

OBJECTIONS OF INGERSOLL-RAND COMPANY
TO VILLAGE OF PAINTED POST
CONDEMNATION OF THE
INGERSOLL-RAND FOUNDRY PROPERTY
(57 +/- ACRES)
VILLAGE OF PAINTED POST, COUNTY OF STEUBEN

I. Introduction.

Ingersoll-Rand Company ("IR") has learned that the Board of Trustees of the Village of Painted Post, Steuben County, New York (the "Village") has commenced a process to condemn certain property owned by IR located in the Village of Painted Post, County of Steuben. IR understands that the Village seeks to condemn approximately 57.413 acres, depicted in Liber of Deeds at page 312 in the office of the Steuben County Clerk, Bath, New York (the "Premises") and located in the vicinity of West Water Street. IR hereby objects to the Village's condemnation of the Premises.

II. Background.

The Premises consists of approximately 57 acres of land upon which there existed a 287,000 +/- square foot foundry and numerous support buildings. The foundry operated from approximately 1920 through December 1985, and produced gray iron castings principally for IR's compressor plant located at a separate site in Painted Post, New York. The operations consisted of pattern construction, sand mold lines, melt furnaces, castings, shakeout, casting, clearing, and pattern and casting storage. After the foundry was idled in December 1985, an environmental evaluation and cleanup was conducted by IR as part of its facility closure activity.

The New York State Department of Environmental Conservation ("DEC") and IR have conducted various environmental investigations at and near the Premises. Information concerning the environmental investigations and cleanup that occurred at the Premises, and areas of the Premises that may have been impacted by releases of hazardous wastes, substances or constituents, can be obtained from documents submitted to the DEC at its Albany, New York office, and its Region 8 and/or Region 9 offices (Avon and Buffalo, New York, respectively). Attached as Exhibit 1 is a copy of the DEC March 1994 Record of Decision ("ROD") for the Premises, which includes a bibliography of documents included as a part of the administrative record for the ROD. That

administrative record is important for this eminent domain inquiry and is incorporated by reference into the record for this proceeding. The ROD presents considerable information about the Premises including an overview of its operational, disposal and environmental history, the remedial activity undertaken there, human health and environmental protection information, enforcement status, and a responsiveness summary from the DEC and New York State Department of Health ("DOH") to questions and comments made during a public meeting concerning proposed remedial action at the Premises.

A description of the DEC remedy for the Premises is presented in the ROD, which includes certain institutional controls, the placement of a deed restriction on the Premises, and fencing. A copy of that deed restriction, as required and approved by the DEC, is included as Exhibit 2. That deed restriction was entered and recorded in the Steuben County Clerk's Office on January 10, 2001 at Liber 1697, pages 314-325.

III. Objections to Condemnation

Section 201 of New York Eminent Domain Procedure Law (EDPL) provides as follows:

Except as provided herein, prior to acquisition, the condemnor, in order to inform the public and to review the public use to be served by a proposed public project and the impact on the environment and residents of the locality where such project will be constructed, shall conduct a public hearing in accordance with the provisions of this article at a location reasonably proximate to the property which may be acquired for such project.

A. THE VILLAGE HAS FAILED TO INFORM THE PUBLIC AND TO REVIEW THE PUBLIC USE IN A LAWFUL MANNER

IR is concerned about the welfare of the residents of the Village and the impact any redevelopment of the Premises will have on the environment and the community. IR's position is that the Premises should remain "as is", with existing controls in place under the

oversight of the DEC and IR. IR objects to the condemnation of the Premises, in significant part, because the Village does not have the appropriate information or data to describe to the community what the impact of any redevelopment of the Premises will have on future users, the surrounding community, the environment, and IR. Accordingly, the initiation of any eminent domain proceeding at this time is inherently defective under law, and prejudicial to the surrounding community and IR. It is IR's position that the Village is proceeding in a manner which violates Section 201 of the EDPL as well as a number of administrative, legal and regulatory requirements.

1. **The Premises is Restricted and Fenced**

Pursuant to the March 1994 Record of Decision, the DEC required the implementation of certain "institutional controls." Those institutional controls required that a deed restriction be placed on the Premises (See Exhibit 2), and that existing site security and fencing be maintained.

The deed restriction, which was approved by the DEC, is "for the purpose of promoting, benefitting, preserving and protecting the health and safety of the public and the environment" (pg. 2). The deed restriction imposes certain conditions and restrictions on the Premises, which are binding on IR and every person or entity who shall be an owner of the Premises or any part thereof. The restrictions specify that the Premises:

shall be held, transferred, sold, conveyed, occupied and developed
subject to the following conditions, covenants and restrictions:

1. Notice and warning is hereby provided that polynuclear aromatic hydrocarbons (PAHs), which are semi-volatile organic compounds, are located in soils at and below the ground

surface of the Premises. Notice and warning is hereby provided that these PAHs may pose an elevated risk to workers in a scenario where future use includes invasive activities at or below the Premises, and appropriate precautions should be taken.

