Old Bethpage Landfill Closure

2.0 Title 3 Grant and/or Amendment, State Superfund Agreement, ROD
Site listing/delisting Package
CONSENT DECREE

APPLICATION FOR EQBA FUNDING

OLD BETHPAGE SOLID WASTE DISPOSAL COMPLEX

CAPPING AND CLOSURE PLAN

TOWN OF OYSTER BAY
DEPARTMENT OF PUBLIC WORKS

OCTOBER 1988

LKB LOCKWOOD, KESSLER & BARTLETT, INC.
CONSULTING ENGINEERS SINCE 1889
SYOSSET, NEW YORK

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NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION
1986 ENVIRONMENTAL QUALITY BOND ACT
TITLE 3 AND TITLE 5 APPLICATION FOR STATE ASSISTANCE

NAME OF APPLICANT (Municipality): TOWN OF OYSTER BAY

COUNTY: NASSAU

TYPE OF PROJECT
- [X] Municipal Hazardous Waste Site Remediation (Grant Program)
- [ ] Municipal Landfill Closure (Loan Program)

PROJECT NAME: Capping and Closure at the Old Bethpage Landfill

DESCRIPTION (Purpose, scope, location): See Appendix 1

(Attach Project Narrative, Workplan, etc.)

OBLIGATION: Concent Decree No. CV-83-5357 See Appendix 2
(Reference and attach copy of order, permits, etc.)

SCHEDULE: Work has or will commence on July 1989 (date) and will be completed no later than October 1990 (date) (Attach Project Schedule). (See Appendix 3)

ESTIMATED PROJECT COST: $5,700,000 (See Appendix 4)
(Attach Project Budget, proposed contracts, or information on how contracts for Professional Services will be awarded)

NAME AND TITLE OF INDIVIDUAL AUTHORIZED TO SIGN APPLICATION (Please Print)
ANGELO A. DELLIGATTI, Town Supervisor

ADDRESS (Post Office Box No. or Street, City, State and Zip Code) PHONE NO. (Include area code)
TOWN HALL
AUDREY AVENUE, OYSTER BAY, NY 11791 (516) 922-5800

CERTIFICATION: The undersigned does hereby certify that the information in this application and in the attached certified copies of resolution(s), other statements, and exhibits is true, correct and complete to the best of his or her knowledge and belief, and further that any and all statements, data and supporting documents which have heretofore been made for the purpose of receiving State assistance for the project described herein are attached hereto in full.

Angelo A. Delligatti 12/1/88
Signature of individual authorized by resolution (attach copy) to sign application Date

FOR STATE USE ONLY

PROJECT NO. _____
DATE RECEIVED _____
DATE COMPLETE _____

(Rev. 4/17/87)

CERTIFICATE OF RECORDING OFFICER

That the attached Resolution is a true and correct copy of the Resolution, authorizing the signing of a State Contract and assuming funding of the municipal portion of the cost of the project, as regularly adopted at a legally convened meeting of the Town Board of the Town of Oyster Bay duly held on the 15th day of November, 1988; and further that such Resolution has been fully recorded in the Town Board Minutes in my office.

In witness whereof, I have hereunto set my hand this 16th day of November, 1988.

If the Applicant has an Official Seal, impress here.

Fanny Carsentino

Signature of Recording Officer

First Deputy Town Clerk

Title of Recording Officer

six copies of these (2) pages

Meeting of November 15, 1988 RESOLUTION NO. 1182-88

WHEREAS, in accordance with the terms of the Consent Decree executed by and between the Town of Oyster Bay and the State of New York, the Town is eligible to apply for Environmental Quality Bond Act funds, in the amount of 75% of the eligible cost for the capping and closure of the landfill located at the Old Bethpage Solid Waste Disposal Complex; and

WHEREAS, the Town, after thorough consideration of the various aspects of the problem and study of available data, has hereby determined that this project is desirable and in the public interest; and

WHEREAS, Article 52 of the Environmental Conservation Law authorized financial assistance to municipalities for remediation of inactive hazardous waste disposal sites by means of a written agreement and the Town deems it to be in the public interest and benefit under this law to enter into a contract with the State of New York,

NOW, THEREFORE, BE IT RESOLVED, That the Supervisor or his duly designated representative is hereby authorized and directed to act in connection with any contracts between the Town and the State and to provide such additional information as may be required; and be it further

RESOLVED, That all parties to the various contracts agree to fund their portion of the costs of this project; and be it further

RESOLVED, That a certified copy of this Resolution be prepared and sent to the New York State Department of Environmental Conservation together with the State Contract; and be it further

RESOLVED, That this resolution is to take effect immediately.

Approved as to Form
Deputy Town Attorney

The foregoing resolution was declared adopted after a poll of the members of the Board; the vote being recorded as follows:

Supervisor Delligatti	Aye
Councilman Hogan	Aye
Councilman Diamond	Aye
Councilman Clark	Aye
Councilman Hynes	Aye
Councilman Venditto	Aye
Councilman Ocker	Aye

cc: Supervisor
Town Board
Town Attorney
Comptroller (2)
D.P.W.
I.G.A. (6 certified

CONSULTANT/CONTRACTOR DETAILED EEO AND MBE/WBE WORKPLAN
NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

consultant/contractor name N/A			contract number N/A
address N/A	city N/A	state N/A	zip code N/A
grantee name TOWN OF OYSTER BAY			project/grant number TBI 86-415-B
address TOWN HALL AUDREY AVENUE	city OYSTER BAY	state N.Y.	zip code 11771
authorized representative ANGELO A. DELLIGATTI	title TOWN SUPERVISOR	authorized signature	

contract description
The work under this project entails the construction of a retaining wall, grading, and the placement of 18 inches of clay with a maximum permeability of 10^{-7} cm/sec, and 12 inches of growing medium, as required by 6NYCRR Part 360 Regulations, on the exposed side slopes of the landfill. Existing slopes that are steeper than one vertical to three horizontal will either be cut and filled or they will be stepped down by the use of gabion walls. Finally, drainage facilities and access roads will be provided, and the area will be hydroseeded to provide a stable slope and park-like appearance.

PROJECTED EEO AND MBE/WBE CONTRACT SUMMARY

	percent	amount		%	No./Empl	Wk/Hrs
1. Total Dollar Value of the Prime Contract	100	5,700,000*	5. Total No. Employees/ Work Hours			
2. MBE Goal Applied to the Contract	15	855,000	6. Total Goal for Minority Employees	15		
3. WBE Goal Applied to the Contract	5	285,000	7. Total Goal for Female Employees	15		
4. MBE/WBE Combined Totals	20	1,140,000	8. EEO Combined Totals	30		

For the Office of Affirmative Action Use Only

proposed goals		date approved	date disapproved	initials
MBE (%)	EEO-Minorities (%)			
WBE (%)	EEO-Minorities (%)			

* Exact cost will be submitted upon receipt of bids

SECTION II.- WBE INFORMATION: In order to Achieve the WBE Goals, WOMEN Firms are Expected to Participate in the Following Manner:

WBE Firm	Description of Work Quantities Involved By WBE	Projected WBE Contract Amount and Award Date	Contract Schedule Start Date	Contract Payment Schedule	Project Completion Date
name: address: city: state/zip code: telephone number:		$_____ Date: _____			
name: address: city: state/zip code: telephone number:		$_____ Date: _____			
name: address: city: state/zip code: telephone number:		$_____ Date: _____			

APPENDIX 1.

Capping and Closure at the Old Bethpage Landfill

Project Description

The Old Bethpage Landfill is located as shown on Figure 1, in eastern Nassau County on Long Island, New York.

The capping project is part of the landfill closure plan described in the OBSWDC Remedial Action Plan (RAP) and in the Court Order on Consent No. CV-83-5357. Capping of the landfill slope areas will minimize leachate generation and groundwater contamination.

The work under this project entails the construction of a gabion retaining wall, grading and placement of 18 inches of clay with maximum permeability of 10^{-7} cm/sec and 12 inches of growing medium, as required by 6NYCRR Part 360 Regulations, on the exposed side slopes of the landfill. A typical cross section is shown on Figure 2. Existing slopes that are steeper than one [vertical] to three [horizontal] will either be cut and filled or they will be stepped down by the use of gabion walls. Finally, drainage facilities and access roads will be provided, and the area will be hydroseeded to provide a stable slope and park-like appearance.

The project covers an approximate area of 21.3 acres, consisting of the Southwest and Southeast slopes of the landfill as shown on Drawing 1. The top of the landfill will be maintained at elevation 240. The western slopes will be brought to grade by filling along the slope and into the adjacent excavated area. The "toe of the slope" is expected to be expanded into the adjacent excavated area by approximately 125 feet. The south slopes will require cuts of up to 10 feet at the top, and filling of up to 20 feet at the toe. The eastern slopes will be stepped down and brought to grade through the use of a gabion wall. The height of this wall will vary,

with its highest point at approximately 20 feet. In addition to the gabion wall, the top of the slope will be cut by approximately 20 feet. The gabion wall and cut, in combination will provide the required slope of 1 on 3.

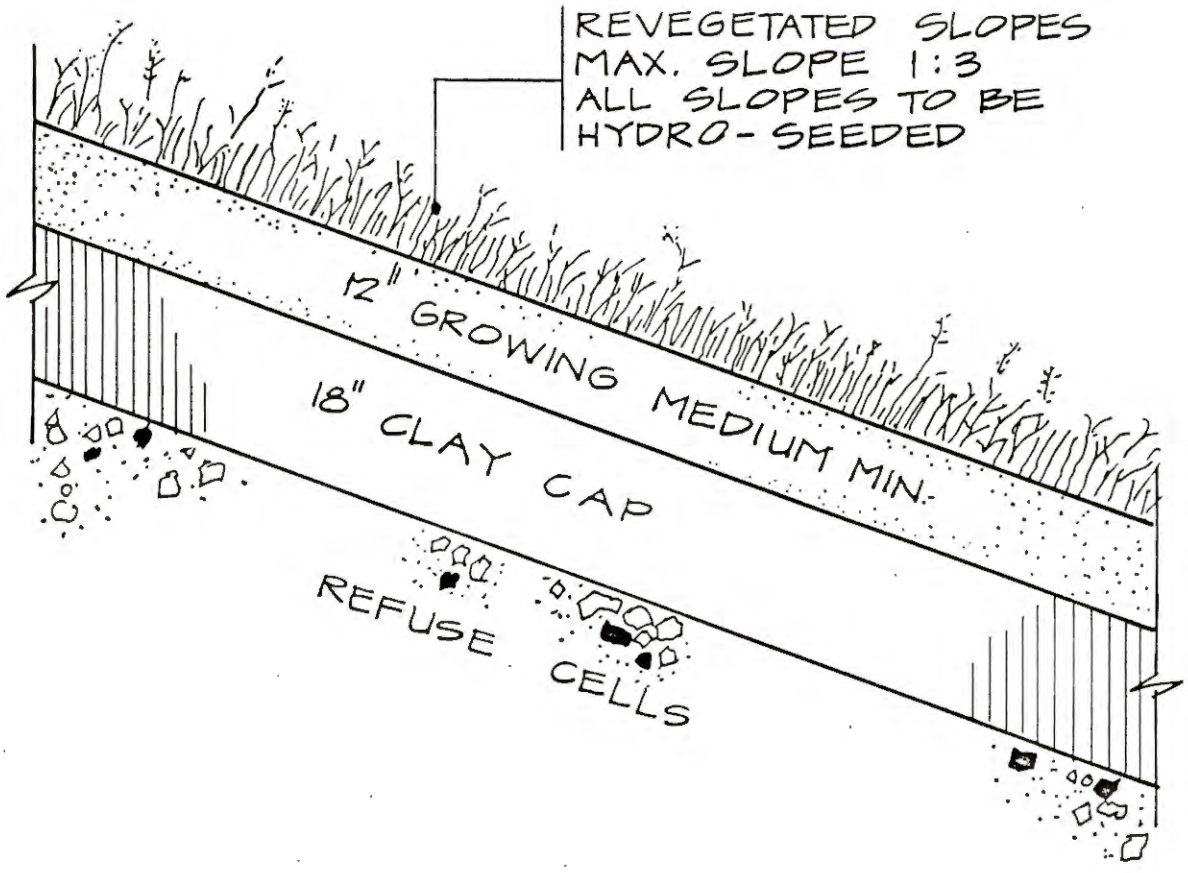
The total project area will be covered with 18 inches of clay of 10^{-7} cm/sec permeability, as required by the 6NYCRR Part 360 Regulations. The clay will be placed and compacted in three 6 inch lifts. Testing will be carried out as required by the State regulations.

Drainage will be provided through the use of approximately 5,000 feet of drainage ditches, benches and access roads. These multi-purpose benches will be covered with 12 inches of stone. Drainage chutes will be made of gabion matresses.

3012-12

FIGURE 1

LOCATION OF OBSWDC



3012-12

FIGURE 2

LKB

OBSWDC EXISTING TYPICAL CAP SECTION

APPENDIX 2

ROBERT ABRAMS
Attorney General

JAMES A. SEVINSKY
Assistant Attorney General in Charge
Environmental Protection Bureau

STATE OF NEW YORK
DEPARTMENT OF LAW
120 BROADWAY
NEW YORK, NY 10271

(212) 341-2458

May 18, 1988

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Re: New York State v. Town
of Oyster Bay, et al.

Dear Counselors:

Enclosed please find the Final Consent Decree (with Appendices to the extent completed) in settlement of the

above captioned action. In response to comments received on draft #9 from the Town, we have made the following changes:*

1. Points 1, 3, 5, 7, and 8 of Carole Burns' April 27, 1988 letter have been incorporated as requested.

2. In response to Ms. Burns' point 2, we still do not understand why any party would pay its share to the Town, except by mistake perhaps, when it would receive neither a release nor a dismissal in return. In the event of a mistake, a court would most likely allow the return of the money even in light of the proposed language. In addition, incorporation of the Town's proposed sentence in the location suggested may result in some ambiguity with respect to the Town's obligation not to release or dismiss parties who do not contribute to the Common Defense Fund. However, since there has been no objection from any other party concerning the inclusion of the language, we have included it but in a different location to avoid the aforementioned ambiguity. The sentence was added on page 21, fourth line from the bottom, and merged with the last sentence on that page.

3. With respect to Nassau County (point 4 of the April 27 letter), we have made certain changes on page 50. In addition, the Vocational and Educational Extension Board of Nassau County (VEEB) has been included in these special release provisions. We have been informed by the Nassau County Attorney that he has discussed this latter change with the attorney for VEEB.

4. In response to point 6, we have changed the word "lodging" to "execution" to be consistent with the extent of the State's release of the Town. (This change was discussed with Mr. Altheim and agreed to by him.)

5. In response to point 9, we have added language at the end of page 41 and on page 46 as proposed by the Town.

6. In response to a concern expressed by the Town orally, we have added a sentence on page 23 in the first paragraph, line 9, under Section XIII (Obligations of the State).

While scrutinizing the Decree for the last time, we noticed four minor language changes that we felt should be made. First, with respect to the exclusion for civil toxic tort claims, on page 38 of the Consent Decree, second line

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*Please note that the pages enumerated in this letter refer to page numbers in draft #9.

from the bottom, we changed "exclude" to "not include." Second, with respect to the general covenant on pages 47 and 48, we believe that the inclusion of the language "in any way aiding" is overreaching and therefore the language was deleted. For example, the State may be required to produce documents for a private party under the Freedom of Information Act, or any party may be subject to the production of documents under Federal Rule 34(c). The language "instituting, asserting or pressing" provides adequate protection against the possibility of a party initiating an action. Third, on page 55, we substituted the neutral phrase "either authorizing or prohibiting" for "barring." Finally, on page 10, we made reference to the official Record of Decision signed by the State and EPA so it could be filed with the Court.

With respect to the appendices, Appendix A is still missing schedules to be contained in Figures 6 and 7. We hope to finalize these schedules with the Town in the next few days. At that time, we will send out the figures for insertion in Appendix A. This negotiation with the Town should not be an impediment to execution of the Decree by other parties. Appendices B and C have been redrafted in a manner consistent with the Consent Decree and are enclosed with Appendices D, E-I and E-III. Liaison Counsel for Group I of the third-parties has not provided us with Appendix E-II as yet. Consequently the signature section is also incomplete.

Finally, we received on May 10 Andy Simons' letter concerning comments of the third-parties. We have accepted the changes proposed in points 1 through 6 of the letter and have made the appropriate changes. The Town also has agreed to these changes. We have not accepted points 7 through 10 for the following reasons:

1. Points 7 and 8 - The addition of "which has been or could have been alleged" is inappropriate in the general covenant. The covenant applies "forever" and includes all past and present claims as well as those which may arise in the future. Mr. Simons' suggested language is limiting and confusing. Furthermore, the State will not delete "and only to the extent that each party has been released..." because this is a general provision and different covenants apply to different parties (e.g., the State and Nassau County) based upon the releases received. The language suggested in point 8 is contained in Appendices B and C as they are specifically directed toward individual parties.

2. Point 9 - As we indicated in our letter of April 20, 1988, the inclusion of this language in a previous draft (not prepared by us) was overlooked and the State will not agree to its inclusion in the final. We will not acknowledge in the Consent Decree any right to

contest the validity of the Town's documents. The Consent Decree is specifically neutral on this "right to contest" which we believe is appropriate.

3. Point 10 - There still must be a misunderstanding with respect to the purpose of Appendix C. It was the Town's and the Settling Defendants' choice to execute an individual release form for each party. Therefore, it does not make sense to include Appendix C in the Section relating to signature by counterpart.

Please notify us no later than COB on Tuesday, May 24th, as to when the Decree will be executed by the parties which you represent. If there is any disagreement with the terms of the Decree, the State will request that the parties appear before Judge Sifton to explain why this case cannot be settled under the terms set forth.

Sincerely,

E. Gail Suchman

ROBERT L. OSAR
E. GAIL SUCHMAN
Assistant Attorneys General

RLO,EGS:ra
Encl.

----------X

GRUMMAN CORPORATION and GRUMMAN AEROSPACE CORPORATION,

Third-party plaintiff,

-against-

A.A. & M. CARTING SERVICE, INC., et al.

Third-party defendants.

----------X

MARMON GROUP, INC., et al.,

Third-party plaintiff,

-against-

A.A. & M. CARTING SERVICE, INC., et al.,

Third-party defendants.

----------X

FINAL CONSENT DECREE

WHEREAS, the Attorney General of the State of New York (the "State") having filed a First Amended Complaint (the "Complaint") in this matter pursuant to, inter alia, the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. § 9601 et seq., as amended by the Superfund Amendments and Reauthorization Act of 1986, Public Law No. 99-499, 100 Stat. 1613 ("CERCLA/SARA"); the Environmental Conservation Law of the State of New York § 27-0914 and § 17-0501; and the common law for equitable relief and damages including the recovery of all response

costs the State alleges it has incurred and will incur under CERCLA/SARA in connection with a facility known as the Old Bethpage Landfill located in the Town of Oyster Bay, New York (hereinafter "TOB Landfill" or "Landfill");

WHEREAS, Defendant Town of Oyster Bay (hereinafter "the Town") and the Corporate Defendants having filed answers denying any and all claims and having filed third-party complaints against approximately 160 third-party defendants for contribution and/or indemnification;

WHEREAS, the State, the Town, the Corporate Defendants and certain third-party defendants (the Corporate Defendants and the Settling Third-Party Defendants set forth in Appendix E-II and E-III attached hereto, hereinafter collectively referred to as the "Settling Defendants") having each stipulated and agreed to the making and entry of this Final Consent Decree (hereinafter "Decree" or "Consent Decree") prior to the taking of any testimony, based upon the pleadings herein, and without any admission of any allegation contained in the Complaint, third-party complaints, answers, counterclaims and crossclaims;

WHEREAS, the Court having reviewed this Decree and finding it adequate to resolve the issues raised in these actions and to protect the public interest; and

WHEREAS, the State, the Town and the Settling Defendants having agreed that settlement of this matter is

in the public interest and entry of this Consent Decree is made in good faith in an effort to avoid expensive and protracted litigation;

NOW THEREFORE, it is ORDERED, ADJUDGED, AND DECREED as follows:

I. JURISDICTION

The Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. § 1331, 28 U.S.C. § 1345, 42 U.S.C. § 9613 and has jurisdiction over the parties to this Decree. The parties who have consented to entry of this Decree waive any objection they may have to the jurisdiction of the Court to enforce this Decree and agree to be bound by the terms hereof.

II. PARTIES

The parties to this Consent Decree are:

1. Plaintiff State of New York (the "State");

2. Defendant Town of Oyster Bay (the "Town");

3. Defendants:

Occidental Chemical Corporation
Occidental Chemical Holding Corporation
Occidental Petroleum Corporation
Marmon Group, Inc.
Cerro Wire & Cable Corp.
Cerro Conduit Company
Cerock Wire and Cable Group, Inc.
The Rockbestos Company
Grumman Corporation
Grumman Aerospace Corporation

and their respective parents and subsidiaries identified in Appendix E-I attached hereto (collectively the "Corporate Defendants"); and

4. The third-party defendants set forth in Appendix E-II attached hereto (collectively "Group I of the Settling Third-Party Defendants"); and

5. The third-party defendants set forth in Appendix E-III attached hereto (collectively "Group II of the Settling Third-Party Defendants").

III. BINDING EFFECT

This Consent Decree shall apply to, benefit, and be binding upon all parties to this Decree, and their respective past and present officers, directors, officials, agents, attorneys, servants, employees, representatives, successors, and assigns. Each undersigned representative of the parties to this Consent Decree certifies that he or she is fully authorized to enter into the terms and conditions of this Decree and to execute and legally bind such party to it.

The Town shall make available a copy of this Consent Decree to all contractors retained to perform the Remedial Action Plan, as defined in Section VI herein and attached hereto as Appendix A, and apprise them that the provisions of this Decree govern their work and the work of their subcontractors. All contracts for the implementation of the

Remedial Action Plan shall provide that the provisions of this Consent Decree shall govern that remedial work to be performed.

IV. PURPOSE

The purpose of this Consent Decree is to settle solely amongst the parties to this Consent Decree those claims alleged in the Complaint, crossclaims, counterclaims, and third-party claims in this action, and all claims which might have been alleged, by any party to this Consent Decree relating to the existence, release or threat of release of hazardous substances at or from the TOB Landfill, except as specifically reserved herein. Additionally, the purpose of the Decree is to serve the public interest by protecting the public health, welfare, and the environment at the TOB Landfill and its environs by the implementation of the Remedial Action Plan required herein.

V. PUBLIC PARTICIPATION

For a thirty (30) day period prior to final approval and entry of this Consent Decree by the Court, the public will be afforded an opportunity to review and comment upon the Decree as set forth herein. All written comments by the public will be reviewed and responded to in writing by the State and all written comments and responses will be made a part of the record filed with this Consent Decree.

