

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 ARCH STREET
PHILADELPHIA, PENNSYLVANIA 19103-2029**

IN THE MATTER OF:)
)
New Chem Incorporated)
State Route 2)
P.O. Box 3000)
New Cumberland, West Virginia 26047-9802)
) DOCKET NO. RCRA-03-2002-0010
)
)
)
EPA I.D. No. WVD981945215)
)
)
RESPONDENT)

ADMINISTRATIVE ORDER ON CONSENT

TABLE OF CONTENTS

I.	Jurisdiction	1
II.	Parties Bound	2
III.	Statement of Purpose	3
IV.	Findings of Fact	3
V.	Conclusions of Law and Determinations	4
VI.	Work to be Performed	4
	A. Interim Measures (“IM”)	4
	B. RCRA Facility Investigation (“RFI”)	5
	C. Corrective Measures Study (“CMS”)	6
	D. Public Comment and Participation	6
	E. Submissions/EPA Approval/Additional Work	6
VII.	Quality Assurance	8
VIII.	On-site and Off-site Access	8
IX.	Sampling and Data/Document Availability	9
X.	Record Preservation	10
XI.	Project Coordinators	11
XII.	Notification	11
XIII.	Delay in Performance/Stipulated Penalties	13
XIV.	Dispute Resolution	15

TABLE OF CONTENTS (cont.)

XXV. Force Majeure and Excusable Delay 15

XXVI. Reservation of Rights 16

XXVII. Other Claims 17

XXVIII. Other Applicable Laws 18

XIX. Indemnification of the United States Government 18

XX. Notice of Non-Liability of EPA 18

XXI. Subsequent Modification 18

XXII. Severability 19

XXIII. Termination and Satisfaction 19

XXIV. Permit Integration 19

XXV. Attorneys' Fees 19

XXVI. Effective Date 20

FIGURE

1. Location Map of Facility

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION III**

IN THE MATTER OF:)
)
New Chem Incorporated) ADMINISTRATIVE ORDER
State Route 2) ON CONSENT
P.O. Box 3000) U.S. EPA
New Cumberland, West Virginia 26050) DOCKET NO. RCRA-03-2002-0010
)
)
)
)
EPA I.D. No. WVD981945215)
)
RESPONDENT) Proceeding under Section
) 3008(h) of the Resource
) Conservation and Recovery
) Act, as amended, 42 U.S.C.
) Section 6928(h).

ADMINISTRATIVE ORDER ON CONSENT

The parties to this Final Administrative Order on Consent (“Consent Order”), the United States Environmental Protection Agency (“EPA”) and New Chem Incorporated (“Respondent”), having agreed to entry of this Consent Order, it is therefore Ordered and Agreed that:

I. JURISDICTION

A. This Consent Order is issued pursuant to the authority vested in the Administrator of the United States Environmental Protection Agency by Section 3008(h) of the Resource Conservation and Recovery Act of 1976, as amended by the Hazardous and Solid Waste Amendments of 1984 (collectively referred to hereinafter as “RCRA”), 42 U.S.C. Section 6928(h). The authority vested in the Administrator has been delegated to the Regional Administrators by EPA Delegation Nos. 8-31 and 8-32 dated March 6, 1986.

B. On May 29, 1986, EPA granted the State of West Virginia (the “State”) authorization to operate a state hazardous waste program in lieu of the federal program, pursuant to Section 3006(b) of RCRA, 42 U.S.C. Section 6926(b). Revisions to West Virginia’s program

were authorized by EPA on August 11, 2000. The State, however, does not have authority to enforce Section 3008(h) of RCRA. The State of West Virginia has been given notice of the issuance of this Consent Order.

C. This Consent Order is issued to Respondent, the owner and operator of a facility located on State Route 2, between New Cumberland and Newell, in Hancock County, West Virginia, hereinafter referred to as the "Facility" and as defined further in Section IV.B below and depicted in Figure 1 attached to this Consent Order and a part hereof.

D. Respondent consents to issuance of this Consent Order, agrees to comply with its terms and will not contest EPA's authority to issue this Consent Order and to enforce its terms. Further, Respondent will not contest EPA's jurisdiction to: compel compliance with this Consent Order in any subsequent enforcement proceeding, either administrative or judicial; require Respondent's compliance with the terms of this Consent Order; or impose sanctions for violations of this Consent Order.

II. PARTIES BOUND

A. This Consent Order shall apply to and be binding upon EPA, Respondent and its agents, successors and assigns.

B. No change in ownership of any property covered by this Consent Order, or in corporate or partnership status of Respondent, shall in any way alter, diminish, or otherwise affect Respondent's obligations and responsibilities under this Consent Order.

C. Respondent shall provide a copy of this Consent Order to all supervisory personnel, contractors, subcontractors, laboratories, and consultants retained to conduct and/or monitor any portion of the work performed pursuant to this Consent Order and shall do so within seven (7) calendar days of the effective date of this Consent Order or date of such retention, whichever is later. All contracts, agreements or other arrangements with such persons shall require such persons to conduct and/or monitor the work in accordance with the requirements of this Consent Order. Notwithstanding the terms of any such contract, agreement or arrangement, Respondent is responsible for complying with this Consent Order and for ensuring that all such persons perform such work in accordance with this Consent Order.

D. In the event of any change in ownership or operation of the Facility and/or in the event of any change in majority ownership or control of the Respondent, Respondent shall notify EPA in writing of the nature of any such change no later than fifteen (15) calendar days after the effective date of such change. In addition, Respondent shall provide a copy of this Consent Order to any successor to the Respondent and/or to the Facility at least fifteen (15) calendar days prior to the effective date of such change.