2. No disturbance or excavation of surface or subsurface soils or other materials at or below the Premises, shall occur without the prior written notice to, and prior written approval of, I-R.
3. No use of the Premises may occur for other than industrial or commercial purposes.
4. Any activity or use not specifically permitted hereby or any activity prohibited pursuant hereto shall be forbidden (See Exhibit 2, pp. 2-3).

These restrictions, conditions and covenants run with the Premises and bind all owners and occupiers of the Premises or any part thereof, and their respective successors and assigns. The deed restrictions cover all 57+/- acres at the Premises. The deed restrictions also provide that the costs of any action to enforce the provisions of the deed restriction become a binding, personal obligation of the owner in breach. As for the fencing at the Premises, the ROD contemplates that the fencing will remain and be maintained.

a. Inadequate Information or Data

The Village has not provided the public with information about how it intends to address environmental conditions at the Premises. However, the deed restriction provides warning to the Village of environmental conditions, and potential human health and environmental risks. Also, the fencing is to be maintained to keep people off of the Premises.

The Village has presented no data or other information, either from historical environmental investigations at the Premises, or current data, as to whether the intended future use of the Premises (whatever that may be) is compatible, safe and lawful, given the environmental conditions at the Premises. Without such information or data, this proceeding is inherently defective, as the Village is unable to properly inform the public of a development or use which is consistent with conditions at the Premises and the mandates of the EDPL.

**b. Without IR's Consent, The Village's
Condemnation and Development
Plan Will Violate The Deed Restrictions**

The deed restrictions clearly mandate no disturbance or excavation of surface or subsurface soils, or other materials on, or below, the Premises, without prior written notice to, and the approval of, IR. The Village has not provided written notice to, nor received any approval from, IR, relative to the planned use of the Premises, or any related disturbance or excavation of surface or subsurface soils or other materials. Should the Village or any developer proceed to disturb or excavate any surface or subsurface soils or other materials at the Premises, without IR's consent, it will be in direct violation of the deed restriction. This would subject the Village (and the developer) to strict liability, and all resulting damages and attorneys' fees, arising out of that violation.^{1/}

^{1/} Even if the Village were somehow able to avoid the deed restrictions through the proposed eminent domain proceeding, there is an intrinsic, substantial value in the deed restrictions for which IR would have to be compensated as part of the valuation phase of the proceeding.

c. **Use Only for Commercial/Industrial Purposes**

The Village's condemnation proceeding is also defective because it fails to inform the public of the intended use of the Premises, and whether that intended use is for a commercial or industrial purpose. Indeed, IR has heard references to use of the Premises as a "call-center," a recreational area, and most recently as a warehouse/distribution center. If the Village or any developer is planning to use the Premises for other than commercial or industrial purposes, it would be in direct violation of the deed restrictions.

For example purposes only, the Village has failed to inform the public as to whether a future user of the Premises would include any residential development, a day care center, food processing or storage facilities, outdoor recreational facilities, common outdoor areas for employees, or similar uses. Any potential use of the Premises which is inconsistent with the deed restrictions, or environmental conditions at the Premises, puts the public at risk. The Village has failed to inform the public of the specific and intended uses of the Premises, so as to allow for informed decision making and public input on the proposed condemnation.

d. **The Premises is Subject to the DEC 1994 Record of Decision**

The DEC's 1994 Record of Decision for the Premises clearly requires the continued placement of the deed restrictions on the Premises, as well as fencing. IR is not aware that the Village has informed the DEC of its specific intentions and plans relative to redevelopment of the Premises. Similarly, IR is unaware that the Village has sought approval from the DEC for any proposed redevelopment activities, or that it has discussed meeting or changing the deed restriction or the requirement of maintaining fencing around the Premises.

Should the Village or any developer proceed to disturb or excavate any surface or subsurface soils, or other materials, at the Premises, or disturb the fencing in any manner, they will be in violation of the deed restrictions, the ROD, and be subject to strict liability and all resulting damages and related attorneys' fees.

**2. The Premises is Subject to a Consent Order Between
NYSDEC and IR and Applicable DEC Regulations**

IR and the DEC entered into an Administrative Order on Consent in 1987 (Exhibit 3 ("Order")). See Exhibit 3. That Order provides that "in the event [IR] proposes to convey the whole or any part of its ownership interest in the Site, while this Order remains in effect, [IR] shall, not less than thirty (30) days prior to the consummation of such proposed conveyance, notify the [DEC] in writing of the identity of the transferee and the nature and date of the proposed conveyance." In advance of such proposed conveyance, IR is to notify the transferee in writing of the applicability of the Order.

IR has no record of the Village formally communicating its intentions to the DEC concerning the Premises or any related redevelopment plan. It is clear from the Order that the DEC is to be informed of any conveyance. The DEC notice provision is designed to provide the DEC with adequate notice and an opportunity to consider all of the facts and issues related to the environmental conditions of the Premises as related to any conveyance, development or change in use at the Premises. The fact that the Village plans a conveyance by means of eminent domain does not eliminate the requirement that the DEC be notified properly.

