



State of New Jersey

Department of Environmental Protection

Christine Todd Whitman
Governor

Robert C. Shinn, Jr.
Commissioner

COPY - FOR YOUR INFORMATION
PLEASE DISCARD AFTER REVIEW

IN THE MATTER OF
THE ALBERT STEEL DRUM SITE
AND
PRENTISS INCORPORATED
Respondent

ADMINISTRATIVE
CONSENT
ORDER

This Administrative Consent Order is issued pursuant to the authority vested in the Commissioner of the New Jersey Department of Environmental Protection (hereinafter "the Department" or "DEP") by N.J.S.A. 13:1D-1 et seq., and the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq., the Solid Waste Management Act, N.J.S.A. 13:1E-1 et seq., and the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11 et seq. and duly delegated to the Assistant Director, Division of Responsible Party Site Remediation pursuant to N.J.S.A. 13:1B-4.

Received & Recorded
Essex County, NJ
AUG 02 03:35 PM '92
Carole A. Graves
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FINDINGS

1. The 13.7 acre property that is the subject of this Administrative Consent Order is located at 324-398 Wilson Avenue in the City of Newark, Essex County, New Jersey. It is designated as Block 5038, Lots 70, 108 and 109 on the tax maps of Newark (hereinafter the "Site"). The Site is located southeast of downtown Newark in a heavily industrialized area and is bordered on the north and northeast by Wilson Avenue, to the southeast by the former New Jersey Central Railroad, Welch, Holme & Clark Co. and Troy Chemical Corporation, Inc., and to the west by Avenue L. The central 9.3 acre portion of the Site is inactive and contains several building foundations. One of these building foundations belonged to a two-story brick building located in the northwest corner of the Site (hereinafter "the Building") that was previously leased by Prentiss Drug and Chemical Co., Inc., now known as Prentiss Incorporated (hereinafter "Prentiss" or "Respondent"), a New York corporation, currently located at 21 Vernon Street, P.O. Box CB2000, Floral Park, NY 11001-2714. The Housing Authority of the City of Newark is the current owner of the Site.

2. Prentiss formulated biocides and Meelium (an ingredient in deodorants and air fresheners) at the Building from approximately 1956 to approximately August, 1982. Pesticides known to be handled by Prentiss at the Building include lindane, methoxychlor, chlordane and malathion. Lindane is listed by the U.S.E.P.A. as a Class II Pesticide Chemical. An inspection conducted by the Department on June 7, 1977 revealed floor

drains in the Building connected to the ground surface outside the building.

3. The Remedial Investigation Report for the Site dated March, 1993 prepared by TRC Environmental Corporation for the Department reported biocides in the Site soils. Specific contaminants detected include, but are not limited to, lindane, chlordane, methoxychlor and 2,3,7,8-TCDD.

4. On March 15, 1995, the Department issued a Directive and Notice to Insurers to Prentiss and American Cyanamid Company. The Directive alleged that Prentiss and American Cyanamid are responsible for contamination at the Site and directed them to arrange for the cleanup and removal of the discharges at the Site by paying the Department \$9,180,000 to demolish the structurally unsound building and conduct remedial design and construction activities.

5. Prentiss and Cytec Industries, Inc., which has assumed the responsibility for sites related to the former chemicals business operations of American Cyanamid, agreed to conduct the demolition of the structurally unsound building in a letter to the Department dated April 26, 1995. The building was demolished by Prentiss and Cytec under an Administrative Consent Order dated June 30, 1995.

6. By letter dated April 18, 1996, Prentiss advised the Department that it is prepared to enter into an Administrative Consent Order to remediate the approximately 1.2 acre area around the Building.

7. By entering this Administrative Consent Order, Prentiss neither admits to any fact, fault or liability under any statute or regulation concerning the condition of the Site nor waives any rights or defenses with regard to the Site except as specifically provided in this Administrative Consent Order, nor consents to the Findings in the Administrative Consent Order or the accuracy of the information in the Department's public files referenced in paragraph eight (8) below. Prentiss specifically denies that it used Arsenic at the Site or that it is otherwise responsible for Arsenic at the Site.

8. All of the Department's public files concerning the Site are incorporated herein and made a part hereof.

9. The scope of the remediation required by this Administrative Consent Order ("ACO") is limited to the arsenic, pesticides and dioxin contamination in soils in the approximately 1.2 acre area surrounding the building. In addition, Prentiss agrees to pay the Department \$160,116 toward the capping of the Site which will be conducted by the Department after the whole Site is fully remediated.

10. At such time as the Department determines that Prentiss has completed the remediation required by this ACO, the Department will issue a letter stating that no further action is required for the soils in the 1.2 acre area surrounding the building. The Department's issuance of a final NFA for the 1.2 acre area surrounding the building will evidence the Department's determination that Prentiss has made a good faith response to

the March 15, 1995 Directive for the soils in the 1.2 acre area surrounding the building.

ORDER

I. Remedial Action

11. Within forty-five (45) calendar days from the effective date of this ACO, Prentiss shall submit a cashier's or certified check to the Department payable to "Treasurer, State of New Jersey" in the amount of \$160,116. This check will cover the cost of capping the soils in the 1.2 acre section of the Site that Prentiss will remediate under this ACO.

