



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

VIA FEDERAL EXPRESS

Mr. John Stokes
Senior Vice President
Giant Yorktown, Incorporated
2201 Goodwin Neck Road
Grafton, Virginia 23692

July 26, 2006

Re: RCRA Section 3008(h) Consent Order
Giant Yorktown Refinery, EPA I.D. No. VAD 05 099 0357

Dear Mr. Stokes:

The enclosed RCRA Section 3008(h) Order on Consent ("Order") has been revised to reflect the recently negotiated clarification reflected in Section XXII. Cost Estimate and Performance Guarantee of the Order.

Given the time that has lapsed since we began the process of reaching this agreement, please have the appropriate representative sign the Order and return it to EPA by August 16, 2006. Any questions regarding this matter should be directed to Donna McCartney at (215)814-3427 or Susan Hodges in the Office of Regional Counsel at (215)814-2643.

Region III looks forward to working with Giant as it implements the corrective measures at its Yorktown Refinery.

Sincerely,

Dana M. McCartney Br

Robert Greaves, Chief (3WC23)
General Operations Branch

cc: D. Pavlich, Giant
S. Hodges, 3RC43
D. McCartney, 3WC23
H. Freeland, VDEQ
C. Martin, Esq.



UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION III

IN THE MATTER OF:	) FINAL ADMINISTRATIVE
	) ORDER ON CONSENT
Giant Yorktown, Incorporated	)
2201 Goodwin Neck Road	) U.S. EPA Docket No.
Grafton, Virginia 23692	) RCRA-03-2006-0231CA
	)
	)
	)
	)
RESPONDENT	)
	)
EPA I.D. No. VAD 05 099 0357	) Proceeding under Section
	) 3008(h) of the Resource
	) Conservation and Recovery
	) Act, as amended, 42 U.S.C.
	) Section 6928(h).

FINAL 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.....	5
VI. WORK TO BE PERFORMED	5
A. CORRECTIVE MEASURE WORK PLAN AND DESIGN.....	6
B. CORRECTIVE MEASURE CONSTRUCTION	6
C. CORRECTIVE MEASURE ASSESSMENT REPORT	7
D. COMPLETION OF CORRECTIVE MEASURES	8
E. HEALTH AND SAFETY PLAN	9
F. CORRECTIVE MEASURE OPERATION AND MAINTENANCE	9
G. USE RESTRICTIONS	9
H. OBLIGATIONS REGARDING SUCCESSORS-IN-INTEREST	10
I. CONTRACTOR REVIEW	11
J. ADDITIONAL WORK	12
K. INTERIM MEASURES ("IM")/SITE STABILIZATION	12
L. SUBMISSIONS/EPA APPROVAL	13
VII. QUALITY ASSURANCE	14
VIII. PUBLIC REVIEW OF ADMINISTRATIVE RECORD	14

IX. ON-SITE AND OFF-SITE ACCESS	15
X. SAMPLING AND DATA/DOCUMENT AVAILABILITY	16
XI. RECORD PRESERVATION	17
XII. PROJECT COORDINATORS	17
XIII. NOTIFICATION	17
XIV. DELAY IN PERFORMANCE/STIPULATED PENALTIES	19
XV. DISPUTE RESOLUTION.....	21
XVI. FORCE MAJEURE AND EXCUSABLE DELAY	22
XVII. RESERVATION OF RIGHTS	23
XVIII. OTHER CLAIMS	24
XIX. OTHER APPLICABLE LAWS	24
XX. INDEMNIFICATION OF THE UNITED STATES GOVERNMENT	25
XXI. NOTICE OF NON-LIABILITY OF EPA	25
XXII. COST ESTIMATES AND PERFORMANCE GUARANTEE	25
XXIII. SUBSEQUENT MODIFICATION	29
XXIV. SEVERABILITY	30
XXV. TERMINATION AND SATISFACTION	30
XXVI. SURVIVABILITY/PERMIT INTEGRATION	30
XXVII. ATTORNEYS' FEES	30
XXVIII. EFFECTIVE DATE	31

ATTACHMENT A - FINAL DECISION AND RESPONSE TO COMMENTS

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	) Section 6928(h).

FINAL ADMINISTRATIVE ORDER ON CONSENT

The Parties to this Final Administrative Order on Consent ("Consent Order" or "Order"), the United States Environmental Protection Agency ("EPA") and Giant Yorktown, Incorporated ("Giant" or "Respondent"), having agreed to entry of this Consent Order, it is therefore ordered and agreed that:

I. JURISDICTION

This Consent Order is issued pursuant to the authority vested in the Administrator of the EPA by Section 3008(h) of the Resource Conservation and Recovery Act of 1976, as amended by the Hazardous and Solid Waste Amendments of 1984 ("RCRA"), 42 U.S.C. Section 6928(h). The authority vested in the Administrator was delegated to the Regional Administrators by EPA Delegation Nos. 8-31 and 8-32 dated May 11, 1994, and redelegated to the Region III Waste and Chemicals Management Division Director on June 21, 2004.

On March 6, 1986, the EPA granted the Commonwealth of Virginia ("the

Commonwealth") 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). Since that time, EPA has authorized revisions to the Commonwealth's authorized hazardous waste program. The Commonwealth, however, does not have authority to enforce Section 3008(h) of RCRA, 42 U.S.C. Section 6928(h).

This Consent Order is issued to Respondent, the current owner and operator of a facility known as the Giant Yorktown Refinery ("Yorktown Refinery"), located at 2201 Goodwin Neck Road in Grafton, Virginia. For purposes of this Consent Order, the property on which the facility is located is referred to hereinafter as the "Facility" or "Giant property." Giant owns and operates a plant at the Facility that produces unleaded gasoline, diesel fuels, liquefied petroleum gas, butane, furnace oil, petroleum coke, and sulfur and has the capacity to refine approximately 56,000 barrels of crude oil per day. The Facility occupies approximately 600 acres of land bordered by the York River on the north and east, by Back Creek on the south, by Virginia Power Company's power station on the west, and by Bull Creek Pond and a salt marsh area to the east. The Yorktown Refinery began operations in 1956 and was previously owned and operated by BP Products North America, Incorporated ("BP") until May 14, 2002.

Respondent consents to and agrees not to contest EPA's authority to issue this Consent Order and to enforce its terms. Further, Respondent will not contest EPA's authority to: compel compliance with this Consent Order in any subsequent enforcement proceeding, either administrative or judicial; require Respondent's full or interim 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. Any change in ownership of the Facility or in the corporate, or partnership status of the Respondent including, but not limited to, any transfer of assets or real or personal property, shall in no way alter, diminish, or otherwise affect Respondent's obligations and responsibilities under this Consent Order. Any conveyance of title, easement, or other interest in the Facility will not affect Respondent's obligations under this Order. Respondent will give written notice of this Order to any successor in interest prior to transferring ownership or operation of the Facility or a portion thereof and will notify EPA in writing not less than ten (10) days in advance of the transfer. This written notice will describe how Respondent has assured that, despite the transfer, all institutional controls required by EPA for the Facility will be implemented and maintained.