Without the DEC's input regarding the Village's planned condemnation and redevelopment of the Premises, the Village has failed to provide the public with adequate

information so as to allow for informed decision-making. Accordingly, the initiation of any eminent domain proceeding at this time is inherently defective under the EDPL, inconsistent with the Consent Order, and prejudicial to the community and IR.

It is also important to note that the DEC notice provision in the Order is consistent with the notice requirements and related policies embodied in DEC regulations at 6 NYCRR Part 375. In pertinent part, Section 375.1.6 requires notice to DEC at least 60 days before the start of any physical alteration or construction constituting a substantial change in use of a site listed in the Registry. Clearly, what the Village is proposing for the Premises is a substantial change in use of the Premises (see 6 NYCRR § 375-1.3(v)). While the Village may claim that the need to notify the DEC is obviated because the Premises has been delisted, the clear intent of these regulatory provisions is to get DEC involved early in the process where any physical alteration or construction or other change in use of a site is contemplated. As provided in Section 375-1.8(b), the Registry is informational in nature, and a site is not required to be on the Registry to confer jurisdiction for action by the DEC.

**3. The Condemnation Will Subject The Village And Any
Future Developer To All Obligations and Liability Risks
Under Law For The Environmental And Other Conditions
At The Premises**

Should the Village proceed with a condemnation of the Premises, it will subject the Village and any developer to all of the present and future liabilities associated with the environmental conditions at the Premises. As the Village has provided no information to the public as to the extent or cost associated with these liabilities, the commencement of this eminent

domain proceeding is inherently defective. While the Village apparently intends to obtain access to the Premises to perform environmental sampling, so as to develop information regarding potential conditions and related liabilities, informed decisions concerning the proposed use of the Premises, and how it would impact the environment and residents, cannot be made until after that information is obtained and disseminated to the public in understandable form.

In addition, as a future owner or operator of the Premises, the Village and any developer are strictly liable for the environmental conditions of the Premises, and will be responsible for any resulting claims for injury to persons or property, and the cost of any future investigation and remediation activity.

The Village has failed to inform the public about the matters discussed above and to review the proposed public use of the Premises in a lawful manner as required by the EDPL and other pertinent statutes and regulations. Yet, the Village is proceeding to condemn the Premises and subject the Village to potentially significant liabilities. No information has been provided the public so as to allow for a proper and thorough assessment of these potential liabilities.

B. THE VILLAGE HAS FAILED TO INFORM THE PUBLIC AND REVIEW THE IMPACT ON THE ENVIRONMENT AND RESIDENTS OF PAINTED POST IN A LAWFUL MANNER

The Village has not only failed to inform the public of the matters discussed above, and to review the public use in a lawful manner, but it has also failed to inform the public and to review the impact of any proposed redevelopment of the Premises on the environment and residents of Painted Post.

**1. The Premises Has Not Been Adequately Investigated
For An Undefined Future Use**

The Village has resolved to and commenced proceedings to condemn the Premises, where there are known environmental conditions, without having done any environmental testing, and without providing the public with information describing how any future use of the Premises would be compatible with the overriding concern of protecting human health and the environment.

Without a proper environmental assessment of the Premises, an evaluation of planned uses, and an exposure assessment which integrates the environmental assessment and planned uses at the Premises, the Village has failed to inform the public of the impact on the environment and its residents. Without that information and evaluation, the Village is putting the environment and its residents at risk, and has failed to provide its residents with fundamental information required to make informed decisions, and to allow for meaningful reflection in these proceedings. While the Village may cite to various historical studies by DEC or IR, none of those studies contemplated a particular redevelopment, nor evaluated specific future use scenarios which could give rise to human or environmental exposure to historical environmental conditions at the Premises. Indeed, that is exactly why the Premises is fenced, and why there are deed restrictions prohibiting any disturbance or excavation at the Premises without IR's consent. Without a thorough investigation and study of the Premises as related to any potential future redevelopment, the Village has not met the EDPL requirement that the public be apprised of the effect such redevelopment will have on the populace and the environment.

2. **The Village Must Cease These Condemnation Proceedings until it Complies with SEQR**

The Village must cease all efforts to condemn the Premises until it has complied with the requirements of Article 8 of the Environmental Conservation Law, and the regulations promulgated under Article 8 and set forth at Part 617 of Title 6 of the New York Code of Rules and Regulations (collectively referred to as “SEQR”). Pursuant to SEQR, no state or local governmental agency may undertake, fund or approve an action until the agency has performed an adequate environmental review consisting of an evaluation of the nature, type, size and scope of the action and an assessment of whether the action has the potential to have a significant environmental impact. 6 NYCRR §617.3(a). If the action is one which may have a significant adverse environmental impact, an environmental impact statement or “EIS” must be prepared. Long Island Pine Barrens Society, Inc. v. Planning Board of Town of Brookhaven, 80 N.Y.2d 500, 512, 591 N.Y.S.2d 982 (1992).