III. STATEMENT OF PURPOSE

In entering into this Consent Order, the mutual objectives of EPA and Respondent are: (1) to perform Interim Measures, as necessary, to prevent or mitigate any threat to human health and the environment; (2) to perform a RCRA Facility Investigation (“RFI”) to determine fully the nature and extent of any release of hazardous waste and/or hazardous constituents at or from the Facility; and (3) to perform a Corrective Measures Study (“CMS”) to identify and evaluate alternatives for corrective action necessary to clean up contaminated media to levels protective of human health and the environment.

IV. FINDINGS OF FACT

A. Respondent is a corporation and is a “person” as defined in Section 1004(15) of RCRA, 42 U.S.C. Section 6903(15).

B. Respondent is the owner and/or operator of a former hazardous waste treatment/storage/disposal facility located at State Route 2, between New Cumberland and Newell, in Hancock County, West Virginia (“Facility”) within the meaning of Section 3008(h) of RCRA, 42 U.S.C. 6928(h). Since its acquisition of the Facility in 1997, Respondent has been working to remove hazardous material.

C. A prior owner/operator of the Facility, Newell Specialty Chemicals (“Newell”), submitted to EPA a Notification of Hazardous Waste Activity pursuant to Section 3010(a) of the RCRA, 42 U.S.C. Section 6930 (a), on January 28, 1987 identifying itself as a generator of hazardous waste. EPA assigned Newell the Facility Identification Number WVD981945215.

D. Between 1986 and 1997, various hazardous waste inspections were conducted at the Facility by authorized representatives from the West Virginia Department of Natural Resources, West Virginia Department of Environmental Protection and the EPA. These inspection reports repeatedly state that the Facility was storing hazardous wastes for greater than ninety (90) days.

E. In a Compliance Evaluation Inspection Report dated March 23 and 24, 1996, the West Virginia Department of Environmental Protection inspector reported evidence of recent and past spillage onto the ground from several hazardous waste tanks, leaking drums, and releases of liquids onto the ground from secondary containment areas.

F. On February 18, 1997, Respondent acquired ownership of the Facility from Newell and assumed all responsibility for the environmental cleanup and remediation of the Facility.

G. Analytical data collected at the Facility and reported in Subsurface Soil Investigation

Report Old Emergency Dump Pit and Production Area-Section B-9 (March 1996) and The Report to NewChem, Incorporated for Groundwater Characterization (April 1997) show that there have been releases of hazardous constituents to groundwater and soil.

H. Some hazardous constituents found in groundwater exceed, in some instances, the maximum contaminant levels (“MCLs”) of the federal Safe Drinking Water Act (“SWDA”) and have the potential to cause adverse impacts to human health and/or the environment.

V. CONCLUSIONS OF LAW AND DETERMINATIONS

EPA hereby determines that there is or has been a release of hazardous waste within the meaning of 3008(h) of RCRA, 42 U.S.C. 6928(h), into the environment from the Facility and that a RCRA Facility Investigation and Corrective Measures Study and /or other response measures required by this Consent Order are necessary to protect human health or the environment.

VI. WORK TO BE PERFORMED

Pursuant to Section 3008(h) of RCRA, 42 U.S.C. Section 6928(h), Respondent agrees to and is hereby ordered to perform the following acts in the manner and by the dates specified herein. All work undertaken pursuant to this Consent Order shall be developed and performed, as appropriate and approved by EPA, in accordance with: the Scope of Work for a RCRA Facility Investigation; the Scope of Work for a Corrective Measures Study; the Scope of Work for Health and Safety Plan; the Scope of Work for Interim Measures, if necessary; and RCRA, its implementing regulations and relevant EPA guidance documents. EPA’s Scopes of Work and relevant guidances are available at: http://www.epa.gov/reg3wcmd/ca/ca_resources.htm.

“Days” as used herein shall mean calendar days unless otherwise specified.

A. INTERIM MEASURES (“IM”)

1. In the event Respondent identifies an immediate or potential threat to human health and/or the environment, or discovers new releases of hazardous waste and/or hazardous constituents not previously identified, Respondent shall notify the EPA Project Coordinator, orally within 48 hours of discovery and notify EPA in writing within three (3) calendar days of such discovery summarizing the immediacy and magnitude of the potential threat(s) to human health and/or the environment. Upon written request of EPA, Respondent shall submit to EPA an IM Workplan in accordance with the IM Scope of Work. If EPA determines that immediate action is required, the EPA Project Coordinator may orally authorize Respondent to act prior to EPA’s receipt of the IM Workplan.

2. If EPA identifies an immediate or potential threat to human health and/or the

environment, or discovers new releases of hazardous waste and/or hazardous constituents not previously identified, EPA will notify Respondent in writing. Within ten (10) days of receiving EPA's written notification, Respondent shall submit to EPA an IM Workplan in accordance with the IM Scope of Work, that identifies interim measures which will mitigate the threat. If EPA determines that immediate action is required, the EPA Project Coordinator may orally require Respondent to act prior to Respondent's receipt of EPA's written notification.

3. All IM Workplans shall ensure that the interim measures are designed to mitigate immediate or potential threat(s) to human health and/or the environment, and should be consistent with the objectives of, and contribute to the performance of any long-term remedy which may be required at the Facility.

4. Each IM Workplan shall include the following sections as appropriate and approved by EPA: Interim Measures Objectives, Public Involvement Plan, Data Collection Quality Assurance, Data Management, Design Plans and Specifications, Operation and Maintenance, Project Schedule, Interim Measures Construction Quality Assurance, and Reporting Requirements. Concurrent with submission of an IM Workplan, Respondent shall submit to EPA an IM Health and Safety Plan.

B. RCRA FACILITY INVESTIGATION ("RFI")

5. Within sixty (60) calendar days of the effective date of this Consent Order, Respondent shall submit to EPA for approval a Description of Current Conditions at the Facility ("Description"). This Description shall be developed in accordance with the RFI Scope of Work.

6. Within sixty (60) calendar days of the approval of the effective date of this Consent Order, Respondent shall submit to EPA a Workplan for a RCRA Facility Investigation ("RFI Workplan"). The RFI Workplan shall be developed as appropriate and approved by EPA in accordance with, at a minimum, the RFI Scope of Work, RCRA, its implementing regulations, and relevant EPA guidance documents.

