

## ORDER

## I. Reimbursement of Prior Costs [Optional]

1. Within thirty (30) calendar days after the effective date of this Administrative Consent Order, [Person] shall pay to the Department the sum of \$ [amount] as reimbursement of costs incurred by the Department to date, in connection with the investigation of, and response to, the matters described in the Findings hereinabove. [Person] shall make payment of the above amount by a cashier's or certified check payable to the "Treasurer State of New Jersey" and submit it with NJDEPE Form 062A to:

New Jersey Department of Environmental Protection

Bureau of Revenue

PO Box 402

440 East State Street

Trenton, New Jersey 08625-0402

## II. Payment

1. The Department will conduct a [remedial phase] of hazardous substances, as defined by the Spill Compensation and Control Act, and all pollutants, as defined by the Water Pollution Control Act, discharged at, emanating from, or which have emanated from the Site. The [remediation phase] will be performed in accordance with N.J.A.C. 7:26E.

2. [Person] shall pay for all of the Department's costs in its preparation and performance of the [remedial phase] described above, including contracting costs and the cost of the Department's administration and supervision of the performance of the [remedial phase] as follows (hereinafter collectively "cost of the [remedial phase]"):

(a) Within thirty (30) calendar days after the effective date of this administrative consent order, [Person] shall pay the sum of \$[amount] to the Department to pay the costs of the [remedial phase]. The Department shall deposit this payment in a separate interest bearing account (hereinafter "Account"). The Department will draw on the Account to pay the costs of the [remedial phase]. All interest earned upon the Account shall be credited to the Account.

(b) Within thirty (30) calendar days after payment of the invoices by the Department, the Department to its contractors, the Department will provide [Person] with copies of all invoices submitted to the Department by its contractors. Within thirty (30) calendar days after the Department draws down on the Account the Department will provide [Person] with a statement showing that the Department has paid the invoices from the Account.

(c) Funds remaining in the Account upon the Department's completion of the remedial phases described

in this administrative consent order shall be promptly returned to [Person] by the Department.

## III. Exchange of Information

1. The Department will provide [Person] with final copies of [remedial phase] documents defined as Deliverables in the approved contract between the Department and its contractor(s), which include: Work Plan and Sampling Plans; Quality Assurance/Quality Control ("QA/QC") Protocols; [remedial phase] Reports; Endangerment or Risk Assessment Reports; and Data Reports that include all data that have passed or failed QA/QC. For any data that fails QA/QC, the reasons for such failure will be explained in the data report.

2. [Person] may submit written comments to the Department on the Deliverables. The Department will review all such comments submitted by [Person], but is under no obligation to incorporate [Person's] comments in the Deliverables.

3. The Department will schedule meetings concerning the [remedial phase] with [Person] as necessary.

4. The Department will allow [Person] to take split-samples of all samples collected during a sampling event as part of the [remedial phase] provided however, that [Person's] representatives do not in any way impede the progress of the [remedial phase].

## IV. General Provisions

1. [Person] hereby consents to and agrees to comply with this administrative consent order which shall be fully enforceable as an Administrative Order in the New Jersey Superior Court pursuant to the Department's statutory authority.

2. No modification or waiver of this administrative consent order shall be valid except by written amendment to this administrative consent order duly executed by [Person] and the Department. Any amendment to this administrative consent order shall be executed by the Department and [Person]. The Department reserves the right to require the resolution of any outstanding violations of the rules or this administrative consent order prior to executing any such amendment.

3. [Person] waives its rights to an administrative hearing concerning the entry of this administrative consent order.

4. This administrative consent order shall be governed and interpreted under the laws of the State of New Jersey.

5. This administrative consent order shall be binding, jointly and severally, on each signatory, its successors, assignees and any trustee in bankruptcy or receiver appointed pursuant to a proceeding in law or equity. No change in the ownership or corporate status of any signa-

tory or of the facility or site shall alter signatory's responsibilities under this administrative consent order.

6. Except as otherwise provided, the requirements of this administrative consent order shall be deemed satisfied upon the receipt by [Person] of written notice from the Department that [Person] has demonstrated, to the satisfaction of the Department, that [Person] has completed the substantive and financial obligations imposed by this administrative consent order. Such written notice shall not relieve [Person] from the obligation to conduct future remediation pursuant to Federal, State or local laws for matters not addressed by this administrative consent order.

7. By entering into this Administrative Consent Order, the Department does not waive its right to assess or collect civil or civil administrative penalties for past, present and future violations by [Person] of any New Jersey environmental statutes or regulations.

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

9. This administrative consent order shall be effective upon the execution of this administrative consent order by the Department and [Person]. [Person] shall return executed [Order] to the Department for Department signature within five (5) calendar days from the effective date.

NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION

Date: \_\_\_\_\_ BY: \_\_\_\_\_  
Signature  
\_\_\_\_\_  
Print Full Name Signed Above  
\_\_\_\_\_  
Title  
[Print Name of Company executing Order]

Date: \_\_\_\_\_ BY: \_\_\_\_\_  
Signature  
\_\_\_\_\_  
Print Full Name Signed Above  
\_\_\_\_\_  
Title

Recodified from N.J.A.C. 7:26C App. D and amended by R.1997 d.499, effective November 17, 1997.  
See: 29 N.J.R. 46(a), 29 N.J.R. 4957(a).  
Amended by R.1999 d.241, effective August 2, 1999.  
See: 30 N.J.R. 2373(a), 31 N.J.R. 2167(a).

APPENDIX C

COVENANT NOT TO SUE

The standard covenant not to sue contains matter in brackets [ ]. Upon the Department's issuance of a covenant not to sue, the Department will choose the matter in brackets which is applicable to the specific circumstances of the particular site. The Department may elect to issue a covenant not to sue in one or more parts. The Department may modify this document to address the unique circumstances of a publicly conducted remediation.