As an initial matter, it is well established that SEQR applies to the attempts of local governments to condemn property. See Eminent Domain Procedures Law, Section 204(B)(3); See also Board of Cooperational Educational Services of Albany-Schoharie-Schenectady-Saratoga Counties v. Town of Colonie, 268 A.D.2d 838, 839-40, 702 N.Y.S.2d 219 (3d Dep’t 2000) (Condemnor’s determination and findings must be made in accordance with procedures set forth in Article 8 of the ECL, and as a general proposition, an EIS must be prepared).

It is also well established that SEQR must be commenced at the earliest possible time in the formulation of a project. The overriding purpose of SEQR is to assure that the

decision-maker has considered pertinent environmental information before making a final decision, and an EIS is the means by which such information is conveyed. Seymour v. Saratoga County, 190 A.D.2d 276, 279, 598 N.Y.S.2d 93 (3d Dep't 1993). For this reason, SEQR requires that actions be reviewed as early as possible in the decisional process; it frustrates the purpose of SEQR to delay preparation of an EIS beyond the point of actual decision-making. Id.; see also Tri-County Taxpayers Assn. v. Town Board of Town of Queensbury, 55 N.Y.2d 41, 47, 447 N.Y.S.2d 699 (Year?); ("[W]ith respect to any action which might have a significant effect on the environment, [the EIS] should be accessible to members of the Town Board and the public prior to action on the proposal in question"); Briody v. Village of Lewiston, 188 A.D. 2d 1017, 1018, 591, N.Y.S.2d 909 (4th Dep't 1992) ("The granting of an option to Respondent Defendant Atherton was one step in the process that was to culminate in the development of an inn, pub and restaurant on the property. It committed the municipal authorities to a definite course of future decisions".); Programming and Systems, Inc. v. New York State Urban Development Corporation, 61 N.Y.2d 738, 739, 472 N.Y.S.2d 912, 913 (1984) ("[A]n [EIS] mandated by ECL 8-0109 must be prepared and made available to the public before any significant authorization is granted for a specific proposal.").

Seymour v. Saratoga County, 190 A.D.2d at 276, is a particularly illustrative case involving the selection of a preferred site by the Saratoga County Board of Supervisors for a proposed new landfill. The County, relying on a consultant's recommendation, approved a preferred site for the proposed new landfill, and authorized the County Attorney to commence the SEQR process and the consultant to undertake other investigations and activities as required to site, design, construct and operate the landfill. The Court held that by selecting a preferred

site for the landfill, the County had committed itself to a specific course of action focused on the construction and operation of a landfill at the preferred site. In particular, the initiation of condemnation proceedings demonstrated that SEQR had been violated. "Having selected a site for the landfill and authorized concrete action with respect thereto, respondent moved from the preliminary planning stage into the realm of definite action and with it acquired a corresponding obligation to satisfy SEQR's requirements." Id at 280. As a result, the resolutions of the County identifying the preferred site and authorizing the activities required to site, design, construct and operate the landfill, including condemnation proceedings, were null and void. Id.

Similarly, the Village has prematurely committed itself to a particular parcel for condemnation and related redevelopment activities. IR submits that the Village must cease the condemnation proceedings, and related efforts to develop the Premises, until it has performed an adequate environmental review pursuant to SEQR. In particular, the Village must determine through the SEQR process whether the Premises, rather than other available alternative sites, is the location that will minimize adverse environmental impacts associated with any proposed redevelopment to the maximum extent practicable.

3. **The Village Must Prepare an Environmental Impact Statement**

SEQR requires the preparation of an environmental impact statement or EIS for any action which includes the potential to cause at least one significant adverse environmental impact. The threshold triggering the requirement that an EIS be prepared is relatively low; it need only be demonstrated that the action may have a significant effect on the environment.

Kahn v. Pasnik, 231 A.D.2d 568, 569, 647 N.Y.S.2d 279 (2d Dept. 1996), aff'd, 90 N.Y.2d 569, 664 N.Y.S.2d 584 (1997). In addition, as best IR can determine, the proposed condemnation and redevelopment of the Premises involves a Type I action under SEQR (construction of a non-residential facility with greater than 100,000 square feet of gross floor area; construction or physical alterations of 10 acres; or rezoning of 25 acres or more). For Type I actions there is a presumption that the proposed activity will have a significant adverse environmental impact and that an EIS must be prepared. Kirk-Astor Neighborhood Association v. Town Board of Town of Pittsford, 106 A.D.2d 868, 870, 483 N.Y.S.2d 526 (4th Dep't 1984), appeal dismissed, 66 N.Y.2d 896, 498 N.Y.S.2d 791(1985).

An EIS must assess any potentially significant adverse impact associated with the action and establish alternatives which will mitigate such significant impacts. In this case, an EIS is necessary to evaluate the environmental impacts associated with a development at the Property, compared with the environmental impacts of the development at an alternative location. Site specific impacts upon land use, water resources, air resource, traffic and human health must be assessed in detail. Impacts to human health must be considered, particularly

given the historical environmental conditions at the Premises, and the deed restrictions which were placed on the Property by IR and DEC that restrict development of the Premises.

Accordingly, the Village must cease all efforts to condemn the Premises until it has complied with the requirements of SEQR, including the preparation of an EIS.

