPERTY(S):**

125 Factory Lane, Middlesex, NJ  
1530 Clugston Road, York, PA  
80 Lister Avenue, Newark, NJ

All other terms, conditions, and exclusions shall remain the same.



**AUTHORIZED REPRESENTATIVE**  
or countersignature (in states where applicable)

89557 (7/05)  
CI2736

INSURED'S COPY

VES000000171

ENDORSEMENT NO. 9

This endorsement, effective 12:01 AM, April 30, 2007

Forms a part of Policy No: PLS 2337544

Issued to: VEOLIA ENVIRONMENTAL SERVICES  
NORTH AMERICA CORPORATION

By: AMERICAN INTERNATIONAL SPECIALTY LINES INS. CO.

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

**SELF-INSURED RETENTION ENDORSEMENT**

It is hereby agreed that the following changes are made to the Policy:

1. All references in Item 3 of the Declarations page to "Deductible" and within the Policy are replaced with "Self-Insured Retention" on each occasion.
2. Section V. **LIMITS OF COVERAGE; DEDUCTIBLE**, is re-titled "Section V. **LIMITS OF COVERAGE; SELF-INSURED RETENTION AND DEDUCTIBLE**".
3. Section V. **LIMITS OF COVERAGE; DEDUCTIBLE**, Paragraph F. **Deductible**, (1) Coverages A through I is deleted in its entirety and replaced with the following:

**F. Self-Insured Retention - Coverages A through I; Deductible - Coverage J**

- (1) Self Insured Retention - Coverages A through I

Subject to Paragraphs V.A. through V.E. above, this Policy is to pay covered **Loss**, in excess of the Self-Insured Retention amount stated in Item 3 of the Declarations for the applicable coverage, up to but not exceeding the applicable "Each Incident" limit of coverage. The Self-Insured Retention amount is to be borne by the **Insured** and is not to be insured. The insurance provided by this Policy shall be excess over the applicable Self-Insured Retention amount shown in Item 3 of the Declarations, whether such Self-Insured Retention is collectible or not collectible by reason of the refusal or inability of the **Insured** to pay the retention amount due to insolvency, bankruptcy or any other reason. In no event shall the Company be responsible to make any payment under this Policy before the **Insured** has paid the Self-Insured Retention, and the risk of uncollectibility (in whole or in part) of such Self-Insured Retention is expressly retained by the **Insured** and is not in any way or under any circumstances insured or assumed by the Company.

If the same, related or continuous **Pollution Conditions** result in coverage under more than one coverage under Coverages A through I, only the highest applicable Self-Insured Retention amount stated in Item 3 of the Declarations among all the coverage sections applicable to the **Loss** shall apply.

The **Insured** shall promptly reimburse the Company for advancing any element of **Loss** falling within the Self-Insured Retention.

All other terms, conditions, and exclusions shall remain the same.



AUTHORIZED REPRESENTATIVE  
or countersignature (in states where applicable)



ENDORSEMENT NO. 10

This endorsement, effective 12:01 AM, April 30, 2007

Forms a part of Policy No: PLS 2337544

Issued to: VEOLIA ENVIRONMENTAL SERVICES  
NORTH AMERICA CORPORATION

By: AMERICAN INTERNATIONAL SPECIALTY LINES INS. CO.

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

**MATERIAL CHANGE IN USE OF INSURED PROPERTY(S) EXCLUSION**

It is hereby agreed that the following exclusion is added to Section II. **EXCLUSIONS, 1., COMMON EXCLUSIONS - APPLICABLE TO ALL COVERAGES:**

**MATERIAL CHANGE IN USE:**

arising from a material change in use of the **Insured Property(s)** which results in a use which is different from the Intended Use disclosed in the application process and listed below:

Intended Use:

Waste materials treatment and waste materials storage and distribution.

All other terms, conditions, and exclusions shall remain the same.



AUTHORIZED REPRESENTATIVE  
or countersignature (in states where applicable)

ENDORSEMENT NO. 11

This endorsement, effective 12:01 AM, April 30, 2007

Forms a part of Policy No: PLS 2337544

Issued to: VEOLIA ENVIRONMENTAL SERVICES  
NORTH AMERICA CORPORATION

By: AMERICAN INTERNATIONAL SPECIALTY LINES INS. CO.

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY**

**NAMED INSURED ENDORSEMENT**

It is hereby agreed that Section VIII., DEFINITIONS, Paragraph O. Named Insured is deleted in its entirety and replaced with the following:

O. **Named Insured** means the person or entity named in Item 1. of the Declarations acting on behalf of all other **Insureds**, if any, for the payment or return of any premium, payment of any deductible, receipt and acceptance of any endorsement issued to form a part of this Policy, giving and receiving notice of cancellation or nonrenewal, and the exercise of the rights provided in the **Extended Reporting Period** clause.

Furthermore, it is hereby agreed that the following entity(s) are included as **Named Insureds** but solely as respects liability arising out of the ownership, operation, maintenance or use of the **Insured Property(s)** designated in Item 5. of the Declarations. The first **Named Insured**, previously designated in Item 1. of the Declarations shall remain unchanged as such.

**NAMED INSURED(S)**

Veolia ES Technical Solutions, L.L.C.  
Marisol, Inc.  
Allied Oil and Chemical Sales, Inc.  
James R. Nerger  
John P. Nerger  
Thomas J. Nerger  
Mary T. Herlia  
Steven F. Nerger  
Frederick L. Nerger  
Therese A. Nerger  
Joanne T. Mild

All other terms, conditions, and exclusions shall remain the same.



**AUTHORIZED REPRESENTATIVE**  
or countersignature (in states where applicable)

ENDORSEMENT NO. 12

This endorsement, effective 12:01 AM, April 30, 2007

Forms a part of Policy No: PLS 2337544

Issued to: VEOLIA ENVIRONMENTAL SERVICES  
NORTH AMERICA CORPORATION

By: AMERICAN INTERNATIONAL SPECIALTY LINES INS. CO.

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

**COVERAGES C AND F - PRE-EXISTING CONDITIONS ONLY ENDORSEMENT**

It is hereby agreed that Section I., **INSURING AGREEMENTS**, 1. **COVERAGES C** and **F** are deleted in their entirety and replaced with the following:

**COVERAGE C - THIRD-PARTY CLAIMS FOR ON-SITE BODILY INJURY AND PROPERTY DAMAGE RESULTING FROM PRE-EXISTING CONDITIONS**

To pay on behalf of the Insured, Loss that the Insured becomes legally obligated to pay as a result of Claims for Bodily Injury or Property Damage resulting from Pollution Conditions on or under the Insured Property that commenced prior to the Continuity Date shown below, if such Bodily Injury or Property Damage takes place while the person injured or property damaged is on the Insured Property, provided such Claims are first made against the Insured and reported to the Company in writing during the Policy Period, or during the Extended Reporting Period if applicable.

For purposes of coverage provided by this Endorsement, the following Continuity Date applies to Coverage C:

Continuity Date: April 30, 2007

**COVERAGE F - THIRD-PARTY CLAIMS FOR OFF-SITE BODILY INJURY AND PROPERTY DAMAGE RESULTING FROM PRE-EXISTING CONDITIONS**

To pay on behalf of the Insured, Loss that the Insured becomes legally obligated to pay as a result of Claims for Bodily Injury or Property Damage resulting from Pollution Conditions, beyond the boundaries of the Insured Property, that commenced prior to the Continuity Date shown below, and migrated from the Insured Property, provided such Claims are first made against the Insured and reported to the Company in writing during the Policy Period, or during the Extended Reporting Period if applicable.

For purposes of coverage provided by this Endorsement, the following Continuity Date applies to Coverage F:

Continuity Date: April 30, 2007

All other terms, conditions, and exclusions shall remain the same.



AUTHORIZED REPRESENTATIVE  
or countersignature (in states where applicable)

**ENDORSEMENT NO. 13**

**This endorsement, effective 12:01 AM, April 30, 2007**

**Forms a part of Policy No: PLS 2337544**

**Issued to: VEOLIA ENVIRONMENTAL SERVICES  
NORTH AMERICA CORPORATION**

**By: AMERICAN INTERNATIONAL SPECIALTY LINES INS. CO.**

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

**CONDITION OF PAYMENT ENDORSEMENT**

It is hereby agreed that any payment under this Policy shall only be made in full compliance with all United States of America economic and trade sanction laws or regulations, including, but not limited to, sanctions, laws and regulations administered and enforced by the U.S. Treasury Department's Office of Foreign Assets Control ("OFAC").

All other terms, conditions, and exclusions shall remain the same.



**AUTHORIZED REPRESENTATIVE**  
or countersignature (in states where applicable)

ENDORSEMENT NO. 14

This endorsement, effective 12:01 AM, April 30, 2007

Forms a part of Policy No: PLS 2337544

Issued to: VEOLIA ENVIRONMENTAL SERVICES  
NORTH AMERICA CORPORATION

By: AMERICAN INTERNATIONAL SPECIALTY LINES INS. CO.

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

**WAR EXCLUSION ENDORSEMENT**

It is hereby agreed that the following exclusion is added to Section II. **EXCLUSIONS**, Subsection 1. **COMMON EXCLUSIONS - APPLICABLE TO ALL COVERAGES**:

**WAR**

Arising directly or indirectly as a result of or in connection with war, whether declared or not, or any act or condition incident to war. War includes civil war, insurrection, act of foreign enemy, civil commotion, factional civil commotion, military or usurped power, rebellion or revolution.

All other terms, conditions, and exclusions shall remain the same.



**AUTHORIZED REPRESENTATIVE**  
or countersignature (in states where applicable)

ENDORSEMENT NO. 15

This endorsement, effective 12:01 AM, April 30, 2007

Forms a part of Policy No: PLS 2337544

Issued to: VEOLIA ENVIRONMENTAL SERVICES  
NORTH AMERICA CORPORATION

By: AMERICAN INTERNATIONAL SPECIALTY LINES INS. CO.

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

**TERRORISM EXCLUSION - ALL TERRORISM (INCLUDING CERTIFIED ACTS OF TERRORISM)**  
**EXCLUSION ENDORSEMENT**

Pursuant to the requirements of the Terrorism Risk Insurance Act of 2002, the "Act," the Insured has been provided notice that the Insured may elect to purchase coverage for loss covered under this Policy arising directly or indirectly as a result of a certified "act of terrorism" as defined by Section 102. Definitions, of the Act and any revisions or amendments thereto and the premium charge for such coverage.

After receiving such notice, the Insured has elected not to purchase coverage for such certified "acts of terrorism" and has agreed to the inclusion of a Terrorism Exclusion. Therefore, this Policy is amended to include the following exclusion:

The Company has no obligation to make any payment or to provide or to pay for a defense under this Policy due to or arising directly or indirectly as a result of or in connection with **Terrorism** including but not limited to, any contemporaneous or ensuing loss caused by fire, looting, or theft.

**Terrorism** means the use or threatened use of force or violence against person or property, or commission of an act dangerous to human life or property, or commission of an act that interferes with or disrupts an electronic or communication system, undertaken by any person or group, whether or not acting on behalf of or in connection with any organization, government, power, authority or military force, when the effect is to intimidate, coerce or harm a government, the civilian population or any segment thereof, or to disrupt any segment of the economy.

The defined term **Terrorism** shall specifically include, but is not limited to, the following definition of a certified "Act of Terrorism" defined by Section 102. Definitions, of the Terrorism Risk Insurance Act of 2002 and any revisions or amendments thereto:

(1) Act of Terrorism -

(A) Certification. - The term "act of terrorism" means any act that is certified by the Secretary of the Treasury of the United States, in concurrence with the Secretary of State, and the Attorney General of the United States -

(i) to be an act of terrorism;

(ii) to be a violent act or an act that is dangerous to -

(I) human life;

(II) property; or

(III) infrastructure;

(iii) to have resulted in damage within the United States, or outside of the United States in the case of -

(I) an air carrier or vessel described in paragraph (5)(B); for the convenience of this endorsement, paragraph (5)(B) reads: occurs to an air carrier (as defined in Section 40102 of title 49, United States Code) to a United States flag vessel (or a vessel based principally in the United States, on which United States income tax is paid and whose insurance coverage is subject to regulation in the United States), regardless of where the loss occurs, or at the premises of any United States mission ;

(II) the premises of a United States mission; and

ENDORSEMENT NO. 15 (Continued)

- (iv) to have been committed by an individual or individuals acting on behalf of any foreign person or foreign interest, as part of an effort to coerce the civilian population of the United States or to influence the policy or affect the conduct of the United States Government by coercion.
- (B) Limitation. - No act shall be certified by the Secretary as an act of terrorism if -
  - (i) the act is committed as part of the course of a war declared by the Congress, except that this clause shall not apply with respect to any coverage for workers' compensation; or
  - (ii) property and casualty insurance losses resulting from the act, in the aggregate, do not exceed \$5,000,000.
- (C) Determinations Final. - Any certification of, or determination not to certify, an act as an act of terrorism under this paragraph shall be final, and shall not be subject to judicial review.
- (D) Nondelegation. - The Secretary may not delegate or designate to any other officer, employee, or person, any determination under this paragraph of whether, during the effective period of the Program, an act of terrorism has occurred.

All other terms, conditions, and exclusions shall remain the same.



AUTHORIZED REPRESENTATIVE  
or countersignature (in states where applicable)

**ENDORSEMENT NO. 16**

This endorsement, effective 12:01 AM: April 30, 2007

Forms a part of policy no.: PLS 2337544

Issued to: VEOLIA ENVIRONMENTAL SERVICES  
NORTH AMERICA CORPORATION

By: AMERICAN INTERNATIONAL SPECIALTY LINES INS. CO.

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

**SITE SPECIFIC KNOWN CONDITIONS EXCLUSION ENDORSEMENT**

Solely with respects to the Insured Property(s) scheduled below on this endorsement, it is hereby agreed as follows:

1. The following is added to Section II. **EXCLUSIONS, 1. COMMON EXCLUSIONS APPLICABLE TO ALL COVERAGES:**

**KNOWN CONDITIONS:**

arising from Pollution Conditions that were, at any time prior to the Inception Date, the subject of or otherwise associated with the Resource Conservation and Recovery Act (RCRA) Facility Investigation concerning the below Scheduled Insured Property.

2. Any Claim arising from Pollution Conditions which are the subject of the Known Conditions Exclusion added by paragraph 1. above of this Endorsement and reported under this Policy shall be deemed to have been made and reported to the Company under and within the policy period of Policy PLS 5298422 issued by the Company to Marisol, Inc.

**Scheduled Insured Property(s)**

125.Factory Lane  
Middlesex, NJ

All other terms, conditions and exclusions remain the same.

  
Authorized Representative  
or countersignature (where required by law)

INSURED'S COPY

VES000000180



**ENDORSEMENT NO. 17**

This endorsement, effective 12:01 AM: April 30, 2007

Forms a part of policy no.: PLS 2337544

Issued to: VEOLIA ENVIRONMENTAL SERVICES  
NORTH AMERICA CORPORATION

By: AMERICAN INTERNATIONAL SPECIALTY LINES INS. CO.

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

**DEFINITION OF INSURED ENDORSEMENT**

It is hereby agreed that Section VIII. DEFINITIONS, Paragraph J. Insured is deleted in its entirety and replaced with the following:

J. Insured means the Named Insured, and any past or present director, officer, partner, member or employee thereof, including a temporary or leased employee, while acting within the scope of his or her duties as such.

All other terms, conditions and exclusions remain the same.

  
Authorized Representative  
or countersignature (where required by law)

INSURED'S COPY

VES000000181

ENDORSEMENT NO. 18

This endorsement, effective 12:01 AM: April 30, 2007

Forms a part of policy no.: PLS 2337544

Issued to: VEOLIA ENVIRONMENTAL SERVICES  
NORTH AMERICA CORPORATION

By: AMERICAN INTERNATIONAL SPECIALTY LINES INS. CO.

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

**DEFINITION OF RESPONSIBLE INSURED ENDORSEMENT**

It is hereby agreed that Section VIII. DEFINITIONS, Paragraph Y. Responsible Insured is deleted in its entirety and replaced with the following:

- Y. **Responsible Insured** means the manager or supervisor of the Named Insured responsible for environmental affairs, control or compliance, or any manager of the Insured Property responsible for environmental affairs, control or compliance, or any officer, director or partner of the Named Insured.

All other terms, conditions and exclusions remain the same.

  
Authorized Representative  
or countersignature (where required by law)

INSURED'S COPY

VES000000182

**ENDORSEMENT NO. 19**

This endorsement, effective 12:01 AM: April 30, 2007

Forms a part of policy no.: PLS 2337544

Issued to: VEOLIA ENVIRONMENTAL SERVICES  
NORTH AMERICA CORPORATION


By: AMERICAN INTERNATIONAL SPECIALTY LINES INS. CO.

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

**CONTINUOUS COVERAGE ENDORSEMENT**

With respect to Section V. LIMITS OF COVERAGE, DEDUCTIBLE, Paragraph B.(3) of policy PLS 5298422, it is hereby agreed that the Insured has maintained with the Company Pollution Legal Liability coverage substantially the same as this Policy's coverage on a continuous, uninterrupted basis since the inception of policy PLS 5298422, effective December 23, 1998.

All other terms, conditions and exclusions remain the same.

  
Authorized Representative  
or countersignature (where required by law)

INSURED'S COPY

VES000000183

## AIG ENVIRONMENTAL PIER II PROGRAM

Insured: VEOLIA ENVIRONMENTAL SERVICES  
NORTH AMERICA CORPORATION

Policy #: PLS 2337544

Congratulations for choosing AIG Environmental® as your insurance provider! Among other things, your decision allows you access to the Pollution Incident and Environmental Response (PIER II) Program. This program is designed to assist you with your environmental response to catastrophic events or releases at your facility or facilities.

Enclosed you will find:

- Question and Answers regarding the PIER II Program
- PIER II Registration Form

Please complete the enclosed registration form to allow us to have the correct contacts for providing environmental management services if an environmental emergency should occur at your facility or facilities. A postage paid envelope is enclosed for your convenience.

The PIER Program has a toll-free telephone number **1 (877) PIER NOW (877.743.7669)** in case of an emergency. You may follow the guidelines below to determine when to call for PIER II program services.

**Call PIER II when:**

- A significant amount of hazardous materials is released onto the ground, soil, into the storm drain, or sewer.
- Abnormal amounts of hazardous vapors are detected.

**Do not Call PIER II for:**

- Regulatory inspections
- Purposes of satisfying claim-reporting requirements.

Enrolling in this service allows us to provide you with one number to call for assistance with your emergency response when it really matters; potentially reducing insurance claims, remediation costs, and environmental contamination.

If you have any questions about the application or general questions about the PIER II Program please call 1-800-348-4314 and ask for Department Code PIER II.

Thank you,

PIER Program Manager  
AIG Consultants-Environmental Management Division  
2929 N. Central Avenue, 18th Floor  
Phoenix, AZ 85012  
Email: PIER@aig.com



# AIG Environmental

A Division of American International Companies®

To: VEOLIA ENVIRONMENTAL SERVICES  
NORTH AMERICA CORPORATION  
From: AIG Environmental  
Date: May 18, 2007  
Re: PIER II Program Q & A

**Q. What exactly is the PIER II Program?**

A. The Pollution Incident and Environmental Response (PIER II) Program is designed to assist you when you have determined that additional emergency response capabilities and services are necessary to respond to your environmental pollution incident. PIER II resources include a national network of emergency response contractors and environmental consultants. Additionally, project management services will be provided by AIG Consultants-Environmental Management Division (AIGC-EM). AIGC-EM will be in communication with both you and the emergency responder during the incident to make sure that all resources of the PIER II Program are made available to you.

**Q. Why should I use the PIER II Program?**

A. The PIER II Program provides you with a national network of emergency response resources with just one phone call. As an AIG Environmental client, you will benefit from reduced rates that have already been negotiated for you. In addition to providing you with the management services of an AIGC-EM Program Manager, PIER II also offers investigative services, adjusting services, and a crisis management advisory board that can be utilized.

**Q. How do I access the PIER II Program when I have an emergency?**

A. To access the PIER II Program 24 hours a day, simply dial toll-free **1-877 PIER NOW (877.743.7669)** and you will be connected to the Emergency Response Hotline. Enter your call-back number, and the on-call AIGC-EM PIER Program Manager will return your page, collect vital information, and dispatch the emergency response services that you require.

**Q. What are my responsibilities through the response process?**

A. As the responsible party, you are ultimately responsible for responding to your environmental pollution incident. The PIER II Program is offered to assist you in the overall incident response and management process.

**Q. Are my claim reporting requirements satisfied by accessing the PIER II Program?**

A. No. Please refer to your policy for claim reporting requirements.

**Q. By being a participant in PIER II, does this mean that my claim is automatically covered by AIG? If not, who pays for the PIER II services?**

A. Coverage will be determined by the claims department after a factual analysis of the incident and the insurance policy. Covered costs will be paid or reimbursed up to the limit of the policy and subject to any deductible or retention amount. If the incident is not covered by the policy, then you will be responsible for payment of the response. In either situation, you will benefit from the pre-negotiated low rates.

**Q. What do I need to do to sign up for the PIER II Program?**

- A. The best thing to do is to register for the PIER II Program using the registration form included in this packet. The PIER Program Manager listed below can then contact you to provide you with more information.

**Q. Who should I contact to discuss the PIER II Program?**

- A. To discuss the PIER II Program benefits and to register your company for PIER II Program services, contact:

PIER Program Manager  
AIG Consultants, Inc.  
Environmental Mgmt. Division  
2929 N. Central Avenue, 18th Floor  
Phoenix, AZ 85012  
Phone: 1-800-348-4314 ask for Department Code PIER II  
Email: PIER@aig.com

# AIG ENVIRONMENTAL PIER II REGISTRATION FORM

Return to:  
Brian Johnson  
PIER II Program Manager  
AIG Consultants-Environmental Management Division  
2929 N. Central Avenue, 18th Floor  
Phoenix, AZ 85012

## Policy Holder Information:

Named Insured	<u>VEOLIA ENVIRONMENTAL SERVICES</u>	Policy #:	<u>PLS 2337544</u>
	<u>NORTH AMERICA CORPORATION</u>	Phone number:	_____
Contact Name:	_____	Fax number:	_____
Mailing Address:	<u>700 E BUTTERFIELD RD</u>		_____
		County:	_____
City:	<u>LOMBARD</u>		
State ZIP:	<u>IL 60148-6006</u>		

## Emergency Contact Information:

Check here if the emergency contact is not the same for every facility under this policy. AIG will contact you for more information.

<b>Primary Contact:</b>	(must be filled in)		
Name:	_____	Daytime Phone:	_____
Mailing Address:	_____	Nighttime Phone:	_____
	_____		
City:	_____		
State ZIP:	_____		
<b>Secondary Contact:</b>	(must be filled in)		
Name:	_____	Daytime Phone:	_____
Mailing Address:	_____	Nighttime Phone:	_____
	_____		
City:	_____		
State ZIP:	_____		

**AIG ENVIRONMENTAL PIER II REGISTRATION FORM**  
(continued)

**Site specific information** \* (Physical addresses, not mailing addresses) \* Please copy for additional sites.

<p>Facility #: _____</p> <p>Facility Name: _____</p> <p>Address 1: _____</p> <p>Address 2: _____</p> <p>City: _____</p> <p>State: _____</p> <p>Zip: _____</p> <p>Facility Type: _____</p> <p>Comments: _____</p>	<p>Facility #: _____</p> <p>Facility Name: _____</p> <p>Address 1: _____</p> <p>Address 2: _____</p> <p>City: _____</p> <p>State: _____</p> <p>Zip: _____</p> <p>Facility Type: _____</p> <p>Comments: _____</p>
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<p>Facility #: _____</p> <p>Facility Name: _____</p> <p>Address 1: _____</p> <p>Address 2: _____</p> <p>City: _____</p> <p>State: _____</p> <p>Zip: _____</p> <p>Facility Type: _____</p> <p>Comments: _____</p>	<p>Facility #: _____</p> <p>Facility Name: _____</p> <p>Address 1: _____</p> <p>Address 2: _____</p> <p>City: _____</p> <p>State: _____</p> <p>Zip: _____</p> <p>Facility Type: _____</p> <p>Comments: _____</p>
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<p>Facility #: _____</p> <p>Facility Name: _____</p> <p>Address 1: _____</p> <p>Address 2: _____</p> <p>City: _____</p> <p>State: _____</p> <p>Zip: _____</p> <p>Facility Type: _____</p> <p>Comments: _____</p>	<p>Facility #: _____</p> <p>Facility Name: _____</p> <p>Address 1: _____</p> <p>Address 2: _____</p> <p>City: _____</p> <p>State: _____</p> <p>Zip: _____</p> <p>Facility Type: _____</p> <p>Comments: _____</p>
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POLICYHOLDER DISCLOSURE STATEMENT  
UNDER  
TERRORISM RISK INSURANCE ACT OF 2002

You are hereby notified that under the federal Terrorism Risk Insurance Act of 2002 (the "Act") effective November 26, 2002, you now have a right to purchase insurance coverage for losses arising out of an Act of Terrorism, which is defined in the Act as an act certified by the Secretary of the Treasury (i) to be an act of terrorism, (ii) to be a violent act or an act that is dangerous to (A) human life; (B) property or (C) infrastructure, (iii) to have resulted in damage within the United States, or outside of the United States in case of an air carrier or vessel or the premises of a U.S. mission and (iv) to have been committed by an individual or individuals acting on behalf of any foreign person or foreign interest, as part of an effort to coerce the civilian population of the United States or to influence the policy or affect the conduct of the United States Government by coercion. You should read the Act for a complete description of its coverage. The Secretary's decision to certify or not to certify an event as an Act of Terrorism and thus covered by this law is final and not subject to review. There is a \$100 billion dollar annual cap on all losses resulting from Acts of Terrorism above which no coverage will be provided under this policy and under the Act unless Congress makes some other determination.

For your information, if such coverage is purchased, coverage provided by the policy for losses caused by an Act of Terrorism may be partially reimbursed by the United States under a formula established by the Act. Under this formula the United States pays 90% of terrorism losses covered by this law exceeding a statutorily established deductible that must be met by the insurer, and which deductible is based on a percentage of the insurer's direct earned premiums for the year preceeding the Act of Terrorism.

Coverage for Acts of Terrorism is not included in the policy referenced below as the insured has rejected the offer to purchase such insurance.

AMERICAN INTERNATIONAL SPECIALTY LINES INS. CO.  
NAMED INSURED: VEOLIA ENVIRONMENTAL SERVICES  
POLICY #: PLS 2337544  
EFFECTIVE DATES: 04/30/2007 TO 04/30/2017

BINDER WITH NO CERTIFIED ACT INSURANCE (COVERAGE REJECTED BY INSURED)  
81273 (12/02)  
CI1960

INSURED'S COPY

VES000000189

**POLICYHOLDER NOTICE**

Thank you for purchasing insurance from a member company of American International Group, Inc. (AIG). The AIG member companies generally pay compensation to brokers and independent agents, and may have paid compensation in connection with your policy. You can review and obtain information about the nature and range of compensation paid by AIG member companies to brokers and independent agents in the United States by visiting our website at [www.aigproducercompensation.com](http://www.aigproducercompensation.com) or by calling AIG at 1-800-706-3102.

**AMERICAN INTERNATIONAL SPECIALTY LINES INSURANCE COMPANY  
 POLLUTION LEGAL LIABILITY SELECT® POLICY  
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SETTLEMENT AGREEMENT AND RELEASE

This SETTLEMENT AGREEMENT and RELEASE, dated as of December 31, 1985, made by and between Marisol, Incorporated (MARISOL), a corporation organized under the laws of New Jersey, having an address at \_\_\_\_\_ and Diamond Shamrock Chemicals Company (DSCC), a Delaware corporation, having an address at 351 Phelps Court, Irving, Texas 75038.

WHEREAS, the New Jersey Department of Environmental Protection (DEP) and the United States Environmental Protection Agency (EPA) have alleged that dioxin is present on certain property located at 80 Lister Avenue, Newark, New Jersey, which is owned by MARISOL and which is designated as Lot \_\_\_, Block \_\_\_ on the Tax Map of the City of Newark (the "Property");

WHEREAS, DEP has issued orders to MARISOL and DSCC relating to the performance of certain remedial work on the Property and adjacent property;

WHEREAS, MARISOL has caused to be filed against DSCC, a certain crossclaim for compensatory damages, consequential damages, punitive damages and such other relief as the Court may deem appropriate for alleged injury to MARISOL'S use and enjoyment of the Property in an action now pending in the Superior Court of New Jersey, Essex County, entitled:

Lamoreaux, et al, v. Diamond Shamrock Chemicals Company,  
Docket No. L-036231-83;

WHEREAS, DSCC denies any liability for the alleged presence of said dioxin on said Property and any liability for said crossclaim;

WHEREAS, the parties wish to amicably resolve the controversies now pending between them in the above referenced crossclaim;

NOW, THEREFORE, in consideration of the mutual covenants set forth herein, the parties agree as follows:

1) MARISOL agrees to sell and DSCC agrees to buy the Property.

2) Time and place of closing. The closing date cannot be made final at this time. Subject to the terms of paragraph 6 hereof, DSCC and MARISOL agree to make 30 days from the date of this Agreement the estimated date for the closing. Both parties will fully cooperate so the closing can take place on or before the estimated date. The closing will be held at the offices of McCarter & English, Esq., 550 Broad Street, Newark, New Jersey 07102.

3) MARISOL agrees to transfer and DSCC agrees to accept ownership of the Property free of all claims, rights, and interests of others, except for and subject to the following:

- a) the rights of utility companies to maintain pipes, poles, cables, wires, and other improvements over, on and under the street, the part of the Property next to the street or running to any improvement on the Property; and
- b) recorded agreements including easements, which limit the use of the Property;
- c) such facts as would be disclosed by a survey or inspection of the Property, provided same do not render title unmarketable;
- d) laws, ordinances, regulations, restrictions, and orders of any federal, state, county or municipal government or other public authority relating to the Property or the use thereof;
- e) the Standards Exceptions and Special Exceptions listed in Schedule B of \_\_\_\_\_ Title Insurance Company title report number \_\_\_\_\_, dated \_\_\_\_\_ receipt of which report is acknowledged by DSCC;
- f) March 13, 1984 Administrative Consent Order referred to in paragraph 7 hereof;
- g) statutory lien for real estate taxes not due and payable (taxes to be paid to date of closing).

In addition to the above, title will be insurable at regular rates by any title insurance company authorized to do business in New Jersey subject to the above exceptions. MARISOL will deliver its corporate resolution authorizing the sale.

4) If DSCC finds, upon examination of title, any objections or defects, other than those set forth in paragraph 3, and subject to which the Property is to be conveyed, so that MARISOL cannot convey the title as herein provided,

DSCC shall, within 15 days after receipt of such title search (which title search shall be procured by DSCC within 15 days of the date hereof), give notice in writing to MARISOL stating in detail such objections or defects, and MARISOL shall have a reasonable period in which to remove any such objections or defects, and, if necessary, the closing date shall be automatically extended by such reasonable period. In the event that MARISOL is unable or unwilling to remove any such objections or defects, or is for any other reason unable to convey the Property as herein agreed to be conveyed, DSCC's sole remedy shall be to reject the title and cancel this agreement, whereupon neither party shall have any further liability to the other. Nothing contained herein shall require MARISOL to commence any proceeding to cure or remove a title defect or to incur any expense in connection therewith.

5) Taxes and other municipal charges, sewer service and sewer maintenance charges, interest on deferred municipal assessments, assessments or charges of private associations, rents and interest on mortgages, and other utility charges, if any, are to be apportioned as of the date of the delivery of the deed as herein provided. Should any such taxes, assessments or charges be undetermined on said date, the last determined tax or applicable charge shall be used



for the purpose of apportionment;

6) This Agreement is contingent upon MARISOL obtaining authorization from DEP, in the form of a letter of non-applicability or otherwise, that the closing may occur. At the closing, MARISOL will deliver evidence of compliance with the Environmental Cleanup Responsibility Act. If MARISOL is unable to obtain such evidence of compliance sufficiently in advance of the closing date specified in paragraph 2 hereof in order to enable the closing to take place on that date, then the closing date shall automatically be extended to enable MARISOL to obtain such compliance, in which case the closing date shall be seven (7) days after MARISOL gives notice to DSCC that evidence of such compliance has been obtained, provided however that if MARISOL is unable to deliver evidence of such compliance within ninety (90) days after the date of this Agreement, DSCC or MARISOL may, upon notice to the other, terminate this Agreement, whereupon neither party shall have any further liability to the other hereunder.

7) DSCC agrees to perform remedial work on said property in accordance with and as required by the Administrative Consent Order dated March 13, 1984 to which the parties hereto and the State of New Jersey are signatories.

8) At the closing and simultaneously with the transfer

to it of title to the Property, DSCC will, by certified check drawn upon a bank which is a member of the New York Clearing House Association, pay MARISOL six hundred seventy six thousand dollars (\$676,000.00);

9) At or before the closing, MARISOL will cause the above referenced crossclaim filed by it against DSCC to be dismissed with prejudice, and without costs; and will furnish to DSCC confirmation of said dismissal;

10) Said Property is being sold "as is." MARISOL does not make any claims or promises, express or implied, about the condition or value of any of said Property included in this sale.

11) DSCC shall obtain, and pay for all costs incurred in connection with obtaining, any certificate of occupancy required in connection with the use or occupancy of the Property by DSCC.

12) All understandings and agreements heretofore had between the parties hereto are merged into this agreement. No change may be made in this agreement except by instrument in writing, signed by the party against whom enforcement is sought.

13) This agreement shall be governed by and construed in accordance with the laws of the State of New Jersey.

14) This agreement may be executed in any number

of counterparts, each of which shall be deemed an original, but such counterparts shall together constitute but one and the same instrument.

15) All notices under this agreement must be in writing. Such notices must be delivered personally or mailed by certified mail, return receipt requested, to the other party at the address written in this agreement, or to that party's attorney. Notice by such mail is deemed effective as of the date of mailing.

16) In consideration of the foregoing, the parties hereto further agree for themselves, their predecessors, successors and assigns and anyone claiming through or under them to release and forever discharge each other and all of each other's successors, parents, subsidiaries, joint ventures, officers, directors, employees, agents, insurers, and assigns, from all actions, causes of action, suits, debts, dues, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses, damages, judgments, extents, executions, claims and demands whatsoever, in law, admiralty or equity, except claims for contribution arising from and out of third party actions against each of them, which against each other, their successors and assigns either party now has, or shall or may have, for,

upon, or by reason of any matter, cause or thing whatsoever from the beginning of the world to the end of the world arising in any way out of the existence or alleged existence of dioxin or any other chemical substance whenever and wherever made, on, or having originated or allegedly originated from, said Property.

IN WITNESS WHEREOF, MARISOL AND DSCC have executed this Agreement this 31st day of December, 1985.

MARISOL, INCORPORATED

BY H. Peter Berger

DIAMOND SHAMROCK CHEMICALS COMPANY

BY [Signature]

is less clear than this notice, it is due to the quality of the document being filmed

STATE OF NEW JERSEY  
DEPARTMENT OF ENVIRONMENTAL PROTECTION  
ROBERT E. HUGHEY, COMMISSIONER  
CN 402  
TRENTON, N.J. 08625  
609-292-2885

IN THE MATTER OF :  
DIAMOND SHAMROCK CHEMICALS COMPANY : ADMINISTRATIVE  
AND MARISOL, INC. : CONSENT ORDER

The following FINDINGS are made and ORDER is issued pursuant to the authority vested in the Commissioner of the New Jersey Department of Environmental Protection (hereinafter "the Department") by Executive Order No. 40 (1983) signed by Governor Thomas H. Kean on June 2, 1983, N.J.S.A. App. A:9-45, N.J.S.A. 13:1D-1 et seq., the Solid Waste Management Act, N.J.S.A. 13:1E-1 et seq., the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq., and the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11 et seq.

FINDINGS

The Department hereby finds that:

1. Diamond Shamrock Chemicals Company (hereinafter "the Company"), formerly known as the Diamond Shamrock Corporation, operated a chemical manufacturing facility at 80 Lister Avenue (Block 2438, Lots 58 and 59) in Newark, New Jersey (hereinafter "Newark facility" or "the site") from March 1951 to August 1969 under the name Diamond Alkali Company. Among other chemicals, the Company manufactured 2,4-D, 2,4,5-T - and 2,4,5 Trichlorophenol at the Newark facility.
2. The Company ceased production activities at the site in August 1969 and sold the property in March 1971 to Chemicaland Corporation, which may have conducted certain chemical manufacturing activities during the several years it owned and occupied the site.
3. Walter Ray Holding Company purchased the property at a tax sale in 1980 and held the premises until 1981. It is not known whether any chemical manufacturing activities occurred at the site during this time.

11/82 Revised

DIA 001

0242 F

NOTICE: If the film image is less clear than the notice, it is due to the quality of the document being filmed

4. Walter Ray Holding Company sold the property in June 1981 to Marisol, Inc., the current owner of the site, which undertook certain waste consolidation activities prior to renting certain portions (to wit: one warehouse) thereof to SCA Chemical Services Company. Additionally, Marisol, Inc. used one building on the site as a general business office.
5. In June 1983, the NJDEP determined that the soil at the Newark facility contained 2, 3, 7, 8 - TCDD (hereinafter "dioxin"). The Company, pursuant to Executive Order No. 40 (1983) and the Department's Administrative Order No. EO 40-6, thereupon undertook certain interim site stabilization measures including the placement of a suitable ground cover at the Newark facility. Placement of the tarp-like cover was intended to be an interim measure to minimize the spread of wind blown dust from the facility, while an acceptable final remedial action could be designed and implemented.

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED AND AGREED THAT:

6. Marisol, Inc. and the Company shall maintain the existing fences along the property boundaries to restrict unauthorized access to the site.
7. The Company shall maintain the existing ground cover, or if necessary, install and maintain a replacement deemed suitable by the Department, at the Newark facility until the final remedial action plan is implemented.
8. Marisol, Inc. shall allow the Company to conduct an evaluation of the site and to implement a final remedial program for the site.
9. (a) The Company shall undertake, entirely at its own expense, a comprehensive evaluation of the site as set forth in Exhibit A, which is attached hereto and made a part hereof, to determine the levels of dioxin and other chemicals at the site. For the purposes of this Order, "other chemicals" shall be defined as the United States Environmental Protection Agency's (USEPA) 129 priority pollutants "plus 40" (See Part 1 of Appendix A). The Company shall also conduct, entirely at its own expense, a feasibility study of remedial action alternatives for the site as set forth in Part 4 of Exhibit A. As part of this study, the Company shall also

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address the alternatives for removal or containment, at the Company's expense, of all drums and material stored at the site pursuant to the Department's Administrative Order No. EO 40-18.

- (b) Within forty-five (45) days after the effective date of this Order, the Company shall submit to the Department, for its review and approval, a comprehensive and detailed site evaluation plan which includes each of the items set forth in Parts 2 and 3 of Exhibit A. Within fifteen (15) days of receipt of the Department's comments on the site evaluation plan, the Company shall modify the plan as necessary to conform with said comments and submit the modified site evaluation plan to the Department. Within one hundred twenty (120) days after receiving the Department's final approval of the plan, the Company shall conduct and complete the site evaluation and submit a report detailing the results to the Department for its review and approval. Within fifteen (15) days of receipt of the Department's comments on the report, the Company shall modify the report as necessary to conform with said comments and submit the modified report to the Department. Any significant modification of the site evaluation plan or report required by the Department may be grounds to extend the 15 day or 120 day time period.
- (c) Within sixty (60) days after receiving the Department's final approval of the site evaluation report, the Company shall conduct and submit the feasibility study to the Department for public hearing and approval. The feasibility study shall identify and evaluate all potentially viable remedial action alternatives for the site. The feasibility study shall include a comparison of all such alternatives as to environmental and public health impacts, degree of confidence in success, time required for implementation and cost, including operation and maintenance costs. The feasibility study shall recommend the remedial action alternative deemed best suited to remove the dioxin and other chemicals from the site such that the levels of dioxin or other chemicals remaining on the site following the removal do not constitute a significant risk to public health or the environment. The determination as to what levels of dioxin or other chemicals constitute a significant risk to public health or the environment shall be made solely by the Department. If the feasibility study concludes, and the

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Prior to the preparation and implementation of such plan, the Company, subject to the approval of the Department, shall take such interim measures as are necessary to control or minimize said migration.

13. Within five (5) days after the effective date of this Order, the Company shall appoint a Facility Coordinator who shall be responsible for overseeing the implementation of this Order and the activities required herein.
14. Karisol shall allow the Department access to the site at all times for the purpose of monitoring compliance with the terms of this Order.
15. (a) The Company shall make its best efforts to secure and maintain in force comprehensive general liability insurance coverage as broad as the standard coverage form currently in use in the State of New Jersey which shall not be circumscribed by the endorsements limiting the breadth of coverage. The policy shall include an endorsement (broad form) for contractual liability, an endorsement for completed operations liability, an endorsement of Broad Form Property Damage Coverage and an endorsement for independent contractors coverage. The Company shall make its best efforts to have its underwriter(s) add and maintain the State of New Jersey as an additional insured through completion of the remedial action plan implemented pursuant to paragraph 10 of this Order, except that such coverage as an additional insured shall not apply to any negligence of the State of New Jersey. The policy shall be specifically endorsed to eliminate any exclusions for explosion, collapse and underground hazards (x, c, u). Limits of liability shall not be less than six (6) million dollars per occurrence and annual aggregate for bodily injury and for property damage combined.
- (b) Within thirty (30) days or as soon as coverage can be effected after the effective date of this Order, the Company shall provide the Department with a current certificate of insurance certifying coverage. The certificate shall contain a provision that the insurance shall not be cancelled for any reason except after thirty (30) days written notice to the Department.
- (c) To the extent that the Company is unable to secure or maintain the above coverage or to have the State

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of New Jersey added as an additional insured, the Company shall indemnify the State to the same extent that said coverage would have provided the State as an additional insured.

16. (a) Within thirty (30) days after the effective date of this Order, the Company shall obtain and provide to the Department an irrevocable letter of credit in the amount of \$12 million to secure performance of all obligations under this Order. Said letter of credit shall be issued pursuant to the provisions of N.J.S.A. 17:9A-25(3) and shall not be automatically renewable but shall be renewable upon reapplication and review only. The Company shall maintain said letter of credit continually.

Within thirty (30) days after approval of a remedial action alternative by the Department pursuant to paragraph 10 of this Order, the Company shall amend the letter of credit to an amount equal to the estimated cost of fully implementing the approved alternative, including any operation and maintenance costs, if applicable.

- (b) 1. The Company shall establish a standby trust fund within thirty (30) days of the effective date of this Order.
2. This standby trust fund shall be the depository for all funds drawn by draft under the irrevocable letter of credit required by subparagraph 16(a), which funds shall be deposited into such trust fund promptly and directly by the issuing institution.
3. In the event that the Department determines that the Company has failed to perform any of its obligations under this Order, the Department may draw on the letter of credit; provided, however, that before any draw can be made, the Department shall notify the Company in writing of the obligation(s) with which it is not complying, and the Company shall have a reasonable time, not to exceed thirty (30) days, to perform such obligation(s). Should the Department determine that the Company has not corrected its non-performance, the Department shall give the Company fifteen (15) days advance notice in writing of its intent to draw on the letter of credit and of the

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amount it intends to draw and have deposited  
in the standby trust.

- (c) At any time, the Company may apply to the Department for approval to reduce the amount of the letter of credit, or to substitute other financial assurances in a form and manner acceptable to the Department.
17. If any event occurs which purportedly causes or may cause delays in the achievement of any deadline contained in this Administrative Consent Order, the Company shall notify the Department in writing within ten (10) days of the delay or anticipated delay, as appropriate, describing the anticipated length, precise cause or causes, measures taken or to be taken and the time required to minimize the delay. The Company shall adopt all necessary measures to prevent or minimize delay.
  18. If any delay or anticipated delay has been or will be caused by fire, flood, riot, strike or other circumstances alleged to be beyond the control of the Company, then the time for performance hereunder may be extended by the Department for a period no longer than the delay resulting from such circumstances, or 15 days whichever is shorter, provided that the Department may grant additional extensions for good cause. If the events causing such delay are not found to be beyond the control of the Company, failure to comply with the provisions of this Administrative Consent Order shall constitute a breach of the Order's requirements. The burden of proving that any delay is caused by circumstances beyond the Company's control and the length of such delay attributable to those circumstances shall rest with the Company. Increases in the costs or expenses incurred in fulfilling the requirements contained herein shall not be a basis for an extension of time. Similarly, delay in completing an interim requirement shall not automatically justify or excuse delay in the attainment of subsequent requirements.
  19. The provisions of this Order shall be binding on Diamond Shamrock Chemicals Company and Marisol, Inc. and their independent agents, successors, assigns, and any trustee in bankruptcy or receiver appointed pursuant to a proceeding in law or equity.
  20. No obligations imposed by this Order are intended to constitute a debt, claim, penalty or other civil action which could be limited or discharged in a bankruptcy proceeding. All obligations imposed by this Order shall

constitute continuing regulatory obligations imposed pursuant to the police powers of the State of New Jersey, intended to protect the public health, safety and welfare.

21. This Order shall take effect upon the signature of all parties.

#### RESERVATION OF RIGHTS

This Administrative Consent Order shall be fully enforceable in the New Jersey Superior Court upon the filing of a summary action for compliance pursuant to Executive Order No. 40 (1983) signed by Governor Thomas H. Kean on June 2, 1983, N.J.S.A. App. A:9-45, N.J.S.A. 13:1D-1 et seq., the Solid Waste Management Act, N.J.S.A. 13:1E-1 et seq., the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq., and the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11 et seq. This Consent Order may be enforced in the same manner as an Administrative Order issued by the Department pursuant to these same statutory authorities and shall not preclude the Department from taking whatever action it deems appropriate to enforce the environmental protection laws of the State of New Jersey in any manner not inconsistent with the terms of this Order; provided, however, that upon the Company's satisfactory compliance with the provisions of this Order, the Department shall not require further remedial action by the Company with respect to the presence at 80 Lister Avenue in the City of Newark, New Jersey of dioxin (2,3,7,8-TCDD) or other chemicals identified in the site evaluation report approved by the Department. The parties recognize that this Consent Order is intended only to settle the Department's claims against the Company for the presence at 80 Lister Avenue in the City of Newark, New Jersey of dioxin (2,3,7,8-TCDD) and other chemicals identified in the site evaluation report approved by the Department, and agree that nothing herein shall be construed to address, resolve or settle any other matter or issue.

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Marisol, Inc. and the Company consent to this Administrative Consent Order without admission of any liability and without admission of any issues of fact or law.

Diamond Shamrock Chemicals Company

Date: 12/14/84

By: [Signature]  
James F. Kelley  
Vice-President

Date: 12/14/84

Witness: [Signature]  
Corporate Secretary

Marisol, Inc.

Date: March 5, 1984

By: [Signature]  
Peter Nerger  
President

Date: Mar. 5, 1984

Witness: [Signature]  
Corporate Secretary

NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION

Date: 3/13/84

By: [Signature]  
Robert E. Hughes  
Commissioner

DIA 001



**EPA/ROD/R02-87/053  
1987**

**EPA Superfund  
Record of Decision:**

**DIAMOND ALKALI CO.  
EPA ID: NJD980528996  
OU 01  
NEWARK, NJ  
09/30/1987**

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- ACCESS TO THE SITE IS CONTROLLED BY FENCING AND BY A 24-HOUR SECURITY SERVICE
- THOSE PERSONS AUTHORIZED FOR SITE ACCESS ARE REQUIRED TO WEAR PROTECTIVE CLOTHING AND EQUIPMENT
- A GEOTEXTILE FABRIC COVERING THE SITE MINIMIZES THE POTENTIAL FOR DIRECT CONTACT WITH SOIL.

AS A RESULT OF THESE MEASURES, THE RISK OF ON-SITE EXPOSURE IS CURRENTLY NOT A CONCERN.

#### MIGRATION OF HAZARDOUS SUBSTANCES TO THE PASSAIC RIVER

THE REMEDIAL INVESTIGATION INDICATES THAT HAZARDOUS SUBSTANCES ARE BEING RELEASED FROM THE SITE TO THE PASSAIC RIVER THROUGH THE ROUTES OF GROUND WATER MIGRATION AND SURFACE RUNOFF OF STORMWATER. THE REMEDIAL INVESTIGATION ALSO IDENTIFIED TCDD AND OTHER HAZARDOUS SUBSTANCE IN PASSAIC RIVER SEDIMENTS. A SEPARATE STUDY OF THE CONTAMINATION OF PASSAIC RIVER SEDIMENTS IS BEING CONDUCTED BY DIAMOND SHAMROCK. RESULTS OF THAT STUDY SHOW THAT THE MORE RECENT SEDIMENTS CONTAIN RELATIVELY LITTLE TCDD COMPARED TO OLDER SEDIMENTS. THE DATA SUGGESTS THAT RELEASES OF TCDD TO THE PASSAIC RIVER WERE MUCH GREATER IN THE PAST DURING THE PERIOD OF PESTICIDE PRODUCTION AT THE SITE THAN AT THE PRESENT. TCDD HAS ALSO BEEN FOUND IN BIOTA FROM THE PASSAIC RIVER AND NEARBY WATER.

THE RELEASES OF HAZARDOUS SUBSTANCES FROM THE SITE TO THE PASSAIC RIVER PRESENT A CONTINUING RISK TO THE ENVIRONMENT AND TO HUMANS WHO MAY INGEST CONTAMINATED FISH AND SHELLFISH. THE LATTER RISK HAS BEEN REDUCED BY NJDEP'S ADVISORIES AGAINST FISH CONSUMPTION AND BAN ON COMMERCIAL FISHING.

#### MIGRATION OF HAZARDOUS SUBSTANCES TO DEEPER AQUIFERS

A COMPONENT OF THE CONTAMINATED GROUND WATER IN THE FILL LAYER FLOWS DOWNWARD INTO THE LOWER AQUIFERS WHICH ARE INFLUENCED BY INDUSTRIAL WELLS IN THE AREA. SINCE THERE ARE NO POTABLE WELLS IN THE AREA, INGESTION OF CONTAMINATED GROUND WATER IS NOT A GREAT CONCERN AT THIS TIME. HOWEVER, THERE IS STILL SOME RISK OF EXPOSURE VIA THE INDUSTRIAL WELLS PUMPING FROM THE DEEPER AQUIFERS. THE FACT THAT THE MIGRATION OF TCDD AND DDT IN GROUND WATER IS ATTENUATED BY ADSORPTION OF THESE COMPOUND ON SOIL SUBSTANTIALLY REDUCES THIS RISK.

#### MIGRATION OF AIRBORNE HAZARDOUS SUBSTANCES

HAZARDOUS SUBSTANCES CAN BE RELEASED FROM THE SITE INTO THE AIR BY VOLATILIZATION AND BY DUST GENERATION. WHILE THE GEOTEXTILE FABRIC REDUCES DUST GENERATION FROM THE SOIL, THE BUILDINGS AND STRUCTURES AT THE SITE ARE A POTENTIAL SOURCE OF AIRBORNE DUST. AS PREVIOUSLY REPORTED IN THIS ROD, TCDD AND OTHER HAZARDOUS SUBSTANCES WERE MEASURED IN AMBIENT AIR SAMPLES TAKEN ON-SITE. INHALATION OF AIRBORNE HAZARDOUS SUBSTANCES MIGRATING OFF-SITE IS AN EXPOSURE ROUTE. CONTROL OF AIR EMISSIONS FROM THE SITE WILL BE A PRIME CONCERN DURING REMEDIAL ACTIVITIES SINCE THE REMEDIAL ACTIVITIES CAN BE EXPECTED TO GENERATE DUST AND EXPOSE VOLATILE CHEMICALS TO THE AIR.

CHAPTER 3 OF THE FEASIBILITY STUDY REPORT QUANTIFIES SOME OF THE RISKS DISCUSSED ABOUT AND PROVIDES A MORE DETAILED ANALYSIS.

### VI. THE CRITERIA FOR REMEDY SELECTION

#### 1. THE LAW AND REGULATIONS THAT GOVERN THIS ROD

EPA'S SELECTION OF A REMEDIAL ALTERNATIVE MUST BE IN ACCORDANCE WITH THE REQUIREMENTS OF THE COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY ACT OF 1980 (CERCLA), 42 U.S.C. SECS. 9601 ET SEQ., AS AMENDED BY THE SUPERFUND AMENDMENTS AND REAUTHORIZATION ACT (SARA) (ENACTED OCTOBER 17, 1986), AND THE REQUIREMENTS OF ITS GOVERNING REGULATIONS, THE NATIONAL OIL AND HAZARDOUS SUBSTANCES POLLUTION CONTINGENCY PLAN (NCP), 40 C.F.R. PART 300. ACCORDINGLY, THE AGENCY HAS SELECTED A REMEDY THAT IS CONSISTENT WITH ITS GOVERNING STATUTE.

#### 2. THE SUBSTANTIVE LEGAL REQUIREMENTS

UNDER ITS LEGAL AUTHORITIES, EPA'S RESPONSIBILITY AT SUPERFUND SITES IS TO UNDERTAKE REMEDIAL ACTIONS THAT ARE NECESSARY IN ORDER TO PROTECT THE PUBLIC HEALTH AND WELFARE AND THE ENVIRONMENT. IN SECTION 121 OF SARA, CONGRESS PROVIDES GUIDELINES WHICH THE AGENCY MUST FOLLOW IN SELECTING REMEDIES WHICH ASSURE PROTECTION OF HUMAN HEALTH AND THE ENVIRONMENT. THESE GUIDELINES ARE DISCUSSED BELOW.

FIRST, IN SECTION 121(B), CONGRESS CREATES A STATUTORY PREFERENCE FOR REMEDIAL ACTIONS IN WHICH TREATMENT PERMANENTLY AND SIGNIFICANTLY REDUCES THE VOLUME, TOXICITY OR MOBILITY OF THE HAZARDOUS SUBSTANCE, POLLUTANTS AND CONTAMINANTS. IN ASSESSING VARIOUS PERMANENT SOLUTIONS, EPA MUST SPECIFICALLY ADDRESS THE LONG-TERM EFFECTIVENESS OF THE DIFFERENT ALTERNATIVES. EPA SHALL, AT A MINIMUM, TAKE INTO ACCOUNT:

- (A) THE LONG-TERM UNCERTAINTIES ASSOCIATED WITH LAND DISPOSAL;
- (B) THE GOALS AND REQUIREMENTS OF THE RESOURCE CONSERVATION AND RECOVERY ACT (RCRA);
- (C) THE PERSISTENCE, TOXICITY, MOBILITY AND PROPENSITIES OF THE HAZARDOUS SUBSTANCES AND CONSTITUENTS TO BIOACCUMULATE;
- (D) THE SHORT AND LONG-TERM POTENTIAL FOR ADVERSE HEALTH EFFECTS FROM HUMAN EXPOSURE;
- (E) LONG-TERM MAINTENANCE COSTS;
- (F) THE POTENTIAL FOR FUTURE REMEDIAL ACTION COSTS IF THE ALTERNATIVE REMEDIAL ACTION IN QUESTION WERE TO FAIL;
- (G) THE POTENTIAL THREAT TO HUMAN HEALTH AND THE ENVIRONMENT ASSOCIATED WITH EXCAVATION, TRANSPORTATION, AND REDISPOSAL, OR CONTAINMENT.

CONGRESS PRESCRIBES THAT IN CHOOSING ITS FINAL REMEDY, EPA MUST SELECT A REMEDIAL ACTION THAT USES PERMANENT SOLUTIONS AND ALTERNATIVE TREATMENT TECHNOLOGIES OR RESOURCE RECOVERY TECHNOLOGIES TO THE MAXIMUM EXTENT PRACTICABLE.

SECOND, PURSUANT TO SECTION 121(C), IF EPA SELECTS A REMEDIAL ACTION THAT RESULTS IN ANY HAZARDOUS SUBSTANCE, POLLUTANTS OR CONTAMINANTS REMAINING AT THE SITE, EPA MUST REVIEW SUCH REMEDIAL ACTION AT LEAST EVERY 5 YEARS AFTER THE INITIATION OF SUCH REMEDIAL ACTION TO ASSURE THAT HUMAN HEALTH AND THE ENVIRONMENT ARE BEING PROTECTED BY THE REMEDIAL ACTION BEING IMPLEMENTED. IN ADDITION, IF UPON SUCH REVIEW IT IS THE JUDGEMENT OF EPA THAT ACTION IS APPROPRIATE AT SUCH SITE IN ACCORDANCE WITH SECTION 104 OR 106, EPA MUST TAKE OR REQUIRE SUCH ACTION.

THIRD, IN SECTION 121(D)(2), CONGRESS PROVIDES THAT EPA'S REMEDIAL ACTION, WHEN CONDUCTED ON-SITE, MUST COMPLY WITH APPLICABLE OR RELEVANT AND APPROPRIATE ENVIRONMENTAL STANDARDS ESTABLISHED UNDER FEDERAL AND STATE ENVIRONMENTAL LAWS (SUCH APPLICABLE OR RELEVANT AND APPROPRIATE REQUIREMENTS SOMETIMES WILL BE REFERRED TO AS ARARS). HOWEVER, SECTION 121(D)(4) ALLOWS EPA TO SELECT A REMEDY THAT DOES NOT COMPLY WITH ALL ARARS, IF EPA FINDS THAT:

- (A) THE REMEDIAL ACTION SELECTED IS ONLY PART OF A TOTAL REMEDIAL ACTION THAT WILL ATTAIN SUCH LEVEL OR STANDARD OF CONTROL WHEN COMPLETED;
- (B) WHEN COMPLIANCE WITH SUCH REQUIREMENT AT THAT FACILITY WILL RESULT IN GREATER RISK TO HUMAN HEALTH AND THE ENVIRONMENT THAN ALTERNATIVE OPTIONS;
- (C) COMPLIANCE WITH SUCH REQUIREMENTS IS TECHNICALLY IMPRACTICABLE FROM AN ENGINEERING PERSPECTIVE;
- (D) THE REMEDIAL ACTION SELECTED WILL ATTAIN A STANDARD OF PERFORMANCE THAT IS EQUIVALENT TO THAT REQUIRED UNDER THE OTHERWISE APPLICABLE STANDARD, REQUIREMENT, CRITERIA, OR LIMITATION, THROUGH USE OF ANOTHER METHOD OR APPROACH;
- (E) WITH RESPECT TO A STATE STANDARD, REQUIREMENT, CRITERIA, OR LIMITATION, THE STATE HAS NOT CONSISTENTLY APPLIED (OR DEMONSTRATED THE INTENTION TO CONSISTENTLY APPLY) THE STANDARD REQUIREMENT, CRITERIA, OR LIMITATION IN SIMILAR CIRCUMSTANCES AT OTHER REMEDIAL ACTIONS WITHIN THE STATE; OR
- (F) IN THE CASE OF A REMEDIAL ACTION TO BE UNDERTAKEN SOLELY UNDER SECTION 104 USING THE FUND,

SELECTION OF A REMEDIAL ACTION THAT ATTAINS SUCH LEVEL OR STANDARD OF CONTROL WILL NOT PROVIDE A BALANCE BETWEEN THE NEED FOR PROTECTION OF PUBLIC HEALTH AND WELFARE AND THE ENVIRONMENT AT THE FACILITY UNDER CONSIDERATION, AND THE AVAILABILITY OF AMOUNTS FROM THE FUND TO RESPOND TO OTHER SITES WHICH PRESENT OR MAY PRESENT A THREAT TO PUBLIC HEALTH OR WELFARE OR THE ENVIRONMENT, TAKING INTO CONSIDERATION THE RELATIVE IMMEDIACY OF SUCH THREATS.

FOURTH, IN SECTION 121(D)(3), CONGRESS ESTABLISHED REQUIREMENTS FOR ACTIONS INVOLVING THE TRANSFER OF ANY HAZARDOUS SUBSTANCE OR POLLUTANT OR CONTAMINANT OFF-SITE (E.G., TO AN OFF-SITE COMMERCIAL TREATMENT OR DISPOSAL FACILITY). THIS SECTION REQUIRES THAT THE OFF-SITE FACILITY BE OPERATING IN COMPLIANCE WITH SECTION 3004 AND 3005 OF RCRA (OR, WHERE APPLICABLE IN COMPLIANCE WITH OTHER APPLICABLE FEDERAL LAW) AND WITH ALL STATE REQUIREMENTS. IN ADDITION, THIS SECTION PROVIDES FURTHER RESTRICTIONS REGARDING THE USE OF OFF-SITE LAND DISPOSAL FACILITIES THAT ARE RELEASING HAZARDOUS WASTE OR HAZARDOUS WASTE CONSTITUENTS TO GROUND WATER, SURFACE WATER OR SOIL.

IN ADDITION, SECTION 121 (A) REQUIRES THE SELECTION OF A REMEDY WHICH, IN ADDITION TO MEETING ALL OTHER CRITERIA OF SECTION 121, PROVIDES FOR COST-EFFECTIVE RESPONSE. IN EVALUATING COST-EFFECTIVENESS OF REMEDIAL ALTERNATIVES, EPA MUST TAKE INTO ACCOUNT THE SHORT-TERM AND LONG-TERM COSTS OF THESE ALTERNATIVES INCLUDING THE COSTS OF OPERATION AND MAINTENANCE FOR THE ENTIRE PERIOD DURING WHICH SUCH ACTIVITIES WILL BE REQUIRED.

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#### VII. DESCRIPTION AND EVALUATION OF REMEDIAL ALTERNATIVES

THE REMEDIAL ALTERNATIVES WHICH WERE DEVELOPED IN DETAIL IN THE FEASIBILITY STUDY ARE LISTED AND BRIEFLY DESCRIBED IN TABLE I. COST ESTIMATES FOR THESE REMEDIAL ALTERNATIVES ARE PRESENTED IN TABLE II. A DETAILED DESCRIPTION OF THE PROCESS FOR SCREENING REMEDIAL TECHNOLOGIES AND DEVELOPING REMEDIAL ALTERNATIVES IS FOUND IN THE FEASIBILITY STUDY REPORT. FOR EACH REMEDIAL ALTERNATIVE, A DESCRIPTION AND EVALUATION FOLLOWS.

##### ALTERNATIVE 1 - NO ACTION

THE NO-ACTION ALTERNATIVE INCLUDES THE MAINTENANCE OF THE SITE FENCE, GEOTEXTILE FABRIC, SECURITY SYSTEMS, AND THE ESTABLISHMENT OF AN ONGOING MONITORING PROGRAM. THE SITE WOULD ESSENTIALLY REMAIN AS IT CURRENTLY EXISTS EXCEPT THAT ALL MATERIALS REMAINING ON 120 LISTER AVENUE (EAST OF THE FENCE SEPARATING 80 LISTER AVENUE FROM 120 LISTER AVENUE) WITH DIOXIN CONCENTRATIONS IN EXCESS OF 7 PPB WILL BE TRANSFERRED TO 80 LISTER AVENUE FOR STORAGE.

THE RISKS PRESENTED BY THE SITE AFTER IMPLEMENTING ALTERNATIVE 1 WOULD BE ESSENTIALLY THE SAME AS THOSE DISCUSSED PREVIOUSLY IN SECTION V OF THIS ROD. IN VIEW OF THESE RISKS, ALTERNATIVE 1 (NO ACTION) DOES NOT ASSURE PROTECTION OF THE ENVIRONMENT OR OF HUMAN HEALTH. SINCE SECTION 121 (D) (1) OF CERCLA REQUIRES THAT THE SELECTED REMEDY ASSURE SUCH PROTECTION, ALTERNATIVE 1 CANNOT BE SELECTED.

##### ALTERNATIVE 2 - ON-SITE CONTAINMENT WITH CAP AND SLURRY WALL

THIS ALTERNATIVE WOULD RELY ON THE ON-SITE CONTAINMENT OF WASTES BY THE CONSTRUCTION OF AN IMPERMEABLE BARRIER (SLURRY WALL) AND A CAP MEETING RCRA REQUIREMENTS (SEE FIGURES 5 AND 6). ONLY A PORTION OF 120 LISTER AVENUE WHERE SOIL CONCENTRATIONS OF DIOXIN ARE LESS THAN 7 PPB WOULD BE OUTSIDE OF THE CONTAINMENT AREA.

THERE ARE A NUMBER OF ADDITIONAL COMPONENTS OF THIS REMEDIAL ALTERNATIVE. THE BUILDINGS WOULD BE DEMOLISHED AND THE RUBBLE SPREAD AND COMPACTED OVER THE SITE. THE CONTENTS OF SHIPPING CONTAINERS CURRENTLY ON 120 LISTER AVENUE WOULD BE EMPTIED, SPREAD AND COMPACTED OVER THE SITE. UNDERGROUND CONDUITS, INCLUDING UTILITY LINES AND SEWER SYSTEMS WHICH HAVE NOT ALREADY BEEN SEALED, WOULD BE LOCATED BY PERIMETER EXCAVATION, PLUGGED AT THE EXTERIOR OF THE SITE, AND COMPLETELY FILLED WITHIN THE INTERIOR OF THE SITE WITH GROUT. SEVERAL TANKS AND MAJOR STRUCTURAL STEEL COMPONENTS WOULD BE CLEANED AND HAULED OFF-SITE FOR RECLAMATION, RESALE, OR DISPOSAL AS NON-HAZARDOUS WASTE. A NEW BULKHEAD WOULD BE INSTALLED TO INCREASE THE STABILITY OF THE RIVER BANK. DRUMMED LIQUIDS AND PROCESS WASTES WOULD BE STABILIZED AND IMMOBILIZED. A MONITORING PROGRAM WOULD BE ESTABLISHED AND MAINTAINED.

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THE UNDERLYING DESIGN PRINCIPLE OF THIS ALTERNATIVE IS TO SUBSTANTIALLY REDUCE THE MOVEMENT OF CHEMICAL CONTAMINANTS, ESPECIALLY DIOXIN AND DDT, BY CONTAINMENT OF THE WASTE. THE SITE GEOLOGIC AND HYDROGEOLOGIC CONDITIONS COUPLED WITH THE GEOCHEMICAL CHARACTERISTICS OF DIOXIN AND DDT MAKE THIS ALTERNATIVE A POSSIBLE REMEDIAL OPTION FOR THE CONTAINMENT OF THESE CONTAMINANTS ON SITE. A LOW-PERMEABILITY SILT LAYER WITH AN AVERAGE THICKNESS OF ABOUT NINE FEET UNDERLIES THE FILL AND MITIGATES THE DOWNWARD MIGRATION OF THE CHEMICAL CONSTITUENTS. FURTHERMORE, DIOXIN IS STRONGLY ABSORBED BY MEDIA WITH ORGANIC AND CLAY CONTENT (SUCH AS THE SILT LAYER) AND ITS RATE OF MIGRATION IN SUCH MEDIA WOULD BE GREATLY RETARDED. THE BEHAVIOR OF DDT IN THE SILT LAYER WOULD BE SIMILAR. THEREFORE, THE SILT LAYER PROVIDES A NATURAL BARRIER TO MITIGATE DOWNWARD MIGRATION OF DIOXIN AND DDT. TESTING INDICATED THAT THE PERMEABILITY OF THE SILT IS APPROXIMATELY 10-7 CENTIMETERS PER SECOND (CM/SEC).