C. Respondent shall provide a copy of this Consent Order to Respondent's supervisory personnel responsible for implementation of the work under this Consent Order and all contractors, subcontractors, laboratories, and consultants retained to conduct and/or monitor

any portion of the work performed pursuant to this Consent Order within seven (7) calendar days of the effective date of this Consent Order or the 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 conduct and/or monitor such work in accordance with this Consent Order. The existence of any provision or term of any contract, agreement or other arrangement requiring a contractor, subcontractor, laboratory or consultant to conduct or monitor the work in accordance with the requirements from this Consent Order shall not excuse or otherwise relieve Respondent of the obligation to comply with this Consent Order.

D. In the event of any change in ownership and/or operation of the Facility and/or in the event of any change in the 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 subsequent operator of 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 the protection of human health and/or the environment through: (1) the implementation of the corrective measures described in EPA's Final Decision and Response to Comments, dated March 31, 2004 (collectively referred to herein as the "FDRTC"), incorporated hereto and made a part hereof as Attachment A, as it pertains to the Facility, and, (2) the performance of Interim Measures ("IM") at the Facility to prevent or mitigate threats to human health and/or the environment.

IV. FINDINGS OF FACT

A. Respondent is a corporation doing business in the Commonwealth of Virginia and is a "person" as defined in Section 1004(15) of RCRA, 42 U.S.C. §6903(15).

B. Respondent is the current owner and operator of a hazardous waste management facility located at 2201 Goodwin Neck Road, Grafton, Virginia. Respondent is engaged in the treatment, storage, and disposal of hazardous waste at the Facility subject to the interim status requirements of 40 C.F.R. Part 265. Specifically, at the Facility Respondent produces unleaded gasoline, diesel fuels, liquefied petroleum gas, butane, furnace oil, petroleum coke and sulfur, and has the capacity to refine approximately 56,000 barrels of crude oil per day. The Facility occupies approximately 600 acres of land bordered by the York River on the north and east, by Back Creek on the south, by Virginia Power Company's power station on the west, and by Bull Creek Pond and a salt marsh area to the east. Operations at the Facility began in 1956 and the

Facility was previously owned and operated by BP until May 14, 2002. BP retains ownership of a contiguous 85-acre parcel of land consisting of a wooded area to the east of Bull Creek Pond (the "BP property").

C. On October 31, 1991, EPA and BP entered into a Final Administrative Order on Consent (the "RFI/CMS Order"), Docket Number RCRA-III-046-CA, pursuant to Section 3008(h) of RCRA, 42 U.S.C. Section 6928(h). The RFI/CMS Order required BP to conduct a RCRA Facility Investigation ("RFI") and a Corrective Measure Study ("CMS") for both the Facility and the BP property. The RFI included an evaluation of the extent of releases of hazardous wastes and/or hazardous constituents from both the Facility and the BP property into soils, sediments, groundwater, and surface water. The CMS provided an evaluation of clean-up alternatives based on criteria set forth in the RFI/CMS Order.

D. On May 14, 2002 Giant Industries Incorporated assumed ownership of the Facility. The new name for Giant's business at the Yorktown Refinery is Giant Yorktown, Incorporated.

E. Section IV ("Findings of Fact") of the RFI/CMS Order is hereby incorporated herein by reference.

F. The RFI Report submitted by BP concluded that there are contaminants of concern present in the soil, sediments, and groundwater. The contaminants of concern are benzene, toluene and xylene, polycyclic aromatic hydrocarbons ("PAHs"), phenols, and heavy metals such as arsenic, chromium, and cadmium. EPA has determined that the contaminants of concern require further remediation.

G. On November 5, 2003, EPA issued for public comment a Statement of Basis ("SB") which described and evaluated corrective measures alternatives to mitigate or eliminate releases of hazardous waste and/or hazardous constituents at and/or from both the Facility and the BP property and contained EPA's recommended corrective measure. The SB and the Administrative Record were made available to the public for a thirty (30)-day comment period. The public comment period began on November 5, 2003, and ended on December 5, 2003.

H. In Section IX of the SB, EPA established media cleanup standards for the contaminants of concern in the soil, sediments and groundwater at the Facility and the BP property and these standards are hereby incorporated herein by reference.

I. The human health and environmental effects of the contaminants of concern are described in the Administrative Record supporting the issuance of this Consent Order.

J. On March 31, 2004, EPA issued a Final Decision and Response to Comments ("FDRTC") which identified the remedial alternative and media cleanup standards selected by EPA for both the Facility and the BP property and provided responses to all comments received

during the public comment period. The FDRTC is set forth in Attachment A to the Consent Order and is incorporated herein and made part hereof.

V. CONCLUSIONS OF LAW AND DETERMINATIONS

Based on the Findings of Fact set forth above, and after consideration of the Administrative Record supporting the issuance of this Consent Order, EPA has made the following Conclusions of Law and Determinations:

- A. Respondent is a "person" within the meaning of Section 1004(15) of RCRA, 42 U.S.C. Section 6903(15).
- B. Respondent is the current owner and operator of a "facility authorized to operate under Section 3005(e) of RCRA, 42 U.S.C. Section 6925(e)," within the meaning of Section 3008(h) of RCRA, 42 U.S.C. Section 6928(h).
- C. The substances referred to in Section IV.F of this Consent Order are "hazardous wastes" within the meaning of Section 3008(h) of RCRA, 42 U.S.C. Section 6928(h).
- D. There is or has been a "release of hazardous waste into the environment from a facility" within the meaning of Section 3008(h) of RCRA, 42 U.S.C. Section 6928(h).
- E. The actions required by this Consent Order are necessary to protect human health and/or the environment.

VI. WORK TO BE PERFORMED

EPA acknowledges that Respondent may have performed some of the tasks required by this Consent Order and the Respondent may have available some of the information and data required by this Consent Order. This information and or data may be used to meet the requirements of this Consent Order, upon submission to and formal approval by EPA.

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, at a minimum: the Scope of Work for Corrective Measures Implementation ("CMI"); the Scope of Work for a Health and Safety Plan; the Scope of Work for Interim Measures ("IM"); the FDRTC set forth in Attachment A as it pertains to the Facility; 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, and are incorporated herein by reference.

"Days" as used herein shall mean calendar days unless specifically stated otherwise.