C. THE VILLAGE HAS FAILED TO CONSIDER ALTERNATIVE PROPERTY FOR REDEVELOPMENT AND TO COMPLY WITH ITS OWN RESOLUTION AUTHORIZING COMMENCEMENT OF EMINENT DOMAIN PROCEEDINGS

IR submits that there are alternative parcels available that should be considered for the proposed development. Attached as Exhibit 4 is a copy of the March 30, 2004 letter of Howard P. Schultz and Associates (Schultz) detailing alternative parcels which are available in the immediate area of the Premises. Although the only parcel in the Village is considerably smaller than the Premises, there are large nearby parcels in the Town. For example, there is a 71 acre parcel about one mile west of the Premises. Interestingly, that parcel is owned by Corning Property Management Corporation. IR understands that one of the scenarios proposed for redevelopment of the Premises is ultimately for use by Corning. IR wonders why this, and other parcels controlled by Corning, were not considered, unless, of course, Corning had concerns about redeveloping those properties.

IR submits that any legitimate analysis of property suitable for the proposed project should include those identified by Schultz, and possibly others that could be identified through a reasonable search. Moreover, IR submits that SEQR requires the Village to evaluate such properties, regardless of whether they are outside the boundaries of the Village, to determine if they would be appropriate for any proposed development.

Finally, IR submits that the Village has not complied with its own resolution authorizing the commencement of the eminent domain process. See Exhibit 5. The resolution requires that the Village make a good faith written offer to IR to purchase the Premises before proceeding in eminent domain. At the time IR learned that the Village had scheduled the March 31 hearing to commence the eminent domain process, it was waiting to hear back from the Village's representatives about "innovative" methods to deal with concerns IR raised about certain aspects of any proposed sale of the Premises. Needless to say, IR was surprised that the Village opted to unilaterally terminate negotiations that could have potentially resulted in an arms-length transfer of the Premises, instead proceeding with condemnation. This is especially troubling given the resolution requirements noted above, and the fact that the Village did not make a good faith written offer to purchase the Premises.

D. CONCLUSION AND RELIEF REQUESTED

IR believes that the Village has improperly commenced this eminent domain proceeding because it has failed to evaluate and examine the proposed public use, thus making it impossible to inform the public of the impact it will have on the environment and residents of Painted Post. IR is concerned about the welfare of the residents of the Village and the impact a condemnation of the Premises and any redevelopment will have on the community. IR believes that the Village should abandon its plan for condemnation of the Premises, and look to alternative sites. The Premises should remain "as is," with controls in place under the oversight of DEC and IR.

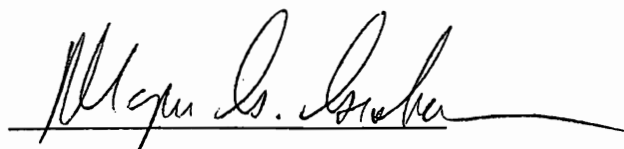
In the alternative, if the Village decides to continue the condemnation process, IR believes the Village should cancel, postpone or otherwise adjourn the initiation of its formal

eminent domain proceeding until such time as the Village addresses the concerns identified in A, B and C above; formally involves the DEC in this process; complies with all aspects of the deed restrictions, including obtaining the consent of IR with respect to any soil disturbance or excavation activities at the Premises; and complies with all SEQR requirements. These prerequisites are not only legally required, but are consistent with proper development standards designed to ensure the protection of human health and the environment. At the same time, the data generated to address the foregoing will provide the public with the information it needs to be informed and knowledgeable about the use and impact any redevelopment of the Premises is likely to have on the environment and the residents of Painted Post.

Respectfully Submitted,

March 31, 2004

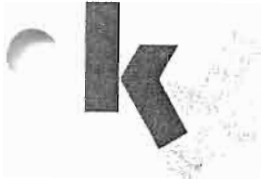
Ingersoll-Rand Company
by its attorneys
Phillips Lytle LLP

A handwritten signature in black ink, appearing to read "Megan L. Gribben", is written over a horizontal line.

To: Barbara A. Clarke, Village Clerk
Village of Painted Post, New York

To: Board of Trustees
Village of Painted Post, New York

BFLO Doc. # 1374701.5



The Krog Corp.

file
Former Ingersoll Rand Company
BEP

November 11, 2004

Munesh Patel
Harris Beach
99 Garnsey Road
Pittsford, NY 14534

Dear Munesh,

The following is our anticipated schedule of events which will take place once The Krog Corp. can access the site:

Week #1:

- Mobilize Site (Job Office, etc.)
- Post Property
- Survey Work (property line verification, layout, Topo Survey)
- Probe Drilling/Soils Sampling
- Occupy & Clean existing buildings
- Building layout
- Site clearing (trees, fence, etc.)

Week #2:

- Removal and crushing of existing concrete floor slabs, etc.

Week #3:

- Excavation balance site, footings and foundations.