VI. DEFINITIONS

Unless otherwise explicitly stated, the definitions provided in CERCLA/SARA shall control the meaning of terms used in this Consent Decree and its Appendices.

1. "Consent Decree" or "Decree" shall mean this Final Consent Decree and all its Appendices.

2. "Requisite Remedial Technology" ("RRT") means known engineering, scientific and construction principles and practices, used or acceptable for use in the cleanup or containment of chemical contamination which are applicable to the materials and hydrogeological conditions found at the TOB Landfill and its environs, including new and innovative technologies which utilize a permanent solution to the maximum extent practicable.

3. "Remedial Action Plan" ("RAP") as used in this Consent Decree means that program for remediation, including design, construction and operation, required by this Consent Decree which the State and the Town on the basis of present knowledge believe to be appropriate to accomplish the remedial goals and criteria of this Consent Decree, and to which no objections have been raised by any other party to this Consent Decree.

4. "Hazardous Substances" includes those substances referred to as hazardous substances in Section 101(14) of

the Comprehensive Environmental Response Compensation and Liability Act, 42 U.S.C. § 9601(14), and those substances referred to as hazardous wastes in the New York State Environmental Conservation Law § 27-1301.

5. "Contractor" means the company or companies retained by the Town to undertake and implement the Remedial Action Plan. Each contractor and subcontractor shall be qualified to implement those portions of the Remedial Action Plan for which it is retained.

6. "National Contingency Plan" shall be used as that term is defined in Section 105 of CERCLA/SARA, 42 U.S.C. § 9605.

7. "Operation and Maintenance" ("O&M") means the requirement for continued operation of the program of remediation, as necessary, in a manner which ensures that the remedy continues to perform its function as designed to meet the Remediation Criteria set forth in Section X herein.

8. "Oversight" means the State's inspection of remedial work and verification of compliance with the requirements set forth in this Consent Decree.

9. "Final Design Plan" means the final engineering design and specifications (including drawings) for the complete program for remediation, including but not limited to the design and specifications for the completion of the capping program, groundwater recovery system, treatment

system (including piping), recharge system (including injection wells and basin) and monitoring program, as more fully described in the RAP.

10. "Settling Defendants" means the Corporate Defendants and Groups I and II of the Settling Third-Party Defendants as these terms are defined in Section II above.

VII. STATEMENT OF CONDITIONS AT THE TOB LANDFILL

Defendant Town has owned and operated the TOB Landfill since the late 1950's. The TOB Landfill occupies approximately 65 acres and since the commencement of operation has been a municipal landfill, receiving refuse, wastes, and garbage from private, municipal, and commercial sources and accumulating that material at the site.

Investigations at the TOB Landfill and its offsite environs have been conducted. The findings of these investigations are set forth in the report of the Remedial Investigation ("RI") filed herewith. Based on the data set forth in the RI, the State and Town believe that the Map set forth on Figures 1 and 2 of Appendix A shows the approximate location and dimensions (including depths) of the groundwater plume containing chemical substances (the "plume") to be remediated.

PLUME DEFN

VIII. REMEDIAL ACTION FEASIBILITY STUDY

In compliance with the provisions of the Interim Consent Order entered in this action and the requirements of CERCLA/SARA, the Town has had prepared a Remedial Action Feasibility Study ("FS") filed herewith setting forth and analyzing all remedial alternatives for the Landfill. This FS has been provided to the public and all written comments from the public and responses by the State are also filed herewith. Based upon this FS, the Town recommended and the State and the Federal Environmental Protection Agency have selected pursuant to a formal Record of Decision (also filed herewith) the remedial program for the Landfill which is set forth in the RAP, attached hereto as Appendix A.

RAP ACCEPTED

IX. GENERAL OBLIGATION OF THE TOWN TO REMEDIATE

The Town shall design, construct, operate and maintain a program for remediation of the TOB Landfill to achieve the Remediation Criteria set forth in Section X herein.

X. REMEDIATION CRITERIA

The program for remediation to be implemented by the Town under this Consent Decree shall:

1. Establish and maintain a consistent hydraulic containment of the plume as set forth in Appendix A, Section I.D, through the installation and operation of pumping wells.

2. Demonstrate by chemical analytical sampling in the Monitoring Program, set forth in Appendix A, Section II.A,

that the plume is not migrating beyond the point of hydraulic containment in excess of the Groundwater Criteria set forth herein in Appendix A, Table 2.

3. Collect groundwater within the plume until it can be demonstrated by the Monitoring Program set forth in Appendix A, Section II.B, that the concentrations of chemical constituents in the groundwater within the plume a) meet the Groundwater Criteria set forth in Table 2 of Appendix A, or b) demonstrate that a Zero Slope Condition as defined in Appendix A, Section III.B.2, has been reached and all other conditions of termination, including the evaluation of RRT as set forth in Section XI, have been met.

4. Confirm the attainment of the Groundwater Criteria or the Zero Slope Condition through a post-termination monitoring program set forth in Appendix A, Section II.B.5.

5. Treat and discharge the collected groundwater to comply with the discharge criteria for air and water set forth in Appendix A, Tables 1 and 2, and all applicable standards and regulations, including substantive permit requirements for such discharges.

6. Complete, operate and maintain a landfill capping program and continue to implement, monitor, and operate and maintain the gas and leachate collection systems as per the closure requirements of New York State Regulation 6 NYCRR

Part 360 and the requirements of this Consent Decree and RAP.

XI. SPECIFIC OBLIGATIONS OF THE TOWN

The Town's Implementation of the Remedial Action Plan

Based upon information contained in the RI and FS, the Town shall implement and continuously operate and maintain the program set forth in the RAP attached hereto as Appendix A until such time as the Town may be permitted to terminate the program in accordance with the terms and provisions of this Decree. All schedules, requirements and obligations contained in Appendix A shall be fully enforceable solely against the Town as part of this Decree. All reports, plans (including the Final Design Plan), and similar documents required by the RAP shall be submitted to the State for approval as per Sections XV and XXXI herein and, upon approval, shall become part of the RAP and shall be deemed fully enforceable under this Decree.

Description of RAP

The RAP annexed hereto as Appendix A, developed by the Town's consultants in consultation with the State, provides in part for:

1. The installation and operation and maintenance of a system of groundwater recovery wells in the plume which will extract groundwater and pipe it to a treatment facility all

designed to achieve the Remediation Criteria set forth in Section X.

2. Installation, operation, and maintenance of a "Monitoring Program" and "Post-Termination Monitoring Program" which shall provide data sufficient to determine the effectiveness of contaminant reduction and hydraulic control measures in meeting the Remediation Criteria.

3. Installation, operation, and maintenance of treatment facilities for the extracted groundwater designed to comply with the Remediation Criteria.

4. Completion, operation and maintenance of a capping program for the Landfill to comply with the Remediation Criteria.

5. Continued operation and maintenance, monitoring, and enhancement, as required, of the gas and leachate collection systems.

6. The implementation of a Health and Safety Plan(s) for the construction, operation and maintenance of the program set forth in the RAP.

7. A Sampling and Analysis Program setting forth the specific protocols and analytical methods to be used in the "Monitoring Program" and "Post-Termination Monitoring Program".

The Town's Duty to Modify

The Town will implement any modifications or alterations to the RAP necessary to meet the Remediation Criteria set forth in Section X herein. Such modifications and alterations shall be subject to State approval and to the limitations of Requisite Remedial Technology ("RRT") as defined in Section VI and set forth herein.

In the event that the Groundwater Criteria of Appendix A, Table 2, are not met but termination of the RAP is sought pursuant to the Zero Slope Condition defined in Appendix A, Section III.B.2, then the Town shall examine whether there is an existing RRT which is capable of achieving the Groundwater Criteria or otherwise capable of substantially reducing the concentrations of hazardous substances. The Town will then provide a report to the State detailing its examination of such RRTs and its conclusion as to whether such technology exists and its application and appropriateness to the situation then existing at the TOB Landfill. If the State and Town agree that (a) such RRT exists and (b) it is appropriate to utilize the same, then the Town shall prepare a plan to implement said RRT. If the Town and the State cannot agree on these issues, they shall be subject to the dispute resolution mechanism set forth in Section XXXI of this Decree. In determining whether an RRT

is appropriate, consideration shall be given to the following factors in the order of priority set forth:

(1) the extent to which the Groundwater Criteria have been satisfied;

(2) the extent to which the application of the RRT would further reduce the chemical concentration levels and control migration of the plume; and

(3) the economic cost required to implement the RRT.

The Town's plan for implementation of the RRT shall include a schedule for implementation and shall be subject to the State review, approval, and dispute resolution mechanism set forth in Sections XV and XXXI of this Decree.

All reports, plans, final design specifications and similar documents required by the duty to modify set forth in this Section shall be submitted to the State for approval as per Sections XV and XXXI herein and, upon approval, shall become part of the RAP and be deemed fully enforceable under this Decree.

Compliance With Law

The implementation of the RAP by the Town shall be in accordance with all the terms and obligations of this Decree and all applicable federal, State and local law and

regulation, including permit requirements as set forth in Section XX herein.

Completion of the RAP

The RAP for groundwater remediation shall be deemed complete when the Termination Criteria set forth in Appendix A, Section III.A, have been met.

The Town's Duty To Assume Full Cost of Remediation

It is the Town's duty, other than as expressly set forth in this Decree, to assume the full cost of remediation. The Town has estimated the costs of implementation of the groundwater remediation program set forth in the RAP, Appendix A, Section I.C, to be approximately 7.0 million dollars. The obligations of the State under this Decree, with respect to the payment of money, is set forth in Section XIII herein and is based upon and shall be limited by that sum of money, unless otherwise agreed to by the State. If the Town's costs in implementing that section of the RAP exceed the estimated $7.0 million figure, the Town agrees that it shall be responsible for all such excess costs and shall not seek further monies for any portion of the costs of the RAP, past or future, from the Settling Defendants or the State. Such acceptance is not a waiver of the Town's right to seek such response costs from other potentially responsible parties not included among the Settling Defendants or the State.

In the event the Town fails to implement in a timely manner or continuously operate and maintain the program set forth in the RAP described in Appendix A, the State, upon 30 days written notice, may perform such portions of the RAP as may be necessary. If the State performs portions of the RAP because of the Town's failure to comply with its obligations under this Decree, the Town shall reimburse the State for the costs of doing such work within 30 days of receipt of demand for payment of such costs. Any demand for payment made by the State under this Section will be documented to verify that the claimed costs were incurred. In no event, shall the Settling Defendants have any liability to the Town or the State in the event the Town fails to timely, continuously or properly implement, operate and maintain the programs set forth in the RAP.

Releases, Indemnities, Covenants Not To Sue, Stipulations of Dismissal

Pursuant to Section XXVI, the Town shall execute and deliver Releases, Indemnities and Covenants Not to Sue in the form annexed hereto as Appendix B and a Stipulation of Dismissal With Prejudice in the form annexed hereto as Appendix D. Delivery of Releases, Indemnities and Covenants Not to Sue by the Town, as required by this Section and Section XXVI herein, to all Settling Defendants which have complied with the requirements of Section XII herein shall

be made on the 40th day after entry of this Consent Decree at 11:00 a.m. at the Ceremonial Courtroom, United States District Courthouse, Cadman Plaza, Brooklyn, New York, or at such other location as may be mutually agreed upon by the parties to this Decree. Should the 40th day after entry of this Decree fall on a Saturday or Sunday, then the parties shall meet on the following Monday.

XII. OBLIGATIONS OF SETTLING DEFENDANTS

The Corporate Defendants

The sole obligations under this Consent Decree of the Corporate Defendants are:

1. Payment to the Supervisor, Town of Oyster Bay, of the aggregate sum of $2,450,000 (to be contributed by the Corporate Defendants in such proportions as they have among themselves previously agreed); and

2. Pursuant to Section XXVI, the execution and delivery of Releases and Covenants Not to Sue in the form annexed hereto as Appendix C and a Stipulation of Dismissal with Prejudice in the form annexed hereto as Appendix D.

No amount to be paid by the Corporate Defendants or any of them is to be considered a penalty. The finality of this Consent Decree, the release and discharge of all obligations hereunder of the Corporate Defendants, and the execution and

delivery to the Corporate Defendants of the releases, indemnities, covenants and stipulations required of the Town under this Consent Decree, shall not be conditioned upon, but rather shall be wholly independent of, implementation of any settlement between the State, the Town and any other person, including but not limited to any of the Settling Third-Party Defendants.

The Settling Third-Party Defendants

The sole obligations under this Consent Decree of Group I of the Settling Third-Party Defendants are:

1. Payment to the Supervisor, Town of Oyster Bay, of the aggregate sum of $1,893,000, to be contributed by the members of Group I of the Settling Third-Party Defendants in such amounts as they have previously agreed; and

2. Pursuant to Section XXVI, the execution and delivery of Releases and Covenants Not to Sue in the form annexed hereto as Appendix C and a Stipulation of Dismissal With Prejudice in the form annexed hereto as Appendix D; and

3. Payment to the Treasurer, Old Bethpage Landfill Common Defense Fund, of all fund allocations attributed to such Settling Third-Party Defendants by the Third-Party Defendants' Management Committee, by a date certain, no later than the entry of this Decree,

to be noticed in writing by the Management Committee.

The sole obligations under this Consent Decree of each Settling Third-Party Defendant in Group II are:

1. Payment to the Supervisor, Town of Oyster Bay, by each party of its agreed share of the aggregate sum of $82,500, which sum shall be in addition to and not part of the $1,893,000 referred to above; and

2. Pursuant to Section XXVI, the execution and delivery of Releases and Covenants Not to Sue in the form annexed hereto as Appendix C and a Stipulation of Dismissal With Prejudice in the form annexed hereto as Appendix D; and

3. Payment to the Treasurer, Old Bethpage Landfill Common Defense Fund, of all fund allocations attributed to such Settling Third-Party Defendant by the Third-Party Defendants' Management Committee, by a date certain, no later than entry of this Decree, to be noticed in writing by the Management Committee.

No amount to be paid by any Settling Third-Party Defendant is to be considered a penalty. The finality of this Consent Decree, the release and discharge of all obligations hereunder of the Settling Third-Party Defendants, and the execution and delivery to the Settling Third-Party Defendants of the releases, indemnities,

covenants and stipulations required of the Town under this Decree, shall not be conditioned upon, but rather shall be wholly independent of implementation of any settlement between the State, the Town and any other person, including but not limited to any of the Corporate Defendants.

The Town shall execute and deliver Releases, Indemnities and Covenants Not to Sue and a Stipulation of Dismissal pursuant to Section XXVI herein to contributing members of Group I upon payment of $1,893,000, irrespective of whether any member of Group II has satisfied its obligations under this Decree. Notwithstanding anything herein to the contrary, the Town shall not be required to execute or deliver a Release, Indemnity and Covenant Not to Sue, or any Stipulation of Dismissal, to any Settling Third-Party Defendant in Group I or Group II if the payment of $1,893,000 required to be made by Group I of the Settling Third-Party Defendants is not made. In such event, the Settling Third-Party Defendants in Group II shall not be required to make the agreed upon payments, and the Town's third-party action against all third-party defendants shall continue. The Town shall have full perpetual right, title, interest and use of all funds paid by members of Groups I and II regardless of whether they have made their payment of fund allocations to the Old Bethpage Common Defense Fund, but in no event shall the Town execute or deliver a Release,

Indemnity and Covenant Not to Sue, or any Stipulation of Dismissal, to any Settling Third-Party Defendant until such Settling Third-Party Defendant has made full payment to the Treasurer, Old Bethpage Landfill Common Defense Fund, of all fund allocations to the Common Defense Fund attributed to such Settling Third-Party Defendant by the Third-Party Defendants' Management Committee as certified to the Town by said Treasurer. Such certification shall be made within ten days after the entry of this Decree.

Delivery of payments to the Town by the Settling Defendants as required by this Section and the delivery of Releases and Covenants Not to Sue by the Settling Defendants, as required by this Section and Section XXVI herein, shall be made on the 40th day after entry of this Consent Decree at 11:00 a.m. at the Ceremonial Courtroom, United States District Courthouse, Cadman Plaza, Brooklyn, New York, or at such other location as may be mutually agreed upon by the parties to this Decree. Should the 40th day after entry of this Decree fall on a Saturday or Sunday, then the parties shall meet on the following Monday.

The Settling Defendants waive any and all rights and claims with respect to any and all monies collected by the

Town pursuant to this Consent Decree and/or pursuant to any surviving third-party action.

XIII. OBLIGATIONS OF THE STATE

The Town may submit to the State, pursuant to the Municipal Assistance Program set forth in New York State regulations at 6 NYCRR Part 375, an application for not more than 1.875 million dollars (75% of $2.5 million), subject to the provision in Section XXVIII herein, unless otherwise agreed to by the State. The Town shall comply with all requirements of 6 NYCRR § 375. The State shall process said application and provide a final determination with all deliberate speed. The State acknowledges that the Town's settlement with the Settling Defendants as set forth in this Decree is reasonable based upon the estimated cost of 7.0 million dollars for implementation of the groundwater remediation program set forth in the RAP, Appendix A, Section I.C. If any monies are received by the Town from the State under this program, the Town agrees to reimburse the State 75% of all monies received by the Town from its insurers or from any other potentially responsible parties not included among the Settling Defendants or the State up to the full amount received by the Town from the State. No State Municipal Assistance Program money shall be disbursed to the Town until all monies received pursuant to Section

XII have been applied to the implementation of the RAP and accounted for pursuant to the requirements of 6 NYCRR § 375.

The State shall diligently review all documents submitted pursuant to the RAP and respond within the time periods required under Section XV of this Decree, unless a different time schedule is agreed to by the Town and State.

As set forth in Section XXIII of this Decree, the State will provide oversight of the activities required by the RAP.

Pursuant to Section XXVI, the State shall execute and deliver to each Corporate Defendant and to each contributing Settling Third-Party Defendant a Release and Covenant Not to Sue in the form annexed hereto as Appendix C and a Stipulation of Dismissal With Prejudice in the form annexed hereto as Exhibit D.

XIV. CONSISTENCY WITH THE LAWS OF THE STATE OF NEW YORK AND FEDERAL LAW

The obligations required of the Town under this Consent Decree are consistent with the laws of the State of New York and the United States. The State and the Town agree that, in any civil, judicial, or administrative proceeding instituted by any person or entity against the State or the Town arising from activities at the TOB Landfill, they will acknowledge the appropriateness of the RAP and that the

activities described in the RAP are consistent with the Naticnal Contingency Plan.

XV. REVIEW AND APPROVAL PROCEDURE

Whenever the RAP calls for the development or submittal of plans to the State or if either the Town or the State pursuant to this Consent Decree proposes modification or alteration tc any plan to be developed and implemented pursuant to this Consent Decree, such plans shall not be implemented until they are reviewed by the designated recipient of the Town or State, as appropriate, and according to the following procedure:

(1) A copy of each proposed plan or modification to a plan shall be mailed to:

1. New York State Department of Law
   Environmental Protection Bureau
   120 Broadway
   New York, N.Y. 10271
   Re: Old Bethpage Landfill Remediation

2. Department of Environmental Conservation
   Division of Hazardous Waste Remediation
   50 Wolf Rd.
   Albany, N.Y. 12233

3. Town Attorney
   Town of Oyster Bay
   Oyster Bay, N.Y. 11771

Any office listed above may designate in writing a specific person or an alternate office to receive such plan.

(2) After receiving a proposal for a plan or modification to a plan, the receiving party shall promptly respond to said proposal as soon as practical and normally within 30 days. If that party considers the proposal acceptable, it shall mail written notice of approval within 30 days after receipt of the proposal. The plan shall become effective on the date the approval is received by the proposing party and shall thereafter be implemented by the Town.

(3) If the receiving party does not consider the proposal acceptable, it shall mail a written notification of disapproval within 30 days after receipt of the proposal which shall include its particular objections and may include suggested modifications. If the Town and State cannct thereafter agree on the proposed plan, within a reasonable time of the date of mailing of such notice of disapproval, then the Town shall petition this Court for a resolution of the dispute pursuant to the Dispute Resolution provisions of Section XXXI herein.

(4) In each instance in which a plan as proposed or modified becomes effective, the State shall attach it to this Consent Decree as an appendix, mail copies of the appended document to the Town and other parties receiving

notice as per Section XXXIV herein, and file it with the Court. Such plan shall be deemed fully enforceable as part the Consent Decree.

(5) No informal advice or guidance by officers, employees or representatives of the parties, upon any plan, report, proposal, study or other document, or modifications or additions thereto, shall relieve the Town of its obligation to obtain the State's formal written approval of the same. Notification of such approval shall only be transmitted by the Department of Law.

XVI. PROPERTY ACCESS

The work to install and construct the remedial system under the RAP is designated to take place off-site on State owned property and on-site within the TOB Landfill property boundaries (off-site and on-site properties when referred to collectively shall be identified as "the Site").

State Property

The State will provide access for the Town to perform all off-site work pursuant to the RAP set forth in Appendix A.

The Town shall indemnify the State for any and all liability arising out of the Town's activities on State property.

TOB Landfill Property

The Town shall cooperate fully in allowing access to its property and its environs and all structures and facilities erected thereon, as necessary, to fulfill the remedial goals, programs and plans described herein.

The State shall have access to the TOB property and its environs at all times in order to observe and monitor the progress of the work, to take samples and to conduct surveys or investigations relating to any air, soil and groundwater contamination at, beneath, or near the Site.

Nothing herein limits or otherwise affects any right of entry to the Site by the State pursuant to applicable laws, regulations, or permits.

XVII. SAMPLING AND NOTICE

The State shall have the right to obtain samples or duplicate samples, at its own option and cost, of all materials or substances sampled by the Town in the course of the performance of its obligations hereunder. Such activities conducted by the State shall, to the maximum extent possible, be conducted in such a fashion so as not to impede or interfere with implementation of the RAP. The State shall give the Town reasonable notice of all activities to be conducted on or adjacent to the Site that might have an impact on the remediation activities.

The Town shall provide to the State Project Coordinator designated under Section XXIII herein reasonable notice of the work schedule for construction, excavating, drilling, sampling or other investigative or remedial work to be conducted in the performance of the obligations under this Consent Decree. It shall be the obligation of the State Project Coordinator, to provide State observers to the Site as required. If the State has been provided a reasonable work schedule, the Town may proceed with any work at the Site, whether or not a State observer is present.

XVIII. INSURANCE

To the extent that the Town or its contractors obtain insurance coverage with regard to the activities to be implemented under the RAP, the Town shall require that these policies include a waiver of the insurer's subrogation rights against the State and Settling Defendants, except with respect to claims not released herein as set forth in Section XXVI.

