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**DECISION DOCUMENT-**  
**FINAL REMEDIAL SELECTION REPORT**

ACCUTHERM, INC. SITE  
FRANKLIN TOWNSHIP, GLOUCESTER COUNTY, NEW JERSEY

New Jersey Department of Environmental Protection  
Site Remediation Program  
Publicly Funded Remediation Element  
P.O. Box 413  
Trenton, New Jersey 08625-0413

**April 2008**

## I. BACKGROUND

### A. Purpose

The purpose of this Decision Document – Final Remedial Action Selection Report is to present the New Jersey Department of Environmental Protection's (NJDEP) selected remedial action(s) for the Accutherm, Inc. site (the site) in Franklin Township, Gloucester County, New Jersey.

The Final Remedial Investigation (RI) Report, dated January 2008, by The Louis Berger Group (Berger) is **Attachment 1** to this Decision Document. That report documents the remedial investigation conducted by Berger for the NJDEP from March 2007 to August 2007, and evaluates potential remedial actions for the site. A summary of pertinent site information is presented in this Decision Document; details can be found in **Attachment 1**.

### B. Site Background

The Accutherm, Inc. site is located at 162 Station Avenue in Franklin Township, Gloucester County, NJ. The site consists of a single one-story building with basement on a cleared 0.4-acre corner lot. Accutherm, Inc. manufactured mercury thermometers at the site from approximately 1984 through 1993. As a result, the interior of the building became contaminated with mercury.

The Kiddie Kollege childcare center began operating at the site in approximately February 2004. The childcare center was closed on July 28, 2006 after NJDEP determined that mercury contamination existed in the building. After the Kiddie Kollege was closed, NJDEP and the property owner were unable to reach agreement on the terms of an Administrative Consent Order, under which the owner would investigate the site and implement necessary remedial actions. As a result, NJDEP proceeded to perform a remedial investigation of the property using public funds.

### C. Enforcement History

NJDEP issued a Directive to Accutherm Inc. on April 7, 1995, ordering the company to remediate all discharges at the site. On May 3, 1995, Accutherm notified NJDEP that it had filed for bankruptcy. No cleanup was ever performed.

On July 27, 2006, Jim Sullivan, Inc. (JSI), the owner of record of the property, signed a Memorandum of Agreement (MOA) with NJDEP, under which JSI would investigate mercury contamination at the site. After further review of the site's history, NJDEP informed JSI on August 11, 2006 that the site had been deemed a priority site and that an MOA was not sufficient. JSI was requested to enter into an Administrative Consent Order (ACO) with NJDEP.

By letter dated August 15, 2006, JSI declined to enter into an ACO. On August 17, 2006, NJDEP issued a directive to JSI, directing it to pay NJDEP \$500,000 to conduct a remedial investigation and remedial action at the site. NJDEP and JSI subsequently discussed the terms of an ACO, but could not reach an agreement.

On October 6, 2006, JSI filed a lawsuit against the NJDEP and others, contending that JSI doesn't own the site and is therefore not liable for the costs of site cleanup. By letter dated October 10, 2006, JSI informed NJDEP that it would not agree to an ACO. NJDEP terminated JSI's MOA by letter dated October 18, 2006.

## II. SUMMARY OF REMEDIAL INVESTIGATION (RI)

### A. Overview

In November 2006, the NJDEP engaged The Louis Berger Group (Berger) to conduct a remedial investigation (RI) of the Accutherm, Inc. site. The details of the RI can be found in **Attachment 1**, the Final RI Report. A summary of the RI is presented here.

Based upon the site's history, mercury was the primary contaminant of concern during the RI. The RI included the following sampling and testing, most of which was conducted between May and July of 2007:

- a) a geophysical survey of the site
- b) test trenching and associated soil sample collection
- c) collection of shallow soil samples on neighboring properties (by NJDEP)
- d) collection of shallow soil samples around the property perimeter
- e) collection of deep soil samples near the building foundation
- f) collection of soil samples around the active septic leach field
- g) sampling of septic tank contents
- h) testing of air inside the building
- i) sampling of building materials
- j) collection of surface wipe samples on building surfaces
- k) installation and sampling of five on-site groundwater monitoring wells
- l) sampling of 4 private potable wells near the site (by NJDEP)

## B. Remedial Investigation (RI) Findings

The major findings of the RI are summarized as follows:

1. Soil. No contamination above the applicable NJDEP Soil Cleanup Criteria (SCC) was found in any soil sample collected at the site, for mercury or any other contaminant. Low levels of mercury were detected in some soil samples both on the site and on neighboring residential properties. The NJDEP residential SCC for mercury is 14 milligrams per kilogram (mg/kg). The highest on-site detection of mercury was 2.5 mg/kg; the highest off-site detection was 1.7 mg/kg.
2. Septic Tank. Mercury was found at low levels in liquid and sludge samples collected inside the site septic tank. No mercury was detected in any of 5 soil samples collected directly outside the septic leach field.
3. Ground Water. Only minor ground water contamination was found. In July 2007, mercury was found in monitoring well MW-5 at a concentration of 2.6 micrograms per liter ( $\mu\text{g/l}$ ), slightly above the New Jersey Ground Water Quality Standard of 2  $\mu\text{g/l}$ . MW-5 is located near the septic leach field in the eastern part of the site. MW-5 was also sampled in June 2007, with mercury found at 1.4  $\mu\text{g/l}$ .
4. Building Materials. Forty-nine (49) samples of sheet rock, carpet, wall insulation, plywood, concrete, and formica were collected inside the former Accutherm building for analysis for mercury. Additionally, 51 surface wipe samples were collected from the walls, floors, wooden joists, and furniture inside the building. All samples contained mercury, except for 2 of the material samples. Concrete samples collected from the basement walls had the highest concentrations of mercury.
5. Indoor Air. The air inside the former Accutherm building was screened for mercury. Airborne mercury concentrations in the entire basement and first floor greatly exceeded the NJDEP Residential Indoor Air Screening Level for mercury, which is 0.3 micrograms per cubic meter ( $\mu\text{g/m}^3$ ). The maximum mercury concentrations recorded in the basement and the first floor were 305  $\mu\text{g/m}^3$  and 165  $\mu\text{g/m}^3$  respectively.

## C. Conclusions

Based upon the soil and ground water sampling results, there are no known external sources of the airborne mercury found inside the former Accutherm building. NJDEP concludes that the continuing volatilization of mercury from building materials is the source of the airborne mercury concentrations inside the building. Airborne mercury will

continue to exceed indoor air screening levels inside the building until the contaminated building materials are remediated. The building cannot be occupied for any purpose in its current state.

NJDEP concludes that one or both of the septic leach fields are the source of the mercury contamination in monitoring well MW-5. No other wells in the area have mercury above the GWQS.

### III. REMEDIAL ALTERNATIVES SELECTION EVALUATION (RASE)

#### A. Overview

Based upon the RI findings, remedial action is necessary to address the mercury contamination at the Accutherm, Inc. site. NJDEP's remedial objective is to eliminate the threat of exposure to airborne mercury at the site and the threat of additional discharges of mercury to the environment, now and in the future. NJDEP considered remedial alternatives that would remove the mercury present in building materials from the site. Alternatives that would leave mercury in place, such as encapsulation through the application of a chemical polymer, were eliminated from consideration, because future building renovations could cause a breach in the encapsulation, allowing releases of mercury.

NJDEP and Berger determined that there are 2 remedial alternatives worthy of consideration for the Accutherm, Inc. site: 1) demolition and disposal of the former Accutherm building, and 2) decontamination of the building for re-occupancy. Those two alternatives are discussed below.

#### **Alternative #1 - Demolition and Disposal**

This alternative would include the following:

- a) demolition and removal of the former Accutherm building in its entirety
- b) emptying of the septic tank
- c) demolition and removal of the septic tank
- d) removal of both septic leach fields
- e) post-excavation sampling for mercury in all work areas, followed by additional soil excavation if necessary
- f) transportation and disposal of all building materials, soil, etc. at approved facilities
- g) backfilling of all work areas with clean soil.

The estimated cost of **Alternative #1** is **\$549,450**. That amount includes a construction contingency of 20%. A construction contingency is an amount added to the construction cost estimate on most cleanup projects to account for uncertainties and unforeseen

conditions (such as additional contamination and increased disposal costs) that are usually encountered after cleanup work starts.

### **Alternative #2 - Decontamination for Re-occupancy**

This alternative would include the following:

- a) removal of all interior finishing materials, including sheet rock, carpets, and flooring
- b) removal of all heating, ventilation, and air conditioning (HVAC) equipment
- c) decontamination of the remaining building structure, including basement walls and floor, wall studs, and floor joists, using two applications of a mercury decontamination fluid
- d) confirmatory air sampling
- e) confirmatory wipe sampling of decontaminated materials
- f) emptying and cleaning of the septic tank
- g) removal of both septic leach fields, and replacement of the active field, after post-excavation sampling
- h) transportation and disposal of all interior finishing materials, HVAC equipment, soil, etc. at approved facilities
- i) backfilling of all work areas with clean soil
- j) replacement of interior finishing materials and HVAC systems.