12. Within ten (10) calendar days after the effective date of this ACO, Prentiss shall submit to the Department a detailed draft Remedial Action Work Plan for the excavation and off-site disposal of soils contaminated with arsenic, pesticides and dioxin in accordance with N.J.A.C. 7:26E and the Decision Document dated June 19, 1994.

13. Within ten (10) calendar days after receipt of the Department's written comments on the draft Remedial Action Work Plan, or longer as authorized by the Department, Prentiss shall modify the draft Remedial Action Work Plan to conform to the Department's comments and shall submit the modified Remedial Action Work Plan to the Department. The determination as to whether or not the modified Remedial Action Work Plan, as resubmitted, conforms to the Department's comments and is otherwise acceptable to the Department shall be made solely by the Department in writing.

14. Upon receipt of the Department's written final approval of the Remedial Action Work Plan, Prentiss shall implement the approved Remedial Action Work Plan in accordance with the schedule therein.

15. Prentiss shall submit to the Department a draft Remedial Action Report (hereinafter "RA Report") in accordance with N.J.A.C. 7:26E and the Remedial Action Work Plan and the schedule therein.

16. If upon review of the draft RA Report the Department determines that additional remedial action is required, Prentiss shall conduct additional remedial action as directed by the Department and shall submit a second draft RA Report.

17. Within thirty (30) calendar days after receipt of the Department's written comments on the draft or second draft (if applicable pursuant to the preceding paragraph) RA Report, or longer as authorized by the Department, Prentiss shall modify the draft or second draft RA Report to conform to the Department's comments and shall submit the modified RA Report to the Department. The determination as to whether or not the modified RA Report, as resubmitted, conforms with the Department's comments and is otherwise acceptable to the Department shall be made solely by the Department in

writing.

II. Additional Remedial Investigation and Remedial Action

18. If at any time that this ACO is in effect the Department determines that the prevailing standards in N.J.A.C. 7:26E are not being achieved or that additional remedial investigation and/or remedial action is required to protect human health or the environment, Prentiss shall conduct such additional activities as directed by the Department.

III. Permit Application Process for Remedial Activities

19. Within thirty (30) calendar days after receipt of the Department's written notification regarding the Department's approval of the Remedial Action Work Plan, Prentiss shall submit to the Department a detailed draft permit application submission schedule in accordance with N.J.A.C. 7:26E for all relevant federal, State and local permit applications, certifications or modifications necessary to implement the selected remedial action.

20. Upon receipt of the Department's written approval of the permit application schedule, Prentiss shall carry out the permit application process in accordance with the approved schedule.

21. Prentiss shall submit complete applications for all federal, State and local permits or permit modifications required to carry out the obligations of this ACO in accordance with the approved schedules.

22. Within thirty (30) calendar days after Prentiss' receipt of written comments from the permitting agency concerning any permit application to a federal, State, or local agency, or within a time period extended in writing by the Department, Prentiss shall modify the permit application to conform to the permitting agency's comments and resubmit the permit application to the agency. The determination as to whether or not the permit application, as resubmitted, conforms with the agency's comments or is otherwise acceptable to the agency shall be made solely by the agency.

23. The terms and conditions of any federal, State or local permit or permit modification issued to Prentiss shall not be preempted by the terms and conditions of this ACO even if the terms and conditions of any such permit or permit modification are more stringent than the terms and conditions of this ACO.

24. To the extent that the terms and conditions of any federal, State or local permit or permit modification are substantially equivalent to the terms and conditions of this ACO, Prentiss waives any rights it may have to contest such terms and conditions of any

such permit.

IV. Project Coordination

25. Respondent shall submit to the Department all documents required by this Administrative Consent Order, including correspondence relating to force majeure issues, by delivery with an acknowledgement of receipt from the Department. The date that the Department executes the acknowledgement will be the date the Department uses to determine Respondent's compliance with the requirements of this Administrative Consent Order and the applicability of stipulated penalties and any other remedies available to the Department.

26. Within seven (7) calendar days after the effective date of this Administrative Consent Order, Respondent shall submit to the Department the name, title, address and telephone number of the individual who shall be Respondent's technical contact for the Department for all matters concerning this Administrative Consent Order and Respondent shall designate an agent for the purpose of service for all matters concerning this Administrative Consent Order and shall provide the Department with the agent's name and address.

27. Unless otherwise directed in writing by the Department, Respondent shall submit all payments and three (3) copies of all documents required by this Administrative Consent Order to the individual identified below, who shall be the Department's contact for Respondent for all matters concerning this Administrative Consent Order:

New Jersey Department of Environmental Protection
Bureau of Site Management
401 East State Street - 6th floor
CN 413
Trenton, New Jersey 08625
Attn: Mr. Anil Singh

28. Respondent shall notify, both verbally and in writing, the contact person listed above at least fourteen (14) calendar days prior to the initiation of any field activities.

V. Remediation Funding Source

29. Respondent shall establish and maintain a remediation funding source in a form acceptable to the Department in the amount of \$192,250. The remediation funding source shall conform with the requirements of P.L.1993, c.139 and this Administrative Consent Order.

30. At any time, Respondent may apply to the Department to substitute other remediation funding sources in a form, and manner acceptable to the Department.