7. The RFI Workplan shall be designed to determine the presence, magnitude, extent, direction, and rate of movement of any hazardous wastes or hazardous constituents within and beyond the Facility boundary. The RFI Workplan shall document the procedures Respondent shall use to conduct those activities necessary to: (A) characterize the source(s) of contamination; (B) characterize the potential pathways of contaminant migration (C) define the degree and extent of contamination; (D) identify actual or potential human and/or ecological receptors; and (E) support the development of alternatives from which a corrective measure(s) will be selected by EPA. Respondent may implement the work contained in the RFI Workplan in a phased approach. A specific schedule for expeditious implementation of all activities shall be included in the RFI Workplan.

8. The RFI Workplan shall include: (A) a Project Management Plan; (B) a Data Collection Quality Assurance Plan; (C) a Data Management Plan; and (D) a Community Relations Plan and shall provide for the submission of a draft and final RFI report.

9. Concurrent with the submission of the RFI Workplan, Respondent shall submit an RFI Health and Safety Plan.

10. Upon receipt of EPA approval of the RFI Workplan, Respondent shall implement the EPA-approved RFI Workplan in accordance with the terms and schedules contained therein. Upon completion of implementation of the RFI Workplan, Respondent shall submit to EPA for approval an RFI Report, in accordance with the requirements and schedule contained in the EPA-approved RFI Workplan.

C. CORRECTIVE MEASURES STUDY (“CMS”)

11. Within sixty (60) calendar days of receipt of EPA approval of the RFI Report, Respondent shall submit to EPA for approval a CMS Report. The CMS Report shall be developed as appropriate and approved by EPA in accordance with the CMS Scope of Work

D. PUBLIC COMMENT AND PARTICIPATION

12. After approval of the CMS Report, EPA will make both the RFI Report and the CMS Report, a description of EPA's proposed corrective measure(s) if any are proposed by EPA, and EPA's justification for proposing selection of such corrective measure(s) (the “Statement of Basis”) available to the public for review and comment for at least thirty (30) calendar days.

13. Following the public review and comment period, EPA will notify Respondent of the corrective measure(s) selected by EPA in a Final Decision and Response to Comments (“FDRTC”). If the corrective measure(s) selected by EPA after consideration of public comments differs significantly from the corrective measure(s) recommended in the Statement of Basis, EPA will explain in the FDRTC the basis for such difference.

14. Any decisions or determinations made by EPA pursuant to the Consent Order will be available for public review on Mondays through Fridays, from 9:00 a.m. to 4:00 p.m., by contacting the EPA Project Coordinator, Deborah Goldblum, at (215) 814-3432.

E. SUBMISSIONS/EPA APPROVAL/ADDITIONAL WORK

15. EPA will review Respondent's RFI Workplans, RFI and CMS Reports, and, if necessary, any IM Workplan(s), and any other documents submitted pursuant to this Consent Order (“Submissions”) with the exception of progress reports, and will notify Respondent in writing of EPA's approval or disapproval of each such Submission. In the event of EPA's disapproval, EPA shall specify in writing any deficiencies in the Submission. Such disapproval

shall not be subject to the dispute resolution procedures of Section XIV, below.

16. Within thirty (30) calendar days of receipt of EPA's comments on the Submission, or ten (10) calendar days in the case of an IM Workplan, Respondent shall submit to EPA for approval a revised Submission, which responds to any comments received and/or corrects any deficiencies identified by EPA. In the event that EPA disapproves of the revised Submission, Respondent may invoke the dispute resolution procedures of Section XIV, below. In the event EPA disapproves the revised Submission, EPA reserves the right to revise such Submission and seek to recover from Respondent the costs thereof, in accordance with CERCLA and any other applicable law. Any Submission approved or revised by EPA under this Consent Order shall be deemed incorporated into and made an enforceable part of this Consent Order.

17. Beginning with the first day of the second full month following the effective date of this Consent Order, and every two months thereafter on the first day of the month, throughout the period that this Consent Order is effective, Respondent shall provide EPA with bimonthly (every two months) progress reports. The bimonthly progress reports shall contain the information required in the relevant Scope(s) of Work attached hereto.

18. Four (4) copies of all Submissions required by this Consent Order shall be hand-delivered or sent by Certified Mail, Return Receipt Requested, to the Project Coordinator designated pursuant to Section XI, "PROJECT COORDINATORS," below.

19. All work performed pursuant to this Consent Order shall be under the direction and supervision of a professional engineer or geologist with expertise in hazardous waste site investigation. Within ten (10) calendar days after the effective date of this Consent Order, Respondent shall submit to EPA, in writing, the name, title, and qualifications of the engineer or geologist and of any contractors or subcontractors to be used in carrying out the terms of this Consent Order. Notwithstanding Respondent's selection of an engineer, geologist, contractor or subcontractor, nothing herein shall relieve Respondent of its obligation to comply with the terms and conditions of this Consent Order. EPA shall have the right to disapprove at any time the use of any professional engineer, geologist, contractor or subcontractor selected by Respondent. EPA's disapproval shall not be subject to review under Section XIV of this Consent Order ("DISPUTE RESOLUTION") or otherwise. Within fifteen (15) calendar days of receipt from EPA of written notice disapproving the use of any professional engineer, geologist, contractor or subcontractor, Respondent shall notify EPA, in writing, of the name, title and qualifications of the personnel who will replace the personnel disapproved by EPA. Respondent shall notify EPA ten (10) days prior to changing voluntarily its engineer or geologist, and/or contractors or subcontractors to be used in carrying out the terms of this Consent Order, and shall submit to EPA in writing, the name, title, and qualifications of such person(s).