THE SLURRY WALL WOULD PROVIDE A LATERAL BARRIER AND, WITH THE CAP, WOULD ENCAPSULATE THE WASTES. THE SLURRY WALL, WOULD BE CONSTRUCTED OF CLAY AND BENTONITE AND HAVE A PERMEABILITY OF 10-7 CM/SEC OR LESS. THE CAP, WHICH WOULD INCLUDE A LAYER OF COMPACTED CLAY (PERMEABILITY OF 10-7 CM/SEC) AND A NEARLY IMPERMEABLE SYNTHETIC MEMBRANE LINER, WOULD VIRTUALLY ELIMINATE DOWNWARD SEEPAGE OF SURFACE WATER INTO THE CONTAINED VOLUME.

AFTER INSTALLATION OF ALTERNATIVE 2, THE RCRA CAP WOULD ADEQUATELY CONTROL THE RISKS RESULTING FROM DIRECT ON-SITE CONTACT AND FROM AIRBORNE MIGRATION OF HAZARDOUS SUBSTANCES. THE RISK OF FURTHER CONTAMINATION OF THE PASSAIC RIVER BY THE SITE WOULD ALSO BE ADEQUATELY CONTROLLED. SURFACE RUNOFF FROM THE SITE TO THE PASSAIC RIVER WOULD BE UNCONTAMINATED BECAUSE THE CAP WILL ELIMINATE STORMWATER CONTACT WITH HAZARDOUS SUBSTANCES. DOWNWARD MIGRATION OF CONTAMINATED GROUND WATER THROUGH THE SILT LAYER TO DEEPER AQUIFERS WOULD CONTINUE BUT WOULD BE REDUCED WITH TIME AS THE WATER LEVEL WITHIN THE CONTAINED VOLUME IS GRADUALLY LOWERED BY THE DOWNWARD FLOW. EVENTUALLY THE RATE OF DOWNWARD GROUNDWATER MIGRATION THROUGH THE SILT LAYER WOULD BE REDUCED TO THE RATE OF WATER INFILTRATION THROUGH THE NEARLY IMPERMEABLE CAP AND SLURRY WALL. WHEN THIS CONDITION OCCURS, THE FLOW OF GROUNDWATER THROUGH THE SLURRY WALL WILL BE INTO THE CONTAINED VOLUME DUE TO THE LOWERED WATER LEVEL WITHIN THE CONTAINED VOLUME. THEREFORE, THERE WOULD BE NO MIGRATION OF GROUNDWATER FROM THE CONTAINED VOLUME THROUGH THE FILL LAYER TO THE PASSAIC RIVER. ALTERNATIVE 2 SHOULD ASSURE SUBSTANTIAL PROTECTION OF HUMAN HEALTH AND THE ENVIRONMENT, ALTHOUGH IT WOULD ALLOW SOME CONTINUED RELEASE OF HAZARDOUS SUBSTANCES TO THE GROUNDWATER.

ALTERNATIVE 2 DOES NOT INVOLVE SUBSTANTIAL TREATMENT OF HAZARDOUS SUBSTANCES, ALTHOUGH THE DRUMMED PROCESS WASTES WOULD BE TREATED TO REDUCE THE MOBILITY OF HAZARDOUS SUBSTANCES PRIOR TO THE BURIAL OF THESE WASTES. THEREFORE, ALTERNATIVE 2 DOES NOT SATISFY THE PREFERENCE FOR TREATMENT EXPRESSED IN SECTION 121(B) OF CERCLA.

ALTERNATIVE 2 WOULD REQUIRE MINIMAL ROUTINE OPERATION AND MAINTENANCE ACTIVITIES. THE CAP WOULD NEED TO BE INSPECTED FOR EROSION OR CRACKING AND REPAIRS MADE AS NEEDED. HOWEVER, WITH THE PASSAGE OF TIME THE PERMEABILITY OF THE CAP AND SLURRY WALL MAY INCREASE DUE TO DETERIORATION OF MATERIALS WITH AGE OR AS A RESULT OF CHEMICAL ATTACK. THIS CONDITION WOULD NOT RESULT IN A SUDDEN FAILURE OF THE REMEDY BUT TO A GRADUAL REDUCTION IN EFFECTIVENESS. SHOULD MONITORING SHOW THIS TO BE THE CASE, REPAIRS COULD BE MADE SUCH AS INSTALLATION OF ANOTHER SLURRY WALL OR RECONSTRUCTION OF THE CAP. ALTERNATIVELY, A DIFFERENT REMEDY COULD BE IMPLEMENTED AT THAT TIME.

ALTERNATIVE 2 WOULD NOT COMPLY WITH THE LAND DISPOSAL BAN OF SECTION 3004(E) OF RCRA AND THE ASSOCIATED REGULATIONS (40 CFR SEC. 268.31 - SEE PAGE 40642 OF THE NOVEMBER 7, 1986 FEDERAL REGISTER), WHICH PROHIBIT THE LAND DISPOSAL OF LISTED DIOXIN WASTES AFTER NOVEMBER 8, 1988. ALTERNATIVE 2 WOULD ALSO NOT COMPLY WITH THE RCRA STANDARDS FOR LANDFILL DESIGN (SEE 40 CFR PART 264, SUBPART N) WHICH REQUIRE A DOUBLE LINER AND DOUBLE LEACHATE COLLECTION SYSTEM. THE LANDFILL PROPOSED IN ALTERNATIVE 2 FOR DISPOSAL OF STORED WASTES AND DEMOLITION DEBRIS HAS NO BOTTOM LINERS OR LEACHATE COLLECTION SYSTEMS.

WITH THE EXCEPTION OF THE NO ACTION ALTERNATIVE, ALTERNATIVE 2 IS THE LEAST COSTLY OF THE ALTERNATIVES. THIS WOULD BE THE CASE EVEN IF IT IS ASSUMED THAT THE REMEDIAL ALTERNATIVES INVOLVING CONTAINMENT WOULD HAVE TO BE PERIODICALLY RECONSTRUCTED TO MAINTAIN THEIR EFFECTIVENESS. IT CAN ALSO BE IMPLEMENTED QUICKLY (CONSTRUCTION WOULD TAKE APPROXIMATELY 2 YEARS) AND IS WITHOUT ANY ANTICIPATED IMPLEMENTATION PROBLEMS.

ALTERNATIVE 3 - ON-SITE CONTAINMENT WITH CAP, SLURRY WALL, AND GROUNDWATER PUMPING AND TREATMENT

THIS ALTERNATIVE IS SIMILAR TO ALTERNATIVE 2 EXCEPT THAT PURGE WELLS WOULD BE INSTALLED IN THE CONTAINMENT AREA TO PUMP GROUND WATER FOR TREATMENT. A WASTEWATER TREATMENT PLANT WOULD BE CONSTRUCTED ON-SITE TO TREAT THE PUMPED GROUND WATER PRIOR TO DISCHARGING IT EITHER TO THE PASSAIC RIVER OR TO THE LOCAL PUBLICLY OWNED TREATMENT WORKS. THE CONCEPTUAL DESIGN FOR THIS ALTERNATIVE IS SHOWN IN FIGURES 7 AND 8.

AFTER INSTALLATION OF ALTERNATIVE 3, THE RCRA CAP WOULD ADEQUATELY CONTROL THE RISKS RESULTING FROM DIRECT ON-SITE CONTACT AND FROM AIRBORNE MIGRATION OF HAZARDOUS SUBSTANCES. THE RISK OF FURTHER CONTAMINATION OF THE PASSAIC RIVER BY THE SITE WOULD BE GREATLY REDUCED. SURFACE RUNOFF FROM THE SITE TO THE PASSAIC RIVER WOULD BE UNCONTAMINATED BECAUSE THE CAP WILL ELIMINATE STORMWATER CONTACT WITH HAZARDOUS SUBSTANCES. THE PUMPING OF GROUNDWATER WOULD LOWER THE WATER LEVEL IN THE CONTAINED VOLUME TOWARD THE TOP OF THE SILT LAYER. SINCE THE WATER TABLE WITHIN THE CONTAINED VOLUME WOULD THEN BE LOWER THAN THE WATER TABLE OUTSIDE THE SLURRY WALL, ANY LATERAL MIGRATION OF GROUNDWATER THROUGH THE SLURRY WALL WOULD BE INTO THE CONTAINED VOLUME. BECAUSE THE POTENTIOMETRIC SURFACE OF THE SAND UNIT BELOW THE SILT LAYER IS, ON THE AVERAGE, TWO FEET ABOVE THE TOP OF THE SILT LAYER, THE GROUNDWATER PUMPING WOULD CAUSE AN UPWARD FLOW OF GROUNDWATER FROM THE SAND UNIT THROUGH THE SILT LAYER INTO THE CONTAINED VOLUME. THIS WOULD VIRTUALLY ELIMINATE RELEASES FROM THE CONTAINED VOLUME TO THE GROUNDWATER. THERE WOULD BE A DISCHARGE OF TREATED GROUNDWATER TO THE PASSAIC RIVER AS A RESULT OF THE IMPLEMENTATION OF THIS REMEDY. THE TREATMENT SYSTEM WOULD BE DESIGNED TO MEET THE EFFLUENT LIMITATIONS SPECIFIED IN SECTION VIII OF THIS ROD. AS DESCRIBED IN SECTION VIII, THE LEVEL OF TREATMENT PROVIDED TO ACHIEVE THESE EFFLUENT LIMITATIONS WILL RESULT IN ADEQUATE PROTECTION OF THE PASSAIC RIVER. THEREFORE, ALTERNATIVE 3 WOULD ASSURE PROTECTION OF HUMAN HEALTH AND THE ENVIRONMENT.

ALTERNATIVE 3 DOES NOT RELY PRIMARILY ON THE TREATMENT OF HAZARDOUS SUBSTANCES, ALTHOUGH SOME TREATMENT WOULD BE REQUIRED. SPECIFICALLY, THE DRUMMED PROCESS WASTES WOULD BE TREATED TO REDUCE THE MOBILITY OF HAZARDOUS SUBSTANCES PRIOR TO THE BURIAL OF THESE WASTES AND THE PUMPED GROUNDWATER WOULD BE TREATED TO ACHIEVE THE EFFLUENT LIMITATIONS SPECIFIED IN SECTION VIII. THEREFORE, ALTERNATIVE 3 DOES NOT FULLY SATISFY THE PREFERENCE FOR TREATMENT EXPRESSED IN SECTION 121(B) OF CERCLA.

ALTERNATIVE 3 WOULD REQUIRE OPERATION AND MAINTENANCE OF THE GROUNDWATER PUMPING AND TREATMENT SYSTEM FOR THE FORESEEABLE FUTURE. IN ADDITION, THE CAP WOULD NEED TO BE INSPECTED FOR EROSION OR CRACKING AND REPAIRS MADE AS NEEDED. HOWEVER, WITH THE PASSAGE OF TIME, THE PERMEABILITY OF THE CAP AND SLURRY WALL MAY INCREASE DUE TO DETERIORATION OF MATERIALS WITH AGE OR AS A RESULT OF CHEMICAL ATTACK. THIS WOULD GRADUALLY RESULT IN GREATER INFLUX OF GROUNDWATER INTO THE CONTAINED VOLUME AND GREATER FLOW OF GROUNDWATER TO THE TREATMENT SYSTEM. SINCE THE TREATMENT SYSTEM WOULD BE DESIGNED TO ACCOMMODATE INCREASED FLOWS AND STILL ACHIEVE THE REQUIRED EFFLUENT LIMITATIONS, THE EFFECTIVENESS OF THE REMEDY WOULD BE MAINTAINED (ALTHOUGH OPERATING COSTS WOULD INCREASE WITH GREATER VOLUMES OF WATER BEING TREATED). SHOULD A SIGNIFICANT INCREASE IN GROUNDWATER INFLUX OCCUR, REPAIRS COULD BE MADE SUCH AS INSTALLATION OF ANOTHER SLURRY WALL OR RECONSTRUCTION OF THE CAP. ALTERNATIVELY, A DIFFERENT REMEDY COULD BE IMPLEMENTED AT THAT TIME.

ALTERNATIVE 3 WOULD NOT COMPLY WITH THE LAND DISPOSAL BAN OF SECTION 3004(E) OF RCRA AND THE ASSOCIATED REGULATIONS (40 CFR SEC. 268.31 - SEE PAGE 40642 OF THE NOVEMBER 7, 1986 FEDERAL REGISTER), WHICH PROHIBIT THE LAND DISPOSAL OF LISTED DIOXIN WASTES AFTER NOVEMBER 8, 1988. ALTERNATIVE 3 WOULD ALSO NOT COMPLY WITH THE RCRA STANDARDS FOR LANDFILL DESIGN (SEE 40 CFR PART 264, SUBPART N) WHICH REQUIRE A DOUBLE-LINER AND DOUBLE LEACHATE COLLECTION SYSTEMS. THE CONTAINMENT SYSTEM PROPOSED IN ALTERNATIVE 3 FOR DISPOSAL OF STORED WASTES, DEMOLITION DEBRIS AND WASTEWATER TREATMENT SLUDGE HAS NO BOTTOM LINER AND ONLY A SINGLE LEACHATE COLLECTION SYSTEM.

ALTERNATIVE 3, WHILE MORE COSTLY THAN ALTERNATIVE 1 AND 2, IS LESS COSTLY THAN THE OTHER ALTERNATIVES CONSIDERED. THIS WOULD BE THE CASE EVEN IF IT IS ASSUMED THAT THE REMEDIAL ALTERNATIVES INVOLVING CONTAINMENT WOULD HAVE TO BE PERIODICALLY RECONSTRUCTED TO MAINTAIN THEIR EFFECTIVENESS. IT CAN ALSO BE IMPLEMENTED QUICKLY (CONSTRUCTION WOULD TAKE APPROXIMATELY 2 YEARS) AND IS WITHOUT ANY ANTICIPATED IMPLEMENTATION PROBLEMS.

#### ALTERNATIVE 4 - EXCAVATION AND ON-SITE THERMAL TREATMENT OF WASTE

THIS ALTERNATIVE INCLUDES THE EXCAVATION AND ON-SITE THERMAL TREATMENT OF ALL SOILS AND SITE WASTE CONTAINING DIOXIN ABOVE 7 PPB (FIGURES 5 AND 9). THIS INCLUDES BUILDING RUBBLE, CONTENTS OF SHIPPING CONTAINERS, EXCAVATED SOIL AND BURIED PILING, AND OTHER MISCELLANEOUS SITE WASTE. SEVERAL TANKS AND MAJOR STRUCTURAL

STEEL COMPONENTS FROM THE ON-SITE BUILDINGS WOULD BE CLEANED AND EITHER DISPOSED OF OFF-SITE AS NON-HAZARDOUS WASTE OR SALVAGED. CRUSHING/GRINDING WOULD BE REQUIRED TO REDUCE DEBRIS TO A SIZE SUITABLE FOR TREATMENT. A SLURRY WALL WOULD BE INSTALLED PRIOR TO EXCAVATION. THE THERMALLY TREATED MATERIAL WOULD BE PLACED BACK ONTO THE SITE AND A CAP MEETING RCRA REQUIREMENTS WOULD BE CONSTRUCTED OVER THE TREATED MATERIAL. A NEW BULKHEAD WOULD BE INSTALLED TO INCREASE THE STABILITY OF THE RIVER BANK AND A MONITORING PROGRAM WOULD BE ESTABLISHED AND MAINTAINED DURING THE POST-IMPLEMENTATION PERIOD. TO IMPLEMENT THIS ALTERNATIVE, THE FILL AND UNDERLYING SAND UNIT WOULD BE DEWATERED AND THE RESULTING WASTEWATER TREATED DURING REMEDIATION.

TO CLEAN THE SITE TO A 7 PPB DIOXIN LEVEL, MOST OF THE FILL ABOVE THE SILT LAYER MUST BE EXCAVATED. TO DEWATER THE EXCAVATION, THE SLURRY WALL WOULD EXTEND AT LEAST TO THE SILT LAYER. THE SLURRY WALL MAY BE REQUIRED TO EXTEND TO ROCK ADJACENT TO THE RIVER TO REDUCE INFLOW OF GROUND WATER. THE SLURRY WALL WOULD REDUCE THE HORIZONTAL GROUND WATER FLOW INTO THE EXCAVATION PIT. HOWEVER, BECAUSE OF THE HIGH POTENTIOMETRIC SURFACE IN THE GLACIO-FLUVIAL SAND UNIT, ESPECIALLY ADJACENT TO THE PASSAIC RIVER, THE REMOVAL OF THE FILL MATERIAL, WITHOUT ADEQUATE CONTROL, WOULD BE EXPECTED TO CAUSE DISTURBANCE (HEAVE) OF THE SILT LAYER. THIS PHENOMENON WILL AFFECT THE INTEGRITY OF THE SILT LAYER WHICH HAS BEEN ACTING AS A BARRIER AGAINST THE DOWNWARD MIGRATION OF THE DIOXIN. TO CONTROL THIS PHENOMENON, THE POTENTIOMETRIC HEAD WITHIN THE GLACIO-FLUVIAL SAND UNIT MUST BE LOWERED BELOW THE LEVEL OF THE SILT LAYER. THIS WOULD REQUIRE EXTENSIVE DEWATERING OF THE SAND UNIT AND TREATMENT OF THE PUMPED GROUNDWATER PRIOR TO DISCHARGE.

AFTER EXCAVATION OF THE FILL TO THE 7 PPB DIOXIN LEVEL, DIOXIN AND DDT WOULD STILL BE PRESENT IN THE SILT LAYER AND GROUND WATER SEEPING INTO THE SAND UNIT WOULD STILL CONTAIN THESE CHEMICALS. THE DOWNWARD SEEPAGE WOULD BE SIMILAR TO ALTERNATIVE 2, ALTHOUGH THE MASS OF DIOXIN AND DDT WOULD BE SUBSTANTIALLY LESS THAN ALTERNATIVE 2 BECAUSE OF THE TREATMENT OF THE FILL LAYER.

THE HIGHEST RANKING METHOD OF THERMAL TREATMENT INDICATED IN THE FEASIBILITY STUDY IS A MOBILE INCINERATOR. MOBILE THERMAL TREATMENT SYSTEMS HAVE BEEN USED SUCCESSFULLY TO TREAT DIOXIN WASTES, THE MOST NOTABLE EXAMPLE BEING THE USE OF THE EPA MOBILE INCINERATOR AT THE DENNY FARM SUPERFUND SITE IN MISSOURI. PILOT SCALE MOBILE THERMAL TREATMENT SYSTEMS DEVELOPED BY J.M. HUBER CORP. AND SHIRCO INFRARED SYSTEMS, INC. HAVE ALSO BEEN SUCCESSFULLY TESTED ON SMALL QUANTITIES OF DIOXIN WASTES. LARGER VERSIONS OF THE HUBER AND SHIRCO MOBILE SYSTEMS HAVE BEEN CONSTRUCTED BUT HAVE NOT BEEN TESTED ON DIOXIN WASTES. IN ADDITION, A NUMBER OF OTHER COMPANIES HAVE DEVELOPED MOBILE THERMAL TREATMENT SYSTEMS IN THE LAST FEW YEARS. ALTHOUGH THESE SYSTEMS HAVE NOT BEEN TESTED ON DIOXIN WASTES, MOST OF THESE SYSTEMS ARE POTENTIALLY APPLICABLE TO TREATING THE TYPE OF WASTE FOUND AT THE DIAMOND SHAMROCK SITE. BECAUSE THESE MOBILE THERMAL TREATMENT SYSTEMS ARE NEWLY DEVELOPED, THERE IS LITTLE DATA AVAILABLE ON THE PERFORMANCE OF MANY OF THESE UNITS AND ON THEIR RELIABILITY FOR EXTENDED PERIODS OF OPERATION.

THE EPA MOBILE INCINERATOR IS THE LARGEST MOBILE UNIT TESTED ON DIOXIN WASTE AND THE ONLY ONE WHICH HAS BURNED DIOXIN WASTE OVER AN EXTENDED PERIOD OF TIME. THE UNIT HAS DEMONSTRATED THAT IT CAN ACHIEVE THE REQUIRED 99.9999% DESTRUCTION AND REMOVAL EFFICIENCY FOR DIOXIN. HOWEVER, THE UNIT EXPERIENCED OPERATING PROBLEMS AT DENNY FARM WHICH REQUIRED THAT IT BE SHUT DOWN FOR REPAIR AND MAINTENANCE MORE THAN HALF OF THE TIME. THE EPA MOBILE INCINERATOR WAS RECENTLY MODIFIED TO CORRECT PAST OPERATING PROBLEMS. HOWEVER, THE MODIFIED UNIT HAD NOT BEEN USED TO BURN DIOXIN WASTES AS OF JULY 1987. ANOTHER TRIAL BURN AT DENNY FARM IS PLANNED FOR THE MODIFIED UNIT.

THE USE OF A SINGLE MOBILE INCINERATOR LIKE THE EPA UNIT, OPERATING AT THE RATE ACHIEVED AT DENNY FARM (ABOUT 12 TONS PER DAY), WOULD TAKE ABOUT 20 YEARS TO BURN THE AMOUNT OF WASTE PRESENT AT THE DIAMOND SHAMROCK SITE. ALTHOUGH A NUMBER OF THESE UNITS COULD BE CONSTRUCTED, BROUGHT TO THE SITE AND OPERATED SIMULTANEOUSLY, THERE WOULD BE DIFFICULTY IN LOCATING A LARGE NUMBER OF SMALL INCINERATORS ON A RELATIVELY SMALL SITE. IT ALSO WOULD NOT BE COST EFFECTIVE TO USE SMALL INCINERATORS FOR A LARGE PROJECT. THEREFORE, IT WOULD BE PREFERABLE TO USE ONE OR TWO LARGER THERMAL TREATMENT UNITS, ALTHOUGH SUCH UNITS HAVE NOT YET BEEN TESTED ON DIOXIN WASTE. SINCE ONE OR MORE MOBILE THERMAL TREATMENT UNIT MAY HAVE TO BE DESIGNED, CONSTRUCTED, AND TESTED PRIOR TO OPERATION TO CLEAN UP THE DIAMOND SHAMROCK SITE, IT IS EXPECTED TO TAKE AT LEAST SIX YEARS TO COMPLETE THIS REMEDY.

FOR THERMAL TREATMENT TO BE CONSIDERED FULLY SUCCESSFUL, THE TREATMENT WOULD NEED TO BE SUFFICIENT TO ALLOW DELISTING OF THE TREATED MATERIALS AS HAZARDOUS WASTES. IF THERMAL TREATMENT DOES NOT ALLOW DELISTING OF THE TREATED WASTE, THE TREATED WASTE MAY HAVE TO BE MANAGED IN A MORE PROTECTIVE MANNER THAN DESCRIBED ABOVE.

AFTER IMPLEMENTATION OF ALTERNATIVE 4, THE QUANTITY OF HAZARDOUS SUBSTANCES REMAINING AT THE SITE WOULD BE GREATLY REDUCED AS A RESULT OF THE THERMAL TREATMENT OF WASTES. THERE WOULD, HOWEVER, BE SOME REMAINING HAZARDOUS SUBSTANCES IN THE TREATED WASTE AND IN THE SILT LAYER. IF NECESSARY, MORE PROTECTIVE VARIATIONS OF ALTERNATIVE 4 COULD BE SELECTED (E.G., ADDING A GROUNDWATER PUMPING AND TREATMENT SYSTEM SIMILAR TO THE ONE DESCRIBED IN ALTERNATIVE 3, OFF-SITE DISPOSAL OF THE TREATED WASTES. ONCE ALTERNATIVE 4, (WITH ANY MORE PROTECTIVE VARIATIONS NEEDED) HAS BEEN IMPLEMENTED, FURTHER RELEASES FROM THE SITE WOULD NOT SIGNIFICANTLY AFFECT HEALTH OR THE ENVIRONMENT. HOWEVER, THERE WOULD CONTINUE TO BE SIGNIFICANT RELEASES OF HAZARDOUS SUBSTANCES DURING THE PERIOD OF TIME PRIOR TO THE COMPLETE IMPLEMENTATION OF THIS REMEDY. THE REMEDY WILL REQUIRE AN ESTIMATED SIX YEARS TO IMPLEMENT BECAUSE OF THE NEED FOR A DETAILED INCINERATOR DESIGN, A TEST BURN, MAJOR EXCAVATION ACTIVITIES, THE TIME REQUIRED TO TREAT MORE THAN 70,000 CUBIC YARDS OF WASTE MATERIAL, AND THE FINAL DISPOSITION AND CAPPING OF THE TREATED MATERIALS. DURING THE PERIOD OF IMPLEMENTATION THE RELEASES FROM THE SITE WILL VARY DEPENDING ON THE STATUS OF THE REMEDIAL ACTIVITIES.

DURING THE DESIGN PHASE THERE WOULD BE A CONTINUATION OF THE CURRENT RELEASES FROM THE SITE. DURING THE EXCAVATION ACTIVITIES, DUSTS AND VOLATILE CHEMICALS WOULD BE RELEASED TO THE AIR. THERE WOULD ALSO BE A DISCHARGE OF TREATED GROUNDWATER RESULTING FROM GROUNDWATER PUMPING DURING THE REMEDIAL ACTIVITIES. LASTLY, THERE WILL BE EMISSIONS FROM THE INCINERATOR STACK.

BECAUSE THE INCINERATOR WOULD BE DESIGNED TO ACHIEVE THE RCRA STANDARDS FOR INCINERATORS (SEE 40 CFR PART 264, SUBPART O), THE AIR EMISSIONS FROM THE INCINERATOR WILL CONTAIN VERY LOW CONCENTRATIONS OF HAZARDOUS SUBSTANCES. FOR EXAMPLE, THE STANDARDS REQUIRE 99.9999 PERCENT DESTRUCTION AND REMOVAL EFFICIENCY FOR DIOXIN. AS A RESULT, THE AIR EMISSIONS FROM THE INCINERATOR WOULD RELEASE LESS THAN 0.0001 LBS (0.05 G) OF DIOXIN DURING THE ENTIRE PERIOD OF OPERATION. ALTHOUGH A LARGE POPULATION WOULD BE EXPOSED TO THE INCINERATOR EMISSIONS, THE LEVEL OF TREATMENT REQUIRED WOULD PROVIDE ADEQUATE PROTECTION OF HEALTH AND THE ENVIRONMENT.

AS PREVIOUSLY DISCUSSED FOR ALTERNATIVE 3, A HIGH LEVEL OF TREATMENT CAN BE PROVIDED FOR GROUNDWATER PUMPED FROM THE SITE. WHILE QUANTITIES OF TREATED GROUNDWATER WOULD BE MUCH GREATER DURING THE IMPLEMENTATION OF ALTERNATIVE 4 THAN FOR ALTERNATIVE 3, PROPER DESIGN AND THE OPERATION OF THE TREATMENT FACILITIES WOULD PROVIDE ADEQUATE PROTECTION OF THE PASSAIC RIVER.

THE MOST SIGNIFICANT RELEASES EXPECTED FROM THE IMPLEMENTATION OF ALTERNATIVE 4 WOULD BE THE AIR EMISSIONS RESULTING FROM THE EXCAVATION ACTIVITIES. THESE EMISSIONS WOULD RESULT BOTH FROM DUST GENERATION AND FROM VOLATILIZATION OF CHEMICALS EXPOSED TO AIR. A RISK ASSESSMENT PERFORMED BY AN EPA CONTRACTOR FOR ANOTHER SITE WITH HIGH DIOXIN CONCENTRATIONS (RISKS FROM CHEMICAL RELEASES ASSOCIATED WITH PROPOSED EXCAVATION OF THE HYDE PARK LANDFILL, ENVIRON CORPORATION, NOVEMBER 1985), CONCLUDED THAT DIOXIN CONTAMINATED DUSTS GENERATED FROM THE PROPOSED EXCAVATION WOULD RESULT IN CANCER RISKS GREATER THAN 10<sup>-2</sup> AT PROPERTIES AS FAR AS 1200 METERS FROM THAT SITE. WHILE THIS ASSESSMENT ASSUMED CONVENTIONAL DUST SUPPRESSION METHODS, ALTERNATIVES SUCH AS CONSTRUCTION UNDER AN INFLATABLE DOME HAVE NOT BEEN DEMONSTRATED AT HAZARDOUS WASTE SITES. IN THE ABSENCE OF NEW INFORMATION, THE REMEDIAL ALTERNATIVES INVOLVING EXCAVATION OF THE FILL LAYER CANNOT BE DETERMINED TO BE ADEQUATELY PROTECTIVE OF HEALTH AND THE ENVIRONMENT.

ALTERNATIVE 4 REQUIRES MINIMAL OPERATION AND MAINTENANCE ONCE IT HAS BEEN IMPLEMENTED. THE CAP WILL NEED TO BE MAINTAINED AND THE SITE MONITORED.

ALTERNATIVE 4 WOULD, UPON COMPLETION, COMPLY WITH ALL APPLICABLE OR RELEVANT AND APPROPRIATE REQUIREMENTS (ARARS) OF STATE AND FEDERAL ENVIRONMENTAL LAWS.

ALTERNATIVE 4, WITH A PRESENT VALUE COST ESTIMATE OF \$46,600,000 IS MORE COSTLY THAN THE ALTERNATIVES BASED ON ON-SITE CONTAINMENT.

ALTERNATIVE 5 - EXCAVATION AND DISPOSAL OF ALL WASTE ABOVE 7 PPB IN A SECURE ON-SITE ISOLATION VAULT

THIS ALTERNATIVE INCLUDES THE EXCAVATION OF ALL SOIL CONTAINING DIOXIN ABOVE 7 PPB AND DISPOSING OF THIS SOIL IN AN ON-SITE, ABOVE GRADE VAULT (FIGURES 10 AND 11).

THE DIFFICULTIES ASSOCIATED WITH EXCAVATION DISCUSSED FOR ALTERNATIVE 4 APPLY TO THIS ALTERNATIVE ALSO. THE

VAULT WOULD BE CONSTRUCTED SO THAT THE BOTTOM OF THE VAULT IS ONE FOOT ABOVE THE 100-YEAR FLOOD LEVEL (ELEVATION 10.2 FEET). A LATERAL BARRIER (SLURRY WALL) WOULD BE CONSTRUCTED ALONG THE SITE PERIMETER.

THE CONSTRUCTION OF A SLURRY WALL WOULD BE NECESSARY TO REDUCE THE VOLUME OF WATER INFILTRATING DURING EXCAVATION AND REQUIRING TREATMENT. IN ADDITION, THE SAND UNIT WOULD BE DEWATERED TO REDUCE THE PIEZOMETRIC PRESSURES IN THE GLACIOFLUVIAL SAND TO MINIMIZE POTENTIAL DISTURBANCE OF THE SILT LAYER.

ON-SITE CONTAMINATED BUILDING DEMOLITION MATERIAL, MATERIAL STORED IN CONTAINERS, AND OTHER SITE WASTES WOULD ALSO BE DISPOSED OF IN THE VAULT. SOME TANKS AND MAJOR STRUCTURAL STEEL COMPONENTS WOULD BE DECONTAMINATED AND EITHER DISPOSED OF OFF-SITE AS NON-HAZARDOUS WASTE OR SALVAGED. THE VAULT WOULD BE LINED (TOP, SIDES, AND BOTTOM) TO MEET RCRA REQUIREMENTS.

CLEAN FILL WOULD BE PURCHASED AND PLACED IN THE EXCAVATION TO RETURN THE EXCAVATED FILL LAYER TO PRISTINE GROUND SURFACE. BECAUSE EXCAVATION WOULD PROCEED TO THE 7 PPB LEVEL IN THE FILL AND DIOXIN IS PRESENT IN THE SILT LAYER, GROUND WATER SEEPING FROM THE SITE WILL STILL CONTAIN DIOXIN BUT AT REDUCED LEVELS FROM PRESENT CONDITIONS. THE EXCAVATION, STOCKPILING, AND BACKFILLING WOULD NEED TO BE FINISHED BEFORE THE VAULT COULD BE COMPLETE; THEREFORE, THIS ALTERNATIVE IS EXTREMELY DIFFICULT, IF AT ALL FEASIBLE, DUE TO THE LIMITED SIZE OF THE SITE AND THE FACT THAT THE VAULT WOULD BE EXPECTED TO COVER MOST OF THE SITE.

TO RAISE THE VAULT ABOVE THE 100-YEAR FLOOD ELEVATION, AN ADDITIONAL 4.5 FEET OF SOIL WOULD BE REQUIRED ABOVE THE EXISTING GRADE. COUPLED WITH THE EXCAVATION BACKFILLING, THIS REPRESENTS THE PURCHASE AND HAULING OF APPROXIMATELY 77,000 CUBIC YARDS OF CLEAN FILL.

AFTER IMPLEMENTATION OF ALTERNATIVE 5, NEARLY ALL OF THE HAZARDOUS SUBSTANCES AT THE SITE WOULD BE CONTAINED WITHIN THE VAULT. HOWEVER, SOME HAZARDOUS SUBSTANCES WOULD REMAIN IN THE SILT LAYER. MORE PROTECTIVE VARIATIONS OF ALTERNATIVE 5 COULD ALSO BE SELECTED (E.G., ADDING A GROUNDWATER PUMPING AND TREATMENT SYSTEM SIMILAR TO THE ONE DESCRIBED IN ALTERNATIVE 3). PORTIONS OF THIS REMEDY (E.G., THE CAP, LANDFILL BOTTOM LINERS, ETC.) MAY GRADUALLY DETERIORATE WITH THE PASSAGE OF TIME. AS DISCUSSED FOR ALTERNATIVE 3, PORTIONS OF THE REMEDY SUCH AS THE CAP MAY NEED TO BE REBUILT OR REPLACED PERIODICALLY TO MAINTAIN THE EFFECTIVENESS OF THIS REMEDY. ONCE ALTERNATIVE 5 (WITH PROTECTIVE MODIFICATIONS AS NEEDED) HAS BEEN IMPLEMENTED, FURTHER RELEASES FROM THE SITE WOULD NOT SIGNIFICANTLY AFFECT HEALTH OR THE ENVIRONMENT, PROVIDED THAT THE REMEDY IS PROPERLY OPERATED AND MAINTAINED.

SIMILAR TO ALTERNATIVE 4, THERE WILL BE CONTINUED RELEASES OF HAZARDOUS SUBSTANCES DURING THE PERIOD OF REMEDY IMPLEMENTATION. THERE WOULD BE CONTINUATION OF CURRENT RELEASES DURING THE DESIGN PHASE. THE PERIOD FOR DESIGN IS LIKELY TO BE LENGTHY CONSIDERING THE CONSTRUCTION DIFFICULTIES PREVIOUSLY NOTED. THESE DIFFICULTIES COULD BE REDUCED IF AN OFF-SITE STORAGE AREA CAN BE FOUND WHERE THE MATERIALS TO BE CONTAINED CAN BE STORED DURING EXCAVATION AND VAULT CONSTRUCTION. HOWEVER, THE SITING OF SUCH A STORAGE AREA MAY NOT BE POSSIBLE GIVEN THE STORAGE RESTRICTION OF SECTION 3004(J) OF RCRA IN CONJUNCTION WITH THE LIKELIHOOD OF OPPOSITION FROM THE COMMUNITY NEAR ANY STORAGE SITE.

AIR EMISSIONS RESULTING FROM EXCAVATION ACTIVITIES WOULD BE SIMILAR TO THOSE DESCRIBED FOR ALTERNATIVE 4, AS WOULD THE DISCHARGE OF TREATED GROUND WATER RESULTING FROM GROUND WATER PUMPING.

ALTERNATIVE 5 WILL NOT RELY PRIMARILY ON TREATMENT ALTHOUGH SOME WASTES WOULD BE STABILIZED PRIOR TO CONTAINMENT AND LEACHATE FROM THE VAULT WOULD BE TREATED. THEREFORE, THIS ALTERNATIVE DOES NOT SATISFY THE TREATMENT PREFERENCE OF CERCLA SECTION 121(B).

ALTERNATIVE 5 WILL REQUIRE CONTINUED OPERATION AND MAINTENANCE INCLUDING THE POSSIBLE NEED TO REBUILD PORTIONS OF THE REMEDY SHOULD THEY DETERIORATE WITH TIME. WASTEWATER TREATMENT NEEDS FOR ALTERNATIVE 5 WOULD BE LESS THAN ALTERNATIVE 3 SINCE THERE WOULD BE LESS INFILTRATION OF WATER INTO THE CONTAINED VOLUME.

ALTERNATIVE 5 WOULD NOT COMPLY WITH THE LAND DISPOSAL BAN OF RCRA SECTION 3004(E) AND THE IMPLEMENTING REGULATIONS (40 CFR PART 268, SUBPART C - SEE PAGE 40641 OF THE NOVEMBER 7, 1986, FEDERAL REGISTER).

ALTERNATIVE 5, WITH A COST PRESENT VALUE OF \$14,180,000 IS THE MOST COSTLY OF THE ON-SITE CONTAINMENT REMEDIES BUT IS LESS COSTLY THAN THE REMEDIES WHICH RELY ON THERMAL TREATMENT.

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ALTERNATIVE 6 - TRANSPORT AND OFF-SITE DISPOSAL OR TREATMENT

AT PRESENT, PERMITTED FACILITIES DO NOT CURRENTLY EXIST WHICH CAN ACCEPT RCRA REGULATED DIOXIN WASTES FROM THE SITE. HOWEVER, PERMITTED FACILITIES MAY BECOME AVAILABLE IN THE FUTURE.

THE BASIC PREMISE OF ALTERNATIVE 6 IS THAT ALL MATERIALS CONTAINING DIOXIN LEVELS ABOVE 7 PPB WOULD BE EXCAVATED AND TRANSPORTED OFF-SITE. THE SHIPPING CONTAINERS FROM 120 LISTER AVENUE WOULD BE SHIPPED AS IS BECAUSE THEY ARE PRESENTLY SEALED AND THE EXTERIORS ARE NOT CONTAMINATED. DRUMMED WASTES WOULD BE SHIPPED AS IS, OR IN OVERPACK DRUMS FOR EXISTING DETERIORATED DRUMS. BUILDING DEBRIS WOULD BE REDUCED TO AN ADEQUATE SIZE FOR SHIPMENT AND THE EXCAVATED SOILS AND SUBSURFACE DEBRIS WOULD BE SHIPPED. THE DIFFICULTIES ASSOCIATED WITH EXCAVATION DISCUSSED FOR ALTERNATIVE 4 APPLY TO THIS ALTERNATIVE ALSO. ALL SHIPMENTS WOULD BE IN SEALED CARRIERS.

THE ALTERNATIVE ALSO CONSIDERS THAT THE MATERIALS TRANSPORTED FROM THE SITE WOULD BE DISPOSED OF BY THERMAL TREATMENT (E.G., INCINERATION) OR BY LANDFILLING. CANDIDATE SITES FOR DETERMINING COST AND TRANSPORT METHOD WERE SELECTED ON THE BASIS OF DISPOSAL OR TREATMENT FACILITIES THAT WOULD ACCEPT MATERIALS CONTAINING PCBS. A FACILITY NEAR HOUSTON, TEXAS WAS IDENTIFIED FOR POTENTIAL THERMAL TREATMENT ALLOWING TRANSPORT BY TRUCK, RAIL, OR BARGE. A LANDFILL WAS IDENTIFIED NEAR EMELLE, ALABAMA WHICH LIMITS TRANSPORT TO TRUCKING.

THE COST FOR THE LANDFILLING OR THERMAL TREATMENT OF DIOXIN-CONTAINING WASTE WAS ASSUMED TO BE AT LEAST 30 PERCENT GREATER THAN FOR PCBS. THE ACTUAL COST IS UNKNOWN.

ALTERNATIVE 6A (EXCAVATION WITH OFF-SITE DISPOSAL) IS CLEARLY NOT A VIABLE ALTERNATIVE BECAUSE IT WILL BE PROHIBITED IN THE UNITED STATES BY THE LAND DISPOSAL BAN OF SECTION 3004(E) OF RCRA AND THE IMPLEMENTING REGULATIONS (40 CFR PART 268, SUBPART C - SEE PAGE 40641 OF THE NOVEMBER 7, 1986 FEDERAL REGISTER). 40 CFR SEC. 268.31 BANS THE LAND DISPOSAL OF RCRA DIOXIN WASTES AFTER NOVEMBER 8, 1988. WHILE CERCLA GIVES EPA THE AUTHORITY TO WAIVE APPLICABLE LEGAL REQUIREMENTS AT SUPERFUND SITES UNDER CERTAIN CONDITIONS (SEE SECTION 121(D)(4) OF CERCLA), CERCLA DOES NOT GIVE EPA THE AUTHORITY TO WAIVE APPLICABLE REQUIREMENTS AT OFF-SITE FACILITIES. EFFORTS TO LOCATE TREATMENT AND DISPOSAL SITES IN OTHER COUNTRIES HAVE, THUS FAR, BEEN UNSUCCESSFUL. THEREFORE, ALTERNATIVE 6A CANNOT BE SELECTED.

AFTER THE IMPLEMENTATION OF ALTERNATIVE 6B (EXCAVATION WITH OFF-SITE THERMAL TREATMENT), THE QUANTITY OF HAZARDOUS SUBSTANCES REMAINING AT THE SITE WOULD BE GREATLY REDUCED. THERE WOULD STILL BE SOME REMAINING HAZARDOUS SUBSTANCES IN THE SILT LAYER. IF NECESSARY, MORE PROTECTIVE VARIATIONS OF ALTERNATIVE 6B COULD BE SELECTED (E.G., ADDING A GROUNDWATER PUMPING AND TREATMENT SYSTEM SIMILAR TO THAT DESCRIBED FOR ALTERNATIVE 3). ONCE ALTERNATIVE 6B (WITH ANY MORE PROTECTIVE VARIATIONS NEEDED) HAS BEEN IMPLEMENTED, FURTHER RELEASES FROM THE SITE WOULD NOT SIGNIFICANTLY AFFECT HEALTH OR THE ENVIRONMENT.

COMPARED TO ALTERNATIVE 4, ALTERNATIVE 6B WOULD HAVE THE ADVANTAGE THAT A SITE COULD BE SELECTED WITH AMPLE SPACE TO LOCATE THE THERMAL TREATMENT EQUIPMENT AND WITH A BUFFER ZONE SEPARATING THE FACILITY FROM ITS NEIGHBORS. AS IN THE CASE OF ALTERNATIVE 4, THERE WOULD CONTINUE TO BE SIGNIFICANT RELEASES OF HAZARDOUS SUBSTANCES DURING THE TIME PRIOR TO THE COMPLETE IMPLEMENTATION OF THIS REMEDY. SINCE AT THE PRESENT TIME THERE ARE NO OFF-SITE INCINERATORS OF ADEQUATE CAPACITY WHICH ARE PERMITTED FOR DIOXIN WASTES AND NONE WITH PENDING APPLICATIONS FOR PERMITS, EPA MUST ASSUME THAT ONE OR MORE OFF-SITE INCINERATORS WOULD HAVE TO BE DESIGNED, SITED, PERMITTED AND CONSTRUCTED IN ORDER TO IMPLEMENT THIS REMEDY. BECAUSE OF POTENTIAL SITING PROBLEMS, THIS REMEDY COULD TAKE LONGER TO IMPLEMENT THAN ALTERNATIVE 4, WHICH ITSELF WOULD TAKE AT LEAST SIX YEARS. SITING TREATMENT DISPOSAL LOCATIONS FOR WASTE FROM CERCLA CLEANUPS HAS DELAYED CLEANUPS IN THE PAST AND WOULD BE EXPECTED TO BE ESPECIALLY DIFFICULT FOR A DIOXIN INCINERATOR. WITH THE EXCEPTION OF THE FACT THAT THERE WOULD BE NO INCINERATOR STACK EMISSIONS AT THE SITE, THE RELEASES OF HAZARDOUS SUBSTANCES AT THE SITE DURING IMPLEMENTATION WOULD BE SIMILAR TO ALTERNATIVE 4.

ALTERNATIVE 6B RELIES PRIMARILY ON TREATMENT AND SATISFIES THE PREFERENCE FOR TREATMENT OF SECTION 121(B) OF CERCLA.

ALTERNATIVE 6B REQUIRES MINIMAL OPERATION AND MAINTENANCE ONCE IT HAS BEEN IMPLEMENTED. CONTINUED MONITORING WOULD BE REQUIRED.

ALTERNATIVE 6B WOULD, UPON COMPLETION, COMPLY WITH ALL APPLICABLE OR RELEVANT AND APPROPRIATE REQUIREMENTS (ARARS) OF STATE AND FEDERAL ENVIRONMENTAL LAWS.

ALTERNATIVE 6B IS THE MOST COSTLY OF ALL THE ALTERNATIVES WITH AN ESTIMATED PRESENT VALUE COST OF \$188,460,000.

#### COMPARISON OF ALTERNATIVES

AS PREVIOUSLY NOTED, ALTERNATIVE 1 IS NOT PROTECTIVE OF HEALTH AND THE ENVIRONMENT AND ALTERNATIVE 6A CANNOT BE IMPLEMENTED GIVEN THE RCRA LAND DISPOSAL BAN AND THE LACK OF AVAILABILITY DISPOSAL FACILITIES IN OTHER COUNTRIES. THEREFORE, THESE ALTERNATIVES WILL NOT BE CONSIDERED FURTHER.

ALTERNATIVE 2 AND 3 ARE SIMILAR BUT ALTERNATIVE 3 HAS SEVERAL ADVANTAGES OVER ALTERNATIVE 2:

1. ALTERNATIVE 2 WOULD ALLOW A CONTINUED, BUT REDUCED, RELEASE OF CONTAMINATED GROUND WATER DOWNWARD FROM THE CONTAINED VOLUME. EVENTUALLY, THE QUANTITY OF GROUND WATER MIGRATING DOWNWARD WOULD EQUAL THE QUANTITY OF WATER INFILTRATING THE CONTAINED VOLUME. FOR ALTERNATIVE 3, THE PUMPING OF GROUND WATER FROM THE CONTAINED VOLUME WOULD REVERSE THE DIRECTION OF GROUND WATER FLOW, CAUSING AN INFLUX OF GROUND WATER INTO THE CONTAINED VOLUME FROM THE LOWER SAND UNIT. THIS GROUND WATER FLOW REVERSAL WOULD PROVIDE ADDITIONAL PROTECTION OF THE GROUND WATER IN THE SAND AND BEDROCK BELOW THE SITE.
2. ALTERNATIVE 3 IS MORE RELIABLE THAN ALTERNATIVE 2 BECAUSE THE GROUND WATER PUMPING SYSTEM PROVIDES A BACKUP SHOULD THE EFFECTIVENESS OF THE SLURRY WALL AND CAP BE REDUCED WITH TIME. THEREFORE, THE EFFECTIVENESS OF ALTERNATIVE 3 CAN BE MAINTAINED OVER TIME MORE READILY THAN THE EFFECTIVENESS OF ALTERNATIVE 2.
3. THE GROUND WATER PUMPING AND TREATMENT SYSTEM OF ALTERNATIVE 3 WILL REMOVE THE MORE MOBILE HAZARDOUS SUBSTANCES FROM THE CONTAINED VOLUME AND PROVIDE APPROPRIATE TREATMENT. SINCE THE REMAINING HAZARDOUS SUBSTANCES WILL BE LESS MOBILE, THE QUALITY OF THE GROUND WATER IN THE CONTAINED VOLUME SHOULD GRADUALLY IMPROVE WITH TIME. FOR ALTERNATIVE 2, ANY IMPROVEMENT OF GROUND WATER QUALITY IN THE CONTAINED VOLUME WOULD BE AT THE EXPENSE OF THE DOWNWARD MIGRATION OF MOBILE HAZARDOUS SUBSTANCES TOWARD THE DEEPER SAND AND BEDROCK AQUIFERS, WHICH ARE TAPPED BY INDUSTRIAL WATER SUPPLY WELLS.

THE ADVANTAGES OF ALTERNATIVE 2 OVER ALTERNATIVE 3 ARE THAT ALTERNATIVE 2 WOULD NOT RESULT IN A DISCHARGE OF TREATED WASTEWATER TO THE PASSAIC RIVER AND A RELATIVELY SMALL DIFFERENCE IN COST. HOWEVER, BY MEETING THE CLEANUP STANDARDS IN SECTION VIII, THE DISCHARGE OF HIGHLY TREATED WASTEWATER FOR ALTERNATIVE 3 WOULD BE FULLY PROTECTIVE OF THE PASSAIC RIVER.

BASED ON THE ABOVE COMPARISONS, ALTERNATIVE 3 IS PREFERRED OVER ALTERNATIVE 2.

AS PREVIOUSLY DISCUSSED, ALTERNATIVES 3, 4, 5, AND 6B EACH WOULD, AFTER IMPLEMENTATION, ASSURE ADEQUATE PROTECTION OF HUMAN HEALTH AND THE ENVIRONMENT. HOWEVER, ALTERNATIVE 3 CAN BE IMPLEMENTED MUCH MORE QUICKLY AND WOULD ACHIEVE ITS OBJECTIVES MUCH SOONER THAN ANY OF THE OTHER THREE ALTERNATIVES. IN ADDITION, ALTERNATIVES 4, 5, AND 6B EACH WOULD INVOLVE EXTENSIVE AND DIFFICULT EXCAVATION ACTIVITIES EXPECTED TO GENERATE SIGNIFICANT RELEASES OF HAZARDOUS SUBSTANCES TO THE AIR. THE IMPLEMENTATION OF ALTERNATIVE 3 WOULD RELEASE A MUCH SMALLER QUANTITY OF HAZARDOUS SUBSTANCES TO THE AIR DURING CONSTRUCTION.

IN THE NEAR TERM, IT IS CLEAR THAT ALTERNATIVE 3 PRESENTS LESS RISK THAN ALTERNATIVES 4, 5, AND 6B BECAUSE IT

WILL BRING THE SITE UNDER ADEQUATE CONTROL MUCH MORE QUICKLY THAN THE OTHER ALTERNATIVES. IN THE LONG TERM, ALTERNATIVES 4 AND 6B, WHICH RELY ON THERMAL TREATMENT TO DESTROY HAZARDOUS SUBSTANCES, ARE MORE RELIABLE THAN ALTERNATIVES 3 AND 5 SINCE ONCE HAZARDOUS SUBSTANCES HAVE BEEN DESTROYED THERE IS NO FURTHER RISK OF THEIR RELEASE.

HOWEVER, THE SHORT TERM RELEASES AND EXPOSURES TO HAZARDOUS SUBSTANCES RESULTING FROM THE EXCAVATION OF CONTAMINATED MATERIAL ASSOCIATED WITH THE IMPLEMENTATION OF ALTERNATIVES 4, 5, AND 6B CANNOT BE ELIMINATED ONCE THEY HAVE OCCURRED (I.E., ONCE A PERSON OR THE ENVIRONMENT HAS BEEN EXPOSED TO HAZARDOUS SUBSTANCES, IT IS IMPOSSIBLE TO GO BACK IN TIME AND CHANGE THIS FACT; IRREPARABLE HARM MAY HAVE BEEN DONE). IF ALTERNATIVE 3 IS IMPLEMENTED, SHORT-TERM RISK WILL BE ADEQUATELY CONTROLLED AND IT WILL STILL BE POSSIBLE TO TAKE FUTURE ACTIONS TO CONTROL LONG-TERM RISKS. IN FACT, SECTION 121(C) OF CERCLA REQUIRES THAT, IF A REMEDIAL ACTION THAT RESULTS IN ANY HAZARDOUS SUBSTANCES REMAINING AT THE SITE IS SELECTED, SUCH REMEDIAL ACTION MUST BE REVIEWED AT LEAST EVERY FIVE YEARS TO ASSURE PROTECTION OF HUMAN HEALTH AND THE ENVIRONMENT. IF AT THE TIME OF REVIEW, FURTHER REMEDIAL ACTION IS APPROPRIATE IN ACCORDANCE WITH SECTION 104 OR 106 OF CERCLA, EPA MUST TAKE OR REQUIRE SUCH ACTION. AS NOTED PREVIOUSLY, ALTERNATIVE 3 WOULD NOT FAIL SUDDENLY, BUT MAY GRADUALLY BECOME LESS EFFECTIVE WITH THE PASSAGE OF TIME. THEREFORE, THE REMEDY COULD BE REEVALUATED AND SUPPLEMENTED BY ADDITIONAL REMEDIAL ACTION WITHOUT APPRECIABLE DAMAGE RESULTING FROM LOSS OF REMEDY EFFECTIVENESS. IN VIEW OF EPA'S OBLIGATION TO REEVALUATE CONTAINMENT REMEDIES UNDER SECTION 121(C) OF CERCLA, ALTERNATIVE 3 ASSURES ADEQUATE LONG-TERM PROTECTION OF HEALTH AND THE ENVIRONMENT, AS WOULD ALTERNATIVE 5 FOR THE SAME REASONS. BASED ON THE CURRENTLY AVAILABLE INFORMATION, EPA HAS DETERMINED THAT ALTERNATIVE 3 PRESENTS LESS RISK AT THIS TIME AND IS MORE PROTECTIVE THAN THE OTHER ALTERNATIVES WHEN BOTH SHORT-TERM AND LONG-TERM RISKS ARE CONSIDERED.

#### ADDITIONAL CONSIDERATIONS REGARDING ALTERNATIVE 3

FOR THE REASONS GIVEN IN THE PREVIOUS SECTION OF THIS ROD, EPA HAS DETERMINED THAT ALTERNATIVE 3 IS MORE PROTECTIVE THAN THE OTHER ALTERNATIVES CONSIDERED IN THE FEASIBILITY STUDY. BEFORE ALTERNATIVE 3 CAN BE SELECTED, EPA MUST FIRST TAKE INTO ACCOUNT THE FACTORS LISTED IN SECTION 121(B)(1) OF CERCLA. AS SUMMARIZED BELOW, EPA HAS TAKEN THESE FACTORS INTO ACCOUNT:

##### (A) THE LONG-TERM UNCERTAINTIES ASSOCIATED WITH LAND DISPOSAL -

AS PREVIOUSLY ACKNOWLEDGED IN THIS ROD, IT IS EXPECTED THAT ALTERNATIVE 3, WHICH RELIES PRIMARILY ON CONTAINMENT OF HAZARDOUS SUBSTANCES, WILL REQUIRE PERPETUAL OPERATION, MAINTENANCE, MONITORING AND REEVALUATION; AND, IF NECESSARY, ADDITIONAL REMEDIAL ACTION. EPA RECOGNIZES THE NEED FOR CONTINUED CARE OF THE SITE AND IS OBLIGATED BY SECTION 121(C) OF CERCLA TO ENSURE THAT THE REMEDY REMAINS PROTECTIVE IN THE LONG-TERM.

##### (B) THE GOALS AND REQUIREMENTS OF RCRA -

AS PREVIOUSLY NOTED, ALTERNATIVE 3 WOULD NOT COMPLY WITH THE LAND DISPOSAL BAN OF SECTION 3004(E) OF RCRA AND THE ASSOCIATED REGULATIONS, WHICH PROHIBIT THE LAND DISPOSAL OF LISTED DIOXIN WASTES AFTER NOVEMBER 8, 1988. ALTERNATIVE 3 WOULD ALSO NOT COMPLY WITH THE RCRA STANDARDS FOR LANDFILL DESIGN (SEE 40 CFR PART 264, SUBPART N) WHICH REQUIRE A DOUBLE-LINER AND DOUBLE LEACHATE COLLECTION SYSTEMS.

SECTION 121(D)(4)(B) OF CERCLA PROVIDES THAT EPA MAY SELECT A REMEDY THAT DOES NOT COMPLY WITH ALL APPLICABLE OR RELEVANT AND APPROPRIATE REQUIREMENTS OF FEDERAL AND STATE ENVIRONMENTAL LAW IF COMPLIANCE WITH ALL REQUIREMENTS WILL RESULT IN GREATER RISK THAN ALTERNATIVE OPTIONS. EPA HAS PREVIOUSLY DETERMINED THAT ALTERNATIVES 4 AND 6, WHICH COMPLY WITH THE RCRA LAND DISPOSAL BAN, WILL RESULT IN GREATER RISK THAN ALTERNATIVE 3 DUE TO THE POTENTIAL EXPOSURE TO HAZARDOUS



SUBSTANCES RESULTING FROM EXCAVATION OF CONTAMINATED MATERIAL. ALTERNATIVE 5, WHICH WOULD COMPLY WITH RCRA LANDFILL STANDARDS BUT NOT WITH THE LAND DISPOSAL BAN, WOULD ALSO RESULT IN GREATER RISK THAN ALTERNATIVE 3.

VARIANTS OF ALTERNATIVE 3 ARE ALSO POSSIBLE WHICH WOULD CONTAIN THE WASTES PRESENTLY IN THE GROUND IN THE SAME MANNER AS ALTERNATIVE 3, BUT UTILIZE INCINERATION OR A DOUBLE-LINED ON-SITE LANDFILL TO MANAGE THE WASTES PRESENTLY STORED AT THE SITE AS WELL AS THE DEMOLITION DEBRIS. THE ADVANTAGE OF THIS APPROACH IS THAT A SOLUTION WITH GREATER LONG-TERM RELIABILITY CAN BE USED FOR SOME OF THE WASTE, WITHOUT EXTENSIVE EXCAVATION AND THE ASSOCIATED RISKS. THIS APPROACH CAN ALSO BE MORE CONSISTENT WITH RCRA REQUIREMENTS THAN ALTERNATIVE 3. HOWEVER, THESE VARIANTS WOULD OFFER NO SIGNIFICANT REDUCTION IN LONG-TERM RISK COMPARED TO ALTERNATIVE 3 BECAUSE THE WASTES PRESENTLY IN THE GROUND CONTAIN A MUCH GREATER QUANTITY OF HAZARDOUS SUBSTANCES THAN THE STORED WASTE AND DEMOLITION DEBRIS. SPECIFICALLY, THE MATERIAL ABOVE GROUND CONTAINS RELATIVELY LOW CONCENTRATIONS OF CONTAMINANTS. REMOVING THIS MATERIAL, WHILE REDUCING THE VOLUME OF WASTE, WOULD REMOVE ONLY A SMALL PERCENTAGE OF THE MASS OF TOTAL CONTAMINANTS. THEREFORE, THE LONG TERM RISK WOULD REMAIN ESSENTIALLY UNCHANGED. THESE VARIANTS WOULD ALSO BE MORE DIFFICULT AND TIME CONSUMING TO IMPLEMENT THAN ALTERNATIVE 3 (ESPECIALLY IF INCINERATOR SITING, DESIGN AND TESTING IS INVOLVED) AND WOULD NOT BRING THE SITE UNDER ADEQUATE CONTROL AS EXPEDITIOUSLY AS ALTERNATIVE 3. THEREFORE, ALTERNATIVE 3 IS PREFERABLE TO THESE VARIANTS OF ALTERNATIVE 3.

BASED ON THE ABOVE CONSIDERATIONS, ALTERNATIVE 3 MAY BE SELECTED ALTHOUGH IT WILL NOT COMPLY WITH THE RCRA LAND DISPOSAL BAN OR RCRA LANDFILL DESIGN STANDARDS.

(C) THE PERSISTENCE, TOXICITY, MOBILITY AND PROPENSITIES TO BIOACCUMULATE THE HAZARDOUS SUBSTANCES AND CONSTITUENTS -

THE EXTREME TOXICITY AND PROPENSITY TO BIOACCUMULATE AND PERSISTENCE OF DIOXIN AND OTHER HAZARDOUS SUBSTANCE WAS TAKEN INTO ACCOUNT IN THE REMEDY SELECTION PROCESS. THE FACT THAT THE HAZARDOUS SUBSTANCES WOULD HAVE GREATLY REDUCED MOBILITY UNDER THE CONDITIONS WHICH ALTERNATIVE 3 WOULD ESTABLISH WAS ALSO TAKEN INTO ACCOUNT, AS WAS THE FACT THAT EXCAVATION ACTIVITIES COULD GREATLY INCREASE THE MOBILITY OF HAZARDOUS SUBSTANCES SUCH AS DIOXIN, WHICH WOULD OTHERWISE BE RELATIVELY IMMOBILE.

(D) THE SHORT AND LONG-TERM POTENTIAL FOR ADVERSE HEALTH EFFECTS FROM HUMAN EXPOSURE -

AS PREVIOUSLY DISCUSSED, ALTERNATIVE 3 PRESENTS LESS POTENTIAL FOR ADVERSE HEALTH EFFECTS AT THIS TIME THAN ALL OTHER ALTERNATIVES CONSIDERED WHEN BOTH SHORT AND LONG-TERM RISKS OF EXPOSURE ARE CONSIDERED. SPECIFICALLY, THE POTENTIAL EXPOSURE TO HAZARDOUS SUBSTANCES RESULTING FROM THE EXCAVATION OF CONTAMINATED MATERIAL WHICH IS AN ESSENTIAL COMPONENT OF ALTERNATIVE 4, 5, 6A AND 6B IS DETERMINED TO BE TOO GREAT A RISK AT THIS TIME.

(E) LONG-TERM MAINTENANCE COSTS -

THE LONG-TERM MAINTENANCE COSTS ASSOCIATED WITH ALTERNATIVE 3 ARE

RECOGNIZED. THE SELECTION OF ALTERNATIVE 3 WOULD BE BASED ON ITS GREATER PROTECTIVENESS AND NOT ON ITS LOWER INITIAL COST WHEN COMPARED TO THE OTHER ALTERNATIVES.

- (F) THE POTENTIAL FOR FUTURE REMEDIAL ACTION COSTS IF THE ALTERNATIVE REMEDIAL ACTION IN QUESTION WERE TO FAIL -

IT IS RECOGNIZED THAT THE PERFORMANCE OF ALTERNATIVE 3 COULD DETERIORATE WITH TIME AND THAT COSTLY ADDITIONAL REMEDIAL ACTION MAY BE NECESSARY. HOWEVER, THE SELECTION OF ALTERNATIVE 3 WOULD BE BASED ON ITS GREATER PROTECTIVENESS AND NOT ON ITS LOWER INITIAL COST WHEN COMPARED TO THE OTHER ALTERNATIVES.

- (G) THE POTENTIAL THREAT TO HUMAN HEALTH AND THE ENVIRONMENT ASSOCIATED WITH EXCAVATION, TRANSPORTATION, AND REDISPOSAL, OR CONTAINMENT -

FUTURE EXCAVATION, IF REQUIRED AFTER IMPLEMENTATION OF ALTERNATIVE 3, COULD HAVE SUBSTANTIAL RISKS. HOWEVER, THESE RISKS WOULD BE NO GREATER THAN THE RISKS PRESENTED BY THE EXCAVATION ACTIVITIES ASSOCIATED WITH ALTERNATIVES 4, 5, AND 6. AS PREVIOUSLY DISCUSSED, ANY DETERIORATION OF PERFORMANCES OF ALTERNATIVE 3 WOULD BE GRADUAL AND COULD BE MITIGATED BY ADDITIONAL RESPONSE ACTION WHEN THE INITIAL SIGN OF DETERIORATION (SUCH AS AN INCREASED INFLUX OF GROUND WATER INTO THE CONTAINED VOLUME) IS OBSERVED. THE APPROPRIATE CORRECTIVE ACTION FOR REMEDY DETERIORATION MIGHT BE TO REBUILD THE CONTAINMENT SYSTEM RATHER THAN EXCAVATE. REBUILDING THE CONTAINMENT SYSTEM WOULD INVOLVE FAR LESS RISK OF CONSTRUCTION RELATED RELEASES THAN WOULD ACTIONS INVOLVING EXCAVATION.

SECTION 121(B) OF CERCLA CREATES A PREFERENCE FOR REMEDIES WHICH UTILIZE TREATMENT BY ENSURING THAT THE LONG-TERM DISADVANTAGES OF REMEDIAL ALTERNATIVES ARE TAKEN INTO ACCOUNT IN THE REMEDY SELECTION PROCESS. SINCE TREATMENT ALTERNATIVES TEND TO MINIMIZE LONG-TERM DISADVANTAGES, TREATMENT IS FAVORED BY TAKING THESE DISADVANTAGES INTO ACCOUNT. HOWEVER, SECTION 121(B) ALSO TAKES SHORT-TERM RISKS INTO ACCOUNT. SECTION 121(B) IS NOT INTENDED TO ESTABLISH TREATMENT AS AN END IN ITSELF, BUT TO USE TREATMENT, TO THE EXTENT PRACTICABLE, AS A MEANS FOR ENSURING PROTECTION OF HEALTH AND THE ENVIRONMENT. SINCE, FOR THIS SITE, THE REMEDIAL ALTERNATIVES WHICH HAVE A GREATER RELIANCE ON TREATMENT ARE LESS PROTECTIVE THAN ALTERNATIVE 3, ALTERNATIVE 3 UTILIZES TREATMENT TECHNOLOGIES TO THE MAXIMUM EXTENT PRACTICABLE FOR ACHIEVING CERCLA'S PRIMARY GOAL OF PROTECTING HEALTH AND THE ENVIRONMENT.

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#### VIII. CLEANUP STANDARDS

SECTION 121(D)(2) OF CERCLA PROVIDES THAT EPA'S REMEDIAL ACTION, WHEN CONDUCTED ON-SITE, MUST COMPLY WITH APPLICABLE OR RELEVANT AND APPROPRIATE ENVIRONMENTAL STANDARDS ESTABLISHED UNDER FEDERAL AND STATE ENVIRONMENTAL LAWS EXCEPT AS PROVIDED BY SECTION 121(D)(4). SUCH APPLICABLE OR RELEVANT AND APPROPRIATE REQUIREMENTS SOMETIMES WILL BE REFERRED TO AS ARARS. IT IS EPA'S POSITION IS THAT ON-SITE RESPONSE ACTIONS NEED COMPLY ONLY WITH THE SUBSTANTIVE REQUIREMENTS OF OTHER ENVIRONMENTAL LAWS, NOT THE PROCEDURAL AND ADMINISTRATIVE REQUIREMENTS OF OTHER ENVIRONMENTAL LAWS (E.G., REQUIREMENTS TO OBTAIN PERMITS, PREPARE ENVIRONMENTAL IMPACT STATEMENTS, PREPARE PLANNING DOCUMENTS, MAINTAIN RECORDS AND SUBMIT REPORTS). HOWEVER, CERCLA ACTIONS WILL UTILIZE PROCEDURAL AND ADMINISTRATIVE SAFEGUARDS SIMILAR TO THOSE PROVIDED BY OTHER ENVIRONMENTAL LAWS. SINCE ARARS MAY NOT ALWAYS PROVIDE AN ADEQUATE LEVEL OF PROTECTION (FOR EXAMPLE, THERE MAY NOT BE AN ARAR FOR A PARTICULAR HAZARDOUS SUBSTANCE), CLEANUP STANDARDS MAY ALSO BE ESTABLISHED BASED ON RISK ASSESSMENT, GUIDANCE OR OTHER AVAILABLE INFORMATION.