31. Upon the Department's approval of the Report, the Respondent shall amend the amount of the remediation funding source, specified above, to equal the estimated cost of implementation of the approved activities required by this Administrative Consent Order, or shall provide such other remediation funding source as may be approved by the Department in an amount equal to the estimated cost of implementation of the approved activities required by this Administrative Consent Order.

VI. Project Cost Review

32. Beginning ninety (90) calendar days after the effective date of this Administrative Consent Order, and quarterly thereafter on the same calendar day, Respondent shall submit to the Department a detailed review of all costs required for Respondent's compliance with this Administrative Consent Order, including:

(a) A detailed summary of all monies spent to date pursuant to this Administrative Consent Order;

(b) The estimated cost of all future expenditures required to comply with this Administrative Consent Order; and

(c) The reason for any changes from the previously submitted cost review.

33. At any time after Respondent submits the first cost review pursuant to the preceding paragraph, Respondent may request the Department's approval to reduce the amount of the remediation funding source to reflect the remaining costs of performing the obligations under this Administrative Consent Order. If the Department grants written approval of such a request, Respondent may amend the amount of the then existing remediation funding source consistent with that approval.

34. If the estimated costs of meeting Respondent's obligations in this Administrative Consent Order at any time increase to an amount greater than the remediation funding source Respondent shall:

(a) Within thirty (30) calendar days after receipt of written notice of the Department's determination, increase the amount of the then existing remediation funding source or provide additional remediation funding source to an amount equal to the Department's approved estimated cost; and

(b) Upon notification from the Department pursuant to paragraph eighty-two (82) that the obligations of the Administrative Consent Order have been satisfied, Respondent shall be relieved of any further obligation to maintain in full force and effect the remediation funding source required by this Administrative Consent Order for the site which is the subject of this Administrative Consent Order. Upon the Department's written

approval of the completion of any remediation required by this Administrative Consent Order, as verified by final site inspection and upon Respondent's satisfaction of all financial obligations in connection therewith, Respondent shall be relieved of any further obligation to maintain in full force and effect the remediation funding source required by this Administrative Consent Order for the site at which the approved remediation has been completed.

VII. Oversight Cost Reimbursement

35. Within thirty (30) calendar days after receipt from the Department of a written summary of the Department's oversight costs, including all accrued interest incurred pursuant to the paragraph below, determined pursuant to N.J.A.C. 7:26C Appendix I, Respondent shall submit to the Department a cashier's or certified check payable to the "Treasurer, State of New Jersey" and submitted with DEPE Form 062A, for the full amount of the Department's oversight costs, for the period being charged.

36. Interest shall accrue on the unpaid balance of oversight costs, beginning at the end of the thirty (30) calendar day period established in the preceding paragraph, at the rate established by Rule 4:42 of the current edition of the Rules Governing the Courts of the State of New Jersey.

VIII. Stipulated Penalties

37. Respondent agrees to pay stipulated penalties to the Department for Respondent's failure to comply with any of the deadlines, schedules or requirements of this Administrative Consent Order including those established and approved by the Department in writing pursuant to this Administrative Consent Order. Each day of violation for each deadline, schedule or requirement not complied with shall be an additional, separate and distinct violation. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Administrative Consent Order. Each signatory to this Administrative Consent Order shall be jointly and severally liable for stipulated penalties for violations of this Administrative Consent Order which result in the Department's issuance of a demand for stipulated penalties.

38. Stipulated penalties shall begin to accrue on the first calendar day after the performance is due or noncompliance occurs and not at the time the Department gives notice of the violation or non-compliance to Respondent or issues a written demand for stipulated penalties. Stipulated penalties shall then continue to accrue through the final day of correction of the non-compliance. The Department may determine that a submittal of insufficient quality constitutes non-compliance and one or more violations of this Administrative Consent Order. Stipulated penalties for such violations shall accrue from the date Respondent made the submission for sixty (60) calendar days, unless the

Department provides Respondent with written notice that stipulated penalties for such violations continue to accrue beyond that sixty (60) day period. In which case stipulated penalties will continue to accrue until Respondent corrects the non-compliance.

39. Respondent's payment of stipulated penalties for failure to comply with the deadlines, schedules and requirements associated with the major deliverables and tasks required by this Administrative Consent Order, as identified below, shall be made according to this paragraph:

(a) Major violations include Respondent's failure, according to the schedules in the Administrative Consent Order, to:

- i. Submit any remedial investigation workplans;
- ii. Implement any approved remedial investigation workplan;
- iii. Satisfy any remediation funding source requirement;
- iv. Failure to allow the Department or its authorized agents access to the site;
- v. Implementation and recording of permanent use and/or access restrictions; and
- vi. Reimbursement of oversight costs, including prior costs.