20. EPA may determine that certain tasks and deliverables including, but not limited to, investigatory work or engineering evaluation require additional work. These tasks and deliverables may or may not have been in the IM or RFI Workplans. If EPA determines that such

additional work is necessary, EPA shall request, in writing, that Respondent perform the additional work and shall specify the reasons for EPA's determination that additional work is necessary. Within fifteen (15) calendar days after the receipt of such request, Respondent shall have the opportunity to meet or confer with EPA to discuss the additional work EPA has requested. In the event that Respondent agrees to perform the additional work, this Consent Order shall be modified in accordance with Section XXI, "SUBSEQUENT MODIFICATION," below, and such work shall be performed in accordance with this Consent Order. In the event Respondent declines or fails to perform the additional work, EPA reserves the right to order Respondent to perform such additional work; to perform such additional work itself and to seek to recover from Respondent all costs of performing such additional work; and to disapprove of the IM or RFI Workplan and/or the RFI or CMS Reports.

VII. QUALITY ASSURANCE

A. Throughout all sample collection and analysis activities, Respondent shall use EPA-approved quality assurance, quality control, and chain-of-custody procedures, as specified in the EPA-approved Workplans. In addition, Respondent shall:

1. Ensure that laboratories used by Respondent for analyses perform such analyses according to the EPA methods included in "Test Methods for Evaluating Solid Waste" (SW-846, November 1986) or other methods deemed satisfactory to EPA. If methods other than EPA methods are to be used, Respondent shall submit all analytical protocols to be used for analyses to EPA for approval at least thirty (30) calendar days prior to the commencement of analyses and shall obtain EPA approval prior to the use of such analytical protocols.

2. Ensure that laboratories used by Respondent for analyses participate in a quality assurance/quality control program equivalent to that which is followed by EPA, and certified by the State of West Virginia. As part of such a program, and upon request by EPA, such laboratories shall perform analyses of samples provided by EPA to demonstrate the quality of the analytical data.

3. Inform the EPA Project Coordinator at least fourteen (14) calendar days in advance of any laboratory analysis regarding which laboratory will be used by Respondent and ensure that EPA personnel and EPA authorized representatives have reasonable access to the laboratories and personnel used for analysis.

VIII. ON-SITE AND OFF-SITE ACCESS

A. Subject to compliance with plant safety regulations, EPA and/or its authorized representatives shall have the authority to enter and freely move about all property at the Facility during the effective dates of this Consent Order for the purposes of, inter alia:

interviewing Facility personnel and contractors; inspecting records, operating logs, and contracts related to the Facility; reviewing the progress of Respondent in carrying out the terms of this Consent Order; conducting such tests, sampling or monitoring as EPA or its Project Coordinator deem necessary; using a camera, sound recording, or other documentary type equipment; and verifying the reports and data submitted to EPA by Respondent. Respondent shall permit such persons to inspect and copy all records, files, photographs, documents, and other writings, including all sampling and monitoring data, that pertain to work undertaken pursuant to this Consent Order. Nothing herein shall be interpreted as limiting the inspection authority of EPA under federal law.

B. To the extent that work required by this Consent Order, or by any EPA-approved Workplan prepared pursuant hereto, must be done on property not owned or controlled by Respondent, Respondent shall use its best efforts to obtain site access agreement(s) from the present owner(s) and/or lessee(s) of such property, as appropriate, within thirty (30) calendar days of receipt of EPA approval of any Workplan pursuant to this Consent Order which requires work on such property. For purposes of this paragraph, "best efforts" shall include, at a minimum, but shall not be limited to: a) a certified letter from Respondent to the present owner(s) or lessee(s) of such property requesting agreements to permit Respondent, EPA, and its authorized representatives access to such property; and b) the payment of reasonable sums of money in consideration of access. "Reasonable sums of money" means the fair market value of the right of access necessary to implement the requirements of this Consent Order. In the event that such agreements for access are not obtained within thirty (30) calendar days after receipt of EPA approval of any Workplan pursuant to this Consent Order which requires work on property which is not owned or controlled by Respondent, Respondent shall notify EPA, in writing, within seven (7) calendar days after the conclusion of such thirty day period, regarding both the efforts undertaken to obtain access and the inability to obtain such agreements. In the event that Respondent fails to obtain off-site access, despite the exercise of best efforts, EPA, in its discretion, may assist Respondent in obtaining off-site access for Respondent. Respondent shall reimburse EPA for all costs incurred by EPA in obtaining access, including, but not limited to, attorneys fees and the amount of any just compensation and costs incurred by EPA.

C. Nothing in this Consent Order limits or otherwise affects EPA's rights of access and entry pursuant to applicable law, including, but not limited to, RCRA and CERCLA.

IX. SAMPLING AND DATA/DOCUMENT AVAILABILITY

A. Respondent shall submit to EPA the results of all sampling and/or tests or other data generated by, or on behalf of, Respondent in accordance with the requirements of this Consent Order.

B. Respondent shall notify EPA and the State, in writing, at least fourteen (14) calendar days in advance of any field activities, including but not limited to, well drilling,

installation of equipment, or sampling. At the request of EPA, Respondent shall provide or allow EPA or its authorized representatives to take split or duplicate samples of all samples collected by Respondent pursuant to this Consent Order. EPA agrees to forward to Respondent copies of all analytical data and supporting information obtained from such samples. Nothing in this Consent Order shall limit or otherwise affect EPA's authority to collect samples pursuant to applicable law, including, but not limited to, RCRA and CERCLA. .

C. Respondent may assert a business confidentiality claim covering all or part of any information submitted to EPA pursuant to this Consent Order in the manner described in 40 C.F.R. Section 2.203(b). Any assertion of confidentiality shall be adequately substantiated by Respondent when the assertion is made in accordance with 40 C.F.R. Section 2.204(e)(4). Information subject to a confidentiality claim shall be disclosed only to the extent allowed by, and in accordance with, the procedures set forth in 40 C.F.R. Part 2, Subpart B. If no such confidentiality claim accompanies the information when it is submitted to EPA, it may be made available to the public by EPA without further notice to Respondent. Respondent shall not assert any confidentiality claim with regard to any physical, sampling, monitoring, or analytical data.