Notwithstanding the provisions of this Decree, in no event shall the Town be relieved of its ultimate responsibility to implement in a timely fashion the RAP under this Consent Decree by reason of any inability to obtain or failure to maintain in force any insurance policies, or by reason of any dispute between the Town and any of its insurers pertaining to any claim arising out of

implementation or operation of the RAP, or arising out of any other activity required under this Consent Decree.

XIX. REPORTS AND DATA

L K & B provide report

The Town shall provide the State a quarterly report (on the calendar quarter) and an annual report detailing the implementation and operation of the RAP. Such reports shall continue until the Consent Decree has been satisfied in accordance with Section XXXIX. The information required in the reports is set forth on Appendix A, Section II.D.

The Town shall provide all data generated under this Consent Decree to the State within a reasonable time, normally within 30 days, after the Town or its consultants obtain such data, unless the State waives in writing its right to all or some of such data.

XX. PERMITS

The Town shall use its best efforts, and the State, shall cooperate consistent with its legal authority, to obtain on a timely basis such permits, easements, rights of way, rights of entry, approvals, or other authorizations from any federal, State, or local government entity, or any corporation, partnership, association, or private person which are necessary to carry out any of the Town's obligations pursuant to this Consent Decree. The Town shall promptly notify the State in the event of the Town's

inability to obtain appropriate authorizations on a timely basis.

In the event the Town is unable to obtain the authorizations required by this Section, the State shall, consistent with its legal authority, assist in obtaining, as appropriate, all such authorizations which the Town was unable to obtain. If, despite the Town's best efforts, the Town does not obtain the aforementioned authorizations on a timely basis, the time for performance of any obligations pursuant to this Consent Decree which are necessarily dependent upon such authorizations shall be extended as appropriate. If, despite the Town's best efforts, such authorizations cannot be obtained despite an enlargement of time, the State and the Town will meet to seek agreement as to how this Consent Decree or its schedules can be modified or altered consistent with the Remediation Criteria and schedules of this Decree. If agreement cannot be reached, it will be resolved pursuant to the dispute resolution provision of Section XXXI herein.

XXI. DELAY OF PERFORMANCE

"Force Majeure" for the purpose of this Consent Decree is defined as an event arising from causes entirely beyond the control of the Town which cannot be overcome by diligence and which (1) delays any performance required under this Consent Decree or (2) makes legally impossible

substantial performance of the obligations imposed by this Consent Decree. "Force Majeure" shall not include increased costs associated with compliance with the obligations set forth in this Decree.

If a delay occurs or the Town anticipates a delay in performance of its obligations under this Consent Decree, due to a "force majeure" event, it shall promptly notify the State, in writing, of the nature, cause and anticipated length of the delay and all steps which the Town has taken or will take, with a schedule for their implementation, to avoid or minimize the delay. If the State and Town agree that the delay was attributable to a "force majeure" event, they may stipulate to a reasonable extension which will then be submitted to this Court. If they do not agree that the delay was caused by a "force majeure" event, or if regardless of the cause of the delay, they are unable to agree on a stipulated extension of time to be granted to the Town, the State shall notify the Town in writing. In that event, the Town may petition the Court for relief. The burden of demonstrating the occurrence of a "force majeure" event is on the Town.

The granting or agreement to a "force majeure" delay of a requirement or obligation under this Consent Decree does not relieve or allow delay of the Town's other obligations or requirements under this Decree.

XXII. RETENTION OF RECORDS

The Town shall preserve and retain all records and documents now in its possession or control or which come into its possession or control with respect to disposal of materials at the Site and persons who disposed at the Site regardless of any document retention policy to the contrary, for at least five years after termination of this Decree pursuant to Section XXXIX unless the State agrees in writing to allow the destruction of such documents at an earlier time. In any event, the Town shall provide a thirty-day prior notice of such destruction to the Settling Defendants at the addresses indicated on the Releases and Covenants Not to Sue executed pursuant to Section XXVI. Notice sent to the Settling Defendants at said addresses shall constitute compliance by the Town with this Section. Upon request by a Settling Defendant within fourteen days after notice is mailed, the Town shall make the records available to said Settling Defendant for review and/or copying prior to their destruction.

Until completion of the RAP and termination of this Consent Decree, the Town shall preserve, and shall instruct all contractors and anyone else acting at the TOB Landfill on its behalf to preserve (in the form of originals or exact copies) all sampling and analytical data and related reports; as built drawings; engineering specifications and

contract documents; and operation and maintenance records and logs relating to the implementation, performance and monitoring of the RAP. Upon the completion of the RAP, all such records, documents, and information shall be made available to the State Project Coordinator as established by Section XXIII herein. If the State Project Coordinator declines to take any such documents in his possession within a reasonable time, the Town may (but is not required to) dispose of such records. In any event, the Town shall provide a thirty-day prior notice of such destruction to the Settling Defendants at the addresses indicated on the Releases and Covenants Not to Sue executed pursuant to Section XXVI. Notice sent to the Settling Defendants at said addresses shall constitute compliance by the Town with this Section. Upon request by a Settling Defendant within fourteen days after notice is mailed, the Town shall make the records available to said Settling Defendant for review and/or copying prior to their destruction.

XXIII. PROJECT COORDINATOR

By the effective date of this Consent Decree, the State and the Town shall each designate Project Coordinators to monitor the progress of the work in developing, implementing, operating, maintaining and, if appropriate, terminating the RAP and to coordinate communication. The State Project Coordinator shall have the authority to ensure

who are the designees?

that all aspects of the RAP are performed in accordance with all applicable statutes, regulations, and this Consent Decree. The State Project Coordinator shall also have the authority to require a cessation of the performance of the PAP or any other activity at the Site that, in the Coordinator's opinion, may present or contribute to an endangerment to public health, welfare or the environment or cause or threaten to cause the release of hazardous substances from the Site. In the event the State Coordinator suspends the RAP or any other activity at the Site, the State and Town may stipulate to an extension of the schedule as appropriate and submit such stipulation as a modification to this Decree to be entered by the Court. In the event the State and the Town cannot agree, the matter is to be resolved through the Dispute Resolution provisions of Section XXXI.

The Project Coordinators do not have the authority to modify in any way the terms of this Decree, including Appendix A or any design or construction plans. The absence of the State Project Coordinator from the Site shall not be cause for stoppage of the work, provided adequate notice was given pursuant to Section XVII herein. The State and the Town have the right to change their respective Project Coordinators. Such a change shall be accomplished by

notifying the other party in writing at least seven calendar days prior to the change.

The Town's Project Coordinator may assign other representatives, including other contractors, to serve as a Site representative for oversight of performance of daily operations during remedial activities.

The State Project Coordinator may assign other representatives, including other State employees or contractors, to serve as a Site representative for oversight of performance of daily operations during remedial activities. Prior to invoking formal Dispute Resolution procedures pursuant to Section XXXI, any disputes arising between the Site representatives and the Town or its contractors which cannot be resolved, shall be referred to the State Project Coordinator.

XXIV. ENFORCEMENT OF CONSENT DECREE

If any of the parties to this Consent Decree considers that any other party has failed to comply with the terms and conditions of this Consent Decree, the party alleging noncompliance may seek appropriate relief from the Court.

XXV. THE TOWN'S INDEMNIFICATION OBLIGATIONS

The Town shall defend, indemnify and hold harmless each party to whom the Release, Indemnity and Covenant Not to Sue in the form annexed hereto as Appendix B has been delivered pursuant to Section XXVI herein and its past and present directors, officers, officials, employees, representatives, agents, servants, attorneys, successors, heirs, executors, and administrators, all in their respresentative capacities as such, from and against any and all claims, suits, actions, proceedings, damages, expenses, losses, costs, reasonable attorneys' and experts' fees and disbursements arising out of, relating to or resulting from the performance, attempted performance or failure of performance by the Town, or its contractors or subcontractors of any of its obligations under this Consent Decree.

Further, the Town shall defend, indemnify and hold harmless each party to whom the Release, Indemnity and Covenant Not to Sue in the form annexed hereto as Appendix B has been delivered pursuant to Section XXVI herein and its past and present directors, officers, officials, employees, representatives, agents, servants, attorneys, successors, heirs, executors, and administrators, all in their representative capacities as such, from and against any and all claims, suits, actions, proceedings, damages, expenses, losses, costs, reasonable attorneys' and experts' fees and

disbursements arising out of, relating to or resulting from the existence, release or threat of release of any hazardous substance at or from the TCB Landfill.

The Town's indemnification obligations are perpetual and shall survive the execution and implementation of this Consent Decree.

Notwithstanding anything herein or in the Release, Indemnity and Covenant Not to Sue to be delivered in the form annexed hereto as Appendix B, said obligation to indemnify shall not apply, and shall not be construed to apply to any action, suit, liability, obligation, penalty, demand, or proceeding of whatever kind or nature, pertaining to the assertion of a civil toxic tort claim and shall not be construed to and is not intended to effectuate an obligation to indemnify or otherwise to impose upon the Town any liability with respect thereto. All parties to this Consent Decree reserve all claims and defenses with respect to such claims, including specifically the State's right to assert protection, if any, under the Eleventh Amendment to the United States Constitution, and nothing herein constitutes a waiver of such defenses.

For the purposes of this Consent Decree and the Release, Indemnity and Covenant Not to Sue (Appendix B), the term "civil toxic tort claim" shall not include claims for investigation, removal, remediation or cleanup costs arising

out of, relating to or resulting from the existence, release or threat of release of any hazardous substance at or from the TOB Landfill.

The foregoing indemnities shall be subject to the following conditions precedent: In the event an indemnitee becomes apprised of any claim, proceeding, action, suit, liability, fee, fine, penalty, obligation or demand of any kind (hereinafter "claim") within the scope of the aforesaid indemnities, written notice containing particulars with respect to the nature, time, place and cirsumstances of the claim shall be given by or for said indemnitee to the Oyster Bay Town Clerk at Town Hall, Audrey Avenue, Oyster Bay, New York 17771, as soon as practicable. The indemnitee shall promptly forward and tender to the Town for defense every demand, notice, summons or other legal process received by said indemnitee or its representative. Upon receipt of such notice of a claim from an indemnitee, the Town shall promptly and in writing, by certified mail, return receipt requested, inform the indemnitee whether: (1) it acknowledges that said claim is within the scope of the Town's indemnification and defense obligations; (2) it disclaims any obligation to defend and indemnify the indemnitee with respect to said claim; or (3) it accepts the indemnitee's notice of claim and will provisionally defend the indemnitee from and against such claim pending further

investigation, under a full reservation of the Town's rights to disclaim upon ten days notice any and all obligations to defend and indemnify in the event the claim is not within the scope of the Town's indemnification obligations. The Town shall retain competent outside counsel, and shall have the election to retain investigators and experts and otherwise to defend, control, and investigate the defense and settlement of the claim. The indemnitee shall reasonably cooperate with the Town and, upon the Town's request, reasonably assist it in the defense of the claim and the enforcement of any applicable right of contribution or indemnity against any person or organization. The Town shall reimburse out-of-pocket expenses incurred by the indemnitee in cooperating with the Town and assisting it in the defense of the claim. The indemnitee shall not, without prior approval of the Town, except at its own cost, voluntarily make any payment, assume any obligation or incur any expense in the defense of a claim.

In the event the indemnitee does not give notice, tender the defense of a claim, or assist and cooperate as hereinabove provided, the Town shall be free of any obligation to defend, indemnify or hold harmless with respect to any such claim.

Notwithstanding the above, with regard to the indemnification of the State by the Town, the State reserves the right to defend itself by and through the Attorney

General. If the State so elects, the Town shall then reimburse the State for its reasonable attorneys' and experts' fees. The election by the State to defend itself shall not in any way affect the obligations of the Town to indemnify the State as set forth above. Should the State exercise its right to defend itself, the State shall submit periodic reports to the Town so as to keep the Town apprised of all matters necessary to its evaluation of the claim and any defenses thereto.

Notwithstanding anything to the contrary hereinabove set forth, the Town shall not settle, compromise or abandon any claim within the scope of the Town's indemnification obligations without the express written consent of the indemnitee, which consent shall not unreasonably be withheld. In the event that the indemnitee unreasonably withholds its written consent to a proposed settlement, compromise or abandonment of any said claim, the Town shall thenceforth be relieved of its defense and indemnification obligations with regard to that claim.

Notwithstanding anything hereinabove to the contrary, the Town's indemnification obligations to Nassau County and the Vocational and Educational Extension Board of Nassau County shall be limited as provided in Section XXVI herein.

Further notwithstanding anything hereinabove to the contrary, the Town's obligation to indemnify shall not apply, and shall not be construed to apply, and shall not be construed to apply to:

(a) any claim set forth in the complaint filed in Town of Oyster Bay v. B&D Carting Inc. et al., U.S. District Court for the Eastern District of New York, C.V. 87-4336 (Mishler, J.). whether such claim is prosecuted in said court or in another forum;

(b) any claim relating to a failure to pay all or part of any required or appropriate tipping fee in connection with any use of the TOB Landfill; or

(c) any pending action or proceeding to revoke a carter's license for alleged failure to comply with the Town's ordinances or other applicable rules or regulations in connection with licensing requirements.

XXVI. RELEASES AND COVENANTS NOT TO SUE

Between the Town and the State

Effective upon entry of this Consent Decree, and conditioned only upon compliance by the Town with all obligations imposed upon it by the terms of this Consent Decree and approval by the State of the Final Design Plan provided for in the RAP (see Appendix A, Section I.J), this Consent Decree shall constitute, except as specifically set

forth in this Section, full release, remise, acquittal, and discharge of the Town and all of its past and present directors, officers and officials, employees, representatives, agents, servants, attorneys, successors, heirs, executors and administrators, all in their representative capacities as such, from any and all claims, actions and proceedings by the State including those for damages, expenses, losses, costs and reasonable attorneys' and experts' fees and disbursements arising out of, relating to, or resulting from the existence, release or threat of release of hazardous substances at or from the TOB landfill addressed by the RAP and detected at the time of execution of this Consent Decree.

Compliance with the provisions of this Consent Decree shall be considered a complete defense, except as provided in this Section, to any action by the State against the Town and any of its officials, officers, agents and employees which arises out of or relates to, or may in the future arise out of or relate to any release or threat of release of hazardous substances from the TOB Landfill addressed by the RAP and detected at the time of execution of this Consent Decree.

The following claims against the Town are not covered within the meaning of the above Release:

1. Claims based on a failure by the Town to meet the requirements of this Decree, including the failure to adequately perform the RAP, Appendix A;

2. Claims for reimbursement for costs incurred by the State as a result of the failure of the Town to meet the requirements of this Decree;

3. Claims based on the Town's liability arising from the past, present, or future disposal of waste materials disposed outside of the TOB Landfill or any obligations at law or in equity which arise from pollution of the environment which is unrelated to the chemical contamination which is the subject of this Consent Decree, unless said pollution is identified and made a subject of the Consent Decree.

4. Claims based on liability for damage to natural resources as defined in CERCLA Section 101(16), 42 U.S.C. § 9601(16), which are provided for in Section XXIX herein.

Notwithstanding any other provisions of this Section, the State reserves the right to institute proceedings in this action or in a new action against the Town seeking to compel the Town to (1) perform additional response work at the Site or (2) to reimburse the State for response costs, if:

(a) conditions at the Landfill or its environs previously unknown to or undetected by the State are

discovered after the execution of this Consent Decree and these conditions indicate that any hazardous substance has been, or is being, released or there is a substantial threat of such a release into the enviornment, or

(b) the State determines pursuant to CERCLA/SARA § 121(c) or State law, based on information received, in whole or in part, after the execution of this Consent Decree that the RAP is not protective of human health and the environment.

Upon entry of this Consent Decree, the Town shall be deemed to have executed and delivered to the State a Release, Indemnity and Covenant Not To Sue in the form annexed hereto as Appendix B.

Between the Town and Each Corporate Defendant

Forty days after entry of this Consent Decree and in compliance with Section XII, each Corporate Defendant shall execute and deliver to the Town a Release and Covenant Not to Sue in the form annexed hereto as Appendix C. Upon satisfaction of the Corporate Defendants' obligations under Section XII above, the Town shall execute and deliver to each Corporate Defendant a Release, Indemnity and Covenant Not to Sue in the form annexed hereto as Appendix B.

Between the Town, the Corporate Defendants and Each Settling Third-Party Defendant

Forty days after entry of this Consent Decree and in compliance with Section XII, and subject to the provisions concerning Nassau County and the Vocational and Educational Extension Board of Nassau County herein, each contributing Settling Third-Party Defendant in Group I shall execute and deliver to the Town, each Corporate Defendant, and each other, a Release and Covenant Not to Sue in the form annexed hereto as Appendix C. Upon satisfaction of the obligations of Group I of the Settling Third-Party Defendants under Section XII above, the Town shall execute and deliver to each contributing member of Group I of the Settling Third-Party Defendants a Release, Indemnity and Covenant Not to Sue in the form annexed hereto as Appendix B; and each Corporate Defendant shall execute and deliver to each contributing member of Group I of the Settling Third-Party Defendants a Release and Covenant Not to Sue in the form annexed hereto as Appendix C.

Forty days after entry of this Consent Decree and upon satisfaction of the obligations of Group I of the Settling Third-Party Defendants under Section XII above, each contributing Settling Third-Party Defendant in Group II shall execute and deliver to the Town, each Corporate

Defendant, each contributing member of Group I of the Settling Third-Party Defendants, and each other, a Release and Covenant Not to Sue in the form annexed hererto as Appendix C. The Town shall execute and deliver to each member of Group II of the Settling Third-Party Defendants which has satisfied its obligations under Section XII above a Release, Indemnity and Covenant Not to Sue in the form annexed hereto as Appendix B; and each Corporate Defendant and each contributing member of Group I of the Settling Third-Party Defendants shall execute and deliver to each contributing member of Group II of the Settling Third-Party Defendants a Release and Covenant Not to Sue in the form annexed hereto as Appendix C.

Notwithstanding anything herein or to the contrary, the Town's releases, indemnities covenants not to sue shall not apply, and shall not be construed to apply to:

(a) any claim set forth in the complaint filed in Town of Oyster Bay v. B&D Carting Inc. et al., U.S. District Court for the Eastern District of New York, C.V. 87-4336 (Mishler, J.) whether such claim is prosecuted in said court or in another forum;

(b) any claim relating to a failure to pay all or part of any required or appropriate tipping fee in connection with any use of the TOB Landfill; or

(c) any pending action or proceeding to revoke a carter's license for alleged failure to comply with the Town's ordinances or other applicable rules or regulations in connection with licensing requirements.

Between the State and Each Corporate and Settling Third-Party Defendant

Upon the approval by the State of the Final Design Plan required by the RAP to be submitted by the Town pursuant to Appendix A, Section I.J, and subject to the execution and delivery of the above releases, indemnities and covenants, and subject to the provisions herein relating specifically to Nassau County and the Vocational and Educational Extension Board of Nassau County, the State shall be deemed to have executed and delivered to each Corporate Defendant and to each contributing Settling Third-Party Defendant a Release and Covenant Not to Sue in the formed annexed hereto as Appendix C.

Upon approval by the State of the Final Design Plan required by the RAP to be submitted by the Town pursuant to Appendix A, Section I.J, each Corporate Defendant and each contributing Settling Third-Party Defendant shall be deemed to have executed and delivered to the State a Release and Covenant Not to Sue in the form annexed hereto as Appendix C.

Upon approval by the State of the Final Design Plan required by the RAP to be submitted by the Town pursuant to Appendix A, Section I.J, the parties to this Consent Decree shall execute and cause to be filed with the Court a Stipulation of Dismissal With Prejudice in the form annexed hereto as Appendix D, as against those Settling Defendants who have fully complied with their respective obligations under Section XII herein.

General

Effective upon the execution and delivery of all the above releases and covenants not to sue, the State, the Town, the Corporate Defendants and contributing Settling Third-Party Defendants hereby covenant with each other, except as otherwise provided in this Decree, and only to the extent that each party has been released as provided in this Section, foreover to refrain from instituting, asserting or pressing against each other any claim, demand, proceeding, litigation, suit, third-party claim, cross-claim, cause of action or judicial or administrative action of whatever kind or description whether in law or in equity, civil or criminal or for damages, penalties, fees, fines, disbursements, premises, accounts, bills, specialties, rights, debts, dues, agreements or sums of money, costs, expenses, losses, compensation or remedies, provided that each complies with all of the applicable conditions and

terms of this Consent Decree. For the purposes of this Section, the State includes any and all departments, agencies, officers, administrators, and representatives thereof.

Notwithstanding anything in this Section, the above releases, indemnities and covenants shall not apply, and shall not be construed to apply to any action, suit, liability, obligation, penalty, demand, or proceeding of whatever kind or nature, pertaining to the assertion of a civil toxic tort claim, as delimited in Section XXXV herein.

The Town's obligations under Section XXV above are perpetual and shall not be in any way affected by the releases and covenants contemplated in this Section.

Nassau County and the Vocational and Educational Extension Board of Nassau County

The State, Town, and third-party defendants Nassau County and the Vocational and Educational Extension Board of Nassau County ("VEEB") acknowledge the existence of hazardous substances at and emanating from the Fireman's Training Center, a facility owned by Nassau County and operated by VEEB, adjacent to the TOB Landfill (hereinafter the "Nassau County Facility"). The remediation of both onsite and offsite contamination associated with the Nassau County Facility will be the subject of a separate consent decree between the State and Nassau County. The releases,

indemnities and covenants not to sue to be or deemed to be executed and delivered by the Town or the State to Nassau County and VEEB under this Section shall apply only to the alleged disposal of materials at the TOB Landfill by the County and resulting contribution to the release and threat of release of hazardous substances therefrom, and shall not apply, shall not be construed to apply, and shall not effectuate a release, impose a covenant not to sue, or obligation to indemnify with regard to any claim, of whatever kind or nature, whether it be in law, equity or statutory enactment, which in any way relates to, arises out of, or results from the existence, release or threat of release of hazardous substances at or from the Nassau County Facility. Further, the release and covenant not to sue to be executed and delivered by Nassau County and VEEB to the Town under this Section shall not apply, shall not be construed to apply, shall not effectuate a release, or impose a covenant not to sue with regard to any claim, of whatever kind or nature, whether it be in law, equity or statutory enactment, which in any way relates to, arises out of, or results from the migration of hazardous substances from the TOB Landfill onto the property of the Nassau County Facility or any area impacted by hazardous substances emanating from the Nassau County Facility. However, if Nassau County or VEEB commences any action or proceeding

against the Town which relates to, arises out of or results from the migration of hazardous substances from the TOB Landfill onto the property of the Nassau County Facility or any area impacted by hazardous substances emanating from the Nassau County Facility, the release and indemnity of, and covenant not to sue Nassau County and VEEB by the Town and the State shall become null and void ab initio: all monies paid by Nassau County and VEEB to the Town under their obligations pursuant to Section XII of this Consent Decree plus six percent per annum interest shall be returned; and the Town and the State may pursue any of their claims against Nassau County and/or VEEB for their alleged disposal of materials at the TOB Landfill and resulting contribution to the release or threat of release of hazardous substances therefrom.