The estimated cost of **Alternative #2** (including 20% construction contingency) is **\$553,500**. That figure includes 2 full applications of decontamination solution to building surfaces. Additional applications would be needed if confirmatory air and wipe sampling demonstrated the continued presence of mercury.

### **B. Ground Water**

NJDEP believes that one or both of the septic leach fields are the source of the mercury contamination slightly in excess of the GWQS in monitoring well MW-5. Both alternatives include the removal of both septic leach fields, so the suspected source of mercury to ground water will be eliminated under either alternative. NJDEP will sample all 5 site monitoring wells quarterly for at least one year after remedial action is completed, primarily to monitor the mercury in MW-5. The cost of one year of quarterly monitoring is estimated to be **\$10,000**. This cost would be the same for either alternative and would need to be added to remedial cost estimates presented above.

### **C. Evaluation of Remedial Alternatives**

Both alternatives are technically feasible and easily implementable. Either remedial alternative could be completed in less than 3 months from the time that remedial action starts. A brief remedial design effort of 6 months to one year would be needed for either

alternative before remedial action would start.

**Alternative 1** would completely eliminate any possibility of future exposure to mercury at the site, due to the removal of all contaminated building materials. **Alternative 2** is considered to be less reliable. Some mercury could remain in building materials, even after repeated thorough decontaminations. Such residual mercury could later be released to the air inside the building, resulting in exposure. There would always be lingering doubts as to whether exposure to mercury could occur inside the building.

**Alternative 1** has an additional advantage in that the soil directly beneath the building foundation could be sampled after demolition and removal of the building, to ensure that no mercury has migrated to contaminate the soil beneath the building.

**Alternative 1** is estimated to be slightly less expensive than **Alternative 2**. However, the estimated cost of both alternatives is essentially the same, since the \$4,000 difference between the cost estimates is less than the construction contingency of about \$82,000 for each alternative. **Alternative 2**, however, could become significantly more expensive if additional iterations of decontamination are needed. Both alternatives are considered to be cost-effective.

## V. SELECTED REMEDIAL ACTION

### A. Summary and Discussion

The NJDEP has selected **Alternative 1, Demolition and Disposal**, as the remedial action for the Accutherm, Inc. site. The complete demolition and removal of the former Accutherm, Inc. building and septic systems is considered to be the most reliable, permanent, and cost-effective way to eliminate the threat of exposure to mercury at the site. NJDEP will proceed to design and implement the selected remedial action.

### B. Community Relations and Public Participation

The Remedial Investigation Report (RIR) and a Proposed Plan - Draft Remedial Action Selection Report were released to the public on February 1, 2008. Both documents were placed in repository at the office of the Franklin Township municipal clerk on that date. A public notice was issued to announce the availability of the reports, to announce a 30-day public comment period, and to announce a Public Meeting to be held at the Franklin Township Municipal Building on February 13, 2008. The Proposed Plan - Draft Remedial Action Selection Report presented Alternative 1, Demolition and Disposal, as NJDEP's proposed remedy for the site.

The public comment period ran from February 1 through March 1, 2008. A Public Meeting was held at 7:00 PM on February 13, 2008 at the Franklin Township Municipal Building. At the Public Meeting, NJDEP presented a summary of the site history, the remedial investigation, the remedial alternatives selection evaluation, and NJDEP's proposal to select Alternative 1, Demolition and Disposal, as the site remedy. Attendees at the public meeting voiced mostly health-related concerns. **Attachment 2** is a summary of the Public Meeting. It was stated at the public meeting that the potential responsible parties would be offered the opportunity to perform the work. That decision is an enforcement decision that will be made separate from this remedial decision.

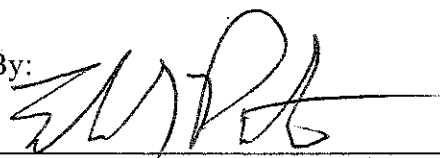
NJDEP received no comments in opposition to the proposed remedy from the general public during the public comment period, including the Public Meeting.

Comments in opposition to the proposed remedy were received from an attorney representing Jim Sullivan, Inc. (JSI), a potentially responsible party for the site, in a letter dated February 28, 2008 (**Attachment 3**). NJDEP reviewed the letter and found that none of the comments had any direct bearing on the proposed remedy. NJDEP responded to JSI in a letter dated April 11, 2008 (**Attachment 4**).

## VI. APPROVAL

As presented herein, **Alternative 1, Demolition and Disposal**, is the selected remedy for the Accutherm, Inc. site. The selected remedial action is protective of human health and the environment, and is the cost-effective remedy pursuant to the Spill Compensation and Control Act and the Technical Requirements for Site Remediation.