(b) Respondent agrees to pay stipulated penalties for the major violations, identified in (a) above, up to the following amounts as determined by the Department:

Calendar Days After Due Date	Stipulated Penalties per Calendar Day
1 - 14	\$ 1,000
15 - 29	\$ 2,500
30 - 44	\$ 5,000
45 - 59	\$ 10,000
60 - over	\$ 25,000

(c) Respondent agrees to pay stipulated penalties for all other violations, not identified in (a) above, up to the following amounts as determined by the Department:

Calendar Days After Due Date	Stipulated Penalties per Calendar Day
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1 - 14	\$ 200
15 - 29	\$ 500
30 - 44	\$ 1,000
45 - 59	\$ 5,000
60 - over	\$ 10,000

40. Stipulated penalties shall be due and payable thirty (30) calendar days after Respondent's receipt of a written demand by the Department. Respondent shall make payment of stipulated penalties by a cashier's or certified check payable to the "Treasurer, State of New Jersey" submitted with DEPE Form 062A, and the payment shall be accompanied by a letter referencing this Administrative Consent Order and the Department's written demand for stipulated penalties.

41. Respondent shall regard payments of stipulated penalties pursuant to this Administrative Consent Order as payments of civil or civil administrative penalties.

42. The payment of stipulated penalties does not alter Respondent's responsibility to complete any requirement of this Administrative Consent Order.

43. If Respondent fails to pay stipulated penalties pursuant to this section, the Department may take enforcement action, including without limitation, instituting civil proceedings to collect such penalties or assessing civil administrative penalties.

IX. Reservation of Rights

44. The Department reserves the right to unilaterally terminate this Administrative Consent Order in the event Respondent violates the terms of this Administrative Consent Order provided, however, that before the Department takes this action, the Department shall notify Respondent in writing of the obligation(s) which it has not performed, and Respondent shall have thirty (30) calendar days after receipt of such notice, unless extended in writing by the Department, to remedy the failure to perform such obligation(s).

45. Nothing in this Administrative Consent Order shall preclude the Department from seeking civil or civil administrative penalties, costs and damages or any other legal or equitable relief against Respondent. The Department reserves the right to conduct any remediation itself at any time.

46. Nothing in this Administrative Consent Order, including the Department's assessment of stipulated penalties, shall preclude the Department from seeking civil or civil administrative penalties or any other legal or equitable relief against Respondent for violations of this Administrative Consent Order. In any such action brought by the Department under this Administrative Consent Order for injunctive relief, civil, or

civil administrative penalties or collection of stipulated penalties, Respondent may raise, among other defenses, a defense that Respondent failed to comply with a decision of the Department, made pursuant to this Administrative Consent Order, on the basis that the Department's decision was arbitrary, capricious or unreasonable. If Respondent is successful in establishing such a defense based on the administrative record, Respondent shall not be liable for penalties for failure to comply with that particular requirement of the Administrative Consent Order. Similarly, in the event that Respondent prevails in any proceeding in which Respondent alleges that the Department acted arbitrarily, capriciously, or unreasonably in exercising its right under to draw on the remediation funding source, the Department will refund, to the account of the remediation funding source the amount of the funds so drawn. Although Respondent may raise such defenses in any action initiated by the Department for injunctive relief or stipulated penalties, Respondent hereby agrees not to otherwise seek review of any decision made or to be made by the Department pursuant to this Administrative Consent Order and under no circumstances shall Respondent initiate any action or proceeding challenging any decision made or to be made by the Department pursuant to this Administrative Consent Order.

47. This Administrative Consent Order shall not be constructed to affect or waive the claims of federal or State natural resources trustees against any person for damages for injury to, destruction of, or loss of natural resources, unless expressly provided herein, and then only to the extent expressly provided herein.

48. The Department reserves the right to require Respondent to take or arrange for the taking of any and all additional measures if the Department determines that such actions are necessary to protect human health or the environment.

49. Notwithstanding any other provision of this Administrative Consent Order, Respondent reserves its right to challenge, as a contested case pursuant to N.J.S.A. 52:14B-1 et seq., that the Department's draw on the remediation funding source provided pursuant to this Administrative Consent Order was arbitrary, capricious or unreasonable; Respondent agrees, however, not to initiate any such challenge until after the Department has corrected or implemented the requirement of this Administrative Consent Order which was the focus of the Department's draw. The Department reserves its right to contest any such action.

50. Except as otherwise stated in this Administrative Consent Order, nothing herein shall be construed as limiting any legal, equitable or administrative remedies which the party conducting remediation may have under any applicable law or regulation. In any enforcement action the Department initiates pursuant to this Administrative Consent Order, Respondent reserves any defenses which the Spill Compensation and Control Act, Matter of Kimber Petroleum Corp., 110 N.J. 69 (1988) or their amendments, supplements and progeny allow.

X. Force Majeure

51. If any event specified in the following paragraph occurs which Respondent believes or should believe will or may cause delay in the compliance or cause non-compliance with any provision of this Administrative Consent Order, Respondent shall notify the Department in writing within seven (7) calendar days of the start of delay or knowledge of the anticipated delay, as appropriate, referencing this paragraph and describing the anticipated length of the delay, the precise cause or causes of the delay, any measures taken or to be taken to minimize the delay, and the time required to take any such measures to minimize the delay. Respondent shall take all necessary action to prevent or minimize any such delay.

52. The Department will extend in writing the time for performance for a period no longer than the delay resulting from such circumstances as determined by the Department only if:

- (a) Respondent has complied with the notice requirements of the preceding paragraph;
- (b) Any delay or anticipated delay has been or will be caused by fire, flood, riot, strike or other circumstances beyond the control of Respondent; and
- (c) Respondent has taken all necessary action to prevent or minimize any such delay.