A. CORRECTIVE MEASURE WORK PLAN AND DESIGN

1. Within sixty (60) calendar days of the effective date of this Consent Order, Respondent shall submit to EPA for approval a CMI Work Plan for the expeditious implementation of the corrective measures selected by EPA in the FDRTC as it pertains to the Facility. The CMI Work Plan shall be developed in accordance with the Scope of Work for Corrective Measures Implementation.
2. Within sixty (60) calendar days of receipt of EPA's approval of the CMI Work Plan, Respondent shall submit to EPA, for review and comment, a 30% CMI Design Report (with a list of plans and specifications) which shall be developed in accordance with the Scope of Work for CMI.
3. Within forty-five (45) calendar days of receipt of EPA's comments on the Preliminary or 30% CMI Design Report, Respondent shall incorporate those comments and submit to EPA for approval a 90% CMI Design Report (with complete plans and specifications). The 90% CMI Design Report shall be developed in accordance with the Scope of Work for CMI.
4. Upon receipt by Respondent of EPA's approval of the 90% CMI Design Report, said Report shall be incorporated into and become enforceable under this Consent Order, and Respondent shall implement it in accordance with the schedules and provisions contained therein.

B. CORRECTIVE MEASURES CONSTRUCTION

1. Respondent shall commence and complete construction of the Corrective Measures selected in the FDRTC as it pertains to the Facility in accordance with the Scope of Work for CMI, the schedule set forth in the EPA-approved CMI Work Plan, and the EPA-approved 90% CMI Design Report (with complete plans and specifications). Respondent shall complete most of the initial construction work within one year of the effective date of this Order. Respondent shall complete implementation of the selected remedy expeditiously to assure the protection of human health and the environment, and as approved by EPA.
2. Within ninety (90) calendar days of completion of construction and the preliminary period of performance monitoring as specified in the EPA-approved 90% CMI Design Report, Respondent shall submit to EPA for approval a CMI Report (including construction certification and as-built drawings). The CMI Report shall be developed in accordance with the Scope of Work for CMI and shall describe activities performed during construction, provide actual specifications of the implemented remedy, and provide a preliminary assessment of CMI performance.

3. EPA shall determine, on the basis of the CMI Report and any other relevant

information, whether the constructed project is consistent with the EPA-approved 90% CMI Design Report. If EPA determines that the constructed project is consistent with the EPA-approved 90% CMI Design Report, EPA shall notify Respondent of such determination, in writing, and the CMI Report shall be considered the Final CMI Report.

4. If EPA determines that the construction project is not built in accordance with the EPA-approved 90% CMI Design Report, EPA shall notify Respondent of those activities that must be undertaken to complete the construction of the Corrective Measures. Respondent shall set forth a schedule for the completion of those activities and submit the schedule to EPA for its review and approval. Respondent shall complete the activities in accordance with the schedule set forth in the EPA notification.

5. Respondent shall take reasonable measures to restrict the use of the Facility in any manner that may interfere with a remedial action, operation and maintenance, monitoring, or other measures necessary to assure the effectiveness and integrity of the remedy to be implemented pursuant to this Order. Such restrictions include, but are not limited to, the installation, construction, removal, or use of any wells or the excavation of any soil within areas exceeding soil cleanup levels except as approved by U.S. EPA as consistent with this Order.

6. Respondent may, at any other time following EPA approval of all predesign or investigative activities required by the FDRTC as it pertains to the Facility, request that EPA select, for the purpose of this Consent Order, Alternative and/or Supplemental Corrective Measure(s), subject to EPA's review and approval.

7. Nothing in this Section VI.B shall limit EPA's authority to implement Alternative and/or Supplemental Corrective Measure(s) or to take any other appropriate action under RCRA, the Comprehensive Environmental Response, Compensation and Liability Act, as amended, 42 U.S.C. Section 9601 et seq. ("CERCLA"), or any other legal authority, including the issuance of a unilateral administrative order or the filing of a civil action.

C. CORRECTIVE MEASURE ASSESSMENT REPORT

1. Within thirty (30) days after Respondent determines that the soil and/or groundwater media cleanup standards in Attachment A (FDRTC) have been attained at the Facility, Respondent shall submit a written report ("Corrective Measures Assessment Report") and certification to U.S. EPA for review and approval. A registered professional engineer and Respondent's Project Manager shall state in the report that the soil and/or groundwater media cleanup standards have been attained in full satisfaction of the requirements of the Consent Order.

2. EPA shall determine, on the basis of the Corrective Measures Assessment Report and any other relevant information, whether the Corrective Measures have achieved or are achieving the media cleanup standards set forth in the FDRTC pertaining to the Facility. If EPA

determines that the Corrective Measures have achieved or are achieving the media cleanup standards set forth in the FDRTC, EPA shall notify Respondent of such determination.

3. If EPA determines that the Corrective Measures have not achieved the media cleanup standards set forth in the FDRTC pertaining to the Facility, EPA shall notify Respondent of those activities that must be undertaken to achieve the media cleanup standards. Respondent shall set forth a schedule for the completion of those activities and submit the schedule to EPA for its review and approval. Respondent shall complete the activities in accordance with the schedule set forth in the EPA notification.

4. No later than February 15th of the fifth year of the effective date of this Consent Order and every five (5) years thereafter until receipt of approval by EPA of a Certificate of Completion submitted pursuant to Section VI.D.4 of this Consent Order, Respondent shall submit a Corrective Measure Five-Year Assessment Report. Such Report shall contain an evaluation of the past and projected future effectiveness of the Corrective Measure in attaining the media cleanup requirements set forth in the FDRTC pertaining to the Facility.

D. COMPLETION OF CORRECTIVE MEASURES

1. After Respondent has determined that the Corrective Measures have been fully implemented in accordance with the EPA-approved CMI Design Report, Respondent shall notify EPA in writing and request EPA's approval to discontinue the Corrective Measure(s) in accordance with Section VI.L.1 of this Consent Order. The request shall explain the basis for Respondent's conclusion and include all available documentation supporting such conclusion.

2. Upon receipt of EPA's approval of Respondent's request to discontinue all Corrective Measures, Respondent may discontinue such Corrective Measures, except that Respondent shall continue to monitor the groundwater in accordance with the EPA-approved CMI Design Report (including the Sampling and Analysis Plan, Operations and Maintenance Plan, and Corrective Action Management Unit ("CAMU") Groundwater Monitoring Plan components). Respondent shall submit the results of such post-construction monitoring with the Quarterly and Annual Progress Reports in accordance with Section VI.L. of this Consent Order.

3. If at any time during the post-construction monitoring program, EPA determines that the level of any hazardous constituent and/or hazardous waste in the groundwater has increased above the media cleanup standards set forth in the FDRTC for such hazardous constituent and/or hazardous waste, EPA may determine if Alternative and/or Supplemental Corrective Measures need to be initiated to achieve the established media cleanup standards. EPA shall notify Respondent in writing of any such determination. Any decision by EPA to require Alternative and/or Supplemental Corrective Measures shall be made pursuant to applicable EPA regulations and consistent with EPA guidance regarding selection of corrective measures under RCRA.