By:

  
\_\_\_\_\_  
Edward Putnam, Assistant Director  
Publicly Funded Remediation Element

  
\_\_\_\_\_  
Date

### List of Attachments

1. Final Remedial Investigation Report, dated January 2008
2. Summary of February 13, 2008 Public Meeting
3. Ballard Spahr Andrews & Ingersoll, LLP letter dated February 28, 2008
4. NJDEP letter dated April 11, 2008



## ATTACHMENT 2

### **SUMMARY OF FEBRUARY 13, 2008 NJDEP PUBLIC MEETING ON THE FORMER ACCUTHERM, INC. SITE**

The Public Meeting was conducted at Franklin Township Municipal Building. Attendees at the public meeting voiced mostly health-related concerns. In response, Jerald Fagliano, Program Manager, Department of Health and Senior Services (DHSS) and Dr. Mary Glenshaw, EIS Officer, Centers for Disease Control and Prevention presented the findings of two mercury exposure health studies. The first study involved monitoring the health effects of mercury amalgam fillings on teenagers. The study revealed no observed health effects. However, several people at the meeting did not agree that this study was relevant because the subjects of the mercury amalgam filling study were teenagers and the students that attended Kiddie Kollege were infants and toddlers. The CDC also presented information about a second study in which adults were exposed to much higher levels of mercury and no long-term effects were observed. Several people stated that they felt that study was also not relevant because the subjects of that study were adults and the study did not monitor the subjects for life.

Several meeting attendees also requested that long-term health monitoring of the Kiddie Kollege students and staff be conducted by the CDC and/or DHSS. One parent expressed the need for long-term monitoring based on the Remedial Investigation Report findings that revealed that the most recent indoor air sample results revealed higher concentrations of mercury than previous samples revealed. NJDEP representative responded that the most recent results were collected using a different method (using real-time sampling equipment) than the original samples. Also, the building was sealed, there was no active ventilation, and the survey was done during a period of high heat which would lead to the conclusion that the latter assessment was representative of worst-case conditions. CDC and DHSS representatives further explained that the health monitoring revealed that the concentration of mercury in all exposed individuals declined to below background levels.

One parent shared concerns about the validity of the data collection methods for the urine samples, believing that the cups used to collect samples should be acid-washed and were not. The parent felt a sample collected in a cup that was not acid-washed cup would result in inaccurately low levels of mercury. Jerald Fagliano (DHSS) stated that he believed that the samples cups were acid-washed, but would confirm. One staff member questioned whether a urine sample, versus a blood sample, provides a more accurate level of mercury present in the body. Both the DHSS and CDC representatives stated that urine sampling was the best method to evaluate the concentration of mercury in the body.

Parents shared many additional concerns about their children, such as whether they should get vaccines, possible damage to reproductive health, and whether frequent respiratory infections can result from mercury exposure. The CDC representative stated that reproductive organ damage and respiratory infections are not linked with mercury exposure and vaccines no longer contain mercury. The CDC representative encouraged parents to send their children's medical records to the CDC for review, and the CDC could recommend a pediatric specialist if needed.

Some parents and Kiddie Kollege staff reiterated their dissatisfaction about the length of time it took to remove the children once the DEP realized it was a contaminated site.

The DEP had sampled potable wells in the immediate vicinity of the former Accutherm, Inc. site. Sampling revealed no mercury concentrations above Federal and State Drinking Water Standards. One individual expressed concern that his potable was not sampled because he was not located immediately adjacent to the site. DEP representatives offered to test his well for mercury.

One parent asked who, ultimately, would decide if the building would be demolished. Edward Putnam, Assistant Director of the Publicly Funded Remediation Element, DEP, stated that after evaluating any comments received, he and the technical team would make the decision. He stated that they will provide the current owner with the opportunity to perform the selected remedial action, and if the current owner did not comply, the Department would perform the cleanup and pursue any responsible parties for cost recovery. The Department will design a method to safely demolish the building and perform the cleanup.

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February 28, 2008

**Via E-mail and Fed Ex**

Karen Kloo, Acting Manager  
NJDEP, SRP, Office of Community Relations  
401 East State Street  
PO Box 413  
Trenton, NJ 08625

Re: Comments on Draft Remedial Action Selection Report and Remedial Investigation Report, Former Accutherm, Inc. Site Franklin Township, Gloucester County, PI#G000015944

Dear Ms. Kloo:

On behalf of our clients Navillus Group, General Partnership ("Navillus") and Jim Sullivan, Inc. ("JSI"), we hereby submit these comments in response to the request for public comment by the State of New Jersey, Department of Environmental Protection ("DEP"), regarding the draft Remedial Action Selection Report ("RASR") and Remedial Investigation Report ("RIR") (collectively, "Reports") prepared by The Louis Berger Group, Inc., both dated January 2008, concerning property located at 162 Station Avenue, Block 4111, Lot 1, f/k/a 1600 Delsea Drive, Block 137, Lot 10, Franklin Township, Gloucester County ("Site").