D. If Respondent wishes to assert a privilege with regard to any document which EPA seeks to inspect or copy pursuant to this Consent Order, Respondent shall identify the document, the privilege claimed, and the basis therefor in writing. For the purposes of this Consent Order, privileged documents are those documents exempt from discovery from the United States in litigation under the Federal Rules of Civil Procedure. Respondent shall not assert a privilege with regard to analytical, sampling and monitoring data.

X. RECORD PRESERVATION

Respondent agrees that it shall preserve, during the pendency of this Consent Order and for a minimum of at least six (6) years after its termination, all data, records and documents in its possession or in the possession of its divisions, officers, directors, employees, agents, contractors, successors, and assigns which relate in any way to this Consent Order or to hazardous waste management and/or disposal at the Facility. After six (6) years, Respondent shall make such records available to EPA for inspection or shall provide copies of such records to EPA. Respondent shall notify EPA at least thirty (30) calendar days prior to the proposed destruction of any such records, and shall provide EPA with a reasonable opportunity to inspect, copy and/or take possession of any such records. Respondent shall not destroy any record to which EPA has requested access for inspection and/or copying until EPA has obtained such access or withdrawn its request for such access. Nothing in this Section X shall in any way limit the authority of EPA under Section 3007 of RCRA, 42 U.S.C. Section 6927, or any other access or information-gathering authority.

XI. PROJECT COORDINATORS

A. EPA hereby designates Deborah Goldblum as the EPA Project Coordinator. Respondent hereby designated Thomas Walsh as Respondent's Project Coordinator. Respondent's legal counsel shall not serve as Respondent's Project Coordinator. Each Project Coordinator shall be responsible for overseeing the implementation of the Consent Order. The EPA Project Coordinator will be EPA's primary designated representative at the Facility. To the maximum extent possible, all communications between Respondent and EPA, and all documents, reports, approvals, and other correspondence concerning the activities performed pursuant to the terms and conditions of this Consent Order, shall be directed through the Project Coordinators.

B. Each party agrees to provide at least seven (7) calendar days written notice to the other party prior to changing Project Coordinators.

C. If EPA determines that conditions or activities at the Facility, whether or not in compliance with this Consent Order, have caused or may cause a release or threatened release of hazardous wastes, hazardous constituents, hazardous substances, pollutants or contaminants which threaten or may pose a threat to the public health or welfare or to the environment, EPA may direct that Respondent stop further implementation of this Consent Order for such period of time as may be needed to abate any such release or threatened release and/or to undertake any action which EPA determines is necessary to abate such release or threatened release.

D. The absence of the EPA Project Coordinator from the Facility shall not be cause for the delay or stoppage of work.

XII. NOTIFICATION

A. Unless otherwise specified, reports, correspondence, approvals, disapprovals, notices, or other submissions relating to or required under this Consent Order shall be in writing and shall be sent as follows:

1. Four copies of all documents to be submitted to the EPA shall be sent to:

Deborah Goldblum
U.S. Environmental Protection Agency
Region III, Mail Code 3WC23
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029
Telephone: 215-814-3432
E-mail: goldblum.deborah@epa.gov

2. Documents to be submitted to Respondent shall be sent to:

Thomas Walsh
Civil & Environmental Consultants
333 Baldwin Road
Pittsburgh, Pa. 15205-9702

Robert Elefante
R. R. 2
Box 3000
New Cumberland, West Virginia 26047-9802

J. Jeffrey McNealey
Porter, Wright
41 South High Street
Columbus, Ohio 43215

3. One copy of all documents to be submitted to EPA shall also be sent to:

H. Michael Dorsey
West Virginia Department of Environmental Protection
Office of Waste Management
1356 Hansford Street
Charleston, West Virginia 25301
Telephone: 304-558-5989
E-mail: mdorsey@mail.dep.state.wv.us

B. Any notice, report, certification, data presentation, or other document submitted by Respondent pursuant to this Consent Order which discusses, describes, demonstrates, or supports any finding or makes any representation concerning Respondent's compliance or noncompliance with any requirement of this Consent Order shall be certified by a responsible corporate officer or a duly authorized representative of a responsible corporate officer. A "responsible corporate officer" means: (a) a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation, or (b) the manager of one or more manufacturing, production, or operating facilities employing more than 250 persons or having gross annual sales or expenditures exceeding \$25 million (in second quarter 1980 dollars), if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures. A person is a "duly authorized representative" only if: (1) the authorization is made in writing by a person described above; (2) the authorization specifies either an individual or position having responsibility for overall operation of the regulated facility or activity (a duly authorized representative may thus be either a named individual or any individual occupying a named position); and (3) the written authorization is submitted to the Project Coordinator designated by EPA in Section XI ("Project Coordinators")

of this Consent Order.

C. The certification required by paragraph B, above, shall be in the following form:

I certify that the information contained in or accompanying this [type of submission] is true, accurate, and complete.

As to [the/those identified portion(s)] of this [type of submission] for which I cannot personally verify [its/their] accuracy, I certify under penalty of law that this [type of submission] and all attachments were prepared in accordance with procedures designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, or the immediate supervisor of such person(s), the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations.