Very Truly Yours,

John P. Schleyer
Project Manager

New York State Department of Environmental Conservation

Division of Environmental Remediation

Bureau of Technical Support, 11th Floor

625 Broadway, Albany, New York 12233-7020

Phone: (518) 402-9553 • FAX: (518) 402-9577

Website: www.dec.state.ny.us



Erin M. Crotty
Commissioner

RECEIVED

JUN 10 2004

MEMORANDUM

TO: See Distribution List

FROM: Kelly Bologna, NYSDEC - DER Bureau of Technical Support *Kelly A Bologna*

SUBJECT: Brownfield Cleanup Program Application
Ingersol-Rand Foundry, C851012

DATE: JUN - 2 2004

The attached Brownfield Cleanup Program Application for remedial work at the subject site has been forwarded to you for your records and/or processing according to the established Brownfield Cleanup Program procedures. If you require additional copies or the complete series of the related application's attachments, please contact me at 518-402-9553.

The Time and Activity Code for the subject site is: N514 (On-Site); N515 (Off-Site)

Attachment(s)

Distribution

Original (with all attachments) to:

Bart Putzig, NYSDEC - Region 8

Copy (with all attachments) to:

Glen Bailey, NYSDEC - Region 9

Gary Litwin, NYSDOH - DEHI Bureau of Environmental Exposure Investigation

Anne Hohenstein, NYSOSC

Copy (without attachments) to:

Anthony Quartararo, NYSDEC - DEE Superfund and Voluntary Cleanup Bureau

Christina Dowd, NYSDEC - DFWMR Bureau of Habitat

Ed Belmore, NYSDEC - DER Remedial Bureau D

**New York State Department of Environmental Conservation
Division of Environmental Remediation**

Bureau of Technical Support, 11th Floor
625 Broadway, Albany, New York 12233-7020
Phone: (518) 402-9553 • FAX: (518) 402-9577
Website: www.dec.state.ny.us



JUN - 2 2004

Mr. Peter Krog
Painted Post Development, LLC
4 Centre Drive
Orchard Park, New York 14127

Re: Brownfield Cleanup Application
Ingersoll-Rand Foundry Site
BCP ID C851012

RECEIVED

JUN 10 2004

DER/HAZ. WASTE REMED
REGION 8

Dear Mr. Krog:

The New York State Department of Environmental Conservation (Department) is in receipt of your application for participation in the Brownfield Cleanup Program (BCP) pursuant to ECL Section 27-1400 et seq. As you know, the BCP is a cooperative approach between the Department and lenders, developers, and current and prospective owners. The program fosters private-sector remediation of brownfields and reduces development pressures on "greenfields." We are pleased to advise you that your application has been determined to be complete.

Pursuant to ECL Section 27-1407(5), a thirty-day public comment period is to be commenced upon the Department's determination that an application is complete. The party seeking to participate in the BCP is required under the BCP to notify in writing individuals on the site contact list (see the supplemental list attached). At a minimum, this includes the chief executive officer and zoning board of each county, city, town and village in which the proposed brownfield site is located, as well as residents of the site, the public water supplier which services the area, any person who has requested to be placed on the brownfield site contact list, and the administrator of any school or day care facility located adjacent to or near the site. Further, the Department will publish a similar notice in the Environmental Notice Bulletin.

In order to facilitate the notifications, the Department has prepared the enclosed Public Notice for you to utilize and the instructions for placing and mailing the notifications as well as the document repository location and contents. As the applicant you are responsible for making available a copy of the application and copies of all other related attached documents such as any assessment and investigation reports and/or investigation or remedial work plans. Also, you must use this Department-approved Public Notice form and cannot provide any other or additional information when fulfilling your obligation to provide notice of the application and comment period. The enclosed form should be provided to a local newspaper servicing the area including the brownfield site for publication no later than June 9, 2004. Additionally, all of the above-mentioned mailings should be completed no later than June 8, 2004. To the extent that the mailings and publications are not completed in accordance

with these time frames, the Department will extend the comment period for a period sufficient to comply with the required thirty-day notice requirement running from the latest of the mailings or publication.

A certificate of mailing, on the enclosed form, is required to be submitted within three days of the mailing. Further, the proof of publication provided by the newspaper must be submitted within three days of your receipt of such document. These documents should be submitted to the Department's project manager at:

New York State Department of Environmental Conservation - Region 8
6274 E. Avon-Lima Road
Avon, New York 14414
ATTN: Bart Putzig

The Department will make every effort to determine your eligibility and status under the BCP by July 24, 2004. We look forward to working cooperatively with you to address the environmental conditions at the brownfield site and to return this property back to productive use.

Sincerely,



Kelly A. Bologna, P.E.
Chief
Site Control Section

Enclosures

cc: w/enc.:

R. Murray, Harris Beach LLP
B. Putzig, Region 8
M. VanValkenburg, NYSDOH
A. Quartararo

w/o enc.:

E. Belmore
G. Bailey

Instructions to Applicant Regarding Placing and Mailing of Notification Regarding Completeness Determination

- 1) The enclosed notice must be provided, without modification, by the applicant to a local newspaper of general circulation servicing the area including the brownfield site for publication no later than the date specified in the cover letter. The notice must be located prominently in the community bulletin section or similar local section of the newspaper. The notice must be published in English and in any other language spoken by significant numbers of people within the community.
- 2) The enclosed notice must be mailed, without modification, by the applicant to the brownfield site contact list as identified in the applicant's application. The mailing must be performed by the date specified in the cover letter. No other materials can be mailed with this notice.
- 3) The applicant must complete and submit to the Department the attached certificate of mailing within the time frame specified in the cover letter.
- 4) The applicant must forward to the Department proof of publication by the newspaper of the newspaper notice within the time frame specified in the cover letter.
- 5) The applicant must make available a copy of the application and all other related documents (i.e., Phase Assessment Reports, Remedial Investigation Work Plans and Reports and Remedial Design Work Plans) at the document repository specified in the public notice.