• **General Comments:**

1. JSI and Navillus are improperly presented as having predetermined liability for the recommended remedial actions. JSI and Navillus did not discharge any hazardous substances at the Site. Accutherm, Inc. ("Accutherm") and Philip J. Giuliano ("Giuliano") are responsible for the presence of mercury within the building on the Site. Nonetheless, JSI entered into a voluntary agreement with DEP and committed to conducting a remedial investigation of the Site with DEP oversight, which DEP agreed upon by letter dated June 21, 2006. DEP thereafter demanded that JSI enter into an Administrative Consent Order

("ACO"). JSI agreed to and did sign an ACO that was prepared by DEP, and in fact, had the signed ACO hand-delivered to DEP at DEP's request. DEP thereafter refused to sign its own ACO, and demanded instead that JSI enter into a different ACO, which ACO failed to comply with DEP's own regulations. When JSI refused to do so, DEP improperly, and in violation of its own regulations, purported to terminate the voluntary agreement. See N.J.A.C. 7:26C-5.2(b). DEP then retained the Berger Group to prepare the Reports, and has since publicly washed its hands of holding Accutherm and Giuliano responsible for contaminating the Site. DEP regrettably allowed Accutherm and Giuliano to walk away from the Site without remediating it in 1994, and should not make this same mistake twice. DEP should seek recovery of all costs of investigation and remediation of the Site from Accutherm and Giuliano, the parties responsible for contamination of this Site, in accordance with the Industrial Site Recovery Act, N.J.S.A. 13:1K-6, et seq. ("ISRA"), and the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11 ("Spill Act"). Though Accutherm filed a Petition in Bankruptcy, that Petition was dismissed when Accutherm failed to comply with its obligations under the Bankruptcy rules, such that Accutherm was never discharged from its liability to clean up the Site. Mr. Giuliano has never filed a Petition in Bankruptcy.

2. The Reports demonstrate that there has been no discharge of mercury from the building to the soils on the Site. There is no mercury in the on-Site potable well, and only one anomalous occurrence of mercury 0.6µg/l above groundwater standards in one sample from one monitoring well. DEP has publicly stated that groundwater contamination is not a concern here. No compounds were detected in excess of DEP soil cleanup criteria in any soil samples taken from the Site. See the RIR at page 10. No mercury has been detected in any potable wells in proximity to the Site. See the RIR at page 5.

Because there has been no discharge or release of hazardous substances from the building to the soils or waters of the State, DEP lacks authority under the Spill Act and the Technical Regulations at N.J.A.C. 7:26E to demolish or "remediate" the building on the Site, or to order anyone else to do so. This is further apparent through any previous failure on DEP's part to make any demand upon Accutherm or Giuliano to demolish the building when Accutherm ceased operations in 1994. DEP simply has no authority to demolish a building based on indoor air quality. Should DEP attempt to do so, JSI or Navillus disavow any liability for such costs.

Further, because DEP has no authority to demolish the building, that portion of the RASR and all costs pertaining thereto, including but not limited to DEP's analysis of the costs of demolition or decontamination, were improper and should not have been undertaken. Therefore, such costs are not recoverable. DEP has no expertise pertaining to analysis of indoor air and mercury remediation

inside the building because such matters are outside the purview of DEP's authority under the Spill Act.

3. The Reports confirm that JSI proposed an appropriate scope of work through the Exterior Site Investigation Workplan previously submitted to DEP pursuant to a Memorandum of Agreement ("MOA") under the Voluntary Cleanup Program, and related correspondence submitted to DEP, from August 2006 through October 2006. DEP's termination of the MOA has done nothing but delay any necessary remediation of the Site and resulted in significant, unnecessary expense to the taxpayers of this State. DEP should take no further measures that will result in needless public expenditures.

4. The Reports inaccurately state that JSI and DEP were unable to agree on the terms of an Administrative Consent Order ("ACO"). JSI did execute and tender an ACO to DEP on August 30, 2006, in the form prescribed by regulation, which was prepared by DEP itself. DEP subsequently attempted to add terms to the ACO that conflict with the Tech Regs.

5. The Reports confirm that Accutherm was subject to ISRA and failed to comply with ISRA. DEP admittedly failed to enforce ISRA and the Spill Act and failed to require remediation of the Site or to remediate the Site itself prior to any conveyance by Accutherm to a third party. Prior to the purported transfer of the Site through foreclosure of tax sale certificates in 2001, DEP failed to require Accutherm to remediate the Site or to remediate the Site itself pursuant to a Notice and Directive to Insurers issued on April 7, 1995 ("Directive"), under authority of the Spill Act. Neither did the Directive demand demolition of the building. If DEP now contends this is an appropriate remedy, it is one that DEP should also have pursued many years ago against Accutherm and Giuliano.