THE FIVE TABLES IN THIS SECTION LIST THE ARARS AND OTHER CLEANUP STANDARDS WHICH PERTAIN TO ONE OR MORE REMEDIAL ALTERNATIVES FOR THE SITE. TABLE III LISTS FEDERAL ARARS THAT WILL BE ATTAINED BY THE SELECTED ALTERNATIVE WHILE TABLE IV LISTS THE FEDERAL ARARS THAT WILL NOT BE ATTAINED BY THE SELECTED ALTERNATIVE AS

WELL AS FEDERAL ARARS THAT ARE NOT PERTINENT TO THE SELECTED REMEDY BUT ARE PERTINENT TO OTHER REMEDIAL ALTERNATIVES. FOR EACH REQUIREMENT, THE TABLES PROVIDE A SUMMARY OF THE REQUIREMENT, A DESCRIPTION OF THE LEGAL PREREQUISITES WHICH MAKE THE ARAR APPLICABLE AND A LEGAL CITATION WHICH CAN BE USED TO OBTAIN FURTHER INFORMATION ON THE ARAR. UNLESS OTHERWISE SPECIFIED BY A FOOTNOTE, EACH OF THE LISTED ARARS PERTAINS TO ALL THE REMEDIAL ALTERNATIVES. FOOTNOTES ARE ALSO PROVIDED TO GIVE SITE SPECIFIC INTERPRETATIONS AND OTHER EXPLANATORY INFORMATION. TABLES V AND VI PROVIDE SIMILAR INFORMATION FOR STATE ARARS. HOWEVER, STATES ARARS THAT DO NOT PERTAIN TO THE SELECTED ALTERNATIVE (BUT MAY PERTAIN TO OTHER ALTERNATIVES) HAVE NOT BEEN INCLUDED. TABLE VII LISTS OTHER CLEANUP STANDARDS (E.G., THOSE BASED ON GUIDANCE OR ADVISORIES, BUT NOT ON PROMULGATED LEGAL REQUIREMENTS). IN THE EVENT THAT THERE ARE SEVERAL ARARS WHICH PERTAIN TO THE SAME HAZARDOUS SUBSTANCES, ACTION OR CIRCUMSTANCE, THE SELECTED ALTERNATIVE MUST ATTAIN THE MOST STRINGENT OF THESE ARARS, EXCEPT AS PROVIDED BY SECTION 121(D)(4) OF CERCLA.

IT SHOULD BE NOTED THAT THE ARAR SUMMARIES PROVIDED IN TABLES III THROUGH VI ARE ABBREVIATED VERSIONS OF PROMULGATED LEGAL REQUIREMENTS. FOR A MORE COMPLETE UNDERSTANDING OF THESE REQUIREMENTS, IT IS NECESSARY TO REFER TO THE CITED SOURCES, WHICH ARE TOO LENGTHY TO REPRINT IN THIS ROD IN THEIR ENTIRETY. IT SHOULD ALSO BE NOTED THAT WHERE ADMINISTRATIVE REQUIREMENTS (E.G., THE NEED TO OBTAIN PERMITS OR SUBMIT PLANNING DOCUMENTS) ARE LISTED IN TABLES III THROUGH VI, THE SUBSTANTIVE TECHNICAL REQUIREMENTS OF SUCH PERMITS OR PLANNING DOCUMENTS ARE ARARS. HOWEVER, THE ADMINISTRATIVE REQUIREMENTS THEMSELVES ARE NOT ARARS.

EXCEPT AS PROVIDED BY SECTION 121(D)(4) OF CERCLA, ARARS MUST BE ATTAINED UPON COMPLETION OF THE REMEDIAL ACTION AS REQUIRED BY SECTION 121(D)(2). HOWEVER, SOME ARARS ARE PERTINENT DURING THE REMEDIAL ACTION. FOR EXAMPLE, A NEWLY INSTALLED GROUND WATER TREATMENT FACILITY, WHICH COULD INCLUDE TANKS AND A CONTAINER STORAGE AREA, GENERALLY SHOULD BE DESIGNED AND OPERATED TO MEET THE ARARS FOR TANKS, CONTAINERS AND EFFLUENT QUALITY DURING THE REMEDIAL ACTION. AS A GENERAL RULE, THE REMEDIAL ACTION SHOULD NOT RESULT IN ANY NEW INSTANCES OF NON-ATTAINMENT OF ARARS, EXCEPT AS PROVIDED BY SECTION 121(D)(4). IN CONTRAST, INSTANCES OF NON-ATTAINMENT OF ARARS WHICH EXIST PRIOR TO THE COMMENCEMENT OF REMEDIAL ACTION GENERALLY CANNOT BE CORRECTED UNTIL THE REMEDIAL ACTION (OR A PORTION OF THE REMEDIAL ACTION) HAS BEEN COMPLETED. THE TIMING OF THE ATTAINMENT OF ARARS LISTED IN TABLES III AND V WILL BE IN ACCORDANCE WITH THE ABOVE PRINCIPLES.

THE SELECTED REMEDIAL ALTERNATIVE DESCRIBED IN SECTION IX OF THIS ROD WILL BE DESIGNED TO MEET ALL PERTINENT ARARS AND OTHER CLEANUP STANDARDS EXCEPT THOSE LISTED IN TABLE IVB AND VI:

- THE RCRA LAND DISPOSAL BAN
- THE RCRA STANDARDS FOR LANDFILL DESIGN
- THE NEW JERSEY SOLID WASTE MANAGEMENT ACT REQUIREMENTS FOR LANDFILL DESIGN, REQUIRING A LINER SYSTEM AND A 200 FOOT BUFFER ZONE.

FOR THE REASONS GIVEN IN ITEM (B) UNDER ADDITIONAL CONSIDERATIONS CONCERNING ALTERNATIVE 3 IN SECTION VII OF THIS ROD, SECTION 121(D)(4)(B) OF CERCLA ALLOWS THE SELECTION OF THE CHOSEN REMEDY DESPITE THE FACT THAT IT DOES NOT COMPLY WITH THE RCRA LAND DISPOSAL BAN OR LANDFILL DESIGN STANDARDS. SIMILARLY, SECTION 121(D)(4)(B) ALSO ALLOWS FOR SELECTION OF THE CHOSEN ALTERNATIVE DESPITE THE FACT THAT IT DOES NOT COMPLY WITH THE NEW JERSEY SOLID WASTE MANAGEMENT ACT REQUIREMENTS FOR LANDFILL DESIGN. IN ADDITION, THE 200 FOOT BUFFER ZONE REQUIREMENT (NO DISPOSAL WITHIN 200 FEET OF THE PROPERTY LINE) IS TECHNICALLY IMPRACTICABLE GIVEN THE SITE DIMENSIONS AND WOULD PROVIDE NO SIGNIFICANT ADDED PROTECTION GIVEN THE PRESENCE OF HAZARDOUS SUBSTANCES ALREADY IN THE GROUND NEAR THE PROPERTY LINE. THESE CIRCUMSTANCES ALLOW FOR THE SELECTION OF THE CHOSEN ALTERNATIVE PURSUANT TO SECTIONS 121(D)(4)(C) AND (D) DESPITE THE FACT THAT IT WILL NOT COMPLY WITH THE BUFFER ZONE REQUIREMENT.

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#### IX. DESCRIPTION OF THE SELECTED ALTERNATIVE

THE EVALUATION OF REMEDIAL ALTERNATIVES PRESENTED IN SECTION VIII OF THIS DOCUMENT DETERMINED THAT ALTERNATIVE 3 IS THE MOST PROTECTIVE OF THE ALTERNATIVES CONSIDERED IN THE FEASIBILITY STUDY. HOWEVER, SEVERAL MODIFICATIONS OF ALTERNATIVE 3 WOULD MAKE IT MORE PROTECTIVE INCLUDING:

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1. THE REMEDY SHALL BE DESIGNED TO ATTAIN THE CLEANUP STANDARDS LISTED IN TABLES III, V, AND VII OF SECTION VIII, WHICH INCLUDE A MORE STRINGENT SOIL CLEANUP STANDARD FOR DIOXIN AS WELL AS MORE STRINGENT REQUIREMENTS FOR FLOOD CONTROL.
2. DRUMS CONTAINING HAZARDOUS SUBSTANCES BUT CONTAINING LESS THAN 1 PPB OF DIOXIN SHALL BE TRANSPORTED OFF-SITE FOR TREATMENT OR DISPOSAL.
3. A FEASIBILITY STUDY SHALL BE PERFORMED AT LEAST EVERY TWO (2) YEARS FOLLOWING THE INSTALLATION OF THE REMEDY TO DEVELOP, SCREEN AND ASSESS REMEDIAL ALTERNATIVES. THESE FEASIBILITY STUDIES WILL EVALUATE THE PERFORMANCE OF THE REMEDY AS WELL AS NEW AND ALTERNATIVE TECHNOLOGIES.

THE COMPONENTS OF ALTERNATIVE 3 WITH THE ABOVE MODIFICATIONS ARE DESCRIBED BELOW:

1. CONSTRUCT A SLURRY WALL ENCIRCLING THE SITE TYING INTO THE SILT LAYER UNDERLYING THE SITE.
2. CONSTRUCT A FLOOD WALL AND APPURTENANCES TO PROTECT THE SITE FROM THE 100 YEAR FLOOD. SUCH FLOOD WALL SHALL CONFORM TO THE SPECIFICATIONS AND GUIDANCES OF THE U.S. ARMY CORPS OF ENGINEERS AND THE NJDEP AND SHALL INCLUDE AS A DESIGN CONSIDERATION THE IMPACT OF THE PROPOSED PASSAIC RIVER FLOOD CONTROL PROJECT.
3. DISASSEMBLE AND DECONTAMINATE ALL NON-POROUS PERMANENT STRUCTURES AND MATERIALS TO THE MAXIMUM EXTENT PRACTICABLE FOR OFF-SITE REUSE, RECYCLE OR DISPOSAL.
4. TRANSPORT ALL DRUMS CONTAINING HAZARDOUS SUBSTANCES BUT CONTAINING LESS THAN 1 PPB OF TCDD OFF SITE FOR TREATMENT OR DISPOSAL.
5. DEMOLISH ALL REMAINING STRUCTURES ON SITE AND SECURE ALL MATERIALS CONTAMINATED ABOVE 1 PPB OF TCDD ON SITE. SECURED MATERIALS SHALL BE SEGREGATED TO THE MAXIMUM EXTENT PRACTICABLE TO AFFORD ACCESS TO AND FACILITATE REMOVAL OF MORE HIGHLY CONTAMINATED MATERIALS, SHOULD SUCH REMOVAL BE SELECTED AS A REMEDY AT A LATER DATE.
6. STABILIZE AND IMMOBILIZE THE CONTENTS OF THE REMAINING DRUMS OF DIOXIN CONTAMINATED MATERIALS.
7. LOCATE AND PLUG UNDERGROUND CONDUITS AND RE-ROUTE ACTIVE SYSTEMS.
8. HAUL, EMPTY, SPREAD AND COMPACT THE CONTAMINATED MATERIALS PRESENTLY STORED AT 120 LISTER AVENUE; DECONTAMINATE THE SHIPPING CONTAINERS FOR OFF-SITE REUSE, RECYCLE OR DISPOSAL.
9. INSTALL, OPERATE, AND MAINTAIN A GROUND WATER WITHDRAWAL SYSTEM DESIGNED TO MAINTAIN A HYDRAULIC GRADIENT PREVENTING THE MIGRATION OF GROUND WATER FROM THE VOLUME CONTAINED WITHIN THE SLURRY WALL.
10. INSTALL, OPERATE, AND MAINTAIN A TREATMENT SYSTEM FOR GROUND WATER AND OTHER AQUEOUS LIQUIDS.
11. CONSTRUCT A SURFICIAL CAP CONSISTING OF SUITABLE MATERIALS DESIGNED TO MEET THE REQUIREMENTS OF THE RESOURCE CONSERVATION AND RECOVERY ACT.

12. IMPLEMENT SUITABLE MONITORING, CONTINGENCY, OPERATION AND MAINTENANCE AND SITE SECURITY PLANS TO ENSURE THE PROTECTION OF HUMAN HEALTH AND THE ENVIRONMENT DURING AND AFTER THE INSTALLATION OF THE SELECTED ALTERNATIVE.
13. ON-SITE PLACEMENT AND CAPPING OF THE SLUDGE GENERATED FROM ALL WASTEWATER TREATMENT PROCESSES UNTIL SUCH TIME THAT AN ALTERNATIVE METHOD OF SLUDGE MANAGEMENT IS APPROVED.
14. DESIGN, CONSTRUCT AND OPERATE THE REMEDY TO ATTAIN THE CLEANUP STANDARDS LISTED IN TABLES III, V, AND VII OF SECTION VIII OF THE RECORD OF DECISION.
15. PERFORM A FEASIBILITY STUDY EVERY 24 MONTHS FOLLOWING THE INSTALLATION OF THE SELECTED INTERIM REMEDY TO DEVELOP, SCREEN AND ASSESS REMEDIAL ALTERNATIVES AND TO ASSESS THE PERFORMANCE OF THE SELECTED REMEDY.

IT SHOULD BE NOTED THAT, ALTHOUGH THE CAP DESCRIBED IN THE FEASIBILITY STUDY INCLUDES A LAYER OF CONCRETE AT THE SURFACE, THE RCRA REGULATIONS DO NOT SPECIFICALLY REQUIRE THE CAP TO HAVE A CONCRETE COMPONENT. SINCE THE PROPOSED CONCRETE PORTION OF THE CAP COULD INTERFERE WITH FUTURE MODIFICATIONS OF THE REMEDY WHICH MAY BE NEEDED, THE ALTERNATIVE DESCRIBED ABOVE DOES NOT SPECIFICALLY CALL FOR A CONCRETE CAP.

THE REMEDIAL ALTERNATIVE DESCRIBED ABOVE IS CONSISTENT WITH THE REQUIREMENTS OF THE COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY ACT OF 1980 (CERCLA), AS AMENDED BY THE SUPERFUND AMENDMENTS AND REAUTHORIZATION ACT OF 1986 (SARA), AND THE NATIONAL OIL AND HAZARDOUS SUBSTANCES POLLUTION CONTINGENCY PLAN (NCP), 40 C.F.R. PART 300. THIS REMEDIAL ALTERNATIVE HAS BEEN DETERMINED TO BE CONSISTENT WITH SECTION 121 OF SARA. IN PARTICULAR, THIS ALTERNATIVE HAS BEEN DETERMINED TO PROVIDE ADEQUATE PROTECTION OF PUBLIC HEALTH AND WELFARE AND THE ENVIRONMENT, TO BE COST-EFFECTIVE AND TO BE APPROPRIATE WHEN BALANCED AGAINST THE AVAILABILITY OF TRUST FUND MONIES FOR USE AT OTHER SITES.

**#ENF**

#### **X. ENFORCEMENT**

AS NOTED IN THE PREVIOUS SECTION CONCERNING THE BACKGROUND CHRONOLOGY, THE NJDEP HAS ISSUED TWO ADMINISTRATIVE CONSENT ORDER FOR THE DIAMOND SHAMROCK SITE AND EPA ENTERED INTO A VOLUNTARY COST REIMBURSEMENT AGREEMENT WITH DIAMOND SHAMROCK.

EPA AND NJDEP PLAN TO NEGOTIATE WITH DIAMOND SHAMROCK FOR THE DESIGN AND IMPLEMENTATION OF THE SELECTED REMEDY. EPA INTENDS THAT ANY AGREEMENT FOR DIAMOND SHAMROCK TO DESIGN AND IMPLEMENT THE REMEDY WOULD BE IN THE FORM OF A CONSENT DECREE ENTERED INTO PURSUANT TO SECTION 122(D) OF CERCLA.

**#CR**

#### **XI. COMMUNITY RELATIONS**

THE DISCOVERY OF 2,3,7,8-TCDD IN THE IRONBOUND COMMUNITY IN 1983 CAUSED GRAVE CONCERNS BY THE RESIDENTS IN THE VICINITY OVER THE HABITABILITY OF THE AREA, AS WELL AS FEARS RELATED TO THE POTENTIAL LONG TERM HEALTH EFFECTS OF THE PRESENCE OF TCDD IN THE ENVIRONMENT.

TOTAL OR PARTIAL EXCAVATION AND REMOVAL OF CONTAMINANTS FROM THE SITE HAS BEEN ENCOURAGED BY THE PUBLIC, HOWEVER, IT IS NOTED THAT THERE IS CURRENTLY NO FACILITY IN THE UNITED STATES THAT CAN ACCEPT DIOXIN CONTAMINATED MATERIALS FROM THE SITE, NOR IS ONE ANTICIPATED IN THE NEAR FUTURE. LACKING THE ABILITY TO IMPLEMENT AN OFF-SITE REMOVAL IN THE NEAR FUTURE, IT IS BELIEVED THAT THE COMMUNITY WOULD ACCEPT, GRUDGINGLY, A CONTAINMENT ALTERNATIVE THAT WOULD MINIMIZE POTENTIAL HEALTH AND SAFETY CONCERNS UNTIL SUCH TIME THAT REMOVAL OR TREATMENT OF CONTAMINANT MATERIALS BECOMES REALISTICALLY ACHIEVABLE. IT THEREFORE APPEARS THAT THE SELECTED ALTERNATIVE WOULD SATISFY THOSE CONCERNS. SPECIFIC COMMENTS FROM COMMUNITY REPRESENTATIVES ARE ADDRESSED IN THE RESPONSIVENESS SUMMARY, WHICH IS INCLUDED AS AN ATTACHMENT TO THIS DOCUMENT.

### XIII. GLOSSARY OF TERMS AND ACRONYMS

ARARS	- APPLICABLE OR RELEVANT AND APPROPRIATE REQUIREMENTS OF FEDERAL AND STATE ENVIRONMENTAL LAWS
CERCLA	- THE COMPREHENSIVE ENVIRONMENTAL RESPONSE COMPENSATION AND LIABILITY ACT, AS AMENDED BY THE SUPERFUND AMENDMENTS AND REAUTHORIZATION ACT OF 1986
DDT	- DICHLORODIPHENYL TRICHLOROETHANE
DIOXIN	- 2,3,7,8-TETRACHLORODIBENZO-P-DIOXIN, ALSO REFERRED TO AS TCDD OR 2,3,7,8-TCDD
EPA	- THE U.S. ENVIRONMENTAL PROTECTION AGENCY
FEASIBILITY STUDY	- AS USED HEREIN, "THE FEASIBILITY STUDY" REFERS TO THE FEASIBILITY STUDY PERFORMED BY DIAMOND SHAMROCK CHEMICALS COMPANY FOR THE PROPERTIES AT 80 AND 120 LISTER AVENUE PURSUANT TO TWO ADMINISTRATIVE CONSENT ORDERS ISSUED BY NJDEP
NCP	- THE NATIONAL OIL AND HAZARDOUS SUBSTANCES POLLUTION CONTINGENCY PLAN (40 CFR PART 300)
NJDEP	- THE NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION
OFF-SITE	- AS USED HEREIN, "OFF-SITE" REFERS TO ALL OTHER AREAS THAN 80 AND 120 LISTER AVENUE, NEWARK, NJ
PIRAP	- PROPOSED INTERIM REMEDIAL ACTION PLAN
RCRA	- THE RESOURCE CONSERVATION AND RECOVERY ACT, AS AMENDED
REMEDIATION INVESTIGATION	- AS USED HEREIN, "THE REMEDIATION INVESTIGATION" REFERS TO THE SITE EVALUATIONS PERFORMED BY DIAMOND SHAMROCK CHEMICALS COMPANY FOR THE PROPERTIES AT 80 AND 120 LISTER AVENUE PURSUANT TO TWO ADMINISTRATIVE CONSENT ORDERS ISSUED BY NJDEP
ROD	- RECORD OF DECISION
SARA	- THE SUPERFUND AMENDMENTS AND REAUTHORIZATION ACT OF 1986
SITE	- THE DIAMOND SHAMROCK SUPERFUND SITE (ALSO KNOWN AS THE DIAMOND ALKALI SUPERFUND SITE) IN ITS BROADEST SENSE, IS THE FORMER PESTICIDES MANUFACTURING FACILITY AT 80 LISTER AVENUE AND THE SURROUNDING AREAS WHICH HAVE BEEN CONTAMINATED BY HAZARDOUS SUBSTANCES WHICH ORIGINATED AT 80 LISTER

AVENUE. HOWEVER, "THE SITE," AS USED IN  
THIS RECORD OF DECISION, REFERS ONLY TO THE  
PORTIONS OF THE DIAMOND SHAMROCK SUPERFUND  
SITE LOCATED AT 80 AND 120 LISTER AVENUE.

#TMA  
TABLES, MEMORANDA, ATTACHMENTS

#RS

APPENDIX A

RESPONSIVENESS SUMMARY

THIS RESPONSIVENESS SUMMARY IS DIVIDED INTO TWO PARTS. PART I IS THE RESPONSIVENESS SUMMARY FOR COMMENTS RECEIVED AT THE FEBRUARY 20, 1986 PUBLIC HEARING ON THE FEASIBILITY STUDY (FS) AND FOR WRITTEN COMMENTS ON THE FS. PART I WAS PREPARED BY THE NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION (NJDEP) WITH INPUT FROM THE U.S. ENVIRONMENTAL PROTECTION AGENCY (EPA).

PART II IS THE RESPONSIVENESS SUMMARY FOR COMMENTS RECEIVED AT THE AUGUST 11, 1987, PUBLIC MEETING ON THE PROPOSED INTERIM REMEDIAL ACTION PLAN (PIRAP) AND FOR WRITTEN COMMENTS ON THE PIRAP. PART II WAS PREPARED JOINTLY BY EPA AND NJDEP AND THE RESPONSES REPRESENT THE POSITIONS OF BOTH AGENCIES.

IN BOTH PARTS I AND II, SIMILAR COMMENTS FROM DIFFERENT PERSONS HAVE BEEN CONSOLIDATED TO REDUCE THE NEED FOR REPETITIOUS RESPONSES.

APPENDIX A - PART I

DIAMOND SHAMROCK SITE  
80 AND 120 LISTER AVENUE  
NEWARK, ESSEX COUNTY  
NEW JERSEY

RESPONSIVENESS SUMMARY  
FOR THE  
ON-SITE FEASIBILITY STUDY

FEBRUARY 1986

THIS COMMUNITY RELATIONS RESPONSIVENESS SUMMARY, PREPARED AS PART OF THE RECORD OF DECISION (ROD) IS DIVIDED INTO THE FOLLOWING SECTIONS:

I. BACKGROUND OF COMMUNITY INVOLVEMENT AND CONCERNS

THIS IS A BRIEF HISTORY OF COMMUNITY INTEREST IN THE DIAMOND SHAMROCK SITE AND A CHRONOLOGY OF COMMUNITY RELATIONS ACTIVITIES CONDUCTED BY THE NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION (NJDEP) AND THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY (USEPA) PRIOR TO AND DURING THE REMEDIAL INVESTIGATION/FEASIBILITY STUDY (RI/FS).

II. SUMMARY OF MAJOR QUESTIONS AND COMMENTS RECEIVED DURING THE PUBLIC COMMENT PERIOD AND NJDEP'S RESPONSES

THIS IS A SUMMARY OF MAJOR QUESTIONS AND COMMENTS DIRECTED TO NJDEP AND DIAMOND SHAMROCK DURING THE FEBRUARY 20, 1986 PUBLIC HEARING REGARDING THE RESULTS OF THE FEASIBILITY STUDY AND SENT TO NJDEP DURING THE PUBLIC COMMENT PERIOD. NJDEP'S RESPONSES ARE INCLUDED IN THIS SECTION.

III. REMAINING CONCERNS

VES000000228



DISCUSSION OF REMAINING COMMUNITY CONCERNS OF WHICH NJDEP, USEPA, AND DIAMOND SHAMROCK SHOULD BE AWARE IN CONDUCTING THE REMEDIAL DESIGN AND REMEDIAL ACTIONS AT THE DIAMOND SHAMROCK SITE.

ATTACHMENTS

- A. AGENDA AND FACT SHEET DISTRIBUTED AT THE 2/20/86 PUBLIC HEARING.
- B. LIST OF ATTENDEES AT THE 2/20/86 PUBLIC HEARING.
- C. A LIST OF SPEAKERS AT THE 2/20/86 PUBLIC HEARING.
- D. LETTERS SENT TO NJDEP DURING THE PUBLIC COMMENT PERIOD.

I. BACKGROUND OF COMMUNITY INVOLVEMENT AND CONCERNS

THE DISCOVERY OF DIOXIN CONTAMINATION AT THE DIAMOND SHAMROCK SITE STIMULATED ACTIVE COMMUNITY INVOLVEMENT, ESPECIALLY AMONG RESIDENTS OF THE IRONBOUND SECTION OF NEWARK. AN ORGANIZED CITIZEN GROUP, IRONBOUND RESIDENTS AGAINST TOXICS, IS APPRISED OF ALL SIGNIFICANT ACTIVITIES AND INCLUDED IN ALL INFORMAL BRIEFINGS FOR LOCAL OFFICIALS RELATED TO THE DIAMOND SHAMROCK SITE. THE INITIATION OF RESIDENTIAL SAMPLING AND SUBSEQUENT REMEDIAL ACTION CREATED INCREASED AWARENESS AND INVOLVEMENT ON BEHALF OF CITIZENS WITH RESPECT TO THE ACTIVITIES OF THE NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION (NJDEP) AND THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY (USEPA) AT DIAMOND SHAMROCK. ON SEVERAL OCCASIONS THE DEPARTMENT HAS CONSULTED WITH THIS GROUP REGARDING STRATEGIES FOR DISSEMINATING INFORMATION TO AND COMMUNICATING WITH RESIDENTS REGARDING THE SENSITIVE ISSUE CONCERNING SAMPLING AND REMEDIATION OF THEIR PROPERTIES. FOLLOWING IS A CHRONOLOGY OUTLINING COMMUNITY RELATIONS ACTIVITIES OVER THE PAST SEVERAL YEARS.

CHRONOLOGY OF COMMUNITY RELATIONS ACTIVITIES

DATE	EVENT
12/82	- NJDEP RELEASED FISHING ADVISORIES FOR REDUCED CONSUMPTION OF WHITE CATFISH IN THE PASSAIC RIVER. THE RIVER ABUTTING 80 LISTER AVE. WAS CLOSED FOR COMMERCIAL FISHING OF AMERICAN EELS AND STRIPED BASS.
6/2/83	- BRIEFING WITH NJDEP, USEPA, AND NEW JERSEY DEPARTMENT OF HEALTH (NJDOH) FOR NEWARK OFFICIALS. - PRESS CONFERENCE DURING WHICH TIME THE GOVERNOR OFFERED ALTERNATE HOUSING TO AFFECTED RESIDENTS. - COMMISSIONERS HUGHEY (NJDEP) AND GOLDSTEIN (NJDOH) MET WITH RESIDENTS IN NEWARK. FACT SHEETS WERE DISTRIBUTED.
6/8/83	- PUBLIC MEETING (SPONSORED BY MAYOR GIBSON) WITH NJDEP (TYLER, BERKOWITZ), USEPA, NJDOH AT ROOSEVELT HOUSING DEVELOPMENT.
6/10/83	- USEPA LETTER TO RESIDENTS RE: DIOXIN SAMPLING DURING WEEK OF 6/13/83.
6/20/83	- PUBLIC MEETING TO DISCUSS CURRENT FINDINGS WITH RESIDENTS (GOVERNOR KEAN).
6/83	- USEPA HELD SEVERAL INFORMAL BRIEFINGS WITH D. CHEROT (NEWARK DEPT. OF HEALTH AND WELFARE) & STAFF. - USEPA INITIATED NUMEROUS DOOR-TO-DOOR CONTACTS RE: ONGOING ACTIVITIES (L. JOHNSON & R. CAHILL).
6/3/84	- NJDEP AND USEPA OFFICIALS MET WITH RESIDENTS RE: START OF HABITABILITY SAMPLING. - NJDOH BROUGHT A MOBILE VAN TO THE IRONBOUND SECTION TO PROVIDE RESIDENTS WITH INFORMATION ABOUT DIOXIN.

- COMMAND POST WITH STATE WORKERS SET UP AT 17 RIVERVIEW COURT.
- 6/6/84 - STATE OFFICIALS ATTENDED A MEETING AT THE ROOSEVELT HOUSING PROJECT.
- NJDEP AND NJDOH WENT DOOR-TO-DOOR TO DISCUSS RESIDENTIAL SAMPLING RESULTS. THE GOVERNOR AND OTHER STATE OFFICIALS HELD A PRESS CONFERENCE IN NEWARK AND A MEETING AT A LOCAL TAVERN TO DISCUSS THESE RESULTS.
- 6/8/84 - PUBLIC MEETING ORGANIZED BY MAYOR GIBSON AT ROOSEVELT HOUSING PROJECT (NJDEP OFFICIALS IN ATTENDANCE).
- 6/13/84 - NJDEP COMMUNITY RELATIONS VISIT AND LETTER DISTRIBUTION TO RESIDENTS RE: STABILIZATION AND CONTAINMENT ACTION AT BRADY IRON & METALS, INC.
- 6/18/84 - PRESS CONFERENCE WITH DR. DEWLING (USEPA).
- PRESS EVENT RE: FEDERAL INVESTIGATION TEAM (FIT) DEMONSTRATION AT HAYES PARK EAST.
- 6/84 - NJDOH DISTRIBUTED FACT SHEETS, QUESTIONNAIRES AND ADDRESSED QUESTIONS RE: HEALTH CONCERNS IN IRONBOUND.
- 8/9-11/84 - NJDEP SPONSORED DIOXIN PUBLIC INFORMATION OPEN HOUSE.
- 1/10/85 - NJDEP LETTER TO RESIDENTS RE: OFF-SITE CLEANUP (ACO II) AND SAMPLING ACTIVITIES (BEGINNING 1/14/85).
- 2/18/85 - NJDEP INFORMAL BRIEFING FOR NEWARK OFFICIALS AND COMMUNITY REPRESENTATIVES RE: ACO'S I & II.
- 3/12/85 - NJDEP MEETING IN NEWARK TO DISCUSS TRAFFIC LOGISTICS WITH POLICE DEPARTMENT, FIRE DEPARTMENT, AND EMERGENCY RESPONSE COORDINATOR.
- 3/14/85 - USEPA DISTRIBUTION OF LETTERS AND CONSENT FORMS TO 17 RESIDENTS RE: RESIDENTIAL SAMPLING ON 3/19/85.
- 4/2/85 - NJDEP LETTER (ENGLISH AND SPANISH) TO RESIDENTS RE: PARKWAY MEDIAN REMEDIATION SCHEDULE ON 3/19/85.
- 6/19/85 - NJDEP INFORMAL BRIEFING WITH NEWARK OFFICIALS AND COMMUNITY REPRESENTATIVES RE: STATUS OF THE DIOXIN CLEANUP.
- 8/9/85 - NJDEP HAND DELIVERED LETTERS TO RESIDENTS AND EXPLAINED SAMPLING RESULTS FROM THEIR PROPERTY.
- 9/9/85 - NJDEP HAND DELIVERED LETTERS TO RESIDENTS REQUESTING THEIR COOPERATION FOR USEPA'S RESIDENTIAL SAMPLING DURING SEPTEMBER 1985.
- 1/8/86 - NJDEP DISTRIBUTION OF LETTERS (ENGLISH AND SPANISH) TO RESIDENTS REGARDING JANUARY 11-16, 1986 STREET CLEANING ACTIVITIES.
- 2/20/86 - NJDEP PUBLIC HEARING (IN NEWARK) TO PRESENT RESULTS OF FEASIBILITY STUDY AND RECEIVE COMMENTS.

II. SUMMARY OF MAJOR QUESTIONS/AND COMMENTS RECEIVED DURING THE PUBLIC COMMENT PERIOD AND NJDEP'S RESPONSES

IN DECEMBER 1985, THE FEASIBILITY STUDY WAS PLACED IN THE FOLLOWING REPOSITORIES FOR REVIEW: NEWARK PUBLIC LIBRARY, 5 WASHINGTON STREET; NEWARK PUBLIC LIBRARY, 140 VAN BUREN STREET; NEWARK CITY CLERK'S OFFICE, 920 BROAD STREET; AND NJDEP, 432 E. STATE STREET, TRENTON. NJDEP ISSUED PRESS RELEASES AND CONTACTED LOCAL OFFICIALS, AS WELL AS COMMUNITY REPRESENTATIVES REGARDING THE AVAILABILITY OF THE FEASIBILITY STUDY AT THESE REPOSITORIES.

ON FEBRUARY 20, 1986 NJDEP HELD A PUBLIC HEARING TO PRESENT THE RESULTS OF, AND RECEIVE COMMENTS/QUESTIONS REGARDING, THE FEASIBILITY STUDY. (SEE ATTACHMENT A: AGENDA AND FACT SHEET DISTRIBUTED AT THE HEARING). THE HEARING WAS HELD AT ST. ALOYSIUS THEATER, 89 FLEMING AVENUE IN NEWARK. IN ORDER TO SELECT THE MOST APPROPRIATE AND ACCESSIBLE MEETING LOCATION, ST. ALOYSIUS THEATER WAS CHOSEN IN CONSULTATION WITH MR. ARNOLD COHEN (IRONBOUND RESIDENTS AGAINST TOXICS - IRAT), MR. MICHAEL GORDON (ATTORNEY FOR IRAT), AS WELL AS LOCAL OFFICIALS (E. HILL, D. CHEROT, H. MARTINEZ). NOTIFICATION OF THE PUBLIC HEARING WAS ACCOMPLISHED THROUGH PRESS RELEASES AND DIRECT MAILING OF NOTICES TO LOCAL, STATE AND FEDERAL OFFICIALS, AS WELL AS CONCERNED CITIZENS. APPROXIMATELY 150 PEOPLE ATTENDED ALTHOUGH ONLY APPROXIMATELY 80 PEOPLE SIGNED THE ATTENDANCE SHEET (SEE ATTACHMENT B), AND 11 PEOPLE COMMENTED DURING THE HEARING (SEE ATTACHMENT C). RESPONSES TO QUESTIONS AND COMMENTS, FOR THE MOST PART, WERE NOT STATED AT THE HEARING. THE PUBLIC COMMENT PERIOD WAS HELD FROM FEBRUARY 20, 1986 THROUGH MARCH 21, 1986. IN ADDITION TO THE COMMENTS MADE DURING THE PUBLIC HEARING FIVE LETTERS WERE RECEIVED BY THE DEPARTMENT DURING THIS PERIOD. (SEE ATTACHMENT D).

DURING THE PUBLIC HEARING MR. HUTTON, DIRECTOR OF ENVIRONMENTAL AFFAIRS FOR DIAMOND SHAMROCK, GAVE A PRESENTATION OF SIX REMEDIAL ACTION ALTERNATIVES THAT WERE CONSIDERED IN THE FEASIBILITY STUDY. THESE ARE:

1. NO ACTION;
2. IN-SITU SLURRY WALL WITH CAP;
3. GROUND WATER PUMPING AND TREATMENT, WITH IN-SITU SLURRY WALL AND CAP;
4. EXCAVATION WITH THERMAL TREATMENT OF MATERIALS WITH OVER 7 PARTS PER BILLION (PPB) DIOXIN COUPLED WITH IN-SITU SLURRY WALL AND CAP;
5. EXCAVATION AND CONSTRUCTION OF AN ON-SITE LANDFILL FOR THE MATERIALS WITH OVER 7 PPB DIOXIN COUPLED WITH A SLURRY WALL AND CAP; AND
6. EXCAVATION, LOADING, AND TRANSPORTATION OF CONTAMINATED ON-SITE MATERIALS AND OFF-SITE COMMERCIAL DISPOSAL, A SLURRY WALL BUILT FOR STABILITY AND GROUND WATER CONTROL DURING EXCAVATION, AND MITIGATION OF MIGRATION OF REMAINING DIOXIN BELOW THE 7 PPB LEVEL AFTER REMEDIATION.

MR. HUTTON THEN DISCUSSED DIAMOND SHAMROCK'S PROPOSED REMEDIAL ALTERNATIVE WHICH INCLUDES A GROUND WATER PUMPING AND TREATMENT SYSTEM, IN-SITU SLURRY WALL, AND CAPPING.

FOLLOWING IS A SUMMARY, ORGANIZED BY SUBJECT, OF ALL MAJOR QUESTIONS/COMMENTS RECEIVED BY NJDEP AT THE PUBLIC HEARING AND DURING THE COMMENT PERIOD. MAJOR SUBJECTS INCLUDE:

- \* PERMANENT REMOVAL;
- \* EFFORTS TO SECURE AN OFF-SITE DISPOSAL FACILITY;
- \* DEVELOPMENT OF A LICENSED DIOXIN DISPOSAL FACILITY;

- \* ADEQUACY OF PROPOSED SITE CLEANUP;
- \* CONSIDERATION OF TECHNOLOGIES FOR SAFE EXCAVATION;
- \* APPLICABILITY OF STATE LAWS FOR HAZARDOUS SITE REMEDIATION;
- \* LONG-TERM SITE MAINTENANCE;
- \* CONTAINMENT OPTION;
- \* PROPOSED ALTERNATIVE VIS A VIS THE PASSAIC RIVER; AND
- \* OTHER ISSUES.

PERMANENT REMOVAL

THE OVERRIDING AND RECURRING THEME EXPRESSED BY THE SPEAKERS AT THE HEARING WAS THAT THE ONLY ACCEPTABLE REMEDIAL ALTERNATIVES WOULD ENTAIL THE TOTAL REMOVAL OF HAZARDOUS WASTE FROM THE DIAMOND SHAMROCK SITE AT 80 AND 120 LISTER AVENUE. COMMUNITY REPRESENTATIVES APPEALED TO NJDEP TO PROTECT THE INTERESTS OF THE IRONBOUND RESIDENTS AND BUSINESSES WHO HAVE ALREADY EXPERIENCED THE HARDSHIPS AND STIGMA ASSOCIATED WITH DIOXIN CONTAMINATION IN THEIR NEIGHBORHOOD. THE ALTERNATIVE PROPOSED BY DIAMOND SHAMROCK IS PERCEIVED BY SOME RESIDENTS AND OTHERS AS A CONTINUATION OF THE PROBLEM, RATHER THAN A REMEDY.

1) + A DISPOSAL SITE CANNOT BE IN ESSEX COUNTY. TOTAL REMOVAL IS THE ONLY ACCEPTABLE OPTION.

+ ALL COMMENTS AND QUESTIONS ARE NUMBERED FOR THE PURPOSE OF CROSS REFERENCING THE TEXT.

RESPONSE: IF IMPLEMENTED AT THE PRESENT TIME, THE TOTAL REMOVAL OPTION WOULD RESULT IN GREATER RISK TO COMMUNITY RESIDENTS THAN WOULD THE PROPOSED REMEDIAL ACTION PLAN. THE DISADVANTAGES OF THE TOTAL REMOVAL ALTERNATIVE, ARE DISCUSSED BELOW:

THE OPTION OF OFF-SITE LAND DISPOSAL WITHOUT TREATMENT IS NOT A VIABLE ONE. THERE ARE CURRENTLY NO LAND DISPOSAL FACILITIES PERMITTED FOR DISPOSAL OF DIOXIN WASTES, AND EFFECTIVE ON NOVEMBER 8, 1988, REGULATIONS PROMULGATED UNDER THE FEDERAL RESOURCE CONSERVATION AND RECOVERY ACT (RCRA) WILL BAN THE LAND DISPOSAL AND LONG-TERM STORAGE OF DIOXIN WASTES UNLESS THE WASTES MEET TREATMENT STANDARDS, WHICH ARE ACHIEVABLE BY INCINERATION. A WAIVER FROM THE LAND DISPOSAL BAN IS AVAILABLE UNDER THE COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY ACT (CERCLA) (SUPERFUND LAW) AUTHORITY FOR LAND DISPOSAL AT THE DIAMOND SHAMROCK SITE BECAUSE THE ALTERNATIVES WHICH COMPLY WITH THE BAN ARE LESS PROTECTIVE THAN THE PROPOSED PLAN. HOWEVER, CERCLA DOES NOT GIVE AUTHORITY FOR SUCH A WAIVER FOR OFF-SITE DISPOSAL OR STORAGE.

SINCE THERE ARE NO EXISTING OFF-SITE COMMERCIAL HAZARDOUS WASTE THERMAL TREATMENT UNITS OF ADEQUATE CAPACITY FOR THE CLEANUP OF THE DIAMOND SHAMROCK SITE WHICH ARE PERMITTED TO TREAT DIOXIN OR HAVE PENDING APPLICATIONS TO TREAT DIOXIN, AN OFF-SITE THERMAL TREATMENT UNIT WOULD HAVE TO BE DESIGNED, CONSTRUCTED AND TESTED. IN ADDITION, THE UNIT WOULD HAVE TO BE SITED, ANOTHER STEP IN THE TIME CONSUMING PROCESS OF IMPLEMENTING THIS REMEDY. SITING TREATMENT AND DISPOSAL LOCATIONS FOR WASTES FROM CERCLA CLEANUPS HAS DELAYED CLEANUPS IN THE PAST AND WOULD BE EXPECTED TO BE ESPECIALLY DIFFICULT FOR AN INCINERATOR CAPABLE OF DESTROYING DIOXINS. IT WOULD TAKE AT LEAST SIX YEARS AND POSSIBLY MUCH LONGER TO IMPLEMENT A REMEDY WHICH RELIES ON OFF-SITE TREATMENT.

IN ADDITION, THE EXCAVATION NECESSARY FOR TOTAL REMOVAL PRESENTS SIGNIFICANT RISKS. THE HAZARDOUS SUBSTANCES TO BE EXCAVATED ARE FAR MORE CONCENTRATED THAN THOSE SUBSTANCES WHICH WERE EXCAVATED AT OFF-SITE PROPERTIES. OF PARTICULAR CONCERN WOULD BE THE RISK RESULTING FROM AIRBORNE RELEASES OF HAZARDOUS SUBSTANCES. WHILE IT HAS BEEN SUGGESTED THAT EXCAVATION COULD TAKE PLACE UNDER A DOME WITH THE AIRBORNE HAZARDOUS SUBSTANCES VENTED THROUGH CARBON FILTERS, THIS TECHNOLOGY HAS YET TO BE DEMONSTRATED IN AN APPLICATION SIMILAR TO ITS POSSIBLE USE AT THIS SITE.

BY CONTRAST, THE PROPOSED REMEDIAL ACTION PLAN CAN BE IMPLEMENTED IN APPROXIMATELY TWO YEARS WITH MINIMAL RISK DURING IMPLEMENTATION. THE PROPOSED PLAN WILL PROVIDE ADEQUATE PROTECTION OF HEALTH AND THE ENVIRONMENT MUCH SOONER THAN ALTERNATIVES INVOLVING TOTAL REMOVAL AND IT CAN BE SUPPLEMENTED BY ADDITIONAL REMEDIAL ACTIONS IN THE FUTURE, IF FEASIBLE.

2) + WE UNDERSTAND THAT THE CLEANUP PLAN PROPOSES TO PLACE DIOXIN-LADEN SOILS IN A LANDFILL ON THEIR PROPERTY IN THIS AREA. ...ALL LANDFILLS WILL EVENTUALLY FAIL. ...HAVE OTHER TREATMENT TECHNOLOGIES BEEN CONSIDERED HERE? ...THE ONLY ADVANTAGE SEEMS TO BE A CHEAP AND CONVENIENT WAY FOR DIAMOND SHAMROCK TO DISPOSE OF THESE WASTES. THIS IS NOT IN THE BEST INTERESTS OF THE COMMUNITY. DEP'S FIRST PRIORITY SHOULD BE TO PROVIDE MAXIMUM PROTECTION OF PUBLIC HEALTH AND THE ENVIRONMENT AND NOT TO MAKE LIFE "EASY" FOR INDUSTRY. WE HOPE NJDEP WILL NOT APPROVE THIS PROPOSED PLAN BUT RATHER CONSIDER CLEANUP OPTIONS THAT WILL REMOVE PERMANENTLY, DESTROY OR DETOXYIFY THE DIOXIN-LADEN SOILS.

+ PARAPHRASED COMMENT, RECEIVED FROM STEPHEN LESTER AND LOIS GIBBS. REFER TO ATTACHMENT D FOR LETTER.

RESPONSE: DIAMOND SHAMROCK AND THEIR CONTRACTOR, IT CORPORATION, HAVE CONSIDERED THE FULL RANGE OF POTENTIALLY VIABLE ALTERNATIVES IN THE FEASIBILITY STUDY SUBMITTED TO NJDEP AND USEPA IN OCTOBER OF 1985. THIS DOCUMENT SUMMARIZED THE FINDINGS OF AN EXTENSIVE REMEDIAL INVESTIGATION CONDUCTED IN 1984 AND 1985. BOTH OF THESE DOCUMENTS WERE PLACED IN PUBLIC REPOSITORIES FOR REVIEW IN DECEMBER 1985.

THE FINDINGS OF THE FEASIBILITY STUDY INDICATE THAT TREATMENT TECHNOLOGIES FOR LARGE QUANTITIES OF DIOXIN-CONTAMINATED MATERIALS ARE NOT SUFFICIENTLY DEVELOPED TO WARRANT RECOMMENDATION AT THIS TIME. ADDITIONALLY, THERE ARE CURRENTLY NO APPROVED DISPOSAL FACILITIES AVAILABLE TO ACCEPT THESE WASTES. CONSEQUENTLY, NJDEP IS RECOMMENDING SECURING CONTAMINATED MATERIALS ON SITE. IT IS THE POSITION OF NJDEP THAT THIS ON-SITE CONTAINMENT IS AN INTERIM SOLUTION, AND IS RECOMMENDED IN ORDER TO STOP THE MIGRATION OF HAZARDOUS MATERIALS. PROVISIONS WILL BE MADE TO PERIODICALLY REVIEW THE STATUS OF AVAILABLE TECHNOLOGIES IN ORDER TO CONDUCT ENVIRONMENTALLY SAFE DESTRUCTION OF ON-SITE MATERIALS IN THE FUTURE.

THE NJDEP BELIEVES THAT THE PROPOSED REMEDY IS MORE PROTECTIVE OF HEALTH AND ENVIRONMENT THAN TOTAL REMOVAL AT THIS TIME. WITH REGARD TO ANY ENGINEERED SOLUTION, OPERATIONAL DIFFICULTIES MAY DEVELOP AT ANY TIME. ACCORDINGLY, SUFFICIENT PROVISIONS FOR PROPER OPERATION AND MAINTENANCE OF THE REMEDY MUST BE INCLUDED. IN ACCORDANCE WITH SECTION 121 (C) OF CERCLA, ADDITIONAL REMEDIAL ACTIONS WOULD BE TAKEN SHOULD THE REMEDY PROVE TO BE INEFFECTIVE; HOWEVER, NJDEP REGARDS THIS AS A REMOTE POSSIBILITY.

MORE SPECIFICALLY, THE PROPOSED REMEDY WOULD REQUIRE OPERATION AND MAINTENANCE OF A GROUND WATER PUMPING AND TREATMENT SYSTEM FOR THE FORESEEABLE FUTURE. THE PUMPING WOULD REVERSE THE PRESENT DIRECTION OF GROUND WATER FLOW AND WOULD RESULT IN A NET INFLUX OF GROUNDWATER INTO THE CONTAINED VOLUME. IN ADDITION, THE CAP WOULD BE INSPECTED FOR EROSION OR CRACKING AND REPAIRS WOULD BE MADE AS NEEDED. SHOULD A SIGNIFICANT INCREASE IN GROUNDWATER INFILTRATION OCCUR, IT WOULD IMMEDIATELY BE DETECTED, AND REPAIRS COULD BE MADE AT THAT TIME.

THERMAL TREATMENT, WHICH IS CURRENTLY THE MOST DEVELOPED AND EFFECTIVE OF TREATMENT ALTERNATIVES, WAS FOUND LESS PROTECTIVE THAN THE PROPOSED CONTAINMENT PLAN IF IMPLEMENTED AT THE PRESENT TIME (SEE THE RESPONSE TO COMMENT #1).

3) + I FUNDAMENTALLY AGREE WITH THE SIXTH REMEDIAL ALTERNATIVE CONSIDERED (I.E., EXCAVATION, LOADING AND TRANSPORTATION OF CONTAMINATED ON-SITE MATERIALS FOR OFF-SITE COMMERCIAL DISPOSAL). SINCE THE DECISIONS MADE HERE WILL BE AN ACCOMMODATION OF EXISTING LAW FOR ANY OF THE ALTERNATIVES, ...PERHAPS AN ARRANGEMENT BETWEEN NJDEP AND USEPA TO HAVE ALREADY ESTABLISHED "DIOXIN-QUALIFIED" OUT-OF-STATE LANDFILLS ACCEPT OUR DIOXIN WASTE... UNTIL NEW JERSEY HAS ITS OWN FACILITY. ADDITIONALLY, WE BOTH KNOW THERE ARE WAYS AND MEANS TO EXCAVATE SAFELY WITHOUT FURTHER CONTAMINATING AIR, WATER, AND LAND, HOWEVER COSTLY TO DIAMOND SHAMROCK. ++

+ PARAPHRASED COMMENT RECEIVED FROM MARIA DEL TUFO, R.T. REFER TO ATTACHMENT D FOR LETTER.

++ THIS ISSUE IS ADDRESSED LATER IN THIS RESPONSIVENESS SUMMARY.

RESPONSE: THERE ARE NO COMMERCIAL FACILITIES, EITHER CURRENTLY OR IN THE NEAR FUTURE, AVAILABLE FOR THE

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TREATMENT OR DISPOSAL OF DIOXIN-CONTAMINATED WASTES. WE THEREFORE BELIEVE THAT THE ONLY VIABLE ALTERNATIVE AVAILABLE IS TO SECURE AND CONTAIN ALL CONTAMINATED MATERIALS ON SITE UNTIL AN APPROPRIATE TECHNOLOGY BECOMES AVAILABLE. THERE ARE QUESTIONS TO BE ANSWERED REGARDING SAFE METHODS OF EXCAVATION, IDENTIFY AREAS MOST LIKELY TO BE IMPACTED, AND THE MEANS FOR ADDRESSING THOSE POTENTIAL IMPACTS. THE NJDEP IS COMMITTED TO A COMPREHENSIVE STUDY OF EXCAVATION RISKS AND A MEANS FOR CONTROLLING THOSE RISKS BY REQUIRING A FEASIBILITY STUDY TO BE PERFORMED EVERY TWO YEARS.

#### EFFORTS TO SECURE AN OFF-SITE DISPOSAL FACILITY

4) + DIAMOND SHAMROCK HAS FAILED TO COMPLY WITH 7:26-1.4 BY NOT EXPLORING ALL ALTERNATIVES AND FAILING TO LIST DETAILED REASONS WHY OFF-SITE DISPOSAL IS NOT AVAILABLE.

+ ONE OF SEVERAL COMMENTS RECEIVED FROM MICHAEL GORDON, ESQ. REFER TO ATTACHMENT D FOR LETTER.

RESPONSE: DIAMOND SHAMROCK HAS, IN FACT, EXPLORED THE POSSIBILITY OF OFF-SITE DISPOSAL AS EVIDENCED BY THE DEVELOPMENT OF ALTERNATIVE NO. 6 WHICH EXPLORED THE POSSIBILITY OF OFF-SITE DISPOSAL AT A HYPOTHETICALLY APPROVED LANDFILL AND INCINERATION FACILITY. THIS ALTERNATIVE HAS BEEN REJECTED DUE TO THE REALITY THAT THERE ARE NO CURRENTLY APPROVED DISPOSAL FACILITIES AVAILABLE IN THE UNITED STATES AS NOTED IN THE RESPONSE TO COMMENT #1. ALTHOUGH TREATMENT OR DISPOSAL SITES MAY BECOME AVAILABLE IN THE FUTURE, WE CANNOT PREDICT WHEN OR IF THIS WILL OCCUR. NJDEP RECOGNIZES THE NEED TO RESPOND TO THE SITUATION AS IT IS CURRENTLY PRESENTED. IN ADDITION, IT IS THE POSITION OF NJDEP THAT ALL POTENTIALLY VIABLE ALTERNATIVES HAVE BEEN INVESTIGATED AND EVALUATED BY DIAMOND SHAMROCK.

5) DIAMOND SHAMROCK HAS FAILED TO FULFILL ITS OBLIGATION TO PROVIDE COMMUNICATION REGARDING THE AVAILABILITY OF OFF-SITE OPTIONS FOR DISPOSAL. THE FEASIBILITY STUDY DOES NOT CONTAIN DOCUMENTATION OF COMMUNICATION WITH HAZARDOUS WASTE DISPOSAL FACILITIES. THIS PREVENTS A MEANINGFUL EVALUATION OF AVAILABLE ALTERNATIVES. REMEMBER NJDEP ESPECIALLY REQUESTED THAT THIS INFORMATION BE CONTAINED IN THE STUDY BACK IN AUGUST 1985.

RESPONSE: ALTHOUGH DIAMOND SHAMROCK DID NOT PRESENT COMMUNICATIONS REGARDING OFF-SITE DISPOSAL OPTIONS WITHIN THE FEASIBILITY STUDY, A RESPONSE HAS BEEN RECEIVED BY NJDEP SUBSEQUENT TO THE COMPLETION OF THE FEASIBILITY STUDY. ALTHOUGH IT IS KNOWN THAT THERE ARE NO APPROVED DISPOSAL FACILITIES WHICH CAN ACCEPT THE TCDD-CONTAMINATED RESIDUES FROM THE DIAMOND SHAMROCK SITE, DIAMOND SHAMROCK'S CONTRACTOR, IT CORPORATION, MADE INQUIRIES AT TWELVE FACILITIES THAT ACCEPT WASTES CONTAINING PCB-CONTAMINATED RESIDUES. THESE DISPOSAL FACILITIES WERE SELECTED SINCE PCB DISPOSAL FACILITIES WOULD BE MOST LIKELY TO ACCEPT TCDD WASTES. ALL INDICATED THAT WASTES CONTAINING TCDD RESIDUES WOULD NOT BE ACCEPTED. USEPA HAS CONFIRMED THE FACT THAT THERE ARE NO COMMERCIAL TREATMENT OR DISPOSAL FACILITIES THAT ARE PERMITTED IN THE UNITED STATES. THIS INFORMATION WAS REVIEWED BY NJDEP AND FORWARDED TO MICHAEL GORDON, ESQ. CONTAMINATED SOILS AT CONCENTRATIONS UP TO 80 PPB. FACILITIES SUCH AS THIS OFFER PROMISE FOR FUTURE TREATMENT OPTIONS.

6) DIAMOND SHAMROCK HAS NOT EVALUATED THE DISPOSAL OF DIOXIN-CONTAMINATED SOIL AT LICENSED INTERNATIONAL DISPOSAL SITES.

RESPONSE: NJDEP REQUESTED THE EVALUATION OF THIS ALTERNATIVE IN OUR RESPONSE TO THE DRAFT FEASIBILITY STUDY. DIAMOND SHAMROCK'S RESPONSE INDICATES THAT ALTHOUGH DIOXIN-CONTAMINATED SOIL MAY BE DISPOSED OF AT ONE EUROPEAN FACILITY, THE POLITICAL AND INSTITUTIONAL CONSTRAINTS ARE SUCH THAT A TIMELY RESOLUTION WOULD BE UNREALISTIC SINCE THIS FACILITY HAS BEEN ESTABLISHED FOR LOCAL DISPOSAL PURPOSES. WHILE NJDEP RECOGNIZES THE BENEFITS THAT WOULD BE REALIZED BY SUCH OVERSEAS DISPOSAL, WE QUESTION SEVERAL FACTORS INCLUDING: DIAMOND SHAMROCK'S ABILITY TO PARTICIPATE IN SUCH A PLAN; THE TIME THAT WOULD UNDOUBTEDLY BE REQUIRED FOR IMPLEMENTATION; THE APPROPRIATENESS OF SUCH AN EXTREME REMEDY IN TERMS OF DISPOSING OF MORE THAN 70,000 CUBIC YARDS OF CONTAMINATED MATERIALS; AND COMPLIANCE WITH ALL REGULATIONS IMPOSED BY THE RECEIVING COUNTRY.

7) + THE CITY OF NEWARK RECEIVED CORRESPONDENCE FROM WEST GERMANY'S DEPARTMENT OF ENVIRONMENTAL PROTECTION INDICATING THAT THERE IS A REGISTERED LANDFILL FOR DIOXIN-CONTAMINATED WASTE IN KASSEL, WEST GERMANY. DIRECTOR ALVIN ZACH, NEWARK DEPARTMENT OF ENGINEERING, URGED NJDEP TO REQUIRE DIAMOND SHAMROCK TO ASSESS THIS FACILITY, AS WELL AS OTHER APPROPRIATE INTERNATIONAL DISPOSAL FACILITIES.

RESPONSE: AT THE REQUEST OF NJDEP, DIAMOND SHAMROCK HAS INVESTIGATED THE POSSIBILITY OF SUCH DISPOSAL OF DIOXIN-CONTAMINATED MATERIALS. AS INDICATED BY THE TONE OF THE RESPONSE, THE FACILITY REFERRED TO IN WEST GERMANY DOES NOT SEEK THE DISPOSAL OF FOREIGN TCDD-WASTE MATERIALS, CITING POLITICAL CONSTRAINTS AND LOCAL USAGE PREFERENCE. IN ADDITION, FOR REASONS DETAILED IN THE PREVIOUS RESPONSE, WE QUESTION THE VIABILITY AND PRACTICALITY OF SUCH A DISPOSAL OPTION.

+ COMMENT RECEIVED FROM DIRECTOR ALVIN ZACH. REFER TO ATTACHMENT D FOR LETTER.

8) ++ REQUEST VIA CORRESPONDENCE FROM MAYOR GIBSON THAT NJDEP REQUIRE DIAMOND SHAMROCK TO EXPLORE THE USE OF USEPA'S FIRST REGISTERED DISPOSAL SITE FOR DIOXIN IN THE UNITED STATES. THE J.M. HUBER CORPORATION IN TEXAS WAS RECENTLY PERMITTED TO ACCEPT DIOXIN WASTES. PRESUMING THAT SUCH A DISPOSAL FACILITY IS AVAILABLE, STORAGE OF DIOXIN SHOULD NOT BE PERMITTED IN NEWARK.

++ COMMENT RECEIVED FROM MAYOR GIBSON. REFER TO ATTACHMENT D FOR LETTER.

RESPONSE: INVESTIGATION BY NJDEP TECHNICAL STAFF HAS DETERMINED THAT THE TEXAS FACILITY REFERRED TO, AT PRESENT, DOES NOT HAVE THE NECESSARY USEPA PERMIT TO TREAT DIOXIN. HOWEVER, THIS FACILITY MAY ACCEPT DIOXIN WASTES FOR RESEARCH AND FUTURE ENGINEERING DESIGN PURPOSES. THE INAPPROPRIATENESS OF THIS FACILITY IS INDICATED BY THE FACT THAT IT WILL PROCESS A MAXIMUM OF ONLY 0.5 POUND/HOUR, AND THAT IT IS EFFECTIVE ON CONTAMINATED SOILS AT CONCENTRATIONS UP TO 80 PPB. FACILITIES SUCH AS THIS OFFER PROMISE FOR FUTURE TREATMENT OPTIONS.

9) HAVE YOU TRIED TO LOCATE ANY OFF-SITE FACILITIES WHERE THIS MATERIAL COULD BE TEMPORARILY STORED?

RESPONSE: THERE ARE CURRENTLY NO FACILITIES AVAILABLE IN THE UNITED STATES THAT ACCEPT TCDD-CONTAMINATED WASTES FOR EITHER STORAGE OR DISPOSAL PURPOSES. SECTION 3004(E) OF THE RESOURCES CONSERVATION AND RECOVERY ACT (RCRA) PROHIBITS LAND DISPOSAL OF TCDD MATERIALS, EFFECTIVE NOVEMBER 8, 1988. FURTHER, SECTION 3004 (J) OF RCRA RESTRICTS STORAGE OF WASTES PROHIBITED FROM LAND DISPOSAL UNDER MOST CIRCUMSTANCES (SEE PAGES 40641 - 40643 OF THE NOVEMBER 7, 1986 FEDERAL REGISTER FOR THE SPECIFIC REGULATIONS). EVEN IF STORAGE OF THESE WASTES WERE POSSIBLE, SUCH A FACILITY DOES NOT EXIST, AS INDICATED PREVIOUSLY.

#### DEVELOPMENT OF A LICENSED DIOXIN DISPOSAL FACILITY

10) DIAMOND SHAMROCK HAS NOT EVALUATED THE SITING, PERMITTING, CONSTRUCTION, OPERATION, AND MAINTENANCE OF A NEW DIOXIN DISPOSAL FACILITY WITHIN NEW JERSEY OR ANYWHERE ELSE IN THE WORLD.

RESPONSE: REALISTICALLY, NJDEP RECOGNIZES THE DIFFICULTIES OF SITING AND PERMITTING A NEW HAZARDOUS WASTE DISPOSAL FACILITY FOR TCDD. WE ALSO RECOGNIZE THE DESIRABILITY OF ULTIMATELY TREATING OR REMOVING THE CONTAMINATION FROM THIS SITE. THIS IS WHY THE RECORD OF DECISION (ROD) WILL CONTAIN PROVISIONS FOR PERIODICALLY EVALUATING THE FEASIBILITY OF DOING SO. IN ADDITION, AS DESCRIBED PREVIOUSLY IN THE RESPONSE TO COMMENT #1, THIS OPTION WAS EVALUATED AND FOUND TO BE LESS PROTECTIVE THAN THE PROPOSED PLAN.

11) ENTOMBMENT ONLY PROLONGS THE PROCESS; IT DOES NOT SOLVE THE CLEANUP PROBLEM. DIAMOND SHAMROCK SHOULD BE REQUIRED TO DEVELOP A LICENSED FACILITY FOR THE DISPOSAL OF DIOXIN-CONTAMINATED SOIL.

RESPONSE: IT IS THE RESPONSIBILITY OF NJDEP TO PROTECT HUMAN HEALTH AND THE ENVIRONMENT. IT IS OUR POSITION THAT THE PROPOSED PLAN PROVIDES THE GREATEST PROTECTION OF ALL THE ALTERNATIVES. IN ADDITION, THE CONTAINMENT ALTERNATIVE IS CONSIDERED AN INTERIM MEASURE UNTIL SUCH TIME AS THE FEASIBILITY OF OTHER TREATMENT OR DISPOSAL METHODS IS PROVEN.

12) THE RECOMMENDED ALTERNATIVE DOES NOT EVALUATE THE COST AND LEGAL CONSTRAINTS OF SEEKING TO BECOME A LICENSED, PERMITTED, SOLID WASTE OR HAZARDOUS WASTE DISPOSAL FACILITY WITHIN NEW JERSEY. THIS IS WHAT IS BEING RECOMMENDED BY DIAMOND SHAMROCK.

RESPONSE: SECTION 121(E) OF CERCLA ELIMINATES THE NEED FOR ANY FEDERAL, STATE AND LOCAL PERMITS FOR CERCLA REMEDIAL ACTIONS. IN ADDITION, SECTION 121(D)(4) OF CERCLA ALLOWS FOR WAIVERS OF THE APPLICABLE OR RELEVANT AND APPROPRIATE REQUIREMENTS OF FEDERAL AND STATE ENVIRONMENTAL LAWS UNDER CERTAIN CIRCUMSTANCES. THE ROD

WILL INCLUDE THE JUSTIFICATION OF SUCH WAIVERS. FINALLY, THIS SITE IS NOT CONSIDERED TO BE A DISPOSAL FACILITY IN THE SENSE THAT WASTE MATERIALS FROM LOCATIONS OTHER THAN THOSE ORIGINATING AT THE SITE WILL NOT BE ACCEPTED.

#### ADEQUACY OF PROPOSED SITE CLEANUP

13) DIAMOND SHAMROCK HAS FAILED TO EVALUATE THE IMPACTS OF JUDGE STANTON'S ORDER AND OPINION. THESE REQUIRE THE SITE REMEDIATION TO ACHIEVE THE HIGHEST LEVEL OF CLEANUP THAT THE BOUNDARIES OF OUR KNOWN TECHNOLOGY WILL ALLOW.

RESPONSE: JUDGE STANTON'S ORDER REQUIRES THE CLEANUP "TO THE GREATEST EXTENT FEASIBLE WITHIN THE BOUNDS OF KNOWN TECHNOLOGY.". SIMILARLY, SECTION 121(B) OF CERCLA REQUIRES THE SELECTION OF A REMEDY THAT USES PERMANENT SOLUTIONS AND ALTERNATIVE TREATMENT TECHNOLOGIES OR RESOURCE RECOVERY TECHNOLOGIES TO THE MAXIMUM EXTENT PRACTICABLE. IT IS THE POSITION OF NJDEP THAT NEITHER JUDGE STANTON'S ORDER NOR SECTION 121(B) OF CERCLA WERE INTENDED TO MAXIMIZE THE USE OF TECHNOLOGY AS AN END IN ITSELF, BUT AS A MEANS FOR ENSURING THE PROTECTION OF HEALTH AND THE ENVIRONMENT. SINCE THE ALTERNATIVES WHICH HAVE A GREATER RELIANCE ON TECHNOLOGY ARE LESS PROTECTIVE THAN THE PROPOSED REMEDIAL ACTION PLAN AT THE PRESENT TIME, THE PROPOSED PLAN DOES UTILIZE KNOWN TECHNOLOGIES TO THE EXTENT PRACTICABLE OR FEASIBLE FOR PROTECTING HEALTH AND THE ENVIRONMENT.

14) THIS SITE PRODUCED CHEMICALS FOR 63 YEARS. THERE ARE PROBABLY A LOT MORE CHEMICALS THAN DIAMOND SHAMROCK IS WILLING TO DEAL WITH. GEOLOGIC AND MAJOR ENGINEERING JUDGEMENTS ARE BEING MADE BASED ON TWO CHEMICALS (DIOXIN AND DDT). WHAT ABOUT THE OTHER CHEMICALS AT THIS SITE THAT HAVE VERY DIFFERENT CHARACTERISTICS FROM DIOXIN AND DDT?