Instructions to Newspapers Regarding Printing the Public Notice

The enclosed notice announces the receipt of an application by the New York State Department of Environmental Conservation to the Department's Brownfield Cleanup Program. Pursuant to ECL Section 27-1407(5), the notice must be located prominently in the community bulletin section or similar local section of the newspaper. The notice must be published in English and in any other language spoken by significant numbers of people within the community.

Instructions to Individuals Receiving the Public Notice

The enclosed notice announces the receipt of an application by the New York State Department of Environmental Conservation to the Department's Brownfield Cleanup Program (BCP). Pursuant to ECL Section 27-1407(5), upon the Department's determination that a BCP application is complete, the applicant must send notice of the application to individuals on a site contact list. Please read the enclosed notice for further information and instructions.

Brownfield Cleanup Program

Ingersoll-Rand Foundry Site
Village of Painted Post, Steuben County
State of New York

NOTICE **Pursuant to ECL 27-1407 and 1417**

The New York State Department of Environmental Conservation (Department) administers the Brownfield Cleanup Program (BCP) pursuant to ECL 27-1400 et seq. The Brownfield Cleanup Program is designed to encourage the remediation of contaminated properties known as brownfields for reuse and redevelopment. Painted Post Development, LLC has submitted an application to participate in the Brownfield Cleanup Program. The application was determined to be complete by the Department on May 26, 2004. The property described in the application is located at 450 West Water Street, Painted Post, New York 14870. The application proposes that the applicant will conduct investigation and/or remedial activities at the site. The application proposes that the site will be used for commercial purposes.

The Department will receive public comments concerning the application for thirty days from June 9, 2004 through July 9, 2004. After review of the application and any public comments received, the Department will determine whether to accept the Applicant's request to participate in the Brownfield Cleanup Program. If the Department accepts the Applicant's request to participate, it will execute a Brownfield Cleanup Agreement (BCA) with the Applicant. By executing a BCA, the Applicant would commit to undertake certain remedial activities under the Department's oversight. A copy of the application as well as copies of previously prepared documents and reports related to the site are available at the document repository for this site located at the Southern Tier Library System, 9424 Scott Road, Painted Post, New York 14870.

The referenced documents have been submitted for background information to this BCP application. The Department, in conjunction with the New York State Department of Health will review these documents during the public comment period.

All citizens are encouraged to offer comments in writing to and refer questions to:

New York State Department of Environmental Conservation - Region 8
6274 E. Avon-Lima Road
Avon, New York 14414
ATTN: Bart Putzig
Phone No. (585) 226-5349

Ingersoll-Rand Foundry Site
BCP ID C851012

CERTIFICATION OF MAILING

I certify that I mailed on _____ a copy of the attached
_____ by first class mail upon the person(s) on the attached
mailing list, by depositing a true copy thereof, securely enclosed in a postpaid wrapper, in
the Post Office box at _____ in the
City of _____, New York, which box is under the
exclusive care and custody of the United States Post Office Department:

Signature

Date

NAME AND ADDRESS OF OWNER OF SITE

Ingersoll-Rand Company 200 200 Chestnut Ridge Road Woodcliff Lake, NJ 07677
Attn: Aaron Kleinbaum, Esq.