53. The burden of proving that any delay is caused by circumstances beyond the control of Respondent and the length of any such delay attributable to those circumstances shall rest with Respondent.

54. "Force Majeure" shall not include the following:

- (a) Delay in an interim requirement with respect to the attainment of subsequent requirements;
- (b) Increases in the cost or expenses incurred by Respondent in fulfilling the requirements of this Administrative Consent Order;
- (c) Contractor's breach, unless Respondent demonstrates that such breach falls within the above paragraphs; and
- (d) Failure to obtain access required to implement this Administrative Consent Order, unless denied by a court of competent jurisdiction.

XI. Dispute Resolution

55. In the event a conflict arises between Respondent and the Department, Respondent may institute the Department's internal process for resolving disputes. The initial step requires that Respondent notify the assigned case manager of the issue(s) that is (are) in dispute. If Respondent and the Department cannot resolve the dispute, Respondent has the option to contact the assigned case manager's supervisor. If the dispute cannot be resolved at that level, it will continue up the chain of command to the Bureau Chief, Assistant Director, Director, Assistant Commissioner and Commissioner or his or her designee, as necessary.

XII. General Provisions

56. Respondent shall, in addition to any other obligation required by law, notify the Department contact identified in this Administrative Consent Order immediately upon knowledge of any condition posing an immediate threat to human health and the environment. The Department reserves the right to stop any construction, improvement(s), or change(s) at the site(s) subject to this Administrative Consent Order, due to the immediate threat caused by contaminants, the disturbance of which would or may cause a threat to human health and the environment as determined by the Department.

57. In the event that the Department determines that a meeting concerning the remediation of the site is necessary at any time, Respondent shall ensure that Respondent's appropriate representative is prepared and available for, and participates in such a meeting upon written notification from the Department of the date, time and place of such meeting.

58. In addition to the Department's statutory and regulatory rights to enter and inspect, Respondent shall allow the Department and its authorized representatives access to all areas of the Site Respondent has access to at all times for the purpose of monitoring Respondent's compliance with this Administrative Consent Order and/or to perform any remedial activities Respondent fails to perform as required by this Administrative Consent Order.

59. Respondent shall not construe any informal advice, guidance, suggestions, or comments by the Department, or by persons acting on behalf of the Department, as relieving Respondent of their obligation to obtain written approvals as required herein.

60. Respondent shall perform all work conducted pursuant to this Administrative Consent Order in accordance with prevailing professional standards.

61. Respondent shall provide a copy of this Administrative Consent Order to each contractor and subcontractor retained to perform the work required by this Administrative Consent Order and shall condition all contracts and subcontracts entered for the performance of such work upon compliance with the terms and conditions of this Administrative Consent Order. Respondent shall be responsible to the Department for ensuring that its contractors and subcontractors perform the work herein in accordance with this Administrative Consent Order.

62. Respondent shall conform all actions required by this Administrative Consent Order with all applicable federal, State and local laws and regulations.

63. Nothing in this Administrative Consent Order shall relieve Respondent from complying with all other applicable laws and regulations. Compliance with the terms of this Administrative Consent Order shall not excuse Respondent from obtaining and complying with any applicable federal, state or local permits, statutes, regulations and/or orders while carrying out the obligations imposed by this Administrative Consent Order. This Administrative Consent Order shall not preclude the Department from requiring that Respondent obtain and comply with any permits, and/or orders issued by the Department under the authority of the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq., the Solid Waste Management Act, N.J.S.A. 13:1E-1 et seq., and the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11 et seq., for the matters covered herein. The terms and conditions of any such permit shall not be preempted by the terms and conditions of this Administrative Consent Order if the terms and conditions of any such permit are more stringent than the terms and conditions of this Administrative Consent Order.

64. All work plans and documents required by this Administrative Consent Order and approved in writing by the Department are incorporated herein and made a part hereof.

65. Respondent shall preserve all potential evidentiary documentation found at the site which may provide a nexus between the contaminated site and any responsible party or lead to the discovery of other areas of concern until written approval is received from the Department to do otherwise, including without limitation, documents, labels, drums, bottles, boxes or other containers, and/or other physical materials that could lead to the establishment of the identity of any person which generated, treated, transported, stored or disposed of contaminants at the site.

66. Upon the receipt of a written request from the Department, Respondent shall submit to the Department all data and information, including technical records and contractual documents, concerning contamination at the site, including raw sampling and monitor data, whether or not such data and information, including technical records and contractual documents, was developed pursuant to this Administrative Consent Order. Respondent reserves their right to assert a privilege regarding such documents, but agrees not to assert any confidentiality or privilege claim with respect to any data related

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to site conditions, sampling or monitoring.

67. Obligations and penalties of this Administrative Consent Order are imposed pursuant to the police powers of the State of New Jersey for the enforcement of law and the protection of the human health, safety and welfare and are not intended to constitute debt or claims which may be limited or discharged in a bankruptcy proceeding.

68. Respondent hereby consents to and agrees to comply with this Administrative Consent Order which shall be fully enforceable as an Order in the New Jersey Superior Court pursuant to the Department's statutory authority.