RESPONSE: THE RISK ASSESSMENT DEVELOPED BY DIAMOND SHAMROCK AND THEIR CONTRACTOR, IT CORPORATION, EVALUATED RISKS POSED BY ALL CHEMICALS DETECTED IN SIGNIFICANT CONCENTRATIONS ON SITE. THE EVALUATION WAS LESS DETAILED FOR CHEMICALS WHICH HAVE A MINOR CONTRIBUTION TO THE TOTAL RISK.

15) DIAMOND SHAMROCK HAS IMPROPERLY DEVELOPED A GROUND WATER DECONTAMINATION PROGRAM BASED ON THE CHEMICAL CHARACTERISTICS OF TWO COMPOUNDS WHEN THERE ARE A HUNDRED COMPOUNDS CONTAMINATING THE SITE. THE LIKELIHOOD OF SUCCESS OF ANY GROUND WATER PROGRAM MUST EVALUATE THE MOBILITY, TOXICITY, ETC. OF ALL COMPOUNDS PRESENT ABOVE THE NEW JERSEY STANDARD OF 100 PPB BEING USED FOR GROUND WATER CLEANUPS AT INDUSTRIAL SITES. THE FEASIBILITY STUDY DOES NOT RECOGNIZE THE PROPER CLEANUP GOAL OF REMEDIATION UNTIL ALL CONTAMINANTS ARE BELOW THE 10 PPB STANDARD.

RESPONSE: THE RECOMMENDED REMEDIAL ALTERNATIVE INCLUDES A GROUND WATER PUMPING PLAN TO REVERSE THE DOWNWARD FLOW OF GROUND WATER THROUGH THE SAND UNIT. THE PURPOSE OF THE PUMPING IS TO PREVENT THE MIGRATION OF THE CONTAMINANTS BENEATH THE CAP AND WITHIN THE SLURRY WALL FROM MOVING OFF SITE. THE PUMPED GROUND WATER WILL THEN BE TREATED TO REMOVE ALL CONTAMINANTS TO LEVELS APPROPRIATE FOR DISCHARGE TO THE PASSAIC RIVER OR TO A WASTEWATER TREATMENT FACILITY.

THE PROPOSED PLAN IS NOT INTENDED AS A GROUND WATER DECONTAMINATION PROGRAM. IT IS INTENDED ONLY TO PREVENT THE RELEASE OF POLLUTANTS FROM THE 80 AND 120 LISTER AVENUE PROPERTIES TO THE GROUND WATER. THE CLEANUP OF ALL GROUND WATER CONTAMINATION ATTRIBUTABLE TO THE DIAMOND SHAMROCK SITE IS OUTSIDE OF THE SCOPE OF THE REMEDIAL INVESTIGATION AND FEASIBILITY STUDY. NJDEP IS COMMITTED TO FURTHER INVESTIGATE GROUND WATER CONTAMINATION IN THE VICINITY OF 80 AND 120 LISTER AVENUE AND TO IMPLEMENT ADDITIONAL REMEDIAL ACTIONS, AS APPROPRIATE.

NEW JERSEY DOES NOT HAVE A STANDARD OF 10 PPB FOR GROUND WATER CLEANUPS AT INDUSTRIAL SITES. NEW JERSEY'S INTERIM GROUND WATER CRITERIA ARE ESTABLISHED ON A "PER CHEMICAL" BASIS. FOR VOLATILE ORGANIC COMPOUNDS, THE LEVELS ESTABLISHED ARE 5 PPB FOR EACH CARCINOGENIC COMPOUND AND A TOTAL OF 50 PPB FOR NONCARCINOGENIC COMPOUNDS WHICH DO NOT HAVE A FEDERAL MAXIMUM CONTAMINANT LEVEL. NONVOLATILE ORGANIC COMPOUNDS HAVE INDIVIDUAL CRITERIA THAT CAN BE OBTAINED FROM THE DEPARTMENT'S DIVISION OF WATER RESOURCES. IT IS NJDEP'S PLAN TO SATISFY THE REQUIREMENTS FOR EFFLUENT DISCHARGES.

#### CONSIDERATION OF TECHNOLOGIES FOR SAFE EXCAVATION



16) DIAMOND SHAMROCK HAS FAILED TO EVALUATE THE IMPACTS OF KNOWN CLEANUP AND CONSTRUCTION METHODOLOGIES ON THE OPTIONS REQUIRING EXCAVATION OF MATERIALS; I.E., REVERSE PRESSURE WITHIN A COVERED WORK AREA. THIS MEANS THE EVALUATION OF ALTERNATIVES PRESENTED IS CLEARLY MISLEADING. DIAMOND SHAMROCK RELIES ON THIS MISINFORMATION TO ELIMINATE ANY OPTIONS CONTAINING EXCAVATION OF SOILS.

RESPONSE: AS INDICATED, EXCAVATION OF CONTAMINATED MATERIALS IS NOT CONSIDERED TO BE A VIABLE OPTION AT THIS TIME. WHEN DISPOSAL SITES OR SATISFACTORY TECHNOLOGIES FOR TREATMENT ARE SUFFICIENTLY DEVELOPED, SAFE EXCAVATION METHODS WILL BE EVALUATED AND IMPLEMENTED TO THE MAXIMUM EXTENT PRACTICABLE. (SEE RESPONSE TO COMMENTS #1 AND #3).

17) THERE ARE SAFE ENGINEERING TECHNOLOGIES FOR THE EXCAVATION OF CONTAMINATED SOILS. A STRUCTURE CAN BE BUILT WITH NEGATIVE PRESSURE TO DRAW AIR IN RATHER THAN OUT, THEREBY REDUCING THE EMISSION OF DIOXIN-CONTAMINATED PARTICULATES INTO THE ATMOSPHERE.

RESPONSE: NJDEP IS COGNIZANT OF SPECIAL TECHNIQUES FOR SUCH CONSTRUCTION. HOWEVER, THERE ARE CURRENTLY NO AVAILABLE TREATMENT OR DISPOSAL FACILITIES IN USE IN THE UNITED STATES FOR SUCH CONTAMINATED MATERIALS. (SEE RESPONSE TO COMMENTS #1 AND #3).

#### APPLICABILITY OF STATE LAWS FOR HAZARDOUS SITE REMEDIATION

18) DIAMOND SHAMROCK HAS FAILED TO EVALUATE THE LEGAL REQUIREMENTS APPLIED BY NJDEP TO SITE CLEANUPS IN NEW JERSEY. THIS PREVENTS THE EVALUATION OF WHAT LAWS WILL BE BROKEN BY THE CLEANUP OPTION SELECTED BY DIAMOND SHAMROCK.

RESPONSE: UNDER THE COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY ACT (CERCLA) (SUPERFUND LAW) AUTHORITY, WHICH ALLOWS FOR AN ON-SITE REMEDY THAT DOES NOT ATTAIN ALL APPLICABLE OR RELEVANT AND APPROPRIATE REQUIREMENTS OF FEDERAL AND STATE LAWS, NJDEP IS PROPOSING IMPLEMENTATION OF A MODIFIED VERSION OF THE ALTERNATIVE THAT WAS PROPOSED BY DIAMOND SHAMROCK. FURTHERMORE, JUSTIFICATION WILL BE PROVIDED IN THE RECORD OF DECISION (ROD) UNDER SECTION 121(D)(4) OF CERCLA FOR THOSE REQUIREMENTS WHICH WILL NOT BE MET.

19) THE FEASIBILITY STUDY IS INCOMPLETE AND CANNOT BE PROPERLY EVALUATED (E.G., THERE IS NO LISTING/DISCUSSION OF STATE LAWS THAT ARE APPLICABLE TO THE RECOMMENDED ALTERNATIVE).

RESPONSE: ALTHOUGH NJDEP NOTES THAT THE FEASIBILITY STUDY DOES NOT DISCUSS RELEVANT STATE OR FEDERAL REGULATIONS, IT IS THE RESPONSIBILITY OF NJDEP TO IDENTIFY AND EVALUATE APPLICABLE OR RELEVANT AND APPROPRIATE REQUIREMENTS IN ANY ENFORCEMENT ACTION TO ENSURE THAT THE SELECTED ALTERNATIVE IS IN COMPLIANCE WITH RELEVANT REGULATIONS. AS INDICATED ABOVE, THE SELECTED REMEDY IS BEING IMPLEMENTED UNDER CERCLA AUTHORITY, WHICH CONTROLS THE LEGAL REQUIREMENTS. ALTHOUGH CERCLA DOES NOT REQUIRE OBTAINING PERMITS PRIOR TO INITIATION OF REMEDIAL ACTIVITIES, CERCLA DOES REQUIRE THAT THESE ACTIONS MEET THE SUBSTANTIVE REQUIREMENTS OF SUCH PERMITS.

20) DIAMOND SHAMROCK HAS FAILED TO EVALUATE THE NEW JERSEY REQUIREMENTS FOR THICKNESS AND PERMEABILITY OF LINERS AT NEW WASTE DISPOSAL LOCATIONS. DIAMOND SHAMROCK'S RELIANCE ON THE PRESENT SILT LAYER IS ILLEGAL.

RESPONSE: CERCLA ALLOWS FOR THE SELECTION OF A REMEDY WHICH MAY NOT MEET ALL REQUIREMENTS UNDER THE CIRCUMSTANCES DESCRIBED IN SECTION 121(D)(4). (REFER TO RESPONSE FOR COMMENTS #18 AND #19 FOR FURTHER DISCUSSION).

#### LONG-TERM SITE MAINTENANCE

21) REGARDLESS OF THE SELECTED REMEDIAL ALTERNATIVE, A LONG-TERM MONITORING PROGRAM IS NECESSARY DURING AND AFTER THE REMEDIAL WORK TO ENSURE ENVIRONMENTAL SAFETY. THE MONITORING PROGRAM MUST PROVIDE DATA/INFORMATION THAT IS READILY USABLE BY OFFICIALS TO ASSESS DAMAGE TO HEALTH AND THE ENVIRONMENT. THE MONITORING PROGRAM SHOULD BE PEER REVIEWED BY APPROPRIATE SCIENTISTS WITHIN AND OUTSIDE OF GOVERNMENT. THE ESSEX COUNTY OFFICE OF ENVIRONMENTAL HEALTH IS AVAILABLE FOR ASSISTANCE IN THIS REGARD.

RESPONSE: NJDEP HAS THE RESPONSIBILITY AND CAPABILITIES TO ESTABLISH A LONG-TERM MONITORING PLAN. INDEED, THIS IS A REQUIREMENT OF THE SELECTED REMEDY. NJDEP ROUTINELY SEEKS THE EXPERTISE OF OUTSIDE HEALTH AGENCIES, AS NEEDED, AND INFORMS THEM OF PROGRAMS ESTABLISHED TO PROTECT PUBLIC HEALTH AND SAFETY. TOWARD THIS END WE APPRECIATE THE INTEREST OF THE ESSEX COUNTY OFFICE OF ENVIRONMENTAL HEALTH.

22) IT IS DIFFICULT TO COMPREHEND MAINTAINING THIS SITE IN PERPETUITY, WHICH WILL ULTIMATELY HAPPEN IF WE DO NOT REMOVE IT. DIAMOND SHAMROCK WILL BE ABLE TO ABANDON THIS SITE AFTER 30 YEARS AND THE COMMUNITY WILL BE LEFT WITH THE RESPONSIBILITY OF MAINTAINING THE SITE FOREVER. WHAT IS THE LONGEST DOCUMENTED EXPERIENCE IN OPERATING A PUMPING SYSTEM OF THIS KIND? THIS IS A TEMPORARY SOLUTION TO A PERMANENT PROBLEM.

RESPONSE: FINANCIAL RESOURCES WILL BE REQUIRED OF DIAMOND SHAMROCK FOR CONTINUAL MAINTENANCE OF THE SITE UNTIL SUCH TIME AS THE CONTAMINANTS ARE EITHER REMOVED OR NO LONGER POSE A THREAT TO HUMAN HEALTH OR THE ENVIRONMENT. THERE WILL BE NO "ABANDONMENT" OF THE SITE AFTER 30 YEARS, ALTHOUGH NJDEP HOPES THAT A PERMANENT RESOLUTION WILL BE REALIZED BEFORE THAT TIME. IF SUBSEQUENT NEGOTIATIONS WITH DIAMOND SHAMROCK FAIL, NJDEP IS COMMITTED TO PROVIDING THE NECESSARY FINANCIAL RESOURCES TO IMPLEMENT THE REMEDY.

PUMPING SYSTEMS ARE CAPABLE OF INDEFINITE OPERATION. ALTHOUGH PIECES OF EQUIPMENT DO WEAR OUT, ALL THAT IS REQUIRED IS COMPONENT REPLACEMENT. THE SAME IS TRUE FOR MANY WATER TREATMENT TECHNOLOGIES THAT ARE CURRENTLY IN USE BY WATER COMPANIES THROUGHOUT THE STATE AND NATION, SUCH AS AIR STRIPPING AND ACTIVATED CARBON FOR THE REMOVAL OF CERTAIN ORGANIC COMPOUNDS, AS WELL AS FILTRATION, FLOCCULATION, SEDIMENTATION, AND ION EXCHANGE FOR OTHER CONTAMINANTS.

23) PRESENTLY, THE LAW IS WRITTEN SO THAT THE RESOURCE CONSERVATION AND RECOVERY ACT (RCRA) REQUIREMENTS FOR A SITE CAP TERMINATE AFTER 30 YEARS. DIAMOND SHAMROCK CAN WALK AWAY "SCOT FREE" AFTER 30 YEARS. IT IS HIGHLY UNLIKELY TO OPERATE THE PROPOSED PUMPING SYSTEM FOR 30 YEARS. DIAMOND SHAMROCK PLANS TO LEAVE THIS SITE AFTER 30 YEARS.

RESPONSE: THESE ACTIONS ARE BEING TAKEN UNDER THE AUTHORITY OF CERCLA WHICH PROVIDES FOR OPERATION AND MAINTENANCE AT SUPERFUND SITES FOR AN INDEFINITE PERIOD. RCRA IS BEING USED TO PROVIDE TECHNICAL GUIDANCE FOR EVALUATING AND DEVELOPING THE CONTAINMENT SYSTEM REQUIREMENTS ONLY. THE PROPOSED REMEDY INCLUDES PROVISIONS FOR CONTINUAL OPERATION AND MAINTENANCE, AS WELL AS MONITORING, UNTIL CONTAMINATION IS REMOVED OR TREATED TO COMPLETION. THESE PROVISIONS WILL BE SPECIFIED IN A FEDERAL JUDICIAL CONSENT DECREE, A LEGALLY BINDING DOCUMENT.

24) DIAMOND SHAMROCK HAS FAILED TO PROPERLY EVALUATE THE IMPACT TO THE ENVIRONMENT AND PUBLIC HEALTH OF THEIR ABANDONMENT OF THE SITE ONCE THE 30-YEAR PERIOD OF SITE MAINTENANCE ENDS. THIS FAILURE IS CRITICAL SINCE NEW JERSEY LAW REQUIRES REMEDIAL ACTIVITY UNTIL THE SITE HAS BEEN REMEDIATED.

RESPONSE: AS PREVIOUSLY NOTED, DIAMOND SHAMROCK CANNOT ABANDON THE SITE AFTER 30 YEARS. EVEN IF THE CORPORATION GOES BANKRUPT, ITS FINANCIAL GUARANTEES WOULD REMAIN IN EFFECT.

25) IT IS MISLEADING TO SAY THAT THERE IS AN UPWARD HYDRAULIC GRADIENT AT THE SITE. WHEN THE CAP DETERIORATES AND THE PUMP FALLS APART THE NATURAL HYDRAULIC GRADIENT WILL BE DOWNWARD AND INTO THE PASSAIC RIVER. DIAMOND SHAMROCK IS PROPOSING A TEMPORARY NON-SOLUTION TO A PERMANENT PROBLEM.

RESPONSE: THE SELECTED REMEDY WILL BE IMPLEMENTED WITH THE APPROVAL AND PROPER FINANCIAL ASSURANCE FROM DIAMOND SHAMROCK. AS SUCH, MAINTENANCE OF PUMPS AND ALL STRUCTURES WILL BE ENSURED, INCLUDING MONITORING ACTIVITIES TO SUSTAIN THEIR EFFECTIVENESS INDEFINITELY. (SEE RESPONSE TO COMMENTS #22 AND #23 FOR FURTHER DISCUSSION).

#### CONTAINMENT OPTION

26) MAJOR CONCERN WAS EXPRESSED REGARDING THE PERMANENCY OF DIAMOND SHAMROCK'S RECOMMENDED CLEANUP ALTERNATIVE. THE CITY OF NEWARK (PER D. CHEROT) PRESUMES THAT DIAMOND SHAMROCK'S RECOMMENDED ALTERNATIVE IS AN INTERIM MEASURE AND THAT THE NJDEP WILL NOT ALLOW THE SITE TO BECOME A PERMANENT HAZARDOUS WASTE FACILITY IN NEWARK.

RESPONSE: THE RECOMMENDED REMEDY IS CONSIDERED TO BE AN INTERIM MEASURE. THE RECOMMENDATION IS MADE BECAUSE NJDEP WISHES TO INITIATE SITE REMEDIATION MEASURES NOW TO REDUCE THE RISKS POSED BY THE SITE. SINCE NO DISPOSAL FACILITIES OR TREATMENT TECHNOLOGIES ARE CURRENTLY ACCEPTABLE, ANY RECOMMENDATION OTHER THAN SOME FORM OF ON-SITE CONTAINMENT WOULD DELAY THE INITIATION OF REMEDIATION UNTIL SUCH FACILITIES BECOME AVAILABLE OR TECHNOLOGIES ARE SUFFICIENTLY DEVELOPED. THE DURATION OF THE PROPOSED CONTAINMENT REMEDY WILL DEPEND ON A NUMBER OF FACTORS-INCLUDING THE PERFORMANCE OF THE REMEDY, DEVELOPMENT OF MEASURES TO MINIMIZE EXCAVATION RISKS, THE DEVELOPMENT OF NEW TECHNOLOGIES, AND THE AVAILABILITY OF EXISTING TECHNOLOGIES SUCH AS INCINERATION FOR DIOXIN WASTES.

27) WHERE HAS CONTAINMENT OF DIOXIN BEEN PERMITTED?

RESPONSE: CONTAINMENT HAS BEEN IMPLEMENTED AT SITES IN ARKANSAS AND SEVESO, ITALY. CONTAINMENT REMEDIES FOR DIOXIN WASTES HAVE BEEN SELECTED BY USEPA FOR THE LOVE CANAL SITE AND HYDE PARK LANDFILL IN NEW YORK STATE.

28) ARE YOU MAKING A BUSINESS DECISION, I.E., CHOOSING AN ALTERNATIVE THAT WILL COST 95% LESS BY STORING IT ON SITE RATHER THAN GETTING RID OF IT?

RESPONSE: NJDEP DOES NOT MAKE "BUSINESS DECISIONS" REGARDING CASES THAT ARE BEING ADDRESSED BY RESPONSIBLE PARTIES. THE PROPOSED CONTAINMENT REMEDY IS ADVOCATED BY NJDEP BECAUSE IT IS PRESENTLY THE MOST PROTECTIVE ALTERNATIVE. NJDEP IS COMMITTED TO RECOMMENDING TREATMENT OR REMOVAL WHEN THESE CAN BE RELIABLY IMPLEMENTED. AS INDICATED IN THE PREVIOUS RESPONSE, CONTAINMENT OF DIOXIN WASTES IS BEING IMPLEMENTED ELSEWHERE.

PROPOSED ALTERNATIVE VIS A VIS THE PASSAIC RIVER

29) DIAMOND SHAMROCK HAS FAILED TO EVALUATE THE IMPACT OF FLOODING UPON THE PROJECT AND THE PROPOSED USE OF THIS AREA FOR FLOOD CONTROL BY THE U.S. ARMY CORPS OF ENGINEERS.

RESPONSE: NJDEP IS AWARE OF THIS POTENTIAL IMPACT. WE HAVE TRANSMITTED OUR CONCERNS TO DIAMOND SHAMROCK, AND HAVE SUBSEQUENTLY RECEIVED THEIR RESPONSE TO OUR CONCERNS, INDICATING THEIR WILLINGNESS TO COOPERATE WITH NJDEP, USEPA, AND THE U.S. ARMY CORPS OF ENGINEERS. HOWEVER, DUE TO THE MAGNITUDE OF THE ARMY CORPS PROJECT, THE RESOLUTION TO THIS ASPECT OF THE SELECTED ALTERNATIVE WILL BE ACCOMPLISHED THROUGH COORDINATION ON THE PART OF DIAMOND SHAMROCK WITH THE U.S. ARMY CORPS DURING THE REMEDIAL DESIGN PHASE OF THE SELECTED ALTERNATIVE. EPA IS WORKING WITH THE U.S. ARMY CORPS OF ENGINEERS TO ENSURE THAT THE FLOOD CONTROL PROJECT HAS NO SIGNIFICANT ADVERSE IMPACT ON THE DIAMOND SHAMROCK SITE OR OTHER SUPERFUND SITES ON THE PASSAIC RIVER.

30) DIAMOND SHAMROCK HAS NOT EVALUATED THE CURRENT PASSAIC RIVER DIOXIN AND DDT CONTAMINATION AND HOW THAT RELATES TO MOVING FORWARD WITH THIS RECOMMENDED ALTERNATIVE.

RESPONSE: NJDEP HAS RECEIVED THE RESULTS OF A REMEDIAL INVESTIGATION OF THE PASSAIC RIVER CONDUCTED BY DIAMOND SHAMROCK DURING THE SUMMER OF 1985. NJDEP IS CURRENTLY EVALUATING THE FINDINGS OF THAT STUDY AND WILL REQUEST ADDITIONAL STUDIES, IF NECESSARY. UPON COMPLETION OF OUR REVIEW, AND ANY ADDITIONAL INVESTIGATIONS THAT ARE DEEMED NECESSARY, WE WILL BE REQUESTING THAT DIAMOND SHAMROCK PROCEED TO PREPARE AN ADDITIONAL FEASIBILITY STUDY TO DEVELOP REMEDIAL ALTERNATIVES FOR THE DETECTED CONTAMINATION.

THE REMEDIATION OF THE PASSAIC RIVER SEDIMENTS IS OUTSIDE OF THE SCOPE OF THE PROPOSED REMEDIAL ACTION PLAN, AND WILL BE ADDRESSED THROUGH ANOTHER RECORD OF DECISION.

31) THE PASSAIC RIVER FLOOD PROJECT PRESENTS A SERIOUS CONFLICT TO THE ENCAPSULATION ALTERNATIVE. THIS ISSUE NEEDS TO BE ADDRESSED. PROPER OPERATION AND MAINTENANCE (O&M) IS ALSO A CRITICAL CONCERN.

RESPONSE: NJDEP IS AWARE OF THE PASSAIC RIVER FLOOD CONTROL PROJECT, AS WELL AS THE NEED TO SECURE THE SITE FROM 100-YEAR FLOOD CONDITIONS. THESE CONSIDERATIONS WILL BE ADDRESSED BY DIAMOND SHAMROCK IN THEIR REMEDIAL DESIGN. DIAMOND SHAMROCK WILL CONSULT WITH THE U.S. ARMY CORPS OF ENGINEERS REGARDING ACCEPTABLE ENGINEERING DESIGN CONSIDERATIONS. OPERATION AND MAINTENANCE OF THE PROPOSED REMEDY WILL BE ADDRESSED.

OTHER ISSUES

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32) THIS 2/20/86 PUBLIC HEARING IS NOT FAIR IN THAT THE PUBLIC DOES NOT HAVE THE ADVANTAGE OF KNOWING THE POSITION OF NJDEP. A HEARING SHOULD BE HELD AFTER NJDEP MAKES A DECISION REGARDING THE SITE REMEDY.

RESPONSE: A PUBLIC MEETING WAS HELD ON AUGUST 11, 1987 AT WHICH TIME THE PROPOSED REMEDIAL ACTION PLAN WAS PRESENTED TO THE PUBLIC.

33) THE RECOMMENDED CANCER RISK FACTOR SET BY DIAMOND SHAMROCK IS NOT ACCEPTABLE. DEP HAS THE RESPONSIBILITY TO "GET IN ON THE ACT". IT IS INAPPROPRIATE FOR DIAMOND SHAMROCK TO SET THIS STANDARD.

RESPONSE: NJDEP AGREES. THE EXCESS CANCER RISK TYPICALLY EMPLOYED BY NJDEP FOR RISK ASSESSMENTS IS  $1 \times 10^{-6}$  (A ONE IN ONE MILLION RISK FACTOR). IN ADDITION, THE CLEANUP STANDARDS TO BE USED FOR THE SITE WILL BE DEVELOPED BY NJDEP AND WILL NOT BE BASED ON THE ACCEPTABLE RISK RECOMMENDATIONS MADE BY DIAMOND SHAMROCK.

34) WHAT IS THE PERMEABILITY OF THE SILT?

RESPONSE: PERMEABILITY OF THE SILT AT THE SITE HAS BEEN TESTED AND IS ON THE ORDER OF  $10^{-7}$  CENTIMETERS PER SECOND. THIS IS EQUIVALENT TO A CLAY-TYPE MATERIAL. ADDITIONAL TESTING WILL BE PERFORMED TO RECONFIRM THIS IN THE DESIGN PHASE. MONITORING WILL BE ESTABLISHED TO ENSURE THE EFFECTIVENESS OF THE REMEDY.

35) WHAT IS NJDEP'S SCHEDULE FOR RESPONDING TO DIAMOND SHAMROCK'S RECOMMENDED ALTERNATIVE?

RESPONSE: LATE SEPTEMBER, 1987.

### III. REMAINING CONCERNS

THE RESIDENTS OF THE IRONBOUND COMMUNITY ARE DISTURBED BY THE PRESENCE OF HAZARDOUS WASTES, ESPECIALLY DIOXIN, IN THEIR COMMUNITY. AS SUCH, SAMPLING AND CLEANUP ACTIVITIES CONDUCTED BY NJDEP AND USEPA HAVE NOT BEEN WELL RECEIVED, AND HAVE GENERATED CONSIDERABLE FEARS AND ANXIETY ON THE PART OF THE COMMUNITY. IT IS ESSENTIAL TO MAINTAIN A STRONG COMMUNITY RELATIONS PROGRAM THROUGHOUT SUBSEQUENT CLEANUP ACTIVITIES IN ORDER TO MINIMIZE UNFOUNDED CONCERNS. IT IS ESSENTIAL TO EMPHASIZE THAT NJDEP VIEWS THE PROPOSED REMEDY AS AN INTERIM ACTION, AND THAT WHEN TECHNOLOGIES FOR SAFE REMOVAL OR DESTRUCTION BECOME AVAILABLE, THEY WILL BE IMPLEMENTED.

### ATTACHMENT

- A. AGENDA AND FACT SHEET DISTRIBUTED AT THE 2/20/86 PUBLIC MEETING.
- B. LIST OF ATTENDEES AT THE 2/20/86 PUBLIC MEETING
- C. LIST OF SPEAKERS AT THE 2/20/86 PUBLIC HEARING
- D. LETTERS SENT TO NJDEP DURING THE PUBLIC COMMENT PERIOD.

ATTACHMENT A

NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION

DIVISION OF WASTE MANAGEMENT

HAZARDOUS SITE MITIGATION ADMINISTRATION

PUBLIC HEARING TO RECEIVE COMMENT ON FEASIBILITY STUDY

REGARDING

80 AND 120 LISTER AVENUE, NEWARK

THURSDAY, FEBRUARY 20, 1986

7:00 P.M.

ST. ALOYSIUS THEATER

89 FLEMING AVENUE

NEWARK, NJ

AGENDA

- 1) OPENING REMARKS AND INTRODUCTIONS  
MICHAEL CATANIA, DEPUTY COMMISSIONER, NJDEP
- 2) OVERVIEW OF PROJECT STATUS  
DR. JORGE BERKOWITZ, ADMINISTRATOR  
HAZARDOUS SITE MITIGATION  
ADMINISTRATION, NJDEP
- 3) PRESENTATION: FEASIBILITY STUDY AND OFF-SITE REMEDIAL ACTION  
MR. WILLIAM HUTTON, DIRECTOR  
ENVIRONMENTAL AFFAIRS  
DIAMOND SHAMROCK CORPORATION
- 4) COMMENTS AND QUESTIONS.

STATE OF NEW JERSEY  
DEPARTMENT OF ENVIRONMENTAL PROTECTION

FACT SHEET

ON

FEASIBILITY STUDY

FOR

80 AND 120 LISTER AVENUE  
NEWARK, NJ  
ESSEX COUNTY

THURSDAY, FEBRUARY 20, 1986

**SITE DESCRIPTION:** THE 80 LISTER AVENUE SITE OCCUPIES APPROXIMATELY 3.5 ACRES IN THE IRONBOUND SECTION OF NEWARK. IT IS BOUNDED ON THE NORTH BY THE PASSAIC RIVER, ON THE EAST BY THE FORMER SERGEANT CHEMICAL COMPANY (120 LISTER AVENUE, NOW OWNED BY DIAMOND SHAMROCK CORPORATION), AT THE SOUTHEAST CORNER BY THE DURALAC COMPANY, AND ON THE SOUTH AND WEST BY THE SHERWIN-WILLIAMS COMPANY. ALTHOUGH PRESENTLY INACTIVE, THE SITE WAS USED FOR MANUFACTURING VARIOUS AGRICULTURAL AND SPECIALTY ORGANIC CHEMICALS FROM 1914-1977. THE MOST SIGNIFICANT PERIOD RELATIVE TO CONTAMINATION OBSERVED AT THE SITE IS FROM THE END OF WORLD WAR II TO THE MID-1970S. DURING THIS TIME, PESTICIDES AND PHENOXY HERBICIDES WERE THE PRIMARY PRODUCTS MANUFACTURED.

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DIOXIN MAY OCCUR AS A CONTAMINANT IN THESE PRODUCTS.

**BACKGROUND:** CONCERN ABOUT THE POTENTIAL ENVIRONMENTAL IMPACT OF DIOXIN IN THIS AREA DEVELOPED AS INFORMATION BECAME AVAILABLE REGARDING MANUFACTURING PROCESSES WHICH HAD THE POTENTIAL TO PRODUCE UNWANTED TOXIC BY-PRODUCTS INCLUDING DIOXIN. IN THE SPRING OF 1983 A COMPREHENSIVE SAMPLING PROGRAM WAS IMPLEMENTED BY THE NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION (NJDEP) TO INVESTIGATE FACILITIES WHICH MIGHT HAVE PRODUCED DIOXIN. THE PRESENCE OF DIOXIN AT THE 80 LISTER AVENUE SITE WAS IDENTIFIED IN MAY 1983. SUBSEQUENT TO THIS FINDING, DIOXIN WAS ALSO DISCOVERED IN SEVERAL AREAS THROUGHOUT THE IRONBOUND SECTION OF NEWARK. BASED ON THE RESULTS OF INITIAL INVESTIGATIONS, DIAMOND SHAMROCK ENTERED INTO AN ADMINISTRATIVE CONSENT ORDER (ACO) WITH THE NJDEP ON MARCH 13, 1984. THE ACO REQUIRES THAT DIAMOND SHAMROCK SECURE THE SITE, PREVENT EXPOSURE TO CONTAMINANTS, DETERMINE THE EXTENT OF CHEMICAL CONTAMINATION, AND COMPLETE A SITE EVALUATION AND A FEASIBILITY STUDY OF REMEDIAL ALTERNATIVES. ON DECEMBER 20, 1984, DIAMOND SHAMROCK ENTERED INTO A SECOND ACO (ACO II) WITH NJDEP WHICH REQUIRES THE INVESTIGATION AND CLEANUP OF ALL AFFECTED OFF-SITE AREAS OF CONTAMINATION IN THE IRONBOUND SECTION OF NEWARK.

**STATUS:** ALMOST ALL OF THE REQUIREMENTS OF BOTH ACO I AND ACO II HAVE BEEN FULFILLED BY DIAMOND SHAMROCK. TO DATE, DIAMOND SHAMROCK HAS POSTED A LETTER OF CREDIT FOR APPROXIMATELY \$16 MILLION IN ORDER TO CONDUCT THE WORK OUTLINED IN BOTH ACOS. OFF-SITE AREAS HAVE BEEN REMEDIATED (SEE ATTACHED SUMMARY OF OFF-SITE REMEDIATION), CONTAMINATED SOILS HAVE BEEN TRANSPORTED AND CONTAINERIZED, AND ARE BEING STORED TEMPORARILY AT 120 LISTER AVENUE. THE DRAFT FEASIBILITY STUDY FOR 80 LISTER AVENUE WAS COMPLETED IN DECEMBER, 1985 AND PLACED IN THE FOLLOWING REPOSITORIES FOR PUBLIC REVIEW:

- (1) NEWARK PUBLIC LIBRARY, NJ REFERENCE, 5 WASHINGTON STREET, NEWARK;
- (2) NEWARK PUBLIC LIBRARY, 140 VAN BUREN STREET, NEWARK;
- (3) NEWARK CITY CLERK'S OFFICE, 920 BROAD STREET, NEWARK; AND
- (4) NJDEP, 432 E. STATE STREET, TRENTON.

WRITTEN COMMENTS REGARDING THE FEASIBILITY STUDY SHOULD BE SUBMITTED TO THE DEPARTMENT PRIOR TO MARCH 21, 1986 AND FORWARDED TO:

GRACE SINGER  
NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION  
HAZARDOUS SITE MITIGATION ADMINISTRATION  
OFFICE OF COMMUNITY RELATIONS  
CN 028  
TRENTON, NJ 08625.

SUMMARY OF REMEDIAL ALTERNATIVES CONSIDERED IN THE FEASIBILITY STUDY

AN EXTENSIVE SCREENING OF AVAILABLE TECHNOLOGIES RESULTED IN THE CONSIDERATION OF SIX REMEDIAL ACTION ALTERNATIVES. THESE ARE:

- NO ACTION;
- IN-SITU SLURRY WALL WITH CAP;
- GROUND WATER PUMPING AND TREATMENT, WITH IN-SITU SLURRY WALL WITH CAP;
- EXCAVATION WITH THERMAL TREATMENT OF MATERIALS WITH OVER 7 PARTS PER BILLION (PPB) DIOXIN COUPLED WITH IN-SITU SLURRY WALL AND CAP;
- EXCAVATION AND DEVELOPMENT OF AN ON-SITE VAULT FOR THE MATERIALS WITH OVER 7 PPB DIOXIN COUPLED WITH A SLURRY WALL AND CAP; AND
- EXCAVATION, LOADING, AND TRANSPORTATION OF CONTAMINATED ON-SITE MATERIALS AND OFF-SITE COMMERCIAL DISPOSAL, IF AVAILABLE; A SLURRY WALL BUILT FOR STABILITY AND GROUND WATER CONTROL DURING

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EXCAVATION, AND MITIGATION OF MIGRATION OF REMAINING DIOXIN  
BELOW THE 7 PPB LEVEL AFTER REMEDIATION.

SUMMARY OF OFF-SITE REMEDIATION

ACCORDING TO THE DECEMBER 20, 1984 ADMINISTRATIVE CONSENT ORDER (ACO II) BETWEEN DIAMOND SHAMROCK AND THE  
NJDEP, THE FOLLOWING AREAS IN THE IRONBOUND SECTION OF NEWARK HAVE BEEN REMEDIATED.

- CONRAIL TRACKS: REMEDIATED AND CONRAIL IS CURRENTLY PREPARING  
THE TRACK FOR RESUMPTION OF SERVICE.
- SHERWIN WILLIAMS SPURS: REMEDIATED AND SERVICE HAS BEEN RESTORED.
- RESIDENCES: REMEDIATION IS COMPLETE WHERE ACCESS HAS BEEN GRANTED.
- SEWERS AND CATCH BASINS: SEWERS AND CATCH BASINS ON RAYMOND  
BOULEVARD AND EUCLID AVENUE HAVE BEEN CLEANED IN ACCORDANCE WITH THE ACO.
- BRADY IRON AND METALS/HILDEMANN PROPERTY/MORRIS CANAL:  
EXCAVATION AND BACKFILLING IS COMPLETE. ALL POST SAMPLES HAVE  
BEEN TAKEN; RESULTS INDICATE NO CONTAMINATION REMAINS ABOVE 1.0  
PPB. THE SITE WILL BE RETURNED TO ITS ORIGINAL CONTOUR.  
DEMOBILIZATION OF EQUIPMENT AND OFFICES IS IN PROGRESS. AT THE  
CONCLUSION OF REMEDIAL ACTIVITIES THE SITE WILL BE FENCED.
- 120 LISTER AVENUE: APPROXIMATELY 1,000 CONTAINERS WITH  
CONTAMINATED SOIL HAVE BEEN PLACED AT THIS SITE (20,000 CUBIC  
YARDS) FOR TEMPORARY STORAGE. APPROXIMATELY 800 OF THESE CONTAIN  
MATERIAL FROM THE BRADY SITE.
- SCA TRAILERS: DECONTAMINATION OF THE NINE TRAILERS CONTAINING  
EQUIPMENT FROM THE SCA WAREHOUSE IS COMPLETE.
- STREET VACUUMING: THIS OPERATION WAS COMPLETED IN MID-JANUARY, 1986.

2/86  
NJDEP.

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ATTACHMENT C

SPEAKERS AT THE 2/20/86 DIAMOND SHAMROCK PUBLIC HEARING

MR. DENNIS G. CHEROT, DIRECTOR, NEWARK DEPARTMENT OF HEALTH AND WELFARE

MR. HENRY MARTINEZ, COUNCILMAN, CITY OF NEWARK

MR. ALVIN ZACH, DIRECTOR, NEWARK DEPARTMENT OF ENGINEERING

MS. KATHRYN SOVA, FOR ESSEX COUNTY EXECUTIVE PETER SHAPIRO

MR. MICHAEL GORDON, ATTORNEY, IRONBOUND COMMITTEE AGAINST TOXICS

MR. ARNOLD COHEN, IRONBOUND COMMITTEE AGAINST TOXICS

MR. VICTOR DELUCA, ADMINISTRATOR, IRONBOUND COMMUNITY CORPORATION

MS. RENA KOPYSTENSKI, EXECUTIVE DIRECTOR, AGENT ORANGE VICTIMS OF NEW JERSEY

MR. PETER MONTAGUE, CONSULTANT

MS. JUNE KRUSZEWSKI, IRONBOUND COMMITTEE AGAINST TOXICS

MS. SANDRA KING, REPORTER, NEW JERSEY NETWORK NEWS.



ATTACHMENT D

NEWARK  
DEPARTMENT OF ENGINEERING

FEBRUARY 21, 1986

MR. MICHAEL F. CATANIA  
DEPUTY COMMISSIONER  
N.J. DEPT. OF ENVIRONMENTAL PROTECTION  
CN 402  
TRENTON, NEW JERSEY 08625

RE: PUBLIC HEARING - FEASIBILITY STUDY FOR FINAL REMEDIATION OF THE  
DIOXIN CONTAMINATION AT 80 LISTER AVENUE

DEAR MR. CATANIA:

AS A FOLLOW UP TO MY TESTIMONY LAST NIGHT, CONCERNING THE ABOVE, I RECEIVED A LETTER THIS MORNING FROM WEST GERMANY'S DEPARTMENT OF ENVIRONMENTAL PROTECTION, DATED FEBRUARY 18, 1986 (COPY ATTACHED), IN RESPONSE TO MY CABLEGRAM OF JANUARY 29, 1986. THE LETTER INDICATES THAT THERE IS A REGISTERED LANDFILL FOR DIOXIN CONTAMINATED DEBRIS IN KASSEL WEST GERMANY.

I WOULD URGE THAT YOU MOVE TO REQUIRE THAT DIAMOND SHAMROCK REALISTICALLY ASSESS NOT ONLY THIS NOTED WEST GERMAN DISPOSAL SITE, BUT, ALSO OTHER INTERNATIONAL DISPOSAL SITES THAT ARE PROPERLY DESIGNED AND CONSTRUCTED TO PROPERLY DISPOSE OF SUCH DEBRIS.

THE TIPPING FEE AT KASSEL IS DM 211 PER METRIC TONNE, WHICH TRANSLATES AT TODAY'S EXCHANGE OF \$91.15 PER METRIC TON OF WASTE THAT WOULD BE LANDFILLED.

PLEASE ADVISE ME, AT YOUR EARLIEST POSSIBLE OPPORTUNITY, WHAT STEPS YOU PLAN TO TAKE REGARDING THE PROPER DISPOSAL AT THE DIAMOND SHAMROCK SITE.

AN EARLY RESPONSE WOULD BE MOST APPRECIATED.

VERY TRULY YOURS,

ALVIN L. ZACH, P.E., DIRECTOR  
DEPARTMENT OF ENGINEERING

ALZ:AS

CC: KENNETH A. GIBSON, MAYOR  
HENRY MARTINEZ, COUNCILMAN, EAST WARD  
ELTON HILL, BUSINESS ADMINISTRATOR  
RICHARD DEWELLING, DEP, COMMISSIONER.

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CITIZEN'S CLEARINGHOUSE FOR HAZARDOUS WASTES, INC.

MARCH 4, 1986

MS. GRACE SINGER  
NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION  
HAZARDOUS MITIGATION ADMINISTRATION  
CN 028  
TRENTON, NJ 08625

DEAR MS. SINGER:

THE CITIZENS CLEARINGHOUSE IS A NATIONAL GRASSROOTS ORGANIZATION THAT WORKS WITH COMMUNITY GROUPS ACROSS THE COUNTRY CONCERNED WITH PROBLEMS CAUSED BY HAZARDOUS AND TOXIC CHEMICALS. WE ARE CONCERNED AND TROUBLED BY THE PLAN PROPOSED BY DIAMOND SHAMROCK TO CLEAN UP SOILS CONTAMINATED WITH DIOXIN IN THE IRONBOUND NEIGHBORHOOD OF NEWARK. AS WE UNDERSTAND THE CLEANUP PLAN, DIAMOND SHAMROCK PROPOSES TO PLACE DIOXIN LADEN SOILS IN A LANDFILL ON THEIR PROPERTY IN THIS AREA.

GIVEN THE GROWING SCIENTIFIC EVIDENCE DOCUMENTING THE FAILURES OF LANDFILLS, WE ARE SURPRISED AND DISAPPOINTED THAT DEP IS EVEN CONSIDERING THIS AS AN ALTERNATIVE.

WE WOULD EXPECT THAT DEP IS FAMILIAR WITH STUDIES CONDUCTED AT BOTH PRINCETON UNIVERSITY AND TEXAS A&M UNIVERSITIES, AS WELL AS REPORTS PREPARED BY THE CONGRESSIONAL OFFICE OF TECHNOLOGY ASSESSMENT AND THE NATIONAL ACADEMY OF SCIENCES (SEE ATTACHED REFERENCE LIST). THESE STUDIES AND OTHERS HAVE COME TO THE SAME GENERAL CONCLUSION: ALL LANDFILLS WILL EVENTUALLY FAIL. THE NATIONAL ACADEMY REPORT FURTHER STATED THAT LANDFILLING SHOULD ONLY BE CONSIDERED AS "THE LAST ALTERNATIVE AFTER ALL WASTE TREATMENT TECHNOLOGIES ... HAVE BEEN EXPLORED.". HAVE ALL OTHER TREATMENT TECHNOLOGIES BEEN CONSIDERED HERE?

LANDFILLS BUILT WITH EVEN THE BEST AVAILABLE ENGINEERING DESIGN ARE STILL DESTINED TO FAIL. IT IS ONLY A MATTER OF TIME. PERMITTING DIAMOND SHAMROCK TO LANDFILL THESE WASTES IN A COMMUNITY IS ONLY ASKING FOR TROUBLE. THE ONLY ADVANTAGE TO THE PLAN SEEMS TO BE A CHEAP AND CONVENIENT WAY FOR DIAMOND SHAMROCK TO DISPOSE OF THESE WASTES. THIS IS NOT IN THE BEST INTEREST OF THE LOCAL COMMUNITY. DEP'S FIRST PRIORITY SHOULD BE TO PROVIDE MAXIMUM PROTECTION OF PUBLIC HEALTH AND THE ENVIRONMENT AND NOT MAKE LIFE "EASY" FOR INDUSTRY.

WE HOPE DEP WILL NOT APPROVE THIS PROPOSED PLAN, BUT RATHER CONSIDER CLEANUP OPTIONS THAT WILL MORE PERMANENTLY DESTROY OR DETOXYFIFY THE DIOXIN LADEN SOILS. LANDFILLING THE WASTES IS NOT A SOLUTION. IT WOULD BE A MISTAKE.

THANK YOU FOR CONSIDERATION OF THESE COMMENTS.

SINCERELY,

STEPHEN U. LESTER  
SCIENCE DIRECTOR

LOIS MARIE GIBBS  
EXECUTIVE DIRECTOR

SUL:LMG/GFM.

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STUDIES DOCUMENTING FAILURES OF LANDFILLS

- 1) TECHNOLOGIES AND MANAGEMENT STRATEGIES FOR HAZARDOUS WASTE CONTROL. CONGRESS OF THE UNITED STATES, OFFICE OF TECHNOLOGY ASSESSMENT, WASHINGTON, D.C., MARCH, 1983.
- 2) MANAGEMENT OF HAZARDOUS INDUSTRIAL WASTES, RESEARCH AND DEVELOPMENT NEEDS, NATIONAL MATERIALS ADVISORY BOARD, NATIONAL RESEARCH COUNCIL OF THE NATIONAL ACADEMY OF SCIENCES, MARCH, 1983.
- 3) WILLIAM SANJOUR, U.S. EPA AND KIRK W. BROWN, TEXAS A&M UNIVERSITY TESTIMONY BEFORE THE HOUSE SUBCOMMITTEE ON NATURAL RESOURCES, AGRICULTURE RESEARCH AND ENVIRONMENT OF THE COMMITTEE ON SCIENCE AND TECHNOLOGY. NOVEMBER 30, 1982. (COMMENTS ON EPA PROPOSED REGULATIONS FOR THE LAND DISPOSAL OF HAZARDOUS WASTES).
- 4) ALTERNATIVES TO THE LAND DISPOSAL OF HAZARDOUS WASTES. AN ASSESSMENT FOR CALIFORNIA. PREPARED BY THE TOXIC WASTE ASSESSMENT GROUP, GOVERNOR'S OFFICE OF APPROPRIATE TECHNOLOGY, STATE OF CALIFORNIA, 1981. AVAILABLE FROM PUBLICATIONS AND INFORMATION, OAT, 1600 NINTH ST., SACRAMENTO, CA 95814. PHONE: 916/323-8133.
- 5) HAZARDOUS WASTE LANDFILLS - CAN CLAY LINERS PREVENT MIGRATION OF TOXIC LEACHATE? ALLEN MORRISON. CIVIL ENGINEERING - ASCE. JULY, 1981.
- 6) ORGANIC LEACHATE EFFECTS ON THE PERMEABILITY OF CLAY LINERS. D.C. ANDERSON, K.W. BROWN, J.D. GREEN APPEARED IN THE PROCEEDINGS OF THE NATIONAL CONFERENCE ON MANAGEMENT OF UNCONTROLLED HAZARDOUS WASTE SITES. OCTOBER 28-30, 1981.
- 7) THE INTERACTION OF CLAY-SOIL WITH WATER AND ORGANIC SOLVENTS: IMPLICATIONS FOR THE DISPOSAL OF HAZARDOUS WASTES. WILLIAM J.GREEN, S. FRED LEE AND R. ANNE JONES. ACCEPTED FOR PUBLICATION J. ENV. SCI. AND TECHN. 1982.
- 8) PERFORMANCE DIFFICULTIES OF "SECURE" LANDFILLS FOR CHEMICAL WASTE AND AVAILABLE MITIGATION MEASURES. PETER N. SKINNER; APPEARED IN THE HAZARDOUS WASTE DILEMMA: ISSUES AND SOLUTIONS. 1980 CONFERENCE OF ENVIRONMENTAL ENGINEERING DIVISION OF THE AMERICAN SOCIETY OF CIVIL ENGINEERS, 1981.
- 9) FOUR SECURE LANDFILLS IN NEW JERSEY -- A STUDY OF THE STATE OF THE ART IN SHALLOW BURIAL WASTE DISPOSAL TECHNOLOGY, DRAFT OF FEBRUARY 1, 1981. DR. PETER MONTAGUE, DEPT. OF CHEMICAL ENGINEERING AND CENTER FOR ENERGY AND ENV. STUDIES, SCH. OF ENG./APPLIED SCI., PRINCETON UNIV., PRINCETON, N.J., 1981.
- 10) DISCUSSION PAPER: STATE ACTION TO REDUCE LAND DISPOSAL OF TOXIC WASTES. PREPARED BY THE INTERAGENCY TASK FORCE FOR REDUCTION OF LAND DISPOSAL OF TOXIC WASTES. STATE OF CALIFORNIA, DEPT. OF HEALTH SERVICES. JANUARY, 1982.
- 11) HAZARDOUS WASTE DISPOSAL METHODS: MAJOR PROBLEMS WITH THEIR USE. REPORT BY THE COMPTROLLER GENERAL OF THE UNITED STATES. U.S. GENERAL ACCOUNTING OFFICE, REPORT NO. CED-81-21. NOVEMBER 19, 1980.

MARIA A. DEL TUFO, R.T.  
CONSULTANT IN ENVIRONMENTAL SERVICES AND OCCUPATIONAL HEALTH CARE

MARCH 12, 1986

MS. GRACE SINGER  
NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION  
HAZARDOUS SITE MITIGATION ADMINISTRATION  
OFFICE OF COMMUNITY RELATIONS  
CN 028  
TRENTON, NEW JERSEY 08625

DEAR MS. SINGER,

AS AN ENVIRONMENTALIST AND SOMEONE WITH FAMILY CONCERNS IN THE IRONBOUND COMMUNITY OF NEWARK, I WOULD LIKE TO TAKE THIS OPPORTUNITY TO COMMENT ON THE FEASIBILITY STUDY DONE BY DIAMOND SHAMROCK CORP. WITH REGARD TO THE "CLEAN-UP" AND/OR REMEDIATION OF CONTAMINANTS AT 80 AND 120 LISTER AVENUE, NEWARK.

IT WAS MY UNDERSTANDING AT THE PUBLIC HEARING HELD ON THIS SUBJECT ON FEBRUARY 20, 1986, THAT EXCAVATION AND OFF-SITE TRANSPORTATION AND DISPOSAL OF THE DIOXIN CONTAMINATED MATERIALS IS NOT AN ALTERNATIVE SINCE:

1. DIOXIN IS NOT ACCEPTED AT ANY ESTABLISHED OUT-OF-STATE LANDFILL IN THIS COUNTRY FROM AN OUT-OF-STATE SOURCE, AND
2. EXCAVATION OF SAID CONTAMINANTS WOULD INNATELY PRODUCE "MORE" AIR POLLUTION AND CONTAMINATION OF THE ENVIRONMENT.

AS OUTLINED IN THE FACT SHEET ON THE FEASIBILITY STUDY FOR 80 AND 120 LISTER AVENUE, NEWARK, N.J., I FUNDAMENTALLY AGREE WITH THE SIXTH REMEDIAL ALTERNATIVE CONSIDERED:

"EXCAVATION, LOADING AND TRANSPORTATION OF CONTAMINATED ON-SITE MATERIALS AND OFF-SITE COMMERCIAL DISPOSAL, IF AVAILABLE; A SLURRY WALL BUILT FOR STABILITY AND GROUND WATER CONTROL DURING EXCAVATION, AND MITIGATION OF MIGRATION OF REMAINING DIOXIN BELOW THE 7 PPB LEVEL AFTER REMEDIATION."

SINCE THE DECISIONS MADE HERE WILL BE AN ACCOMMODATION OF EXISTING LAW FOR ANY OF THE ALTERNATIVES, IT SEEMS TO ME PERHAPS AN "ARRANGEMENT" COULD BE MADE BETWEEN THE (NJ)DEP AND (FEDERAL)EPA TO HAVE ALREADY ESTABLISHED "DIOXIN-QUALIFIED" OUT-OF-STATE LANDFILLS ACCEPT OUR DIOXIN WASTE, AT LEAST TEMPORARILY UNTIL NEW JERSEY HAS ITS OWN SUCH FACILITY.

AS FOR THE EXCAVATION FURTHER CONTAMINATING THE ENVIRONMENT, WE BOTH KNOW THERE ARE WAYS AND MEANS TO EXCAVATE SAFELY AND WITHOUT FURTHER CONTAMINATING THE SURROUNDING AIR, WATER AND LAND, HOWEVER COSTLY TO DIAMOND SHAMROCK.

I THANK YOU FOR THIS OPPORTUNITY TO COMMENT ON THIS SITUATION AND HOPE YOU CAN ARRIVE AT A REMEDIAL ALTERNATIVE THAT IS AGREEABLE TO ALL CONCERNED.

IF I CAN BE OF HELP IN ANY WAY, PLEASE FEEL FREE TO CONTACT ME.

YOURS TRULY,

MARIA A. DEL TUFO, R.T.

CC: COUNCILMAN HENRY MARTINEZ  
EAST WARD, NEWARK, N.J.

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KENNETH A. GIBSON  
MAYOR  
NEWARK, NEW JERSEY

MARCH 18, 1986

HONORABLE RICHARD T. DEWLING  
COMMISSIONER, N. J. DEPARTMENT OF ENVIRONMENTAL PROTECTION  
CN 402  
TRENTON, NEW JERSEY 08625

DEAR COMMISSIONER DEWLING:

IN ADDITION TO EXPLORING THE USE OF REGISTERED SITES OUTSIDE OF THE UNITED STATES FOR THE SAFE AND PROPER STORAGE OF THE DIOXIN CONTAMINATED WASTE AS NOTED IN MR. ZACH'S LETTER TO MR. CATANIA OF FEBRUARY 21, 1986 (COPY ATTACHED), I WOULD LIKE TO SUGGEST THAT YOU REQUIRE DIAMOND SHAMROCK TO EXPLORE THE USE OF EPA'S FIRST REGISTERED DISPOSAL SITE FOR DIOXIN IN THE UNITED STATES. THE J. M. HUBER CORPORATION HAS RECENTLY BEEN PERMITTED BY EPA FOR DIOXIN DISPOSAL IN TEXAS. I AM ATTACHING A COPY OF TEN ARTICLES PRINTED IN THE MARCH ISSUE OF "WORLD WASTE," WHICH DESCRIBES THE DIOXIN DISPOSAL PROCESS.

IN THAT DISPOSAL FACILITIES ARE AVAILABLE, THE DIOXIN FROM THE DIAMOND SHAMROCK PROPERTY AND OTHER CONTAMINATED SITES IN NEWARK SHOULD NOT BE PERMITTED TO BE STORED IN NEWARK.

SINCERELY,

KENNETH A. GIBSON  
MAYOR

KAG:PA

ATTACHMENTS

CC: MR. ALVIN L. ZACH, P.E., L.S., DIRECTOR, NEWARK DEPT. OF ENGINEERING  
HONORABLE MICHAEL F. CATANIA, DEPUTY COMMISSIONER, N. J. DEPT. OF ENVIRONMENTAL PROTECTION.

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LAW OFFICES  
GORDON AND GORDON

MARCH 18, 1986

GERARD BURKE, ESQ.  
DIRECTOR OF REGULATORY SERVICES  
STATE OF NEW JERSEY  
DEPARTMENT OF ENVIRONMENTAL PROTECTION  
OFFICE OF REGULATORY SERVICES  
CN-402  
TRENTON, NEW JERSEY 08625

RE: DIAMOND SHAMROCK FEASIBILITY  
STUDY COMMENTS

DEAR MR. BURKE:

THE FOLLOWING COMMENTS ARE SUBMITTED ON BEHALF OF THE IRONBOUND HEALTH RIGHTS ADVISORY COMMISSION AND ARNOLD COHEN. THESE WRITTEN COMMENTS ARE IN ADDITION AND ADOPT THE ORAL COMMENTS MADE BY MYSELF, DR. PETER MONTAGUE AND ARNOLD COHEN AT THE PUBLIC MEETING HELD BY DEP ON THE FEASIBILITY STUDY.

THE MAIN AREAS OF CONCERN AND DEFICIENCIES FOUND IN THE FEASIBILITY STUDY ARE THE FOLLOWING:

1. DIAMOND HAS FAILED TO COMPLY WITH 7:26-1.4 BY NOT EXPLORING ALL ALTERNATIVES AND FAILING TO LIST DETAILED REASONS WHY OFF-SITE DISPOSAL IS NOT AVAILABLE.
2. DIAMOND HAS FAILED TO FULFILL ITS OBLIGATION TO FURNISH COMMUNICATIONS REGARDING THE AVAILABILITY OF OFF-SITE OPTIONS FOR DISPOSAL. THIS PREVENTS A MEANINGFUL EVALUATION OF AVAILABLE ALTERNATIVES. REMEMBER DEP SPECIFICALLY REQUESTED THIS INFORMATION BE CONTAINED IN THE STUDY IN AUGUST OF 1985.
3. DIAMOND HAS FAILED TO EVALUATE THE LEGAL REQUIREMENTS APPLIED BY DEP TO SITE CLEANUPS IN N.J. THIS PREVENTS THE EVALUATION OF WHAT LAWS WILL BE BROKEN BY THE CLEANUP OPTION SELECTED BY DIAMOND.
4. DIAMOND HAS FAILED TO EVALUATE THE IMPACTS OF JUDGE STANTON'S ORDER AND OPINION (COPIES ATTACHED). THESE REQUIRE THAT THE CLEANUP ACHIEVE THE HIGHEST LEVEL OF CLEANUP THAT THE BOUNDARIES OF OUR KNOWN TECHNOLOGY WOULD ALLOW.
5. DIAMOND HAS FAILED TO EVALUATE THE IMPACTS OF KNOWN CLEANUP AND CONSTRUCTION METHODOLOGIES UPON THE OPTIONS REQUIRING EXCAVATION OF MATERIALS, I.E., REVERSE PRESSURE WITHIN A COVERED WORK AREA. THIS MEANS THE EVALUATION OF ALTERNATIVES PRESENTED IS CLEARLY MISLEADING. DIAMOND RELIES ON THIS MISINFORMATION TO ELIMINATE ANY OPTIONS CONTAINING EXCAVATION OF SOILS.
6. DIAMOND HAS FAILED TO PROPERLY EVALUATE THE IMPACT UPON THE ENVIRONMENT AND PUBLIC HEALTH OF ABANDONMENT OF THE SITE BY DIAMOND ONCE THE 30 YEAR TIME FRAME OF MAINTENANCE OF THE SITE ENVISIONED BY DIAMOND'S FEASIBILITY STUDY ENDS. THIS FAILURE IS CRITICAL FOR NEW JERSEY LAW REQUIRES REMEDIAL ACTIVITY UNTIL THE SITE HAS BEEN CLEANED AND RESPONSIBILITY FOR ONGOING CLEANUP ACTIVITY IS NOT ENDED BY THE MERE PASSAGE OF TIME.
7. DIAMOND HAS IMPROPERLY DEVELOPED A GROUNDWATER DECONTAMINATION PROGRAM BASED UPON THE CHEMICAL CHARACTERISTICS OF TWO COMPOUNDS WHEN WE KNOW LITERALLY A HUNDRED COMPOUNDS ARE CONTAMINATING THE SITE. THE LIKELIHOOD OF SUCCESS OF ANY GROUNDWATER PROGRAM MUST EVALUATE THE MOBILITY, TOXICITY, ETC. OF ALL COMPOUNDS PRESENT ABOVE THE NEW JERSEY STANDARD OF 10 PPB BEING USED FOR GROUND WATER CLEANUPS AT INDUSTRIAL SITES. THE FEASIBILITY STUDY DOES NOT RECOGNIZE THE PROPER CLEANUP GOAL OF REMEDIATION UNTIL ALL CONTAMINANTS ARE BELOW THE 10 PPB STANDARD.

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8. DIAMOND HAS FAILED TO EVALUATE THE IMPACT OF FLOODING UPON THE PROJECT AND THE PROPOSED USE OF THIS AREA FOR FLOOD CONTROL BY THE ARMY CORPS.
9. DIAMOND HAS FAILED TO EVALUATE THE NEW JERSEY REQUIREMENTS FOR THICKNESS AND PERMEABILITY AS TO LINERS AT NEW WASTE DISPOSAL LOCATIONS. DIAMOND'S RELIANCE ON THE PRESENT SILT LAYER IS ILLEGAL.
10. DIAMOND HAS NOT EVALUATED THE SITING, PERMITTING CONSTRUCTION OPERATION, AND MAINTENANCE OF A NEW DIAMOND DIOXIN DISPOSAL FACILITY, WITHIN NEW JERSEY OR ANYWHERE ELSE IN THE WORLD.
11. DIAMOND HAS NOT EVALUATED THE DISPOSAL OF DIOXIN CONTAMINATED SOIL AT LICENSED INTERNATIONAL DISPOSAL SITES.
12. DIAMOND HAS NOT EVALUATED THE CURRENT PASSAIC RIVER DIOXIN AND DDT CONTAMINATION AND HOW THAT RELATES TO MOVING FORWARD WITH THIS RECOMMENDED ALTERNATIVE.
13. THE RECOMMENDED ALTERNATIVE DOES NOT EVALUATE THE COST AND LEGAL CONSTRAINTS OF SEEKING TO BECOME A LICENSED PERMITTED SOLID WASTE OR HAZARDOUS WASTE DISPOSAL FACILITY WITHIN NEW JERSEY. THIS IS WHAT IS BEING RECOMMENDED BY DIAMOND.

THE IRONBOUND HEALTH ADVISORY COMMISSION IS ADAMANT THAT THE OBJECTIVES OUTLINED BY DIAMOND IN ITS EXECUTIVE SUMMARY ARE ILLEGAL IN PART AND DO NOT MEET THE CLEANUP REQUIREMENTS AS MANDATED BY THE JUDICIAL DECISION OF JUDGE STANTON. JUDGE STANTON HAS DETERMINED THAT DIAMOND SHAMROCK IS LEGALLY RESPONSIBLE TO CLEANUP THESE SITES TO THE EXTENT PERMITTED BY KNOWN TECHNOLOGY. THIS DOES NOT MEAN MERELY CONTAIN CONTAMINANTS ON SITE, OR MERELY REDUCE THE MASS TRANSPORT OF DDT AND DIOXIN IN THE GROUND WATER, OR MERELY ELIMINATE THE MASS TRANSPORT OF CHEMICALS FROM THE SITE TO THE PASSAIC RIVER, OR MEAN UNDUE CONCERN FOR THE MOST COST EFFECTIVE METHOD WHEN THAT METHOD DOES NOT REPRESENT A TOTAL CLEANUP. JUDGE STANTON'S RULING MEANS THE IMPLEMENTATION OF CLEANUP AND REMOVAL TO A SECURE FACILITY AND THE COMMENTORS WILL PURSUE THIS INTERPRETATION IN COURT IF NECESSARY IN ORDER TO PREVAIL UPON DEP TO REQUIRE A REAL CLEANUP. DIAMOND'S CURRENT STUDY IS INCOMPLETE AND THE IRONBOUND HEALTH RIGHTS ADVISORY COMMISSION REQUESTS A FORMAL HEARING BE HELD BY DEP ONCE THE FEASIBILITY STUDY HAS BEEN DEEMED COMPLETE AND DEP HAS SELECTED AN ALTERNATIVE AND ISSUED ITS RATIONALE NECESSARY TO SUPPORT IT.

RESPECTFULLY SUBMITTED,

MICHAEL GORDON

MG:PC  
ENCLOSURE

CC: ARNOLD COHEN.

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SUPERIOR COURT OF NEW JERSEY

MORRIS AND SUSSEX COUNTIES

FEBRUARY 3, 1986

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RE: IRONBOUND HEALTH RIGHTS ADVISORY COMMISSION, ET AL. V.  
DIAMOND SHAMROCK CHEMICALS CO., ET AL.;  
CHANCERY DIVISION, ESSEX COUNTY;  
DOCKET NO. C-3190-83E -- LETTER OPINION

DEAR COUNSEL:

ON JANUARY 8, 1986, AN ORDER GRANTING FINAL EQUITABLE RELIEF AND TRANSFERRING DAMAGE CLAIMS TO LAW DIVISION WAS ENTERED BY ME IN THIS ACTION. THE ORDER ACTED AS A FINAL JUDGMENT WITH RESPECT TO PLAINTIFF'S CLAIMS FOR EQUITABLE RELIEF. ON FEBRUARY 24, 1986, I RECEIVED NOTICE THAT THE DEFENDANTS NEW JERSEY DEPARTMENT OF

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ENVIRONMENTAL PROTECTION AND NEW JERSEY DEPARTMENT OF HEALTH APPEAL FROM A PORTION OF THE ORDER. THIS LETTER OPINION IS ISSUED PURSUANT TO R. 2:5-1(B) AND MUST BE MADE PART OF THE RECORD ON APPEAL.

OVER A PERIOD OF YEARS, THE DEFENDANT DIAMOND SHAMROCK CHEMICAL COMPANY, OR A CORPORATE ENTITY TO WHICH IT WAS RELATED, MANUFACTURED A CHEMICAL HERBICIDE IN A FACTORY AT 80 LISTER AVENUE IN THE IRONBOUND SECTION OF NEWARK, NEW JERSEY. UNDER THE NAME "AGENT ORANGE" THIS HERBICIDE WAS WIDELY USED AS A DEFOLIANT DURING THE VIETNAM WAR. A BY-PRODUCT OF THE HERBICIDE IS AN EXTREMELY TROUBLESOME DIOXIN.

TESTS ON MANY STANDARD SPECIES OF LABORATORY ANIMALS HAVE SHOWN THAT THE DIOXIN INVOLVED HERE IS HIGHLY TOXIC. INDEED, FOR SOME STANDARD SPECIES, THE DIOXIN IS SUPER TOXIC, WITH EXTREMELY SMALL QUANTITIES PRODUCING QUICK DEATH. EXPERIENCE WITH STANDARD SPECIES OF TEST ANIMALS WOULD LEAD ONE TO SUSPECT THAT EXPOSURE TO DIOXIN MIGHT PRODUCE DEVASTATING RESULTS IN HUMANS.

BEFORE THE DIOXIN IN QUESTION WAS PERCEIVED AS BEING AS POTENTIALLY DANGEROUS AS WE NOW SUSPECT IT MAY BE, MANY HUMAN BEINGS WERE EXPOSED TO IT IN ONE WAY OR ANOTHER. NEVERTHELESS, THE DEVASTATING RESULTS FOR HUMANS WHICH MIGHT HAVE BEEN PREDICTED FROM THE TEST RESULTS WE NOW HAVE ON LABORATORY ANIMALS DO NOT SEEM TO HAVE OCCURRED. THE EVIDENCE IN THIS CASE INDICATES THAT MOST HUMAN BEINGS EXPOSED TO THIS DIOXIN HAVE NOT YET EXPERIENCED ANY ADVERSE RESULTS, AT LEAST NONE WHICH CAN BE PRESENTLY DETECTED. WHEN EXPOSED HUMANS HAVE EXPERIENCED DETECTABLE ADVERSE RESULTS, THE PROBLEMS SEEM TO BE RELATIVELY MINOR.