XXVII. CONTRIBUTION PROTECTION

Upon entry of this Decree, and subject only to compliance of the Corporate Defendants and the Settling Third-Party Defendants with their respective obligations under this Decree, each of the Corporate Defendants and the Settling Third-Party Defendants shall be deemed to have resolved its respective liability to the State of New York for purposes of contribution protection provided for in CERCLA/SARA Section 113(f)(2) and the State, the Town, the Corporate Defendants and the Settling Third-Party Defendants

shall not be liable for any claim for contribution regarding matters associated with the existence, release or threat of release of hazardous substances at or from the TOB Landfill, except with regard to civil toxic tort claims, as hereinbefore delimited. Pursuant to CERCLA/SARA Section 113(f)(3)(B) or any other applicable law or common law, the Town and the Settling Defendants may seek contribution from any person who is not a party to this Decree and reserve the right to do so.

XXVIII. STATE RESPONSE COSTS

Notwithstanding the provision of Section XIII above, the Town shall reimburse the State for its past, present and future response (including oversight) costs (except as provided in Section XI) which it may be entitled to recover in this matter under CERCLA/SARA, the New York State Environmental Conservation Law, and the common law of New York by subtracting the amount of $150,000 (75% of $200,000) from its application to the State Municipal Assistance Program pursuant to Section XIII above.

XXIX. NATURAL RESOURCE DAMAGE FUND

In the event that the RAP, despite full compliance with all other provisions of this Consent Decree including confirmation of the Zero Slope Condition and implementation and completion of an approved RRT plan as provided for in

Appendix A, Section III.A, fails to achieve the Groundwater Criteria set forth in Appendix A, Table 2, the Town shall make a one time payment in the amount of $500,000 to a fund (hereinafter referred to as the "Natural Resource Damage Fund" or the "Fund") established by the Town, to be expended exclusively upon written approval of the State for activities to benefit the environment and people of the Town of Oyster Bay which would not be otherwise undertaken or required by law. In expending and approving the expenditure of such funds, to the extent practicable and based on need, priority shall be given to activities designed to improve groundwater and air quality in the area and residential neighborhoods adjacent to the TOB Landfill.

The Settling Defendants shall not be obligated to contribute to the Fund and shall not be obligated to the Town for any portion of its contribution to the Fund. The Town's payment shall satisfy any and all claims against the Town and the Settling Defendants for damages to natural resources made by the State of New York with respect to the TOB Landfill and any releases of hazardous substances therefrom.

The Natural Resource Damage Fund described above shall be established within 30 days of the Town's demonstration that the requirements of the Termination Criteria, as

defined in Appendix A, and any approved RRT plan have been met.

The Fund established by this Section shall be created and approved by the Town Board of Oyster Bay. The Town Treasurer shall serve as custodian of such Fund and be authorized to disburse and otherwise manage its monies. The State's approval for the expenditure of funds shall be sought pursuant to the approval provisions of Section XV. Unless good cause is shown, this Fund should be expended for the purposes set forth in this Section within 3 years of its establishment.

XXX. COSTS AND PAYMENTS

Except as otherwise provided in this Consent Decree, the parties agree that they will bear their respective costs and disbursements.

XXXI. DISPUTE RESOLUTION

In the event that the Town and the State cannot resolve any dispute arising under this Decree or from the implementation or modification of this Decree, then the interpretation advanced by the State shall be considered binding unless the Town petitions for the resolution of the dispute pursuant to the provisions of this Section.

Any dispute that arises with respect to the meaning or application of this Consent Decree or any action, plan, schedule or modification under this Decree, shall in the

first instance be the subject of informal negotiations. Such period of informal negotiations shall not extend beyond 30 days, unless the parties agree otherwise.

At the termination of unsuccessful informal negotiations, should the Town choose not to follow the State's position, it shall file with the Court a petition which shall describe the nature of the dispute and include a proposal for its resolution. The filing of a petition asking the Court to resolve a dispute shall not of itself postpone the deadlines for the Town to meet obligations under this Decree with respect to the disputed issue.

The State shall have 30 days to respond to the petition. In any such dispute, the Town shall have the burden of (1) showing that its proposal is appropriate to fulfill the terms, conditions, requirements, and goals of this Consent Decree, (2) demonstrating that its proposal is consistent with the National Contingency Plan and will protect public health, welfare, and the environment from the release or threat of release of hazardous substances at the Site, and (3) proving that the State's interpretation of the terms and conditions of this Consent Decree and applicable federal and State law and regulations was arbitrary and capricious or not otherwise in accordance with law. Unless the Town meets its burden on all three issues, the State's interpretation of the terms and conditions of this Consent

Decree or any action, plan, schedule or modifications thereunder shall prevail.

XXXII. MODIFICATION

Prior to the effective date of the releases of the Settling Defendants as provided in Section XXVI herein, there shall be no modification of this Consent Decree without written consent of all the parties or order of the Court. Subsequent to the effective release of the Settling Defendants as provided in Section XXVI herein, modification of this Consent Decree shall require only the written consent of the Town and the State provided that the Consent Decree may not be modified so as to in any way affect a Settling Defendant without the written consent of said Settling Defendant. All modifications will be effective as of the date of approval by the Court.

The Town has informed the State that it intends to apply, through the Solid Waste Disposal District, its agents and/or contract vendees, to the State for a permit to construct and operate a Resource Recovery Facility at its Old Bethpage Solid Waste Disposal Complex. Should the State of New York grant such a permit which includes the option to use leachate contaminated water as process water for said Resource Recovery Facility, the Town may apply for a modification to the RAP made part of this Decree under Section XXXV herein. Such application for modification may

only be made after such permit(s) is granted and shall be handled pursuant to the State review, approval and dispute resolution provisions of Sections XV and XXXI of this Decree. Any such modification must be consistent with the Remediation Criteria set forth in Section X of this Decree and the RAP, Appendix A hereto.

Nothing in the RAP or this Consent Decree shall be construed as either authorizing or prohibiting the State from issuing permits to construct and operate a Resource Recovery Facility at the Old Bethpage Solid Waste Disposal Facility prior to the Town applying for said modification to the RAP. In the event that the State of New York grants a permit to construct and operate a Resource Recovery Facility at Old Bethpage Solid Waste Disposal Complex which does not utilize leachate contaminated water as process water for said Facility then, in that event, it shall not be necessary for the Town to apply for a modification to the RAP for that purpose.

XXXIII. ADMISSIBILITY OF DATA

In the event that the Court is called upon to resolve a dispute concerning implementation of this Consent Decree, the State and the Town waive any evidentiary objection to the admissibility into evidence of data gathered, generated, or evaluated pursuant to and in accord with this Decree. The State or the Town may object to a specific item of evidence if the objecting party demonstrates that such item

of evidence was not gathered, generated, or handled in accordance with the sampling and analytical procedures established pursuant to the RAP.

XXXIV. NOTICE REQUIREMENTS

The original or copy of all communications between and among the Town, the Settling Defendants, the State, and contractors for the Town should be sent to at least the following persons or their written designees:

1. The State of New York

   New York State Department of Law
   Environmental Protection Bureau
   120 Broadway
   New York, N.Y. 10271

   - and -

   New York State Department of Environmental Conservation
   Division of Hazardous Waste Remediation
   50 Wolf Road
   Albany, NY 12233

   Re: Old Bethpage Landfill Remediation

2. The Town of Oyster Bay

   Town Attorney
   Town of Oyster Bay
   Oyster Bay, N.Y. 11771

3. Occidental Defendants

   Scott N. Fein, Esq.
   Whiteman, Osterman & Hannah
   One Commerce Place
   Albany, N.Y. 11260

4. Marmon Group, Inc., and Cerro Defendants

Richard J. Kissel, Esq.
Gardner, Carton & Douglas
Quaker Tower
321 North Clark Street
Chicago, Illinois 60610

5. Grumman Defendants

Charles A. Gilman, Esq.
Cahill, Gordon & Reindel
80 Pine Street
New York, N.Y. 10005

6. Settling Third-Party Defendants

Andrew J. Simons, Esq.
Liaison Counsel
Third-Party Defendants' Management Committee
Farrell, Fritz, Caemmerer, Cleary, Barnosky & Armentano, P.C.
EAB Plaza
Uniondale, N.Y. 11556

After final release and discharge of the Settling Defendants pursuant to Section XXVI, notifications pursuant to this Section need no longer be sent to the Settling Defendants, except as provided in Section XXII herein.

XXXV. APPENDICES

Appendices annexed hereto are an integral part of this Consent Decree and are hereby incorporated by reference as though they were set forth verbatim.

The State and the Settling Defendants by entering into this Consent Decree, do not necessarily accept the validity or accuracy of any opinions or conclusions contained in any

see next pg?

written materials prepared by the Town's Consultants which are annexed hereto except to the extent that they specifically accept or approve them in writing.

XXXVI. CONTINUING JURISDICTION

Upon approval by this Court of the Stipulation of Dismissal with Prejudice filed pursuant to Section XXVI herein, the Court specifically retains jurisdiction over both the subject matter and the Parties under this Consent Decree for its duration for the purposes of issuing such further orders or directions as may be necessary or appropriate to construe, implement, modify, enforce, terminate, or reinstate its terms or for any further relief as the interest of justice may require. Furthermore, the Court retains jurisdiction over the action by the Town and/or any Settling Defendants against any non-settling party, subject to the protection of Section XXVII herein.

XXXVII. NEW REMEDIATION CRITERIA

In the event that a new standard for a particular chemical constituent is promulgated by the State or federal government which standard is applicable and relevant with respect to the TOB Landfill and such standard is more stringent than the Remediation Criteria set forth in Appendix A, the State may notify the Town in writing and upon such notification the standard shall supercede the previous Remediation Criteria for that constituent. The Town may seek relief from the Court

pursuant to this Decree on the ground that the new standard is not applicable or relevant to the site. Such petition for relief shall be filed within 30 days of the receipt of the State's written notification. In no event, however, shall the release of the Settling Defendants be affected thereby.

XXXVIII. USE OF DECREE

This Consent Decree was negotiated and executed by the State, the Town, and the Settling Defendants in good faith to avoid expensive and protracted litigation and is a settlement of claims that were contested, denied and disputed by the Town and the Settling Defendants. Accordingly, the provisions, terms, and conditions of this Consent Decree and any action or submission under or by reason of the provisions, terms, and conditions of this Consent Decree shall not in any action, proceeding or litigation whatsoever, whether or not brought by the State, constitute or be construed as an adjudication or finding on any issue of fact or law, or as admissions by any party with respect to any issue or be construed as, or operate as, an admission that the Town or the Settling Defendants have violated any law or regulation or otherwise committed a breach of duty at any time.

XXXIX. TERMINATION AND SATISFACTION

The provisions of this Consent Decree shall be deemed satisfied upon the Town's receipt of written notice from the State that the Town has demonstrated, to the satisfaction of

the State, that all of the terms of this Consent Decree have been completed.

XL. COUNTERPARTS

This Consent Decree and the Stipulation of Dismissal with Prejudice may be executed in counterpart. Each counterpart may serve as a duplicate original.

XLI. EFFECTIVE DATE

This Consent Decree is effective upon the date of its entry by this Court.

PLAINTIFF:

THE STATE OF NEW YORK

ROBERT ABRAMS
Attorney General of the State of New York

Date:_____ By:_____
ROBERT L. OSAR
Assistant Attorney General

_____
E. GAIL SUCHMAN
Assistant Attorney General

DEFENDANTS:

THE TOWN OF OYSTER BAY

Date:_____ By:_____
ANGELO A. DELLIGATTI
Town Supervisor

OCCIDENTAL CHEMICAL CORPORATION, OCCIDENTAL CHEMICAL HOLDING CORPORATION, OCCIDENTAL PETROLEUM CORPORATION

Date:_____ By:_____
Name:
Title:

MARMON GROUP, INC., CERRO WIRE & CABLE CORP., CERRO CONDUIT COMPANY, CEROCK WIRE AND CABLE GROUP, INC., THE ROCKBESTOS COMPANY

Date:_____ By:_____
Name:
Title:

GRUMMAN CORPORATION and GRUMMAN AEROSPACE CORPORATION

Date:_____ By:_____
Name:
Title:

THIRD-PARTY DEFENDANTS:
GROUP I:

[LIST]

GROUP II:

AAA DEVELOPMENT CORP.

Date:_____ By:_____
OTTO PULSE

BOOS CUSTOM WOODWORKING CO., INC.

Date:_____ By:_____
NORMAN BOOS

SKYVIEW GRAPHICS, INC.

Date:_____ By:_____
JOSEPH KNIZAK

MOD-A-CAN, INC.

Date:_____ By:_____
MILLARD PRISANT
President

COUNTY NEON SIGN CORP.

Date:_____ By:_____
GEORGE SCHNEIDER

GENEVA PRECISION MANUFACTURING CORP.

Date:_____ By:_____
ROGER STEHLIN
President

MALVESE TRACTOR & IMPLEMENT CO., INC.

Date:_____ By:_____
JAMES F. ORR
Executive Vice President

ONTEL CORP.

Date:_____ By:_____
JOHN EMMERICH
Vice President

JERBRAN CORPORATION

Date:_____ By:_____
GREGG SOLOWIEI
Secretary, Branch Motors

DATAMEDIC CORP.

Date:_____ By:_____
PETER FETTEROLF

PALLEN MAINTENANCE COMPANY

Date:_____ By:_____
DAVID L. PALMER

IDEAL CARBON PAPER CORP.

Date:_____ By:_____
FRED RISPULI
President

HAROLD OSROW & LEONARD OSROW
d/b/a WINDING ROAD REALTY CO.

Date:_____ By:_____
HAROLD OSROW
Partner

SO ORDERED:

_____
UNITED STATES DISTRICT JUDGE

Entered this _____ day of _____

FC

APPENDIX A

OBSWDC
Remedial Action Plan

I. DESCRIPTION

A. Introduction

This Remedial Action Plan (RAP) describes the activities undertaken, and to be undertaken to restore the quality of groundwater and air in the vicinity of the Old Bethpage Solid Waste Disposal Complex (OBSWDC) which has been affected by contamination from the Old Bethpage Landfill. This RAP provides for the Town of Oyster Bay to implement the following activities in compliance with the terms and conditions of a Final Consent Decree in N.Y.S. v. Town of Oyster Bay et al. 83 Civ. 5357("Consent Decree") to which this plan is attached as Appendix A:

(1) install a system of groundwater recovery wells in the "Area to be Remediated" described in Section I.B herein;

(2) operate and maintain these groundwater recovery wells, to create a hydraulic barrier as defined in Section I.D and to attain specified Groundwater Criteria set forth in Section III.B.1 or demonstrate that the Zero Slope Condition and other Termination Criteria of Section III.B.2 have been met;

(3) treat and discharge the extracted and collected groundwater in compliance with the groundwater and air discharge requirements set forth in Sections I.E and I.F;

(4) complete, maintain, and monitor the current capping and gas and leachate collection programs as per the closure requirements of New York State Regulation 6 NYCRR Part 360 and the requirements of the Consent Decree and Sections I.G, I.H and I.I herein;

(5) carry out and comply with the requirements for sampling, analysis and health and safety set forth in Sections IV, V and VI, respectively.

The RAP is preceded by several studies which defined the nature and extent of groundwater contamination and examined remedial alternatives:

"Old Bethpage Landfill, Groundwater Monitoring Program, Phases 1 & 2," Lockwood, Kessler & Bartlett, Inc., 1981.

"Comprehensive Land Use and Operations Plan, Old Bethpage, Solid Waste Disposal Complex," Lockwood, Kessler & Bartlett, Inc., 1983.

"Groundwater Monitoring Data Report," Lockwood, Kessler & Bartlett, Inc., 1984.

"OBSWDC Offiste Exploratory Drilling and Monitoring Well Installation Program, Old Bethpage, Long Island, New York," Geraghty & Miller, Inc., August 1985.

"OBSWDC Offsite Groundwater Monitoring Program, Old Bethpage, Long Island, New York," Geraghty & Miller, Inc., September, 1986.

"Remedial Action Feasibility Study, Landfill Leachate Plume, Old Bethpage Solid Waste Disposal Complex, Town of Oyster Bay, New York", Lockwood, Kessler & Bartlett, Inc. and Geraghty & Miller, Inc., July, 1987.

"OBSWDC Aquifer Test For Evaluating Hydraulic Control of Leachate Impacted Ground Water, Old Bethpage, Long Island, New York", Geraghty & Miller, September 1987.

B. Area to be Remediated (the "plume")

The 1986 report by Geraghty & Miller, Inc. identified offsite areas where groundwater quality had been affected by contamination from the Landfill. The RAP provides for

hydraulic containment of the plume by a system of groundwater recovery wells located at the area defined by the leading edge of the plume of volatile organic chemicals ("VOCs"). The area to be remediated (the "plume") is delineated in plan view on Figure 1, and is shown in cross-section on Figure 2. The recovered water will be piped to a treatment plant and ultimately recharged through a combination of leaching wells and the recharge basin located northwest of the Old Bethpage Landfill as shown on Figure 3. This system is described in detail in the following sections.

C. Groundwater Recovery Well System

Based upon previous modeling studies and a pilot pump test conducted in the summmer of 1987, the proposed number and location of groundwater recovery wells to effectuate hydraulic control of the area to be remediated is set forth in Figure 3. The engineering details and design specifications for this system will be set forth in the Final Design Plan to be submitted pursuant to Section J. The Town of Oyster Bay will complete the Final Design Plan and installation of the groundwater recovery system as set forth in the schedule in Section K. The Final Design Plan and the installed recovery system is subject to final State approval as per paragraph XV of the Consent Decree.

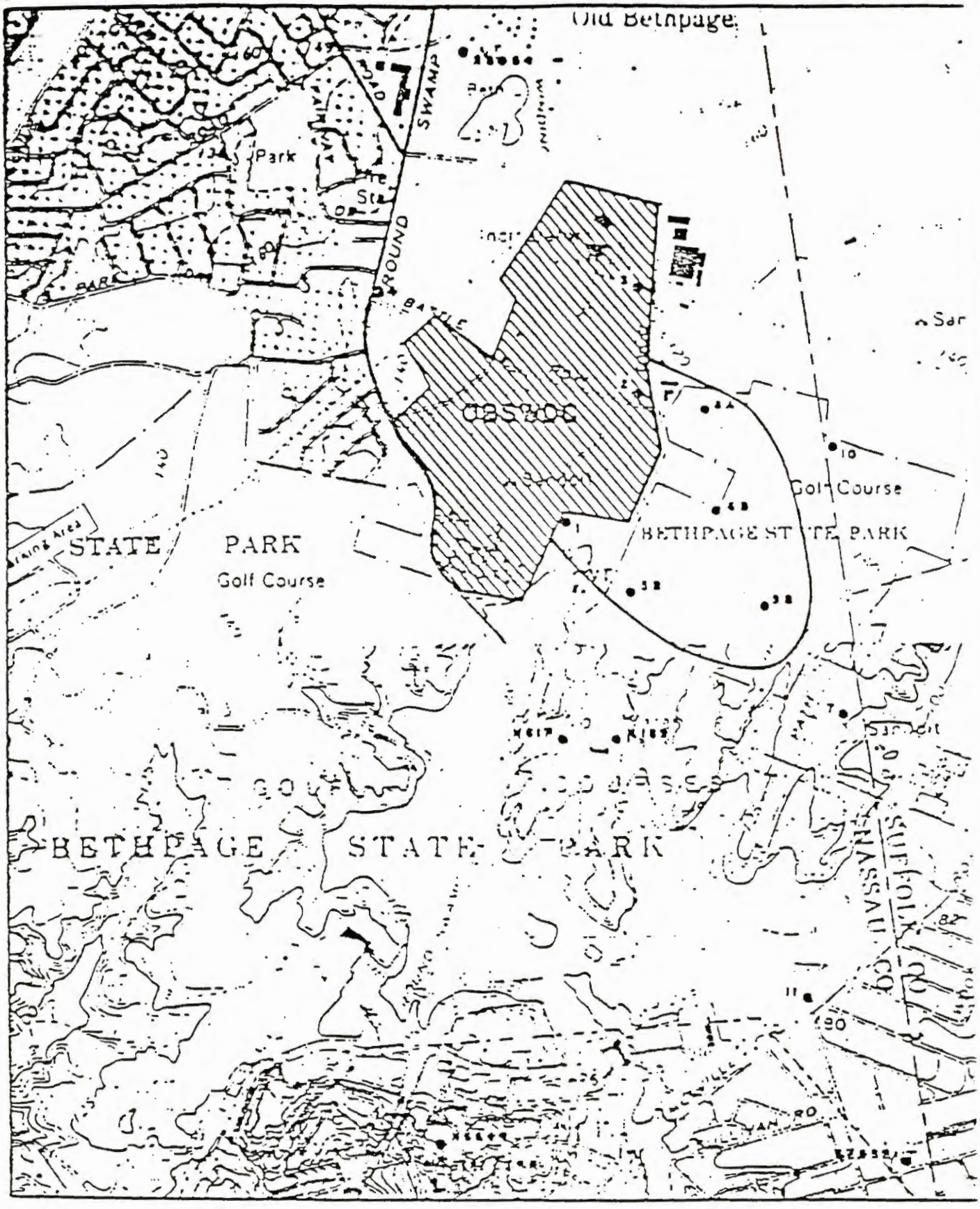
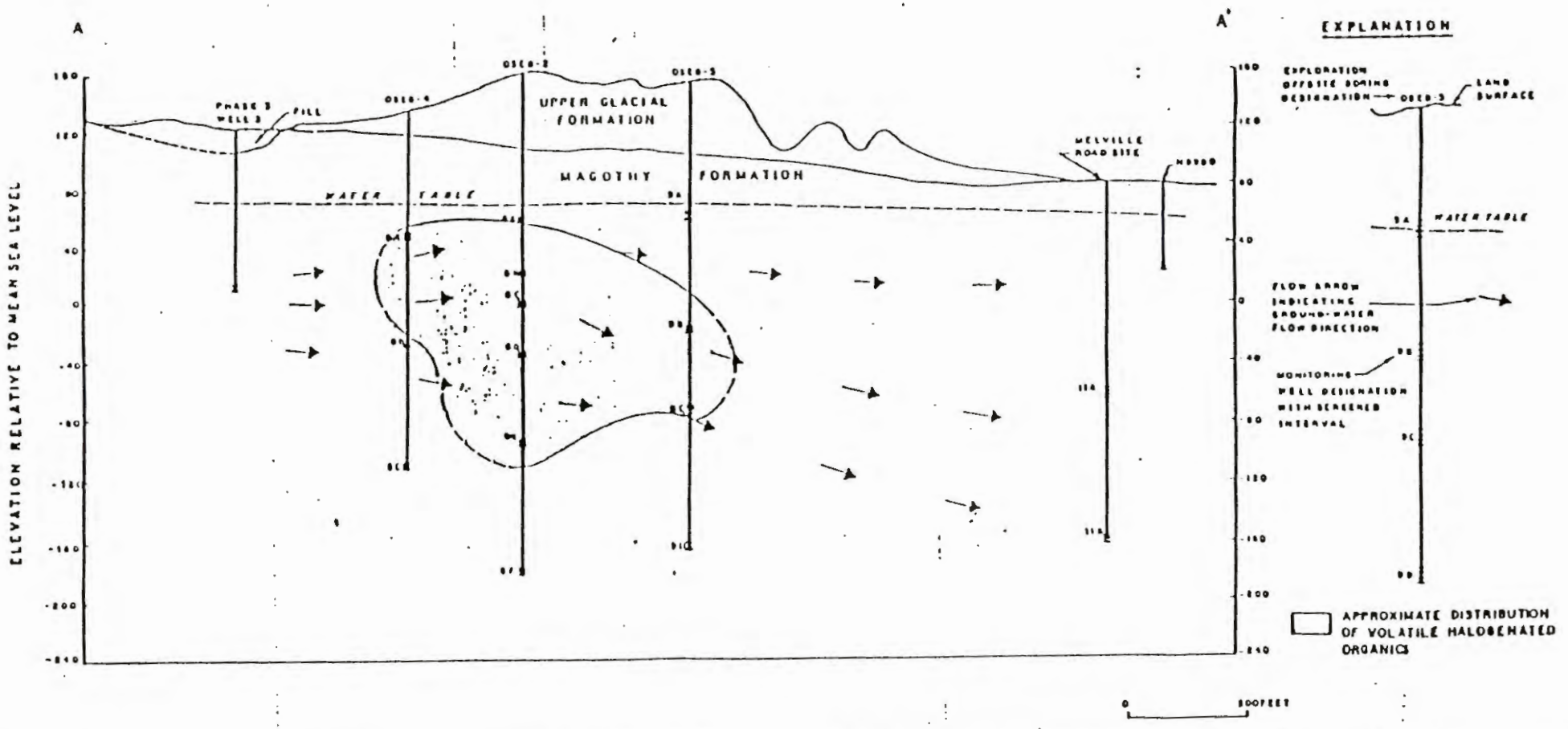