4. If after the post-construction monitoring program is completed to EPA's satisfaction, the established media cleanup standards for groundwater have been maintained and all other aspects of Corrective Measures Construction and O&M have been completed, Respondent shall submit a Certification of Completion for all corrective measures ("Certification of Completion") to EPA for approval in accordance with Section VI.L.1 of this Consent Order. The Certification of Completion shall provide documentation sufficient to support a determination that media cleanup standards set forth in the FDRTC have been maintained and include all available documentation supporting such a determination.

E. HEALTH AND SAFETY PLAN

Concurrent with the submission of the CMI Work Plan, the Respondent shall submit to EPA a CMI Health and Safety Plan developed and/or revised in accordance with the provisions of the Scope of Work for a Health and Safety Plan.

F. CORRECTIVE MEASURE OPERATION AND MAINTENANCE

The Respondent shall perform the Operation and Maintenance ("O&M") activities in accordance with the timetable set forth in the EPA-approved CMI Design Report and the EPA-approved O&M Plan.

G. USE RESTRICTIONS

Respondent shall, commencing on the effective date of this Consent Order, and thereafter, refrain from using the Facility in any manner which could compromise or adversely affect the effectiveness and protectiveness of the corrective measures undertaken in accordance with Section VI of this Consent Order. In addition, commencing on the effective date of this Consent Order, and thereafter, unless (i) required for implementation of the work under this Consent Order; (ii) or otherwise determined to be necessary by EPA, Respondent shall comply with the following restrictions regarding use of the Facility:

1. Until EPA has determined that the groundwater cleanup levels specified in Attachment A to this Order are achieved at the Facility and the BP property as set forth in paragraph VI.C.2 above, no use of groundwater or placement of new groundwater wells at the Facility for the purposes of (i) drinking, bathing, washing, or any other human contact; or (ii) for livestock, farming or irrigation shall be permitted.

2. Only industrial activities may be conducted at the Facility. The term "industrial activities" shall consist of manufacturing and processing operations and associated activities including, but not limited to, production, research and development or other laboratory activities, wastewater treatment activities, storage and shipment of refined products and raw materials, office use, and parking/driveway use.

3. Respondent shall notify EPA, in writing, of any land use changes at the Facility that may impact the corrective measures set forth in the FDRTC. This notification shall be submitted for EPA's review and approval at least fifteen (15) days prior to enacting any such land use changes at the Facility.

H. OBLIGATIONS REGARDING SUCCESSORS-IN-INTEREST

1. Notice

a. Within fifteen (15) days after the effective date of this Consent Order, Respondent shall submit to EPA for review and approval a notice to be filed with the Recorder of Deeds, York County, Commonwealth of Virginia ("Title Notice"), which shall provide notice to all successors-in-title that the respective property is part of the Facility subject to the FDRTC, that EPA selected a remedy for the Facility and the BP property on March 31, 2004, and that EPA and Respondent have entered into this Consent Order requiring Respondent to implement the FDRTC. Such Title Notice shall identify the administrative docket number of this Consent Order and the effective date of this Consent Order. Such Title Notice shall recite the obligation to comply with the land use restrictions of Section VI.G. Respondent shall record the Title Notice within ten (10) days of EPA's approval of the Title Notice. Respondent shall not modify or release such Title Notice without prior written approval of EPA. Respondent shall provide EPA with a certified copy of the recorded Title Notice(s) within ten (10) days of recording such Title Notice(s).

b. At least thirty (30) days prior to any conveyance, transfer or assignment of any interest in the Facility, including, but not limited to, fee interests, leasehold interests, easements, land use interests, licenses and mortgage interests, Respondent shall give the grantee(s) or transferee(s)-in-interest a written description of the use restriction requirements set forth in Section VI.G of this Consent Order. At least thirty (30) days prior to such conveyance, transfer or assignment, Respondent shall also give written notice to EPA and the State of the proposed conveyance, including the name(s), address(es) and telephone number(s) of the grantee(s) or transferee(s)-in-interest, and the date on which notice of this Consent Order, and use restriction requirements of this Consent Order were given to the grantee(s). In addition, Respondent shall provide EPA with copies of all agreement(s) or contract(s), including but not limited to indemnification agreement(s) or contract(s), executed in connection with such conveyance, transfer or assignment, within five (5) days of the effective date of such agreement(s).

2. Continuing Obligation

In the event of any conveyance, transfer or assignment of any interest in the Facility, including, but not limited to, fee interests, leasehold interests, easements, land use interests, licenses and mortgage interests, Respondent shall continue to be bound by all terms and conditions, and subject to all benefits, of this Consent Order. In no event shall such conveyance, transfer or assignment release or otherwise affect Respondent's obligation to comply with all

provisions of this Consent Order, unless EPA and Respondent agree to such a modification of this Consent Order.

3. Reservation of Easement.

In the event of a conveyance, transfer or assignment of any interest in the property that constitutes the Facility, Respondent shall expressly reserve in the deed or other instrument effecting the transfer an irrevocable and permanent easement which (i) grants Respondent access for the purpose of carrying out its obligations under this Consent Order; and (ii) imposes upon the subsequent grantee's use of the Facility the restrictions of Section VI.G of this Consent Order. Thereafter, Respondent shall enforce the terms of any such easement reserved pursuant to this Section VI.H.3 against all subsequent grantees of a conveyance, transfer or assignment of any interest in the Facility.

I. CONTRACTOR REVIEW

1. All work performed pursuant to this Consent Order shall be under the direction and supervision of a qualified professional with expertise in the relevant aspects of hazardous waste site investigation and remediation. Within fifteen (15) calendar days after the effective date of this Consent Order, Respondent shall submit to EPA, in writing, the names, titles, and qualifications of the professional project coordinator, engineers, geologists, contractors and subcontractors (hereinafter "contractors") to be used in carrying out the terms of this Consent Order. Within fifteen (15) calendar days of retaining any other contractors to be used in carrying out the terms of this Consent Order, Respondent shall submit to EPA, in writing, the names, titles and qualifications of any such additional contractors. Notwithstanding Respondent's selection of any qualified contractor, nothing herein shall relieve Respondent of the obligation to comply with the terms and conditions of this Consent Order.

2. EPA shall have the right to disapprove at any time the use of any contractor selected by Respondent pursuant to paragraph 1, immediately above, and paragraph 3, immediately below. This selection shall not be subject to review under Section XV of this Consent Order ("DISPUTE RESOLUTION") or otherwise. Within fifteen (15) calendar days of receipt from EPA of a written notice disapproving the selection of any contractor, Respondent shall notify EPA, in writing, of the names, titles and qualifications of the personnel who will replace the personnel disapproved by EPA.

3. Respondent shall notify EPA at least fifteen (15) calendar days prior to voluntarily replacing a professional engineer, geologist, contractor or subcontractor to be used in carrying out the terms of this Consent Order, and shall submit to EPA the names, titles, and qualifications of such replacement personnel.