6. The Reports erroneously declare that JSI is the present owner of the Site. Ownership of the Site is a contested issue and the subject matter of litigation. Navillus Group, General Partnership and JSI filed suit in the Chancery Division of Superior Court, Gloucester County, on or about October 6, 2006, under ISRA to void transfer of the Site from its prior owners, Accutherm and Giuliano, based on Accutherm's undisputed failure to comply with ISRA and DEP's failure to enforce ISRA. DEP is also a party to this litigation.

7. The Reports contain numerous misstatements characterized as "fact." JSI and Navillus object to all sampling and analysis performed by The Berger Group premised upon "suspicions" of contamination, "reported disposal practices," and unspecified "reports" of alleged historical dumping of pollutants outside of the building on the Site. There is no identification in the Reports of the sources of such "suspicions" or "reports" of dumping. DEP should reference and identify with specificity all persons with knowledge that formed the basis for any such suspicions or who have knowledge of any reports of dumping or disposal

practices. DEP should make all documents available that refer or relate to any suspicions or reports of dumping or disposal practices, or that were relied upon in forming such opinions. JSI and Navillus further object to removal of the building by DEP for the purpose of merely conducting additional sampling in the area underneath the present location of the building.

8. All information made available to the Berger Group in connection with preparation of the Reports was not previously made available in response to a public records request submitted in October 2003 on behalf of JSI. DEP has admitted it produced only a report prepared by EPA stating the Site did not present "an immediate threat to human health or the environment."

9. DEP's present authority to conduct any activities on the Site is limited to remedial investigation. DEP does not presently have a right of access to the Site to perform any remedial activities, including but not limited to demolition or decontamination of the building on the Site. No remedial activities should be conducted unless DEP first obtains such authority.

• **Specific Comments:**

**RIR:**

1. The RIR mistakenly states that DEP "learned" the Site was being used as a day care center on April 11, 2006. See RIR at page 1. DEP was informed of the proposed use of the Site for day care center purposes on September 23, 2003.

2. The RIR erroneously indicates that the building on the Site was "sold" and "renovated into a day care center" in the early 1990's. See RIR at page 3. From 1994 through 1999, tax sale certificates were sold by Franklin Township to collect unpaid taxes, and the Site was ultimately foreclosed upon in 2001. Franklin Township issued a zoning permit to the applicant Kiddie Kollege, on December 8, 2003, and Franklin Township issued a Certificate of Occupancy to Kiddie Kollege on February 11, 2004. A Kiddie Kollege daycare subsequently began operating at the Site in 2004.

3. The RIR references surface soil samples taken outside of the building in January 1996, and compares them to the current DEP residential soil cleanup criteria. See RIR at page 4. The area at issue is presently paved. There is no exposure pathway and no apparent reason for this analysis.

4. The RIR states that utility trenches can act as pathways for migration of contamination. See RIR at page 8. This statement is unsupported.

5. The RIR incorrectly refers to a "prior report" of mercury in the building's septic system. See RIR at page 11. On April 13, 1988, DEP documented naphtha,

aromatic hydrocarbons, volatile organic compounds, and petroleum hydrocarbons, but no mercury inside the former septic system. See RIR at page 4.

6. The RIR states that "sanitary sewage and alleged wastes from mercury thermometer manufacturing process were reportedly discharged to the Site's original septic system between the early 1980's and 1994." See RIR at page 11. The source of this information should be identified.

7. The RIR states that there is "no evidence of contaminant migration from the building interior, or of the alleged disposal of wastes from mercury thermometer manufacturing processes to the exterior ground surfaces." See RIR at page 20. Thus, there is no basis for the proposed remedial action as set forth in the RASR.

8. The RIR states that there were no exceedances of DEP soil cleanup criteria in any of the soil samples collected from test pit TP07 beneath the septic field infiltrate. See RIR at page 12. Also, no compounds in excess of any soil cleanup criteria were encountered in the area of the new septic disposal field. See RIR at page 14. Thus, there is no basis for the proposed remedial action as set forth in the RASR.

9. The RIR states that wastes from the former mercury thermometer manufacturing processes were allegedly discharged to the ground surface along the southern side of the existing building, and that due to "alleged dumping," further investigation and soil sampling was warranted. See RIR at page 12. The source of this information should be identified. The RIR subsequently indicates that no exceedances of any soil cleanup criteria were encountered in the referenced area, so that these "allegations," if there were any, were false. See RIR at page 13.