Figure 1 APPROXIMATE DISTRIBUTION OF VOLATILE HALOGENATED ORGANICS (VHOs) AND LANDFILL LEACHATE IN EXCESS OF ARARs

PREPARED BY GERAGHTY & MILLER INC., FOR LOCKWOOD, KESSLER, & BARTLETT, INC., & TOWN OF OYSTER BAY, OLD BETHPAGE, NY

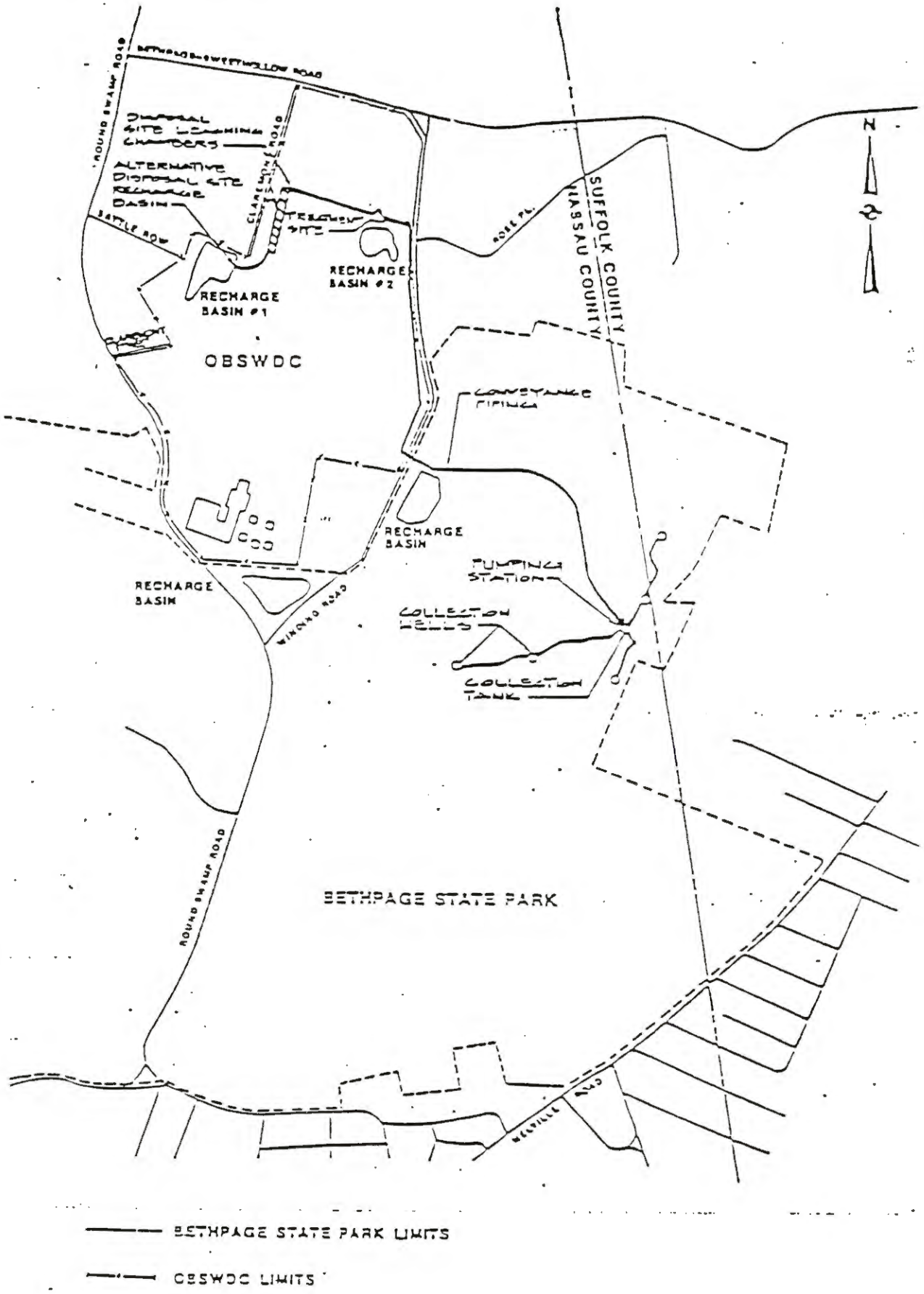


APPROXIMATE VERTICAL DISTRIBUTION OF VOLATILE HALOGENATED ORGANICS (VHO_B) ALONG CROSS SECTION A-A'

Prepared by Geraghty & Miller, Inc for

LOCKWOOD, KESSLER, AND BARTLETT, INC.
AND THE
TOWN OF OYSTER BAY

Old Bethpage, New York



FIGURE

LED

RECOMMENDED REMEDIAL ALTERNATIVE

TABLE 1
APPLICABLE AIR DISCHARGE
REQUIREMENTS FOR AIR STRIPPING
TREATMENT SYSTEM*

Constituent	-Ambient Air Concentrations- NYSDEC Annual Guideline (ug/m3)
Vinyl Chloride	4.00E-01
Freon 13	3.00E-02
Methylene Chloride	1.17E+03
1,1-Dichloroethane	2.70E+03
1,2-Dichloroethene	2.63E+03
Chloroform	1.67E+02
1,1,1,-Trichloroethane	3.80E+04
Carbon Tetrachloride	1.00E+02
1,2-Dichloroethane	2.00E+01
Trichloroethylene	9.00E+02
1,2,-Dichloropropane	1.17E+03
Bromodichloromethane	3.00E-02
Tetrachloroethene	1.12E+03
Chlorodibromomethane	3.00E-02
Bromoform	1.67E+01
Benzene	1.00E+02
Toluene	7.50E+03
Ethyl Benzene	1.45E+03
(m) Xylene	1.45E+03
(o&p) Xylene	1.45E+03
(m) Dichlorobenzene	3.00E-02
(o) Dichlorobenzene	1.00E+03
(p) Dichlorobenzene	1.50E+03
Chloroethane	5.20E+04
1,1,-Dichloroethylene	6.67E+01
Chlorobenzene	1.17E+03
Ammonia	3.60E+02

* Established per New York State Department of Environmental Conservation Air Guide No. 1 for Toxic Air Contaminants. If any federal National Ambient Air Quality Standards or National Emission Standards for Hazardous Air Pollutants are promulgated which are more stringent than these State guidelines, the more stringent standard shall apply.

D. Hydraulic Containment

The proposed hydraulic containment system, subject to final State approval, will consist of sufficient recovery wells (the preliminary design based on previous modeling and monitoring calls for five (5) wells as shown on Figure 3), each pumping at a rate necessary to maintain and control the movement of groundwater in the area to be remediated and to provide a barrier to further plume migration. Sufficient drawdown will be created and maintained to establish a hydraulic gradient toward the recovery wells. Monitoring of water levels as set forth in Section II.A will be conducted to demonstrate that a sufficient drawdown is being maintained to create a hydraulic barrier to contain the plume. The procedure to verify the amount of drawdown sufficient to create such a barrier and to confirm that this drawdown is being maintained is also set forth in Section II.A.

E. Treatment System

A treatment system will be designed and installed to remove VOCs from the water collected by the remedial recovery wells. The air and water discharges from this treatment system will meet all applicable federal, state, and local air discharge requirements as set forth on Table 1 and all applicable State Pollution Discharge Elimination

System (SPDES) and Technical and Operational Guidance Series (TOGS) limitations set forth in Table 2.

Initially, the treatment system will consist of an air stripping unit designed to meet the specified discharge criteria.

The initial air stripping tower will be located as shown on Figure 3 and will have the conceptual design characteristics as shown on Table 3. The precise location within the area shown and the specific operational design characteristics will be set forth in the Final Design Plan to be submitted pursuant to Sections J and K, subject to State approval.

If after two (2) months of operation (after an initial equipment shakedown period), the air stripper treatment system does not meet the specified discharge criteria, the Town will be required to add a carbon adsorption unit capable of allowing the system to meet the specified discharge criteria. The Town will also be required to install sufficient iron treatment equipment and/or implement sufficient equipment maintenance procedures to insure that the air stripping equipment operates continuously and efficiently.

The Town will set forth in the Final Design Plan the complete treatment system showing the integration of all the above described units. The Final Design Plan will also set

TABLE 2

GROUNDWATER AQUIFER AND TREATED GROUNDWATER DISCHARGE REQUIREMENTS*

Inorganics	mg/l
Barium	1.0
Cadmium	0.01
Chloride	250
Chromium (hex)	0.05
Copper	1.0
Cyanide	0.2
Iron	0.3
Lead	0.025
Magnesium	35
Manganese	0.3
Mercury	0.002
Silver	0.05
Zinc	5.0
Total Dissolved Solids	500**
Nitrate	10
Sulfate	250
Phenols (total)	0.001

Volatile Organic Compounds (VOCs)	ug/l
Vinyl Chloride	2.0***
Methylene Chloride	50
1, 1 Dichloroethane	50
1, 2 Dichloroethane	0.8
1, 1 Dichloroethene	0.07
1, 2 Dichloroethene (trans)	50
Trichloroethylene	5***
1, 1, 1 Trichloroethane	50
Chloroform	100
Carbon Tetrachloride	5
1, 2 Dichloropropane	50
Bromodichloromethane	50
Tetrachloroethene	0.7
Chlorodibromomethane	50****
Chloroethane	50****
Bromoform	50
Benzene	non-detect
Toluene	50
Xylene (all isomers)	50

Table 2 con't.

Ethylbenzene	50
Chlorobenzene	20
Dichlorobenzene	
ortho-and para-	4.7
all isomers	50****
Total VOCs (for groundwater)	50
Total VOCs (for discharge)	100

* This list of compounds is not exhaustive of the applicable Standards and Guidance Values. The list represents the most prevalent compounds found at the site. The cleanliness criteria listed herein are Standards and Guidance Values issued by the NYS Department of Environmental Conservation for the protection of Class GA waters found at 6 NYCRR 703 and in the Technical and Operational Guidance Series (TOGs) dated April 1, 1987. If during the course of the remediation additional compounds should be detected, the most stringent of the requirements obtained from these two sources shall apply. For any VOC which does not have a specific Standard or Guidance Value, the applicable limit shall be 50 u/l.

** Federal Standard promulated by the U.S. Environmental Protection Agency (EPA).

*** For these compounds, the Maximum Contaminant Level (MCL) under the Federal Safe Drinking Water Act is less than the State Standards or Guidance Values and therefore shall apply. Should additional MCLs be promulgated by the EPA, then the most stringent standard shall apply.

**** These compounds do not have a specific State Standard or Guidance Value and therefore the applicable limit is 50 u/l.

TABLE 3

Preliminary Air Stripper Design Data*

Water Flow Rate	=	1.5 MGD
Air/Water Ratio	=	60/1
Air Flow Rate	=	8400 cfm
Liquid Loading Rate	=	20 gpm/ft^2
Stripper Diameter	=	8 ft.
Air Exit Velocity	=	2.8 fps.
Water Temperature	=	50 to 60 F
Stripper Ground Elevation	=	El.140 (approximately)
Stripper Height	=	38 ft.

* Preliminary design data has been established through pilot plant studies and is subject to future modification prior to final design.

rl

forth the proposed procedure and timetable for integrating the additional treatment units in the system, if needed.

In general, these additional treatment units will be installed adjacent to the operating air stripping tower. The need for these units(s) will be established within 60 days of the plant start-up [allowing for a reasonable plant shakedown period agreed to by Town and State] or, if the influent/removal efficiencies of the initial treatment system change in the future, within 60 days of the confirmation of the failure to meet the specified discharge criteria. The installation of the additional treatment units will be completed within a period of ~~five~~ (5) months from the time that the failure to comply is ~~established~~. The conceptual design parameters for the iron removal system and the carbon adsorption units(s) are presented in Tables 4 and 5, respectively. The final design parameters will be developed and set forth in the Final Design Plan required by Sections J and K, subject to State approval.

The Town will make all necessary modifications, additions, and adjustments to the treatment system until it meets the specified discharge criteria. The treatment system will not be permitted to operate without State approval for longer than a sixty day period if it fails to meet the specified discharge criteria. Re-start of the system will only be allowed following the implementation of State approved modifications.

TABLE 4

Preliminary Iron Removal System Design Data*

Water Flow Rate	=	1.5 MGD
Treatment Method	=	Ion Exchange (Magnesium Zeolite or equivalent) followed by pressure filtration
Chemical Feeding	=	Potassium Permagnate Caustic
Configuration	=	3 trains in parallel
Reaction Tank Diameter	=	8 ft.
Reaction Tank Cross Sectional Area	=	50.2 ft^2
Liquid Loading Rate	=	6.97 gpm/ft^2
Reaction Tank Height	=	less than 10 ft.

* Preliminary design data has been established by the manufacturer and is subject to future modification prior to final design.

TABLE 5

Preliminary Activated Carbon Adsorption System Design Data*

Water Flow Rate	=	1.5 MGD
No. of Carbon Adsorbers	=	3 (includes 1 standby)
Configuration	=	Parallel
Adsorber Diameter	=	10 ft.
Adsorber Cross Sectional Area	=	78.5 ft^2
Liquid Loading Rate	=	6.68 gpm/ft^2
Adsorber Height	=	less than 20 ft.
Carbon Load	=	20,000# per Adsorber
Estimated Useful Carbon Life (to benzene breakthrough)	=	1 Year

* Preliminary design data has been established through laboratory bench scale studies and is subject to future modification prior to final design.

F. Discharge System

1. General

The water to be discharged will be conveyed to a series of leaching wells and/or to an existing recharge basin for recharge to the ground. The discharge points will be located west northwest of the landfill area at the Old Bethpage Solid Waste Disposal Complex as shown on Figure 3. The discharge system, whether leaching pools and/or a recharge basin will be designed to accommodate the total daily flow from the recovery wells.

2. Leaching Wells

The leaching wells will be ten feet in diameter and have an approximate effective depth of 25 feet. A typical section of the proposed well is shown on Figure 4. The final quantity and location of the wells will be determined, subject to State approval as part of the Final Design Plan required under Sections J and K. As per the schedule set forth in Section K, prior to completion of the Final Design Plan, soil borings will be obtained and percolation tests will be conducted to establish the exact number of wells and the expected percolation rates. Should a sufficient area containing well-drained subsurface soils not be available to recharge the discharge flow, the recharge basin, described in the next paragraph, will be used for the overflow.

3. Recharge Basin

Recharge Basin No. 1, as shown in Figure 3, is located

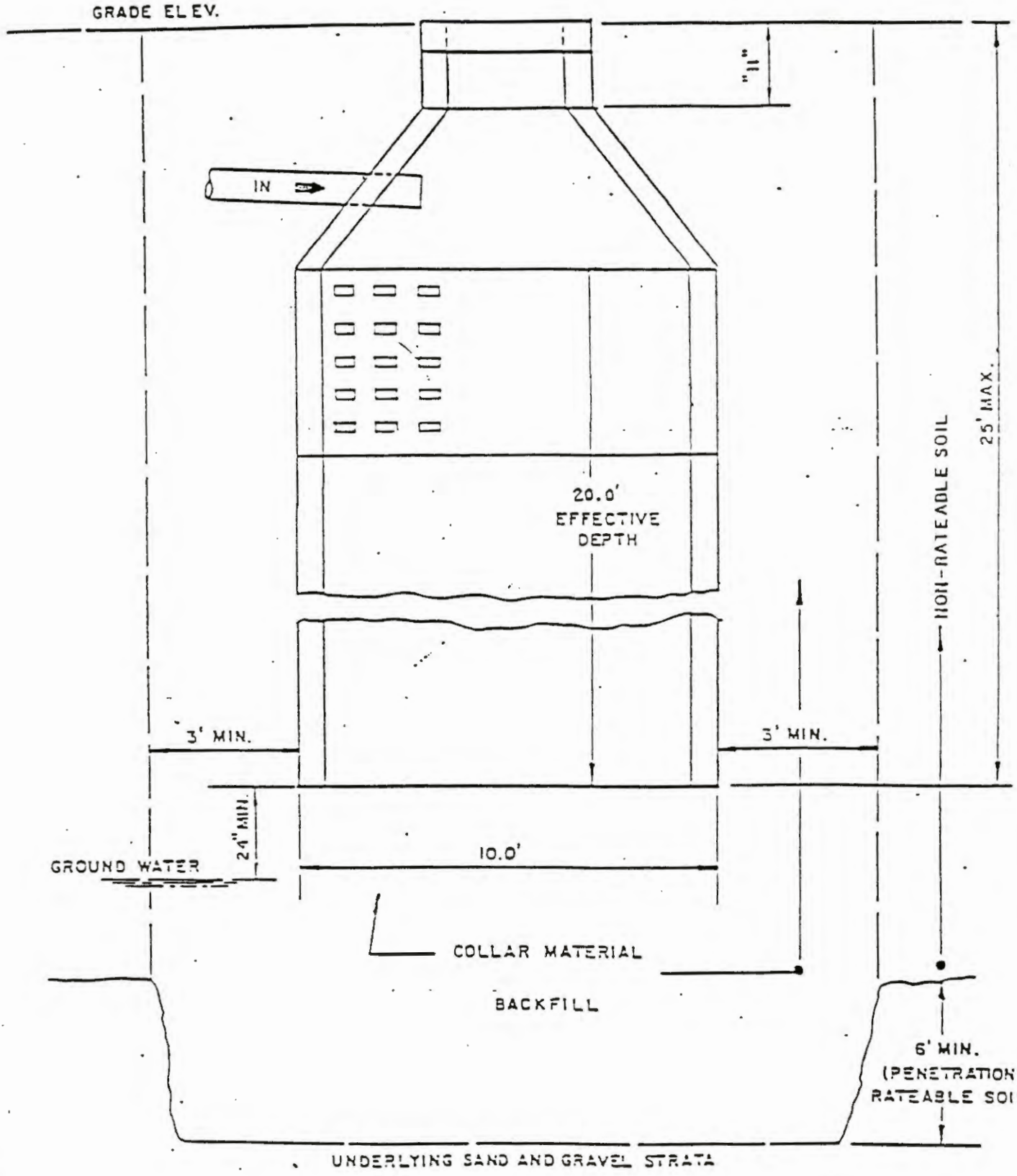


FIGURE 4

PROPOSED LEACHING WEL
CROSS SECTIO

to the west of the landfill area. The basin currently is under construction. The Town will design and construct the basin with a capacity sufficient to handle all local runoff and the flow from the recovery wells. Any water that cannot be discharged to the ground through leaching wells will overflow to the basin for recharge into the ground.

G. Landfill Cap Completion

Approximately 29 acres of the landfill area has already been capped. The remaining portion will be capped as per the schedule in Section K (commencing immediately after signing Consent Decree).

The capping program will comply with the provisions of 6 NYCRR Part 360. The lower portion of the cover must be of a material which restricts infiltration to the equivalent of that achieved by 18 inches of clay at hydraulic conductivity of 10^{-7} cm/sec or less. Soils suitable for plant growth will be applied on top of the clay layer to a thickness of 12 inches. All areas will be hydroseeded (the simultaneous application of water, seed and other specified components by means of a pump or spray) and side slopes are, to the extent practical, to be 3 to 1 or less as long as a stable side slope is maintained. An existing typical cap section is shown in Figure 5.

The capping program and the final grading are designed and will be constructed in coordination with stormwater

what work?

control systems, service access roads, earth benches, and gas control facilities.