J. ADDITIONAL WORK

1. EPA may determine that certain tasks and deliverables, including, but not limited to, investigatory work, or engineering evaluation, or procedure/methodology modifications, require additional work. These tasks and deliverables may or may not have been in the EPA-approved CMI Work Plan or other EPA-approved document(s). Furthermore, at any time during or after the implementation of the Corrective Measures specified in the FDRTC, EPA may determine that the media cleanup standards set forth in the FDRTC have not been met and/or that the continued implementation of the Corrective Measures are not likely to achieve such standards. In that event, EPA may determine that additional work is necessary to perform supplemental and/or alternative Corrective Measures pursuant to RCRA, applicable EPA regulations and/or guidance.

2. EPA may request, in writing, that Respondent perform such additional work. EPA shall specify the basis and reasons for its determination that additional work is necessary.

3. 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. In the event that Respondent agrees to perform such additional work, Respondent shall submit to EPA for review and approval a work plan for the additional work. Such work plan shall be submitted within forty-five (45) days of receipt of EPA's determination that additional work is necessary, or otherwise in accordance with a later alternative schedule established by EPA. Upon EPA's approval of a work plan, the work plan shall be incorporated into and become enforceable under this Consent Order, and Respondent shall implement it in accordance with the schedule and provisions contained therein.

4. If Respondent declines to perform the additional work, EPA reserves the right to order Respondent to perform such additional work; to perform such additional work itself and seek to recover all costs of performing such additional work from Respondent; and/or to take any other appropriate action under RCRA, the Comprehensive Environmental Response, Compensation, and Liability Act, as amended ("CERCLA"), or any other legal authority.

K. INTERIM MEASURES ("IM")/SITE STABILIZATION

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 Work Plan in accordance with the IM Scope of Work. 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 Work Plans shall ensure that the interim measures are designed to mitigate immediate or potential threats to human health and/or the environment, and should be consistent with, and easily integrated into, the Corrective Measures set forth in the FDRTC.

4. Each IM Work Plan shall be developed in accordance with the IM Scope of Work and 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 Work Plan, Respondent shall submit to EPA an IM Health and Safety Plan.

5. Upon receipt of EPA approval of an IM Work Plan, Respondent shall implement the EPA-approved IM Work Plan in accordance with the requirements and schedules contained therein.

L. SUBMISSIONS/EPA APPROVAL

1. EPA will review documents submitted pursuant to this Consent Order (hereinafter collectively referred to as "Submissions") and will notify Respondent in writing of EPA's approval or disapproval of the Submission(s) or any part thereof (except for Health and Safety Plans and Progress Reports which will be submitted for review but not approval). In the event of EPA's disapproval, EPA shall specify in writing any deficiencies in the Submission(s). Such disapproval shall not be subject to the dispute resolution procedures of Section XV, below. Notwithstanding any notice of disapproval, Respondent shall implement, at the direction of EPA, any action required by any non-deficient portion of the Submission(s).

2. Within thirty (30) calendar days of receipt of EPA's comments on a Submission, or fifteen (15) calendar days in the case of an IM Workplan, Respondent shall submit to EPA for approval a revised Submission which responds to EPA's comments and/or corrects any deficiencies identified by EPA. In the event that EPA disapproves the revised Submission, EPA reserves the right to revise or prepare such Submission and seek to recover from Respondent the costs thereof, in accordance with CERCLA, and any other applicable laws, and/or to take any other appropriate action under RCRA, CERCLA, or any other legal authority. Any Submission prepared by Respondent that is approved or revised by EPA under this Consent Order shall be deemed incorporated into and made an enforceable part of this Consent Order.

3. On May 15th, August 15th and November 15th of each year during which this Consent Order is effective, Respondent shall submit to EPA a Quarterly Progress Report for the first, second and third calendar quarters, respectively, which contains the information required in the Scope of Work for CMI.

4. On February 15th of each year during which this Order is effective, Respondent shall submit to EPA an Annual Progress Report which contains the information described in the Scope of Work for CMI and for the previous calendar year. Respondent shall not be required to submit an Annual Progress Report in any year a Corrective Measure Five-Year Assessment Report is submitted pursuant to Section VI.C.4. of this Order.

VII. QUALITY ASSURANCE

Throughout all sample collection and analysis activities, Respondent shall use EPA-approved quality assurance/quality control ("QA/QC"), and chain-of-custody procedures, as specified in the EPA-approved Work Plans. In addition, Respondent shall:

A. Ensure that laboratories used for analyses by Respondent perform such analyses according to the EPA methods included in "Test Methods for Evaluating Solid Waste" (SW-846, November 1986, Third Edition as updated) or other methods deemed satisfactory to EPA. If methods other than EPA methods are to be used, Respondent shall submit all protocols to be used for analyses to EPA for approval pursuant to Section VI.L at least thirty (30) calendar days prior to the commencement of such analyses.

B. Ensure that laboratories used by Respondent for analyses participate in a QA/QC program equivalent to that which is followed by EPA. 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.

C. Inform EPA at least fifteen (15) calendar days in advance of any laboratory analysis required by this Consent Order regarding which laboratory will be used by Respondent and ensure that EPA personnel and/or EPA authorized representatives are allowed reasonable access to the laboratory(ies), records, and personnel utilized by Respondent for analysis of samples collected pursuant to this Consent Order.

VIII. PUBLIC REVIEW OF ADMINISTRATIVE RECORD

The Administrative Record supporting the issuance of this Consent Order will be available for public review during business hours at the following location:

U.S. Environmental Protection Agency
Region III
1650 Arch Street

Philadelphia, Pennsylvania 19103
Attn: Ms. Donna M. McCartney (3WC23)
Telephone Number: (215) 814-3427

IX. ON-SITE AND OFF-SITE ACCESS

A. 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 work undertaken pursuant to the Consent Order; 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 EPA and its authorized representatives to inspect and copy records, files, photographs, documents, and other writings, in its possession or under its control, including all sampling and monitoring data, that pertain to work undertaken pursuant to this Consent Order.

B. To the extent that work required by this Consent Order, or by any approved Work Plan prepared pursuant hereto, must be done on property not owned or controlled by Respondent, Respondent shall use their 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 Work Plan pursuant to this Consent Order which requires work on such property. For the 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, as appropriate, requesting agreements to permit Respondent, EPA, and its authorized representatives access to such property; 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; c) prompt communication by the Respondent with the property owner(s) or lessee(s) to inform them of the nature of the work to be done on their property, the time it will take, the disturbance (if any) that will occur, and the restoration (if necessary) to be done when the work is finished. In the event that such agreements for access are not obtained within thirty (30) calendar days after receipt of EPA approval of any Work Plan 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 failure to obtain such agreements, regarding both the efforts undertaken to obtain access and the failure to obtain such agreements. In the event that Respondent fails to obtain access, after using best efforts as described in this paragraph, EPA, in its unreviewable 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.