Signature : _____

Name : _____

Title : _____

XIII. DELAY IN PERFORMANCE/STIPULATED PENALTIES

A. Unless there has been a written modification of a compliance date by EPA, or excusable delay as defined below in Section XV, “FORCE MAJEURE AND EXCUSABLE DELAY,” in the event that Respondent fails to comply with any requirement set forth in this Consent Order, Respondent shall pay stipulated penalties, as set forth below, upon receipt of written demand by EPA. Compliance by Respondent shall include commencement or completion, as appropriate, of any activity, plan, study or report required by this Consent Order in an acceptable manner and within the specified time schedules in and approved under this Consent Order. Stipulated penalties shall accrue as follows:

1. For failure to commence, perform or complete work as prescribed in this Consent Order: \$3,000 per day for one to seven days or part thereof of noncompliance, and \$5,000 per day for each day of noncompliance, or part thereof, thereafter;
2. For any failure to comply with the provisions of this Consent Order after receipt of notice of noncompliance by EPA: \$3,000 per day for one to

seven days or part thereof of noncompliance, and \$5,000 per day for each day of noncompliance, or part thereof, thereafter, in addition to any stipulated penalties imposed for the underlying noncompliance;

3. For failure to deliver any submittal as required by this Consent Order, or for any failure to comply with this Consent Order not described in subparagraphs 1 and 2 above: \$2,000 per day for one to seven days or part thereof of noncompliance, and \$4,000 per day for each day of noncompliance, or part thereof, thereafter.

B. All penalties shall begin to accrue on the date that complete performance is due or a violation occurs, and shall continue to accrue through the final day of or correction of the violation. Nothing herein shall prevent the simultaneous accrual of separate stipulated penalties for separate violations of this Consent Order.

C. All penalties owed to EPA under this Section XIII shall be due within thirty (30) calendar days of receipt of a demand for payment unless Respondent invokes the dispute resolution procedures under Section XIV, below. Such notification shall describe the noncompliance and shall indicate the amount of penalties due. Interest shall begin to accrue on the unpaid balance at the end of the thirty (30) calendar day period and shall accrue at the United States Tax and Loan Rate.

D. All penalty payments shall be made by certified or cashier's check payable to the Treasurer of the United States of America and shall be remitted to:

Regional Hearing Clerk
U.S. Environmental Protection Agency
Region III
P.O. Box 360515
Pittsburgh, Pennsylvania 15251-6515

All payments shall reference the name of the Facility, Respondent's name and address, and the EPA Docket Number of this Consent Order. Copies of the transmittal of payment shall be sent simultaneously to the EPA Project Coordinator and the Regional Hearing Clerk (3RC00), U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103-2029.

E. Respondent may dispute EPA's demand for payment of stipulated penalties for any alleged violation of this Consent Order by invoking the dispute resolution procedures below under Section XIV, "DISPUTE RESOLUTION." Stipulated penalties shall continue to accrue, but need not be paid, for any alleged noncompliance which is the subject of dispute resolution during the period of such dispute resolution. To the extent that Respondent does not prevail upon resolution of the dispute, Respondent shall remit to EPA within seven (7) calendar days of

receipt of such resolution any outstanding penalty payment, including any accrued interest, in the manner described above in Paragraph D of this Section XIII. To the extent Respondent prevails upon resolution of the dispute, no penalties shall be payable.

F. Neither the filing of a petition to resolve a dispute nor the payment of penalties shall alter in any way Respondent's obligation to comply with the requirements of this Consent Order.

G. The stipulated penalties set forth in this Section XIII shall not preclude EPA from pursuing any other remedies or sanctions which may be available to EPA by reason of Respondent's failure to comply with any of the requirements of this Consent Order.

XIV. DISPUTE RESOLUTION

A. If Respondent disagrees, in whole or in part, with any EPA disapproval, modification or other decision or directive made by EPA pursuant to this Consent Order, Respondent shall notify EPA in writing of its objections, and the basis therefor, within fourteen (14) calendar days of receipt of EPA's disapproval, decision or directive. Such notice shall set forth the specific points of the dispute, the position which Respondent asserts should be adopted as consistent with the requirements of this Consent Order, the basis for Respondent's position, and any matters which it considers necessary for EPA's determination. EPA and Respondent shall have an additional fourteen (14) calendar days from the receipt by EPA of the notification of objection, during which time representatives of EPA and Respondent may confer in person or by telephone to resolve any disagreement. If an agreement is reached, the resolution shall be written and signed by an authorized representative of each party. In the event that resolution is not reached within this fourteen (14) calendar day period, EPA will furnish to Respondent, in writing, its decision on the pending dispute.

B. Except as provided in Section XIII. C. and E. "DELAY in PERFORMANCE/STIPULATED PENALTIES," the existence of a dispute, as defined in this Section XIV, and EPA's consideration of matters placed into dispute, shall not excuse, toll or suspend any compliance obligation or deadline required pursuant to this Consent Order during the pendency of the dispute resolution process.

C. Notwithstanding any other provisions of this Consent Order, no action or decision by EPA, including, without limitation, decisions of the Regional Administrator, Region III, pursuant to this Consent Order, shall constitute final agency action giving rise to any right to judicial review prior to EPA's initiation of judicial action to compel Respondent's compliance with this Consent Order.

XV. FORCE MAJEURE AND EXCUSABLE DELAY

A. Respondent shall perform the requirements of this Consent Order in the manner

and within the time limits set forth herein, unless the performance is prevented or delayed by events which constitute a force majeure. Respondent shall have the burden of proving such a force majeure. A force majeure is defined as any event arising from causes not reasonably foreseeable and beyond the control of Respondent, which cannot be overcome by due diligence and which delays or prevents performance in the manner or by a date required by this Consent Order. Such events do not include increased costs of performance, changed economic circumstances, reasonably foreseeable weather conditions or weather conditions which could have been overcome by due diligence, or failure to obtain federal, state, or local permits.

B. Respondent shall notify EPA, in writing, within seven (7) calendar days after it becomes or should have become aware of any event which Respondent claims constitutes a force majeure. Such notice shall estimate the anticipated length of delay, including necessary demobilization and remobilization, its cause, measures taken or to be taken to prevent or minimize the delay, and an estimated timetable for implementation of these measures. Failure to comply with the notice provision of this Section XV shall constitute a waiver of Respondent's right to assert a force majeure claim with respect to such event. In addition to the above notification requirements, Respondent shall undertake all reasonable actions to prevent or to minimize any delay in achieving compliance with any requirement of this Consent Order after it becomes or should have become aware of any event which may delay such compliance.