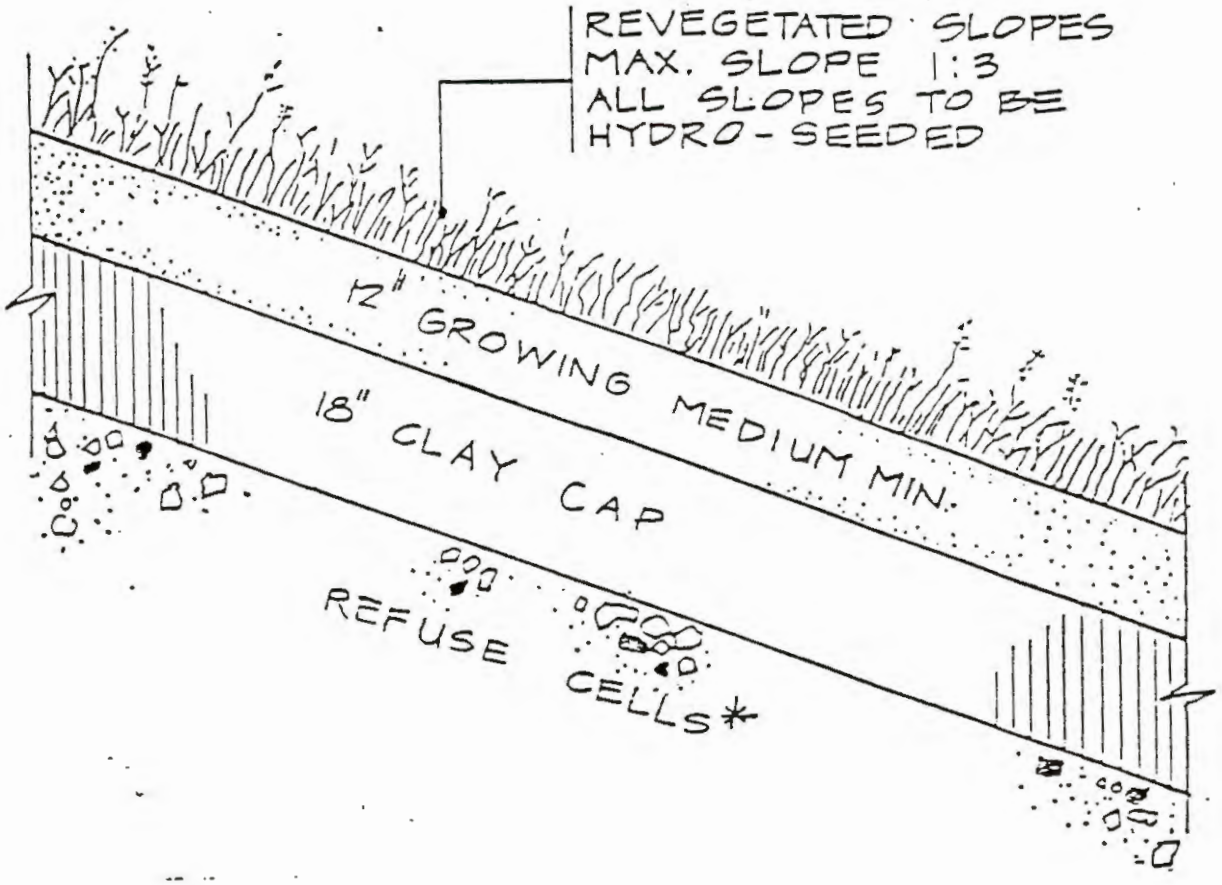
The capping will be completed within months of the initiation of the work. It involves the following steps:

- surveying the completed area;
- regrading to attain, to the extent practical, slopes that are 3 horizontal to 1 vertical or less as long as a stable side slope is maintained;
- application of a cap to reduce infiltration of precipitation into the fill;
- application of growing medium soil over the impervious cap;
- revegetation of slopes by hydroseeding a mixture of seed, water, fertilizer and adhesive mulch; and
- other landscaping as necessary such as screen planting at base, and plateau planting of young trees, shrubs and grasses.

Confirmation of compliance with the cap requirements will be confirmed as set forth in RAP Attachment 1.

H. Landfill Gas Collection System

Since 1979, the Town has implemented programs to prevent offsite migration of landfill gas at OBSWDC. A perimeter landfill gas collection system has been installed at the OBSWDC under four separate construction contracts. The system is comprised of twenty three (23) gas recovery wells, six thousand five hundred (6,500) feet of collection



* DESIGN WILL INCLUDE GAS VENTING AS NECESSARY

FIGURE 5

OBSWDC EXISTING
TYPICAL CAP SECTION

header and three condensate collection wells. The mechanical portion of the system consists of two independently driven blower packages with a combined flow rate capacity of nearly 1800 cubic feet/minute; condensate separation equipment; safety devices and a high temperature gas incinerator.

Pending approval of its application to dispose collected condensate through the Nassau County Sanitary Sewer System, the condensate may be discharged pursuant to its current SPDES permit. If the Nassau County Sanitary Sewer Permit is not approved, the condensate shall be treated in the treatment system pursuant to Section E and discharged pursuant to the discharge criteria pursuant to Section F.

As part of this remedial program the Town will continue to operate and maintain this gas collection system in compliance with the requirements of 6 NYCRR Part 360 and maintain a zero percent methane gas migration limitation at the Landfill boundary. In order to demonstrate that compliance, the Town will conduct the monitoring program described in the Lockwood, Kessler and Bartlett April 1987 report entitled "1986 Annual Report: Summarizing the Status of Landfill Gas Monitoring Programs and the Establishment of the Zero Percent Gas Migration Limitation at the Old Bethpage Landfill," to be amended as necessary. In addition, the Town will conduct the Supplemental Gas Monitoring Program set forth in Attachment 2. The Town will

2. The Town will expand and modify this gas collection system as required to prevent offsite migration of landfill gas and to meet the requirements set forth above.

I. Leachate Collection and Treatment System

Since 1983, the Town has processed leachate at its treatment facility pursuant to a sewer use permit from the Nassau County Department of Public Works. The plant has the capacity to treat up to 50,000 gallons per day for heavy metals and solids, and presently discharges the clear, settled effluent to the County sewer located on Round Swamp Road.

As part of this remedial plan, the Town will be required to continue to operate and maintain its leachate collection, treatment, and disposal system in compliance with 6 NYCRR Part 360 and applicable Nassau County Sewer Use Ordinances.

The Town shall dispose of all sludge generated by the leachate collection system at an offsite location in compliance with all applicable federal, state, and local law and regulation.

J. Preparation of a Final Design Plan

1. Content and Schedule

The Final Design Plan will be prepared and submitted in accordance with the Schedule set forth in Section K. The Final Design Plan will contain the following items: Final engineering design and specifications

(including drawings) for the complete program for remediation, including but not limited to the design and specifications for the completion of the capping program, groundwater recovery system, treatment system (including piping), recharge system (including injection wells and basin) and monitoring program as fully described in this RAP.

2. Preparation and Adjustments

Prior to final design, up-to-date aerial photographs, supplemented with field survey data will be obtained to produce the topographic maps of the area. Soil borings will also be collected in the area of the proposed treatment plant for use during the foundations design. Percolation tests of the subsurface soils will also be conducted in the area where treated effluent is to be recharged to aid in the design of those facilities.

The treatment plant design will be made flexible to accommodate changes in the interconnecting piping, if and when additional equipment is required to be installed. The use of temporary piping or hose is anticipated during the initial operation of the treatment plant.

The initial construction phase for the treatment plant will include site clearing and preparation, foundations and utilities installation for the entire project, and construction and installation of the air stripping unit, wellfield, influent piping and recharging facilities. The

subsequent construction phase, if required, will include the installation of iron removal and/or carbon adsorption equipment and appurtenances.

K. Schedule of Implementation

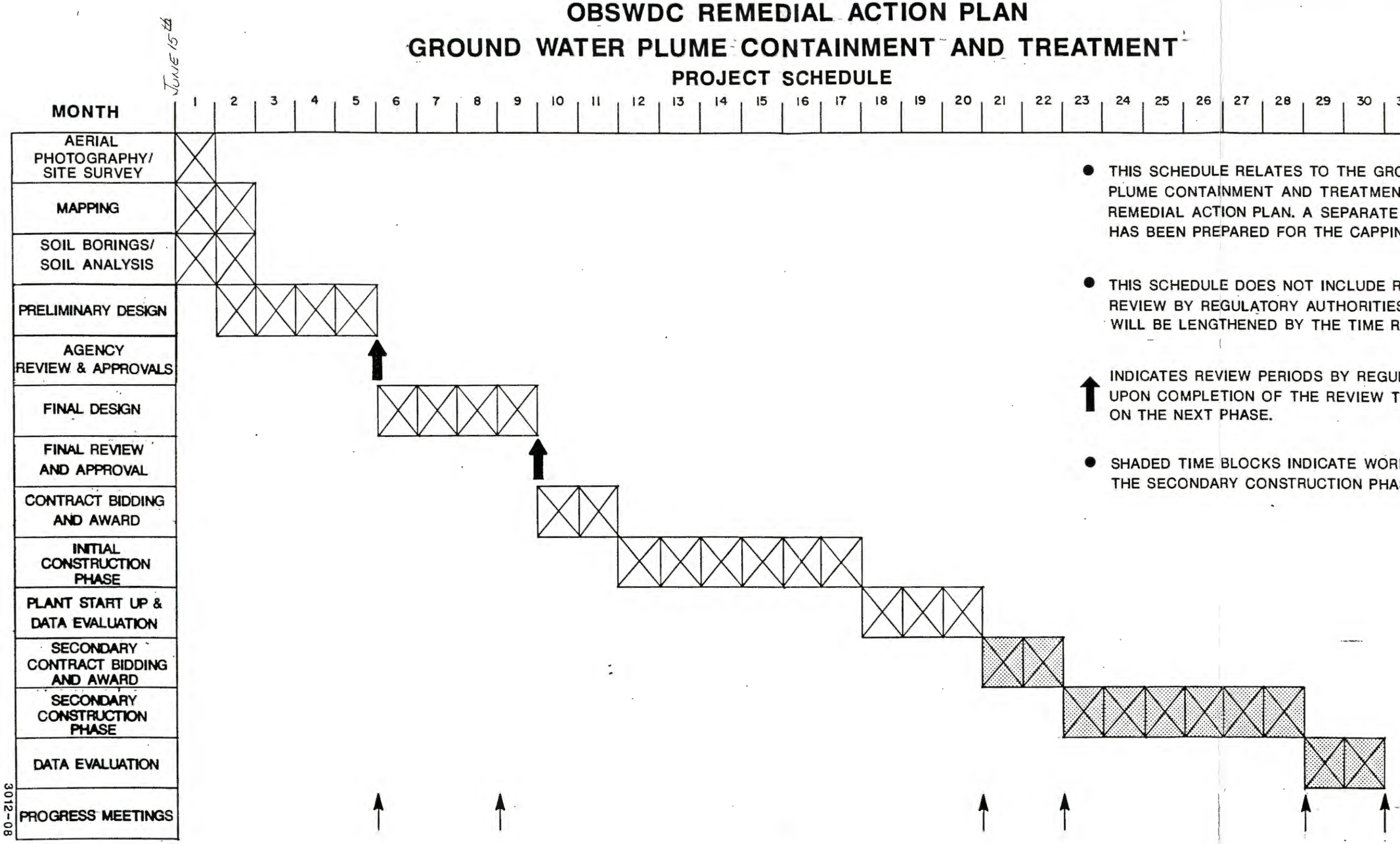
The groundwater recovery, treatment and discharge systems set forth in Sections C, D, E and F shall be installed and completed in accordance with the schedule contained in Figure 6. The landfill cap as required in Section G shall be installed and completed in accordance with the schedule contained in Figure 7. Both schedules and all requirements for the methane gas recovery system set forth in Section H are to begin immediately upon signing of the Consent Decree.

II. MONITORING PROGRAM

A. Hydraulic Monitoring

The effectiveness of the hydraulic containment system in exerting control over the defined area to be remediated will need to be demonstrated by measuring water levels in adjacent monitoring wells. In addition, measurement of water levels will monitor the effects of potential mounding due to recharge of the treated water. Initially, the wells to be measured are: all 23 wells in the offsite Remedial Investigation; all remaining intact Phase I, II and III monitoring wells; the well at Melville Road; the closest Farmingdale public drinking wells and all observation wells installed as part of the remediation, including, e.g., the

OBSWDC REMEDIAL ACTION PLAN
GROUND WATER PLUME CONTAINMENT AND TREATMENT
PROJECT SCHEDULE



- THIS SCHEDULE RELATES TO THE GROUND WATER PLUME CONTAINMENT AND TREATMENT PORTION OF THE REMEDIAL ACTION PLAN. A SEPARATE AND DISTINCT SCHEDULE HAS BEEN PREPARED FOR THE CAPPING PROGRAM
- THIS SCHEDULE DOES NOT INCLUDE REQUIRED TIME FOR REVIEW BY REGULATORY AUTHORITIES. THE SCHEDULE WILL BE LENGTHENED BY THE TIME REQUIRED FOR REVIEW
- ↑ INDICATES REVIEW PERIODS BY REGULATORY AUTHORITIES. UPON COMPLETION OF THE REVIEW THE PROJECT WILL CARRY ON THE NEXT PHASE.
- SHADED TIME BLOCKS INDICATE WORK RELATED TO THE SECONDARY CONSTRUCTION PHASE

3012-08

FIGURE 6

UKB

observation wells for the pump test and the well(s) upgradient of the proposed recharge area. Water levels measured in these wells will be referenced to mean sea level and plotted on a base map, according to depth. Contour lines (indicating areas of equal hydraulic potential) will then be drawn. The limiting flow lines will then be drawn indicating the effective capture zone.

Water levels will be monitored on a monthly basis once the hydraulic containment system becomes operational. Water levels will be measured using a steel tape and chalk. Based on these water level measurements, the pumping rates will be adjusted and the system modified until the required hydraulic barrier is created and maintained.

The determination of when the appropriate hydraulic barrier has been created will be as follows: Based on monthly water level measurements, the Town will demonstrate, subject to State concurrence, that equilibrium has been established in the system. Once agreement is reached as to the establishment of equilibrium, the Town will demonstrate with appropriate data and analysis, subject to the State's concurrence, that drawdown, sufficient to create a hydraulic barrier regardless of seasonal fluctuations, has been established. Thereafter, the Town will maintain that drawdown, unless it is demonstrated by subsequent measurement or sampling that that drawdown being achieved is no longer sufficient or is excessive to create the hydraulic

barrier. Then the process of establishing, subject to State concurrence, a pumping rate to achieve the required drawdown number appropriate to attain hydraulic control will be recommenced.

The Town will be required to continue to monitor the recovery system to confirm the effectiveness of the hydraulic barrier under any conditions and to adjust and modify the recovery well system to maintain that barrier until the Termination Criteria are met. In addition, the Town will be required to continue to monitor for recharge mounding effects. However, after the initial determinations of equilibrium and appropriate drawdown are reached, the Town will only be required to provide quarterly potentiometric surface maps (see Reporting Requirements in Section II.D.) and to measure water levels at the five recovery wells; monitoring wells 7B and 9B and/or 9C; OBS-1 and OBS-2; a minimum of three additional monitoring points depending upon the ultimate configuration of the agreed upon capture zone; and the wells upgradient of the propsoed recharge area. Either party, during the course of the operation of the system, may propose that wells for water level measurement may be added, subtracted or substituted.

B. Groundwater Quality and Monitoring

1. Introduction

Monitoring of groundwater quality is required to assess the progress of groundwater cleanup, and to

demonstrate whether the Termination Criteria set forth in Section III.A have been met.

2. First Round Monitoring

Once the recovery system has been installed and prior to commencement of pumping, a comprehensive First Round sampling shall be undertaken. The wells to be sampled are all 23 wells in the offsite Remedial Invesigation; all remaining intact Phase I, II, and III observation wells; the well at Melville Road; the closest Farmingdale public drinking wells and all observation wells installed as part of the remediation, including, e.g., the observation wells for the pump test and the well(s) upgradient of the proposed recharge area. A complete priority pollutant analysis (Methods 624, 625 and 200.7 [or other individual metals analysis approved per 40 C.F.R. § 136.3]) and a concurrent library search (to tentatively identify and quantify all peaks with an area equal to or greater than 10% of the nearest internal standard) will be conducted on the samples taken from these wells. In addition, leachate indicators shall be analyzed per Table 6.

3. Quarterly Monitoring

Three months after the First Round sampling described above, a program of Quarterly Monitoring will begin and shall continue until the program for termination monitoring is commenced.

The following wells will be sampled quarterly:

5B	8A	11A
6A	8B	11B
6B	9B	7B
6C	9C	
6E		
6F		

In addition, one pump test observation well (to be selected by the State), and the well(s) installed upgradient of the recharge area will be sampled quarterly. A well (to be selected by the State) for the sampling of leachate parameters only will also be sampled quarterly.

The samples from these wells (except as noted) will be analyzed for the parameters set forth in Table 6 utilizing the analytical methods enumerated in the Table.

Either party, during the course of the operation of the system, may propose that monitoring wells be added, subtracted, or substituted. If the parties cannot agree on these proposals, the disagreement will be resolved pursuant to the dispute resolution mechanism, Section XXXI of the Consent Decree.

4. Termination Monitoring

In order to determine whether the Termination Criteria for the remedial system has been attained, a Termination Monitoring program must be commenced. The recovery well system will be required to operate a minimum of five full years (20 quarters) (unless it is demonstrated that the standards and guidelines have been met at an earlier date) before Termination Monitoring can be commenced. Thereafter

the Town may, at any time, request the commencement of the Termination Monitoring Program.

a. Initial Termination Monitoring

After the Town's notification to the State that it will commence Termination Monitoring, an Initial Termination Monitoring duplicating the First Round Sampling Program, set forth in Section II.B.2, will be conducted. All wells will be sampled and analyzed for a complete priority pollutant analysis as also set forth in Section II.B.2.

b. Quarterly Termination Monitoring

After the analytical results from the Initial Termination Monitoring are obtained, quarterly Termination Monitoring will commence. This quarterly monitoring will be conducted for a minimum of two (2) years (eight (8) quarters). The State in its discretion after the Initial Termination Monitoring will determine whether the final year of Section II.B.3 Quarterly Monitoring may be substituted for the first year of Quarterly Termination Monitoring.

The wells to be sampled and the parameters to be analyzed for will be proposed by the Town, subject to State approval.

At a minimum, the wells to be sampled will include the wells sampled for the two years of Quarterly Monitoring immediately prior to the Town's request for Termination Monitoring. At a minimum, the parameters analyzed for will be those set forth in Table 6 and any that were added or

substituted in the last two years of Quarterly Monitoring. Parameters identified in the Initial Termination Monitoring which could affect the ability of the Town to meet Termination Criteria will also be required on the list of parameters to be analyzed.

Based on two (2) full years (eight(8)quarters) of Termination Monitoring results, the Town may submit a Petition for Termination which demonstrates that the criteria set forth in Section III.A have been met. If the State agrees with the Town's Petition for Termination, the remedial system may be terminated. If the State and Town cannot agree, disputes will be resolved pursuant to the Dispute Resolution mechanism of Section XXXI of the Consent Decree. The Town will continue to operate the remedial system and conduct Quarterly Sampling until such dispute is resolved or an order from the Court issued. If the Remedial system is shut down, pursuant to either agreement or court order, Post-Termination Monitoring, as set forth in Section II.B.5 will commence.

5. Post-Termination Monitoring

Following termination of the operation of the hydraulic containment system, a Post-Termination Monitoring Program will be undertaken. This program will last a minimum of three (3) years and consist of a semi-annual sampling of the wells sampled during the Quarterly Termination Monitoring Program and an analysis for the same parameters monitored in

that program. The data will continue to be evaluated to determine if it is meeting the Termination Criteria. If the post-termination monitoring analytical results indicate that groundwater quality is no longer meeting the Termination Criteria set forth in Section III.A, the remedial system will be re-started within 30 days. After startup the Town can seek to demonstrate to the State, subject to its concurrence, that the Termination Criteria is in fact being met, or that the groundwater contamination discovered is attributable to a source other than the Landfill, per Section III.B.3.

C. Treatment System Discharges

Operation of the air stripper must be maintained to assure compliance with: 1) applicable air discharge requirements set forth in State Regulations and the State Air Guide No. 1 for the Control of Toxic Air Contaminants (Table 1); 2) applicable State Pollution Discharge Elimination System (SPDES) requirements, and 3) State Technical and Operational Guidance Series limitations for potable groundwater quality (Table 2). Prior to submission of the Final Design Plan required by Section I.J. herein, the Town shall develop a monitoring program, in consultation with the Department of Environmental Conservation permitting

authorities to assure continued compliance of the air stripper with applicable air and water discharge criteria including permit or permit equivalent requirements. Upon approval by the State, such monitoring program shall be deemed incorporated as part of this RAP.

D. Reporting

1. Quarterly Reports

a. Construction Period

Quarterly Reports will be prepared for each quarter of the construction period containing the following information:

- Description of work completed
- Delays and reasons
- Work projection for the next quarter
- Changes or modifications, including and dates of approval
- Problems and resolutions
- Revised schedule, if appropriate

b. Operating Period

Quarterly Reports will be prepared for each quarter of the operating period containing the following information and data:

- Pumpage records
- Treatment system air and water discharge data

- Treatment system performance records
- Data analysis (trends, position of plume, etc.)
- Modifications to system, including method and dates of approval
- Groundwater quality monitoring data
- Water level data
- Potentiometric surface maps as revised
- Record of all system downtime

2. Annual Operating Report

An annual operating report will be prepared for each year of the operating period containing a summary and analysis of the information and data contained in the quarterly reports. The Town at its option may combine the 4th quarter report of each year and the annual report into one combined report.

E. Notification of System Downtime

In the event that the hydraulic containment/ treatment, or major operable unit thereof, is down or experiences failure for a period of 48 hours or more, the designated agent of New York State will be notified, by telephone, followed by a letter. During such down time or failure, the Town and its representatives will make every reasonable effort to obtain the necessary replacement

equipment and re-start the system in an expeditious manner. If the system cannot be restarted within 48 hours after timely notification, the provisions of Section XXI of the Consent Decree shall apply, as appropriate.

III. TERMINATION

A. Termination Criteria

The criteria for termination of the hydraulic containment/treatment system are as follows:

The Town:

1) Demonstrates that groundwater affected by contamination from the Old Bethpage Landfill has been remediated so that all the wells required to be sampled in the Termination Monitoring Program meet the standards/guideline values given in Table 2 for the parameters analyzed.

- or -

2) (a) Demonstrates that groundwater affected by contamination from the Old Bethpage Landfill has been remediated to the extent feasible with the existing remedial system so that all the wells within the plume, required to be sampled in the Termination Monitoring Program, meet the zero slope condition as described in Attachment 3; and

(b) Demonstrates, subject to State concurrence, that any residual contamination is either 1) attributable to another source or 2) cannot be feasibly remediated with available Requisite Remedial Technology ("RRT") [defined in

Section VI, paragraph 2 of the Consent Decree to mean known engineering, scientific and construction principles and practices, used or acceptable for use in the cleanup or containment of chemical contamination which are applicable to the materials and hydrogeological conditions found at the TOB Landfill and its environs, including new and innovative technologies which utilize a permanent solution to the maximum extent practicable] as set forth in Section XI of the Consent Decree; and

(c) Demonstrates that the level of contamination existing in the Termination Monitoring Wells located within the defined plume will not cause future exceedances of the standards/guidelines in the Termination Monitoring Wells located outside the defined plume, e.g. the observation wells installed as part of the remediation and Well Cluster No. 7.