X. 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 and the Attachments appended hereto and incorporated herein.

B. Respondent shall notify EPA, in writing, at least fifteen (15) calendar days in advance of any field activities, such as 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. 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 sampled pursuant to this Consent Order.

D. If Respondent asserts a privilege with respect to any document which EPA seeks to inspect or copy pursuant to this Consent Order, the Respondent shall provide the EPA within seven (7) days from the date of EPA's request to inspect or copy such document with the following: (1) the title of the document, record, or information; (2) the date of the document, record, or information; (3) the name and title of the author of the document, record, or information; (4) the name and title of each addressee and recipient; (5) a description of the contents of the document, record, or information; and (6) the nature and basis of the privilege asserted by the Respondent. For the purposes of this Consent Order, privileged documents are those documents exempt from discovery by the United States in litigation in Federal court in cases in which the United States is a party. However, no document, record, or information created, generated or collected pursuant to the terms of this Consent Order shall be withheld on the grounds that it is privileged.

XI. RECORD PRESERVATION

Respondent shall preserve, during the pendency of this Consent Order and for a minimum of at least six (6) years after its termination, at least one copy of all nonidentical 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 XI 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.

XII. PROJECT COORDINATORS

A. EPA hereby designates Donna M. McCartney the EPA Project Coordinator. Respondent hereby designates Grady Wood as Respondent's Project Coordinator. Addresses and telephone numbers for the Project Coordinators are provided in Section XIII.A, below. 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 a Project Coordinator. Respondent's legal counsel shall not serve as Respondent's Project Coordinator.

C. The absence of the EPA Project Coordinator from the Facility shall not be cause for the delay or stoppage of work, unless this work cannot proceed without the EPA Project Coordinator's on-site review and/or approval.

XIII. 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:

Donna M. McCartney (3WC23)
U.S. Environmental Protection Agency
1650 Arch Street
Philadelphia, Pennsylvania 19103
(215) 814-3427 (Telephone)
(215) 814-3113 (Facsimile)

2. Documents submitted to Respondent shall be sent to:

Grady Wood
Giant Yorktown Incorporated
2201 Goodwin Neck Road
Grafton, Virginia 23693
(757) 898-9618
(757) 898-9690 (Facsimile)

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

Leslie Romanchik
Commonwealth of Virginia
Department of Waste Management
629 East Main Street
Richmond, Virginia 23219
(804) 698-4129 (Telephone)
(804) 698-4234 (Facsimile)

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 Section XII ("PROJECT COORDINATOR") 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: _____

XIV. 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 XVI ("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 of any activity, plan, study or report required by this Consent Order in accordance with the requirements of the Consent Order 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: \$2,500 per day for one to seven days or part thereof of noncompliance, and \$4,500 per day for each day of noncompliance, or part thereof, thereafter;
2. For failure to submit any draft or final plans, plans, or reports as required by this Consent Order: \$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;

3. For failure to submit quarterly progress reports as required by this Consent Order: \$1,000 per day for one to seven days or part thereof of noncompliance, and \$1,500 per day for each day of noncompliance, or part thereof, thereafter;
4. For failure to submit other deliverables as required by this Consent Order: \$1,000 per day for one to seven days or part thereof of noncompliance, and \$1,500 per day for each day of noncompliance, or part thereof, thereafter;
5. For any failure to comply with the provisions of this Consent Order after receipt of notice of noncompliance by EPA: \$2,500 per day for one to seven days or part thereof of noncompliance, and \$4,500 per day for each day of noncompliance, or part thereof, hereafter, in addition to any stipulated penalties imposed for the underlying noncompliance;
6. For any material failure to comply with this Consent Order not described in subparagraphs 1 through 5, above; \$1,500 per day for one to seven days or part thereof of noncompliance, and \$2,500 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 XIV shall be due within thirty (30) calendar days of receipt of a demand for payment unless Respondent invokes the dispute resolution procedures under Section XV, 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. In addition, a penalty charge of six (6) percent will be assessed on any unpaid balance which remains delinquent more than ninety (90) days after payment is due. However, should assessment of the penalty be required, it will be assessed from the first day payment is due.

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, the Regional Hearing Clerk (3RC00), and the Office of the Comptroller (3PM30), U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

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 XV ("DISPUTE RESOLUTION"). Stipulated penalties and interest 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 fifteen (15) 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 XIV. To the extent Respondent prevails upon resolution of the dispute, no penalties shall be payable. Notwithstanding the above, to the extent that Respondent does not prevail upon resolution of a dispute, EPA, in its sole and unreviewable discretion, after consideration of the nature of the dispute, Respondent's assertions relative to the matter in dispute, and any other relevant matter, may forego collection of all or a portion of the stipulated penalty and any accrued interest.

F. Except as provided in paragraph E of this Section, immediately above, neither the filing of a petition to resolve a dispute nor the payment of penalties shall alter in any way Respondent's obligations to comply with the requirements of this Consent Order.

G. The stipulated penalties set forth in this Section 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.

XV. 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, except as otherwise provided in this Order, Respondent shall notify EPA in writing of their objections, and the basis therefor, within fifteen (15) 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 fifteen (15) 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 fifteen (15) calendar day period, EPA will furnish to Respondent, in writing, its decision on the pending dispute.

B. Except as provided in paragraphs C and E of Section XIV ("DELAY in PERFORMANCE/STIPULATED PENALTIES"), the existence of a dispute, as defined in this Section, 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.

XVI. 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 event. 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 causes or may cause a delay in complying with any requirement of this Consent Order or prevents compliance in the manner required by this Consent Order and any event which Respondent claims constitutes a force majeure. Such notice shall include an estimate of 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 the threat or potential threat of any, to human health or the environment caused by the delay or disruption, and if Respondent asserts that the event is a force majeure, the facts and reasoning supporting that assertion. Failure to comply with the notice provision of this Section XVI shall constitute a waiver of Respondent's rights 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 reasonably 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 XXII ("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 XV ("DISPUTE RESOLUTION").

XVII. RESERVATION OF RIGHTS

A. EPA reserves all rights and defenses that it may have, including the right 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, Work Plans, 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 of the United States, except as specifically set forth hereon.

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 action pursuant to Section 3008(h) of RCRA, 42 U.S.C. Section 6928(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(s) to obtain and comply with any local, state, or federal permit.

F. EPA reserves the right to perform any portion of the work consented to herein or to conduct any additional site characterization, feasibility study, and response/corrective actions it deems necessary to protect public health and/or welfare and/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.

H. If EPA determines that Respondent's activities, 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 human health and/or the environment, EPA may direct Respondent to 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 undertake any action which EPA determines is necessary to abate such release or threatened release.