C. If EPA determines that the failure to comply or delay has been or will be caused by a force majeure, the time for performance of that requirement of this Consent Order may be extended, upon EPA approval, for a period equal to the delay resulting from such force majeure. This shall be accomplished through an amendment to this Consent Order pursuant to Section XXI, "SUBSEQUENT MODIFICATION." Such an extension shall not alter the schedule for performance or completion of any other tasks required by this Consent Order, unless these tasks are also specifically altered by amendment of the Consent Order. In the event that EPA and Respondent cannot agree that any delay or failure has been or will be caused by a force majeure, or if there is no agreement on the length of the extension, Respondent may invoke the dispute resolution procedures set forth in Section XIV, "DISPUTE RESOLUTION."

XVI. RESERVATION OF RIGHTS

A. EPA expressly reserves all rights and defenses that it may have, including the right both to disapprove of work performed by Respondent pursuant to this Consent Order, to require that Respondent correct and/or perform any work disapproved by EPA, and to request that Respondent perform tasks in addition to those stated in the Scope(s) of Work, Workplans, or this Consent Order.

B. EPA hereby reserves all of its statutory and regulatory powers, authorities, rights and remedies, both legal and equitable, including any which may pertain to Respondent's failure to comply with any of the requirements of this Consent Order, including, without limitation, the assessment of penalties under Section 3008(h)(2) of RCRA, 42 U.S.C. Section 6928(h)(2). This

Consent Order shall not be construed as a covenant not to sue, or as a release, waiver or limitation of any rights, remedies, powers and/or authorities, civil or criminal, which EPA has under RCRA, CERCLA, or any other statutory, regulatory or common law authority.

C. Compliance by Respondent with the terms of this Consent Order shall not relieve Respondent of its obligations to comply with RCRA or any other applicable local, state, or federal laws and regulations.

D. The signing of this Consent Order and Respondent's consent to comply shall not limit or otherwise preclude EPA from taking additional enforcement action pursuant to RCRA, including but not limited to Sections 3008(a) or (h) of RCRA, 42 U.S.C. §§ 6928(a) or (h), or any other authority, should EPA determine that such action is warranted.

E. This Consent Order is not intended to be, nor shall it be construed as, a permit. This Consent Order does not relieve Respondent of any obligation to obtain and comply with any local, state, or federal permit or approval.

F. EPA reserves the right to perform any portion of the work consented to herein or any additional site characterization, feasibility study, and response/corrective actions it deems necessary to protect public health or welfare or the environment. EPA may exercise its authority under RCRA, CERCLA or any other authority to undertake or require the performance of response actions at any time. EPA reserves the right to seek reimbursement from Respondent for costs incurred by the United States in connection with any such response actions. Notwithstanding compliance with the terms of this Consent Order, Respondent is not released from liability, if any, for the costs of any response actions taken by EPA.

G. EPA reserves whatever rights it may have under CERCLA or any other law, or in equity, to recover from Respondent any costs incurred by EPA in overseeing the implementation of this Consent Order.

XVII. OTHER CLAIMS

Nothing in this Consent Order shall constitute or be construed as a release from any claim, cause of action or demand in law or equity against any person, firm, partnership, or corporation, or other entity for any liability it may have arising out of or relating in any way to the generation, storage, treatment, handling, transportation, release, or disposal of any hazardous constituents, hazardous substances, hazardous wastes, pollutants, or contaminants found at, taken to, or taken from the Facility.

XVIII. OTHER APPLICABLE LAWS

All actions required to be taken pursuant to this Consent Order shall be undertaken in accordance with the requirements of all applicable local, state, and federal laws and regulations. Respondent shall obtain or require its authorized representatives to obtain all permits and approvals necessary under such laws and regulations.

XIX. INDEMNIFICATION OF THE UNITED STATES GOVERNMENT

Respondent agrees to indemnify and save and hold harmless the United States Government, its agencies, departments, agents, and employees, from any and all claims or causes of action arising from or on account of acts or omissions of Respondent or its agents, independent contractors, receivers, trustees, and assigns in carrying out activities required by this Consent Order. This indemnification shall not be construed in any way as affecting or limiting the rights or obligations of Respondent or the United States under their various contracts. The United States shall not be deemed to be a party to any contract entered into by Respondent for the purpose of carrying out any activities required by this Consent Order.

XX. NOTICE OF NON-LIABILITY OF EPA

EPA shall not be deemed a party to any contract involving Respondent and relating to activities at the Facility and shall not be liable for any claim or cause of action arising from or on account of any act, or the omission of Respondent, its officers, employees, contractors, receivers, trustees, agents or assigns, in carrying out the activities required by this Consent Order.

XXI. SUBSEQUENT MODIFICATION

A. Except as provided in Paragraph C of this Section XXI, below, this Consent Order may be amended only by mutual agreement of EPA and Respondent. Any such amendment shall be in writing, shall be signed by an authorized representative of each party, shall have as its effective date the date on which it is signed by EPA, and shall be incorporated into this Consent Order.

B. Any reports, plans, specifications, schedules, other submissions and attachments required by this Consent Order are, upon written approval by EPA, incorporated into this Consent Order. Any noncompliance with such EPA-approved reports, plans, specifications, schedules, other submissions, and attachments shall be considered a violation of this Consent Order and shall subject Respondent to the stipulated penalty provisions included in Section XIII, "DELAY IN PERFORMANCE/STIPULATED PENALTIES."

C. Minor modifications in the studies, techniques, procedures, designs or schedules utilized in carrying out this Consent Order and necessary for the completion of the project may

be made by written agreement of the Project Coordinators. Such modifications shall have as an effective date the date on which the agreement is signed by the EPA Project Coordinator.