IT MAY BE THAT THE HUMAN ORGANISM HAS AN ABILITY TO WITHSTAND EXPOSURE TO THIS DIOXIN WHICH THE STANDARD SPECIES OF TEST ANIMALS DO NOT SHARE, OR IT MAY BE THAT EXPOSED HUMANS HAVE RECEIVED DAMAGE WHICH IS SLOW IN MANIFESTING ITSELF. ALL OF US HOPE, OF COURSE, THAT THE DIOXIN IS NOT SERIOUSLY HARMFUL TO HUMANS. BUT OUR EXPERIENCE WITH OTHER CHEMICALS FORCES US TO BE CAUTIOUS, BECAUSE WE KNOW THAT WE ARE SOMETIMES SERIOUSLY DAMAGED BY A CHEMICAL WITHOUT BEING AWARE OF IT UNTIL MANY YEARS HAVE PASSED AFTER THE EXPOSURE. IN THIS REGARD, ONE CANNOT HELP THINKING ABOUT A SYNTHETIC ESTROGEN (DES), AN APPROVED THERAPEUTIC DRUG WHICH WAS ROUTINELY ADMINISTERED TO MANY PREGNANT WOMEN TO PREVENT MISCARRIAGES. THE WOMEN TAKING DES DID NOT APPEAR TO BE HURT BY IT, THE BABIES THEY PRODUCED APPEARED TO BE HEALTHY, AND GREW INTO HEALTHY YOUNG CHILDREN. HOWEVER, AS THOSE CHILDREN PASSED THROUGH PUBERTY INTO ADOLESCENCE, VASTLY DISPROPORTIONATE NUMBERS OF THEM DEVELOPED SERIOUS CANCERS. THE HUMAN REALITY AND THE HUMAN DECENCY OF OUR PRESENT SITUATION REQUIRE US TO REGARD PERSONS EXPOSED TO DIOXIN AS BEING AT SPECIAL RISK. THEY WILL REMAIN AT SPECIAL RISK FOR MANY YEARS TO COME. IT IS IMPERATIVE THAT RESPONSIBLE PUBLIC AGENCIES OPERATE CAREFULLY DESIGNED PROGRAMS TO TEST, MONITOR AND, IF NECESSARY, TREAT PERSONS EXPOSED TO DIOXIN.

MANY YEARS AGO, DEFENDANT DIAMOND SHAMROCK CHEMICAL COMPANY USED THE FACTORY AT 80 LISTER AVENUE TO MANUFACTURE HERBICIDE. ALL OF THE PERSONS WHO WORKED IN THE FACTORY DURING THAT MANUFACTURING PROCESS WERE EXPOSED IN A SUBSTANTIAL WAY TO DIOXIN. THE FAMILIES OF THOSE WORKERS WERE EXPOSED TO THE DIOXIN IN A DIFFERENT, BUT POTENTIALLY SIGNIFICANT, WAY. AFTER DIAMOND SHAMROCK STOPPED USING THE FACTORY AT 80 LISTER AVENUE, OTHER BUSINESSES USED THE PREMISES FOR DIFFERENT MANUFACTURING PROCESSES. BY THAT TIME THERE WERE RELATIVELY LARGE AMOUNTS OF DIOXIN IN THE SOIL AND MATERIALS AT 80 LISTER AVENUE, AND THESE WORKERS WERE EXPOSED. THEIR FAMILIES HAVE HAD A DERIVATIVE EXPOSURE TO DIOXIN. OVER THE YEARS, DIOXIN HAS BEEN CARRIED FROM 80 LISTER AVENUE INTO THE SURROUNDING NEIGHBORHOOD. NEIGHBORHOOD FACTORY WORKERS AND RESIDENTS HAVE BEEN EXPOSED TO VARYING AMOUNTS OF DIOXIN. IN SHORT, OVER THE YEARS, VARIOUS CATEGORIES OF PERSONS HAVE BEEN EXPOSED IN DIFFERENT WAYS, FOR DIFFERENT LENGTHS OF TIME, TO VARYING AMOUNTS OF DIOXIN. ON THE FACE OF IT, SOME OF THE EXPOSURE IS POTENTIALLY VERY DANGEROUS, SOME IS POTENTIALLY MODERATELY DANGEROUS IN SOME DEGREE OR OTHER, AND SOME IS PROBABLY NOT DANGEROUS. BUT NOBODY REALLY KNOWS.

THE FACT THAT THERE WAS SUBSTANTIAL DIOXIN CONTAMINATION AT 80 LISTER AVENUE AND ITS ENVIRONS CAME TO PUBLIC ATTENTION IN 1982. SHORTLY THEREAFTER, THIS ACTION WAS INSTITUTED. PLAINTIFFS HAVE SOUGHT A WIDE RANGE OF INJUNCTIVE RELIEF. SOME OF THE RELIEF WAS AIMED AT PHYSICAL CLEANING OF 80 LISTER AVENUE AND SURROUNDING AREAS; SOME OF IT WAS AIMED AT IDENTIFYING, TESTING, MONITORING AND TREATING THE VARIOUS CATEGORIES OF PERSONS EXPOSED TO DIOXIN. THERE WERE ALSO CLAIMS FOR SUBSTANTIAL MONEY DAMAGES. AT THE OUTSET, I DETERMINED (WITHOUT ANY SERIOUS OBJECTION FROM ANY OF THE PARTIES OR THEIR ATTORNEYS) THAT TOP PRIORITY HAD TO BE GIVEN TO PHYSICAL ABATEMENT AND CLEANING OF THE ENVIRONMENT AND TO HELPING TO GET APPROPRIATE HEALTH PROGRAMS IN PLACE. FINANCIAL LIABILITY PROBLEMS WERE OF DECIDEDLY SECONDARY IMPORTANCE. I DID NOT WANT TO SEE THE ENERGY AND RESOURCES OF PUBLIC OFFICIALS AND THE PARTIES DIVERTED FROM THE NEED TO SOLVE EXISTING ENVIRONMENTAL AND HEALTH PROBLEMS. ACCORDINGLY, I STAYED ALL PROCEEDINGS WITH RESPECT TO DAMAGE CLAIMS, AND

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I PROHIBITED ANY DISCOVERY ON THE DAMAGE CLAIMS.

ALTHOUGH WE HAVE NEVER HAD AND NEVER WILL HAVE A PLENARY TRIAL ON THE EQUITABLE RELIEF CLAIMS IN THIS CASE, WE HAVE HAD EXTENSIVE INTERLOCUTORY PROCEEDINGS DEALING WITH THE EQUITABLE RELIEF CLAIMS. THERE HAVE BEEN MANY FORTUNATE ASPECTS TO THIS CASE. THE EXECUTIVE BRANCH OF OUR STATE GOVERNMENT HAS GIVEN EXTENSIVE ATTENTION TO THE PROBLEMS AT AND AROUND 80 LISTER AVENUE. THE ATTENTION HAS OFTEN BEEN AT THE HIGHEST LEVEL, WITH THE COMMISSIONER OF HEALTH, THE COMMISSIONER OF THE DEPARTMENT OF ENVIRONMENTAL PROTECTION AND THE GOVERNOR HIMSELF BECOMING PERSONALLY INVOLVED IN SOME OF THE EXECUTIVE BRANCH DECISION-MAKING. DIAMOND SHAMROCK HAS EXHIBITED AN ENLIGHTENED SOCIAL CONSCIENCE WITH RESPECT TO THE ENVIRONMENTAL PROBLEMS AND HAS ENTERED INTO CONSENT ADMINISTRATIVE ORDERS WITH THE DEPARTMENT OF ENVIRONMENTAL PROTECTION WHICH HAVE COMMITTED MANY MILLIONS OF DOLLARS AND CONSIDERABLE TECHNICAL EXPERTISE TO THE REMOVAL OF DIOXIN FROM 80 LISTER AVENUE AND ITS ENVIRONS.

IN PARTICULAR, THERE HAVE BEEN FAIRLY EXTENSIVE INTERLOCUTORY PROCEEDINGS WITH RESPECT TO HEALTH ISSUES. WE HAVE NEVER HAD ORAL TESTIMONY ON THE HEALTH ISSUES, BUT WE HAVE HAD EXTENSIVE EXPERT TESTIMONY BY WAY OF AFFIDAVITS AND REPORTS. MOSTLY AS A RESULT OF ITS OWN INITIATIVES, BUT PARTLY AS A RESULT OF PRODDING IN THIS ACTION, THE NEW JERSEY DEPARTMENT OF HEALTH PRODUCED AN ELABORATE PLAN TO TEST AND MONITOR IN DIFFERENT WAYS THE VARIOUS CATEGORIES OF EXPOSED PERSONS. (FEDERAL HEALTH AGENCIES APPARENTLY PLAYED A LARGE ROLE IN DEVELOPING THAT PLAN, BUT THE NEW JERSEY COMMISSIONER OF HEALTH APPROVED THE PLAN AND AUTHORIZED ITS SUBMISSION TO THIS COURT AS HIS PLAN TO DEAL WITH THE HEALTH NEEDS OF THE SITUATION.). THE DEPARTMENT OF HEALTH PLAN WAS NOT ACCEPTABLE TO PLAINTIFFS, BUT AFTER HEARING THE ARGUMENTS OF THE PARTIES AND REVIEWING THEIR EXTENSIVE DOCUMENTARY SUBMISSIONS, I DECIDED THAT THE PLAN SUBMITTED BY THE STATE WAS AN ADEQUATE PROGRAM FOR DEALING WITH THE HEALTH ISSUES. ACCORDINGLY, I ENTERED AN ORDER APPROVING THE PLAN SOME TIME AGO.

BY THE SUMMER OF 1985, IT APPEARED TO ME THAT THE DEPARTMENT OF ENVIRONMENTAL PROTECTION AND THE DEPARTMENT OF HEALTH HAD THE REAL-LIFE PROBLEMS OF THIS CASE WELL IN HAND. THAT IS NOT TO SAY THAT THE PROBLEMS WERE SOLVED. FAR FROM IT. MANY FUTURE YEARS OF WORK ARE INVOLVED HERE. THE ENVIRONMENTAL CLEANUP PLAN AND THE HEALTH PLAN WILL REQUIRE ONGOING REVISION AND UPDATING AS WORK PROGRESSES AND AS MORE FACTS BECOME KNOWN. HOWEVER, IT SEEMED TO ME THAT THE COMMISSIONER OF THE DEPARTMENT OF ENVIRONMENTAL PROTECTION AND THE COMMISSIONER OF THE DEPARTMENT OF HEALTH WERE ADDRESSING ALL OF THE PROBLEMS WITH VIGOR AND WITH EXPERTISE THAT THE COURT DID NOT POSSESS. ACCORDINGLY, I SUGGESTED TO THE PARTIES THAT PERHAPS THE COURT SHOULD TERMINATE THE EQUITABLE RELIEF PORTION OF THE CASE AND TRANSFER THE DAMAGE CLAIMS TO THE LAW DIVISION FOR FURTHER PROCEEDINGS. I INVITED THE PARTIES TO SUBMIT WRITTEN ARGUMENT. AFTER RECEIVING THE ARGUMENTS OF THE PARTIES, I ENTERED THE JANUARY 8, 1986 ORDER GRANTING FINAL EQUITABLE RELIEF AND TRANSFERRING DAMAGE CLAIMS TO THE LAW DIVISION.

SO FAR AS EQUITABLE RELIEF CLAIMS ARE CONCERNED, THE JANUARY 8 ORDER PROVIDES AS FOLLOWS:

"IT IS FURTHER ORDERED THAT THE COMMISSIONER OF DEPARTMENT OF HEALTH SHALL IMPLEMENT (WITH FEDERAL TECHNICAL ASSISTANCE AND FINANCIAL AID, IF AVAILABLE; BUT WITHOUT THEM, IF THEY ARE NOT AVAILABLE) THE MEDICAL TESTING AND MONITORING PROGRAM PREVIOUSLY APPROVED BY THE COURT, AND THE COMMISSIONER OF DEPARTMENT OF ENVIRONMENTAL PROTECTION SHALL CONTINUE TO ENFORCE THE CLEANUP OF DIOXIN CONTAMINATION AT AN(D) IN THE ENVIRONS OF 80 LISTER AVENUE, NEWARK, NEW JERSEY TO THE GREATEST EXTENT FEASIBLE WITHIN THE BOUNDS OF KNOWN TECHNOLOGY. ...

"THE COURT IS SATISFIED THAT THE COMMISSIONER OF THE DEPARTMENT OF HEALTH AND THE COMMISSIONER OF THE DEPARTMENT OF ENVIRONMENTAL PROTECTION WILL CONTINUE IN AN ACTIVE AND VIGOROUS FASHION TO DISCHARGE THEIR RESPONSIBILITIES IN THIS MATTER. OTHER THAN WHAT IS GRANTED ABOVE, NO ADDITIONAL EQUITABLE JUDICIAL RELIEF IS NECESSARY. THIS ORDER CONSTITUTES A FINAL JUDGMENT ON THE CLAIMS ASSERTED HEREIN FOR EQUITABLE RELIEF."

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I REALIZE THAT WHEN THE COMMISSIONER OF THE DEPARTMENT OF HEALTH SUBMITTED HIS TESTING AND MONITORING PLAN TO THE COURT HE ANTICIPATED THAT SUBSTANTIAL FINANCIAL AND TECHNICAL ASSISTANCE IN CARRYING OUT THE PLAN WOULD BE FORTHCOMING FROM THE FEDERAL GOVERNMENT. I GATHER THAT FEDERAL FUNDING HAS NOT YET BEEN OBTAINED IN ANYTHING APPROACHING THE NEEDED AMOUNT, AND THAT IT IS DOUBTFUL THAT FULL FEDERAL FUNDING WILL EVER BE GRANTED. THAT LACK OF FEDERAL FUNDING IS REGRETTABLE, AND I RECOGNIZE IT POSES SUBSTANTIAL PRACTICAL PROBLEMS FOR THE NEW JERSEY DEPARTMENT OF HEALTH. HOWEVER, THE LACK OF FEDERAL FUNDING DOES NOT ALTER THE BASIC REALITIES OF THIS CASE, AND IT DOES NOT AND SHOULD NOT RELIEVE ANY NEW JERSEY OFFICIAL OF HIS RESPONSIBILITIES IN THIS MATTER.

PERHAPS THE MOST BASIC REALITY OF THIS CASE IS THAT THERE IS A FUNDAMENTAL HUMAN NEED TO BE MET. REAL PEOPLE, INNOCENT PEOPLE, WHOSE IDENTITIES ARE KNOWN, HAVE BEEN EXPOSED TO DIOXIN AND PUT AT SPECIAL RISK. THEY HAVE TO BE TESTED, MONITORED AND IF NECESSARY, TREATED. THIS IS A RESPONSIBILITY OF GOVERNMENT. IN VIEW OF THE FACT THAT THE TESTING AND MONITORING MAY YIELD DATA OF GENERAL SCIENTIFIC SIGNIFICANCE IN ADDITION TO HELPING THE INDIVIDUAL PEOPLE INVOLVED, ONE WOULD HAVE HOPED THAT THE FEDERAL GOVERNMENT WOULD BE A MAJOR FUNDER. HOWEVER, IF THE FEDERAL GOVERNMENT IS UNWILLING OR UNABLE TO HELP, THAT DOES NOT EXCUSE NEW JERSEY FROM MEETING ITS RESPONSIBILITY. WE IN NEW JERSEY HAVE OUR OWN SPECIAL TRADITIONS OF CARING, CONCERN AND DECENCY, AND THEY MUST BE UPHELD.

THE COMMISSIONER OF THE DEPARTMENT OF HEALTH HAS APPEALED FROM THAT PORTION OF THE JANUARY 8 ORDER WHICH REQUIRES HIM TO "IMPLEMENT (WITH FEDERAL TECHNICAL ASSISTANCE AND FINANCIAL AID, IF AVAILABLE; BUT WITHOUT THEM, IF THEY ARE NOT AVAILABLE) THE MEDICAL TESTING AND MONITORING PROGRAM PREVIOUSLY APPROVED BY THE COURT. ...". I POINT OUT THAT THE PROGRAM IN QUESTION WAS NOT SOMETHING PROPOSED BY THE PLAINTIFFS, OR EVEN FULLY ACCEPTABLE TO THEM. IT WAS NOT SOMETHING DEvised BY THE COURT. THE PROGRAM WAS PROPOSED TO THE COURT BY THE COMMISSIONER. IT REPRESENTED HIS EVALUATION OF WHAT NEEDED TO BE DONE TO MEET THE HUMAN HEALTH NEEDS OF THIS SITUATION. I ACCEPTED IT BECAUSE IT APPEARED TO BE A WELL-DESIGNED, WELL-REASONED RESPONSE TO THE HEALTH PROBLEM CONFRONTING ALL OF US. THE HOPED-FOR FEDERAL FUNDING MAY HAVE DISAPPEARED, BUT THE PROBLEM HAS NOT. GIVEN THE IMPORTANCE OF THE PROBLEM, I DO NOT THINK IT REPRESENTS INAPPROPRIATE JUDICIAL ACTIVISM OR AN INAPPROPRIATE JUDICIAL INTRUSION INTO THE AFFAIRS OF THE OTHER BRANCHES OF GOVERNMENT TO REQUIRE THE COMMISSIONER OF THE DEPARTMENT OF HEALTH TO IMPLEMENT HIS OWN PROGRAM OF MEDICAL TESTING AND MONITORING, EVEN THOUGH HE DID NOT GET THE FEDERAL HELP HE ANTICIPATED. UNDER ALL OF THE CIRCUMSTANCES OF THIS CASE, I THINK IT IS RIGHT FOR THE COURT TO EXPECT THE GOVERNOR AND THE LEGISLATURE TO FIGURE OUT A WAY TO PROVIDE THE SEVERAL MILLION DOLLARS NEEDED TO IMPLEMENT THE MEDICAL TESTING AND MONITORING PROGRAM.

VERY TRULY YOURS,

REGINALD STANTON, A.J.S.C.

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FILED  
JAN 08 1986  
REGINALD STANTON, A.J.S.C.

PREPARED BY THE COURT AFTER  
RECEIVING DRAFT ORDER FROM  
PLAINTIFFS' ATTORNEYS

IRONBOUND HEALTH RIGHTS : SUPERIOR COURT OF NEW JERSEY  
ADVISORY COMMISSION, ET AL., : CHANCERY DIVISION  
: ESSEX COUNTY  
PLAINTIFFS : DOCKET NO. C-3190-83E  
: CIVIL ACTION  
-V- :  
DIAMOND SHAMROCK CHEMICAL : ORDER GRANTING FINAL EQUITABLE  
COMPANY, ET AL., : RELIEF AND TRANSFERRING DAMAGE  
DEFENDANTS. : CLAIMS TO LAW DIVISION  
:

THIS MATTER CAME BEFORE THE COURT ON THE MOTION OF GORDON AND GORDON, P.A., ATTORNEYS FOR PLAINTIFFS, FOR AN ORDER FOR ADDITIONAL INTERIM RELIEF IN THE PRESENCE OF MESSRS. GORDON AND GORDON, P.A. BY: MICHAEL GORDON, ESQ. AND TIMOTHY S. HALEY, ESQ., ATTORNEYS FOR PLAINTIFFS; MESSRS. HOAGLAND, LONGO, OROPOLLO & MORAN, BY: RHONDA S. BIRNBAUM, ESQUIRE, ATTORNEYS FOR DEFENDANT, AETNA CASUALTY; MESSRS. LOWENSTEIN, SANDLER, BROCHIN, KOHL, FISHER, BOYLAND & MEANOR, BY: PHILIP L. GUARINO, ESQ., ATTORNEYS FOR DEFENDANT, S.E.A. SERVICES, INC., MESSRS. MCCARTER & ENGLISH, BY: FRANCIS E.P. MCCARTER, ESQUIRE, ATTORNEYS FOR DEFENDANT, DIAMOND SHAMROCK CHEMICALS COMPANY; MESSRS. SHANLEY & FISHER, BY: KENNETH S. KASPER, ESQUIRE, ATTORNEYS FOR DEFENDANT, RICHARD F. ENGEL, ESQUIRE, DEPUTY ATTORNEY GENERAL, ATTORNEY FOR DEFENDANT, DEPARTMENT OF ENVIRONMENTAL PROTECTION; MESSRS. DUGHI & HEWIT, BY: PATRICIA MASSA BASS, ESQUIRE, ATTORNEYS FOR DEFENDANT, DR. ROGER BRODKIN. THE QUESTION OF MAKING FINAL THE EQUITABLE RELIEF GRANTED IN THIS CASE CAME BEFORE THE COURT ON ITS OWN MOTION, AFTER ALL COUNSEL WERE GIVEN THE OPPORTUNITY TO COMMENT THEREON.

IT IS HEREBY ORDERED, ON THIS 8TH DAY OF JANUARY, 1986, THAT PLAINTIFFS' MOTION FOR ADDITIONAL INTERIM RELIEF IS DENIED.

IT IS FURTHER ORDERED THAT THE COMMISSIONER OF DEPARTMENT OF HEALTH SHALL IMPLEMENT (WITH FEDERAL TECHNICAL ASSISTANCE AND FINANCIAL AID, IF AVAILABLE; BUT WITHOUT THEM, IF THEY ARE NOT AVAILABLE) THE MEDICAL TESTING AND MONITORING PROGRAM PREVIOUSLY APPROVED BY THE COURT, AND THE COMMISSIONER OF DEPARTMENT OF ENVIRONMENTAL PROTECTION SHALL CONTINUE TO ENFORCE THE CLEANUP OF DIOXIN CONTAMINATION AT AN(D) IN THE ENVIRONS OF 80 LISTER AVENUE, NEWARK, NEW JERSEY TO THE GREATEST EXTENT FEASIBLE WITHIN THE BOUNDS OF KNOWN TECHNOLOGY. SEE BELOW. \*

IT IS FURTHER ORDERED THAT THE MATTER IS HEREBY TRANSFERRED TO THE LAW DIVISION, ESSEX COUNTY FOR ALL FURTHER PROCEEDINGS ON THE DAMAGE CLAIMS ASSERTED HEREIN.

IT IS FURTHER ORDERED THAT THE STAY ON DISCOVERY IS HEREBY LIFTED.

IT IS RECOMMENDED TO THE HONORABLE JOHN A. MARZULLI, A.J.S.C., THAT

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THIS MATTER BE SPECIALLY ASSIGNED TO A SINGLE JUDGE FOR CASE MANAGEMENT.

PLAINTIFFS' ATTORNEYS SHALL SEND COPIES OF THIS ORDER TO ALL COUNSEL OF RECORD WITHIN 7 DAYS OF THE DATE HEREOF.

REGINALD STANTON  
JUDGE OF THE SUPERIOR COURT  
ASSIGNMENT JUDGE

\* THE COURT IS SATISFIED THAT THE COMMISSIONER OF THE DEPARTMENT OF HEALTH AND THE COMMISSIONER OF THE DEPARTMENT OF ENVIRONMENTAL PROTECTION WILL CONTINUE IN AN ACTIVE AND VIGOROUS FASHION TO DISCHARGE THEIR RESPONSIBILITIES IN THIS MATTER. OTHER THAN WHAT IS GRANTED ABOVE, NO ADDITIONAL EQUITABLE JUDICIAL RELIEF IS NECESSARY. THIS ORDER CONSTITUTES A FINAL JUDGMENT ON THE CLAIMS ASSERTED HEREIN FOR EQUITABLE RELIEF.

CONFORMED COPY

APPENDIX A - PART II

RESPONSIVENESS SUMMARY

PROPOSED INTERIM REMEDIAL ACTION PLAN FOR  
THE DIAMOND SHAMROCK SUPERFUND SITE  
NEWARK, NEW JERSEY

PUBLIC COMMENT PERIOD  
JULY 31, 1987 TO AUGUST 31, 1987

SECTIONS I AND II BELOW PRESENT A SUMMARY OF THE QUESTIONS AND COMMENTS EXPRESSED BY THE PUBLIC AT THE AUGUST 11, 1987, MEETING ON THE PROPOSED INTERIM REMEDIAL ACTION PLAN FOR THE DIAMOND SHAMROCK SUPERFUND SITE. THE QUESTIONS AND COMMENTS ARE GROUPED INTO GENERAL CATEGORIES OR SUBJECTS. SECTION III IS A SUMMARY OF ADDITIONAL COMMENTS RECEIVED IN WRITING DURING THE PUBLIC COMMENT PERIOD. ALL COMMENTS OR QUESTIONS ARE FOLLOWED BY RESPONSES REPRESENTING THE JOINT POSITION OF EPA AND NJDEP.

I. SELECTION OF A REMEDIAL ALTERNATIVE

A. THE PROPOSED INTERIM REMEDY - ON-SITE CONTAINMENT WITH GROUND-WATER PUMPING AND TREATMENT.

1. COMMUNITY MEMBERS STATED CONCERN THAT THIS "INTERIM" SOLUTION WOULD BE PERMANENT AND THAT THE SITE WOULD BECOME A HAZARDOUS WASTE DISPOSAL FACILITY.

EPA AND NJDEP DO NOT BELIEVE THAT THE PROPOSED REMEDY WILL BE A PERMANENT SOLUTION FOR THE CONTAMINATION AT THE DIAMOND SHAMROCK SITE. IT IS HOPED THAT FUTURE STUDIES OF THE MEANS FOR EXCAVATION WILL SHOW THAT EXCAVATION CAN BE DONE IN A SAFE MANNER WITH AN ACCEPTABLE IMPACT ON THE COMMUNITY. BOTH AGENCIES BELIEVE THAT SITING PROBLEMS FOR A HAZARDOUS WASTE THERMAL TREATMENT UNIT CAN BE RESOLVED, GIVEN ENOUGH TIME. IT IS EXPECTED THAT LARGER THERMAL TREATMENT UNITS CAPABLE OF PROPERLY TREATING DIOXIN WASTES WILL BE PROVEN EFFECTIVE AND WILL BECOME AVAILABLE FOR THE TREATMENT OF WASTE FROM THIS SITE. THIS EXPECTATION IS BASED ON THE RAPID PROGRESS IN THERMAL TREATMENT TECHNOLOGY WHICH IS CURRENTLY BEING MADE.

EXCAVATION AND TREATMENT OPTIONS ARE NOT PREFERRED AT THIS TIME, IN PART, BECAUSE THEY CANNOT BE IMPLEMENTED IN AN EXPEDITIOUS MANNER. ONCE THE SITE IS ADEQUATELY CONTROLLED BY THE PROPOSED REMEDY, HOWEVER, THE NEED TO REMEDY THE SITE EXPEDITIOUSLY WILL NO LONGER EXIST AND MORE COMPLEX REMEDIES SUCH AS EXCAVATION AND THERMAL TREATMENT CAN BE CONSIDERED IN THE NECESSARY DETAIL.

2. PETER MONTAGUE EXPRESSED CONCERN ABOUT WHETHER A REMEDY SIMILAR TO THAT PROPOSED HAD BEEN USED ON SIMILAR WASTES. IF SO, WHERE HAS THIS SOLUTION BEEN USED BEFORE?

CONTAINMENT REMEDIES HAVE BEEN UTILIZED AT HAZARDOUS WASTE SITES NUMEROUS TIMES IN THE PAST, ALTHOUGH THE COMPOSITION OF THE WASTE, ESPECIALLY WITH RESPECT TO THE DIOXIN CONTAMINATION, AT THE DIAMOND SHAMROCK SITE IS UNIQUE. A NOTEWORTHY EXAMPLE OF THE SUCCESSFUL IMPLEMENTATION OF CONTAINMENT AT A SITE WITH WASTES SIMILAR TO THOSE AT DIAMOND SHAMROCK IS THE LOVE CANAL SITE IN NEW YORK STATE. AS WITH DIAMOND SHAMROCK, LOVE CANAL IS A SETTING IN WHICH PESTICIDES AND DIOXIN-CONTAMINATED MATERIALS WERE DISPOSED.

A NEW CAP WAS PLACED ON THE LOVE CANAL SITE IN 1984 AND GROUND-WATER PUMPING AND TREATMENT HAVE BEEN INITIATED. EXTENSIVE MONITORING HAS SUBSEQUENTLY BEEN CONDUCTED AND THE RESULTS INDICATE THE EFFECTIVENESS OF THE CAP AND GROUND-WATER PUMPING AND TREATMENT IN CONTROLLING OFF-SITE MIGRATION OF CONTAMINANTS.

3. FRANK SUDOL, REPRESENTING MAYOR SHARPE JAMES, SAID THAT THE PROPOSED REMEDY DOES NOT ADEQUATELY ADDRESS THE FOLLOWING:

A - DETAILED DESCRIPTION OF THE FS TO BE CONDUCTED EVERY TWO YEARS (WHAT WILL BE DONE TO MEET CERCLA 121(C)?);

THE AGENCY IS CURRENTLY DEVELOPING GUIDANCE THAT WILL EXPLAIN PROCEDURES FOR CONDUCTING EVALUATIONS REQUIRED

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BY SECTION 121(C). AFTER THIS GUIDANCE IS AVAILABLE, IT WILL BE USED IN DEVELOPING PLANS FOR THE BIENNIAL FEASIBILITY STUDIES CALLED FOR BY THE PROPOSED PLAN. EXISTING EPA GUIDANCE FOR CONDUCTING A FEASIBILITY STUDY, ENTITLED GUIDANCE ON FEASIBILITY STUDIES UNDER CERCLA, JUNE 1985, PROVIDES MUCH INFORMATION THAT WILL STILL BE RELEVANT WHEN THE FIRST RE-EVALUATION IS PERFORMED.

B - DETAILED PROPOSAL FOR PUBLIC PARTICIPATION IN THE BIENNIAL FS;

CURRENT EPA REGULATIONS REQUIRE THAT THERE BE A PUBLIC COMMENT PERIOD ON ALL FEASIBILITY STUDIES DEVELOPED UNDER THE SUPERFUND PROGRAM. THEREFORE, THE PUBLIC WILL HAVE AN OPPORTUNITY TO REVIEW AND COMMENT ON EACH BIENNIAL RE-EVALUATION REPORT. ADDITIONALLY, NJDEP AND EPA WILL BE WILLING TO MEET WITH AN ADVISORY COMMITTEE COMPOSED OF OFFICIALS AND COMMUNITY REPRESENTATIVES IN ORDER TO OBTAIN INPUT FROM THIS COMMITTEE AND TO KEEP THE COMMITTEE APPRISED OF SITE STATUS.

C - DETAILS CONCERNING THE CONDITIONS WHICH WOULD TRIGGER ADDITIONAL STUDIES;

SINCE RE-EVALUATION STUDIES ARE TO BE COMPLETED EVERY TWO YEARS, SUCH STUDIES WILL BE IN PROGRESS ALMOST CONTINUALLY. NJDEP AND EPA, THEREFORE, DO NOT ANTICIPATE THE NEED FOR ADDITIONAL STUDIES. THE AGENCIES HAVE THE DISCRETION, HOWEVER, TO CONDUCT OR REQUIRE SUCH STUDIES SHOULD THE NEED ARISE.

D - THE POSSIBILITY OF NEWARK RECEIVING COMPENSATION FOR ACCEPTING DIOXIN, AS THERE IS A PRECEDENT FOR THIS;

EPA AND NJDEP ARE AWARE OF NO EXISTING STATUTORY AUTHORITY TO COMPENSATE NEWARK FOR STORING DIOXIN. THUS, THE AGENCIES CANNOT CONSIDER COMPENSATION AT THIS TIME.

E - DETAILED PROPOSAL FOR AIR MONITORING;

ITEM 14 ON PAGE A-2 OF THE PROPOSED INTERIM REMEDIAL ACTION PLAN (THE PROPOSED PLAN) ADDRESSES THE NEED FOR SUITABLE MONITORING ACTIVITIES: "IMPLEMENT SUITABLE MONITORING, CONTINGENCY, OPERATION AND MAINTENANCE... TO ENSURE THE PROTECTION OF HUMAN HEALTH AND THE ENVIRONMENT DURING AND AFTER THE INSTALLATION OF THE SELECTED ALTERNATIVE, INCLUDING A GROUND WATER MONITORING PROGRAM.". DETAILED PLANS FOR THIS MONITORING WILL BE INCLUDED IN THE REMEDIAL DESIGN DOCUMENT, INCLUDING SPECIFIC ACTIONS FOR AIR MONITORING. THAT DOCUMENT WILL BE MADE AVAILABLE FOR PUBLIC REVIEW AND COMMENT, PRIOR TO THE INITIATION OF ANY ON-SITE WORK.

F - DETAILS CONCERNING HOW THE CARBON WILL BE TREATED AFTER IT HAS CLEANSED THE GROUND WATER;

ITEM 13 ON PAGE A-1 OF THE PROPOSED PLAN SPECIFIES HOW THE SPENT CARBON AND OTHER SLUDGES GENERATED BY WASTEWATER TREATMENT WILL BE HANDLED. IT STATES THAT ACTIONS TAKEN AS PART OF THE REMEDY WILL "PLACE ON-SITE AND CAP THE SLUDGE GENERATED FROM THE WASTEWATER TREATMENT PROCESS UNTIL SUCH TIME THAT AN ALTERNATIVE METHOD OF SLUDGE MANAGEMENT IS APPROVED.". SPENT CARBON AND SLUDGES WILL PROBABLY BE PLACED IN A SEPARATE ON-SITE LANDFILL CELL TO MINIMIZE POTENTIAL RELEASE OF OTHER ON-SITE WASTE UNDER THE CAP. FUTURE OPTIONS FOR THESE GROUND-WATER TREATMENT WASTES MAY INVOLVE TREATMENT AT AN OFF-SITE PERMITTED FACILITY.

G - PLAN FOR A BULKHEAD WHICH COULD WITHSTAND THE 500-YEAR FLOOD;

THE SECURING OF THE HAZARDOUS MATERIALS FROM FLOODING WILL NOT BE ACHIEVED SOLELY BY REBUILDING THE BULKHEAD. THE INTEGRITY OF THE SITE WILL ALSO BE MAINTAINED BY THE CONSTRUCTION OF THE CAP, WHICH WILL BE DESIGNED TO MEET THE RIGOROUS REQUIREMENTS OF RCRA. WE ANTICIPATE THAT THE CAP WILL BE SEVERAL FEET THICK AND WILL CONTAIN HIGHLY IMPERMEABLE MATERIALS WHICH WILL NOT BE PENETRATED BY FLOODING OR OTHER WEATHER CONDITIONS. ALTHOUGH IT IS POSSIBLE THAT THE OUTERMOST PART OF THE CAP MAY BE DAMAGED IN THE 500-YEAR FLOOD, THE CONTENTS UNDER THE CAP WOULD NOT BE THREATENED. THE 100-YEAR FLOOD IS USED AS THE DESIGN BASIS FOR FLOOD PROTECTION IN A NUMBER OF APPLICABLE FEDERAL AND STATE REGULATIONS.

H - PLANS FOR ADDITIONAL SECURITY DURING THE TIMES WHEN THE SITE WILL BE UNATTENDED;

ITEM 14 ON PAGE A-2 OF THE PROPOSED PLAN ADDRESSES THE NEED FOR "SITE SECURITY MEASURES TO ENSURE THE

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PROTECTION OF HUMAN HEALTH AND THE ENVIRONMENT DURING AND AFTER THE INSTALLATION OF THE SELECTED ALTERNATIVE...". THE SITE WILL BE ESPECIALLY HAZARDOUS DURING IMPLEMENTATION OF THE REMEDY AND THERE WILL BE MUCH CONSTRUCTION EQUIPMENT ON THE SITE. SECURITY MEASURES, THEREFORE, WILL BE QUITE STRINGENT DURING THE IMPLEMENTATION PHASE. FOLLOWING COMPLETION OF THE SELECTED REMEDY, THE SITE WILL BE MUCH LESS HAZARDOUS TO TRESPASSERS THAN IS CURRENTLY THE CASE, AND THE SITE WILL NEED LESS SECURITY. A DETAILED PLAN WILL BE PREPARED LATER AS PART OF THE REMEDIAL DESIGN. THE SECURITY PLAN WILL BE AVAILABLE FOR REVIEW AND COMMENT BY LOCAL CITIZENS AND OFFICIALS.

I - DETAILS CONCERNING THE SPECIFIC TYPE OF INDUSTRY WHICH MIGHT USE THE SITE ONCE IT IS CAPPED;

ALTHOUGH THE FEASIBILITY STUDY EXPLORED THE POSSIBILITY, EPA AND NJDEP HAVE NO INTENTION THAT INDUSTRY SHOULD BE LOCATED AT THIS SITE. BUILDING ON THE CAP WOULD INTERFERE WITH FURTHER REMEDIATION.

J - DETAILS CONCERNING THE CONTENTS OF THE 570 DRUMS MENTIONED IN THE FS;

DETAILS CONCERNING THE CONTENTS OF THESE DRUMS ARE LOCATED IN SECTION 5.10 OF THE DOCUMENT ENTITLED "SITE EVALUATION FOR 80 LISTER AVENUE," DATED FEBRUARY 1985. THIS DOCUMENT MAY BE FOUND IN THE ADMINISTRATIVE RECORD \* FOR THE SITE. INFORMATION CURRENTLY AVAILABLE INDICATES THAT MORE THAN HALF OF THE DRUMS CONTAIN DIOXIN, WHICH MAKES OFF-SITE DISPOSAL OF MOST DRUMS IMPOSSIBLE AT THIS TIME.

K - DETAILS ON THE FEASIBILITY STUDY PLANS FOR DUST CONTROL, AS WELL AS AIR, GROUND-WATER AND METEOROLOGICAL MONITORING WHILE THE BUILDINGS ARE BEING DEMOLISHED.

EPA AND NJDEP AGREE THAT AIR, WATER AND METEOROLOGICAL MONITORING ARE NECESSARY. THESE DETAILED PLANS WILL BE DEVELOPED DURING THE REMEDIAL DESIGN PHASE AND WILL BE MADE AVAILABLE FOR PUBLIC REVIEW AND COMMENT PRIOR TO THE INITIATION OF ON-SITE WORK. EPA AND NJDEP ARE CONFIDENT THAT THIS WORK CAN BE DONE SAFELY. POSSIBLE APPROACHES FOR DUST CONTROL WOULD INCLUDE REMOVAL OF CONTAMINANTS WHENEVER POSSIBLE PRIOR TO DISMANTLING BUILDINGS, USE OF CHEMICAL DUST SUPPRESSANTS AND USE OF A FABRIC FENCE AROUND THE SITE.

\* REPOSITORIES FOR THE ADMINISTRATIVE RECORD ARE:

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION II  
26 FEDERAL PLAZA  
NEW YORK, NY 10278  
(CONTACT LENORE BERMAN AT 212-264-2649)

NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION  
DIVISION OF HAZARDOUS SITE MITIGATION  
401 EAST STATE STREET  
TRENTON, NJ 08625  
(CONTACT JANICE HAVESON AT 609-984-3081)

NEWARK PUBLIC LIBRARY  
5 WASHINGTON STREET  
NEWARK, NJ 07101  
(NJ REFERENCE SECTION, 201-733-7800).

4. SEVERAL OF THOSE WHO SPOKE SAID THEY BELIEVED THAT THE PROPOSED REMEDY WAS CHOSEN BECAUSE IT IS CHEAPEST OR EASIEST FOR DIAMOND SHAMROCK TO IMPLEMENT.

THE REASONS FOR PROPOSING THIS REMEDY ARE OUTLINED IN THE PROPOSED PLAN. AFTER CAREFUL CONSIDERATION, IT WAS DETERMINED BY EPA AND NJDEP THAT THE PROPOSED REMEDY IS THE MOST PROTECTIVE ACTION AT THIS TIME. IT WAS ALSO THE MOST COST-EFFECTIVE. THE MORE COSTLY ALTERNATIVES HAD MAJOR IMPLEMENTATION DIFFICULTIES WHICH WOULD REQUIRE A GREAT DEAL OF TIME, STUDY AND EFFORT TO RESOLVE (REFER TO SECTIONS B. AND C. BELOW FOR FURTHER DISCUSSION). THE DELAYS THIS WOULD REQUIRE ARE INCONSISTENT WITH THE NEED TO REMEDY THE SITE IN A TIMELY MANNER.

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5. ONE COMMUNITY MEMBER WANTED TO KNOW THE CONSTRUCTION MATERIALS OF THE CAP.

THE CAP IS EXPECTED TO BE COMPOSED OF SEVERAL LAYERS, INCLUDING CLAY, A SYNTHETIC MEMBRANE LINER, A FLOW ZONE (CONTAINING COARSE SAND AND/OR GRAVEL) AND A TOP LAYER OF TOPSOIL AND VEGETATION, AS RECOMMENDED BY RCRA GUIDANCE DOCUMENTS. OTHER MATERIALS SUCH AS A GEOTEXTILE MAY ALSO BE USED TO PROTECT AREAS ESPECIALLY SUBJECT TO EROSION. DETAILED PLANS WILL BE DEVELOPED IN THE REMEDIAL DESIGN PHASE AND WILL BE MADE AVAILABLE FOR PUBLIC REVIEW AND COMMENT. THE CONCRETE TOP LAYER ORIGINALLY PROPOSED IN THE FEASIBILITY STUDY HAS NOT BEEN SELECTED BECAUSE IT COULD UNNECESSARILY INTERFERE WITH POSSIBLE FURTHER REMEDIAL ACTION.

#### B. EXCAVATION AND THERMAL TREATMENT

1. MR. MONTAGUE EXPRESSED CONCERN THAT INCINERATION WAS BEING TURNED DOWN FOR INSUFFICIENT REASONS:

A - IF THE LACK OF A LARGE INCINERATOR IS THE PROBLEM, USE SEVERAL SMALL ONES;

THE LACK OF A LARGE INCINERATOR TO TREAT SITE WASTE WAS, AND IS, A FACTOR IN THE DECISION TO RECOMMEND THE PROPOSED REMEDY, BUT IT IS ONE OF MANY. THE INCINERATOR MOST SUCCESSFUL AT BURNING DIOXIN-CONTAMINATED WASTE WAS THE EPA MOBILE INCINERATOR USED AT THE DENNY FARM SITE IN MISSOURI. THAT UNIT DEMONSTRATED THAT IT CAN ACHIEVE THE REQUIRED 99.9999% DESTRUCTION AND REMOVAL EFFICIENCY FOR DIOXIN. BUT, THE USE OF A SINGLE MOBILE INCINERATOR LIKE THE EPA UNIT, OPERATING AT THE RATE ACHIEVED AT DENNY FARM (ABOUT 10 TONS PER DAY), WOULD TAKE ABOUT 20 YEARS TO BURN THE AMOUNT OF WASTE PRESENT AT THE DIAMOND SHAMROCK SITE. ALTHOUGH A NUMBER OF THESE UNITS COULD BE CONSTRUCTED, BROUGHT TO THE SITE AND OPERATED SIMULTANEOUSLY, THERE WOULD BE DIFFICULTY IN LOCATING A LARGE NUMBER OF SMALL INCINERATORS ON A RELATIVELY SMALL SITE. IT ALSO WOULD NOT BE COST EFFECTIVE TO USE SMALL INCINERATORS FOR A LARGE PROJECT. THEREFORE, IT WOULD BE PREFERABLE TO USE ONE OR TWO LARGER THERMAL TREATMENT UNITS, ALTHOUGH SUCH UNITS HAVE NOT YET BEEN TESTED ON DIOXIN WASTE. SINCE ONE OR MORE MOBILE TREATMENT UNITS MAY HAVE TO BE DESIGNED, CONSTRUCTED, AND TESTED PRIOR TO OPERATION TO CLEAN UP THE DIAMOND SHAMROCK SITE, IT IS EXPECTED TO TAKE AT LEAST SIX YEARS TO COMPLETE THIS REMEDY.

B - IF AIRBORNE RELEASES ARE A CONCERN, WE HAVE CLEAN ROOM TECHNOLOGY ON A SCALE LARGE ENOUGH TO BEGIN THE EXCAVATION. MR. MONTAGUE ALSO WANTED TO KNOW WHY IT WAS ALL RIGHT TO RISK EXCAVATION IN WILSONVILLE, IL, BUT NOT IN NEWARK. HE ASKED FOR A LIST OF COMMUNITIES WHERE EXCAVATION HAS TAKEN PLACE.

FURTHER STUDY IS NEEDED TO ADDRESS THE CONCERN OF AIRBORNE RELEASES DURING EXCAVATION. THE APPLICATION OF EXISTING TECHNOLOGY (E.G., "CLEAN ROOM" OR DOME TECHNOLOGY) AT THIS SITE WOULD TAKE A GREAT DEAL OF STUDY AND METHOD DESIGN. THERE ARE NO PRECEDENTS FOR APPLYING THESE TECHNOLOGIES TO SITUATIONS SIMILAR TO THE POSSIBLE EXCAVATION OF THE DIAMOND SHAMROCK SITE. CLEAN ROOM TECHNOLOGY (I.E., A ROOM UNDER NEGATIVE PRESSURE, THE AIR EXHAUST FILTERED WITH ACTIVATED CARBON) HAS BEEN USED IN A STATIONARY BUILDING AT THE DENNY FARM SITE IN MISSOURI. THIS BUILDING IS USED FOR SHREDDING AND BLENDING DIOXIN WASTE PRIOR TO INCINERATION. HOWEVER, THIS TECHNOLOGY IS NOT DESIGNED TO BE MOVED AROUND A SITE BEING EXCAVATED. ALTHOUGH IT MAY BE POSSIBLE TO TRANSFER THE EXISTING STATIONARY TECHNOLOGY TO A MOBILE APPLICATION AT DIAMOND SHAMROCK, IT WOULD REQUIRE LENGTHY STUDY AND DESIGN TO DO SO.

THE CHIEF DIFFERENCE BETWEEN THE EXCAVATION BEING CONSIDERED FOR THE DIAMOND SHAMROCK SITE AND THE EXCAVATION CONDUCTED AT WILSONVILLE, IL, IS THE LEVEL OF TOXICITY OF THE WASTES INVOLVED. DIOXIN IS ORDERS OF MAGNITUDE MORE TOXIC THAN THE SUBSTANCES AT WILSONVILLE. THE DIOXIN CONTAINED IN AIR EMISSIONS RESULTING FROM THE EXCAVATION OF THE DIAMOND SHAMROCK SITE WOULD BE THE CONTROLLING FACTOR IN THE LEVEL OF RISK. A RISK ASSESSMENT PERFORMED FOR ANOTHER SITE WITH HIGH DIOXIN CONCENTRATIONS CONCLUDED THAT DIOXIN-CONTAMINATED DUSTS GENERATED FROM POSSIBLE EXCAVATION WOULD RESULT IN CANCER RISKS GREATER THAN 10<sup>-2</sup> (I.E., ONE IN ONE HUNDRED) AT PROPERTIES AS FAR AWAY AS ONE-HALF MILE FROM THAT SITE. THE CALCULATED RISK RESULTING FROM HIGH CONCENTRATIONS OF OTHER TOXIC CHEMICALS WAS NEGLIGIBLE COMPARED TO THE RISK FROM DIOXIN.

A LIST OF COMMUNITIES WHERE EXCAVATION HAS TAKEN PLACE WOULD REQUIRE AN EXHAUSTIVE SEARCH. FURTHERMORE, A COMPLETE LIST OF LOCATIONS WHERE EXCAVATION HAS BEEN CONDUCTED IS NOT GERMANE TO THE SELECTION OF A REMEDY AT THE DIAMOND SHAMROCK SITE. THEREFORE, THERE ARE NO PLANS TO CONDUCT A SEARCH AND DEVELOP A LIST AT THIS TIME. THERE ARE, HOWEVER, NUMEROUS EXAMPLES OF EXCAVATION, SOME WITH DIOXIN CONTAMINATION, INCLUDING NEWARK, NJ.

C - WHAT ARE EPA'S AND NJDEP'S REASONS FOR THINKING TECHNOLOGY WILL ADVANCE TO MAKE ALTERNATIVES IV, V OR VI FEASIBLE IN THE FUTURE, AS INDICATED AT THE TOP OF PAGE 4 OF THE PROPOSED PLAN?

THE SECTION OF THE PROPOSED PLAN, CITED ABOVE, STATES THAT THE IMPLEMENTATION PROBLEMS ASSOCIATED WITH ALTERNATIVES IV, V AND VI MAY BE RESOLVED IN THE FUTURE. THIS RESOLUTION IS NOT DEPENDENT SOLELY UPON TECHNOLOGICAL ADVANCEMENT. NUMEROUS FACTORS, INCLUDING POLITICAL DECISIONS, SITING, PERMITS OR OTHER ACTIONS, MAY HELP SOLVE PROBLEMS THAT HAVE LED TO THE REJECTION OF ALTERNATIVES IV, V AND VI AT THE PRESENT TIME. TECHNOLOGY IS, HOWEVER, A SIGNIFICANT PART OF THE DECISION NOT TO SELECT THESE ALTERNATIVES.

PRIOR TO THE 1985 TRIAL BURN OF THE EPA MOBILE INCINERATOR AT THE DENNY FARM SITE, THE SUCCESSFUL INCINERATION OF DIOXIN WASTE IN ACCORDANCE WITH RCRA REQUIREMENTS HAD NOT BEEN DEMONSTRATED. SINCE THAT TIME, SUCCESSFUL TRIAL BURNS HAVE BEEN CONDUCTED BY TWO THERMAL TREATMENT UNITS DEVELOPED BY THE PRIVATE SECTOR. A NUMBER OF COMPANIES HAVE RECENTLY DEVELOPED MOBILE INCINERATORS INSPIRED BY THE SUCCESS OF THE EPA UNIT. SOME OF THESE NEWLY DEVELOPED UNITS HAVE GREATER CAPACITY THAN THE EPA MOBILE UNIT AND INCLUDE MODIFICATIONS INTENDED TO IMPROVE PERFORMANCE. RECENT GOVERNMENT INITIATIVES (THE LAND DISPOSAL BAN REGULATIONS BEING PHASED IN UNDER RCRA AND THE IMPLEMENTATION OF THE 1986 SUPERFUND AMENDMENTS, WITH ITS PREFERENCE FOR TREATMENT ALTERNATIVES) SHOULD CONTINUE TO INCREASE THE DEMAND FOR INCINERATION CAPACITY AND PROVIDE A CONTINUED ECONOMIC INCENTIVE FOR DEVELOPMENT OF NEW TREATMENT TECHNOLOGY. THEREFORE, THERMAL TREATMENT TECHNOLOGY SHOULD CONTINUE TO PROGRESS AND TO BECOME MORE AVAILABLE IN THE FUTURE.

2. ONE CITIZEN SAID THAT THE COMMUNITY WOULD OPPOSE ON-SITE INCINERATION.

AT THE PRESENT TIME, EPA AND NJDEP HAVE NO INTENTION OF SELECTING ON-SITE INCINERATION. HOWEVER, IT HAS NOT BEEN RULED OUT FOR THE FUTURE. REFER TO THE RESPONSE TO COMMENT I.C.9. BELOW.

C. ALTERNATIVE VI - OFF-SITE TREATMENT OR DISPOSAL

1. SEVERAL COMMUNITY MEMBERS AND OFFICIALS PREFERRED ALTERNATIVE VI TO ALTERNATIVE III BECAUSE THEY FEEL THAT THE DIOXIN IS BEING "DUMPED" IN NEWARK. ACCORDING TO THEM, THE ONLY SOLUTION IS TO MOVE IT.

THERE ARE CURRENTLY NO EXISTING PERMITTED FACILITIES AT WHICH TO DISPOSE OF THE WASTE, EITHER IN THE UNITED STATES OR ELSEWHERE. THIS DOES NOT MEAN THAT THERE WILL BE NONE AVAILABLE IN THE FUTURE. A LARGE FACTOR IN THE PROPOSED PLAN WAS THE NEED TO FIND A SOLUTION THAT CAN BE IMPLEMENTED EXPEDITIOUSLY; OFF-SITE DISPOSAL OR INCINERATION WOULD TAKE A VERY LONG TIME TO DEVELOP AND IMPLEMENT, DURING WHICH TIME THE SITE WOULD CONTINUE TO PRESENT A HAZARD TO PUBLIC HEALTH AND THE ENVIRONMENT.

2. THESE PEOPLE FEEL THAT DIAMOND SHAMROCK SHOULD COME AND GET THE WASTE AND STORE IT ON SOME OTHER PROPERTY OWNED BY THE COMPANY.

THE DIFFICULTIES IN IMPLEMENTING OFF-SITE MANAGEMENT OPTIONS ARE DISCUSSED IN OTHER RESPONSES IN THIS SECTION. THESE SAME DIFFICULTIES WOULD APPLY IF OFF-SITE MANAGEMENT WERE TO OCCUR ON PROPERTY OWNED BY MAXUS ENERGY CORPORATION (SUCCESSOR TO DIAMOND SHAMROCK). OFF-SITE MANAGEMENT OPTIONS WERE EVALUATED AND FOUND LESS PROTECTIVE THAN THE PROPOSED REMEDY AT THIS TIME. TO LIMIT OFF-SITE MANAGEMENT OPTIONS TO PROPERTY OWNED BY ONE COMPANY WOULD MAKE OFF-SITE MANAGEMENT EVEN MORE DIFFICULT BY EXCLUDING OTHER PROPERTIES WHICH MAY BE BETTER SUITED FOR MANAGING THE WASTE.

3. THESE SAME PEOPLE FEAR THAT THE SITE WILL BE USELESS AS LONG AS CONTAMINANTS REMAIN ON SITE.

EPA AND NJDEP DO NOT CURRENTLY ANTICIPATE ANY USE FOR THE SITE WHILE THE PROPOSED REMEDY IS IN PLACE.

4. TWO SPEAKERS FELT THAT EPA/NJDEP WERE NOT REALLY CONSIDERING THE OPTION OF SENDING THE DIOXIN TO AN OFF-SITE LOCATION.

THERE HAS BEEN AN INTENSIVE SEARCH FOR SITES IN THE UNITED STATES AND ABROAD FOR A TREATMENT, STORAGE AND DISPOSAL FACILITY THAT WOULD ACCEPT WASTE FROM THE DIAMOND SHAMROCK SITE. NO PROMISING OPPORTUNITIES AT

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EXISTING FACILITIES HAVE BEEN FOUND. EPA AND NJDEP HAVE ALSO LOOKED INTO CONSTRUCTING A FACILITY PRIMARILY FOR THE PURPOSES OF RECEIVING SITE WASTES, BUT HAVE DETERMINED THAT THIS CANNOT BE ACCOMPLISHED IN A TIMELY MANNER.

5. MR. SUDOL NOTED THAT IF THE WASTE WERE TO BE TRANSPORTED SOMEWHERE, EPA/NJDEP SHOULD TAKE TRANSPORTATION RISK-REDUCTION MEASURES.

EPA AND NJDEP AGREE THAT TRANSPORTATION RISK REDUCTION MEASURES SHOULD BE TAKEN, IF SUCH A REMEDY IS SELECTED IN THE FUTURE.

6. MR. MONTAGUE ASKED THAT IF MISSOURI ACCEPTS DIOXIN, WHY NOT SEND THE CONTAMINATION THERE?

MISSOURI HAS NOT ACCEPTED, AND CURRENTLY DOES NOT ACCEPT, DIOXIN WASTES FROM OUTSIDE THE STATE.

7. MR. SUDOL CITED TECHNICAL ADVANCES IN THERMAL TREATMENT AND THE FACT THAT EPA DID NOT ADEQUATELY ASSESS THE POSSIBILITY OF SHIPPING TO EUROPE AS REASONS FOR REVISING THE FEASIBILITY STUDY TO EXAMINE ALTERNATIVE VI MORE CAREFULLY.

IT IS TRUE THAT THERE HAVE BEEN SIGNIFICANT ADVANCES IN THERMAL TREATMENT TECHNOLOGY SINCE THE FEASIBILITY STUDY WAS COMPLETED IN 1985. THESE ADVANCES WERE CONSIDERED BY EPA AND NJDEP IN DEVELOPING THE PROPOSED PLAN. IT SHOULD BE NOTED THAT THE RECORD OF DECISION IS BASED NOT ONLY ON THE FEASIBILITY STUDY, BUT ON THE ENTIRE ADMINISTRATIVE RECORD, WHICH INCLUDES INFORMATION THAT WAS NOT AVAILABLE AT THE TIME THE FS WAS PREPARED.

EPA AND NJDEP HAVE ALSO EXPLORED THE OPTION OF SHIPPING SITE WASTES ABROAD. AS A RESULT, IT HAS BEEN CONCLUDED THAT SHIPMENT OF WASTES FROM THE DIAMOND SHAMROCK SITE TO ANOTHER COUNTRY FOR TREATMENT OR DISPOSAL HAS NOT BEEN DEMONSTRATED TO BE A VIABLE OPTION AT THIS TIME. NO FOREIGN FACILITY WHICH COULD ACCEPT THE WASTE HAS BEEN IDENTIFIED.

EPA'S OFFICE OF INTERNATIONAL ACTIVITIES, TO WHICH EXPORTS OF HAZARDOUS WASTE FROM THE UNITED STATES MUST BE REPORTED, HAS INDICATED THAT DIOXIN WASTES HAVE NOT PREVIOUSLY BEEN EXPORTED FROM THE UNITED STATES. A WEST GERMAN LANDFILL WHICH REPORTEDLY HAS DISPOSED OF DIOXIN WASTES AND RECEIVED HAZARDOUS WASTES FROM OTHER COUNTRIES WAS CONTACTED BY IT CORPORATION AND BY EPA. BOTH CONTACTS INDICATED THAT APPROVAL TO DISPOSE OF DIOXIN WASTES FROM THE U.S. AT THIS WEST GERMAN FACILITY IS VERY UNLIKELY.

THE EXTREME DIFFICULTY IN GETTING APPROVAL TO EXPORT DIOXIN WASTE TO OTHER COUNTRIES IS ILLUSTRATED BY EXPERIENCES WITH CANADA, WHICH RECEIVES A SUBSTANTIAL QUANTITY OF HAZARDOUS WASTES, INCLUDING SUPERFUND WASTES, FROM THE U.S. THE CANADIAN GOVERNMENT HAS OPPOSED CONTAINMENT REMEDIES AT U.S. SUPERFUND SITES LOCATED NEAR THE NIAGARA RIVER, WHICH IS A SOURCE OF CANADIAN DRINKING WATER. ONE OF THESE SITES IS LOVE CANAL, WHICH IS A DIOXIN SITE. A PROPOSAL WAS MADE BY THE NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION (NYSDEC) TO CONDUCT A TRIAL BURN FOR LOVE CANAL WASTE AT AN INNOVATIVE THERMAL TREATMENT UNIT (A PLASMA ARC PYROLYSIS UNIT) DEVELOPED AND LOCATED IN KINGSTON, ONTARIO, CANADA. DESPITE THE FACT THAT A SUCCESSFUL TRIAL BURN WOULD BE A STEP TOWARD THE CANADIAN GOVERNMENT'S WISH FOR A PERMANENT SOLUTION FOR THE LOVE CANAL SITE, THE CANADIAN GOVERNMENT REFUSED PERMISSION FOR SHIPMENT OF A RELATIVELY SMALL QUANTITY OF LOVE CANAL WASTE TO CANADA FOR THE TRIAL BURN. CANADA MAINTAINS THAT IF THE LOVE CANAL TRIAL BURN IS CONDUCTED, THE THERMAL TREATMENT UNIT WILL HAVE TO BE RELOCATED IN THE UNITED STATES. GIVEN THIS FAILURE TO OBTAIN EXPORT APPROVAL TO CANADA UNDER RELATIVELY PROMISING CIRCUMSTANCES, THE PROSPECT FOR APPROVAL OF EXPORT OF NEWARK DIOXIN WASTES DOES NOT APPEAR PROMISING AT THIS TIME.

SHOULD THE PROSPECTS FOR EXPORT OF NEWARK DIOXIN WASTES CHANGE IN THE FUTURE, REMOVAL OF THE WASTE TO ANOTHER COUNTRY COULD BE A VIABLE OPTION AT THAT TIME.

8. MR. SUDOL ALSO SAID THAT THE FACT THAT THERE IS NO LICENSED FACILITY SHOULD NOT BE NEWARK'S PROBLEM.

SECTION 121 OF CERCLA REQUIRES THAT SHORT-TERM RISKS BE TAKEN INTO ACCOUNT IN EVALUATING REMEDIAL ALTERNATIVES. THE FACT THAT THERE ARE NO LICENSED OFF-SITE FACILITIES WHICH COULD ACCEPT WASTES FROM THE SITE DOES LESSEN THE EFFECTIVENESS OF OFF-SITE TREATMENT OR DISPOSAL OPTIONS IN CONTROLLING SHORT-TERM RISKS.

UNFORTUNATELY, THIS IS ONE FACTOR WHICH MAKES THE ALTERNATIVE PREFERRED BY THE CITY OF NEWARK LESS PROTECTIVE THAN THE PROPOSED REMEDY.

9. MR. MICHAEL GORDON, ESQ., ATTORNEY FOR THE IRONBOUND HEALTH ADVISORY COMMISSION, STATES THAT OFF-SITE INCINERATION IS THE ONLY ALTERNATIVE WHICH MEETS JUDGE STANTON'S ORDER.

IT IS THE POSITION OF EPA AND NJDEP THAT THE SELECTED REMEDY MEETS, FOR THE PRESENT, THE STATE'S OBLIGATION UNDER JUDGE STANTON'S ORDER. JUDGE STANTON'S ORDER REQUIRES THE CLEANUP "TO THE GREATEST EXTENT FEASIBLE WITHIN THE BOUNDS OF KNOWN TECHNOLOGY.". SIMILARLY, SECTION 121(B) OF CERCLA REQUIRES THE SELECTION OF A REMEDY THAT USES PERMANENT SOLUTIONS AND ALTERNATIVE TREATMENT TECHNOLOGIES OR RESOURCE RECOVERY TECHNOLOGIES TO THE MAXIMUM EXTENT PRACTICABLE. IT IS THE POSITION OF EPA AND NJDEP THAT NEITHER JUDGE STANTON'S ORDER NOR SECTION 121(B) OF CERCLA WERE INTENDED TO MAXIMIZE THE USE OF TECHNOLOGY AS AN END IN ITSELF, BUT AS A MEANS FOR ENSURING THE PROTECTION OF HEALTH AND THE ENVIRONMENT. SINCE THE ALTERNATIVES WHICH HAVE A GREATER RELIANCE ON TECHNOLOGY ARE LESS PROTECTIVE THAN THE PROPOSED INTERIM REMEDIAL ACTION PLAN AT THE PRESENT TIME, THE PROPOSED PLAN DOES UTILIZE KNOWN TECHNOLOGIES TO THE EXTENT PRACTICABLE OR FEASIBLE FOR PROTECTING HEALTH AND THE ENVIRONMENT.

10. MR. MONTAGUE ASKED WHETHER THE PROPOSED INTERIM REMEDIAL ACTION PLAN ADEQUATELY OUTLINES THE REASONS SUPPORTING THE REJECTION OF ALTERNATIVE VI.

THE PROPOSED PLAN ADEQUATELY SUMMARIZES THE REASONS FOR THE REMEDIAL SELECTION, INCLUDING GERMANE REASONS FOR THE REJECTION OF ALTERNATIVE VI. THE RECORD OF DECISION WILL PROVIDE A MORE DETAILED DISCUSSION OF THE SELECTION RATIONALE. ADDITIONAL SUPPORTING INFORMATION IS CONTAINED IN THE ADMINISTRATIVE RECORD.

## II. GENERAL COMMENTS AND QUESTIONS

### A. HEALTH

1. MEMBERS OF THE COMMUNITY URGED ADDITIONAL HEALTH SCREENING AND MEDICAL TESTING. ONE COMMUNITY MEMBER DESCRIBED ILLNESSES OCCURRING IN THE NEIGHBORHOOD.

THE NEW JERSEY DEPARTMENT OF HEALTH DID CONDUCT A HEALTH SURVEY OF IRONBOUND RESIDENTS IN JUNE 1984. CURRENT HEALTH PROBLEMS OR QUESTIONS THAT MAY BE RELATED TO THE DIAMOND SHAMROCK SITE MAY BE BROUGHT TO THE ATTENTION OF DR. LIVERIGHT AT NEW JERSEY DEPARTMENT OF HEALTH, DIVISION OF OCCUPATIONAL AND ENVIRONMENTAL HEALTH, AT 609-984-1863. THE NEW JERSEY DEPARTMENT OF HEALTH HAS EXPRESSED A WILLINGNESS TO CONTINUE TO INVESTIGATE HEALTH PROBLEMS THAT MAY BE RELATED TO THE SITE, AND TO ASSIST THE ESSEX COUNTY DEPARTMENT OF ENVIRONMENTAL HEALTH IN ITS EFFORTS.

### B. DIAMOND SHAMROCK

1. A NUMBER OF COMMENTORS MAINTAINED THAT DIAMOND SHAMROCK IS NOT DOING ENOUGH TO CLEAN UP THE SITE.

DIAMOND SHAMROCK HAS COMPLIED WITH THE REQUIREMENTS IMPOSED ON IT BY THE STATE AND FEDERAL ENVIRONMENTAL AGENCIES IN ADDRESSING SITE CLEANUP.

2. ONE PERSON WAS CONCERNED THAT NO PENALTIES HAD BEEN ASSESSED AGAINST DIAMOND SHAMROCK.

THE SUPERFUND LEGISLATION DOES NOT PROVIDE EPA WITH THE AUTHORITY TO IMPOSE PENALTIES FOR PAST ACTIONS WHICH RESULTED IN THE CREATION OF UNCONTROLLED HAZARDOUS WASTE SITES. IT DOES, HOWEVER, IMPOSE FINANCIAL LIABILITY ON RESPONSIBLE PARTIES FOR THE COSTS OF THE CLEANUP EFFORTS AT SUPERFUND SITES. DIAMOND SHAMROCK HAS SPENT MILLIONS OF DOLLARS ON WORK IT HAS DONE TO CLEAN UP THE SITE AND SURROUNDING AREAS AND HAS REIMBURSED EPA FOR ALMOST \$2 MILLION OF THE AGENCY'S COSTS.

3. MR. SUDOL STATED HIS BELIEF THAT VIOLATIONS OF ECRA MAY HAVE OCCURRED WHEN DIAMOND SHAMROCK TRANSFERRED PROPERTY TO A SEPARATELY INCORPORATED HOLDING COMPANY.