69. No modification or waiver of this Administrative Consent Order shall be valid except by written amendment to this Administrative Consent Order duly executed by Respondent and the Department. Any amendment to this Administrative Consent Order shall be executed by the Department and Respondent. The Department reserves the right to require the resolution of any outstanding violations of the rules or this Administrative Consent Order prior to executing any such amendment.

70. Respondent waives their rights to an administrative hearing concerning the entry of this Administrative Consent Order.

71. This Administrative Consent Order shall be governed and interpreted under the laws of the State of New Jersey.

72. If any provision of this Administrative Consent Order or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Administrative Consent Order or the application of such provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby and each provision of this Administrative Consent Order shall be valid and enforced to the fullest extent permitted by law.

73. This Administrative Consent Order represents the entire integrated agreement between the Department and Respondent concerning the Site subject to this Administrative Consent Order and supersedes all prior negotiations, representations or agreements, either written or oral, unless otherwise specifically provided herein.

74. Within thirty (30) calendar days after the effective date of this Administrative Consent Order, Respondent shall record a copy of this Administrative Consent Order with the County Clerk, Essex County, State of New Jersey and shall provide the Department with written verification of compliance with this paragraph which shall include a copy of this Administrative Consent Order stamped "Filed" by the County Clerk.

75. This Administrative Consent Order shall not be construed to be a permit or in lieu of a permit for any activities which require permits and it shall not relieve

from obtaining and complying with all applicable federal, State and local permits necessary for any activities which Respondent must perform in order to carry out all obligations of this Administrative Consent Order.

76. The Site or any portion thereof may be freely alienated provided that Respondent, if owner(s) of the site, comply with the requirements in this paragraph and all other applicable laws.

(a) Any contract to alienate the site shall require the grantee to allow the implementation and continuation of all activities and obligations pursuant to this Administrative Consent Order and to allow Respondent, the Department and its authorized representatives access to the site for purposes of such activities and obligations. Any alienation shall not affect Respondent's obligations under this Administrative Consent Order.

(b) Respondent shall include in any instrument of conveyance, including but not limited to a deed, title, lease, easement or license for the site a written notice that the site is the subject of this Administrative Consent Order. Any such instrument of conveyance shall be subject to the requirements set forth in this Administrative Consent Order regarding the use of the site and deed restrictions.

77. This Administrative Consent Order shall be binding, jointly and severally, on each party, its successors, assignees and any trustee in bankruptcy or receiver appointed pursuant to a proceeding in law or equity. No change in the ownership or corporate status of any party or of the facility or site shall alter Respondent's responsibilities under this Administrative Consent Order.

78. Respondent shall preserve, during the pendency of this Administrative Consent Order and for a minimum of ten (10) years after its termination, all data and information, including technical records, potential evidentiary documentation and contractual documents, in its possession or in the possession of their divisions, employees, agents, accountants, contractors, or attorneys which relate in any way to the contamination at the site, despite any document retention policy to the contrary. After this ten year period, Respondent may make a written request to the Department to discard any such documents. Such a request shall be accompanied by a description of the documents involved, including the name of each document, date, name and title of the sender and receiver and a statement of contents. Upon receipt of written approval by the Department, Respondent may discard only those documents that the Department does not require to be preserved for a longer period. Upon receipt of a written request by the Department, Respondent shall submit to the Department all data and information, including technical records and contractual documents or copies of the same. Respondent reserves whatever rights they may have, if any, to assert any privilege regarding such data or information, however, Respondent agrees not to assert any privilege or confidentiality claims with respect to any data related to site conditions, sampling, or monitoring.

79. Respondent agrees not to contest the authority or jurisdiction of the Department to issue this Administrative Consent Order; Respondent further agree not to contest the terms or conditions of this Administrative Consent Order except as to interpretation or application of such specific terms and conditions that are being enforced in any action brought by the Department to enforce the provisions of this Administrative Consent Order.

80. Respondent shall provide to the Department written notice of the dissolution of its corporate or partnership identity, the liquidation of the majority of its assets or the closure, termination or transfer of operations at least thirty (30) calendar days prior to such action. Upon such notice, Respondent shall submit a cost review pursuant to this Administrative Consent Order to the Department. Respondent shall also provide written notice to the Department of a filing of a petition for bankruptcy no later than the first business day after such filing. This requirements shall be in addition to any other statutory requirements arising from the dissolution of corporate or partnership identity, the liquidation of the majority of assets, or the closure, termination or transfer of operations. Upon receipt of notice of dissolution of corporate identity, liquidation of assets or filing of a petition for bankruptcy, the Department may request and, within fourteen (14) days of the Department's written request, the Respondent shall obtain and submit to the Department additional remediation funding source pursuant to this Administrative Consent Order.

81. This paragraph will only be applicable when any signatory to the Administrative Consent Order is the owner of the site and/or at such time that the signatory becomes an owner of the site. Respondent shall not make any use of the site or take any actions at the site inconsistent within this Administrative Consent Order. Respondent shall impose such use and/or access restrictions as may be deemed necessary by the Department. The use and access restrictions are to run with the land and be for the benefit of and enforceable by the Department and any citizen which is or may be damaged as a result of violations of the use and access restrictions. The use and access restrictions shall provide actual and constructive notice to any subsequent grantee of the locations and concentrations of all contaminants which remain at the site and of the use and access restrictions imposed. Within thirty (30) calendar days after 's receipt of a written request from the Department, shall record the restrictions with the Essex County Clerk, Essex County, State of New Jersey, and provide the Department with a copy of this Administrative Consent Order stamped "Filed" by the Essex County Clerk.