D. No informal advice, guidance, suggestions, or comments by EPA regarding reports, plans, specifications, schedules, and any other writing submitted by Respondent shall be construed as relieving Respondent of its obligation to obtain written approval, if and when required by this Consent Order.

XXII. SEVERABILITY

If any provision or authority of this Consent Order or the application of this Consent Order to any party or circumstance is held by any judicial or administrative authority to be invalid, the application of such provision to other parties or circumstances and the remainder of this Consent Order shall not be affected thereby and shall remain in full force.

XXIII. TERMINATION AND SATISFACTION

The provisions of this Consent Order shall be deemed satisfied upon Respondent's receipt of written notice from EPA that Respondent has demonstrated, to the satisfaction of EPA, that the terms of this Consent Order, including any additional tasks determined by EPA to be required pursuant to this Consent Order, have been satisfactorily completed. This notice shall not, however, terminate Respondent's obligation to comply with any continuing obligations hereunder including, but not limited to, Sections X ("RECORD PRESERVATION"), XVI ("RESERVATION OF RIGHTS"), XVII ("OTHER CLAIMS"), XVIII ("OTHER APPLICABLE LAWS"), and XIX ("INDEMNIFICATION OF THE UNITED STATES Government").

XXIV. PERMIT INTEGRATION

A. Subsequent to the issuance of this Consent Order, a RCRA permit may be issued to the Facility incorporating the requirements of this Consent Order by reference into the permit.

B. No requirement of this Consent Order shall terminate upon the issuance of a RCRA permit unless such requirement is expressly replaced by a requirement in the permit.

XXV. ATTORNEYS' FEES

The Respondent shall bear its own costs and attorneys fees.

XXVI. EFFECTIVE DATE

The effective date of this Consent Order shall be the date on which a true and correct copy of this Consent Order is received by Respondent.

IT IS SO AGREED AND ORDERED:

DATE: _____

BY: _____
DONALD S. WELSH
REGIONAL ADMINISTRATOR
UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY, REGION III

DATE: _____

BY: _____
NEW CHEM, INC.
ROBERT ELEFANTE, PRESIDENT

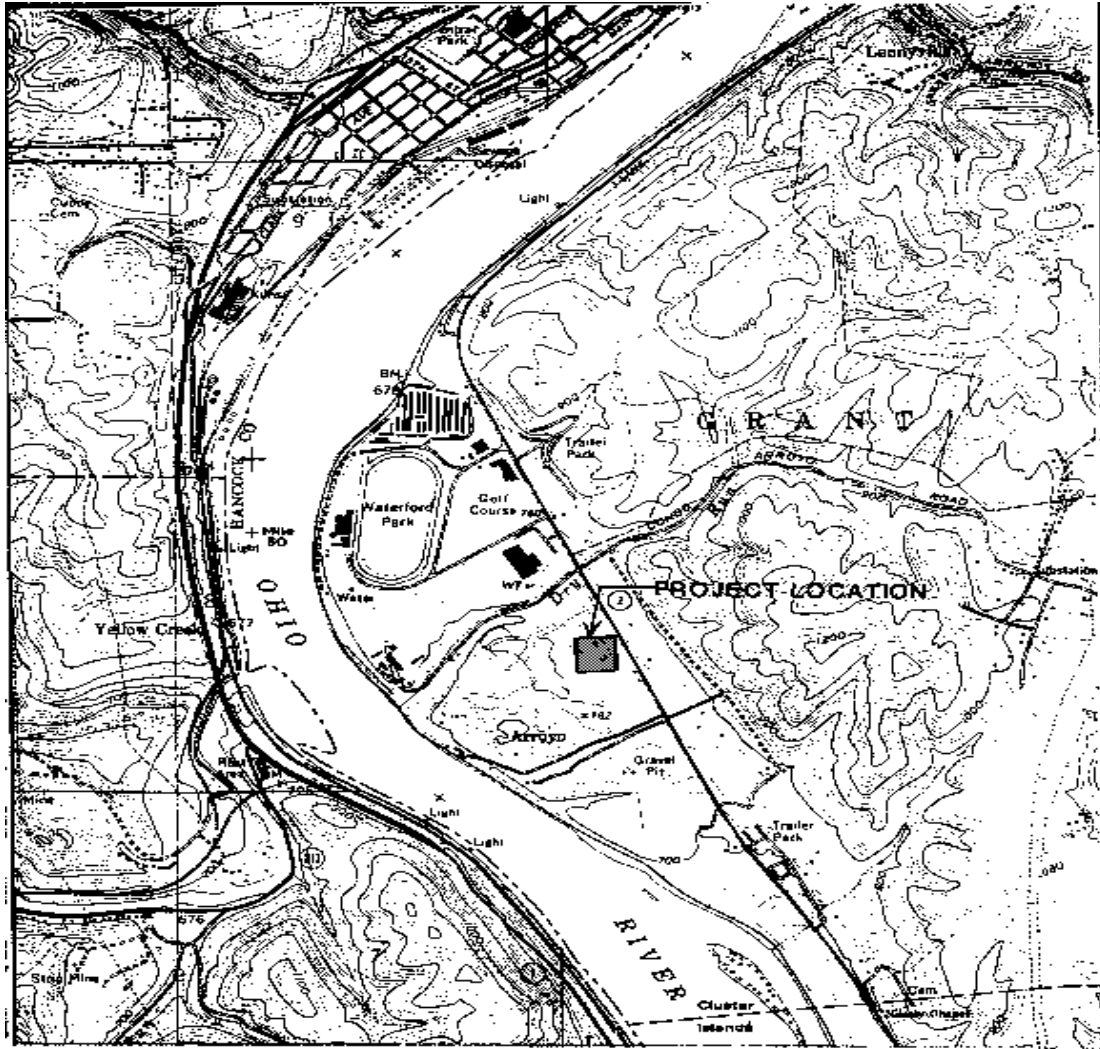


Figure 1
Site Location Map
New Chem, Inc.
New Cumberland, West Virginia