SINCE ECRA IS A STATE LAW AND FALLS WITHIN STATE JURISDICTION, THE MATTER HAS BEEN REFERRED TO NJDEP FOR

INVESTIGATION. THE ALLEGED ECRA VIOLATIONS, HOWEVER, ARE UNRELATED TO THE SELECTION OF A REMEDY FOR THE SITE.

#### C. CONDITIONS AT THE SITE

1. A FEW PEOPLE QUESTIONED WHAT WOULD HAPPEN TO THE 570 DRUMS AND THE CARGO CONTAINERS. ONE WOMAN WANTED TO KNOW THE CONDITION OF THESE DRUMS AND CARGO CONTAINERS AND WHETHER THEY WOULD BE CHECKED BEFORE THE NEXT FEASIBILITY STUDY. ANOTHER SPEAKER BELIEVES THAT BURYING THE DRUMS WILL CAUSE NEW PROBLEMS.

THE DRUMS AND STORAGE CONTAINERS THAT REMAIN ON THE SITE ARE INSPECTED ON A REGULAR BASIS. CURRENTLY, THEY ARE IN ACCEPTABLE CONDITION TO PREVENT RELEASES OF CONTAINERIZED MATERIALS TO THE ENVIRONMENT. ANY DRUM FOUND TO BE LEAKING OR WHOSE INTEGRITY IS OTHERWISE IMPAIRED IS QUICKLY REPAIRED. WASTE FROM THE DRUMS WILL BE STABILIZED (I.E., THE LIQUIDS WILL BE SOLIDIFIED) BEFORE BURIAL AND WILL NOT ADD SIGNIFICANTLY TO THE CONTAMINATION. THOSE DRUMS WHICH ARE FOUND NOT TO BE DIOXIN-CONTAMINATED WILL BE DISPOSED OF OFF-SITE.

2. A FEW LOCAL RESIDENTS SPOKE OF CONCERN ABOUT THE GUARDS AT THE SITE. ONE PERSON SAID THAT HE HAD GONE TO THE SITE AT VARIOUS TIMES AND HAD SEEN NO GUARD.

THE SITE IS VISITED PERIODICALLY BY NJDEP. TO DATE, A GUARD HAS ALWAYS BEEN FOUND TO BE ON DUTY. THESE PERIODIC CHECKS WILL CONTINUE TO ENSURE THAT THE 24-HOUR SECURITY SERVICE CONTINUES TO PROVIDE ADEQUATE SITE PROTECTION.

3. ONE COMMUNITY MEMBER SAID HE FELT THAT THE CLEANUP OF THE PASSAIC RIVER SHOULD NOT BE LEFT UNADDRESSED.

CONTAMINATION IN THE PASSAIC RIVER IS BEYOND THE STATED SCOPE OF THE FEASIBILITY STUDY AND PROPOSED PLAN FOR 80 AND 120 LISTER AVENUE. A SEPARATE STUDY HAS COMMENCED AND A FEASIBILITY STUDY WILL BE CONDUCTED TO DETERMINE POSSIBLE CLEAN UP ALTERNATIVES FOR THE RIVER. A PUBLIC INVOLVEMENT PROGRAM WILL BE IMPLEMENTED FOR THAT ACTIVITY TO INFORM THE LOCAL COMMUNITY OF SITE ACTIVITIES AND CONDITIONS AND PROVIDE OPPORTUNITY FOR PUBLIC COMMENT.

4. MR. MONTAGUE WANTED TO KNOW EXACTLY WHAT, AND HOW MANY, CHEMICALS ARE CONTAMINATING THE SITE.

THE LIST OF CHEMICALS IDENTIFIED TO BE PRESENT AT THE SITE IS EXTENSIVE. THIS INFORMATION CAN BE OBTAINED IN THE DOCUMENTS "SITE EVALUATION FOR 80 LISTER AVENUE" (FEBRUARY 1985) AND "SITE EVALUATION FOR 120 LISTER AVENUE" (MAY 1985), WHICH ARE PART OF THE ADMINISTRATIVE RECORD FOR THIS SITE.

#### D. OTHER CONCERNS

1. MR. VICTOR DELUCA, FROM THE IRONBOUND COMMUNITY CORPORATION, FELT THAT THE RESPONSE TO THE NEED FOR CLEANUP IN MONTCLAIR, NJ WAS MORE RAPID THAN THE RESPONSE AT DIAMOND SHAMROCK AND WANTED TO KNOW WHY.

THE PROBLEM IN MONTCLAIR, ALTHOUGH NOT WITHOUT CONSIDERABLE DIFFICULTIES, IS LESS COMPLICATED THAN THE PROBLEM AT THE DIAMOND SHAMROCK SITE. AS A RESULT, THE SOLUTION THERE SHOULD BE EASIER TO COMPLETE. IT SHOULD BE NOTED THAT NJDEP AND EPA HAVE RESPONDED RAPIDLY TO THE PROBLEMS ASSOCIATED WITH THE DIAMOND SHAMROCK SITE AND THAT MUCH HAS BEEN ACCOMPLISHED SINCE DIOXIN WAS DISCOVERED IN 1983. HOWEVER, THIS HIGHLY COMPLEX SITUATION IS NOT AMENABLE TO A QUICK SOLUTION.

2. CITY COUNCILMAN MARTINEZ EXPRESSED HIS CONCERN THAT NEWARK IS BEING PENALIZED FOR ITS "NOT IN MY BACKYARD" SENTIMENTS.

THIS WAS NOT A CONSIDERATION IN THE DECISION-MAKING PROCESS FOR THE SITE. THE AVAILABLE ALTERNATIVES WERE EVALUATED, AND THE REMEDY SELECTED, STRICTLY ON THE BASIS OF SITE CHARACTERISTICS AND TECHNICAL FACTORS.

3. MR. MONTAGUE EXPRESSED THE OPINION THAT THE MEETING WOULD HAVE BEEN MORE EFFECTIVE IF THE SOUND SYSTEM AND GENERAL LOGISTICS HAD BEEN CHECKED BEFOREHAND.

EPA AND NJDEP AGREE THAT THE SOUND SYSTEM AND THE MEETING ROOM ACOUSTICS WERE LESS THAN DESIRABLE. BEFORE RESERVING THE MEETING ROOM, THE IRONBOUND COMMUNITY CITIZEN'S GROUP WAS ASKED ITS PREFERENCE FOR THE MEETING LOCATION. ITS PREFERENCE WAS THE ST. ALOYSIUS THEATER. SINCE NO COMPLAINTS HAD BEEN RECEIVED AT THE PREVIOUS PUBLIC MEETING ON THIS SITE HELD IN THE ST. ALOYSIUS ST. THEATER, IT WAS ASSUMED THAT THE FACILITIES WERE ACCEPTABLE. THE AGENCIES APOLOGIZE FOR THE NOISE OF THE AIR CONDITIONERS.

4. MR. GORDON SAID HE BELIEVED THAT EPA/NJDEP HAD FAILED TO MEASURE THE "EMOTIONAL FACTOR" OF THE PREFERRED ALTERNATIVE.

THE PROPOSED REMEDY IS THE ALTERNATIVE WHICH IS MOST PROTECTIVE OF PUBLIC HEALTH AND THE ENVIRONMENT AND REPRESENTS A MAJOR IMPROVEMENT VER THE CURRENT SITUATION. IF ALTERNATIVE VI WERE SELECTED, THE EMOTIONAL RESPONSE FROM THE PUBLIC MIGHT BE MORE FAVORABLE AT FIRST. HOWEVER, THE IMPLEMENTATION PROBLEMS ASSOCIATED WITH ALTERNATIVE VI WOULD RESULT IN LATER DISAPPOINTMENTS. THE AGENCIES WILL CONTINUE TO STRESS THE ADVANTAGES OF THE PROPOSED REMEDY.

IT IS HOPED THAT THE COMMUNITY WILL APPRECIATE THE POSITIVE ASPECTS OF THE PROPOSED PLAN.

5. ONE PERSON EXPRESSED THE OPINION THAT NJDEP HAS DONE NOTHING TO REMEDY THE SITUATION AT THE SITE.

OVER THE COURSE OF THE LAST FOUR YEARS MUCH WORK WAS DONE TO REMOVE CONTAMINATION FROM THE COMMUNITY AND PLACE IT ON THE SITE, WHERE PEOPLE WILL NOT BE IN CONTACT WITH IT. THE PROPOSED REMEDY WILL FURTHER CONTAIN THE RELEASE OF TOXIC SUBSTANCES INTO THE ENVIRONMENT. SINCE 1983, NJDEP AND EPA HAVE MADE MAJOR STRIDES IN CONTROLLING RISKS FROM THE SITE AND WILL CONTINUE TO DO SO.

6. MR. MONTAGUE SPOKE OF HIS CONCERN THAT EPA AND NJDEP HAD REASONS FOR THE PROPOSED SELECTION OF A REMEDIAL ALTERNATIVE WHICH ARE BEING HIDDEN FROM THE PUBLIC.

THERE ARE NO HIDDEN REASONS FOR SELECTION OF THE PROPOSED REMEDY. FOR EXAMPLE, BOTH THE FACT SHEET DISTRIBUTED AT THE MEETING AND THE PROPOSED PLAN CLEARLY STATE THAT A MAJOR DISADVANTAGE OF ALTERNATIVE VI IS THE PROBLEM OF SITING A THERMAL TREATMENT UNIT. ALL REASONS FOR THE SELECTION OF A REMEDY AT THE DIAMOND SHAMROCK SITE ARE FOUND IN THE PROPOSED PLAN AND WILL BE PRESENTED AGAIN, IN MORE DETAIL, IN THE RECORD OF DECISION.

### III. SUMMARY OF WRITTEN COMMENTS

THE FOLLOWING IS A SUMMARY OF WRITTEN COMMENTS AND QUESTIONS RECEIVED DURING THE PUBLIC COMMENT PERIOD, JULY 31, 1987 THROUGH AUGUST 31, 1987, AND THE RESPONSES TO THEM. COMMENTS GIVEN AT THE PUBLIC MEETING AND REITERATED IN WRITING HAVE NOT BEEN REPEATED HERE BUT ARE ADDRESSED IN THE PREVIOUS SECTIONS.

A. IN A LETTER DATED AUGUST 31, 1987, MAXUS ENERGY CORPORATION:

- EXPRESSED ITS CONCERN "ABOUT THE DELAY IN THE APPROVAL OF A REMEDIAL ACTION PLAN WHICH WOULD ENABLE THE CLOSURE OF THE SITE AND ELIMINATION OF THE INTERIM MEASURES."

EPA PLANS TO SIGN A RECORD OF DECISIONS FOR THIS SITE, WHICH WOULD CONSTITUTE FORMAL SELECTION OF A REMEDY, IN THE VERY NEAR FUTURE. ONCE A REMEDY IS SELECTED, EPA PLANS TO EXPEDITE ITS IMPLEMENTATION.

- URGED EPA AND NJDEP TO REVISE THE PROPOSED TIMING OF THE BIENNIAL RE-EVALUATION OF THE REMEDY FROM EVERY TWO YEARS TO AN "AS-NEEDED" BASIS. THE REMEDY WOULD THEN BE RE-EVALUATED "ONLY IF IT PROVES TO BE INEFFECTIVE IN REMOVING AND CONTROLLING THE MOVEMENT OF CONTAMINANTS WHICH POSE AN UNACCEPTABLE RISK TO THE PUBLIC..."

CERCLA REQUIRES THAT NOT ONLY RELEASES, BUT ALSO THE THREAT OF RELEASES, BE REMEDIATED. EVEN IF THE PROPOSED PLAN WORKS SOUNDLY, THERE IS STILL A THREAT OF RELEASE WHICH SHOULD BE EXAMINED REGULARLY. THEREFORE, EPA AND NJDEP HAVE NO PLANS TO CHANGE THE REQUIREMENTS OF THE RE-EVALUATION OF THE SELECTED REMEDY EVERY TWO

YEARS.

- STATED ITS BELIEF THAT THE ACCEPTABLE LEVELS OF DIOXIN AT THE SITE SHOULD BE REVIEWED. CURRENTLY, "AN ACTION LEVEL OF LESS THAN ONE PART PER BILLION PPB) IN THE SOIL HAS BEEN SHOWN TO BE AN ACCEPTABLE STANDARD FOR PUBLIC OR RESIDENTIAL AREAS, WITH A LEVEL OF 5-7 PPB BEING THE NJDEP AND EPA STANDARD FOR INDUSTRIAL SITES.". MAXUS RECOMMENDED THAT THE ACCEPTABLE LEVEL OF DIOXIN BE SET AT 5-7 PPB RATHER THAN 1 PPB AT THE DIAMOND SHAMROCK SITE, SINCE THE SITE IS INDUSTRIAL.

AT THE PRESENT TIME, IT IS IMPOSSIBLE TO PREDICT WITH CERTAINTY THE FUTURE LAND USE AT THE SITE. THEREFORE, EPA AND NJDEP WILL REQUIRE A 1 PPB STANDARD TO PROTECT THE POSSIBILITY FOR ALL POTENTIAL LAND USES.

B. IN HIS LETTER OF AUGUST 17, 1987, MICHAEL GORDON STATED THAT, "THE DEP DECISION NOT TO REQUIRE SITE STABILIZATION (ALTERNATIVE 3) IN CONJUNCTION WITH A REQUIREMENT THAT AN OFF-SITE INCINERATOR BE SITED, DESIGNED AND CONSTRUCTED PURSUANT TO A DETAILED TIME SCHEDULE, IS ARBITRARY AND UNREASONABLE."

EPA AND NJDEP HAVE NOT ESTABLISHED THAT EXCAVATION CAN BE CONDUCTED WITH ACCEPTABLE IMPACT ON HEALTH AND THE ENVIRONMENT. FURTHERMORE, EPA AND NJDEP DO NOT KNOW AT THIS TIME WHETHER OFF-SITE INCINERATION WILL BE PREFERABLE TO ON-SITE INCINERATION OR TO SOME OTHER REMEDY AT SOME POINT IN THE FUTURE. THIS WILL DEPEND ON FACTORS SUCH AS THE FUTURE AVAILABILITY OF OFF-SITE FACILITIES PERMITTED FOR DIOXIN, THE ABILITY TO RESOLVE SITING DIFFICULTIES IN THE FUTURE, THE COST DIFFERENCES BETWEEN ON-SITE AND OFF-SITE INCINERATION, THE PERFORMANCE OF THE INTERIM REMEDY (WHICH WOULD DICTATE THE URGENCY OF UNDERTAKING ADDITIONAL REMEDIAL ACTION), ETC. THESE FACTORS CAN BE BETTER EVALUATED IN THE FUTURE. THEREFORE, IT IS PREMATURE TO SELECT OFF-SITE INCINERATION OR ANY OTHER OPTION AS THE SECOND PHASE OF A PROPOSED CONTAINMENT PLAN.

C. THE MAYOR OF NEWARK, MR. SHARPE JAMES, IN HIS LETTER OF AUGUST 18, 1987:

- STATED HIS BELIEF THAT NJDEP WILL SOON "FAIL TO MEET ITS OWN RECOMMENDED BIENNIAL TIMETABLE. THE FEASIBILITY STUDY ON WHICH THE PUBLIC MEETING WAS BASED, WAS DATED DECEMBER, 1985. ALMOST TWO YEARS HAVE ALREADY LAPSED WITHOUT ANY OF THE ALTERNATIVES BEING IMPLEMENTED. THEREFORE, PER DEP'S COMMITMENT, THE BIENNIAL REVIEW PROCESS OF FEASIBLE DISPOSAL ALTERNATIVES SHOULD BE INITIATED BEFORE DECEMBER, 1987."

THE BIENNIAL TIMETABLE AS DESCRIBED IN THE PROPOSED PLAN HAS NOT YET BEGUN. IT IS SCHEDULED TO BEGIN TWO YEARS AFTER THE SELECTED REMEDY HAS BEEN INSTALLED. HOWEVER, AS NOTED IN ANSWER TO QUESTION 7, THIS RECORD OF DECISION IS NOT BASED SOLELY UPON THE FEASIBILITY STUDY, BUT ALSO UPON ADDITIONAL INFORMATION, NOT AVAILABLE AT THE TIME THE FS WAS PREPARED, CONTAINED IN THE ADMINISTRATIVE RECORD.

- STATED THAT THE PROPOSED CONTAINMENT PLAN CANNOT BE IMPLEMENTED UNTIL IT MEETS THE SITING CRITERIA OF THE MAJOR HAZARDOUS WASTE FACILITY SITING ACT. THE PLAN MUST BE APPROVED BY THE SITING COMMISSION.

THE MAJOR HAZARDOUS WASTE FACILITY SITING ACT APPLIES ONLY TO COMMERCIAL HAZARDOUS WASTE MANAGEMENT FACILITIES, AND DOES NOT APPLY TO THE PROPOSED PLAN.

D. IN HER LETTER DATED JULY 27, 1987, MS. KATHLEEN CRAIG COMMENTED THAT THE PROPOSED CONTAINMENT PLAN "IS ONLY A WAY OF PUTTING OFF THE INEVITABLE.". SHE ENCLOSED SOME LITERATURE CONCERNING A RECENTLY DEVELOPED THERMAL TREATMENT SYSTEM (OGDEN ENVIRONMENTAL SERVICES' CIRCULATING BED COMBUSTOR).

EPA AND NJDEP ARE AWARE OF THE OGDEN COMBUSTOR, WHICH HAS NOT YET BEEN DEMONSTRATED FOR DIOXIN WASTES.

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HOWEVER, ITS SUCCESS IN TREATING PCB WASTES MAKES IT PROMISING FOR FUTURE USE WITH WASTES FROM THE DIAMOND SHAMROCK SITE. RESPONSES TO OTHER COMMENTS ON THERMAL TREATMENT ARE ALSO RELEVANT TO MS. CRAIG'S COMMENT.

ALTHOUGH MS. CRAIG DID NOT ELABORATE ON WHAT SHE MEANS BY "PUTTING OFF THE INEVITABLE," EPA AND NJDEP RECOGNIZE THAT THE PROPOSED CONTAINMENT REMEDY REQUIRES CONTINUED OPERATION AND MAINTENANCE, AND MAY REQUIRE ADDITIONAL REMEDIAL ACTION SHOULD IT BECOME LESS EFFECTIVE WITH THE PASSAGE OF TIME.- THE PROPOSED REMEDY INCLUDES PROVISIONS FOR OPERATION, MAINTENANCE, PERIODIC RE-EVALUATION, AND ADDITIONAL REMEDIAL ACTION, IF APPROPRIATE. EPA AND NJDEP HAVE DETERMINED THAT THE PROPOSED CONTAINMENT REMEDY IS CURRENTLY THE MOST PROTECTIVE OF THE AVAILABLE REMEDIAL ALTERNATIVES.

E. IN HIS LETTER DATED SEPTEMBER 6, 1987, PETER MONTAGUE SUBMITTED WRITTEN COMMENTS ELABORATING ON THE COMMENTS WHICH HE MADE AT THE AUGUST 11, 1987, PUBLIC MEETING.

BECAUSE HIS WRITTEN COMMENTS WERE SUBMITTED AFTER THE CLOSE OF THE PUBLIC COMMENT PERIOD, A RESPONSE TO MR. MONTAGUE'S WRITTEN COMMENTS IS NOT PROVIDED IN THIS RESPONSIVENESS SUMMARY. HOWEVER, MR. MONTAGUE'S ORAL COMMENTS HAVE BEEN ADDRESSED IN A PREVIOUS SECTION OF THIS DOCUMENT. TO ADDRESS MR. MONTAGUE'S WRITTEN COMMENTS IN THIS DOCUMENT WOULD DELAY THE RECORD OF DECISION AND THE INITIATION OF REMEDIAL ACTION. EPA AND NJDEP HAVE DECIDED THAT MR. MONTAGUE'S WRITTEN COMMENTS DO NOT MERIT ANY CHANGE IN THE SELECTED ALTERNATIVE. HOWEVER, NJDEP INTENDS TO SEND A WRITTEN RESPONSE DIRECTLY TO MR. MONTAGUE.



TABLE I

REMEDIAL ALTERNATIVES

- ALTERNATIVE 1 - NO ACTION
- ALTERNATIVE 2 - SLURRY WALL AND CAP - DEMOLITION OF STRUCTURES, DECONTAMINATION, GRADING, AND IN-SITU CONTAINMENT OF ALL WASTE WITH A SLURRY WALL AND CAP
- ALTERNATIVE 3 - SLURRY WALL AND CAP, GROUNDWATER TREATMENT - DEMOLITION OF STRUCTURES, DECONTAMINATION, GRADING, AND IN-SITU CONTAINMENT OF ALL WASTE WITH A SLURRY WALL AND CAP, WITH CONTINUED PUMPING AND TREATMENT OF THE GROUNDWATER
- ALTERNATIVE 4 - EXCAVATION AND ON-SITE THERMAL TREATMENT - DEMOLITION OF STRUCTURES, DECONTAMINATION, GRADING, EXCAVATION, ON-SITE TREATMENT OF GROUNDWATER, AND THERMAL TREATMENT OF ALL SITE WASTES AND SOILS CONTAINING DIOXIN ABOVE 7 PPB WITH IN-SITU CONTAINMENT OF THE REMAINING SITE SOILS AND TREATED MATERIALS WITH A SLURRY WALL AND CAP
- ALTERNATIVE 5 - EXCAVATION AND ON-SITE VAULT - DEMOLITION OF STRUCTURES, DECONTAMINATION, GRADING, EXCAVATION, ON-SITE TREATMENT OF GROUNDWATER, AND VAULT ENCAPSULATION OF ALL SITE WASTES AND SOILS CONTAINING DIOXIN ABOVE 7 PPB WITH IN-SITU CONTAINMENT OF THE REMAINING SOILS WITH A SLURRY WALL AND THE VAULT
- ALTERNATIVE 6A - EXCAVATION AND OFF-SITE DISPOSAL - DEMOLITION OF STRUCTURES, DECONTAMINATION, GRADING, EXCAVATION, ON-SITE TREATMENT OF GROUNDWATER, AND HAULING OF WASTE AND SOILS CONTAINING DIOXIN ABOVE 7 PPB TO AN OFF-SITE FACILITY FOR LANDFILL DISPOSAL; SOILS REMAINING WITH DIOXIN LEVELS BELOW 7 PPB WOULD BE CONTAINED BY A SLURRY WALL
- ALTERNATIVE 6B - DEMOLITION OF STRUCTURES, DECONTAMINATION, GRADING, EXCAVATION, ON-SITE TREATMENT OF GROUNDWATER, AND HAULING OF WASTE AND SOILS CONTAINING DIOXIN ABOVE 7 PPB TO AN OFF-SITE FACILITY FOR "THERMAL TREATMENT"; SOILS REMAINING WITH DIOXIN LEVELS BELOW 7 PPB WOULD BE CONTAINED BY A SLURRY WALL.

TABLE VII

OTHER CLEANUP STANDARDS

BASE/NEUTRAL-ACID EXTRACTABLES	HEALTH ADVISORIES (1) (PPB)	SOIL CLEANUP (3) (PPB)
2,4,6-TRICHLOROPHENOL		
2-CHLOROPHENOL		
2,4-DICHLOROPHENOL		
PHENOL		
BENZOIC ACID		
2-METHYLPHENOL		
4-METHYLPHENOL		
2,4,5-TRICHLOROPHENOL		
ACENAPHTHENE		
1,2,4-TRICHLOROENZENE		10,000
HEXACHLOROENZENE		10,000
2-CHLORONAPHTHALENE		10,000
1,2-DICHLOROENZENE		10,000
1,3-DICHLOROENZENE		10,000
1,4-DICHLOROENZENE		10,000
FLUORANTHENE		10,000
NAPHTHALENE		10,000
BIS(2-ETHYLHEXYL) PHTHALATE		10,000
DI-N-BUTYLPHTHALATE		10,000
BENZO(A) ANTHRACENE		10,000
ANTHRACENE		10,000
FLUORENE		10,000
PHENANTHRENE		10,000
PYRENE		10,000
BENZYL ALCOHOL		10,000
2-METHYLNAPHTHALENE		10,000
VOLATILE ORGANICS		
BENZENE		1,000
CHLOROENZENE		1,000
1,2-DICHLOROETHANE		1,000
1,1,1-TRICHLOROETHANE		1,000
1,1-DICHLOROETHANE		1,000
CHLOROFORM		1,000
1,1-DICHLOROETHENE		
TRANS-1,2-DICHLOROETHENE		1,000
ETHYLBENZENE		1,000
METHYLENE CHLORIDE		1,000
TETRACHLOROETHENE		
TOLUENE		1,000
TRICHLOROETHENE		1,000
VINYL CHLORIDE		1,000
ACETONE		1,000
VOLATILE ORGANICS CONTINUED		
	HEALTH ADVISORIES (1) (PPB)	SOIL CLEANUP (3) (PPB)

2-BUTANONE	1,000
CARBON DISULFIDE	1,000
4-METHYL-2-PENTANONE	1,000
TOTAL XYLENES	1,000

HERBICIDES; PESTICIDES,  
AND PCBS

4,4-DDT	
4,4-DDE	
4,4-DDD	
ALPHA-ENDOSULFAN	
2,4-D	
2,4,5-T	
2,4-DB	
DINOSEB (DNBP)	
2,3,7,8-TCDD	1.0

INORGANIC PARAMETERS

ANTIMONY	
ARSENIC	20,000
BERYLLIUM	
CADMIUM	3,000
CHROMIUM	100,000
COPPER	170,000
LEAD	400,000
MERCURY	1,000
NICKEL	100,000
SELENIUM	4,000
SILVER	5,000
ZINC	350,000
TOTAL CYANIDE	12,000
TOTAL PHENOL	
NITRATE NITROGEN	

OTHER PARAMETERS

TOTAL ORGANIC CARBON (TOC)	
TOTAL SUSPENDED SOLIDS	
PETROLEUM HYDROCARBONS	100,000
TOTAL TOXIC ORGANICS	
TOTAL VOLATILE ORGANICS	1,000

FOOTNOTES FOR TABLE VII

1. HEALTH ADVISORIES - GUIDANCE RECEIVED FROM APPROPRIATE HEALTH AGENCIES SUCH AS THE CENTER FOR DISEASE CONTROL (CDC) AND THE NEW JERSEY DEPARTMENT OF HEALTH (NJDOH); CONSIDERED AS OTHER GUIDANCE TO BE EMPLOYED IN THE IMPLEMENTATION OF THE SELECTED ALTERNATIVE

THE CONCENTRATION OF 1.0 PPB OF DIOXIN IS A SOIL CONCENTRATION THAT WAS DEVELOPED BY THE CDC AND HAS BEEN APPLIED CONSISTENTLY AT CLEANUPS THROUGHOUT NEW JERSEY

A RISK BASED 2,3,7,8-TCDD CONCENTRATION OF 500 NANOGRAMS PER SQUARE METER HAS BEEN DEVELOPED BY THE NJDEP TO BE EMPLOYED DURING CLEANUP OF SURFACES CONTAMINATED WITH DIOXIN (E.G., TRUCKS, BACKHOES, ETC.);


THIS CONCENTRATION OF DIOXIN HAS BEEN EMPLOYED IN THE PAST TO ASSESS THE PERFORMANCE OF DECONTAMINATION PROCEDURES

2. SOIL CLEANUP STANDARDS - THESE STANDARDS ARE NOT YET PROMULGATED, BUT HAVE BEEN ACCEPTED AND USED BY THE NJDEP; THEY ARE THEREFORE PRESENTED ~~HERE FOR CONSIDERATION AS APPROPRIATE AND RELEVANT~~ REQUIREMENTS

THE CONCENTRATION NOTED IN EACH ORGANIC CATEGORY ARE FOR EACH COMPOUND INDIVIDUALLY OR THE TOTAL SUM CONCENTRATION OF THAT CLASS OF COMPOUND, E.G., THE TOTAL CONCENTRATION OF BASE NEUTRAL COMPOUNDS CANNOT EXCEED 10,000 PPB; INORGANIC CONCENTRATIONS ARE FOR INDIVIDUAL ELEMENTS; CONCENTRATIONS GIVEN ARE BASED ON BEST PROFESSIONAL JUDGEMENT, RISK ASSESSMENT, BEST AVAILABLE TECHNOLOGY (DETECTION LIMITS), OR KNOWN AVERAGE BACKGROUND CONCENTRATIONS.



1. that pursuant to Federal Rule of Civil Procedure 42(a), the above-captioned actions are hereby consolidated for all purposes under Civil Action No. 89-5064; and
2. that the Consent Decree lodged in Civil Action No. 89-5064(JWB) is hereby entered.

  
\_\_\_\_\_  
JOHN W. BISSELL  
United States District Judge

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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY

- 114

UNITED STATES OF AMERICA,

THE STATE OF NEW JERSEY,

Plaintiffs,

v.

OCCIDENTAL CHEMICAL CORPORATION,

CHEMICAL LAND HOLDINGS, INC.,

Defendants.

X  
X  
X  
X  
X  
X  
X  
X  
X  
X  
X  
X  
X

CIVIL ACTION NO.

, J.

CONSENT DECREE

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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY

UNITED STATES OF AMERICA,	X	
	X	
THE STATE OF NEW JERSEY,	X	
	X	CIVIL ACTION NO.
Plaintiffs,	X	
	X	
v.	X	
	X	, J.
OCCIDENTAL CHEMICAL CORPORATION,	X	
	X	
CHEMICAL LAND HOLDINGS, INC.,	X	
	X	
Defendants.	X	
	X	

CONSENT DECREE

WHEREAS, on \_\_\_\_\_, 1989, the United States of America ("the United States"), on behalf of the Administrator of the United States Environmental Protection Agency ("EPA"), and the State of New Jersey, Department of Environmental Protection ("the State"), filed a Complaint in this matter against Occidental Chemical Corporation ("OCC"), as successor to Diamond Shamrock Chemicals Company, and Chemical Land Holdings, Inc. ("CLH") pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. §9601 et seq., and the authority vested in the Commissioner of the New Jersey Department of Environmental Protection ("NJDEP") pursuant to N.J.S.A. 13:1D-1 et

seq., the New Jersey Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq., the New Jersey Solid Waste Management Act, N.J.S.A. 13:1E-1 et seq., the New Jersey Spill Compensation and Control Act, N.J.S.A. 58:10-23.11a et seq., and the authority delegated to the Assistant Director of the Responsible Party Cleanup Element of the Division of Hazardous Waste Management of NJDEP pursuant to N.J.S.A. 13:1B-4 for the recovery of past response costs incurred by the United States and the State and for conduct of remedial design, remedial construction, operation and maintenance, remedy evaluation activities and Site stabilization activities in response to alleged releases and substantial threat of releases of hazardous substances into the environment at the Diamond Alkali Superfund Site located in the City of Newark, County of Essex, New Jersey, sometimes referred to as the Diamond Shamrock Superfund Site;

WHEREAS, Diamond Shamrock Corporation, which was named Diamond Alkali Company until 1967, operated a plant situated at the 80 Lister Avenue portion of the Diamond Alkali Superfund Site from 1951 through 1969, where, among other chemicals, the company manufactured 2,4-D, 2,4,5-T and 2,4,5-Trichlorophenol, from which 2,3,7,8-Tetrachlorodibenzo-p-dioxin is a by-product. Diamond Shamrock Corporation ceased production activities at the Site in August, 1969. In 1971, Diamond Shamrock Corporation sold the plant and property to Chemicaland Corporation, which

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conducted certain chemical manufacturing activities for itself and others during the several years it owned and occupied the Site. Walter Ray Holding Company purchased the plant and property at a tax sale in 1980 and held the premises until 1981. Walter Ray Holding Company sold the property in June, 1981 to Marisol, Inc. which conducted salvage operations, including removal of certain materials to certain off-Site locations, and waste consolidation activities;

WHEREAS, in September, 1983, Diamond Shamrock Corporation adopted a new corporate structure. A stock holding company was formed under the name "Diamond Shamrock Corporation." The former Diamond Shamrock Corporation changed its name to Diamond Shamrock Chemicals Company, and became a subsidiary of the new Diamond Shamrock Corporation. On April 19, 1984, Diamond Shamrock Chemicals Company acquired the property located at 120 Lister Avenue from E. M. Sergeant Pulp and Chemical Co., Inc. to assist with the cleanup of the Site. Similarly, Diamond Shamrock Chemicals Company acquired the plant and property at 80 Lister Avenue from Marisol, Inc. on January 27, 1986;

WHEREAS, on September 4, 1986, Diamond Shamrock Corporation sold all the outstanding stock in Diamond Shamrock Chemicals Company to Oxy-Diamond Alkali Corporation, a wholly-owned indirect subsidiary of Occidental Petroleum Corporation. Diamond Shamrock Chemicals Company was then renamed Occidental

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Electrochemicals Corporation. Title to the Site had previously been transferred by way of an intraholding company transaction to Diamond Shamrock Chemical Land Holdings, Inc., a wholly-owned indirect subsidiary of Diamond Shamrock Corporation. Effective November 30, 1987, Occidental Electrochemicals Corporation was merged into Occidental Chemical Corporation, a wholly-owned indirect subsidiary of Occidental Petroleum Corporation. On December 4, 1987, the name of Diamond Shamrock Chemical Land Holdings, Inc. was changed to Chemical Land Holdings, Inc. Chemical Land Holdings, Inc., a subsidiary of Maxus Energy Corporation, is the current holder of title to the Site;

WHEREAS, EPA, pursuant to Section 105 of CERCLA, 42 U.S.C. §9605, placed the Diamond Alkali Superfund Site on the National Priorities List, which is set forth at 40 C.F.R. Part 300, Appendix B, by publication in the Federal Register on September 21, 1984, 49 Fed. Reg. 37070;

WHEREAS, in response to alleged releases and substantial threat of releases of hazardous substances into the environment at the Diamond Alkali Superfund Site, and pursuant to an administrative consent order entered into between NJDEP and Diamond Shamrock Chemicals Company and Marisol, Inc., and authorized on March 13, 1984 (hereinafter "ACO I"), Diamond Shamrock Chemicals Company commenced a Site Evaluation for the property located at 80 Lister Avenue, Newark, New Jersey.

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Thereafter, pursuant to a second administrative consent order entered into between NJDEP and Diamond Shamrock Chemicals Company, et al. and authorized on December 21, 1984 ("ACO II"), Diamond Shamrock Chemicals Company commenced a Site Evaluation for the property located at 120 Lister Avenue, Newark, New Jersey. ACO II also required the cleanup of certain off-site properties and the transfer of contaminated materials resulting from such action to 120 Lister Avenue for storage. The Site Evaluations conducted pursuant to ACO I and ACO II for the 80 and 120 Lister Avenue properties together constitute a Remedial Investigation ("RI"), as that term is used at 40 C.F.R. §300.68, to determine the nature and extent of contamination at the Site;

WHEREAS, pursuant to ACO I and ACO II, Diamond Shamrock Chemicals Company prepared a Site Evaluation Report for the 80 Lister Avenue property dated February, 1985, a Site Evaluation Report for the 120 Lister Avenue property dated May, 1985, and a Site Evaluation Addendum for the 80 and 120 Lister Avenue properties dated February, 1986. These Reports collectively constitute an RI Report for the Site;

WHEREAS, pursuant to ACO I and ACO II, Diamond Shamrock Chemicals Company conducted a Feasibility Study ("FS"), as that term is used at 40 C.F.R. §300.68, to develop and evaluate alternatives for the remediation of the Site;

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WHEREAS, pursuant to ACO I and ACO II, Diamond Shamrock Chemicals Company prepared an FS Report for the Site dated October, 1985;

WHEREAS, on August 1, 1987, pursuant to Section 117 of CERCLA, 42 U.S.C. §9617, EPA published a notice of completion of the FS and of the proposed interim plan for remedial action, and provided opportunity for public comment to be submitted in writing to EPA by August 31, 1987, or orally at a public meeting scheduled and subsequently held in the City of Newark, New Jersey on August 11, 1987;

WHEREAS, pursuant to Section 117 of CERCLA; 42 U.S.C. §9617, EPA made and has kept a transcript of the August 11, 1987, public meeting and has made this transcript available to the public;

WHEREAS, certain persons, including a representative of OCC, provided comments on EPA's proposed remedial action plan;

WHEREAS, EPA issued a Record of Decision on September 30, 1987, which documents the selection of a remedial action plan for the cleanup of the Site, discusses EPA's reasons for adopting such plan and responds to each of the significant comments on and criticisms of the proposed remedial action plan;

WHEREAS, the State has given its concurrence to the remedial action plan selected in the Record of Decision;

WHEREAS, EPA and NJDEP consider the selected remedial action plan to be an interim remedy in view of the periodic

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evaluation of the selected remedial action required under the Record of Decision in order to assure that human health and the environment are being protected by the Remedy, taking into account, as provided in Section 121 of CERCLA, 42 U.S.C. §9621, without limitation, any changes in knowledge concerning the risks posed by dioxin and other Hazardous Materials at the Site; and to develop, screen and assess the viability of implementing remedial alternatives more protective of human health and the environment, including those alternatives which are based purely on advances in technology and those which utilize more permanent solutions;

WHEREAS, pursuant to Section 117(b) of CERCLA, 42 U.S.C. §9617(b), EPA provided notice of adoption of the selected remedial action plan in the form of the Record of Decision, including notice of the availability of the Record of Decision to the public for review at EPA and NJDEP offices, and at the local community repository at the Newark Public Library, 5 Washington Street, Newark, New Jersey;

WHEREAS, pursuant to Section 117(d) of CERCLA, 42 U.S.C. §9617(d), EPA published such notice in a major local newspaper of general circulation on December 7, 1987;

WHEREAS, in accordance with Section 121(f)(1)(F) of CERCLA, 42 U.S.C. §9621(f)(1)(F), the State has had a substantial and meaningful involvement in the initiation, development and selection of the remedial action to be undertaken at the Site;

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WHEREAS, the State has actively participated in negotiations leading to this settlement and is a party to this settlement;

WHEREAS, pursuant to Section 122(j) of CERCLA, 42 U.S.C. §9622(j), EPA notified the Federal natural resource trustees of negotiations with potentially responsible parties ("PRPs") on the subject of addressing releases and threatened releases of hazardous substances at the Site, and EPA encouraged the participation of the Federal natural resource trustees in such negotiations;

WHEREAS, pursuant to Section 121(d)(1), the United States, the State and OCC believe that the remedial action plan adopted by EPA and set forth in the Record of Decision is consistent with the NCP;

WHEREAS, OCC agrees to implement the Work as defined, infra, in Section II of this Consent Decree, and EPA has determined that the Work will be implemented properly by OCC and that OCC is qualified to implement the Work;

WHEREAS, Diamond Shamrock Chemicals Company's obligations under ACO I and ACO II will be fulfilled if Settling Defendants comply with this Consent Decree and complete, to the satisfaction of NJDEP, those items specified by the State in writing to be developed by the State within forty-five (45) Working Days of the entry of this Decree;

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WHEREAS, OCC agrees that this Consent Decree addresses only remediation of the 80 and 120 Lister Avenue properties, and does not address performance of tasks related to the Passaic River, the bedrock aquifer and other properties;

WHEREAS, pursuant to Section 122 of CERCLA, 42 U.S.C. §9622, the United States, the State, OCC and CLH have each stipulated and agreed to the making and entry of this Consent Decree prior to the taking of any testimony, based upon the pleadings herein;

NOW THEREFORE, it is ORDERED, ADJUDGED, AND DECREED as follows:

I.

JURISDICTION

This Court has jurisdiction over the subject matter of this action and the parties to this Consent Decree pursuant to Sections 106, 107 and 113 of CERCLA, 42 U.S.C. §§9606, 9607 and 9613, and 28 U.S.C. §1345, and pendant jurisdiction over those claims arising under the laws of the State. OCC and CLH do not admit and reserve their rights to contest the jurisdiction of this Court over, and to award relief for, subject matters or activities not expressly required by this Consent Decree. The Parties agree that nothing in this Consent Decree nor the fact that it is being entered shall constitute an admission of fact or conclusion of law.

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## II.

DEFINITIONS

Whenever the following terms are used in this Consent Decree and the attachments hereto, the following definitions specified in this Section shall apply:

A. "Appendix" or "Appendices" means those attachments listed below, which are incorporated herein and made a part of this Consent Decree by reference:

Appendix I - Statement of Work

Appendix II - Cleanup Standards

Appendix III - 80 Lister Avenue: Metes and Bounds

Appendix III-1 - 120 Lister Avenue: Metes and Bounds

Appendix III-2 - 80 and 120 Lister Avenue: Survey Plat

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

C. "Consent Decree" means this Consent Decree, all Appendices to this Consent Decree and all modifications to such documents. For convenience, all references in the attached Appendices to this Consent Decree shall be understood to refer to this document.

D. "Contractor" means the company or companies retained by OCC to perform the Work required by this Consent Decree and all attachments hereto.

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E. "Diamond Alkali Superfund Site" means the real property located at 80 and 120 Lister Avenue, in the City of Newark, County of Essex, New Jersey, and those areas to which contamination originating at 80 Lister Avenue has migrated.

F. "Dioxin," "TCDD" and "2,3,7,8-TCDD" mean 2,3,7,8-Tetrachlorodibenzo-p-dioxin.

G. "EPA" means the United States Environmental Protection Agency.

H. "Hazardous Materials" means "hazardous substance" within the meaning of Section 101(14) of CERCLA, 42 U.S.C. §9601(14); "hazardous substances" within the meaning of Section 3 of the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11.b.k.; "pollutant" within the meaning of the New Jersey Water Pollution Control Act, N.J.S.A. 58:10A-3(n); and "pollutant or contaminant" within the meaning of Section 101(33) of CERCLA, 42 U.S.C. §9601(33).

I. "National Contingency Plan" shall be used as that term is used in Section 105 of CERCLA, 42 U.S.C. §9605, and the National Oil and Hazardous Substances Pollution Contingency Plan, 40 C.F.R. Part 300, and any amendments thereto.

J. "NJDEP" means the State of New Jersey Department of Environmental Protection.

K. "Operation and Maintenance" and "O&M" mean those activities required by Section H of Appendix I, as may be modified pursuant to the provisions of this Consent Decree and any schedules,

plans or reports required to be submitted pursuant hereto.

L. "Parties" means the United States of America on behalf of the United States Environmental Protection Agency; the State of New Jersey, Department of Environmental Protection; Occidental Chemical Corporation; and Chemical Land Holdings, Inc.

M. "Record of Decision" and "ROD" mean that document issued on September 30, 1987, to present the remedial action plan selected by the Regional Administrator of EPA Region II to address the 80 and 120 Lister Avenue portion of the Diamond Alkali Superfund Site;

N. "RCRA" means the Resource, Conservation and Recovery Act, as amended, 42 U.S.C. §6901 et seq.

O. "Remedy" means the selected remedial alternative set forth in the Record of Decision, as described in Section VI.B, infra, and as shall be developed, implemented and/or modified pursuant to this Consent Decree.

P. "Remedial Construction" means those activities required by Section G of Appendix I, as may be modified pursuant to the provisions of this Consent Decree and any schedules, plans or reports required to be submitted pursuant hereto.

Q. "Remedial Design" means those activities required by Section F of Appendix I, as may be modified pursuant to the provisions of this Consent Decree and any schedules, plans or reports required to be submitted pursuant hereto.

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R. "Remedy Evaluation" means those activities required by Section I of Appendix I, as may be modified pursuant to the provisions of the Consent Decree and any schedules, plans or reports required to be submitted pursuant hereto.

S. "Settling Defendants" means Occidental Chemical Corporation, as successor to Diamond Shamrock Chemicals Company, and Chemical Land Holdings, Inc.

T. "Site" means the real property located at 80 and 120 Lister Avenue, in the City of Newark, County of Essex, New Jersey. Such properties are designated as Block 2438, Lots 57, 58 and 59 on the Tax Map of Newark, as described by metes and bounds in Appendices III and III-1, and the survey plat in Appendix III-2.

U. "Site Stabilization" means those activities required by Section D of Appendix I, as may be modified pursuant to the provisions of this Consent Decree and any schedules, plans or reports required to be submitted pursuant hereto.

V. "State" means the State of New Jersey.

W. "Statement of Work" means that document incorporated herein as Appendix I of this Consent Decree.

X. "Work" means all work and other activities required by this Consent Decree, including, but not limited to: Site Stabilization, Remedial Design, Remedial Construction, Operation and Maintenance, Additional Work pursuant to Section VII., infra,

Remedy Evaluation, and implementation of the response actions selected pursuant to Remedy Evaluation.

Y. "Working Day" means any day of the week except for Saturday or Sunday, that is not a designated Federal or State holiday.

Z. All terms not otherwise defined herein shall have their ordinary meanings except that those terms defined in Section 101 of CERCLA, 42 U.S.C. §9601, shall have the meanings set forth therein.

### III.

#### PARTIES BOUND

A. This Consent Decree applies to and is binding upon the undersigned Parties and their successors and assigns. Each undersigned representative of a party to this Consent Decree certifies that he or she is fully authorized by the entity which he or she represents to enter into the terms and conditions of this Decree and to execute and legally bind that entity to it.

B. The Parties agree that CLH is a party to this Consent Decree for specific, limited purposes. CLH shall allow access to the Site as provided in Section XI, infra, and shall abide by the agreements on conveyance and use of the property in this Section III.

C. OCC shall provide a copy of this Consent Decree to each chief contractor and chief subcontractor retained to perform the

Work required by this Consent Decree. Chief contractors or subcontractors shall be those contractors or subcontractors whose contracts or subcontracts for Work performed pursuant to this Consent Decree have a total value exceeding twenty-five thousand dollars (\$25,000). The obligation to provide a copy of this Consent Decree to a chief contractor or chief subcontractor shall be triggered when the planned or actual value of Work exceeds twenty-five thousand dollars (\$25,000). OCC shall be responsible to the United States and the State for ensuring that each of its contractors and subcontractors perform the Work contemplated herein in accordance with this Consent Decree.

D. Conveyance of the Site

1. Settling Defendants may convey any or all of their interest in the Site, provided that no conveyance or transfer of title, lease, easement or other interests in the Site shall be consummated without a provision permitting a continuance of the Work pursuant to this Consent Decree, and all such conveyances of title, grants of easements or other conveyances of any interest in the Site shall contain a covenant to permit such Work. At least sixty (60) calendar days prior to any conveyance, Settling Defendants having control of or ownership over the Site shall notify EPA and NJDEP by registered mail of their intent to convey any interest in the Site, and the provisions to be made allowing the continued implementation of the Work. If such property is alienated, Settling Defendants' obligations under this Consent Decree shall continue

unless the grantee agrees to assume these obligations and both EPA and NJDEP agree, in writing, to allow the grantee to assume the obligations of the grantor.

2. The restrictions and obligations set forth herein shall run with the land and shall be binding on any and all parties who acquire any interest in the Site. In addition, Settling Defendants shall promptly give notice to EPA and NJDEP of any actual conveyance or transfer of any interest they may have in any property not part of the Site but which is used to implement the Work in the immediate vicinity of the Site, to the extent such conveyance is known or should be known to Settling Defendants.

3. A notification of the existence of this Consent Decree and where and how a copy may be obtained shall be recorded by Settling Defendants in the Office of the Clerk of Essex County, State of New Jersey and any other appropriate office as a lien and encumbrance on all parcels comprising the Site. Settling Defendants agree to execute such legal instruments and documents, if any, as may be required to effectuate the recording of such notice in the Office of the Clerk of Essex County, State of New Jersey and any other appropriate office, and to pay the costs of the preparation and recording of such documents.

4. Within forty-five (45) calendar days of entry by this Court of this Consent Decree, written proof of such recording with the Office of the Clerk of Essex County, State of New Jersey and any other appropriate office as required pursuant

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to Section III.D.3, supra, shall be sent to those individuals specified in Section XXX, infra.

5. Any deed, title or instrument of conveyance for the Site or any part thereof shall contain a permanent deed restriction to the benefit of EPA and NJDEP that states:

The Owner agrees not to make any use of, or take any actions at, the Site inconsistent with the Work at the Site as set forth in the Consent Decree entered in United States of America v. Occidental Chemical Corporation, Civil Action No. \_\_\_\_\_, in the United States District Court for the District of New Jersey. The Owner also agrees to the imposition of such use and/or access restrictions as may be deemed necessary by the United States Environmental Protection Agency ("EPA") and the State of New Jersey Department of Environmental Protection ("NJDEP") to insure compliance with the referenced Consent Decree and/or the integrity of the Work. The restrictions shall continue until such time as the Site is declared by EPA, in consultation with the State, to be fit for unrestricted use. The restrictions shall include provisions for the continuation of access rights. The use and access restrictions are to run with the land and be for the benefit of and enforceable by EPA and NJDEP. The Owner shall record the restrictions with the Clerk of Essex County, State of New Jersey immediately upon the request of EPA and/or NJDEP that it do so.

Settling Defendants shall include the above statements in all leases, subleases or rental agreements relating to the Site or any part thereof which are executed on or after the effective date of this Consent Decree.

6. Any such lease or sublease for the Site or any part thereof shall contain the permanent deed restriction described in Section III.D.5, supra, until such time as the Site is declared

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by EPA, in consultation with the State, to be fit for the removal of those restrictions set forth in Section III.D.5, supra.

7. Any deed restriction as described above shall run with the land until such time the Site is declared by EPA, in consultation with the State, to be fit for the removal of those restrictions set forth in Section III.D.5, supra.

E. Use of the Site

Until such time as EPA and NJDEP approve otherwise, the use or development of the Site shall be in a manner consistent with the terms of this Consent Decree, including the permanent deed restrictions described in Section III.D.5, supra.

IV.

PURPOSE

The purpose of this Consent Decree is to serve the public interest by protecting the public health, welfare and the environment from releases and threatened releases of Hazardous Materials at or from the Site through the implementation of the Work, and to settle the claims asserted by the United States and the State against Settling Defendants in the Complaint.

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## V.

GENERAL PROVISIONSA. Permits and Approvals.

1. All activities undertaken by OCC pursuant to this Consent Decree shall be undertaken in accordance with the requirements of Section 121(e)(1) of CERCLA, 42 U.S.C. §9621(e)(1), and the National Contingency Plan and any amendments thereto.

2. The off-site transfer, treatment, storage or disposal of Hazardous Materials removed from the Diamond Alkali Superfund Site by OCC must be in compliance with Section 121(d)(3) of CERCLA, 42 U.S.C. §9621(d)(3). To the extent applicable to it, OCC is responsible for compliance with all requirements relating to off-site management under RCRA, and N.J.A.C. 7:26-1.1 et seq., including fulfilling the standards applicable to generators and transporters of hazardous waste promulgated at 40 C.F.R. Parts 262 and 263. In particular, this responsibility includes using and signing manifest forms for hazardous wastes transported from the Diamond Alkali Superfund Site. Furthermore, in the Site Management Plans for Remedial Construction and for Operation and Maintenance, both of which are required by Appendix I, OCC shall designate any facilities it proposes to use for such off-site transfer, storage, treatment or disposal. OCC shall conduct off-site disposal activities in conformance with the National Contingency Plan and any amendments

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thereto, and the Revised Procedures for Planning and Implementing Off-site Response Actions, EPA Office of Solid Waste and Emergency Response, November 13, 1987, and any amendments thereto.

3. Approvals which may be granted by EPA, the State or other governmental entity shall not relieve OCC from any liability it may have arising from or relating to its acts or omissions or the acts or omissions of any of its contractors, subcontractors or any other person or entity acting on its behalf in the performance of the Work or its failure to perform fully or complete the Work.

4. Notwithstanding any other provision in this Consent Decree, no Federal, State or local permits shall be required for any portion of the Work conducted entirely at the Diamond Alkali Superfund Site.

B. National Contingency Plan.

1. OCC shall design, implement and complete the Work in accordance with the provisions of the National Contingency Plan, and any amendments thereto, and any standards, specifications and schedules of completion developed in accordance with Section VI, infra, or agreed to by the Parties, or ordered by this Court.

2. This Court finds and the Parties agree that the Work is consistent with the National Contingency Plan. Settling Defendants do not waive their rights to contest the consistency

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with the National Contingency Plan of any further response action ordered pursuant to Remedy Evaluation.

C. If the application of any amendment to CERCLA or the National Contingency Plan after the date of lodging of this Consent Decree would substantially alter OCC's obligations under this Decree, EPA, in consultation with the State, shall determine to what extent such amendment shall be incorporated to modify those tasks remaining to be implemented in furtherance of the Work.

D. At places in this Consent Decree the obligations of the Parties are calculated in terms of a specified number of calendar days. If performance of any responsibility under this Consent Decree falls due on a Saturday, Sunday, or official Federal or State holiday, the due date for such performance is automatically extended until the end of the next day that is not a Saturday, Sunday, or official Federal or State holiday.

## VI.

### WORK TO BE PERFORMED

#### A. Commitment by OCC.

OCC agrees to finance, design, construct, operate and maintain, and conduct periodic evaluations of the Remedy in accordance with all terms, conditions and schedules set forth herein and developed and approved hereunder, and to perform the Work in accordance with Appendix I.

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B. The following is a description of the components of the selected remedial alternative:

1. Construct a slurry wall tying into the silt layer underlying the Site. The slurry wall shall be designed and constructed to encircle the soil and debris at the Site which exceeds any soil cleanup standard specified in Appendix II. Where a cleanup standard is exceeded at or beyond the Site boundary, the slurry wall shall extend as close as is practicable to the Site boundary.

2. Construct a flood wall and appurtenances to protect the Site from the 100 year flood. The flood wall may be designed to incorporate the functions of the slurry wall along the Passaic River front. The design considerations for such flood wall shall include the specifications and guidances of the United States Army Corps of Engineers and NJDEP, as well as the impact of the proposed Passaic River flood control project.

3. To the maximum extent practicable, disassemble and decontaminate all non-porous permanent structures and materials to facilitate off-site reuse, recycle or disposal. Decontamination procedures shall be designed and implemented to attain the cleanup standard for dioxin specified in Appendix II. The decontamination procedures shall also be protective of human health and the environment with respect to all other Hazardous Materials known to be present at the Site.

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4. To the extent practicable, transport all containers (other than those shipping containers currently stored at 120 Lister Avenue) containing Hazardous Materials, but containing less than 1.0 ppb of dioxin, off-site, for treatment or disposal.

5. Demolish all remaining structures on-site and secure all materials contaminated at or above 1.0 ppb of dioxin on-site. Secured materials shall be segregated to the maximum extent practicable. The placement of secured materials shall be in accordance with the requirements specified in Appendix II.

6. Stabilize and immobilize the contents of the remaining containers (other than those shipping containers currently stored at 120 Lister Avenue) of dioxin contaminated materials.

7. Locate and plug inactive underground conduits, and reroute active systems.

8. Haul, empty, spread and compact the contaminated materials stored at 120 Lister Avenue and, to the maximum extent practicable, decontaminate the non-porous portions of the shipping containers for off-site reuse, recycle or disposal. Decontamination procedures shall be designed and implemented to attain the cleanup standard for dioxin specified in Appendix II. The decontamination procedures shall also be protective of human health and the environment with respect to all other Hazardous Materials known to be present at the Site.

9. Install, operate and maintain a ground water withdrawal system designed to maintain a hydraulic gradient preventing the migration of ground water from the volume contained within the slurry wall.

10. Install, operate and maintain a treatment system for ground water and other aqueous liquids resulting from the Work. The treatment system shall discharge treated wastewater either to the Passaic Valley Sewerage Commission treatment works or directly to the Passaic River. The treatment system shall be designed, constructed, and operated and maintained to attain and shall attain the cleanup standards (effluent limitations) specified in Appendix II. The treatment system shall be designed, constructed, and operated and maintained in accordance with the requirements (other than administrative requirements) for discharge of treatment system effluent to navigable waters, discharge to publicly owned treatment works and discharge to surface waters specified in Appendix II, as appropriate.

11. Construct a surficial cap consisting of suitable materials designed to meet the requirements of RCRA. The cap shall cover the slurry wall and the entire area encircled by the slurry wall. The design, construction, and operation and maintenance of the cap shall be in accordance with the requirements specified in Appendix II.

12. Implement suitable monitoring, contingency, operation and maintenance, and site security plans designed to

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ensure the protection of human health and the environment during the Remedial Construction and after the completion of the Remedial Construction.

13. On-site containment of all sludge generated from the wastewater treatment processes until such time that an alternative method of sludge management is approved.

14. Design, construct, and operate and maintain the Remedy to attain the cleanup standards listed in Appendix II.

C. With respect to Sections VI.B.3, VI.B.4 and VI.B.8, supra, EPA, in consultation with the State, shall determine the level constituting compliance with an individual Subparagraph "to the maximum extent practicable" or "to the extent practicable," and, in so doing, shall determine what constitutes implementation of the particular component of the selected remedial alternative for the Site.

D. Within seven (7) calendar days of the date of lodging of this Consent Decree with this Court, OCC shall commence those tasks required by Sections D and E of Appendix I and, thereafter, complete such tasks in accordance with those schedules set forth in or developed and approved under Appendix I.

E. Schedules prepared by OCC pursuant to Appendix I shall express schedule dates in terms of periods of time following prerequisite events, rather than as calendar dates. The entry of this Consent Decree by this Court shall be deemed a prerequisite event for activities conducted pursuant to Sections F, G, H and I

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of Appendix I. The previous statement shall not, however, preclude OCC from performing Work in accordance with Section F of Appendix I prior to the entry of this Consent Decree, should OCC elect to do so, if OCC obtains EPA's prior written approval.

F. The timing of compliance with the requirements of Section VI.B, supra, with respect to the attainment of cleanup standards shall be governed by the following:

1. With respect to any action-specific cleanup standards specified or referenced in Appendix II, and except as expressly provided in this Consent Decree and in plans and/or schedules developed and approved by EPA, in consultation with the State, OCC shall comply with the requirements of Section VI.B, supra, during the implementation of the Work.

2. With respect to any cleanup standards specified or referenced in Appendix II which were not being attained prior to the commencement of the Work, OCC shall comply with the requirements of Section VI.B, supra, regarding such cleanup standards by not later than the completion of Remedial Construction. Such cleanup standards are not deemed action-specific cleanup standards with respect to any occurrences of non-attainment which existed prior to the commencement of the Work and continue subsequent to the commencement of the Work.

3. With respect to any cleanup standards specified or referenced in Appendix II which were being attained prior to the

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commencement of the Work, OCC shall comply with the requirements of Section VI.B, supra, during the implementation of the Work.

G. With respect to the attainment of effluent limitations required by Section VI.B.10, supra, the following shall apply:

1. In the event that an analysis (or a number of analyses) of a treatment system effluent sample (or samples) yields a concentration value (or an average concentration value) for an analyte which is less than or equal to the practical quantitation limit ("PQL") value for the analytical method employed as specified in the Sampling, Analysis and Monitoring Plan for Remedial Design (see Section E.2.a of Appendix I), the effluent limitation shall be deemed to have been attained for that analyte with respect to that sample (as well as for any average effluent limitation for that analyte with respect to that group of samples). However, if at any time EPA, in consultation with the State, approves an analytical method with a lower PQL, the achievability of such new PQL or such effluent limitation, whichever is less stringent, shall be grounds for additional work pursuant to Section VI.G.5, infra, unless OCC proves to the satisfaction of EPA, in consultation with the State, that attainment of effluent values at or below the new PQL is not technically practicable.

2. In the Remedial Design Workplan required by Section E of Appendix I, OCC shall, at a minimum, set forth plans to conduct treatability studies to evaluate all known wastewater

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treatment methods that are or may be feasible for the treatment of those Hazardous Materials present at the Site in order to attain the effluent limitations set forth in Appendix II.

3. In the event that the wastewater treatability studies conducted pursuant to the approved Remedial Design Workplan lead EPA, in consultation with the State, to conclude, based on technical evidence presented to EPA and the State by OCC and on any other relevant information, that it is not technically practicable to attain an effluent limitation for a particular Hazardous Material, EPA, in consultation with the State, may direct the Remedial Design to proceed based on the most stringent design criteria and effluent values which EPA, in consultation with the State, determines are technically practicable; provided that OCC proves to the satisfaction of EPA, in consultation with the State, that the most stringent design criteria, when implemented, will result in a reduced adverse impact on the water quality of the Passaic River compared to the impact associated with the unremediated ground water migration from the Site to the Passaic River. In the event EPA, in consultation with the State, directs the Remedial Design to proceed as set forth above, OCC shall not be deemed in violation of this Consent Decree for failure to attain such effluent limitations, provided that an effluent value which is based on the design criteria and is specified in the Final Design Report (see Section F of Appendix

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I), is attained for the Hazardous Material or parameter to which the effluent limitation applies.

4. If OCC does not achieve the effluent values approved by EPA, in consultation with the State, pursuant to Sections VI.G.1 and VI.G.3, supra, OCC shall be deemed in violation of this Consent Decree unless OCC proves to the satisfaction of EPA, in consultation with the State, that the attainment of such effluent values is not technically practicable despite OCC's evaluation and testing of all known methods to attain such values. If EPA, in consultation with the State, agrees that OCC has proved that the attainment of such effluent values is not technically practicable, the Remedial Construction and/or Operation and Maintenance activities may continue, provided that OCC shall, as part of the Remedy Evaluation required by Section VIII, infra, evaluate and, if not previously tested, test all known methods for achieving such effluent values, and provided that OCC proves to the satisfaction of EPA, in consultation with the State, that the Final Design Report and/or Operation and Maintenance Plan, when implemented, will result in a reduced adverse impact on the water quality of the Passaic River compared to the impact associated with the unremediated ground water migration from the Site to the Passaic River.

5. Notwithstanding Sections VI.G.1, VI.G.2, VI.G.3 and VI.G.4, supra, the finding of an effluent value greater than an effluent limitation may be grounds for additional work pursuant

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to Section VII, infra, and may be a factor considered in the determination of the appropriateness of additional response action pursuant to Section VIII.B, infra.

6. The relief provided by Sections VI.G.1, VI.G.2, VI.G.3 and VI.G.4, supra, may be terminated by EPA, in consultation with the State, pursuant to schedules developed by or approved by EPA, in consultation with the State, to attain more stringent effluent values established and approved pursuant to Section(s) VII and/or VIII.C, infra.

7. With respect to this Section VI.G, EPA, in consultation with the State, shall determine what constitutes "technically practicable" in consideration of the EPA CERCLA Compliance With Other Laws Manual, August, 1988.

## VII.

### ADDITIONAL WORK

A. In the event EPA, in consultation with the State, and/or OCC determine(s) that additional work, including additional Remedial Design or Remedial Construction, is necessary to meet, at the Site, the cleanup standards described and/or referenced in Section VI, supra, and/or the Statement of Work, notification of the need for such additional work will be provided to the other parties. Additional work as defined in this Section VII shall be limited to that work which is required to achieve successful implementation of the components of the selected remedial

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alternative, as set forth in Section VI.B, supra. The performance of Additional Work shall not be deemed a "modification" within the meaning of Sections XXXII.A and XXXII.C., infra.

B. Any additional work which OCC determines to be necessary is subject to approval by EPA, in consultation with the State.

C. Any additional work which is determined to be necessary by OCC and approved by EPA, in consultation with the State, or determined to be necessary by EPA, in consultation with the State, to meet the cleanup standards, shall be completed by OCC in accordance with those standards, specifications and schedules developed by OCC and approved by EPA, in consultation with the State.

D. The provisions of this Section VII shall remain effective throughout the duration of this Consent Decree.

#### VIII.

##### REMEDY EVALUATION TO ASSURE PROTECTION OF HUMAN HEALTH AND THE ENVIRONMENT AND TO ASSESS REMEDIAL ALTERNATIVES

A. OCC shall conduct a Remedy Evaluation for the Site once every two (2) years following completion of the Remedial Construction activities required under this Consent Decree (1) to assure that human health and the environment are being protected by the Remedy implemented by OCC under this Decree, taking into account, as provided in Section 121 of CERCLA, 42 U.S.C. §9621, without limitation, any changes in knowledge concerning the risks posed by dioxin and other Hazardous Materials at the Site and addressed by this Decree; and (2) to develop, screen and assess

the viability of implementing remedial alternatives more protective of human health and the environment, including those alternatives which are based purely on advances in technology and those which utilize more permanent solutions.

B. In the event that a Remedy Evaluation results in modifications of the Remedy that may affect subsequent Remedy Evaluations in some manner, OCC may request EPA to revise the format or content of any subsequent Remedy Evaluation to accommodate the modifications. EPA, in consultation with the State, will make such revisions as it deems appropriate.

C. EPA and the State will review each Remedy Evaluation conducted by OCC. If, upon such review, EPA, in consultation with the State, determines that further response action is necessary as a result of a Remedy Evaluation conducted pursuant to Sections VIII.A.1 and VIII.A.2, supra, EPA will notify OCC of its preliminary determination with respect to the need for further study and/or remedial action. The criteria for EPA's determination regarding the necessity of further response action as a result of a Remedy Evaluation conducted pursuant to Section VIII.A.2, supra, will be the same as the criteria for the Selection of appropriate remedial actions set forth in Section 121 of CERCLA, 42 U.S.C. §9621, with the exception of the criteria set forth in Section 121(c), 42 U.S.C. §9621(c). OCC will be provided an opportunity to confer with EPA, which may coincide

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with an opportunity for public comment, if appropriate, with respect to any response action proposed by EPA pursuant to this Section VIII, and to submit written comments for the record with respect to any response action proposed by EPA. After the comment period closes, EPA will either affirm, modify or rescind its proposed response action in writing, stating the reasons for any further response action required. OCC shall implement and finance such response action, subject to its rights under Section XXIV, infra, to dispute whether the response action selected by EPA is consistent with the criteria specified above. OCC shall not be liable for any stipulated penalties that may accrue during any period of dispute resolution referred to in the preceding sentence unless OCC's invocation of dispute resolution is determined to be without sufficient cause. The requirement that such response action be performed shall not be deemed a "modification" within the meaning of Sections XXXII.A and XXXII.C, infra.

D. OCC agrees to reimburse the United States and the State for those costs incurred in overseeing and reviewing OCC's Remedy Evaluations and any subsequent remedial action conducted by OCC under this Section VIII.

E. EPA and the State reserve their rights as set forth in Section 121(f) of CERCLA, 42 U.S.C. §9621(f).

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F. The provisions of this Section VII shall terminate upon EPA's determination that a permanent remedy has been implemented at the Site.

IX.

ENDANGERMENT

A. In the event of any action or occurrence during the term of this Consent Decree which causes or threatens a release of Hazardous Materials from the Site or which causes or may cause an imminent and substantial endangerment to public health or welfare or the environment, OCC shall immediately, upon notice or discovery of such action or occurrence, take all appropriate action to prevent, abate or minimize such release or endangerment and shall immediately notify the EPA RPM or, if that is impossible, the Response and Prevention Branch, EPA Region II at (201) 548-8730. OCC shall take such action in accordance with all applicable provisions of the Health and Safety/Contingency Plan developed pursuant to Appendix I and approved thereunder.