COVENANT NOT TO SUE

The Department issues this Covenant Not to Sue (Covenant) pursuant to N.J.S.A. 58:10B-13.1. That statute requires a Covenant with each no further action letter. However, in accordance with N.J.S.A. 58:10B-13.1, nothing in this Covenant shall benefit any person who is liable, pursuant to the Spill Compensation and Control Act (Spill Act), N.J.S.A. 58:10-23.11, for cleanup and removal costs and the Department makes no representation by the issuance of this Covenant, either express or implied, as to the Spill Act liability of any person.

The Department covenants, except as provided in the preceding paragraph, that it will not bring any civil action against:

- (a) the person who undertook the remediation;
- (b) subsequent owners of the subject property;
- (c) subsequent lessees of the subject property; and
- (d) subsequent operators at the subject property;

for the purposes of requiring remediation to address contamination which existed prior to the date of the [Select one: final certified report (including the report date and title), or affidavit (including the date and the name of the person who signed the affidavit)] for the real property at [Select one: industrial establishment, site or area(s) of concern] identified above, or payment of cleanup and removal costs for such additional remediation.

[Include the following paragraph if either engineering or institutional controls were part of the remedial action at the industrial establishment, site or area(s) of concern:

The person who undertook the remedial action, and each subsequent owner, lessee and operator, during that person's ownership, tenancy or operation, shall maintain all applicable engineering and institutional controls and conduct periodic compliance monitoring in the manner the Department requires.]

[Include the following paragraph if a restricted use remedial action was implemented at the industrial establishment, site or area(s) of concern:

Any person who benefits from this Covenant may be barred from making a claim against the Spill Compensation Fund, N.J.S.A. 58:10-23.11i, and the Sanitary Landfill Facility Contingency Fund, N.J.S.A. 13:1E-105, pursuant to N.J.A.C. 7:1I-2.6 and N.J.A.C. 7:1J-2.7, respectively for any costs or damages relating to the remediation covered by this Covenant. All other claims against these funds will be controlled by the corresponding statutes and their implementing regulations.]

[Include the following paragraph if a limited restricted use remedial action was implemented at the industrial establishment, site or area(s) of concern:

Any person who benefits from this Covenant may be barred from making a claim against the Spill Compensation Fund, N.J.S.A. 58:10-23.11i, and the Sanitary Landfill Facility Contingency Fund, N.J.S.A. 13:1E-105, pursuant to N.J.A.C. 7:1I-2.6 and N.J.A.C. 7:1J-2.7 for any costs or damages relating to the remediation covered by this Covenant if the Department requires additional remediation in order to remove the institutional control. All other claims against these funds will be controlled by the corresponding statutes and their implementing regulations.]

Pursuant to N.J.S.A. 58:10B-13.1d, this Covenant does not relieve any person from the obligation to comply in the future with laws and regulations. The Department reserves its right to take all appropriate enforcement for any failure to do so.

The Department may revoke this Covenant at any time after providing notice upon its determination that either:

(a) any person with the legal obligation to comply with any condition in this No Further Action Determination has failed to do so; or

(b) [Include the following language if engineering or institutional controls were part of the remedial action at the industrial establishment, site or area(s) of concern: any person with the legal obligation to maintain or monitor any engineering or institutional control has failed to do so.]

This Covenant, which the Department has executed in duplicate, shall take effect immediately once the person who undertook the remediation has signed and dated the Covenant on the lines supplied below and the Department has received one copy of this document bearing original signatures of the Department and the person who undertook the remediation.

[Insert Name of Person who undertook the remediation]

By: \_\_\_\_\_  
Title: \_\_\_\_\_  
Dated: \_\_\_\_\_

NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION

By: \_\_\_\_\_  
Title: \_\_\_\_\_  
Dated: \_\_\_\_\_

Recodified to N.J.A.C. 7:26C App. A by R.1997 d.499, effective November 17, 1997.

See: 29 N.J.R. 46(a), 29 N.J.R. 4957(a).  
Appendix was, "Standard Responsible Party Oversight Document".  
New Rule, R.1999 d.241, effective August 2, 1999.  
See: 30 N.J.R. 2373(a), 31 N.J.R. 2167(a).

APPENDIX D

(RESERVED)

Recodified to N.J.A.C. 7:26C App. B by R.1997 d.499, effective November 17, 1997.

See: 29 N.J.R. 46(a), 29 N.J.R. 4957(a).  
Appendix was, "Standard Publicly Conducted Administrative Consent Order".

APPENDIX E

(RESERVED)

Repealed by R.1997 d.499, effective November 17, 1997.

See: 29 N.J.R. 46(a), 29 N.J.R. 4957(a).  
Appendix was, "Standard Letter of Credit".

APPENDIX F

(RESERVED)

Repealed by R.1997 d.499, effective November 17, 1997.

See: 29 N.J.R. 46(a), 29 N.J.R. 4957(a).  
Appendix was, "Standard Standby Trust Agreement".

APPENDIX G

(RESERVED)

Repealed by R.1997 d.499, effective November 17, 1997.

See: 29 N.J.R. 46(a), 29 N.J.R. 4957(a).  
Appendix was, "Standard Fully Funded Trust Agreement".

APPENDIX H

(RESERVED)

Repealed by R.1997 d.499, effective November 17, 1997.

See: 29 N.J.R. 46(a), 29 N.J.R. 4957(a).  
Appendix was, "Standard Surety Bond".

APPENDIX I

(RESERVED)

Repealed by R.1997 d.499, effective November 17, 1997.

See: 29 N.J.R. 46(a), 29 N.J.R. 4957(a).  
Appendix was, "Oversight Cost Formula".