B. Methodologies for Termination Criteria

1. Meeting Standards and Guidelines

The standards/guideline values presented in Table 2 are the criteria which must be achieved for each compound and for total VOC concentration in all monitoring wells designated for the Termination Monitoring Program for a period of two years (eight quarters) prior to termination.

2. Achieving the Zero Slope Condition

The zero slope condition refers to a demonstrated condition in which contaminant concentrations in all the Termination Monitoring Wells are lowered by the remediation, but do not achieve the standards and guidance values set forth in Table 2. Instead of continuing to be lowered, the concentrations reach a certain level and remain at that level during the two year Termination Monitoring period. This condition is demonstrated if a plot of concentration versus time for the two year Termination Monitoring period shows that the slope of the line is statistically indistinguishable from zero. The monitoring wells to be used in the evaluation of zero slope will be the Termination Monitoring wells agreed to as set forth in Section II.B.4(b). The contaminants to be used in evaluating the zero slope condition will be Termination Monitoring parameters agreed to as per Section II.B.4(b). The Zero Slope condition will be determined by the method set forth in Attachment 3.

3. Determination of Effects from Other Sources of Contamination

If one or more Termination Monitoring Wells does not meet the Termination Criteria set forth above, the Town may still seek termination of the remediation if all the remaining wells meet the criteria and the Town can demonstrate, subject to State concurrence, that the

contamination in the non-complying wells is attributable to sources of contamination other than the TOB Landfill. The State will continue to make available to the Town all data it obtains with respect to other potential sources of contamination, including without limitation the Nassau County Firemen Training Center Facility and the Claremont Polychemical Site.

IV. GROUNDWATER SAMPLING PLAN

A. Sampling Preparation

Sampling will be conducted only by authorized representatives of the Town who are thoroughly knowledgeable of groundwater sampling procedures, and who have been thoroughly familiarized with the sampling protocol for this site. Health and safety procedures for sampling personnel are described in Section VI. The sampling personnel will coordinate with a New York State certified analytical laboratory to arrange for the appropriate containers. Prior to the start of the monitoring program, the laboratory will be provided with written instructions regarding the list of analytical parameters and reporting requirements; subsequent modifications, if any, in the laboratory procedures will be confirmed similarly, in writing. Such modifications will be subject to State concurrence. State representatives will be provided notice and access and right to sampling split as set forth in the consent decree.

B. Sampling Protocol

The protocol for sampling will be submitted for approval by the State, prior to the start of the monitoring program.

C. Quality Control/Quality Assurance

A trip blank will accompany each day's samples during each sampling round. A trip blank is defined as a standard 40-ml VOA vial of organic-free water which accompanies the samples. The trip blank will not be opened at any time prior to analysis. The trip blank is then analyzed for VOCs. A field blank will be taken during each sampling round. A field blank is defined as two 40-ml VOA vials of organic-free water taken to the field during sampling. The water from the field blank will be poured through the sample/discharge fitting (after it has been cleaned according to protocol) and collected in a third vial. The field blank is then analyzed for VOCs.

During each sampling round, one duplicate sample will be taken and run for the appropriate parameters and as per the analytical methods for that sampling round.

There are certain substances which are frequently reported in laboratory analytical results and which are not present in the sample when collected. These contaminants are termed "artifacts" and are typically documented by their detection in laboratory blanks. USEPA has recognized a

number of compounds as frequently occurring artifacts and has consequently relaxed acceptance criteria for QA/QC blanks for these compounds (see USEPA Contract Laboratory Program "Statement of Work for Organic Analysis", October 1986). The currently recognized artifact compounds are the following:

a. Methylene chloride

b. Acetone

c. Toluene

d. 2-Butanone

e. Listed Phthalate Esters

Results of method blank analyses are acceptable to EPA if they contain less than five (5) times the Contract Required Detection Limit (CRDL) for each compound (Method blank is described as "an analytical control consisting of all reagents, internal standards, and surrogate standards, that is carried through the entire analytical procedure. The method blank is used to define the level of laboratory background contamination"). For example, if the CRDL for methylene chloride is 5 ug/L, a concentration of up to 25 ug/L in a method blank analysis would still be acceptable.

Thus, in evaluating water-quality data for compliance with the terms of the RAP, the presence of certain compounds as artifacts will be considered. Contaminants which are inconsistent with the historical database will be investigated as possible artifacts. Demonstration of a

compound as an artifact may be in one or more of the following ways:

1. By providing laboratory QA/QC data showing the presence of the compound in method blank sample(s), per the above discussion of CLP requirements.
2. By citing a government publication of analytical methodologies or criteria which provides for an allowable persistent artifact(s), beyond compounds (a) through (e) cited above, provided that the particular concentration in question is within the allowable range.
3. By resampling, provided the new sample indicates a nondetectable (ND) concentration or meets one of the above criteria.

Sampling records will be completed for each, and these records become part of the project file. Chain of custody forms will accompany each day's delivery of samples.

V. SAMPLE ANALYSIS PLAN

The analytical methods appropriate to each sampling program are specified in this document. The appropriate procedures are incorporated by reference. The laboratory will report the data in a form consistent with the previous studies and monitoring, i.e., constituent, concentration, and units.

VI. HEALTH AND SAFETY CONSIDERATIONS

The RAP presents the plan for collection and treatment of groundwater affected by contamination from the Old Bethpage Landfill and source control of landfill gas and leachate. As specific job descriptions are defined for construction, operation, and monitoring of the remedial system, job-specific health and safety requirements will be developed. The requirements will be kept in a central file onsite and copies provided to the State representative.

The health and safety requirements will be designed to comply with OSHA's General Industry Standards, as well as more newly-issued hazardous waste regulations (29 CFR 1910.120). If two standards cover the job, the more stringent standard will apply. With regard to the hazardous waste regulations, every reasonable attempt will be made to use engineering controls and/or work practices to minimize the possibility of exposure, as opposed to relying on personal protective equipment (consistent with OSHA policy). Further, air monitoring will be conducted to evaluate exposure hazards, and all personnel who may potentially be exposed will undergo yearly medical monitoring. The health and safety plan will be submitted to the State for approval as set forth in the consent decree and the Schedule in Sections J and K and prior to commencement of the remedial construction.

RAP ATTACHMENT 1

Landfill Cap Specifications
and Testing Requirements

1. The clay cap shall be constructed in 6-8 inch thick lifts (after compaction), must meet the following specifications or must be mixed with an appropriate material to meet the following specifications:

a.	Permeability:	1×10^{-7} cm/sec or less
b.	Grain Size:	P200 content of 50% by weight or greater
c.	Liquid Limit:	25% or greater
d.	Plasticity Index:	10% or greater
e.	Compaction:	90% Modified Proctor density or greater
f.	Moisture Content:	varying between optimum and 2% of wet of optimum

2. To ensure attainment of the required permeability for the clay cap the following documentation testing shall be performed:

a. Analysis of grain size distribution using the Unified Soil Classification System (ASTM D2487) and analysis of Atterberg Limits on at least one sample for every 500 cubic yards of clay placed.

b. Development of reference compaction (dry density and moisture content) and permeability curves using at least three points per curve for each sample of material proposed to be used for the cap and for at least one sample for every 500 cubic yards of clay placed.

c. Measurements of in-situ compaction using a nuclear densiometer (ASTM D2922) at the intersection points of a 100-foot grid pattern. The grid shall be offset for each lift of in-place material.

d. Measurement of laboratory saturated hydraulic conductivity on a minimum of one undisturbed sample per acre per lift of clay placed. The procedure for obtaining the undisturbed sample and performing the test must be approved by the State.

Any portion of the constructed cap which fails to achieve an in-situ density required to provide a permeability of 1 x 10^{-7} cm/sec or less, as judged from the reference compaction curves or from the laboratory hydraulic conductivity tests shall be reconstructed until the requisite dry density and permeability are achieved and verified by the State.

3. A qualified soil technician or engineer shall be present during construction of the cap to provide visual inspection and direct sampling and testing. The results of the in-situ density and permeability tests shall be analyzed by a geotechnical professional and submitted to the State with the professional engineers' certification of construction.

RAP Attachment 2

OLD BETHPAGE LANDFILL
SUPPLEMENTAL GAS MONITORING PROGRAM

The supplemental landfill gas monitoring program for the Old Bethpage Landfill Remediation Program contains five components. These are 1) the collection of ambient air samples; 2) the collection of subsurface gas samples at a depth of 30"; 3) the collection of subsurface gas samples at depths of 10', 20', 30' and 40'; 4) the collection of thermal oxidizer emission samples (stack testing); and 5) the measurement of gas pressure to ascertain negative pressure created by the gas collection system. These data requirements supplement the existing methane gas monitoring program and will be reported in the annual reports produced under that program.

The location of the proposed sampling points are shown on Drawing No. 1, entitled "Old Bethpage Landfill Zero Percent Methane Gas Migration Contours, 1986 Annual Site Survey". A description of the various components of this program follows.

Ambient Air Samples

Ambient air samples (24 hr. samples) will be collected at three locations around the landfill as shown on Drawing No. 1. One location will be along Winding Road to the east and southeast of the landfill (near M-3 shown on Drawing No. 1). One location will be to the west of the landfill along Round Swamp Road (near M-33). A third location will be north of the landfill (between M-17 and M-22). Samples at these locations will be collected quarterly during the initial year of the program and, if approved by the State, on an annual basis thereafter. Samples will be analyzed for volatile organic compounds.

30" Deep Subsurface Gas Samples

Fourteen subsurface gas samples will be collected at a depth of 30" at the following locations surrounding the landfill as shown on Drawing No. 1: F-1, M-2, M-4, M-5, M-6, M-13, M-16, M-21, M-22, M-28, M-31, M-34, M-37 and M-39. Samples will be collected on a quarterly basis during the initial year of the program and, if approved by the State, on an annual basis thereafter. Samples will be analyzed for volatile organic compounds.

Subsurface Gas Samples at Various Depths

Subsurface gas samples will be collected at depths of 10', 20', 30', and 40' at location M-9 (to be repaired or replaced) shown on Drawing No. 1. Samples will be collected on a quarterly basis during the initial year of the program and, if approved by the State, on an annual basis thereafter. Samples will analyzed for volatile organic compounds.

Thermal Oxidizer Emissions

Thermal oxidizer emissions will be sampled (in the incinerator stack) on a quarterly basis during the initial year of the program. The emissions will be related to oxidizer incinerator temperatures during this initial year of sampling. Thereafter, the oxidizer temperatures will be monitored on a monthly basis to insure that temperatures needed to volatilize the organics are being maintained in the oxidizer. The emissions will continue to be sampled on an annual basis. Samples will be analyzed for volatile organic compounds.

Pressure Readings

Pressure readings will be taken at three locations around the perimeter of the gas collection system to ascertain whether a vacuum is created around the system. This data will assist in monitoring the effectiveness of the system and in determining whether the system needs adjustment or enhancement. One reading will be taken to the south of the landfill at either F-6 or F-9 (existing probes) shown on Drawing No. 1. A new probe will be installed and a reading taken to the northwest of landfill between LGV 16 and LGV 17. The third probe will be installed and a reading taken to the southeast of the landfill between TGV-1 and LGV-9. Pressure readings will be taken on a quarterly basis during the initial year of the program and, if approved by the State, on an annual basis thereafter.

RAP Attachment 3

For the purposes of determining the zero slope condition, the concentrations of the organic parameters will be totaled for each quarter to produce a concentration versus time plot for each well, for a total of eight such plots. It will be required that the zero slope condition exist in each of these Termination Monitoring wells.

The method to be used for determining whether zero slope has been achieved is as follows:

The data will be tested for normality and the selected statistical test will be determined by the following procedure:

1. Plot concentrations obtained over time on probability paper.

2. Evaluate for normality by an agreed upon objective method.

3. If data is not normally distributed, transformations such as lognormal may be employed in an attempt to obtain a normal distribution. Transformed data will be tested for normality.

4. If the data is normally distributed, the most powerful parametric test will be used.

5. If the data is not normally distributed, the most powerful non-parametric test will be performed on the data.

During the course of the remedial activities, either party may request, as provided in the consent decree, to alter the above procedure, as appropriate, to provide a more powerful test, as statistically defined.

APPENDIX B

RELEASE, INDEMNITY AND COVENANT NOT TO SUE TO BE DEEMED EXECUTED AND DELIVERED BY THE TOWN TO THE STATE (PURSUANT TO SECTION XXVI OF THE FINAL CONSENT DECREE) AND TO BE EXECUTED AND DELIVERED BY THE TOWN TO EACH CORPORATE DEFENDANT AND EACH CONTRIBUTING SETTLING THIRD-PARTY DEFENDANT

WHEREAS, the parties to the Final Consent Decree governing the settlement of the action entitled State of New York v. The Town of Oyster Bay, et al., 83 CV 5357 (CPS), and its related third-party actions, have settled said action and third-party actions in accordance with the terms thereof,

NOW THEREFORE, the Town of Oyster Bay (hereinafter "the Town") does hereby and for its successors and assigns release, remise, acquit and forever discharge _____ and all of its past and present directors, officers, officials, employees, representatives, agents, servants, attorneys, successors, heirs, executors, and administrators, all in their representative capacities as such, from any and all claims and demands of whatever kind or description, whether at law or in equity, including those for damages, penalties, fees, fines, disbursements, premises, accounts, bills, specialties, rights, debts, dues, agreements or sums of money, costs, expenses, losses, compensation or remedies, that the Town of Oyster Bay had, now has, or that it or its successors and assigns may have in the future against _____ arising out of,

relating to or resulting from the existence, release or threat of release of any hazardous substance at or from Town of Oyster Bay Landfill (hereinafter "TOB Landfill").

FURTHER, the Town does hereby covenant with _____ forever to refrain from instituting, asserting or pressing against _____ and its past and present directors, officers, officials, employers, representatives, agents, servants, attorneys, successors, heirs, executors, and administrators, all in their representative capacities as such, any claim, demand, proceeding, litigation, suit, third-party claim, cross-claim, cause of action or judicial or administrative action of whatever kind or description, whether in law or in equity, civil or criminal or for damages, penalties, fees, fines, disbursements, premises, accounts, bills, specialties, rights, debts, dues, agreements or sums of money, costs, expenses, losses, compensation or remedies arising out of, relating to or resulting from the existence, release or threat of release of any hazardous substance at or from the TOB Landfill.

FURTHER, the Town shall defend, indemnify and hold harmless _____ and its past and present directors, officers, officials, employees, representatives, agents, servants, attorneys, successors, heirs, executors,

and administrators, all in their representative capacities as such, from and against any and all claims, suits, actions, proceedings, damages, expenses, losses, costs, reasonable attorneys' and experts' fees and disbursements arising out of, relating to or resulting from the performance, attempted performance or failure of performance by the Town, or its contractors or subcontractors of any of its obligations under this Consent Decree.

FURTHER, the Town shall defend, indemnify and hold harmless _____ and its past and present directors, officers, officials, employees, representatives, agents, servants, attorneys, successors, heirs, executors, and administrators, all in their representative capacities as such, from and against any and all claims, suits, actions, proceedings, damages, expenses, losses, costs, reasonable attorneys' and experts' fees and disbursements arising out of, relating to or resulting from the existence, release or threat of release of any hazardous substance at or from the TOB Landfill.

Notwithstanding anything herein, this Release, Indemnity and Covenant Not to Sue shall not apply and shall not be construed to apply to any action, suit, liability, obligation, penalty, demand, or proceeding of whatever kind or nature, pertaining to the assertion of a civil toxic tort claim and shall not be construed to and is not intended to

effectuate an obligation to indemnify or otherwise to impose upon the Town any liability with respect thereto. All claims and defenses with respect to such civil toxic tort claims are hereby reserved and nothing herein constitutes a waiver of such defenses.

For the purpose of this Release, Indemnity and Covenant Not to Sue, the term "civil toxic tort claim" shall not include claims for investigation, removal, remediation or cleanup costs arising out of, relating to or resulting from the existence, release or threat of release of any hazardous substance at or from the TOB Landfill.

The foregoing indemnities shall be subject to the following conditions precedent: In the event _____ becomes apprised of any claim, proceeding, action, suit, liability, fee, fine, penalty, obligation or demand of any kind (hereinafter "claim") within the scope of the aforesaid indemnities, written notice containing particulars with respect to the nature, time, place and circumstances of the claim shall be given by or for _____ to the Oyster Bay Town Clerk at Town Hall, Audrey Avenue, Oyster Bay, New York 17771, as soon as practicable. _____ shall promptly forward and tender to the Town for defense every demand, notice, summons or other legal process received by_____ or its representative. Upon receipt of such notice of a claim

from _____, the Town shall promptly and in writing, by certified mail, return receipt requested, inform _____ whether (1) it acknowledges that said claim is within the scope of the Town's indemnification and defense obligations; (2) it disclaims any obligation to defend and indemnify with respect to said claim; or (3) it accepts the notice of claim and will provisionally defend from and against such claim pending further investigation, under a full reservation of the Town's rights to disclaim upon ten days notice any and all obligations to defend and indemnify in the event the claim is not within the scope of the Town's indemnification obligations. The Town shall retain competent outside counsel, and shall have the election to retain investigators and experts and otherwise to defend, control, and investigate the defense and settlement of the claim. _____shall reasonably cooperate with the Town and, upon the Town's request, reasonably assist it in the defense of the claim and the enforcement of any applicable right of contribution or indemnity against any person or organization. The Town shall reimburse out-of-pocket expenses incurred by _____ in cooperating with the Town and assisting it in the defense of the claim. _____ shall not, without prior approval of the Town, except at its own cost,

voluntarily make any payment, assume any obligation or incur any expense in the defense of a claim.[1]

In the event _____ does not give notice, tender the defense of a claim, or assist and cooperate as hereinabove provided, the Town shall be free of any obligation to defend, indemnify or hold harmless with respect to any such claim.

Notwithstanding anything to the contrary hereinabove set forth, the Town shall not settle, compromise or abandon any claim within the scope of the Town's indemnification obligations without the express written consent of _____, which consent shall not unreasonably be withheld. In the event that _____ unreasonably withholds its written consent to a proposed settlement, compromise or abandonment of any said claim, the Town shall thenceforth be relieved of its defense and indemnification obligations with regard to that claim.[2]

---

[1]With respect to the Release, Indemnity and Covenant Not to Sue to be executed and delivered by the Town to the State, language must be added here to effectuate the terms as set forth in Section XXV of the Final Consent Decree regarding the Town's indemnification obligations to the State.

[2]With respect to the Release, Indemnity and Covenant Not to Sue to be executed and delivered by the Town to Third-Party Defendants Nassau County and the Vocational and (Footnote Continued)

Further notwithstanding anything herein, this Release, Indemnity and Covenant Not to Sue shall not apply, and shall not be construed to apply to:

(a) any claim set forth in the complaint filed in Town of Oyster Bay v. B&D Carting Inc. et al., U.S. District Court for the Eastern District of New York, C.V. 87-4336 (Mishler, J.) whether such claim is prosecuted in said court or in another forum;

(b) any claim relating to a failure to pay all or part of any required or appropriate tipping fee in connection with any use of the TOB Landfill; or

(c) any pending action or proceeding to revoke a carter's license for alleged failure to comply with the Town's ordinances or other applicable rules or regulations in connection with licensing requirements.

(Footnote Continued)
Educational Extension Board of Nassau County (VEEB) language must be added here to effectuate the terms as set forth in Sections XXV and XXVI of the Final Consent Decree regarding the Town's obligations to release, indemnify and covenant not to sue Nassau County and VEEB.

This Release, Indemnity and Covenant Not to Sue shall be construed in accordance with the terms set forth in the Final Consent Decree.

_____

TOWN SUPERVISOR
TOWN OF OYSTER BAY

(ACKNOWLEDGMENT)

APPENDIX C

RELEASE AND COVENANT NOT TO SUE TO BE DEEMED EXECUTED AND DELIVERED BY THE STATE TO EACH CORPORATE DEFENDANT AND EACH CONTRIBUTING SETTLING THIRD-PARTY DEFENDANT AND BY THE CORPORATE DEFENDANTS AND SETTLING THIRD-PARTY DEFENDANTS TO THE STATE (PURSUANT TO SECTION XXVI OF THE FINAL CONSENT DECREE) AND TO BE EXECUTED AND DELIVERED BY THE CORPORATE DEFENDANTS AND SETTLING THIRD-PARTY DEFENDANTS TO THE TOWN AND EACH OTHER

WHEREAS, the parties to the Final Consent Decree governing the settlement of the action entitled State of New York v. The Town of Oyster Bay, et al., 83 CV 5357 (CPS), and its related third-party actions, have settled said action and third-party actions in accordance with the terms thereof,

NOW, THEREFORE, the undersigned party does hereby and for its successors and assigns release, remise, acquit and forever discharge _____ and its past and present directors, officers, officials, employees, representatives, agents, servants, attorneys, successors, heirs, executors, and administrators, all in their representative capacities as such, from any and all claims and demands of whatever kind or description, whether at law or in equity, including those for damages, penalties, fees, fines, disbursements, premises, accounts, bills, specialties, rights, debts, dues, agreements or sums of money, costs, expenses, losses, compensation or remedies, that the undersigned had, now has, or that it or its successors and assigns may have in the

future against _____ arising out of, relating to or resulting from the existence, release or threat of release of any hazardous substance at or from Town of Oyster Bay Landfill (hereinafter "TOB Landfill").

FURTHER, the undersigned party does hereby covenant with _____ forever to refrain from instituting, asserting or pressing against _____ and its past and present directors, officers, officials, employers, representatives, agents, servants, attorneys, sucessors, heirs, executors, and administrators, all in their representative capacities as such, any claim, demand, proceeding, litigation, suit, third-party claim, cross-claim, cause of action or judicial or administrative action of whatever kind or description whether in law or in equity, civil or criminal or for damages, penalties, fees, fines, disbursements, premises, accounts, bills, specialties, rights, debts, dues, agreements or sums of money, costs, expenses, losses, compensation or remedies arising out of, relating to or resulting from the existence, release or threat of release of any hazardous substance at or from TOB Landfill.

Notwithstanding anything herein, this Release and Covenant Not to Sue shall not apply and shall not be construed to apply to any action, suit, liability, obligation, penalty, demand, or proceeding of whatever kind or nature, pertaining to the assertion of a civil toxic tort claim. All claims and defenses with respect to such civil

toxic tort claims are hereby reserved and nothing herein constitutes a waiver of such defenses.

For the purpose of this Release and Covenant Not to Sue, the term "civil toxic tort claim" shall not include claims for investigation, removal, remediation or cleanup costs arising out of, relating to or resulting from the existence, release or threat of release of any hazardous substance at or from the TOB Landfill.[1]

This Release and Covenant Not to Sue shall be construed in accordance with the terms set forth in the Final Consent Decree.