B. In the event EPA and/or the State take action to respond to the circumstances set forth in Section IX.A, supra, OCC shall reimburse all costs of the response action incurred by EPA that are not inconsistent with the National Contingency Plan and/or incurred by the State as the State is authorized to recover by

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law, subject to those defenses set forth under Section 107(b) of CERCLA, 42 U.S.C. §9607(b).

C. Nothing in this Consent Decree shall be deemed to limit the power and authority of the United States, the State or this Court to take, direct or order all appropriate action to protect human health and the environment or to prevent, abate or minimize an actual or threatened release of Hazardous Materials on, at or from the Site.

X.

PARTIES' DESIGNATED REPRESENTATIVES

A. 1. Within ten (10) calendar days of lodging of this Consent Decree, EPA shall designate a Remedial Project Manager ("RPM") and NJDEP shall designate a Case Manager to monitor the progress of the Work and to coordinate communications among EPA, NJDEP and OCC. EPA and NJDEP may each designate an alternate representative.

2. Within ten (10) calendar days of lodging of this Consent Decree, OCC shall designate a Project Coordinator who shall have primary responsibility for implementation of the Work.

B. 1. The EPA RPM and any designated representative exercising the authority of Section X.B.3, infra, shall have the training provided for a grant of the authority set forth in 40 C.F.R. §§300.68(a)(2) and 300.33(b), or any similar provision in future amendments or revisions to the National Contingency Plan.

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2. The EPA RPM shall work in cooperation with the NJDEP Case Manager.

3. The EPA RPM and the NJDEP Case Manager shall each have the authority to require a cessation of the performance of the Work or any other activity at the Site that may present or contribute to an imminent and substantial endangerment to public health, welfare or the environment or cause or threaten to cause the release of Hazardous Materials from the Site. In the event the EPA RPM or the NJDEP Case Manager suspends the Work or any other activity at the Site, EPA, in consultation with the State, may extend the compliance schedule developed under this Consent Decree as appropriate.

4. EPA, NJDEP and OCC shall each have the right to change their respective designated representatives by notifying the other parties in writing. OCC shall notify EPA and NJDEP of any such change at least seven (7) calendar days prior to the change. EPA and NJDEP will make reasonable efforts to notify OCC prior to any such change; however, any failure by EPA and/or NJDEP to notify OCC shall not be a breach of this Consent Decree.

C. The EPA RPM and the NJDEP Case Manager may assign other representatives, including other EPA and NJDEP employees or contractors, to serve as their representatives for oversight of performance of daily operations during implementation of the Work.

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D. The EPA RPM, or the NJDEP Case Manager, acting with the concurrence of the EPA RPM, may make or authorize field modifications, consistent with the implementation of the Work, in writing, to the studies, designs, techniques or procedures undertaken or utilized in performing the Work required under this Consent Decree, provided any such modifications are consistent with Appendix I. Such field modifications shall not be deemed a modification within the meaning of Section XXXII, infra.

E. The absence of OCC's Project Coordinator shall not be cause for work stoppage.

F. To the maximum extent possible, except as specifically provided in this Consent Decree, communications among the Parties shall be between their designated representatives.

## XI.

### FACILITY ACCESS

A. EPA and the State, and their representatives, including contractors and subcontractors, shall have access at all times to the Site and any other property on which the Work is being performed to the extent that access to such property is controlled by or available to Settling Defendants to enable the Parties and their representatives to conduct any activity authorized by this Consent Decree, including, but not limited to:

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1. Monitoring the progress of activities taking place;
2. Verifying any data or information submitted to EPA and NJDEP;
3. Conducting investigations relating to contamination at or near the Site;
4. Obtaining samples at or relating to the Site; and
5. Inspecting and copying records, operating logs, contracts or other documents required to assess compliance with this Consent Decree.

B. All access to the Site shall be in compliance with the applicable Health and Safety/Contingency Plan as uniformly applied to all Parties.

C. 1. To the extent that the Diamond Alkali Superfund Site or other areas where the Work is to be performed hereunder is owned by parties other than those bound by this Consent Decree, OCC shall use best efforts to obtain access from the owners for the purpose of implementing the requirements of this Decree in accordance with the schedule set forth in the approved Remedial Design Work Plan. Such agreements shall provide access not only for OCC, but also for EPA and the State and authorized representatives or agents of EPA and the State.

2. If such access agreements are not obtained within the time specified herein, OCC shall so notify EPA and NJDEP in

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accordance with the procedures set forth in Section XXX, infra, and OCC shall use its best efforts to otherwise secure necessary access. For purpose of securing access, "best efforts" may involve the expenditure of money and the initiation of judicial proceedings to the extent authorized by law.

3. Should OCC, using its best efforts, fail to secure access to the Site or other areas where the Work is to be performed hereunder, EPA and the State may assist OCC in obtaining such access. OCC shall reimburse EPA and the State for all expenses incurred in obtaining access, in accordance with Section XXII, infra.

## XII.

### SAMPLING AND DATA

A. Within seven (7) calendar days of a request by EPA or the State, OCC shall make available to EPA and the State all requested results of sampling and/or tests or other data generated by or for OCC with respect to the implementation of the Work.

B. At the request of any party, any other party shall provide split or duplicate samples to the requesting party, or allow split or duplicate samples to be taken by the requesting party of any samples collected that relate in any way to the implementation of the Work. OCC shall notify EPA and the State not less than ten (10) calendar days in advance of any sample collection activity. In addition, EPA and the State shall have the right to

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take any additional samples or direct OCC to take any additional samples that EPA and the State deem necessary to determine whether the Work is being implemented properly.

C. Notwithstanding any other provision of this Consent Decree, EPA and the State hereby retain all of their information gathering, access and inspection authorities and rights under CERCLA, RCRA, and any other applicable Federal or State statutes or regulations.

### XIII.

#### PUBLIC INSPECTION

All data, factual information and documents submitted by Settling Defendants to EPA and NJDEP pursuant to this Consent Decree shall be available for public inspection. Settling Defendants shall not assert a claim of confidentiality regarding any monitoring or hydrogeologic data, any information specified under Section 104(e)(7)(F)(i) through (viii) of CERCLA, 42 U.S.C. §9604(e)(7)(F)(i) through (viii), or any other chemical, scientific or engineering data related to the Work or submitted to EPA and the State pursuant to this Consent Decree. Information entitled to protection under 18 U.S.C. §1905 is excluded from public inspection in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. §9604(e)(7).

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## XIV.

REPORTING REQUIREMENTSA. Monthly Progress Reports.

In addition to any other requirement of this Consent Decree, OCC shall prepare and provide to EPA and the State written monthly progress reports. For each calendar month, or part thereof, such monthly progress report shall: (1) describe all actions which have been taken to fulfill the requirements of this Consent Decree during the prior month; (2) describe any potential and/or actual noncompliance with this Consent Decree and other problems encountered; (3) describe all corrective actions taken in response to any potential and/or actual noncompliance or problems which occurred during the prior month; (4) include all final results of sampling, tests and all other data received or generated by OCC during the course of implementing the Work during the prior month; (5) describe all actions, data and plans which are scheduled for the next two months; (6) include information regarding percentage of completion, all delays encountered or anticipated that may affect the future schedule for performance of the Work, and a description of all efforts made to mitigate those delays or anticipated delays; and (7) include a section entitled "Summary For Submission to Court" which summarizes items (1) through (6), supra. Such monthly progress reports are to be submitted to EPA and the State by the twentieth (20th) calendar day of each succeeding month, the first

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such report being due following the first full month following lodging of this Consent Decree with this Court.

**B. Weekly Progress Reports.**

In addition to the monthly progress report required pursuant to Section XIV.A, *supra*, during Remedial Construction, OCC shall prepare and provide to EPA and the State a weekly written progress report. For each calendar week, such weekly progress report shall: (1) describe all actions which have been taken toward fulfilling the requirements of this Consent Decree; (2) describe any potential and/or actual noncompliance with this Consent Decree and other problems encountered; (3) describe all corrective actions taken for any potential and/or actual noncompliance or problems which occurred during the relevant week; (4) describe all actions, data and plans which are scheduled for the next three (3) consecutive weeks; and (5) describe the types and amounts of Hazardous Materials removed or remediated. Such weekly Remedial Construction progress reports shall be submitted to EPA and the State by the tenth (10th) calendar day following each Sunday for the week ending on that Sunday.

**C. Incomplete or Deficient Reports.**

1. In the event that EPA deems a progress report to be incomplete or otherwise deficient, EPA shall notify OCC of the

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alleged deficiency in writing. OCC shall make the necessary revisions and resubmit the revised progress report with the next scheduled progress report or, if the next progress report is due less than fourteen (14) calendar days following OCC's receipt of the notice of deficiency, with the subsequently scheduled progress report.

2. In the event EPA determines that a revised progress report is deficient for failure to address a deficiency stated in accordance with the procedures of Section C.1, supra, OCC shall be deemed in violation of this Consent Decree.

D. Submittal of Reports.

1. If the date for submission of any report, item or notification required pursuant to this Consent Decree falls upon a weekend or Federal or State holiday, the time period for submission of that item or notification is extended to the next Working Day following the weekend or holiday.

2. In the event EPA or the State requests more than one (1) copy of any report, OCC shall provide a reasonable number of copies as requested.

E. 1. Upon the occurrence of any event during performance of the Work which requires reporting to the National Response Center pursuant to Section 103 of CERCLA, 42 U.S.C. §9603, or which requires notification pursuant to N.J.A.C. 7:1E-1.1 et seq., OCC shall also orally notify the EPA RPM and the NJDEP Case Manager promptly.

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2. In the event of the unavailability of the EPA RPM, OCC shall promptly orally notify the Response and Prevention Branch, EPA, Region II at (201) 548-8730, in addition to the reporting required by Section 103 of CERCLA, 42 U.S.C. §9603.

3. In the event of the unavailability of the NJDEP Case Manager, OCC shall promptly notify the NJDEP Bureau of Emergency Response at (609) 292-1075.

4. Within ten (10) calendar days of the onset of such an event, OCC shall furnish to EPA and NJDEP a written report setting forth the event(s) which occurred and the measure(s) taken and to be taken in response thereto.

XV.

PLANS, REPORTS AND ITEMS REQUIRING AGENCY APPROVAL  
OR RESPONSE TO AGENCY COMMENTS

A. In the event EPA disapproves any plan, report (other than a progress report covered by Section XIV, SUPRA), or other item required to be submitted to EPA and NJDEP for approval pursuant to this Consent Decree, OCC shall have a reasonable time as specified in the notice, but not less than fourteen (14) calendar days from the receipt of written notice of such disapproval to correct any deficiencies and resubmit the plan, report or other item for approval. The notice of disapproval from

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EPA shall include an explanation of why the plan, report or other item is being disapproved. OCC shall address each of EPA's comments and resubmit the previously disapproved plan, report or other item along with the required changes to EPA and NJDEP within the period set forth above.

B. In the event any comment on any report required under Appendix I is not adequately addressed by OCC in the second (2nd) submittal, OCC shall be deemed in violation of this Consent Decree, subject to the provisions of Section XV.C, infra. In the event EPA, in consultation with the State, does not approve OCC's second (2nd) submittal, or any portion thereof, EPA retains the right to amend or develop the submittal. OCC shall implement any such submittal as amended or developed by EPA, subject to OCC's right to invoke dispute resolution under this Consent Decree.

C. It is the intention of the Parties to engage in such discussions as may be necessary to resolve technical issues raised by EPA's comments made pursuant to Sections XV.A and XV.B, supra. EPA, in consultation with the State, may modify its comments and/or extend the due date for a subsequent submittal as a consequence of such discussions.

D. EPA and NJDEP will endeavor to complete their review of plans, reports and other items submitted to them for approval within the time periods specified as goals for such review and set forth in the letter from EPA to OCC dated October 17,

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1989, as may be revised by subsequent letters. Failure by EPA and/or NJDEP to complete review in accordance with such letter(s) shall not relieve OCC of any obligation under this Consent Decree, nor shall it automatically extend the time for performance by OCC except to the extent that Appendix I or a schedule approved under this Section XV requires that performance of a particular activity commence following approval of the plan, report or other item under review.

XVI.

YEARLY PROGRESS REPORTS FOR THE BENEFIT OF THIS COURT

On or before March 31st following each calendar year during which this Court retains jurisdiction hereof pursuant to Section XXXIV, infra, EPA and the State shall file with this Court a compilation of the monthly "Summary For Submission to Court" submitted by OCC pursuant to Section XIV.A, supra, during the preceding calendar year.

XVII.

COMPLETION OF REMEDIAL CONSTRUCTION

A. Within ninety (90) calendar days of completion of all activities required pursuant to Sections G.1 through G.6 of Appendix I, OCC shall submit to EPA and the State a written

report certifying that, subject to any exceptions identified in the Final Report for Remedial Construction required by Section G.7 of Appendix I, all Remedial Construction activity components have been completed in full satisfaction of the standards and specifications set forth in the Final Design Report prepared and approved pursuant to this Consent Decree. Said report shall be signed by a New Jersey licensed professional engineer. The Final Report for Remedial Construction required by Section G.7 of Appendix I shall be submitted together with the written certification.

B. If EPA, in consultation with the State, determines that Remedial Construction has not been completed in accordance with the standards and specifications set forth in the Final Design Report prepared and approved pursuant to this Consent Decree, EPA shall notify OCC, in writing, of the specific tasks and activities which have not been so performed. OCC shall then implement the specified activities and tasks in accordance with those standards, specifications and schedules approved by EPA.

C. 1. Any portion of the Work performed pursuant to this Consent Decree shall not be deemed complete until it has been reviewed by EPA and NJDEP, and approved by EPA in writing.

2. At such time as EPA determines that Remedial Construction has been completed in accordance with the standards and specifications set forth in this Consent Decree, and that the

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Remedial Construction is operating in accordance with such requirements, EPA shall notify OCC of such approval in writing.

D. Approval of completion of the Remedial Construction work in no way limits OCC's obligations under Sections VI, VII and VIII, supra.

XVIII.

ASSURANCE OF ABILITY TO COMPLETE WORK

A. Within fourteen (14) calendar days of the effective date of this Consent Decree, OCC shall submit a letter of credit to EPA for the purpose of demonstrating its ability to complete the Work and to pay all claims that arise in connection with the performance of the Work. The letter of credit must be adequate to assure EPA and the State that it is unnecessary to require additional assurances.

B. OCC shall submit such financial assurance annually.

C. The Parties agree that the total of sixteen million dollars (\$16,000,000) in letters of credit presently in effect pursuant to ACO I and ACO II shall be adequate financial assurance hereunder as of the effective date of this Consent Decree, provided however, that by no later than fourteen (14) calendar days after the effective date of this Decree, such letters of credit shall be

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modified to be held by OCC for the benefit of EPA and NJDEP to satisfy the requirements of this Consent Decree.

D. In the event EPA or the State subsequently determines such financial assurance is inadequate, EPA shall so inform OCC in writing and OCC shall have thirty (30) calendar days from the date of receipt of such written notice to obtain further financial assurance which shall assure EPA and the State that OCC has sufficient assets to implement and complete the Work or the requirements of ACO I and ACO II.

E. OCC may petition EPA for a reduction in the amount of financial assurance required following EPA's approval of the completion of Remedial Construction work pursuant to Section XVII.C.2, supra, and at such time as OCC submits each Remedy Evaluation conducted pursuant to Section VIII.A, supra.

#### XIX.

##### RETENTION OF RECORDS

A. Settling Defendants shall preserve and retain, and EPA and the State shall use their best efforts to preserve and retain, all records and documents now in their possession or control and those which may come into their possession or control (including, for OCC, those in the possession or control of Maxus Energy Corporation) that relate in any manner to the Site or the Work, regardless of any document retention policy to the contrary, for not less than six (6) years after EPA certifies

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approval of the Remedial Construction or six (6) years after the records or documents come into a party's possession, whichever is later.

B. Settling Defendants shall preserve, or shall instruct their contractors, their contractors' subcontractors and anyone else acting on their behalf in connection with the Site, to preserve (in the form of originals or exact copies, or upon EPA approval, microfiche of all originals) all records and documents of whatever kind, nature or description that relate to the Site or the Work for the time period specified in Section XIX.A, supra.

C. OCC shall, within sixty (60) calendar days of the effective date of this Consent Decree, obtain the written agreement of Maxus Energy Corporation to preserve, retain and provide to OCC on demand originals or copies of all records and documents fitting the description set forth in Section XIX.B, supra, for the time period specified in Section XIX.A, supra. A copy of the executed agreement between OCC and Maxus Energy Corporation shall be submitted to EPA and the State within ninety (90) calendar days of the effective date of this Consent Decree.

D. Prior to ceasing to preserve and retain any records and documents retained pursuant to Sections XIX.A, XIX.B and XIX.C,

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supra, Settling Defendants shall provide at least ninety (90) calendar days written notice to EPA and the State. EPA will thereafter notify Settling Defendants in writing with respect to the appropriate disposition of said records and documents, which may include transfer of said materials to EPA or the State.

E. Failure by EPA or the State to preserve and retain records and documents that relate to the Site or the Work shall not be deemed a violation of this Consent Decree.

F. Nothing herein shall require the disclosure of information subject to a legally applicable privilege.

XX.

RESPONSE AUTHORITY

Subject to the provisions of Section XXV, infra, and notwithstanding any other provision of this Consent Decree, EPA and the State reserve all rights to take any and all response actions authorized by law.

XXI.

FORCE MAJEURE

A. For the purposes of this Consent Decree, "Force Majeure" shall mean any event arising from causes entirely beyond the control of OCC and of any entity controlled by OCC, including its contractors and subcontractors, which delays or prevents the performance of any obligation under this Consent Decree. "Force Majeure" shall not include increased costs or expenses, or finan-

cial incapacity. OCC's inability to meet the effluent limitations set forth in Appendix II for the reasons stated in Section VI.G, supra, shall not be a Force Majeure event and shall be resolved as set forth in Section VI.G, supra. If OCC claims and EPA agrees that a delay or prevention of performance is or was attributable to a Force Majeure event, any failure by OCC to perform Work under this Consent Decree that results solely from the Force Majeure event shall not be deemed a violation of this Consent Decree.

B. 1. OCC shall, within forty-eight (48) hours of when it knows of a Force Majeure, knows or should have known of a Force Majeure event, notify, by telephone, the EPA RPM or, in the event of his or her unavailability, the Chief of the Site Compliance Branch, Emergency and Remedial Response Division of EPA, Region II at (212) 264-2649, and the NJDEP Case Manager at (609) 633-1455 or, after business hours, the NJDEP Hotline at (609) 292-7172.

2. Within fourteen (14) calendar days of the date it provides the notice specified in Section XXI.B.1, supra, OCC shall also notify EPA and NJDEP, in writing. Such notice shall include, to the extent such information is available to or obtainable by OCC, the reason(s) for such delay or prevention of performance, the anticipated duration of such delay, OCC's rationale for interpreting such circumstances as being beyond its

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control (should that be its claim), the measure(s) taken and to be taken by OCC to prevent or minimize the delay, and the time OCC estimates to implement such measure(s). Such notice shall be accompanied by all pertinent documentation including, but not limited to, third party correspondence.

3. Failure to provide timely notice in accordance with Section XXI.B.2, supra, shall constitute a waiver of any claim of Force Majeure.

C. If OCC claims and EPA agrees that a delay or prevention of performance is or was attributable to a Force Majeure event, the affected plans or schedules incorporated in this Consent Decree may be modified by OCC, subject to EPA's approval, to provide such additional time as may be necessary to allow for completion of the specific phase of the Work and/or any succeeding phase of the Work affected by such delay, or to allow for the completion of a substitute activity in furtherance of the implementation of the Work in the event EPA, in consultation with the State, determines that a substitute activity is appropriate. The modification of such affected plans or schedules, and/or the substitution of an activity shall not be deemed a "modification" within the meaning of Sections XXXII.A and XXXII.C, infra.

D. EPA's determination that a delay or prevention of performance is or was attributable to a Force Majeure event shall not necessarily justify or excuse nonperformance on any subsequent day.

E. OCC shall have the burden of proving that any failure to perform any obligation under this Consent Decree is excused by this Section XXI.

XXII.

REIMBURSEMENT

A. United States.

1. Past Costs.

a. Within forty-five (45) calendar days of receipt of a demand for payment, subject to Section XXII.A.4, infra, OCC shall pay to the Hazardous Substances Superfund all costs incurred by the United States since February 1, 1985, for response actions relating to the Diamond Alkali Superfund Site. Payment shall be made by certified or cashiers check payable to the "EPA Hazardous Substances Superfund," mailed to EPA - Region II, Attention: Superfund Accounting, P.O. Box 360188M, Pittsburgh, Pennsylvania 15251. A copy of such check shall be sent to the Regional Counsel, Office of Regional Counsel, EPA, Region II, 26 Federal Plaza, New York, New York 10278, Attention: Diamond Alkali Site Attorney.

b. As soon thereafter as is practicable, EPA shall make a demand or successive demands for payment of those remaining costs incurred by the United States as of the effective date of

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this Consent Decree. OCC shall make payment of such costs in accordance with Section XXII.A.1.a, supra, subject to Section XXII.A.4, infra.

2. Oversight Costs.

Within forty-five (45) calendar days of receipt from the United States of an itemized accounting of costs incurred in connection with its oversight functions under this Consent Decree for a fiscal year or any part thereof, OCC shall pay to the Hazardous Substances Superfund all those undisputed costs incurred by the United States during the period in question. Such costs shall include, but shall not be limited to, those costs incurred by the United States in connection with its review or development of plans, reports and other items, its oversight of the Work implemented by OCC pursuant to this Consent Decree, its efforts to secure access to the Site or other areas for performance of the Work required under this Decree, and any additional response costs, including enforcement costs, relating to matters covered by this Decree. Such payments shall be remitted by OCC as specified in Section XXII.A.1.a, supra.

3. Effect of Dispute Resolution.

i. During the pendency of and pending the resolution of any dispute pursuant to Section XXIV, infra, and subject to Section XXII.A.4, infra, OCC shall not be required to tender payment of any disputed costs to EPA under Sections XXII.A.1 or XXII.A.2, supra, provided that, during the pendency

of the resolution of the dispute, such disputed costs shall be paid into an interest-bearing escrow account within forty-five (45) calendar days of receipt of a demand for payment, plus any additional time for payment that may accrue pursuant to Section XXII.C, infra.

ii. In the event OCC prevails in any dispute resolution under Section XXIV, infra, OCC shall have no liability to pay such disputed costs to EPA under Sections XXII.A.1 and XXII.A.2, supra, and the monies in the interest-bearing escrow account shall be returned to OCC.

iii. In the event OCC does not prevail in any dispute resolution under Section XXIV, infra, OCC shall be liable to EPA for the monies in the interest-bearing escrow account, such monies to be paid to EPA within forty-five (45) calendar days of the final resolution of the dispute.

4. The initial one million dollars (\$1,000,000) of response costs set forth in Section XXII.A.1, supra, are not inconsistent with the National Contingency Plan. The Parties are not addressing the issue of consistency with the National Contingency Plan with respect to those Section XXII.A.1 response costs, if any, which exceed one million dollars (\$1,000,000).

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5. Payment by OCC of the response costs set forth in Sections XXII.A.1 and A.2, supra, is not a penalty, fine or monetary sanction.

6. Interest shall accrue on any amounts overdue under Sections XXII.A.1 and A.2, supra, in accordance with Section 107(a) of CERCLA, 42 U.S.C. § 9607(a). In accordance with 31 U.S.C. §3717, a handling charge shall be assessed at the end of each thirty (30) calendar day late period, and a six (6) percent per annum penalty charge shall be assessed if the penalty is not paid within ninety (90) calendar days of the due date.

B. The State of New Jersey.

1. Past Costs.

a. Within forty-five (45) calendar days of receipt of a demand for payment, OCC shall pay to the State all costs incurred by the State as of the effective date of this Consent Decree, for response actions relating to the Diamond Alkali Superfund Site. Payment shall be made by certified check payable to the "Treasurer, State of New Jersey," mailed to the Division of Hazardous Waste Management, New Jersey Department of Environmental Protection, 401 East State Street - CN 028, Trenton, New Jersey 08625-0028, Attention: Ms. Melinda Dower.

b. As soon thereafter as is practicable, the State shall make a demand or successive demands for payment of those remaining costs incurred by the State as of the effective date of

this Consent Decree. OCC shall make payment of such costs in accordance with Section XXII.B.1.a, supra.

2. Oversight Costs.

Within forty-five (45) calendar days of receipt from the State of an itemized accounting of costs incurred in connection with its oversight functions under this Consent Decree and those items of work specified in the letter produced by the State pursuant to Section XXXVI.C.2, infra, for a fiscal year or any part thereof, OCC shall pay to NJDEP those costs incurred by the State for the period in question. Such costs shall include, but shall not be limited to, those costs incurred by the State in connection with its review or development of plans, reports and other items, its oversight of the Work implemented by OCC pursuant to this Consent Decree, its efforts to secure access to the Site or other areas for performance of the Work required under this Consent Decree, and any additional response costs, including enforcement costs, relating to matters covered by this Decree and those items of work specified in the letter produced by the State pursuant to Section XXXVI.C.2, infra. Payment shall be remitted as specified in Section XXII.B.1.a, supra.

3. Payment by OCC of the response costs set forth in Sections XXII.B.1 and XXII.B.2, supra, is not a penalty, fine or monetary sanction.

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4. The payments due to the State under this Section XXII.B are not subject to dispute resolution under this Consent Decree.

C. Documentation.

1. All demands for payment made by EPA or the State pursuant to this Section XXII. will include cost documentation that verifies that the claimed costs were incurred and that the amount of the demand was properly calculated, and will include the amount, date, description of activity, entity or person to whom the costs were paid or by whom the costs were incurred.

2. Upon receipt of written request, EPA and the State shall make the underlying cost documentation available to OCC for review, and shall designate persons with information concerning the incurrence of costs to answer reasonable questions of OCC concerning such costs, subject to any legal or statutory privilege. Any delay of greater than fourteen (14) calendar days from the date of request by OCC under this Section XXII.C.2 shall extend the due date by an equivalent number of days of delay beyond the fourteenth (14th) calendar day for the payment of those costs which are the subject of the data request, but in no event beyond an additional sixty (60) calendar days.

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## XXIII.

STIPULATED PENALTIES

A. Subject to Section XXI, supra, and Section XXIV, infra, Settling Defendants agree to make payments to EPA and the State as set forth in this Section XXIII.

B. For each and every violation of the reporting requirements set forth in Sections XIV.A, B, C and D, OCC shall pay stipulated penalties to EPA and the State in the amount of five hundred dollars (\$500) per calendar day per violation.

C. Except as otherwise specified in Section XXIII.B, supra, in the event OCC or CLH fails to meet any requirement as to it under this Consent Decree that falls after the entry of this Decree with this Court, including, but not limited to: (1) any requirement set forth in an approved plan which becomes incorporated in this Decree, (2) any deadline, time limit or schedule milestone established under this Decree, and (3) any payment of past costs, oversight costs, stipulated penalties or interest required hereunder, OCC or CLH shall pay to EPA and the State stipulated penalties in the following amounts for each calendar day of each and every violation of said requirement:

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<u>Calendar Days of Delay</u>	<u>Penalty Per Violation Per Calendar Day</u>
1st through 5th day	\$ 1,500
6th through 14th day	\$ 5,000
15th through 30th day	\$ 6,500
31st through 90th day	\$ 8,500
91st day and beyond	\$15,000

The sums shown are the total penalty owed per violation per calendar day to EPA and the State.

D. Stipulated penalties shall begin to accrue on the day that performance is due or noncompliance occurs, and shall continue to accrue through the final day of correction of the noncompliance. Stipulated penalties relating to the adequacy of any reports, plans or other items requiring EPA's response shall begin to accrue on the day OCC or CLH receives written notification of the violation from EPA. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Consent Decree, provided that in the event a report, plan or other item requiring EPA approval pursuant to Sections XIV or XV, supra, is disapproved for more than one (1) reason, only a single stipulated penalty shall be owed for each day of noncompliance stemming from such disapproval. This does not, however, preclude the imposition of separate stipulated penalties stemming from the disapproval of and the lateness of the same submittal.

E. Subject to Section XXIII.M, infra, all stipulated penalties due under this Section XXIII shall be payable to EPA and the

State within forty-five (45) calendar days of OCC or CLH's receipt of a notification of noncompliance. Interest shall begin to accrue on any unpaid balance, if any, on the first calendar day after payment is due.

F. Interest shall accrue on any amounts overdue under this Section XXIII in accordance with Section 107(a) of CERCLA, 42 U.S.C. §9607(a). In accordance with 31 U.S.C. §3717, a handling charge shall be assessed at the end of each thirty (30) calendar day late period, and a six (6) percent per annum penalty charge shall be reassessed if the penalty is not paid within ninety (90) calendar days of the due date.

G. Those stipulated penalties which become due shall be paid by Settling Defendants, fifty (50) percent to EPA and fifty (50) percent to the State.

H. Those stipulated penalties due to EPA shall be paid by certified or cashiers check payable to "EPA Hazardous Substances Superfund," and shall be mailed to EPA - Region II, Attention: Superfund Accounting, P.O. Box 360188M, Pittsburgh, Pennsylvania 15251. A copy of such check shall be sent to the Regional Counsel, Office of Regional Counsel, EPA, Region II, 26 Federal Plaza, New York, New York 10278, Attention: Diamond Alkali Site Attorney.

I. Those stipulated penalties due to the State shall be paid by certified check payable to the "Treasurer, State of New Jersey," and shall be mailed to the Division of Hazardous Waste

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Management, New Jersey Department of Environmental Protection,  
401 East State Street - CN 028, Trenton, New Jersey 08625-0028,  
Attention: Ms. Melinda Dower.

J. In addition to the payments set forth above, the United States and the State specifically reserve the right to seek remedies, sanctions and/or penalties which may be available to the United States and the State by reason of OCC or CLH's failure to comply with the requirements of this Consent Decree, including sanctions and penalties that the United States may seek under Section 122(1) of CERCLA, 42 U.S.C. §9622(1). The United States and the State, however, will not utilize such remedies to obtain penalties inconsistent with the exercise or result of the dispute resolution provisions of Section XXIV, infra. The United States and the State agree that this Court should consider the amount of stipulated penalties already paid by OCC or CLH under this Section XXIII for a particular violation, in the award of any monetary sanctions or penalties that OCC or CLH may be required to pay in the event that the United States or the State seeks additional relief against OCC or CLH for the same noncompliance. Nothing in this Section XXIII.J shall limit any remedy or action available to the United States or the State at law or equity (including the remedy of contempt) to enforce the terms of this Consent Decree.

K. No payments under this Section shall be tax deductible.

L. The payment of stipulated penalties does not alter

Settling Defendants' responsibility to complete any requirement of this Consent Decree.

M. Effect of Dispute Resolution.

1. During the pendency of and pending the resolution of any dispute pursuant to Section XXIV, infra, OCC or CLH shall not be required to tender payment of any stipulated penalties to EPA and the State under this Section XXIII provided that, during the pendency of the resolution of such dispute, those stipulated penalties that accrue during any month shall be paid into an interest-bearing escrow account monthly, by not later than the fifth (5th) calendar day of each calendar month after the dispute arises.

2. In the event OCC or CLH prevails in any dispute resolution under Section XXIV, infra, OCC or CLH shall have no liability to pay stipulated penalties to EPA and the State under this Section XXIII with respect to the matter submitted for dispute resolution, and the monies in the interest-bearing escrow account shall be returned to OCC or CLH.

3. In the event OCC or CLH does not prevail in any dispute resolution under Section XXIV, infra, OCC or CLH shall be liable to EPA and the State for the monies in the interest-bearing escrow account plus all stipulated penalties that have accrued which have not yet been paid into the escrow account, all such monies to be paid to EPA and the State within forty-five

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(45) calendar days of the final resolution of the dispute, except as provided in Section VIII.C, supra.

N. EPA and the State each have the discretion to waive or reduce payments otherwise due under this Section XXIII.

#### XXIV.

##### DISPUTE RESOLUTION

A. As required by Section 121(e)(2) of CERCLA, 42 U.S.C. §9621(e)(2), the Parties shall attempt to resolve expeditiously and informally any disagreements concerning the implementation or application of this Consent Decree or the performance of the Work required hereunder. Unless the Parties agree otherwise, in writing, such attempted informal resolution shall not extend beyond thirty (30) calendar days from the date on which EPA, OCC or CLH receives written notice of the existence of a dispute.

B. If a dispute arising under this Consent Decree is not resolved through informal means under Section XXIV.A, supra, the interpretation advanced by EPA shall be considered binding unless OCC or CLH invokes the dispute resolution provisions of this Section XXIV. Should OCC or CLH desire dispute resolution under this Section XXIV, it shall give written notice to EPA within five (5) calendar days after receipt of EPA's written interpretation of the subject of the dispute.

C. 1. Within fifteen (15) Working Days of receipt of notice of dispute pursuant to Section XXIV.B, supra, OCC and/or

CLH shall serve on EPA and the State a written statement which sets forth the issues in dispute, the relevant facts upon which the dispute is based, any factual data, analysis or opinion supporting its position, and supporting documentation (hereinafter such written statement shall be referred to as a "Statement of Position") on which it relies.

2. EPA shall serve its Statement of Position on OCC or CLH no later than thirty (30) calendar days after receipt of OCC or CLH's Statement of Position.

3. Within fifteen (15) calendar days of receipt of EPA's Statement of Position, OCC or CLH may serve a Reply Statement of Position.

4. Within fifteen (15) calendar days of receipt of OCC or CLH's Reply Statement of Position, EPA may serve a Surreply Statement of Position.

5. EPA may extend the time periods for exchange of Statements of Position by any party.

D. An administrative record of any dispute under this Section XXIV shall be maintained by EPA. This record shall include the written notification of such dispute, the Statements of Position and any other relevant information. The record shall be available for review by the Parties.

E. Upon review of the administrative record, the Director of the Emergency and Remedial Response Division, EPA Region II

shall issue an Order resolving the dispute, a copy of which will be provided to OCC or CLH.

F. Any such Order issued pursuant to Section XXIV.E, supra, shall be reviewable by this Court provided that within seven (7) calendar days of receipt of the Order, OCC or CLH files a petition for judicial review with this Court which describes the nature of the dispute. Thereafter, judicial review will be available only by instituting a new action to the extent permitted by law. In proceedings on any dispute between EPA and OCC concerning matters covered by Section 113(j) of CERCLA, 42 U.S.C. §9613(j), OCC shall have the burden of demonstrating that the position of EPA is arbitrary and capricious or otherwise not in accordance with law. In all other disputes, the standard of review will be determined in accordance with applicable law.

G. The invocation or implementation of the procedures stated in this Section XXIV shall not stay the accrual of stipulated penalties, extend or postpone any deadline, or affect in any way Settling Defendants' obligations (including the obligation to pay stipulated penalties) under this Consent Decree with respect to the disputed issue unless otherwise agreed to by EPA, in writing, or ordered by this Court, provided that this Court may modify such schedule only if OCC or CLH both prevails in dispute resolution and demonstrates that such schedule modification is required by the impracticality of having to continue the work pending the resolution of the dispute. In the event that a dispute

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relates solely to the issue of stipulated penalties that arise in connection with an agreed upon or Court ordered schedule modification, OCC need only address the issue of the appropriateness of stipulated penalties to be paid to EPA and the State.

H. The invocation or implementation of the procedures stated in this Section XXIV shall not stay the accrual of stipulated penalties under Section XXIII, supra. However, such penalties shall be paid into an interest-bearing escrow account pursuant to Section XXIII.M, supra.

XXV.

COVENANTS NOT TO SUE

A. OCC.

1. In consideration of the Work which will be performed and payments which will be made by OCC under the terms of this Consent Decree, and in consideration of the work which has been performed and will be performed pursuant to ACO I and ACO II, and except as otherwise specifically provided in Sections XXV.A.2, XXV.A.3, XXV.A.4, XXV.A.5 and XXV.A.6, infra, the United States and the State covenant not to sue or to issue any administrative orders against OCC for Covered Matters. These covenants extend only to OCC and do not release any other person from liability. For purposes of this Section XXV.A, and except as provided in Sections XXV.A.4, XXV.A.5 and XXV.A.6, infra, "Covered Matters"

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include any and all civil claims available to the United States under Sections 106(a) and 107(a) of CERCLA, 42 U.S.C. §§9606(a) and 9607(a), and Section 7003 of RCRA, 42 U.S.C. §6973, and available to the State under Section 107(a) of CERCLA, 42 U.S.C. §9607(a), and N.J.S.A. 58:10-23.11a et seq., N.J.S.A. 13:1E-1 et seq., and N.J.S.A. 58:10A-1 et seq., relating solely to the Work performed under this Consent Decree and ACO I and ACO II, and for the reimbursement of costs incurred by the United States and the State prior to the effective date of this Decree, in connection with this Site pursuant to Section XXII, supra. This covenant not to sue OCC shall take effect upon receipt of all payments due, and does not extend to future liability.

2. This covenant not to sue OCC shall be conditioned upon performance by OCC of its obligations under this Consent Decree, ACO I and ACO II.

3. This covenant not to sue OCC does not pertain to any matters other than Covered Matters as defined by Section XXV.A.1, supra.

4. "Covered Matters" does not include:

i. Liability arising from Hazardous Materials removed from the Diamond Alkali Superfund Site;

ii. Liability arising from past, present or future disposal or release or threatened release of Hazardous Materials outside of the Site;

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iii. Liability for damages for injury to, destruction of or loss of natural resources resulting from the release of Hazardous Materials at the Diamond Alkali Superfund Site;

iv. Claims based on a failure by OCC to meet the requirements of this Consent Decree including, but not limited to, claims for injunctive relief or claims for civil penalties pursuant to Section 122(1) of CERCLA, 42 U.S.C. §9622(1);

v. Liability for violations of Federal or State law which occur during implementation of the Work;

vi. Claims based on criminal liability;

vii. Any matter as to which the United States or the State is owed indemnification under Section XXVII.A, infra; and

viii. Liability for third party claims asserted against EPA, NJDEP and the New Jersey Spill Compensation Fund, N.J.S.A. 58:10-23.11a et seq.

5. Notwithstanding any other provision of this Consent Decree, the United States reserves its right to institute proceedings in this action or in a new action seeking to compel OCC (1) to perform additional response actions at the Site, or (2) to reimburse the United States for response costs if:

i. conditions at the Site, previously unknown to the United States, are discovered, or

ii. information is received, in whole or in part, after entry of this Consent Decree,

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and the Administrator of EPA or his delegate finds, based on these unknown conditions or this information, together with any other relevant information, that the Work is not protective of public health or welfare or the environment. The provisions of this Section XXV.A.5 in no way limit OCC's obligations under Section VIII, supra, to perform any additional response action.

6. Notwithstanding any other provision of this Consent Decree, the State reserves its right to institute proceedings in this action or in a new action seeking to compel OCC (1) to perform additional response actions at the Site, or (2) to reimburse the State for response costs if:

i. conditions at the Site, previously unknown to the State, are discovered, or

ii. information is received, in whole or in part, after entry of this Consent Decree, and the Commissioner of NJDEP or his delegate finds, based on these unknown conditions or this information, together with any other relevant information, that the Work is not protective of public health or welfare or the environment. The provisions of this Section XXV.A.6 in no way limit OCC's obligations under Section VIII, supra, to perform any additional response action.

B. Limited Covenant For CLH.

1. Except as otherwise specifically provided in Section XXV.B.3., infra, the United States and the State covenant not to

sue or to issue any administrative orders against CLH for Covered Matters as defined in Section XXV.B.2, infra. These covenants extend only to CLH and do not release any other person from liability.

2. For purposes of this Section XXV.B, and except as specifically provided in Section XXV.B.3, infra, "Covered Matters" include those actions which will be performed by CLH pursuant to Sections III and XI, supra. This covenant not to sue CLH shall be conditioned upon performance by CLH of its obligations under this Consent Decree.

3. The United States and the State reserve their rights to take any administrative or judicial action against CLH for any other liability which it may have pursuant to CERCLA, RCRA, N.J.S.A. 13:1D-1 et seq., N.J.S.A. 58:10A-1 et seq., N.J.S.A. 13:1E-1 et seq., and N.J.S.A. 58:10-23.11a et seq., including, but not limited to, any liability which CLH may have for those matters set forth in Section XXV.A.4, supra.

#### XXVI.

#### WAIVER OF ANY CLAIM-SPLITTING DEFENSE

The Parties recognize and acknowledge that the settlement embodied in this Consent Decree is only a partial resolution of issues related to the remediation of conditions at the Diamond



Alkali Superfund Site. Settling Defendants hereby waive the defenses of the entire controversy doctrine and claim-splitting by the United States and the State with respect to amending of the Complaint in this action or the filing of sequential lawsuits by the United States and/or the State for claims involving the Diamond Alkali Superfund Site in subsequent litigation regarding Settling Defendants' liability for remedial action to address off-Site areas, including, without limitation, the Passaic River and other areas and/or payment of costs to finance remedial action to address the Passaic River and other areas.

## XXVII.

OTHER CLAIMS

A. OCC agrees to indemnify, save and hold harmless the United States and the State and their representatives from any and all claims or causes of action arising from acts or omissions of Settling Defendants and/or their contractors, subcontractors or any other person acting on their behalf in the performance of the Work or their failure to perform fully or complete the Work.

B. The United States and the State are not to be construed as parties to, and do not assume any liability for, any contract entered into by Settling Defendants in carrying out the activities required pursuant to this Consent Decree. The proper completion of the Work required under this Consent Decree is the sole responsibility of OCC.

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C. Settling Defendants waive any claims for damages or reimbursement from the United States or the State or for set-off of any payments made or to be made to the United States or the State, arising from or on account of any contract, agreement or arrangement between any one or more of the Settling Defendants and any person performing the Work on or with respect to the Site, including but not limited to claims on account of construction delays.

XXVIII.

CLAIMS AGAINST THE FUNDS

A. In consideration of the entry of this Consent Decree, Settling Defendants waive any rights they may have to assert any claims pursuant to Sections 106(b)(2) and/or 112 of CERCLA, 42 U.S.C. §§9606(b)(2) and/or 9612, against the United States for reimbursement from the Hazardous Substances Superfund for any past costs or costs incurred by Settling Defendants in performing the Work required by this Consent Decree, and nothing in this Decree shall be construed as EPA's preauthorization of a CERCLA claim against the Hazardous Substances Superfund within the meaning of 40 C.F.R. §300.25 and any amendments thereto. Settling Defendants' waiver of any rights they may have to assert claims pursuant to Section 106(b) of CERCLA, 42 U.S.C. §9606(b), is limited to claims that may arise in the implementation of the Work.

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B. Settling Defendants waive their rights to assert any claims against the State, including the New Jersey Spill Compensation Fund, N.J.S.A. 58:10-23.11a et seq., for reimbursement of any sum related to any past costs or costs incurred in performing the Work required under this Consent Decree.

## XXIX.

INSURANCE/FINANCIAL RESPONSIBILITY

A. Prior to commencing any on-Site Work, Settling Defendants shall procure and shall maintain or shall cause to be procured and maintained for the duration of this Consent Decree, general liability and automobile insurance with limits of five million dollars (\$5,000,000), and one million dollars (\$1,000,000), respectively, and shall use best efforts to and shall document and provide to EPA and the State documentation of their efforts to have EPA and the State named as additional insureds. In addition, for the duration of this Consent Decree, Settling Defendants shall satisfy all applicable laws and regulations regarding the provision of workers compensation insurance.

B. Prior to commencement of the Work under this Consent Decree, OCC shall provide EPA and NJDEP with a certificate of insurance in the required amounts.

C. If OCC 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, then, with respect to that contractor or subcontractor, OCC need provide only that portion of the insurance described above which is not maintained by the contractor or subcontractor.

D. OCC shall not be liable to EPA and the State for and does not assume liability for any injury or damages to persons or property resulting solely from acts or omissions of EPA or the State or by any person acting by, through or under them or on their behalf in carrying out any activity under this Consent Decree.

XXX.

NOTICES

A. Whenever, under the terms of this Consent Decree, notice is required to be given, a report or other document is required to be forwarded by one party to another or any other written communication is required, such correspondence or a copy thereof shall be directed to the addresses and individuals specified below, unless this Consent Decree specifies otherwise:

1. As to the United States and/or EPA:

- a. Chief, New Jersey Superfund Branch  
Office of Regional Counsel  
United States Environmental Protection Agency,  
Region II  
26 Federal Plaza  
New York, New York 10278  
Attention: Diamond Alkali Site Attorney

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- b. Chief, New Jersey Compliance Branch  
United States Environmental Protection Agency,  
Region II  
26 Federal Plaza, Room 737  
New York, New York 10278  
Attention: Diamond Alkali Project Manager
- c. Chief, Environmental Enforcement Section Land &  
Natural Resources Division  
United States Department of Justice  
Benjamin Franklin Station  
P.O. Box 7611  
Washington, D.C. 20044  
Attention: File No. 90-11-2-399
2. As to the State and/or NJDEP:  
  
New Jersey Department of Environmental Protection  
Division of Hazardous Waste Management  
401 East State Street  
CN 028  
Trenton, New Jersey 08625-0028  
Attention: Ms. Melinda Dower
3. As to OCC:  
  
Occidental Chemical Corporation  
c/o Maxus Energy Corporation  
717 North Harwood Street  
Dallas, Texas 75201  
Attention: Mr. William C. Hutton  
Director, Environmental Affairs
4. As to CLH:  
  
Chemical Land Holdings, Inc.  
c/o Maxus Energy Corporation  
717 North Harwood Street  
Dallas, Texas 75201  
Attention: Mr. William C. Hutton  
Director, Environmental Affairs

B. The United States (and, where applicable, EPA) and the State (and, where applicable, NJDEP) agree that they will provide each other with a copy of any notice, report or other document

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directed to OCC or CLH. Such copies shall be directed to the addresses and individuals specified in Section XXX.A, supra.

XXXI.

LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

A. This Consent Decree shall be lodged with this Court for not less than thirty (30) calendar days for public notice in accordance with the requirements of Section 122(d)(1)(2) of CERCLA, 42 U.S.C. §9622(d)(1)(2), and 28 C.F.R. §50.7.

B. The United States and the State reserve their right to withhold consent if comments disclose facts or considerations which indicate that this Consent Decree is inappropriate, improper or inadequate.

XXXII.

MODIFICATION

A. Except as expressly provided for in Sections VII, VIII, X, and XXI, supra, there shall be no material modification of this Consent Decree without written approval of all Parties to this Decree and this Court.

B. No oral modifications of this Consent Decree shall be effective.

C. Modifications that do not materially alter the requirements of this Consent Decree may be made upon written consent of all Parties, which shall be filed with this Court.

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## XXXIII.

ADMISSIBILITY OF DATA

In the event that this Court is called upon to resolve a dispute concerning implementation of this Consent Decree, the Parties waive any evidentiary objection to the admissibility into evidence of the results of any analyses of samples conducted by or for a party at or in connection with the Diamond Alkali Superfund Site, or other data gathered, generated, or evaluated pursuant to this Decree, unless a party can demonstrate that there was a significant noncompliance with applicable chain of custody procedures. The Parties waive their right to contest the validity of any data unless it is established that such data has not been validated in accordance with all relevant quality assurance and quality control procedures established by or pursuant to this Consent Decree, or unless it is established that the data has not met the quality assurance and quality control criteria of the applicable approved Quality Assurance Project Plan.

## XXXIV.

CONTINUING JURISDICTION

This Court retains jurisdiction over both the subject matter of this Consent Decree and over all Parties for the duration of the performance of the terms and provisions of this Consent Decree for the purposes of issuing such further orders or

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directions as may be necessary or appropriate to construe or modify the terms of this Decree, or to effectuate compliance with its terms, to the extent allowed by law.

XXXV.

COMMUNITY RELATIONS

Settling Defendants shall cooperate with EPA and NJDEP in providing information regarding the Work required under this Consent Decree to the public. As requested by EPA or NJDEP, Settling Defendants 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 and/or NJDEP to explain activities at or concerning the Diamond Alkali Superfund Site.

XXXVI.

OTHER PROVISIONS

A. This Consent Decree shall be effective upon the date of its entry by this Court.

B. Notwithstanding Section XXXVI.A, supra, within seven (7) calendar days of lodging of this Consent Decree with this Court, each party, to the extent applicable to it, agrees to comply (except as expressly provided elsewhere in this Decree) with the

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following Sections of this Consent Decree: V, VI, X, XIV, XV, XIX, XXI, XXIV, XXVII, XXX, XXXII, XXXIII and XXXV.

C. 1. OCC hereby agrees to perform the obligations imposed upon Diamond Shamrock Chemicals Company under ACO I and ACO II. Those provisions of ACO I and ACO II that relate to matters beyond the scope of the matters covered by this Consent Decree shall remain in effect. Those provisions of ACO I and ACO II that relate to matters within the scope of the matters covered by this Consent Decree are superseded. The letters of credit referenced in Section XVIII, supra, shall remain in effect as provided therein, and NJDEP shall be able to draw upon said letters of credit in order to satisfy the requirements of ACO I and ACO II.

2. The remaining specific items of work which were originally to be performed pursuant to ACO I and ACO II and which are beyond the scope of this Consent Decree shall be identified by the State within forty-five (45) Working Days of the entry of this Decree. Failure by the State to provide such an identification will not constitute a violation of this Consent Decree. The specific items of work which remain to be identified under ACO I and ACO II, and NJDEP's review and approval of the implementation and completion of such items by OCC are not subject to dispute resolution under this Consent Decree.

D. The provisions of State of New Jersey Executive Orders Nos. 40 and 40 D (1983) shall remain in effect. The Work

performed by OCC pursuant to this Consent Decree is consistent with said Executive Order.

E. The section headings set forth in this Consent Decree are included for convenience of reference only, and shall be disregarded in the construction and interpretation of any of the provisions of this Decree.

F. This Consent Decree represents the entire agreement among the Parties with respect to the matters covered by this Decree, and shall supersede all drafts, writings, negotiations and discussions among the Parties.

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THE UNDERSIGNED PARTIES hereby enter into this Consent Decree:

PLAINTIFFS

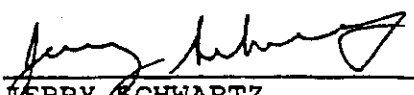
FOR THE UNITED STATES:



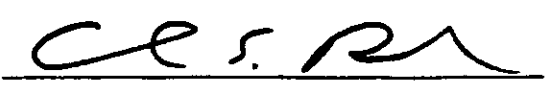
RICHARD B. STEWART  
Assistant Attorney  
General  
Land and Natural Resources  
Division  
U.S. Department of Justice  
Washington, D.C. 20530



SUSAN C. CASSELL  
United States Attorney's Office  
District of New Jersey  
Newark, New Jersey 07102



JERRY SCHWARTZ  
Attorney  
Environmental Enforcement  
Section  
Land and Natural Resources  
Division  
U.S. Department of Justice  
Washington, D.C. 20530



EDWARD E. REICH  
Acting Assistant Administra-  
tor for Enforcement and  
Compliance Monitoring  
U.S. Environmental Protection  
Agency  
Washington, D.C. 20460

Randy B. Stein  
 RANDYE B. STEIN  
 Assistant Regional Counsel  
 U.S. Environmental Protection  
 Agency  
 Region II  
 New York, New York 10278

FOR THE STATE OF NEW JERSEY:

Ronald T. Corcory  
 (Signature)  
 Ronald T. Corcory

Type Name:

Assistant Director for  
 Responsible Party Cleanups  
 Division of Hazardous Waste  
 Management  
 State of New Jersey  
 Department of Environmental  
 Protection  
 Trenton, N.J. 08625

SETTLING DEFENDANTS

Settling Defendants herein, Occidental Chemical Corporation, as successor to Diamond Shamrock Chemicals Company, and Chemical Land Holdings, Inc., by the duly authorized representatives named, titled and signed hereunder, hereby consent to this Consent Decree with respect to the Diamond Alkali Superfund Site located in Newark, New Jersey, and to the filing of this Decree with the United States District Court for the District of New Jersey, and agree to be bound by the terms and conditions hereof.

Upon the lodging of this Consent Decree, Settling Defendants agree that all requirements as to service of process set forth in Federal Rule of Civil Procedure 4, including service of a


summons, and all requirements as to service of pleadings and other papers set forth in Federal Rule of Civil Procedure 5, and any applicable local rules of this Court, shall be deemed to be met by service of process by mail upon the following authorized agents:

FOR OCCIDENTAL CHEMICAL CORPORATION,  
as successor to  
Diamond Shamrock Chemicals Company:

Authorized agent for service of process:

Michael J. Rudick  
Vice President and General Counsel  
Occidental Chemical Corporation  
5005 LBJ Freeway  
Occidental Tower  
Dallas, Texas 75244

By:

  
MICHAEL J. RUBICK  
Vice President and General  
Counsel  
Occidental Chemical Corpora-  
tion

FOR CHEMICAL LAND HOLDINGS, INC.

Authorized agent for service of process:

D. L. Smith  
President  
Chemical Land Holdings, Inc.  
717 North Harwood Street  
Dallas, Texas 75201

By:

  
D. L. SMITH  
President  
Chemical Land Holdings, Inc.

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APPROVED and ENTERED this

day of \_\_\_\_\_, 1989.

UNITED STATES DISTRICT JUDGE

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\_\_\_\_\_  
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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY

UNITED STATES OF AMERICA; )  
THE STATE OF NEW JERSEY )  
 )  
Plaintiffs, )  
 )  
v. )  
 )  
OCCIDENTAL CHEMICAL CORPORATION; ) CIVIL ACTION NO.  
CHEMICAL LAND HOLDINGS, INC. ) 89-5064 (JWB)  
 )  
Defendants. )  
 )  
\_\_\_\_\_ )

STIPULATION OF CONSENT DECREE MODIFICATION

1. The United States of America ("United States"), State of New Jersey ("State"), and Occidental Chemical Corporation ("OCC") and Chemical Land Holdings, Inc., ("CLH"), in Civil Action No. 89-5064 (JWB) (United States District Court of New Jersey), entered into a Consent Decree, with respect to the Diamond Alkali Superfund Site, Newark, New Jersey, on July 14, 1989;

2. Pursuant to said Consent Decree, Section XXXII, paragraph "C," the Parties have entered into "(m)odifications that do not materially alter the requirements of this Consent Decree....;"

3. Pursuant to Section XXXII, paragraph "C," the Parties are filing this Stipulation with the Court as evidence of "...written consent of all Parties..." to the modification;

4. Section XXXII, paragraph "C" does not require any action by the Court, or further action by the Parties, except for filing therewith;

5. The United States, the State, OCC and CLH hereby consent to the change of the designated "Notices" recipient for OCC and CLH; consent to the confirmation of OCC's Designated Project Coordinator; and consent to the proposed "Minor Modification" of the Consent Decree regarding "Notices," (Section XXX, paragraph "A");

6. The parties hereby stipulate that "Notices" to OCC and CLH should be sent as follows:

As to OCC:

Occidental Chemical Corporation  
c/o Chemical Land Holdings, Inc.  
1015 Belleville Turnpike  
Kearny, New Jersey 07032

Attention: Mr. Dave Rabbe, President  
Chemical Land Holdings, Inc.

As to CLH:

Chemical Land Holdings, Inc.  
1015 Belleville Turnpike  
Kearny, New Jersey 07032

Attention: Mr. Dave Rabbe, President  
Chemical Land Holdings, Inc.;



7. The parties have agreed to stipulate to officially confirm the previous designation of OCC's Project Coordinator to be:

Alex Pittignano  
Senior Project Engineer  
Chemical Land Holdings, Inc.  
1015 Belleville Turnpike  
Kearny, New Jersey 07032;

8. The parties have agreed to stipulate to the modification of the "Notices" provision of the Consent Decree (Section XXX of the Consent Decree) to read as follows, via the addition of a subparagraph "C":

C. Any Party to this Consent decree may change the information as to itself, set forth in paragraph "A" above, of this Section XXX, as to the person(s) and/or address(es) designated for notices, reports, documents or any other written communications to it, by providing such new "Notices" information in writing, by certified mail, return receipt requested, to the then designated notice recipients for all other Parties to the Consent Decree. Any such change(s) in a Party's "Notices" information shall be effective upon receipt by any Party to

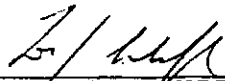
be charged with notice of such change(s) as evidenced by the date of execution by such Party to be charged of the Return Receipt as indicated on said receipt (or if no such date is shown or is illegible, but the Return Receipt was executed on behalf of said Party to be charged, the effective date of the associated changes shall be deemed to be three days following the postmark date of the written notice of such changes to said Party to be charged.)

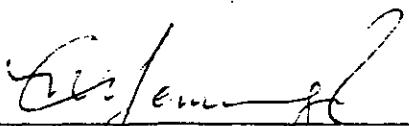
THE UNDERSIGNED PARTIES hereby enter into this

Stipulation:

PLAINTIFFS

FOR THE UNITED STATES:

  
\_\_\_\_\_  
LOYS J. SCHIFFER  
Assistant Attorney General  
Environment and Natural Resources  
Division  
U.S. Department of Justice  
P.O. Box 7611  
Ben Franklin Station  
Washington, D.C. 20044-7611


  
\_\_\_\_\_  
NORMAN O. HEMMING, III (NH 7102)  
Trial Attorney  
Environmental Enforcement Section  
Environment and Natural Resources  
Division  
U.S. Department of Justice  
P.O. Box 7611  
Ben Franklin Station  
Washington, D.C. 20044-7611  
(202) 514-3248

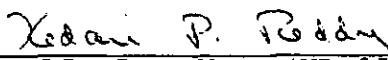
ROBERT J. CLEARY  
United States Attorney  
District of New Jersey  
Newark, New Jersey 07102

*Susan C Casell*

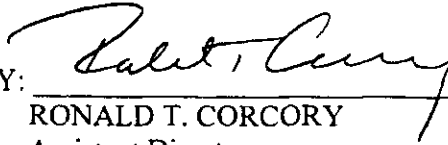
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SUSAN CASSELL (SC 8081)  
Assistant United States Attorney  
Deputy Chief, Civil Division  
District of New Jersey  
970 Broad Street, Room 502  
Newark, New Jersey 07102  
(973) 645-2844

  
\_\_\_\_\_  
JEANNE M. FOX  
Regional Administrator  
United States Environmental  
Protection Agency - Region II  
290 Broadway  
New York 10007-1866

  
\_\_\_\_\_  
KEDARI P. REDDY (KR 0519)  
Assistant Regional Counsel  
U.S. Environmental Protection  
Agency - Region II  
Office of Regional Counsel  
290 Broadway, 17<sup>th</sup> Floor  
New York, NY 10007-1886  
(212) 637-3106

FOR THE STATE OF NEW JERSEY:



RONALD T. CORCORY

Assistant Director

Responsible Party Cleanup Element

N.J. Department of Environmental Protection

401 E. State Street, P.O. Box 028

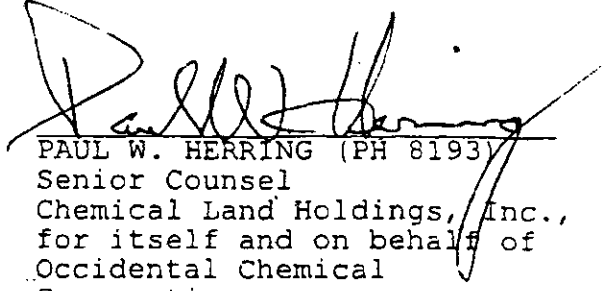
Trenton, N.J. 08625-0028

DEFENDANTS

FOR OCCIDENTAL CHEMICAL CORPORATION,  
as successor to  
Diamond Shamrock Chemicals Company, AND

FOR CHEMICAL LAND HOLDINGS, INC.:

By:



PAUL W. HERRING (PH 8193)  
Senior Counsel  
Chemical Land Holdings, Inc.,  
for itself and on behalf of  
Occidental Chemical  
Corporation  
717 North Harwood Street  
Dallas, Texas 75201  
(214) 953-2769



WILLIAM L. WARREN (W4112)  
Drinker, Biddle & Shanley, L.L.P.  
105 College Road East  
Suite 300  
P.O. Box 627  
Princeton, New Jersey 08542 - 0627

APPENDIX I

STATEMENT OF WORK

A. As described in greater detail below, the Work to be performed under this Consent Decree shall include, but shall not be limited to, the following elements:

1. Remedial Design of the selected alternative described in Section VI of this Consent Decree and in Section B., below, (hereinafter referred to as the "Selected Remedial Alternative");

2. Remedial Construction of the Remedy;

3. Operation and Maintenance ("O&M") of the Remedy;

4. Performance of Remedy Evaluations in accordance with Section VIII of the Consent Decree and with Section I., below.

B. The following is a description of the components of the selected remedial alternative:

1. Construct a slurry wall tying into the silt layer underlying the Site. The slurry wall shall be designed and constructed to encircle the soil and debris at the Site which exceeds any soil cleanup standard specified in Appendix II. Where a cleanup standard is exceeded at or beyond the Site boundary, the slurry wall shall extend as close as is practicable to the Site boundary.

2. Construct a flood wall and appurtenances to protect the Site from the 100 year flood. The flood wall may be designed to incorporate the functions of the slurry wall along the Passaic River front. The design considerations for such flood wall shall include the specifications and guidances of the United States Army Corps of Engineers and NJDEP, as well as the impact of the proposed Passaic River flood control project.

3. To the maximum extent practicable, disassemble and decontaminate all non-porous permanent structures and materials to facilitate off-site reuse, recycle or disposal. Decontamination procedures shall be designed and implemented to attain the cleanup standard for dioxin specified in Appendix II. The decontamination procedures shall also be protective of human health and the environment with respect to all other Hazardous Materials known to be present at the Site.

4. To the extent practicable, transport all containers (other than those shipping containers currently stored at 120 Lister Avenue) containing hazardous materials, but containing less than 1.0 ppb of dioxin, off-site, for treatment or disposal.

5. Demolish all remaining structures on-site and secure all materials contaminated at or above 1.0 ppb of dioxin on-site. Secured materials shall be segregated to the maximum extent practicable. The placement of secured materials shall



be in accordance with the requirements specified in Appendix II.

6. Stabilize and immobilize the contents of the remaining containers (other than those shipping containers currently stored at 120 Lister Avenue) of dioxin contaminated materials.

7. Locate and plug inactive underground conduits, and reroute active systems.

8. Haul, empty, spread and compact the contaminated materials stored at 120 Lister Avenue and, to the maximum extent practicable, decontaminate the non-porous portions of the shipping containers for off-site reuse, recycle or disposal. Decontamination procedures shall be designed and implemented to attain the cleanup standard for dioxin specified in Appendix II. The decontamination procedures also shall be protective of human health and the environment with respect to all other Hazardous Materials known to be present at the Site.

9. Install, operate and maintain a ground water withdrawal system designed to maintain a hydraulic gradient preventing the migration of ground water from the volume contained within the slurry wall.

10. Install, operate and maintain a treatment system for ground water and other aqueous liquids resulting from the Work. The treatment system shall discharge treated wastewater either to the Passaic Valley Sewerage Commission treatment works or directly to the Passaic River. The treatment system

shall be designed, constructed, and operated and maintained to attain and shall attain the cleanup standards (effluent limitations) specified in Appendix II. The treatment system shall be designed, constructed, and operated and maintained in accordance with the requirements (other than administrative requirements) for discharge of treatment system effluent to navigable waters, discharge to publicly owned treatment works and discharge to surface waters specified in Appendix II, as appropriate.

11. Construct a surficial cap consisting of suitable materials designed to meet the requirements of RCRA. The cap shall cover the slurry wall and the entire area encircled by the slurry wall. The design, construction, and operation and maintenance of the cap shall be in accordance with the requirements specified in Appendix II.

12. Implement suitable monitoring, contingency, operation and maintenance, and site security plans designed to ensure the protection of human health and the environment during the Remedial Construction and after the completion of the Remedial Construction.

13. On-site containment of all sludge generated from the wastewater treatment processes until such time that an alternative method of sludge management is approved.

14. Design, construct, and operate and maintain the Remedy to attain the cleanup standards listed in Appendix II.

C. The Pre-Design Planning work, Remedial Design work, Remedial Construction work, Operation and Maintenance work, the Remedy Evaluation work, and any other work performed by OCC pursuant to this Consent Decree shall each be performed under the direction and supervision of a qualified, State licensed professional engineer. Prior to the initiation of any such work, OCC shall notify EPA and the State, in writing, of the name, title, proposed responsibilities, and qualifications of the supervisory engineer and the names of all major contractors and major subcontractors proposed to be used in the development and implementation of the remedial work to be performed by those parties. (A major contractor or major subcontractor shall mean a contractor or subcontractor whose contracts and/or subcontracts for work performed pursuant to this Consent Decree have a planned or actual total value exceeding \$25,000.) Selection of any such engineer, major contractor or major subcontractor shall be subject to approval by EPA, in consultation with the State. (See Sections E.1.b., E.2.d., G.1.b. and H.1.a., below.)

D. SITE STABILIZATION

1. Commencing on the date on which this Consent Decree is lodged with this Court, OCC shall perform Site Stabilization work including, but not limited to, the following:

a. Perform weekly monitoring of the following items: security; tarping materials; storm water ponding and runoff; stability of buildings, drum storage areas, tanks and storage containers (120 Lister Avenue).

b. Perform activities as necessary to address, but not to be limited to, maintenance of security and tarps; reduction of ponding water; prevention of soil erosion from the Site; dust control; spill prevention and control; and stability of buildings (to the extent needed to protect human health), drums, tanks, storage containers, etc.

c. Maintain weekly logs of these activities which shall be submitted to EPA and the State with the monthly progress reports required by Section XIV of this Consent Decree.

d.i. Until approval of the Site Stabilization Plan\* pursuant to this Consent Decree, OCC shall continue to implement the site stabilization plan, which was established pursuant to ACO I and ACO II.

d.ii. Upon approval of the Remedial Design Work Plan by EPA, in consultation with the State (see Section E.3., below), OCC shall perform the Site Stabilization Work described in the Site Stabilization Work Plan\* contained in the approved Remedial Design Work Plan. (See Section E.2.h., below.)

\* The Site Stabilization Work Plan shall address the maintenance of the Site or the portions of the Site which have

not been remedied. The maintenance of the portions of the Site which are undergoing Remedial Construction shall be addressed in the Construction Operations Plan while the maintenance of the portions of the Site for which Remedial Construction is complete shall be addressed by the O&M Plan. (See Sections F.5.e. and F.5.g., below.)