10. The RIR states that presence of mercury in the basement of the building at the Site caused a suspicion that soil adjacent to the building foundation might be impacted. See RIR at page 13. The scientific basis for this "suspicion" should be identified. The RIR subsequently indicates that no exceedances of any soil cleanup criteria were encountered in the referenced area, so that these "allegations," if there were any, were false. See RIR at page 14.

11. The RIR states that to investigate "potential dumping outside of the building during former operations," multiple shallow soil samples were collected at 26 locations. See RIR at page 14. The source of this information should be identified. The RIR subsequently indicates that no exceedances of any soil cleanup criteria were encountered in the referenced area, so that these "allegations," if there were any, were false. See RIR at page 15.

12. The RIR provides no explanation of the need to install five groundwater monitoring wells to accomplish the purposes set forth in the Reports. See RIR at page 15. These monitoring wells were unscientifically distributed by simply locating one at each corner of the Site and one in the center. JSI had previously proposed direct push groundwater sampling to determine where three proposed monitoring wells would best be located. There is no reason stated in the RIR or the RASR why the investigation could not have been undertaken with less than five monitoring wells on this 0.41 acre property.
13. There is no evidence of any mercury in any monitoring wells installed on Site, with one exception of results for mercury 0.6µg/l above groundwater standards in one sample from one monitoring well in the second round of sampling. See RIR at page 16. This monitoring well showed no mercury exceedances the previous time it was sampled.
14. The RIR states that testing of materials inside of the concrete-lined septic tank were conducted for "comparative" purposes only. None of the materials inside the septic tank were discharged to the soil or waters of the State. Additional information should be provided regarding the comparative purposes for which these sampling results were utilized.
15. There are no compounds present above soil cleanup criteria within the brick well on the Site, which was dry at the time of sampling. See RIR at page 18. No further testing of this area should be required.
16. The RIR concludes that no contaminants have migrated from the interior of the building on the Site. See RIR at page 20. Therefore, the remediation "recommended" in the RASR is beyond the scope of the Spill Act. No further sampling or remediation should be required for the area presently located under the existing building, as DEP itself has already concluded that no contaminants have been discharged or released from the building itself.
17. The RIR concludes that the interior of the building at the Site is contaminated with mercury, a condition over which DEP has no regulatory authority under the Spill Act. See RIR at page 21. DEP's demands for demolition or decontamination of the building itself are *ultra vires*.
18. The RIR references research of "other mercury contaminated sites and conversations with environmental cleanup contractors...." See RIR at pages 21 and 23. Details regarding all referenced sites and conversations should be provided.
19. The RIR assumes that mercury must be "retorted" from 100% of all building materials in any demolition process, based on an assumption of maximum concentrations of mercury in the amount of 260 mg/kg, which triggers



the retorting requirement. Based on the sampling results reported in the RIR, this assumption is baseless, as the highest bulk mercury concentrations detected in the building were 90, 170 and 230 mg/kg, respectively. See RIR at page 21.

20. The RIR assumes that all finishing materials would be replaced in connection with decontamination, and adds this cost to the decontamination calculation accordingly. Refinishing the building is not associated with the cost of remediation and should not be included in this calculation.

21. The RIR assumes that decontamination would not address potential sources of mercury contamination from immediately outside or beneath the building. See RIR at page 23. Based on all soil and groundwater sampling results reported elsewhere in the RIR, this assumption is baseless.

**RASR:**

1. The RASR indicates that Accutherm conducted activities on the Site from 1984 through 1993. See RASR at page 1. Elsewhere in DEP's records and in the RIR, it is reported that Accutherm ceased activities at the Site in January 1994.

2. The RASR inaccurately states that JSI and DEP were "unable to reach agreement" on the terms of an ACO. See RASR at pages 1 and 2. JSI executed and tendered an ACO to DEP on August 30, 2006 in form prescribed by regulation. See N.J.A.C. 7:26C-5.2(b). DEP refused to execute the conforming ACO, and wrongfully attempted to add terms to the ACO that conflict with the Tech Regs, and JSI did not accept an ACO with the added terms. DEP improperly terminated the MOA and unjustifiably proceeded to perform a remedial investigation of the Site using public funds. See N.J.A.C. 7:26C-3.3, -3.4. Specifically, there is no basis under the rules to suddenly deem a site "priority" and to terminate an MOA based on such a finding, particularly without cause and where DEP had agreed that an MOA was appropriate less than four months prior.

3. The RASR indicates that Accutherm filed for Chapter 11 bankruptcy protection in 1994. See RASR at pages 2 and 4. Accutherm's petition for bankruptcy was dismissed on November 29, 1994.