82. Except as otherwise provided, the requirements of this Administrative Consent Order shall be deemed satisfied upon the receipt by Respondent of written notice from the Department that Respondent has demonstrated, to the satisfaction of the Department, that Respondent has completed the substantive and financial obligations imposed by this Administrative Consent Order. Such written notice shall not relieve Respondent from the obligation to conduct future investigation or remediation activities pursuant to federal, State or local laws for matters not addressed by this Administrative Consent Order.

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83. Except as otherwise set forth herein, by the execution of this Administrative Consent Order the Department does not release Respondent from any liabilities or obligations such person may have pursuant to any other authority, nor does the Department waive any of its rights or remedies pursuant thereto.

84. Respondent shall submit to the Department, along with the executed original Administrative Consent Order, documentary evidence in the form of a corporate resolution, that the signatory has the authority to bind Respondent to the terms of this Administrative Consent Order.

85. The Department will consider a request for an extension of time to perform any requirement under this Administrative Consent Order, provided that any extension request is submitted to the Department two weeks prior to any applicable deadline to which the extension request refers.

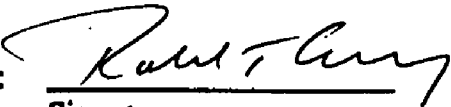
86. Respondent may assert a claim of confidentiality for any information submitted pursuant to this Administrative Consent Order by following the Department's procedures in N.J.A.C. 7:14A-11.

87. Respondent expressly agrees that in the event that Respondent fails or refuses to perform any obligation(s) under this Administrative Consent Order as determined by the Department, the Department shall have the right to exercise any option or combination of options available to the Department under this Administrative Consent Order, or any statute.

88. This Administrative Consent Order shall be effective upon the execution of this Administrative Consent Order by the Department and Respondent. The Respondent shall return a fully executed Administrative Consent Order to the Department together with the remediation funding source required by Paragraph twenty-nine (29) above, and signature authorization required by Paragraph eighty-four (84) above.


Date: 7/23/96

NEW JERSEY DEPARTMENT OF ENVIRONMENTAL
PROTECTION

BY: 
Signature
RONALD T. CORCORAN
Print Full Name Signed Above
AST DIRECTOR
Title

Date: 7/12/96

PRENTISS INCORPORATED

BY: 
Signature
RICHARD A. MILLER
Print Full Name Signed Above
PRESIDENT

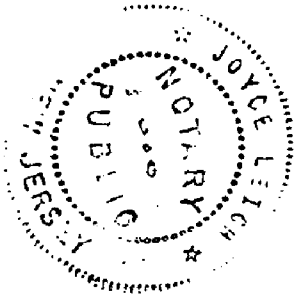
00042076 113

ACKNOWLEDGEMENT OF SIGNATURE

I swear that on the 23rd day of July, 1996 and in my presence
Ronald T. Corcory did affix his signature to this Administrative Consent Order.

Joyce Leigh
Signature of Notary/Seal

JOYCE LEIGH
NOTARY PUBLIC OF NEW JERSEY
My Commission Expires August 18, 1998





UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2
290 BROADWAY
NEW YORK, NY 10007-1866

AUG 24 2006

**GENERAL NOTICE LETTER
URGENT LEGAL MATTER
PROMPT REPLY NECESSARY
CERTIFIED MAIL-RETURN RECEIPT REQUESTED**

President
Prentiss, Inc.
C.B. 2000
Floral Park, New York 11001

RE: Diamond Alkali Superfund Site, Newark Bay Study Area
Notice of Potential Liability

Dear Sir/Madam:

The United States Environmental Protection Agency ("EPA") is charged with responding to the release and/or threatened release of hazardous substances, pollutants, and contaminants into the environment and with enforcement responsibilities under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. §9601 *et seq.* Based on the results of previous CERCLA remedial investigation activities and other environmental studies performed at the Diamond Alkali Superfund Site ("Site"), which includes the Lower Passaic River Study Area, EPA has decided to further expand the area of study to include Newark Bay and portions of the Hackensack River, the Arthur Kill, and the Kill Van Kull. This expanded area of the study is known as the Newark Bay Study Area. EPA has documented the release or threatened release of hazardous substances, pollutants and contaminants into the Newark Bay Study Area.

By this letter, EPA is notifying Prentiss, Inc. of its potential liability relating to the Newark Bay Study Area of the Site pursuant to Section 107(a) of CERCLA, 42 U.S.C. §9607(a). Under CERCLA, potentially responsible parties ("PRPs") include current and past owners and operators, as well as persons who arranged for the disposal or treatment of hazardous substances,

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or the transport of hazardous substances. Based on information that EPA evaluated during the course of its investigation, EPA believes that hazardous substances were released from the former Prentiss Drug & Chemical facility located at 338 Wilson Avenue in Newark, New Jersey, into the Newark Bay Study Area. Hazardous substances, pollutants and contaminants released from the facility into the Newark Bay Study Area present a risk to the environment and the humans who may ingest contaminated fish and shellfish. Therefore, the Prentiss, Inc. may be potentially liable for response costs which the government may incur relating to the Newark Bay Study Area. In addition, responsible parties may be required to pay damages for injury to, destruction of, or loss of natural resources, including the cost of assessing such damages.