I. Because this Consent Order was entered with the consent of both parties, Respondent waives its right to request a public hearing pursuant to Section 3008(b) of RCRA, 42 U.S.C. Section 6928(b).

XVIII. 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.

XIX. 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.

XX. INDEMNIFICATION OF THE UNITED STATES GOVERNMENT

Respondent agrees to indemnify and save and hold harmless the United States Government, its officials, agencies, departments, agents, employees, contractors, subcontractors and representatives, from any and all claims or causes of action arising from, or on account of negligent or other wrongful acts or omissions of Respondent or its officers, directors, employees, 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.

XXI. NOTICE OF NON-LIABILITY OF EPA

Neither the United States nor EPA shall be deemed a party to any contract involving Respondent and relating to activities at the Facility nor shall the United States or EPA be held liable for any claim or cause of action arising from or on account of any act, or omission of Respondent, its officers, employees, contractors, receivers, trustees, agents or assigns, in carrying out the activities required by this Consent Order.

XXII. COST ESTIMATES AND PERFORMANCE GUARANTEE

A. Cost Estimates

1. Within thirty (30) days of the effective date of this Consent Order Respondent shall submit to EPA a detailed written estimate, in current dollars, of the cost of hiring a third party to perform the work described in Section VI of this Order. The cost estimate must account for the total costs of the work activities described in Section VI for the entire period this Order is effective, including operation and maintenance costs and any necessary long term monitoring costs. A third party is a party who is neither a parent nor a subsidiary of the Respondent.

2. Concurrent with the submittal of the CMI Work Plan and CMI Design Reports required under Section VI of this Order, Respondent shall submit a revised detailed written estimate(s), in current dollars, of the cost of hiring a third party to perform the work. Beginning in the year following EPA's approval of the 90% Corrective Measures Implementation Design Report, Respondent must annually adjust the cost estimate(s) for inflation and discount rates within ninety (90) days of the close of Respondent's fiscal year, until the work required by this Order is completed. If an adjustment is made to the cost estimate for inflation and discount rates, an explanation must be provided with each submittal. In addition, the Respondent must adjust the cost estimate if EPA determines that any additional work is required, pursuant to Section VI. J., or if any other conditions increase the cost of the work to be performed under this Order (i.e., change in contractor). Respondent shall submit each cost estimate to EPA for review and approval.

B. Performance Guarantee

1. In order to secure the full and final completion of the work under this Consent Order, within thirty (30) days of the effective date of this Consent Order, or within thirty (30) days of submittal of the initial cost estimate to EPA, whichever date is later, Respondent shall establish financial security for the benefit of the United States in an amount at least equal to the current estimated cost of hiring a third party to perform the work, in one or more of the following forms:

a. A trust fund administered by a trustee which is an entity which has the authority to act as a trustee and whose trust operations are regulated and examined by a U.S. Federal or State agency and that is acceptable in all respects to the EPA. The trust agreement shall provide that the trustee shall make payments from the fund as the EPA shall direct in writing (1) to reimburse Respondent from the fund for work expenditures made by Respondent, or (2) to pay any other person whom the EPA determines has performed or will perform the work required by this Order at the direction of EPA. The draft trust agreement shall be submitted for EPA's review and approval in accordance with Section VI. L. of this Order.

b. A surety bond unconditionally guaranteeing performance of the work or payment, at the direction of EPA, into a standby trust fund which meets the requirements of the trust fund in subparagraph a. above. The surety company issuing the bond must, at a minimum, be among those listed as acceptable sureties on Federal Bonds as set forth in Circular 570 of U.S. Department of the Treasury, and acceptable in all other respects to the EPA.

c. One or more irrevocable letters of credit, payable at the direction of EPA, into a standby trust fund which meets the requirements of the trust fund in subparagraph 3.a. above. The letter(s) of credit must be issued by one or more financial institution(s) (i) that have the authority to issue letters of credit, (ii) whose letter-of-credit operations are regulated and examined by a U.S. Federal or State agency, and (iii) that are acceptable in all respects to the EPA. The letter(s) of credit must be irrevocable and issued for a period of at least 1 year. The letter(s) of credit must provide that the expiration date will be automatically extended for a period of at least 1 year unless, at least 120 days before the current expiration date, the issuing institution notifies both the Respondent and the EPA by certified mail of a decision not to extend the expiration date. Under the terms of the letter(s) of credit, the 120 days will begin on the date when both the Respondent and EPA have received the notice, as evidenced by the return receipts.

d. A policy of insurance issued by an insurance carrier licensed to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer, in one or more states, and governed by terms and conditions acceptable in all respects to EPA.

e. A written guarantee to perform the work executed in favor of EPA by one or more parent companies or subsidiaries of Respondent, or by one or more unrelated companies that have a substantial business relationship with Respondent; provided, however, that any company providing such a guarantee must demonstrate to the satisfaction of the EPA that it satisfies the

financial test requirements of 40 C.F.R. Section 264.143(f) with respect to the cost of the work that it proposes to guarantee in accordance herewith. To meet the written guarantee requirements under Alternative I of Section 264.151(f), Line 1 shall include the amount identified in the initial cost estimate or annually adjusted cost estimate for completing the remaining work. When calculating "Line 2 Total liabilities" for Alternative I, Respondent may deduct the portion of Line 1 that is included in the Total Liabilities on the year-end financial statements for the latest completed fiscal year of the person providing the written guarantee, and Respondent may add that amount to lines 3 and 4; or

f. A written guarantee to perform the work executed in favor of EPA by Respondent; provided, however, that Respondent must demonstrate to the satisfaction of the United States that they satisfy the financial test requirements of 40 C.F.R. Section 264.143(f) with respect to the cost of the work that it proposes to guarantee in accordance herewith.

2. If the Respondent seeks to post financial assurance for completion of the work under this Consent Order by means of a written guarantee, the Respondent shall also comply with the other relevant requirements of 40 C.F.R. Section 264.143(f), 40 C.F.R. Section 264.151(f), and 40 C.F.R. Section 264.151(h)(1) relating to these forms of financial assurance, including, but not limited to: (i) the initial submission of required reports and statements from the guarantors' chief financial officer and independent certified public accountant; (ii) the annual re-submission and certification of such reports and statements within ninety (90) days after the close of each of the guarantors' fiscal years; and (iii) the notification of EPA within ninety (90) days after the close of any of the guarantors' fiscal years in which any such guarantor no longer satisfies the financial test requirements set forth at 40 C.F.R. Section 264.143(f)(1). Respondent shall also notify EPA within thirty (30) days after Respondent becomes aware of any change in financial condition that will result in the inability to satisfy the financial test requirements set forth at 40 C.F.R. Section 264.143(f)(1).

3. Respondent may combine more than one mechanism to demonstrate financial assurance for the work to be performed under this Order, except that mechanisms guaranteeing performance rather than payment may not be combined with other instruments. Any proposed combination of financial assurance mechanisms must be submitted for EPA review and approval.