E. PRE-DESIGN PLANNING

1. Site Management Plan for Pre-Design Planning and Analysis and Validation Plans

a. Within fourteen (14) calendar days of the date on which this Consent Decree is lodged with this Court, OCC shall submit to EPA and the State a Site Management Plan for Pre-Design Planning (i.e., for preparation of the Remedial Design Work Plan required by Section E.2., below).

b. The Site Management Plan ("SMP") for Pre-Design Planning shall be an overall plan which shall include identification of major contractors and major subcontractors and their respective responsibilities for performance of pre-design planning activities. The SMP shall include a list of all key responsible employees expected to participate in the Work and the curriculum vitae of each. The respective responsibilities for each key responsible employee shall be described. A provision shall be included for providing EPA and the State with supplemental information as other key responsible employees are about to become involved in

the Work.

c. EPA, in consultation with the State, will either approve the Site Management Plan for Pre-Design Planning, or require modification of it in accordance with the procedures set forth in Section XV of this Consent Decree.

d.i. Within fourteen (14) calendar days of the date on which this Consent Decree is lodged with this Court, OCC shall submit to EPA and the State a Dioxin Analysis and Validation Plan.

d.ii. Within sixty (60) calendar days of the date on which this Consent Decree is lodged with this Court, OCC shall submit to EPA and the State an Analysis and Validation Plan for Other Parameters.

e.i. The Dioxin Analysis and Validation Plan shall propose at least three candidate analytical methods for the wastewater treatment plant effluent and ground water dioxin analysis required by this Consent Decree. This Plan shall include detailed procedures for validating each proposed method to predict the practical quantitation limit (PQL), precision, and accuracy for each method with respect to the analysis of the wastewater treatment plant effluent which will be generated as a result of the implementation of the Work. For each proposed method, the Plan shall identify at least three laboratories to be utilized in the validation work, unless there are not three commercially available laboratories which are currently capable of doing the validation work, in which

case a minimum of two laboratories shall be identified. This Plan shall also include a schedule for the performance of the validation work and shall describe how the results of the validation work will be used to prepare the Dioxin Analytical Method Validation Report required by Section E.1.h., below.

e.ii. The Analysis and Validation Plan for Other Parameters shall propose one or more candidate analytical methods for the analyses of wastewater treatment plant effluent required by this Consent Decree for each of the following parameters: Cadmium, Cyanide, DDD, DDT, Hexavalent Chromium, Lead, Mercury and Silver. OCC may, at its discretion, elect to address additional parameters in this Plan. This Plan shall include detailed procedures for validating each proposed method to predict the practical quantitation limit (PQL), precision, and accuracy for each method with respect to the analysis of the wastewater treatment plant effluent which will be generated as a result of the implementation of the Work. For each proposed method, the Plan shall identify at least three laboratories to be utilized in the validation work, unless there are not three commercially available laboratories which are currently capable of doing the validation work. This Plan shall also include a schedule for the performance of the validation work and shall describe how the results of the validation work will be used to prepare the Analytical Method Validation Report required by Section E.1.h., below. As an alternative to proposing to validate analytical methods for a

particular parameter, the Analysis and Validation Plan for Other Parameters may present the results of previous studies which demonstrate that a specified analytical method for that parameter will achieve a PQL capable of determining compliance with the effluent limitation(s) for the parameter and will result in data of appropriate precision and accuracy.

f.i. EPA, in consultation with the State, will either approve the Dioxin Analysis and Validation Plan, or require modification of it in accordance with the procedures set forth in Section XV of this Consent Decree.

f.ii. EPA, in consultation with the State, will either approve the Analysis and Validation Plan for Other Parameters, or require modification of it in accordance with the procedures set forth in Section XV of this Consent Decree.

g.i. Upon receipt of written notification of the approval of the Dioxin Analysis and Validation Plan, OCC shall implement the validation work in accordance with the approved Plan, including the approved schedule.

g.ii. Upon receipt of written notification of the approval of the Analysis and Validation Plan for Other Parameters, OCC shall implement the validation work in accordance with the approved Plan, including the approved schedule.

h.i. In accordance with the schedule contained in the approved Dioxin Analysis and Validation Plan, OCC shall submit to EPA and the State a Dioxin Analytical Method



Validation Report presenting the results of the validation work implemented.

h.ii. In accordance with the schedule contained in the approved Analysis and Validation Plan for Other Parameters, OCC shall submit to EPA and the State an Analytical Method Validation Report for Other Parameters presenting the results of the validation work implemented.

i.i. EPA, in consultation with the State, will either approve the Dioxin Analytical Method Validation Report, or require modification of it in accordance with the procedures set forth in Section XV of this Consent Decree.

i.ii. EPA, in consultation with the State, will either approve the Analytical Method Validation Report for Other Parameters, or require modification of it in accordance with the procedures set forth in Section XV of this Consent Decree.

2. Within one-hundred and eighty (180) calendar days of the date on which OCC receives written notification of the approval of the Site Management Plan for Pre-Design Planning, or within ninety (90) calendar days of the date on which OCC receives the State's decision on the approval of the data required by ACO II, or within twenty (20) days of the date on which OCC receives written notification of the approval of the Dioxin Analytical Method Validation Report, or within twenty (20) days of the date on which OCC receives written notification of the approval of the Analytical Method

Validation Report for Other Parameters, whichever date is later, OCC shall submit a detailed Remedial Design Work Plan to EPA and the State for review and subsequent approval by EPA, in consultation with the State. The Remedial Design Work Plan shall be in conformance with the EPA document entitled "Superfund Remedial Design and Remedial Action Guidance" (OSWER Directive 9355.0-4A, June 1986) and with any additional guidance documents provided by EPA and the State prior to completion of the Plan. The Remedial Design Work Plan shall include, but not be limited to, the following items:

a. Sampling, Analysis and Monitoring Plan

i. The Sampling, Analysis and Monitoring Plan ("SAMP") shall provide for sampling, testing and analysis to obtain any additional data needed for performing the Remedial Design. This sampling and testing program should not attempt to confirm all existing data, but rather should provide an independent check of critical parameters and confirm the specifications on materials and treatability.

Analytical methods utilized shall be selected in order to achieve PQLs which are low enough to determine compliance with the cleanup standards contained in this Consent Decree. The method for wastewater treatment plant effluent and ground water dioxin analysis shall be selected in consideration of the approved Dioxin Analytical Method Validation Report (see Section E.1.i, above).

Field sampling methods utilized shall be selected using "NJDEP Field Sampling Procedures Manual," revised in February 1988, as a consideration. All testing methods and procedures shall be fully documented and, if applicable, referenced to established methods or standards.

Where appropriate and applicable, analyses may be performed in accordance with the EPA Contract Laboratory Program ("CLP") methods or with methods referenced in the "Test Methods for Evaluating Solid Wastes" (SW-846 3rd Edition, November 1986). CLP methods are those methods contained in "USEPA Contract Laboratory Program Statement of Work, Inorganic Analysis", Revised 12/87; "USEPA Contract Laboratory Program Statement of Work for Organic Analysis", 2/88; and/or "USEPA Contract Laboratory Program Statement of Work for Dioxin Analysis", 9/86. For analyses performed in accordance with CLP methods, subsequent deliverables must be submitted according to CLP criteria. For those analyses not utilizing CLP methods, the subsequent deliverables must be similar to the CLP deliverables format. An example of each such format must be submitted as part of the SAMP to EPA and the State for review and subsequent approval by EPA, in consultation with the State, prior to use.

The SAMP shall also provide for installation, sampling and analysis of additional ground water monitoring wells located off-site. The purpose of these additional wells will be to determine the extent of ground water contamination

attributable to the Site and to monitor the effect of the Remedial Action on off-site ground water quality. If appropriate, existing off-site wells may also be utilized. In addition, hydrogeological testing may be necessary for the appropriate design of the on-Site ground water collection and treatment systems. The authority of this Consent Decree shall not be used to require additional work for the cleanup of off-site ground water contamination, except to the extent that such cleanup can be achieved by reducing the release of contaminants from the Site.

ii. The SAMP shall include, but not be limited to, the following items:

(1) A map depicting sampling locations;

(2) A detailed description of all sampling, analysis, testing and monitoring to be performed including sampling methods, analytical and testing methods, frequency of sampling and sampling locations;

(3) A discussion of how the sampling, analysis, testing and monitoring will produce data useful for the Remedial Design or for other purposes;

(4) A schedule for performance of specific tasks;

(5) The specific items listed below must be addressed:

(a) Ground water investigations and tests to determine:

- a suitable method for extraction of ground water;
- ground water characteristics relevant to treatment and discharge;
- quantity of ground water to be removed both during and after remedial measures;
- effects on intended construction materials;
- aquifer characteristics by means of pumping tests.

(b) Testing designed to predict gas production potential from the materials to be contained by the cap and slurry wall or treatment systems as well as testing to predict gas composition and amenability to treatment or flaring.

(c) Soil borings and/or geophysical investigations to determine or confirm the location and characteristics of the aquifers and aquitard.

(d) Laboratory testing of borrow soil, select fill and capping materials to determine the physical and chemical properties, as appropriate. Proposed construction materials such as metals and plastics shall be tested for compatibility with the intended environment unless their suitability is already well established and documented.

(e) Subsurface Barrier and Cover Material Suitability and Stability Analysis Program to address:

- side slope stability;
- crack and shrinkage resistance;

- settlement due to distributed cover loadings and fill decomposition and consolidation due to dewatering of waste/fill material;
- support of vegetation;
- water and wind erosion control;
- multimedia cap resistance to sliding on the design slope;
- strength;
- permeability; and
- soil type.

(f) Groundwater treatability testing of all applicable technologies. The applicable technologies shall be identified based on a literature review, the findings of which shall be submitted with the Remedial Design Work Plan, and on any other relevant information.

b. Quality Assurance Project Plan ("QAPP")

i. The QAPP must be approved by EPA, in consultation with the State, prior to the commencement of any sampling activities to which the QAPP pertains.

ii. The QAPP shall be completed in accordance with the "Region II CERCLA Quality Assurance Manual," EPA, Region II, March 1988. In the event of any conflict between the requirements of that document and other quality assurance and/or quality control (QA/QC) requirements stated or cited below (except for requirements of the approved QAPP), the

requirements of that document shall supersede the conflicting portions of the other requirements.

iii. In order to provide quality assurance and maintain quality control regarding all samples collected pursuant to this Consent Decree, OCC shall ensure the following:

(1) The QAPP shall include, at a minimum, the following items:

- Title Page
- Table of Contents
- Project Description
- Project Organization and Responsibility
- Quality Assurance Objectives
- Sampling Procedures
- Sample Custody
- Calibration Procedures and Frequency
- Analytical Procedures
- Data Reduction, Validation and Reporting
- Internal Quality Control Checks
- Performance and Systems Audits
- Preventive Maintenance
- Specific Routine Procedures Used to Assess Data Precision, Accuracy and Completeness
- Corrective Action
- Quality Assurance Reports to Management.

(2) OCC shall use QA/QC procedures in accordance with the QAPP submitted to EPA and the State, and approved by EPA, in consultation with the State, pursuant to this Consent Decree, and shall utilize standard EPA Chain of Custody procedures, as set forth in the EPA document entitled "National Enforcement Investigations Center Policies and Procedures Manual", as revised in May 1986.

(3) OCC shall ensure that laboratories utilized by OCC for analysis of samples taken pursuant to this Consent Decree perform all analyses according to the methods contained in the SAMP and QAPP, which have been approved in writing by EPA, in consultation with the State.

(4) All validated analytical data shall be submitted in a CLP deliverables format, or in a similar approved format, to EPA and the State.

(5) All analytical data shall be validated according to the procedures contained or referenced in the approved QAPP. The validation procedures shall be prepared considering the "Region II CERCLA Quality Assurance Manual," EPA, Region II, March 1988. "Guidelines for Quality Assurance Data Validation of Analytical Sample Deliverables," June 1987, and the "Data Validation Report Deliverable Requirements," July 1987, both published by the NJDEP, Bureau of Environmental Measurements and Quality Assurance, shall be considered in the selection of data validation procedures.



(6) Ensure, prior to engagement, that each laboratory utilized by OCC for analysis of samples taken pursuant to this Consent Decree can demonstrate its ability to perform the analytical and QA/QC tasks required for those analyses to be performed by it.

(7) Ensure that all contracts with laboratories utilized by OCC for analysis of samples taken pursuant to this Consent Decree provide for access of EPA and State personnel or their authorized representatives during normal business hours to the laboratory premises where analysis or testing is being done to assure the accuracy of laboratory results related to the Site.

(8) Ensure that laboratories utilized by OCC will analyze samples submitted by EPA or the State for quality assurance purposes.

c. Health and Safety/Contingency Plan

The Health and Safety/Contingency Plan ("HASCP") for Remedial Design Work shall address the protection of health, safety and response to contingencies which could impact health, safety and the environment during the Remedial Design period. The HASCP shall be prepared considering the document entitled "Occupational Safety and Health Guidance Manual for Hazardous Waste Site Activities" (prepared by NIOSH, OSHA, EPA and USCG, October 1985 (DHHS - NIOSH) Publication No. 85-115) and the Occupational Safety and Health Administration, U.S. Department of Labor ("OSHA") requirements cited below.

i. The HASCP shall include:

(1) Provisions designed to ensure that activities including inspections, investigations and remedial Actions are performed in such a manner as to assure the safety and health of workers so engaged.

(2) Provisions designed to ensure that activities shall be conducted in accordance with general industry and construction OSHA standards (29 CFR 1910 and 1926).

(3) Provisions designed to ensure that activities comply with those requirements set forth in OSHA's interim final rule entitled "Hazardous Waste Operations and Emergency Response," 29 CFR 1910.120, Subpart H, as described in the Federal Register of December 19, 1986, until such time as the final rule takes effect.

ii. The HASCP shall also include, at a minimum, the following items:

(1) Plans showing the location and layout of any temporary facilities to be constructed on or near the Site.

(2) Description of the known hazards and evaluation of the risks associated with the Site and the potential health impacts related to the Site activities.

(3) List of key personnel and alternates responsible for Site safety, response operations and governmental notification/coordination.

(4) Description of levels of protection

(based on specified standards) to be utilized by all personnel.

(5) Delineation of work, decontamination and safe zones, and definitions of the movement of zones.

(6) Description of decontamination procedures for personnel and equipment, and handling/removal of disposable clothing or equipment.

(7) Incident emergency procedures which address emergency care for personnel injuries and exposure problems, and containment measures.

(8) Description of the personnel Medical Surveillance Program(s) in effect.

(9) Description of monitoring for personnel safety.

(10) Description of off-Site air monitoring.

(11) Description of routine and special personnel training programs.

iii. The HASCP must be reviewed by EPA and the State, and approved by EPA, in consultation with the State, prior to commencement of the Work to which the HASCP pertains.

d. Site Management Plan ("SMP") for Remedial Design Activities

The SMP for Remedial Design activities shall be prepared in accordance with the SMP general requirements of Section E.1.b., above.

e. Remedial Design Schedule and Draft Schedule for Remedial Construction and O&M Activities

i. The Remedial Design Schedule and draft schedule for Remedial Construction and O&M activities shall be in the form of a Task/Subtask activity bar chart or critical path method sequence of events. (See Sections F., G. and H., below, for Remedial Design, Remedial Construction and O&M requirements.)

ii. The draft schedule for Remedial Construction and O&M activities will be revised during the Remedial Design process. (See Section F.1.d., below.)

f. Plan for Obtaining Access Approvals and Other Approvals

Such plan shall address any approvals which OCC will require to comply with this Consent Decree, with the exception of those approvals required from EPA and the State. The plan shall detail how such approvals will be sought and will include a schedule for obtaining all necessary approvals. Such approvals may include approval by the Passaic Valley Sewerage Commission to accept pretreated wastewater, permission of owners of property near the Site for access to conduct monitoring or other activities, and approvals of off-Site waste management facilities or recycling facilities to accept materials from the Site.

g. Description of Additional Remedial Design Tasks

i. The Remedial Design Work Plan shall include a description of all other Remedial Design tasks and subtasks to be performed. Such tasks and subtasks shall be included in the Remedial Design Schedule required by Section E.2.e., above. Such tasks shall include, but not be limited to, the preparation of the Remedial Design Investigation reports and Remedial Design reports required by Section F., below.

h. Site Stabilization Work Plan

The Site Stabilization Work Plan shall be a detailed plan for the performance of the Site Stabilization Work required by Section D., above.

i. Pre-Design Report

The Pre-Design Report shall establish preliminary design criteria and engineering parameters necessary to perform the Remedial Design Work. This Report shall identify pertinent project information, summarize the results of previous investigations, identify additional studies needed, and present specific implementation issues.

3. EPA, in consultation with the State, will either approve the Remedial Design Work Plan, or will require modification of such plan, in accordance with the procedures set forth in Section XV of this Consent Decree.

F. REMEDIAL DESIGN

1. OCC shall perform the Remedial Design, in conformance with the approved Remedial Design Work Plan, including the Remedial Design schedules.
2. The Remedial Design work shall include the preparation of Remedial Design Investigation reports presenting the data collected in the implementation of the Sampling, Analysis and Monitoring Plan and the QAPP for the Remedial Design phase of the Work. (See Sections E.2.a. and E.2.b., above.) The reports shall also include a discussion of both the Work and the results.
3. Each Remedial Design Investigation report shall be submitted to EPA and the State in accordance with the schedule set forth in the Remedial Design Work Plan. To the extent practicable, the schedule shall provide for the submittals of the Remedial Design Investigation reports (with the exception of the report(s) containing the results of wastewater treatability studies, which shall be submitted as expeditiously as possible following completion) concurrent with the submittals of the Preliminary Design Report and/or the Intermediate Design Report.
4. For each Remedial Design Investigation report, EPA, in consultation with the State, will either approve the report or will require modification of it in accordance with the procedures set forth in Section XV of this Consent Decree.

5. The Remedial Design Work shall include the preparation of the following Remedial Design reports which are described in the EPA Remedial Design and Remedial Action Guidance: a Preliminary Design Report (30% completion); an Intermediate Design Report (60% completion); and a Prefinal/Final Design Report (90%/100% completion). Each report shall include the plans and specifications which have been completed, together with a design analysis. The design analysis shall provide the rationale for the plans and specifications, including supporting calculations and documentation of how these plans and specifications will meet the requirements of the Consent Decree. The Prefinal/Final Design Report must also include the following items:

a. A Sampling, Analysis and Monitoring Plan for sampling, analysis, testing and monitoring to be performed during the Remedial Construction phase of the Work. (See Section E.2.a., above, for SAMP general requirements.)

i. This Plan shall include an environmental monitoring program to be implemented during the entire period of Remedial Construction. Sampling shall be specifically timed to document environmental effects of the construction.

ii. In lieu of the investigative and testing requirements of Section E.2.a.ii.(5), above, the Plan shall include testing methods appropriate to Remedial Construction including, but not limited to, testing of Remedial Construction

materials prior to use; and testing of constructed remedy components to assure that they meet design specifications.

b. A QAPP for sampling, analysis, testing and monitoring to be performed during the Remedial Construction phase of the Work. (See Section E.2.b., above, for QAPP general requirements.)

i. This QAPP shall also address quality assurance requirements and standards relating to construction operations including, but not limited to, decontamination, installation and excavation. Quality assurance items to be addressed include, but need not be limited to:

- Inspection and certification
- Measurement and daily logging
- Field performance and testing
- As-built drawings and logs
- Testing of the Work and the criteria for passing or failing.

c. Health and Safety/Contingency Plan  
Specifications for the Remedial Construction phase of the Work. (See Section E.2.c., above, for HASCP general requirements.)

i. The HASCP Specifications shall address health and safety measures to be implemented and observed by construction personnel, as well as measures designed to prevent and/or minimize releases from the Site during the Remedial Construction, thereby protecting the adjacent community and general public.



ii. The HASCP Specifications shall be a complete HASCP prepared to achieve a level of health and safety protection which must be equalled or exceeded by the HASCP for Remedial Construction, which will be used by the Remedial Construction contractors (see Section G.3.a., below).

d. A schedule for Remedial Construction and O&M activities. (See Section E.2.e., above.)

e. An Operation and Maintenance Plan for the O&M Phase of the Work. The O&M Plan\* shall include, but need not be limited to, the following elements:

i. A Site Management Plan for O&M activities. (See Section E.1.b., above, for SMP general requirements.) The SMP for O&M activities shall identify all off-Site facilities proposed to be used to manage hazardous substances or other materials from the Diamond Alkali Superfund Site resulting from the O&M Work. For each facility, the proposed materials and methods of management shall be described.

ii. A Sampling, Analysis and Monitoring Plan which identifies sampling procedures and locations, analytical parameters, frequency, etc. (See Section E.2.a., above for SAMP general requirements.)

iii. A QAPP. (See Section E.2.b., above, for QAPP general requirements.)

iv. Health and Safety/Contingency Plan Specifications addressing both routine procedures and emergency

response actions for the O&M Work. (See Section F.5.c., above, for HASCP Specifications general requirements.)

v. A description of the routine O&M activities for the remedial systems addressing, but not limited to, the ground water collection and treatment facilities, any gas venting systems, the slurry wall, the cap, the Site cover, the flood wall and Site security.

vi. A detailed description of the appropriate sampling, storage, treatment or disposal of the sludge and other wastes generated from the on-Site treatment systems.

vii. An O&M schedule which identifies the frequency of O&M activities and when those activities will commence.

\* Activities which will not continue after the completion of the Remedial Construction should not be addressed in the O&M Plan. For example, the on-Site placement and capping of demolition debris (which could be considered operation of a landfill) should not be addressed in the O&M Plan. However, O&M activities that will continue after the completion of Remedial Construction (e.g., operation of the ground water treatment system and the on-site placement and capping of wastewater treatment sludge) shall be addressed by the O&M Plan, even for the periods when these activities may occur concurrently with Remedial Construction activities.

f. Completed permit application forms (including any required supplements) for Federal and State environmental permits which would be required if the remedial action were not conducted under the authority of CERCLA. Such applications may be needed for, but are not limited to, the following:

- Discharges to ground water and/or surface water;
- Waste water treatment facilities;
- All points of contaminant emission to the atmosphere;
- Soil erosion and sediment control for Remedial Action implementation;
- Stream encroachment, diversion or temporary impoundment;
- Landfill disruption or grading;
- Treatment, storage and/or disposal of hazardous wastes;
- Planning approval;
- Ground water lowering or diversion;
- Ground water monitoring;

Permit application forms for Work to be done entirely at the Diamond Alkali Superfund Site should not be signed.

g. A Construction Operations Plan which shall address the methods by which construction operations shall proceed. The discussion of methods shall address the timing of and manner in which activities including, but not limited to, decontamination, demolition, decommissioning, removal, excavation, construction, stabilization, monitoring, security measures, and Site restoration shall be sequenced.

This Plan shall include separate components which address the following:

i. Preparation of the Site including security, utilities, decontamination facilities, construction trailers, equipment storage and construction of roadways.

ii. Coordination of drum removal and decontamination activities.

iii. Coordination of demolition, decommissioning, staging and removal activities.

iv. Coordination of construction activities for the slurry wall, conduit plugging, stockpiling, site cover installation, the flood wall and treatment systems.

v. Coordination of site cover procedures with activities including, but not limited to, the installation of the ground water collection system.

vi. Coordination with local authorities regarding contingency planning and potential traffic obstruction.

vii. Starting up, optimizing, evaluating the performance of the wastewater treatment facilities, and scheduling of the attainment of effluent limitations following start up of the wastewater treatment facilities and prior to EPA's approval of completion of the Remedial Construction work.

viii. Starting up, optimizing, and evaluating the performance of the ground water recovery system.

ix. Procedures for final inspections and Completion of Remedial Construction, as set forth in Section XVII of the Consent Decree.

This Plan shall also address entry and access to the Site during the construction period(s) and periods of inactivity, including provisions for decontamination, erosion control and dust control. Whenever practical, elements of the Construction Operations Plan shall be clearly depicted on the Engineering plans.

h. Cost Estimates for Remedial Construction and Operation and Maintenance.

The cost estimates shall include a detailed and itemized estimate of construction costs and the proposed annual O&M costs. These estimates shall be included in the Prefinal/Final Design Report. Supporting data and sample calculations shall be provided.

i. A report of efforts made to secure access and obtain other approvals and of the results of those efforts. (See Section E.2.f., above). Legal descriptions of property or easements to be acquired shall be provided including, but not limited to, property owners, site operators, addresses and lot and block numbers, and grantors and grantees of easements.

j. Plans for photographic documentation of the Remedial Construction Work. (See Section G.4, below.)

6. The Preliminary Design Report shall also include:

a. Preliminary construction drawings at 30% com-

pletion, of standard size, of proposed Work, facilities, equipment, improvements, details and all other construction and installation items to be developed in accordance with the "Revised Statutes Administrative Rules and Regulations" of the New Jersey State Board of Professional Engineers and Land Surveyors August 1988 printing.

b. Engineering plans representing an accurate identification of existing Site conditions, and a complete illustration of the proposed Work. Typical items to be provided on such drawings include, but need not be limited to:

- i. Title sheet bearing at least the title of the project, a key map, the name of the designer, sheet index, EPA/NJDEP Project identification, etc.
- ii. Property data including owners of record for all properties within 200 feet of the Site.
- iii. The distance and bearing of property lines which identify and define the project Site.
- iv. Easements, rights-of-way and reservations.
- v. Buildings, structures, wells, facilities, controls, equipment and features, existing and proposed, including interim remedial measures.
- vi. A topographic survey, including existing and proposed contours and spot elevations, based on U.S. Geological Service datum.

vii. Utilities, existing and proposed.

viii. Location and identification of all significant natural features including, but not limited to, wooded areas, water courses, wetlands, flood hazard areas and depressions.

ix. Flood hazard data and delineation, if applicable.

x. North arrow, scale, sheet numbers and the person responsible for preparing each sheet.

xi. Decontamination areas, staging areas, borrow areas and stockpiling areas.

xii. Miscellaneous detail sheets.

xiii. Definitions of symbols and abbreviations.

xiv. Items not typically required to be included in the preliminary phase of design drawings include: electrical drawings; mechanical drawings; HVAC (heating, ventilation and air conditioning) drawings; Structural drawings; and miscellaneous construction details.

7. The Remedial Design reports shall, as appropriate, include following:

a. A discussion of the design criteria and objectives, with emphasis on the capacity and ability to successfully meet design objectives.

b. A discussion of the objective of integrating the initial remedial measures into the final design, e.g., demolition and temporary storage.

c. Table of Contents for the specifications, including a listing of specification items from the Construction Specifications Institute master format expected to be included in the construction specifications. This master format is presented in the Construction Specifications Institute's "Manual of Practice", 1985 edition, available from the Construction Specifications Institute, 601 Madison Street, Alexandria, Virginia 22314.

d. Site security measures.

e. Site safety and emergency measures.

f. Plan view(s) for Site preparation and layout.

g. Plans and profiles for: identification and remediation of underground utilities, conduits and obstructions; demolition and decommissioning; container removal; flood wall construction; Site disruption; material stockpiling; etc.

h. Plans and profiles for caps; covers; subsurface barriers; extraction systems; etc.

i. Plans for collection, conveyance and treatment systems and the capacity for each, including plans for the management of sludge generated by the treatment systems.

j. Process diagrams.

k. Projections of gas generation and groundwater recovery, and any anticipated variation following implementation of the Remedial Action.

l. List of drawing sheet titles.



m. Discussion of the methods and features to be used at the completion of the capping to restore the Site to an approximately natural or aesthetic appearance.

n. Evaluation of Site stabilization by grading, flood walls, retaining walls and any other appropriate method.

o. Evaluation of the cost effectiveness of on-site treatment of gas and wastewater versus treatment at an off-site facility (e.g., a publicly-owned treatment works).

p. Construction material recommendations.

8. OCC shall provide surveying services prior to the final design submission. Survey work shall be appropriately marked, recorded and interpreted for mapping, property easements and design completion.

9. The Remedial Design Reports shall be submitted to EPA and the State in accordance with the schedule set forth in the Remedial Design Work Plan.

10. EPA and the State will review and EPA, in consultation with the State, will comment on the Preliminary and Intermediate Design Reports. OCC shall make those changes required by EPA's comments in the succeeding design report (e.g., changes required by comments on the Preliminary Design Report shall be made in the Intermediate Design Report) in accordance with the procedures set forth in Section XV of this Consent Decree.

11. EPA, in consultation with the State, will either approve the Prefinal/Final Design Report or will require

modification of it, in accordance with the procedures set forth in Section XV of this Consent Decree. The approved Prefinal/Final Design Report shall also be known as the Final Design Report.

G. REMEDIAL CONSTRUCTION

1. By not later than the date specified in the schedule for Remedial Construction and O&M activities (see Section F.5.d., above), OCC shall submit to EPA and the State any requests for modification of the approved Final Design Report based on construction methods identified by the prospective construction contractor(s) or other new information.

2. EPA, in consultation with the State, will either approve any requests for modification of the Final Design Report or require modification of them in accordance with the procedures set forth in Section XV of this Consent Decree.

3. By not later than the date specified in the Schedule for Remedial Construction and O&M Activities (see Section F.5.d., above), OCC shall submit the following items to EPA and the State:

a. A HASCP for Remedial Construction which is at least as protective as the HASCP Specifications required by Section F.5.c., above.

b. A Site Management Plan for Remedial Construction activities. (See Section E.1.b., above, for SMP

general requirements.) The SMP for Remedial Construction activities shall identify all off-Site facilities proposed to be used to manage hazardous substances or other materials from the Diamond Alkali Superfund Site resulting from the Remedial Construction Work. For each facility, the proposed materials and methods of management shall be described.

4. EPA, in consultation with the State, will either approve the SMP and HASCP for Remedial Construction or require modification of them in accordance with the procedures set forth in Section XV of the Consent Decree.

5. Following (a) the date by which OCC has received the written approval of EPA, in consultation with the State, of both the Site Management Plan for Remedial Construction Activities and the HASCP for Remedial Construction or (b) the effective date of this Consent Decree, whichever date is later, OCC shall award the Remedial Construction contract(s) and shall perform the Remedial Construction Work in accordance with the Final Design Report (as supplemented and/or modified by the SMP and HASCP for Remedial Construction and by any approved modifications), including the approved Remedial Construction schedule.

6. OCC shall furnish photographs to EPA and the State that record the progress of construction including, but not limited to, the important features of the Site prior to the commencement of the Work, construction activities for the various tasks, and the appearance of the Site after the

construction has been completed. Such photographs shall be developed expeditiously and shall be submitted as part of the monthly progress report for the month in which the photographs are developed.

7. Within ninety (90) calendar days of completion of all activities required by Sections G.1 through G.6, above, OCC shall submit to EPA and the State a written certification and Final Report for Remedial Construction in accordance with the provisions of Section XVII of the Consent Decree. The Final Report, as specified in the Plan required by Section F.5.g.ix., above, shall summarize the Work performed. If the remedy as implemented differs in any way from the approved plans and specifications of the Final Design Report (as modified, if applicable), such modifications shall be reported and "as built" plans and specifications shall be provided showing all such modifications. The reasons for all such modifications shall be described in detail.

#### H. OPERATION AND MAINTENANCE

OCC shall perform O&M activities in accordance with the O&M Plan contained in the approved Final Remedial Design Plan, including the O&M schedule. (See Section F.5.e., above.)

#### I. REMEDY EVALUATION

1. Within ninety (90) calendar days of EPA approval of the completion of Remedial Construction and every two years thereafter, OCC shall submit to EPA and the State a work plan for a Remedy Evaluation (a) to assure that human health and the

environment are being protected by the Remedy implemented by OCC under this Consent Decree, taking into account, as provided in Section 121 of CERCLA, without limitation, any changes in knowledge concerning the risks posed by dioxin and other Hazardous Materials at the Site and addressed by this Decree; and (b) to develop, screen and assess the viability of implementing remedial alternatives more protective of human health and the environment, including those alternatives which are based purely on advances in technology and those which utilize more permanent solutions.

The remedial alternatives developed in the Remedy Evaluations may include alternatives which were included in the 1985 Feasibility Study as well as new alternatives. Factors to be considered in each Remedy Evaluation shall include, but not be limited to, the following:

- a. new technologies,
- b. improvements in existing technologies,
- c. greater availability and/or capacity of existing technologies, and
- d. the ability to safely implement alternatives relying on excavation.

Each Remedy Evaluation shall be conducted in the same manner as a Remedial Investigation and Feasibility Study and in accordance with EPA's Guidance for Conducting Remedial Investigations and Feasibility Studies under CERCLA, Interim Final, October 1988 (OSWER Directive 9355.3-01) and any additional

guidance provided by EPA and the State. Information from previous Remedy Evaluations and other studies for the Site may be used in a Remedy Evaluation provided that the information remains current and accurate. Each Remedy Evaluation work plan shall include plans for any sampling, analysis, testing and monitoring needed to supplement the available data.

2. For each Remedy Evaluation Work Plan, EPA, in consultation with the State, will either approve the work plan or require modification of it in accordance with the procedures set forth in Section XV of this Consent Decree.

3. OCC shall perform each Remedy Evaluation in accordance with the corresponding approved Remedy Evaluation Work Plan. The findings of each Remedy Evaluation shall be presented in a Remedy Evaluation Report. Each Remedy Evaluation Report shall be submitted to EPA and the State in accordance with the approved schedule contained in the work plan for that Remedy Evaluation. The Remedy Evaluations Reports may utilize relevant data collected during O&M activities and during previous studies. Such data may be summarized in the Remedy Evaluation Reports, rather than presented completely. The source documents for data which is summarized shall be referenced.

4. For each Remedy Evaluation Report, EPA, in consultation with the State, will either approve the report or require modification of it in accordance with the procedures set forth in Section XV of this Consent Decree.

## Appendix II

### TABLE A - Cleanup Standards

Table A lists applicable or relevant and appropriate environmental standards established under Federal and State environmental laws (ARARs) that shall be attained by the Settling Defendants through the implementation of the selected alternative. Table A.1 contains Federal ARARs. For each requirement, Table A.1 provides a summary of the requirement, a description of the legal prerequisites which make the ARAR applicable and a legal citation which can be used to obtain further information on the ARAR. Footnotes provide site specific interpretations and other explanatory information. Table A.2 provides similar information for State ARARs. Table A.3 lists other cleanup standards (e.g., those based on guidance or advisories, but not on promulgated legal requirements). In the event that there are several cleanup standards which pertain to the same hazardous substances, action or circumstance, the selected alternative must attain the most stringent of these cleanup standards. Where administrative requirements are listed in Tables A.1 and A.2, these administrative requirements are not ARARs. However, the substantive requirements of such permits or planning documents are ARARs.

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Table A.1

Federal ARARs That Will Be Attained By the Selected Alternative

<u>Summary</u>	<u>Prerequisite</u>	<u>Citation</u>	<u>Footnotes</u>
Facility must be designed, operated and maintained to avoid washout.	RCRA hazardous waste: treatment, storage, or disposal within the 100 year Flood plain	40 CFR 264.18(fb)	
Action to avoid adverse effects, minimize potential harm, restore and preserve natural and beneficial values.	Action will occur in a floodplain i.e., lowlands and flat areas adjoining inland and coastal waters and other flood prone areas	Executive Order 11988, Protection of Floodplains, 40 CFR 6 App. A	1
Placement of a cap over waste (e.g., closing a landfill, or closing a surface impoundment) requires a cover designed to:	Hazardous waste land disposal unit capping	40 CFR 264.310(a)	
<ul style="list-style-type: none"> <li>◦ Provide long term minimization of migration of liquids through the capped area;</li> <li>◦ Function with minimum maintenance;</li> <li>◦ Promote drainage and minimize erosion or abrasion of the cover;</li> <li>◦ Accomodate settling and subsidence so that the cover's integrity is maintained; and</li> <li>◦ Have a permeability less than or equal to the permeability of any bottom liner system or natural sub-soils present.</li> </ul>			



<u>Summary</u>	<u>Prerequisite</u>	<u>Citation</u>	<u>Footnotes</u>
Restrict post-closure use of the property as necessary to prevent damage to the cover.	Hazardous waste facility closure	40 CFR 264.117(c)	
Prevent run-on and run-off from damaging the cover.	Hazardous waste landfill closure	40 CFR 264.310(b)(4)	
Protect and maintain surveyed benchmarks used to locate waste cells (landfills).	"	40 CFR 264.310(b)	
Installation of final cover to provide long-term minimization of infiltration.	"	40 CFR 264.310(a)	
Post-closure care and ground-water monitoring.	"	40 CFR 264.310(b)(3)	2
<hr/>			
Construct a run-on control system capable of handling the peak discharge of a 25 year storm.	Hazardous waste currently being placed in a landfill	40 CFR 264.301(f)	3
Control wind dispersal of particulates.	"	40 CFR 264.301(i)	
Control and collect run-off from a 24-hour 25 year storm.	"	40 CFR 264.301(g)	

<u>Summary</u>	<u>Prerequisite</u>	<u>Citation</u>	<u>Footnotes</u>
Inspect liners and covers during and after installation.	"	40 CFR 264.303	
Inspect facility weekly and after storms to detect malfunction of control systems or the presence of liquids in the leachate collection and leak detection systems.	"		
Maintain records of exact location, dimensions, and contents of each waste cell.	"	40 CFR 264.309	
Close each cell with a final cover after the last waste has been received.	"	40 CFR 264.310	
No bulk or non-containerized hazardous waste containing free liquids may be disposed of in landfills.	"	40 CFR 264.314	
Containers of hazardous waste must be:	Hazardous waste storage in containers		
° Maintained in good condition;		40 CFR 264.171	
° Compatible with hazardous waste to be stored; and		40 CFR 264.172	
° Closed during storage (except to add or remove waste).		40 CFR 264.173	
Inspect container storage areas weekly for deterioration.	"	40 CFR 264.174	

<u>Summary</u>	<u>Prerequisite</u>	<u>Citation</u>	<u>Footnotes</u>
Place containers on a sloped, crackfree base, and protect from contact with accumulated liquid. Provide containment system with a capacity of 10% of the volume of containers of free liquids. Remove spilled or leaked waste in a timely manner to prevent overflow of the containment system.	"	40 CFR 264.175	
Keep containers of ignitable or reactive waste at least 50 feet from the facility's property line.	"	40 CFR 264.176	
Keep incompatible materials separate. Separate incompatible materials stored near each other by a dike or other barrier.	"	40 CFR 264.177	
At closure, remove all hazardous waste and residues from the containment system, and decontaminate or remove all containers, liners.	"	40 CFR 264.178	
Prohibition on long-term storage of listed dioxin wastes.	Storage after Nov. 8, 1988	40 CFR 268.50	6
Requirements for treatment and storage of hazardous waste in tanks, including those requirements listed below.	Tanks	40 CFR Part 264, Subpart J	

<u>Summary</u>	<u>Prerequisite</u>	<u>Citation</u>	<u>Footnotes</u>
Waste must not be incompatible with the tank material unless the tank is protected by a liner or by other means.	"	40 CFR 264.191	
Tanks must be provided with controls to prevent overfilling, and sufficient freeboard maintained in open tanks to prevent overtopping by wave action or precipitation.	"	40 CFR 264.194	
Inspect the following: over-filling controls, control equipment, monitoring data, waste level (for uncovered tanks), tank condition, above-ground portion of tanks, and the areas surrounding tanks.	"	40 CFR 264.195	
Repair any corrosion, crack or leak.	"	40 CFR 264.196	
At closure, remove all hazardous waste and hazardous waste residues from tanks, discharge control equipment, and discharge confinement structures.	"	40 CFR 264.197	
Compliance with effluent limitations requiring the application of best available technology (BAT) to control toxic and nonconventional pollutants and best conventional pollutant control technology (BCT) to control conventional pollutants.	Discharge of treatment system effluent to navigable waters (e.g., Passaic River)	40 CFR 122.44(a)	

<u>Summary</u>	<u>Prerequisite</u>	<u>Citation</u>	<u>Footnotes</u>
Compliance with water quality based effluent limitations.	"	40 CFR 122.44(d)(2)	4
Discharge must be monitored to assure compliance. Discharge will monitor:	"		
• The mass of each pollutant		40 CFR 122.44(i)	
• The volume of effluent			
• Frequency of discharge and other measurements as appropriate.			
Approved tests methods for waste constituents to be monitored must be followed. Detailed requirements for analytical procedures and quality controls are provided.	"		
Pollutants that pass through the POTW without treatment, interfere with POTW operation, or contaminate POTW sludge are prohibited.	Discharge to publicly owned treatment works.	40 CFR 403.5	5
Specific prohibitions preclude the discharge of pollutants to POTWs that:	"		
• Create a fire or explosion hazard in the POTW;			
• Are corrosive (pH<5.0);			

<u>Summary</u>	<u>Prerequisite</u>	<u>Citation</u>	<u>Footnotes</u>
<ul style="list-style-type: none"><li>◦ Are discharged at a flow rate and/or concentration that will result in interference; and</li><li>◦ Increase the temperature of waste-water entering the treatment plant that would result in interference, but in no case raise the POTW influent temperature above 104 degree Fahrenheit (40 degree Celsius).</li><li>◦ Discharge must comply with local POTW pretreatment program, including POTW-specific pollutant limitation, spill prevention program requirements, and reporting and monitoring requirements.</li></ul>		40 CFR 403.5 and local POTW regulations	4

Footnotes for Table A.1

1. Changes in flooding patterns which would result from the U.S. Army Corps of Engineers flood control project for the upper Passaic River shall also be factored into the remedial design. Actions to implement the cited requirements shall be required only to the extent that such actions are required by documents prepared and approved pursuant to this Consent Decree.
2. The cited groundwater monitoring requirements do not pertain to this action. This action addresses only 80 and 120 Lister Avenue and is not intended to address off-site groundwater monitoring or restoration (see Section II of the Record of Decision).
3. The requirements for landfill liners and leachate collection systems of 40 CFR 264.301 do not pertain to this action.
4. The effluent limitation ARARs based on the Federal Water Quality Criteria are:

<u>Pollutant</u>	<u>Effluent Limitation ARAR</u>
Dioxin	1.0 x 10 <sup>-8</sup> lbs/day
DDT	1.6 x 10 <sup>-5</sup> lbs/day
Hexachlorobenzene	5.4 x 10 <sup>-4</sup> lbs/day

5. An option for the selected remedial alternative is to discharge the treated wastewater to the Passaic Valley Sewerage Commission (PVSC) treatment works instead of direct discharge to the river. The viability of this option will depend on the PVSC's willingness to accept this discharge for treatment.

The PVSC's Rules and Regulations Concerning Discharges to the Passaic Valley Sewerage Commissioners Treatment Works contains applicable Federal ARARs since these rules and regulations were developed pursuant to the requirements of the Federal Clean Water Act. In addition, the Federal pretreatment program has been delegated to the State of New Jersey based on the finding that the State program requirements are at least as stringent as the Federal requirements. Therefore, the attainment of the State pretreatment ARARs in Table A.2 will also ensure that the corresponding Federal pretreatment requirements are attained.

- For dioxin, DDT and hexachlorobenzene, which are not specifically addressed by the PVSC rules and regulations, the direct discharge water quality criteria based effluent limitations (see item 4, above) are cleanup standards for pretreated effluent discharged to the PVSC treatment works.
6. The cited requirement is not pertinent to hazardous substances which will not be managed in accordance with the RCRA land disposal ban (see page 77 of the ROD). The cited requirement may be found pertinent for certain hazardous substances which may be managed in accordance with the RCRA land disposal ban in the future (e.g. wastewater treatment plant sludge in the event that it is incinerated on-site or off-site at some future time).



Table A.2

Footnote

New Jersey State ARARs That Will Be Attained By The Selected Alternative

1

<u>Requirement Summary</u>	<u>Prerequisite/Application</u>	<u>Regulatory Citation</u>
A facility located in the 100 year floodplain must be designed, operated and maintained to prevent washout of any hazardous waste unless the owner or operator can show that the waste can be removed safely, before floodwaters reach the facility.	Location Standards for New Hazardous Waste Facilities - Construction Within the 100 year floodplain	7:26-10.3(a)1 2,3
Container storage areas must have a containment system that is capable of collecting and holding spills, leaks, and precipitation.	Use and Management of Containers	7:26-10.4(b)1 et seq. 2,3
All hazardous waste and hazardous waste residues must be removed from the containment system at closure.	"	7:26-10.4(c)1
Unless the owner or operator can demonstrate that the solid waste removed from the containment system at closure is not a hazardous waste, the owner or operator becomes a generator of hazardous waste.	"	7:26-10.4(c)2

<u>Requirement Summary</u>	<u>Prerequisite/Application</u>	<u>Regulatory Citation</u>	<u>Footnote</u>
Tanks shall have sufficient shell strength and, for closed tanks, pressure controls to ensure that they do not rupture or collapse.	Tanks	7:26-10.5(b) et seq.	2,3
General operating requirements for tanks include the following:	"	7:26-10.5(c) et seq.	
<ul style="list-style-type: none"> <li>Wastes and other material that are incompatible with tank material shall not be placed in the tank.</li> <li>The owner or operator shall use appropriate controls to prevent overfilling.</li> </ul>	"		
Above ground storage tanks must have a containment system comparable to containment systems for containers.	"	7:26-10.5(d)1 et seq.	
The owner or operator shall inspect overfilling control equipment, data gathered from monitoring devices, monitoring equipment, tank construction materials, and the general condition of areas surrounding tanks at least once a day.	"	7:26-10.5(e)1 et seq.	
At closure, remove all hazardous waste from tanks, discharge control equipment, and discharge confinement structures.	"	7:26-10.5(h)1	
Repair any leak, crack or wall thinning.	"	7:26-10.5(e)4	

<u>Requirement Summary</u>	<u>Prerequisite/Application</u>	<u>Regulatory Citation</u>	<u>Footnote</u>
A groundwater monitoring system shall be established to prevent the contamination of groundwater.	Hazardous Waste Landfills	7:26-10.8(e)5 et seq.	2,3
Cover or otherwise manage the hazardous waste landfill so that wind dispersal of hazardous waste is eliminated.	"	7:26-10.8(e)6 et seq.	
Ignitable, corrosive and reactive waste shall not be placed in a hazardous waste landfill unless the waste is first treated to render it nonignitable, noncorrosive and/or nonreactive.	"	7:26-10.8(e)8	
Incompatible wastes shall not be placed in the same cell of a hazardous waste landfill.	"	7:26-10.8(e)9	
Bulk liquids, non-containerized liquids, wastes containing free liquids and acute hazardous waste shall not be placed in a hazardous waste landfill.	"	7:26-10.8(e)10	20
Liquid waste of small quantity may be placed in a hazardous waste landfill.	"	7:26-10.8(e)11	
All empty containers shall be crushed flat, shredded or reduced in volume prior to disposal.	"	7:26-10.8(e)12	
No odors shall be detectable off-site.	"	7:26-10.8(e)17	23

<u>Requirement Summary</u>	<u>Prerequisite/Application</u>	<u>Regulatory Citation</u>	<u>Footnote</u>
Liquid wastes mixed with absorbent material may be placed in a hazardous waste landfill.	"	7:26-10.8(e)20	
The owner or operator of a hazardous waste landfill shall supply: a map showing the locations, dimensions, and depth of each cell, contents of each cell, and the approximate locations of each hazardous waste in each cell.	"	7:26-10.8(f) et seq.	
Liners and final covers shall be inspected for uniformity, damages, etc..	"	7:26-10.8(h)1 et seq.	
The owner or operator shall close the hazardous waste facility in a manner that minimizes further maintenance and controls.	General Closure Requirements	7:26-9.8(b)	2,3
The owner or operator shall have a written closure plan.	"	7:26-9.8(c)	
The closure plan shall identify the steps necessary to close the facility.	"	7:26-9.8(e) et seq.	
At final closure of a hazardous waste landfill or any cell therein, the owner or operator shall place final cover to provide longterm minimization of migration of liquids into the landfill.	Specific Closure Requirements	7:26-10.8(i) et seq.	2,3,21

<u>Requirement Summary</u>	<u>Prerequisite/Application</u>	<u>Regulatory Citation</u>	<u>Footnote</u>
<p>The final cover shall:</p> <ul style="list-style-type: none"> <li>° include a vegetative top cover</li> <li>° consist of a drainage layer</li> <li>° consist of a liner system</li> <li>° accomodate settling</li> </ul> <p>The owner or operator shall consider as part of closure at least the following:</p> <ul style="list-style-type: none"> <li>° the type and amount of waste</li> <li>° the mobility of the waste constituents</li> <li>° site location, topography, and surrounding land use</li> <li>° Climate</li> <li>° Characteristics of cover material</li> <li>° Geologic and soils profiles</li> <li>° Surface and subsurface hydrology</li> </ul>	"	7:26-10.8(i)2	21
<p>Post closure care shall continue for 30 years after the date of completing the closure.</p>	General Post Closure Requirements	7:26-9.9(a) et seq.	2,3

<u>Requirement Summary</u>	<u>Prerequisite/Application</u>	<u>Regulatory Citation</u>	<u>Footnote</u>
A owner or operator must establish financial assurance.	Financial Requirements for Facility Post Closure Care.	7:26-9.11(a) <u>et seq.</u>	2,3,22
Maintain the function of the final cover, continue to operate the leachate collection system, maintain and monitor the leak detection system, prevent run-on and run-off, maintain gas collection system, maintain and monitor groundwater monitoring system, protect and maintain benchmarks, restrict access.	Specific Post Closure Requirements	7:26-10.8(1)5 <u>et seq.</u>	2,3, 21,24
Substantive requirements of permits to construct and of certificates to operate new or altered/air pollution control apparatus and equipment.	New or Altered Air Pollution Control Devices	7:27-8 <u>et seq.</u>	4,5
Requirements for the storage, transfer and use of toxic volatile organic substances.	Use of Listed Toxic Substances	7:27-17 <u>et seq.</u> 7:27-16 <u>et seq.</u>	
Requirements for toxic substance emissions from control apparatus.	Discharge of Toxic Volatile Organic Substances	7:27-17 <u>et seq.</u>	
Toxic Volatile Organic Compounds must be discharged from a point source at least 40 feet above grade and at least 20 feet higher than the nearest human use occupancy.	"	7:27-17.4 <u>et seq.</u>	

<u>Requirement Summary</u>	<u>Prerequisite/Application</u>	<u>Regulatory Citation</u>	<u>Footnote</u>
Substantive requirements of permits for the construction or alteration of any structure or permanent fill along, in, or across the channel or flood plain of any stream.	Construction Within a Flood Plain	7:13	6,7
Substantive requirements of permits for the development of the waterfront upon any navigable waterway. Waterfront development means docks, wharves, piers, bulkheads, bridges, pipelines and dredging operations.	"		8
Substantive requirements of NJPDES permits for discharge to the surface waters of the State.	Discharge to Surface Water	7:14A-1 et seq.	9,10,11,12
Substantive requirements of discharge allocation certificates which allocate the effluent limitations that the facility must meet initially.	"	7:14A-3.3	

<u>Requirement Summary</u>	<u>Prerequisite/Application</u>	<u>Regulatory Citation</u>	<u>Footnote</u>
Substantive requirements of NJPDES permits for discharge to the land or groundwater of the State.	Discharge to Land/ Groundwater	7:14A-1 et seq.	13,14
Substantive requirements of permits for diversion of more than 100,000 gallons of water per day (70 gpm) from surface or groundwaters.	Water Diversion	7:19 et seq.	15,16
Certain sewer systems are prohibited from accepting new tie-ins to sewer lines.	Sewerage Facility Tie-ins	7:9-13.1 et seq.	17
Substantive requirements of permits for the drilling, boring, coring or excavation of any well. All abandoned wells must be sealed.	Well Drilling and Sealing	7:9-9 et seq.	18
Owners or operators of new and existing major facilities and cleanup organizations must file with the NJDEP. Major facilities include but are not limited to any appurtenance that is used or capable of being used to refine, produce, store, handle, transfer, process or transport petroleum or other hazardous substances.	Storage and Transfer of Petroleum and Other Hazardous Substances	7:1E et seq.	19



Footnotes for Table A.2

1. In some cases, administrative requirements, such as permitting requirements are cited in this table. Although these administrative requirements are not ARARs, the substantive requirements are required to be met.
2. Statutory citation: N.J.S.A. 13:1E-1 et seq.. Also known as the Solid Waste Management Act.
3. Additional specific requirements may be found at N.J.A.C. 7:26-1 et seq.
4. Statutory citation: N.J.S.A. 26:2C-9.2 et seq.. Also known as the Air Pollution Control Act.
5. Additional specific requirements may be found at N.J.A.C. 7:27 et seq.
6. Statutory citation: N.J.S.A. 58:16A-50 et seq.. Also known as the Flood Hazard Area Control Act.
7. Additional specific requirements may be found at N.J.A.C. 7:8-3.5.
8. Statutory citation: N.J.S.A. 12:5-3.
9. Statutory citation: N.J.S.A. 58:10A-1 et seq.. Also known as the New Jersey Water Pollution Control Act.
10. Additional specific requirements may be found at N.J.A.C. 7:14A-1 et seq.
11. NJPDES Effluent Limitations for discharge to the surface waters of the State of New Jersey - N.J.A.C. 7:14A-1 et seq. In addition, N.J.A.C. 7:9-4.1 et seq. and 7:9-5.1 et seq. are regulatory citations containing substantive requirements of NJPDES permits for discharge to surface waters of the State. Additional substantive requirements are listed below.

Based on minimum requirements for Treatment of Wastewaters, N.J.A.C. 7:9-5.8 and N.J.A.C. 7:9-5.5, a minimum of 85% removal of Total Organic Carbon would be required for discharge to the Passaic River, which is classified as SE3 waters in the vicinity of the Site.

A total effluent toxicity limitation would be required, to be calculated after determination of the Critical Instream Concentration, using specified standard bioassay procedures and species pursuant to N.J.A.C. 7:9-5.7(a), N.J.A.C 7:9-4.6 and N.J.A.C. 7:18-6.

In the following table, where two numbers appear in the column, the limitation on the left indicates a monthly average limitation, with the number on the right indicating a daily maximum limitation.

(continuation of footnote 11)

BASE/NEUTRAL-ACID EXTRACTABLES

NJPDES Effluent  
Limitation (ug/l)

---

2,4,6-Trichlorophenol	115/260
2-Chlorophenol	35/125
2,4-Dichlorophenol	23/150
Phenol	17/40
1,2,4-Trichlorobenzene	45/90
Hexachlorobenzene	20/40
1,2-Dichlorobenzene	40/110
1,3-Dichlorobenzene	25/35
1,4-Dichlorobenzene	18/45
Fluoranthene	16
Naphthalene	35/105
Phenanthrene	35/105

VOLATILE ORGANICS

Benzene	21/57
Chlorobenzene	23/45
1,2-Dichloroethane	30/85
1,1,1-Trichloroethane	25/65
1,1-Dichloroethane	25/65
Chloroform	20/40
trans-1,2-Dichloroethene	25/65
Ethylbenzene	430
Toluene	18/35
Trichloroethene	25/65
Vinyl Chloride	25/65

(continuation of footnote 11)

HERBICIDES, PESTICIDES,  
AND PCBs

NJPDES Effluent  
Limitation (ug/l)

---

4,4-DDT <sup>a</sup>	0.001
4,4-DDE	14.0
Alpha-endosulfan	32/90
2,4-D	1500/3300
2,4-DB	14/25
Dinoseb (DNBP)	420/790
2,3,7,8-TCDD	BMDL *

INORGANIC PARAMETERS

Antimony	200/305
Arsenic	50/115
Beryllium	5.3
Cadmium	0.012
Chromium	44 tri 0.29 hex
Copper	4.0
Lead	0.75
Mercury	0.00057
Nickel	7.1
Silver	0.12
Zinc	47
Total Cyanide	3.5

OTHER PARAMETERS

Total Organic Carbon (TOC)	/40,000
Total Suspended Solids	30,000/50,000
pH (standard units)	6-9
Petroleum Hydrocarbons	10,000/15,000

\* BMDL means below minimum detection limit. Minimum detection limit for 2,3,7,8-TCDD as defined by 40 CFR 136 is 0.002 ppb.

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12. Treatment of Wastewaters - NJAC 7:14A-1 et seq., defines limitations for discharges of toxic substances to surface waters. The limitations listed below would apply to indirect discharges to surface waters prior to treatment by the Passaic Valley Sewerage Commission treatment plant. Where two numbers appear in the column, the limitation on the left indicates a monthly average for the monitoring days, with the limitation on the right indicating a daily maximum discharge limitation. The Passaic Valley Sewerage Commission may have additional restrictions.

BASE/NEUTRAL-ACID EXTRACTABLE COMPOUND	Treatment of waste water limitation (ug/l) for indirect discharge
2,4,6-Trichlorophenol	23/50
2-Chlorophenol	23/50
2,4-Dichlorophenol	23/50
Phenol	17/40
2,4,5-Trichlorophenol	23/50
1,2,4-Trichlorobenzene	55/130
Hexachlorobenzene	+
1,2-Dichlorobenzene	40/110
1,3-Dichlorobenzene	+
1,4-Dichlorobenzene	18/45
VOLATILE ORGANICS	
Benzene	21/57
Chlorobenzene	23/57
1,2-Dichloroethane	400/1,000
1,1,1-Trichloroethane	+

(continuation of footnote 12)

VOLATILE ORGANICS  
(continued)

Treatment of waste  
water limitation (ug/l)  
for indirect discharge

1,1-Dichloroethane	+
Chloroform	32/75
trans-1,2-Dichlorethene	+
Ethylbenzene	+
Methylene Chloride	160/560
Toluene	18/35
Trichloroethene	+
Vinyl Chloride	+

HERBICIDES, PESTICIDES,  
AND PCBs

4,4-DDT	0.012	++
4,4-DDE	0.004	++
4,4-DDD	0.0011	++
Alpha-endosulfan	32/90	
2,4-D	1500/3300	
2,4,5-T	790/1900	
2,4,-DB	14/25	
Dinoseb (DNBP)	420/790	
2,3,7,8-TCDD	0.002	++

INORGANIC PARAMETERS

Arsenic	1000/3000
Cadmium	260/690
Chromium	120/230
Copper	360/1100
Lead	400/600
Mercury	48/110
Nickel	170/360
Zinc	660/2200

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(continuation of footnote 12)

OTHER PARAMETERS

Treatment of waste  
water limitation (ug/l)  
for indirect discharge

pH (standard units)	6-9
Petroleum Hydrocarbons	100,000/150,000
Total Toxic Organics	2,130/2,130
Total Volatile Organics	+++

- + concentrations noted to be in TTO limitation.
- ++ below minimum detection limit as defined by 40 CFR 136.
- +++ toxic volatile organic substances. Mass limit shall be 0.1 lb/hr for individual compounds and 0.5 lb/hr for the sum total.

13. Statutory citation: N.J.S.A 58:10A-1 et seq.. Also known as the New Jersey Water Pollution Control Act.
14. Additional specific requirements may be found at N.J.A.C. 7:14A-1 et seq..
15. Statutory citation: N.J.S.A 58A:1 et seq.. Also known as the Water Supply Management Act.
16. Additional specific requirements may be found at N.J.A.C. 7:19 et seq..
17. Statutory citation: N.J.S.A. 58:10A-1 et seq.. Also known as the Water and Sewer Laws.
18. Statutory citation: N.J.S.A. 58:4A-5 et seq.. Also known as the Well Drilling and Pump Installers Licensing Act.
19. Statutory citation: N.J.S.A. 58:10-23.11 et al.. Also known as the Spill Compensation and Control Act.
20. The cited requirement for acute hazardous waste does not pertain to wastes which will not be managed in accordance with the RCRA land disposal ban (see page 77 of the ROD).
21. Alternatives to a vegetative cover which can be shown to be more appropriate shall not be precluded.
22. The cited requirement shall be deemed satisfied by compliance with the Section of the Consent Decree entitled "Assurance of Ability to Complete Work."
23. The cited requirement shall be a goal to be attained to the extent practicable.
24. The requirements of N.J.A.C. 7:26-10.8(i)5 et seq. for landfill liners and leachate collection do not pertain to this action.

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Table A.3

Other Cleanup Standards

BASE/NEUTRAL-ACID EXTRACTABLES	Health-Based Standards (see footnote for units)	Soil Cleanup(1) (ppb)
2,4,6-Trichlorophenol		
2-Chlorophenol		
2,4-Dichlorophenol		
Phenol		
Benzoic Acid		
2-Methylphenol		
4-Methylphenol		
2,4,5-Trichlorophenol		
Acenaphthene		
1,2,4-Trichlorobenzene		10,000
Hexachlorobenzene		10,000
2-Chloronaphthalene		10,000
1,2-Dichlorobenzene		10,000
1,3-Dichlorobenzene		10,000
1,4-Dichlorobenzene		10,000
Fluoranthene		10,000
Naphthalene		10,000
Bis(2-ethylhexyl)phthalate		10,000
Di-N-butylphthalate		10,000
Benzo(a)anthracene		10,000
Anthracene		10,000
Fluorene		10,000
Phenanthrene		10,000
Pyrene		10,000
Benzyl alcohol		10,000
2-Methylnaphthalene		10,000
 VOLATILE ORGANICS		
Benzene		1,000
Chlorobenzene		1,000
1,2-Dichloroethane		1,000
1,1,1-Trichloroethane		1,000
1,1-Dichloroethane		1,000
Chloroform		1,000
1,1-Dichloroethene		
trans-1,2-Dichloroethene		1,000
Ethylbenzene		1,000
Methylene Chloride		1,000
Tetrachloroethene		
Toluene		1,000
Trichloroethene		1,000

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VOLATILE ORGANICS  
(continued)

Health-Based  
Standards  
(see footnote  
for units)

Soil  
Cleanup(1)  
(ppb)

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Vinyl Chloride		1,000
Acetone		1,000
2-Butanone		1,000
Carbon Disulfide		1,000
4-Methyl-2-pentanone		1,000
Total xylenes		1,000

HERBICIDES, PESTICIDES,  
PCBs, ETC.

2,3,7,8-TCDD	1.0(2)	
2,3,7,8-TCDD	500(3)	

INORGANIC PARAMETERS

Arsenic		20,000
Cadmium		3,000
Chromium		100,000
Copper		170,000
Lead		400,000
Mercury		1,000
Nickel		100,000
Selenium		4,000
Silver		5,000
Zinc		350,000
Total Cyanide		12,000

OTHER PARAMETERS

Petroleum Hydrocarbons		100,000
Total Volatile Organics		1,000

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Footnotes for Table A.3

1. Soil Cleanup Standards - The concentrations noted in each organic category are for each compound individually or the total sum concentration of that class of compound, (e.g., the total concentration of base neutral compounds cannot exceed 10,000 ppb). Inorganic concentrations are for individual elements.
2. The concentration of 1.0 ppb of dioxin is a health-based soil cleanup standard.
3. The concentration of 500 nanograms per square meter for 2,3,7,8-TCDD is a cleanup standard to be employed during cleanup of surfaces contaminated with dioxin (e.g., trucks, backhoes, etc.). This standard for dioxin is to be employed to assess the performance of decontamination procedures.

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# Certificate of Insurance



THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES LISTED BELOW.

NAME AND ADDRESS OF AGENCY

**CORROON & BLACK OF ILLINOIS, INC.**  
135 SOUTH LA SALLE STREET  
CHICAGO, ILLINOIS 60603

**COMPANIES AFFORDING COVERAGES**

COMPANY LETTER **A** AMERICAN MOTORISTS INS. CO.

COMPANY LETTER **B** GRANITE STATE INSURANCE CO.

COMPANY LETTER **C**

COMPANY LETTER **D**

COMPANY LETTER **E**

NAME AND ADDRESS OF INSURED

**Chemical Waste Management, Inc.**  
900 Jorie Blvd.  
Oak Brook, IL 60521

This is to certify that policies of insurance listed below have been issued to the insured named above and are in force at this time. Notwithstanding any requirement, term or condition of any contract or other document with respect to which this certificate may be issued or may pertain, the insurance afforded by the policies described herein is subject to all the terms, exclusions and conditions of such policies.

COMPANY LETTER	TYPE OF INSURANCE	POLICY NUMBER	POLICY EXPIRATION DATE	Limits of Liability in Thousands (000)		
					EACH OCCURRENCE	AGGREGATE
A	<b>GENERAL LIABILITY</b> <input checked="" type="checkbox"/> COMPREHENSIVE FORM <input checked="" type="checkbox"/> PREMISES—OPERATIONS <input checked="" type="checkbox"/> EXPLOSION AND COLLAPSE HAZARD <input checked="" type="checkbox"/> UNDERGROUND HAZARD <input checked="" type="checkbox"/> PRODUCTS/COMPLETED OPERATIONS HAZARD <input checked="" type="checkbox"/> CONTRACTUAL INSURANCE <input checked="" type="checkbox"/> BROAD FORM PROPERTY DAMAGE <input checked="" type="checkbox"/> INDEPENDENT CONTRACTORS <input checked="" type="checkbox"/> PERSONAL INJURY	OYM 445335	1-1-83	BODILY INJURY	\$ 500	\$ 500
				PROPERTY DAMAGE	\$ 500	\$ 500
				BODILY INJURY AND PROPERTY DAMAGE COMBINED	\$	\$
				PERSONAL INJURY		\$ 500
A	<b>AUTOMOBILE LIABILITY</b> <input checked="" type="checkbox"/> COMPREHENSIVE FORM <input checked="" type="checkbox"/> OWNED <input checked="" type="checkbox"/> UNINSURED <input checked="" type="checkbox"/> NON-OWNED	OZM 445335	1-1-83	BODILY INJURY (EACH PERSON)	\$ 500	
				BODILY INJURY (EACH ACCIDENT)	\$ 500	
				PROPERTY DAMAGE	\$ 500	
				BODILY INJURY AND PROPERTY DAMAGE COMBINED	\$	
B	<b>EXCESS LIABILITY</b> <input checked="" type="checkbox"/> UMBRELLA FORM <input type="checkbox"/> OTHER THAN UMBRELLA FORM	6680-7652	10-1-81	BODILY INJURY AND PROPERTY DAMAGE COMBINED	\$5,000	\$5,000
A	<b>WORKERS' COMPENSATION and EMPLOYERS' LIABILITY</b> OTHER	OCM 445335	1-1-83	STATUTORY	\$ 500,000	

**DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES** Marisol, Inc. is named as an Additional Named Insured as respects property leased by the Insured located at 86-92 Lister Avenue, REFUSE COLLECTION Newark, New Jersey.  
**ALL AUTOMOTIVE EQUIPMENT OWNED AND/OR OPERATED BY THE INSURED**

**Cancellation:** Should any of the above described policies be cancelled before the expiration date thereof, the issuing company will endeavor to mail 90 days written notice to the below named certificate holder, but failure to mail such notice shall impose no obligation or liability of any kind upon the company.

NAME AND ADDRESS OF CERTIFICATE HOLDER:  
**Marisol, Inc.**  
 125 Factory Lane  
 Middlesex, New Jersey  
 Attn: Peter Nerger

DATE ISSUED: 6/1/81  
  
 AUTHORIZED REPRESENTATIVE