(SIGNATURE AND ACKNOWLEDGMENT)

---

[1]With respect to the Release and Covenant Not to Sue to be deemed to have been executed and delivered by the State to Third-Party Defendants Nassau County and the Vocational and Educational Extension Board of Nassau County (VEEB), and with respect to the Release and Covenant Not to Sue to be executed and delivered by Nassau County and VEEB to the Town, language must be added here to effectuate the terms as set forth in Sections XXV and XXVI of the Final Consent Decree regarding the release of Nassau County and VEEB by the State and the release of the Town by Nassau County and VEEB.

APPENDIX D

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

THE STATE OF NEW YORK,

Plaintiff,

-against-

THE TOWN OF OYSTER BAY; OCCIDENTAL CHEMICAL CORPORATION; OCCIDENTAL CHEMICAL HOLDING CORPORATION; OCCIDENTAL PETROLEUM CORPORATION; MARMON GROUP, INC.; CERRO WIRE & CABLE CORP.; CERRO CONDUIT COMPANY; CEROCK WIRE AND CABLE GROUP, INC.; THE ROCKBESTOS COMPANY; GRUMMAN CORPORATION; and GRUMMAN AEROSPACE CORPORATION,

Defendants.

83 CIV. 5357 (CPS)

STIPULATION OF DISMISSAL WITH PREJUDICE

TOWN OF OYSTER BAY,

Third-party plaintiff,

-against-

A.A. & M CARTING SERVICE, INC., et al.

Third-party defendants.

OCCIDENTAL CHEMICAL CORPORATION

Third-party plaintiff,

-against-

A.A. & M CARTING SERVICE INC., et al.,

Third-party defendants.

GRUMMAN CORPORATION AND GRUMMAN AEROSPACE CORPORATION,

Third-Party plaintiff,

-against-

A.A. & M. CARTING SERVICE, INC., et al.,

Third-party defendants.

MARMON GROUP, INC., et al.

Third-party plaintiff,

-against-

A.A. & M. CARTING SERVICE, INC., et al.,

Third-party defendants.

WHEREAS the parties to the Final Consent Decree governing the settlement of the above entitled action and its related third-party actions have settled said action and third-party actions in accordance with the terms thereof,

IT IS HEREBY STIPULATED AND AGREED, by and between the undersigned parties, that the above entitled action and its related third-party actions be dismissed in their entireties, with prejudice and without costs, as against those Corporate Defendants and Third-Party Defendants who have fully complied with their respective obligations under the Final Consent Decree, as listed in Exhibit A [to be

generated at time of execution of the Stipulation]. All counterclaims and cross-claims asserted by any of the parties in Exhibit A as against any of the undersigned shall likewise be dismissed with prejudice and without costs. The Court retains jurisdiction over all other parties to this action and related third-party actions who are not listed in Exhibit A.

Dated: New York, New York
, 1988

[signatures]

SO ORDERED:

_____
U.S.D.J.

APPENDIX E-I

PARENTS AND SUBSIDIARIES OF THE CORPORATE DEFENDANTS

Occidental Defendants:

Occidental Chemical Corporation
OXY CH Corporation
Oxy Chemical Corporation
Occidental Chemical Holding Corporation
Occidental Petroleum Investment Co.
Occidental Petroleum Corporation
Rubber Corporation of America

Grumman Defendants:

Grumman Corporation
Grumman Aerospace Corporation
Grumman Data Systems Corporation

Marmon/Cerro Defendants:

No additional parents or subsidiaries

APPENDIX E-III

GROUP II OF THE SETTLING THIRD-PARTY DEFENDANTS

AAA Development Corp. 175 Veterans Boulevard Massapequa, N.Y. 11758	Otto Pulse
Skyview Graphics, Inc. 15 East Bethpage Road. Plainview, N.Y. 11803	Joseph Knizak
Boos Custom Woodworking Co., Inc. 8000 Skunk Lane Cutchogue, N.Y. 11935	Norman Boos
Mod-A-Can, Inc. 178 Miller Place Hicksville, N.Y. 11801	Millard Prisant, Pres.
County Neon Sign Corp. 163 Dupont Plainview, New York 11803	George Schneider
Geneva Precision Manufacturing Corp. 5 Landview Drive Dix Hills, New York 11746	Roger Stahlin, President
Malvese Tractor & Implement Co., Inc. 530 Old Country Road Hicksville, New York 11802	James F. Orr Executive Vice President
Ontel Corp. 1703 Middlesex Street Lowell, Massachusetts 01851	John Emmerich Vice President
Jerbran Corporation 5 Beekman Street New York, New York	Gregg Solowiei Secretary - Branch Motors
Datamedic Corp. 20 Oser Avenue Hauppauge, N.Y. 11788	Peter Fetterolf
Pallen Maintenance Company 916 Crooked Hill Road Brentwood, N.Y. 11717	David L. Palmer
Ideal Carbon Paper Corp. 151 Fairchild Avenue Plainview, N.Y. 11803	Fra[illegible]spoli, President

Harold Osrow & Leonard Osrow,
d/b/a Winding Road Realty Co.
c/o Harold Osrow
569-8 Acorn Street
Deer Park, N.Y. 11729

Harold Osrow, Partner

cc Clerk
3012.08
AP file

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
----------X

STATE OF NEW YORK,

Plaintiff,

- against -

THE TOWN OF OYSTER BAY et alia,

Defendants.

----------X

CV-83-5357

AMENDMENT TO FINAL CONSENT DECREE

The Final Consent Decree dated September 16, 1988, is hereby amended as follows:

An additional paragraph is added to Article XII after the conclusion of paragraph numbered 3 on page 20 and shall read as follows:

> "Monies collected from the Settling Third-Party Defendants of Groups I and II in payment to the Old Bethpage Landfill Common Defense Fund are to be held in escrow and not disbursed pending review by the Court of the rates and calculations used by the Mangement Committee to determine appropriate legal fees."

Page 15 of Exhibit E-II is amended to delete any reference to Ultra Graphics, Inc. as a Group I Settling Third-Party Defendant.

Page 2 of Exhibit E-III is amended to add Ultra Graphics, Inc. as a Group II Settling Third-Party Defendant.

The Clerk is directed to mail a copy of the within to all parties and to annex this Amendment to the Final Consent Decree.

SO ORDERED.

Dated : Brooklyn, New York

September 16, 1988

United States District Judge

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
----------X

STATE OF NEW YORK,

Plaintiff,

CV-83-5357

- against -

MEMORANDUM AND ORDER

THE TOWN OF OYSTER BAY et alia,

Defendants.

----------X

SIFTON, District Judge

This action was commenced by the State of New York on December 8, 1983, under the Comprehensive Environmental Response, Compensation & Liability Act ("CERCLA"), 42 U.S.C. §9601, as amended by the Superfunds Amendments & Reauthorization Act, Pub. L. 99-499, 100 Stat. 1613, and several state statutory and common law causes of action. All causes of action demand the remediation of environmental problems at the Old Bethpage landfill located in the Town of Oyster Bay, New York. The State originally sued the Town of Oyster Bay, as owner and operator of the landfill facility, and several corporate defendants. The defendants then brought third-party actions against approximately 160 other parties. Jurisdiction exists under 28 U.S.C. §§1331 and 1345, and 42 U.S.C. §9613.

The matter is before the Court for an order approving a consent decree agreed to by the plaintiff, all defendants, and all third-party defendants listed in Appendices E-II and E-III of the decree. The decree requires the Town to undertake the remediation of the landfill, for the State and the settling parties to perform the duties and obligations set forth in the decree, and for whatever additional relief the Court deems proper.

Although the affidavit in support of the motion, sworn to by Robert L. Osar, Assistant Attorney General, states that it is supported by all the settling parties and that no opposition has been voiced, the Court received on affidavit in partial opposition to the decree from Jeffrey Levitt, an attorney representing eight third-party defendants who have signed the consent decree.[1/] The essence of this partial opposition is a request that the Court modify the decree to provide that these objecting parties not be responsible for contribution to a common defense fund provided for in the decree to pay for certain legal fees and expenses.

The following facts are taken from the decree itself and the affidavit in support of the motion, except where noted.

As a result of this litigation, the Town and State undertook an investigation of the environmental problems associated with the landfill, and a remedial feasibility study was done. During 1986, the State and Town provided data and information developed by the remedial investigation to the parties. A case management order was approved by the Court in January 1987 providing a schedule for the conduct of the litigation. On March 9, 1987, the parties agreed to adjourn the case management order and pursue settlement. In July 1987, a remedial feasibility study recommended a specific remediation program. The study was delivered to the parties and the public. The remedy that was subsequently selected is set forth in a Record of Decision, which was approved by the State Department of Environmental Conservation and the Federal Environmental Protection Agency in March 1988. The Remedial Action Plan is Appendix A to the consent decree.

The settling parties agreed to the final consent decree in May 1988, and execution of the decree was completed in July 1988. A letter from Robert Osar, dated August 8, 1988, states that the defendant Town of Oyster Bay will continue its action against the remaining

non-settling third parties. The identities of those non-settling parties were submitted to the Court in a letter dated August 22 by counsel for the Town.

A public comment period of 30 days ran from June 24 to July 25, 1988. Although the affidavit in support states that no comments were received, a subsequent letter from the State Attorney General's office indicated that one public comment was received, and a response was sent to the commentator. The State, by its letter, asserts that it does not deem the comment to be a formal objection to entry of the consent decree, though it deemed it appropriate to notify the Court of the letter's existence.

The affidavit in support of the motion states that the motion is supported by all settling parties and entry of the decree is in the public interest.

DISCUSSION

While the construction of a consent decree is essentially a matter of contract law, the decree itself must be treated as a judicial act. See United States v. Swift & Co., 286 U.S. 106 (1932). In United States v. ITT Continental Bakery Co., 420 U.S. 223, 236 n.10 (1974), the Supreme Court stated:

> "Consent decrees and orders have attributes both of contracts and of judicial decrees or, in this case, administrative orders. While they are arrived at by negotiation between the parties and often admit no violation of law, they are motivated by threatened or pending litigation and must be approved by the court or administrative agency."

The standard of review for approval of a consent decree has been described as follows:

> "It is well settled that the function of the reviewing court is not to substitute its judgment for that of the parties to the decree but to assure itself that the terms of the decree are fair and adequate and are not unlawful, unreasonable, or against public policy."

United States v. Hooker Chemicals & Plastics Corp., 540 F. Supp. 1067 (W.D.N.Y. 1982). In City of Detroit v. Grinnell Corp., 495 F.2d 448 (2d Cir. 1974), the Court of Appeals for the Second Circuit stated:

> "When a District Court exercises its authority in approving a settlement offer, it must give comprehensive consideration to all relevant factors, and yet the settlement hearing must not be turned into a trial or a rehearsal of the trial. The Court must eschew any rubber stamp approval in favor of an independent evaluation, yet, at the same time, it must stop short of the detailed and thorough investigation that it would undertake if it were actually trying the case."

Id., at 462 (citation omitted).

Two cases similar to the case before the Court approving settlements requiring the cleanup of complicated environmental problems adopted three criteria for consideration by a court in its decision to approve a proposed settlement agreement. These criteria are legality, fairness, and reasonableness. United States v. Seymour Recycling Corp., 554 F. Supp. 1334, 1337 (S.D. Ind. 1982); United States v. Conservation Chemical Co., 628 F. Supp. 391-400-02 (W.D. Mo. (1985). The underlying purpose of the Court in making these inquiries is to determine whether the decree adequately protects the public interest, Seymour, supra, at 1337, and to determine the settlement's overall fairness to beneficiaries. Citizens for a Better Environment v. Gorsuch, 718 F.2d 117 (D.C. Cir. 1983).

The consent decree proposed here fulfills the criteria described above for judicial approval. A review of the terms of the decree satisfies the Court that it is lawful, fair, adequate, and in the public interest. The plan of the decree requires the expeditious cleanup of the environmental problems at the Old Bethpage landfill and provides a satisfactory solution to the present litiga-tion. After conducting technical studies, reviewing

feasible alternatives, and receiving comment from the public, the Town recommended and the State and Federal Environment Protection Agency selected a relatively speedy and comprehensive cleanup program. Under the terms of the decree, the Town will monitor the implementation and operation of the Remedial Action Plan, providing the State with detailed quarterly and annual reports. The decree advances the purposes of relevant statutes, particularly CERCLA, which are concerned with remediation of hazardous waste sites. All formal documents required by CERCLA have been completed by the State and Town. The burden of the costs associated with the program is to be fairly distributed among the parties. The cost of the cleanup is estimated to be approximately $7,000,000. All responsible parties will contribute funds toward the cleanup activities. The corporate defendants will bear the bulk of the costs for the ground water remediation. Settling third-party defendants will contribute a less substantial but significant share of these costs. Since the decree conditions the Town's issuing of releases, indemnities, and covenants not to sue upon the defendants' payment of their allocated contributions, the Town will collect the money immediately, enabling it to earn interest on the money until it is expended. This interest will offset the Town's portion of the remedial costs.

The remediation program itself has not been challenged. The sole statement of opposition to the allocation of costs under the decree was submitted through a letter during the period for public comment. This opposition expressed the view that local homeowners should not be required to pay for the remediation, as household garbage attributable to them did not create the ground water problem. However, the Old Bethpage landfill contains industrial, commercial and as household waste, all of which contributed to the environmental problems at the site. If no suit had been brought, the Town and the local homeowners could have been responsible for almost all of the costs of any required remediation under New York State law. As stated, however, the corporate and third-party defendants will contribute the bulk of the estimated costs of ground water remediation. The recently enacted Environmental Quality Bond Act provides state taxpayer money to aid in the cleanup of hazardous waste sites. Pursuant to this Act, the Town has applied for the State to pay 75% of the cleanup costs not recovered by the municipality from insurance and other responsible parties. The Town will assume any costs beyond those amounts. The provisions governing liability under the

applicable laws have enabled the Town to recoup most of the eventual costs of the required environmental cleanup of the landfill. Still, local taxpayers are left to bear some responsibility. Under the circumstances of the situation, the portion of the total falling to the taxpayers is reasonable and necessary. Thus, the overall allocation of the costs of the environmental cleanup appears well apportioned and fair. Moreover, entry of the decree would serve the public interest by implementing a well designed, comprehensive response to the environmental problems posed by the landfill.

Eight third-party defendants, all of whom signed and consented to the final consent decree, opposed the decree in part. Specifically, these third-party defendants oppose the provision found in Article XII of the decree requiring all settling third-party defendants to pay to the Treasurer of Old Bethpage Landfill Common Defense Fund, "all fund allocations attributed to such Settling Third-Party Defendant by a date certain, no later than entry of this Decree, to be noticed in writing by the Management Committee."

Prior to the time when the signatures to the decree were executed by the settling parties, the Management Committee had determined that third-party defendant contributions to the common defense fees would be allocated on a per capita basis. The Management Committee was empowered to make this decision pursuant to the provisions of the common defense group agreement. The dollar amount of the per capita contribution was fixed by vote at a meeting during the period of settlement negotiations which counsel for the parties in partial opposition to the decree attended. The settling third-party defendants were further notified by letter that contribution to the fund was a prerequisite to participation in the settlement and indeed to approval of the final consent decree. Thus, it was clearly set forth at the time the opposing third-party defendants signed the decree that such signature and participation would commit them to payment of a per capita allo ation to the common defense fund.

One of the eight opposing third-party defendants had signed an initial agreement to participate in the common defense group fund. Although there was a provision in the defense group agreement drafted in April 1986

permitting withdrawal from the agreement if such request was submitted in writing, the one party opposing the final decree which had previously consented to participation in the group never sought to withdraw from the agreement. Nonetheless, this third-party defendant seeks to avoid contribution to the fund on the ground that up until it signed the decree it had not utilized the Management or Settlement Committees' settlement efforts but rather, had pursued settlement negotiations with the Town on its own. The other seven third-party defendants, who did not execute the original agreement, also contend that they did not benefit from the work of the common defense group.

These third-party defendants, however, all had the option, when faced with participation in the final consent decree, not to sign it. Having signed the decree they now enjoy the fruits of the Management and Settlement Committees' labor. Plainly, all signatories are beneficiaries of the work the committees performed in arriving at a document acceptable to all parties. The settling third-party defendants should not be unjustly enriched at the expense of the remaining third-party defendants. With respect to compensation of lead or liaison counsel in multi-party litigation, The Manual for Complex Litigation, Second §20.223 (1985) states:

> "In fairness, expenses incurred and fees earned by special counsel and committees should not be borne solely by their own clients, but rather should be shared equitably by all benefiting from their services and relieved from similar obligations. If possible, the terms and procedures for payment should be established by agreement among counsel. If a consensus cannot be reached, however, the judge has the power and duty to order fair reimbursement and compensation."

Equity requires that all the third-party defendants who signed the decree should be subject to payment of their fair allocation to the common defense group fund. Since the fees and expenses involved are those for which each client would have had to pay separate counsel and are not large, per capita payment seems appropriate.

Having examined and resolved the issues raised in opposition to the decree, this Court approves the final consent decree as fair and reasonable subject only to judicial review of compensation sought by attorneys out of the common defense fund. Monies collected pursuant to Article XII, therefore, should not be disbursed but should be held in escrow until the issue of reasonableness of the legal fees and expenses is determined.

The Clerk is directed to mail a copy of the within to all parties.

SO ORDERED.

Dated : Brooklyn, New York

September 16 , 1988

United States District Judge

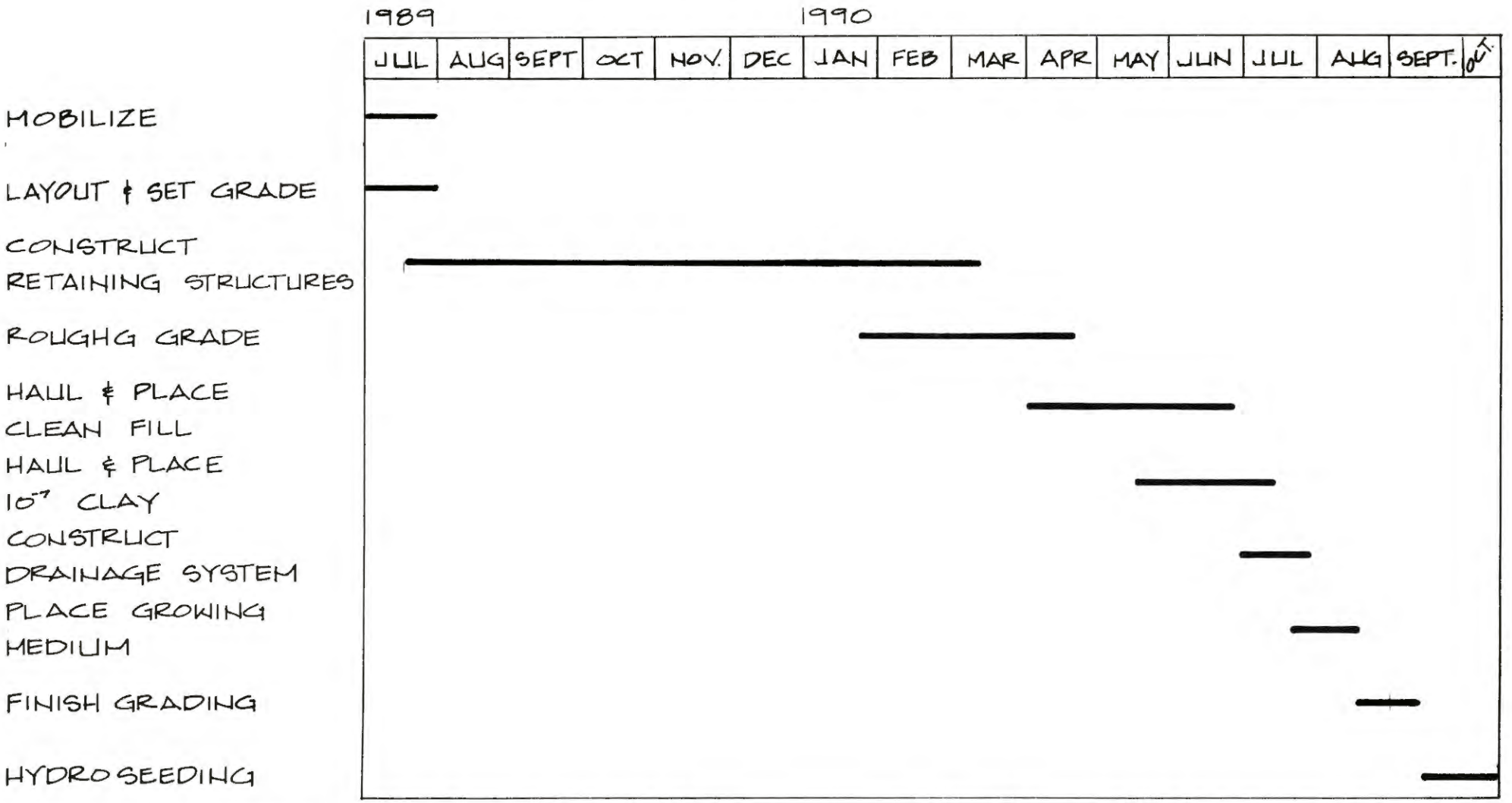
FOOTNOTE

1 The affidavit in opposition states there is an error in the consent decree to the effect that one party, Ultra Graphics, Inc., was placed in Group I of the third-party defendants rather than Group II, where it belongs. There is apparently no dispute about this, and the decree has been modified accordingly.

APPENDIX 3

CAPPING & CLOSURE AT THE OLD BETHPAGE LANDFILL

PROJECT SCHEDULE



NOTE: NO WEATHER OR OPERATIONAL DELAY'S HAVE BEEN CONSIDERED
ACTUAL SEEDING WILL BE LIMITED TO SPRING & FALL SEASONS

APPENDIX 4

Capping and Closure at the Old Bethpage Landfill
Cost Estimate*

Item	Quantity	Unit Price	Cost
Clean Fill	250,000 C.Y.	$10.15/CY	$2,537,500
Clay	62,000 C.Y.	25.5/CY	1,581,000
Growing Medium	42,000 C.Y.	12.25/CY	514,500
Hydroseeding	105,000 S.Y.	3.75/SY	393,750
Gabion	760 L.F.	560/LF	425,600
3/4" Crushed Stone (Multi Purpose Benches)	3,000 C.Y.	31/CY	93,000
Gabion Mattresses (Drainage Chutes)	1,400 S.Y.	32/SY	44,800
Testing			100,000
		TOTAL COST	5,690,150
		SAY	$ 5,700,000

* Detail cost estimate will be submitted with the contract drawings and specifications. Exact cost will be submitted upon receipt of bids.