4. Any and all financial assurance instruments provided pursuant to this Section XXII shall be in form and substance satisfactory to EPA, determined in EPA's sole discretion, and not subject to Dispute Resolution, Section XV. The financial assurance instrument(s) provided pursuant to this Section XXII (including, without limitation, the original versions of letters of credit and other negotiable instruments issued for EPA's benefit) shall be submitted by Respondent to the EPA Project Coordinator in accordance with Section XIII ("Notification") of this Consent Order.

5. Whenever the annually adjusted estimate for the cost of completing the remaining work exceeds the amount of financial assurances already provided pursuant to this Section XXII,

the Respondent shall, within thirty (30) days thereafter, obtain and present to EPA for approval a revised form of financial assurance (and otherwise acceptable under this Section XXII) that reflects such cost increase. In addition, in the event that EPA determines at any time that the financial assurances provided pursuant to this Section XXII are inadequate (including, without limitation, the instrument(s) evidencing such assurances), Respondent shall, within thirty (30) days of receipt of notice of EPA's determination, obtain and present to EPA for approval one of the other forms of financial assurance listed in 40 CFR Section 264.143. Furthermore, if at any time EPA notifies Respondent that the anticipated cost of completing the work has increased, then, within thirty (30) days of receipt of such notification, Respondent shall obtain and present to EPA for approval a revised form of financial assurance (and otherwise acceptable under this Section XXII) that reflects such cost increase. Respondent's inability to post financial assurance for completion of the work shall in no way excuse performance of any other requirements of this Consent Order, including, without limitation, Respondent's obligation to complete the work in accordance with the terms hereof.

6. Any and all financial assurance instruments provided pursuant to this Section XXII shall provide EPA with immediate access to resources, whether in cash or in kind, to continue and complete the work under this Consent Order in the event EPA determines that Respondent (i) has ceased implementation of any portion of the work, (ii) is significantly or repeatedly deficient or late in its performance of the work, or (iii) is implementing the work in a manner which may cause an endangerment to human health or the environment. Respondent may invoke the procedures set forth in Section XV ("Dispute Resolution"), to dispute EPA's determination that any of the circumstances described in clauses (i), (ii), or (iii) of this Paragraph have occurred. If EPA has determined that any of the circumstances described in clauses (i), (ii), or (iii) of this Paragraph have occurred, and if EPA is nevertheless unable after reasonable efforts to secure the resources (whether in cash or in kind) necessary to continue and complete the work from the financial assurance instrument(s) posted by Respondent pursuant to this Section XXII, then, in such event, and upon receiving written notice from EPA, Respondent shall immediately deposit into an account specified by EPA, in immediately available funds and without setoff, counterclaim, or condition of any kind, a cash amount equal to the estimated cost of the remaining work to be performed as of such date, as determined by EPA.

7. a. Reduction of Amount of Financial Assurance. If the Respondent believes that the estimated cost to complete the remaining work has diminished below the amount covered by the existing financial security provided under this Consent Order, the Respondent may petition to reduce the amount of the financial security provided under this Section to the estimated cost of the remaining Work to be performed. The Respondent shall submit a written proposal for such reduction to EPA, which shall specify, at a minimum, the cost of the remaining work to be performed and the basis upon which such cost was calculated. The decision to accept such a proposal and to allow a reduction of the amount of financial assurance in accordance herewith shall rest in EPA's sole discretion. If EPA decides to accept such a proposal, EPA shall notify the Respondent of such decision in writing. After receiving EPA's written acceptance, Respondent may reduce the amount of the financial assurance in accordance with and to the

extent permitted by such written acceptance.

b. Release of Financial Assurance. If Respondent receives written notice from EPA in accordance with Paragraph XXV ("Termination and Satisfaction") hereof that the work has been fully and finally completed in accordance with the terms of this Consent Order, or if EPA otherwise so notifies Respondent in writing, Respondent may petition EPA to allow the release or discontinuance of the financial assurance required hereunder. Respondent shall submit a written proposal for such release to EPA which shall specify the basis for the requested release (e.g., full and final completion of the work, etc.). The decision to accept such a proposal for release of the financial assurance shall rest in EPA's sole discretion, and is not subject to Dispute Resolution in Section XV. If EPA decides to accept such a proposal, EPA shall notify the Respondent and the provider of the financial assurance of such decision in writing. The provider of the financial assurance may be released from its obligations under the instrument only upon a written release from the EPA.

XXIII. SUBSEQUENT MODIFICATION

A. This Consent Order may only be amended in writing by mutual agreement of EPA and Respondent. Any such amendment shall be in writing, shall be signed by both parties, shall have as its effective date the date on which it is signed by EPA, and shall be incorporated into this Consent Order by reference.

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 by reference. Any noncompliance with such EPA-approved reports, plans, specifications, schedules, submissions and attachments shall be considered a violation of this Consent Order and shall subject Respondent to the stipulated penalty provisions included in Section XIV ("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. In emergency situations, minor modifications may be agreed to by oral agreement of the Project Coordinators, subject to written confirmation by the Project Coordinators within seven (7) days of such oral agreement.

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.

XXIV. 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.

XXV. 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 obligations to comply with any continuing obligations hereunder including, but not limited to, Sections XI ("RECORD PRESERVATION"), XVII ("RESERVATION OF RIGHTS"), XVIII ("OTHER CLAIMS"), XIX ("OTHER APPLICABLE LAWS"), XX ("INDEMNIFICATION OF THE UNITED STATES GOVERNMENT"), XXI ("NOTICE OF NON-LIABILITY"), AND XXVII ("ATTORNEYS' FEES").

XXVI. SURVIVABILITY/PERMIT INTEGRATION

A. Subsequent to the issuance of this Consent Order, Respondent may request, and EPA may issue, a RCRA permit for the Facility that incorporates 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 for the Facility unless such requirement is expressly replaced by a requirement in the permit.

XXVII. ATTORNEYS' FEES

The Respondent shall bear its own costs and attorneys' fees.

XXVIII. EFFECTIVE DATE

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

IT IS SO AGREED AND ORDERED:

DATE: _____

BY: _____

JAMES J. BURKE
DIRECTOR, WASTE & CHEMICAL
MANAGEMENT DIVISION
UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY, REGION III

DATE: _____

BY: _____

(NAME)
(TITLE)
Giant Yorktown, Incorporated

XXVIII. EFFECTIVE DATE

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

IT IS SO AGREED AND ORDERED:

DATE: 8/16/06

BY: James J. Burke

JAMES J. BURKE
DIRECTOR, WASTE & CHEMICAL
MANAGEMENT DIVISION
UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY, REGION III

DATE: 8/11/06

BY: John J. Stokes

(NAME) Senior Vice President, Refining
(TITLE) John J. Stokes
Giant Yorktown, Incorporated