For the first phase of the Newark Bay Study, the EPA is proceeding with a multi-year study to determine an appropriate remediation plan for the Newark Bay Study Area. The study will involve investigation of environmental impacts and pollution sources, as well as evaluation of alternative actions, leading to recommendations of environmental remediation activities.

Please note that if you raise the issue that your company has a limited financial ability to contribute toward the payment of response costs at the Site, you will be asked to submit financial records including federal income tax returns as well as audited financial statements to substantiate such a claim. In addition, because EPA has a potential claim against you, you must include EPA as a creditor should your company ever file for bankruptcy.

You are also requested to preserve and retain any documents now in your Company's or its agents' possession or control, that relate in any manner to your facility or the Site or to the liability of any person under CERCLA for response actions or response costs at or in connection with the facility or the Site, regardless of any corporate document retention policy to the contrary.

Enclosed is a list of the other PRPs who have received Notice letters. This list represents EPA's findings on the identities of PRPs to date. We are continuing efforts to locate additional PRPs who have released hazardous substances, directly or indirectly, into the Newark Bay Study Area. Exclusion from the list does not constitute a final determination by EPA concerning the liability of any party for the release or threat of release of hazardous substances into the Newark Bay Study Area. Be advised that notice of your potential liability at the Site may be forwarded to all parties on this list as well as to the Natural Resource Trustees.

We request that you participate in the EPA-approved activities underway as part of the Newark Bay Study. You, along with other such parties, will be expected to both participate in and fund this CERCLA study. For those who choose not to cooperate, EPA may apply the CERCLA enforcement process, pursuant to Sections 106(a) and 107(a) of CERCLA, 42 U.S.C. §9606(a) and §9607(a) and other laws.

In February 2004, EPA signed an Administrative Order on Consent (AOC) with Occidental Chemical Corporation (OCC) to conduct a multi-year remedial investigation/feasibility study in Newark Bay pursuant to CERCLA. This study is being conducted by Tierra Solutions, Inc. with

EPA oversight. Tierra Solutions, Inc. is an affiliate of the company from which Occidental purchased Diamond Shamrock Chemicals (a former owner of a chemical plant at 80 Lister Avenue in Newark, New Jersey), and is performing the work pursuant to that company's indemnity obligation to Occidental. Be advised that notice of your potential liability is being forwarded to OCC by EPA.

We strongly encourage you to contact OCC to discuss your participation. You may do so by contacting:

Carol E. Dinkins, Esq.
Vinson & Elkins LLP
First City Tower
1001 Fannin Street, Suite 2300
Houston, TX 77002-6760
Tel. (713) 758-2528
Fax (713) 615-5311
cdinkins@velaw.com

Written notification should be provided to EPA documenting your intention to participate with OCC and settle with EPA no later than 30 calendar days from your receipt of this letter. The result of any agreement between EPA and your company will need to be memorialized in an AOC. Your written notification should be mailed to:

Amelia M. Wagner, Esq.
Assistant Regional Counsel
U.S. Environmental Protection Agency
290 Broadway, 17th Floor
New York, NY 10007-1866

Pursuant to CERCLA Section 113(k), EPA must establish an administrative record that contains documents that form the basis of EPA's decision on the selection of a response action for a site. The administrative record files along with the Site file are located at EPA's Region 2 office located at 290 Broadway, New York, NY on the 18th floor. You may call the Records Center at (212) 637-4308 to make an appointment to view the administrative record and/or the Site file for the Diamond Alkali Site, Newark Bay.

As you may be aware, the Superfund Small Business Liability Relief and Brownfields Revitalization Act became effective on January 11, 2002. This Act contains several exemptions and defenses to CERCLA liability, which we suggest that all parties evaluate. You may obtain a copy of the law via the Internet at <http://www.epa.gov/swerosps/bf/sblrbra.htm> and review EPA guidances regarding these exemptions at <http://www.epa.gov/compliance/resources/policies/cleanup/superfund>.

Inquiries by counsel or inquiries of a legal nature should be directed to Ms. Wagner at (212) 637-3141. Questions of a technical nature should be directed to Elizabeth Butler, Remedial Project Manager, at (212) 637-4396.

Sincerely yours,



Ray Basso, Strategic Integration Manager
Emergency and Remedial Response Division

Enclosure

cc: General Counsel

PARTIES RECEIVING EPA GENERAL NOTICE LETTER

David M. Cote, Chief Executive Officer
Honeywell International, Inc.
101 Columbia Road
Morristown, New Jersey 07962

President
Prentiss, Inc.
C.B. 2000
Floral Park, New York 11001

Mr. Ralph Izzo, President
Public Service Electric & Gas
80 Park Plaza
Newark, New Jersey 07102

Daryl D. Smith, President
Troy Chemical Corporation
8 Vreeland Road
P.O. Box 955
Florham Park, New Jersey 07932