4. The RASR concludes it is necessary to address contaminated building materials at the Site. See RASR at page 5. All referenced contamination is contained within the interior of the building, which fails to meet the definition of a discharge under the Spill Act.

5. The RASR concludes that if decontamination were selected as the remedial action, afterward "some mercury could remain" in building materials and coalesce. The RASR sets forth no reason for this presumption other than

"this phenomenon has been observed at other mercury cleanups." No specific documentation or reference to any "other" mercury cleanups is provided. Additional information should be cited and provided in support of these statements.

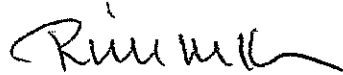
6. All other comments set forth above regarding the RIR that are equally applicable to the RASR are incorporated herein by reference.

These comments are based upon the information presently available to Navillus and JSI. Nothing herein shall be construed as an admission by JSI or Navillus. These comments are presented without prejudice to any position that Navillus or JSI has taken or may take in any present or future civil, administrative or criminal proceeding.

It is requested that copies of all responses by DEP to the comments presented above, along with a copy of all other comments and responses regarding the RIR and RASR, should be directed to the attention of the undersigned.

Thank you for your consideration in this matter.

Very truly yours,



Richard M. Hluchan

RMH/cs

cc: Mark D. Oshinskie, DAG (via email only)



## State of New Jersey

DEPARTMENT OF ENVIRONMENTAL PROTECTION  
PUBLICLY FUNDED REMEDIATION ELEMENT  
P.O. Box 028  
TRENTON, NJ 08625 -0028

JON S. CORZINE  
Governor

LISA P. JACKSON  
Commissioner

APR 11 2008

Richard M. Hluchan  
Ballard Spahr Andrews & Ingersoll, LLP  
Plaza 1000, Suite 500  
Main Street  
Voorhees, NJ 08043-4636

RE: Former Accutherm, Inc. Site, Franklin, NJ

Dear Mr. Hluchan:

We have received and reviewed your letter dated February 28, 2008 on the Remedial Investigation Report (RIR) and the Proposed Plan – Draft Remedial Action Selection Report on the referenced site.

The following paragraphs address the recurring themes of your comments, in the order in which your letter raises them:

1. Regarding the signing of an Administrative Consent Order (ACO), NJDEP did request that your client Jim Sullivan, Inc. (JSI) sign an amended ACO after JSI had signed the first ACO. However, the amended ACO did not fail to comply with NJDEP regulations, as you allege. Further, NJDEP's termination of the voluntary Memorandum of Agreement (MOA) was done in accordance with N.J.A.C. 7:26C-3.3(c) 1.iv., as stated in our October 18, 2006 letter to your office. Lastly, NJDEP will seek to recover costs from all viable potentially responsible parties.
2. Regarding a discharge or release of hazardous substances, NJDEP believes it is clear that discharges of mercury have occurred at the former Accutherm, Inc. site and that the potential for future discharges exists. Mercury has contaminated building materials and discharged to the ground water in the vicinity of monitoring well MW-5. The building is currently unusable and it is reasonable to expect that the building will deteriorate and release additional mercury into the environment.
3. Regarding authority to conduct remedial actions, the New Jersey Spill Act gives the NJDEP sole discretion in determining the need for remedial action and who will

perform a given remedial action. NJDEP believes that it has the authority to perform the proposed remedial actions at the site.

4. Regarding property ownership, NJDEP typically uses municipal tax rolls to determine the owner of a given property. The tax rolls of Franklin Township identify the former Accutherm, Inc. site as Block 4111, Lot 1 (address 162 Station Ave.). Jim Sullivan, Inc. is listed as the current owner of the property.
5. Regarding the details of the field investigation, please be advised that the "Site Sampling and Investigation Plan" for the site, dated March 2007, presents the reasons for all investigation activities. A copy of the SSIP was forwarded to your office on March 22, 2007.

Your letter contained numerous specific comments on the RIR and the Proposed Plan - Draft Remedial Action Selection Report. NJDEP has reviewed and evaluated those comments and acknowledges your perspective, but has determined that they have no bearing on our proposed remedial actions, except for comments regarding the issues addressed above.

It was very unfortunate that the children and employees at the Kiddie Kollege day care facility were exposed to mercury. NJDEP feels that the proposed remedial actions are necessary to ensure that no more New Jersey residents are exposed to the mercury at the former Accutherm, Inc. site.

We thank you for your comments. If you have further comments or questions regarding NJDEP activities at the former Accutherm, Inc. site, we suggest that you address them to Deputy Attorney General Mark Oshinskie at 609-984-5189.

Sincerely,



Edward Putnam, Assistant Director  
Publicly Funded Remediation Element

C: Mark Oshinskie, DAG, NJDOLPS