NAME AND ADDRESS OF RESIDENTS, OWNERS AND OCCUPANTS OF PROPERTIES ADJACENT TO SITE

Mike Rosbaugh	400 W. High Street	Painted Post, NY 14870
Elisabeth McKnight	402 W. High Street	Painted Post, NY 14870
Carroll Clark	404 W. High Street	Painted Post, NY 14870
Roberta McIlwain	408 W. High Street	Painted Post, NY 14870
Henry Havert	409 W. High Street	Painted Post, NY 14870
Larry Smith	412 W. High Street	Painted Post, NY 14870
Pam Rogers	416 W. High Street	Painted Post, NY 14870
Brian Valania	417 W. High Street	Painted Post, NY 14870
Tod and Wendy Kimmey	418 W. High Street	Painted Post, NY 14870
Larry Jenks	419 W. High Street	Painted Post, NY 14870
Current Resident	420 W. High Street	Painted Post, NY 14870
Richard Lewis	421 W. High Street	Painted Post, NY 14870
Current Resident	422 W. High Street	Painted Post, NY 14870
Duane Cooper	424 W. High Street	Painted Post, NY 14870
James Plumely	425 W. High Street	Painted Post, NY 14870
Judith Bischoff	428 W. High Street	Painted Post, NY 14870
Dan Coats	429 W. High Street	Painted Post, NY 14870
Current Resident	432 W. High Street	Painted Post, NY 14870
Nicole Hedden	433 W. High Street	Painted Post, NY 14870
Tracy Onolee	435 W. High Street	Painted Post, NY 14870
A. Hall	436 W. High Street	Painted Post, NY 14870
Jeanette Gellart	439 W. High Street	Painted Post, NY 14870
Wallace Marribitt	440 W. High Street	Painted Post, NY 14870
Current Resident	441 W. High Street	Painted Post, NY 14870
Julie Blodgett	443 W. High Street	Painted Post, NY 14870
Douglas Stowell	444 W. High Street	Painted Post, NY 14870
Shannon Fichter	448 W. High Street	Painted Post, NY 14870
Thomas Corey	449 W. High Street	Painted Post, NY 14870
David Dann	451 W. High Street	Painted Post, NY 14870
Roger & Sandra Rose	452 W. High Street	Painted Post, NY 14870
Tim Thomas	453 W. High Street	Painted Post, NY 14870
Julie Glover	455 W. High Street	Painted Post, NY 14870
Alice Sperryak	456 W. High Street	Painted Post, NY 14870
Current Resident	459 W. High Street	Painted Post, NY 14870
G. J. Vang	460 W. High Street	Painted Post, NY 14870
Florence DiGiacomo	461 W. High Street	Painted Post, NY 14870
Jamie Hussak	463 W. High Street	Painted Post, NY 14870
Robert Adams	464 W. High Street	Painted Post, NY 14870
Darla Savey	465 W. High Street	Painted Post, NY 14870
Darryl Swift	500 W. High Street	Painted Post, NY 14870
David Peris	504 W. High Street	Painted Post, NY 14870
Elizabeth McCarthy	508 W. High Street	Painted Post, NY 14870
William Shauger	512 W. High Street	Painted Post, NY 14870
George Lott	516 W. High Street	Painted Post, NY 14870
Randy Dann	520 W. High Street	Painted Post, NY 14870
Hugh Turner	524 W. High Street	Painted Post, NY 14870
Hanson Thyrsa	528 W. High Street	Painted Post, NY 14870

Josephine Ellett	532	W. High Street	Painted Post, NY 14870
Bill Winter	536	W. High Street	Painted Post, NY 14870
Current Resident	539	W. High Street	Painted Post, NY 14870
Kevin Andrukat	540	W. High Street	Painted Post, NY 14870
Joseph Canale	544	W. High Street	Painted Post, NY 14870
Jerome Overstrom	548	W. High Street	Painted Post, NY 14870
Rosemary Brace	549	W. High Street	Painted Post, NY 14870
Richard Potter	555	W. High Street	Painted Post, NY 14870
Polly Remchuk	556	W. High Street	Painted Post, NY 14870
Fred Herbst	559	W. High Street	Painted Post, NY 14870
Daniel Wilson	560	W. High Street	Painted Post, NY 14870
Amon Perry	561	W. High Street	Painted Post, NY 14870
Jennifer Butts	562	W. High Street	Painted Post, NY 14870
Jon Vine	563	W. High Street	Painted Post, NY 14870
Dawn Nester	564	W. High Street	Painted Post, NY 14870
Noah & Kim Zigas	565	W. High Street	Painted Post, NY 14870
Michelle Crannell	566	W. High Street	Painted Post, NY 14870
Janet Tolbert	567	W. High Street	Painted Post, NY 14870
Debra Dillon	568	W. High Street	Painted Post, NY 14870
James Colavecchi	569	W. High Street	Painted Post, NY 14870
Daniel Divens	570	W. High Street	Painted Post, NY 14870
Jodi Smith	571	W. High Street	Painted Post, NY 14870
Ken Yentzer	572	W. High Street	Painted Post, NY 14870
Jean Connelly	573	W. High Street	Painted Post, NY 14870
Current Resident	574	W. High Street	Painted Post, NY 14870
Arthur Nelson	575	W. High Street	Painted Post, NY 14870
Tina Turner	576	W. High Street	Painted Post, NY 14870
Jill Specht	577	W. High Street	Painted Post, NY 14870
Bernice Ferris	578	W. High Street	Painted Post, NY 14870
James Cawley	579	W. High Street	Painted Post, NY 14870
Rockne Locey	580	W. High Street	Painted Post, NY 14870
Emerst Northrup	582	W. High Street	Painted Post, NY 14870
Douglas Baker	584	W. High Street	Painted Post, NY 14870
Cynthia Frost	586	W. High Street	Painted Post, NY 14870
James Meckley	588	W. High Street	Painted Post, NY 14870
James Pierri	590	W. High Street	Painted Post, NY 14870
Douglas Tong	592	W. High Street	Painted Post, NY 14870

Ruth Ann Morse	403	Brainard Place	Painted Post, NY 14870
Kevin Proudfoot	409	Brainard Place	Painted Post, NY 14870
Steven McGannon	415	Brainard Place	Painted Post, NY 14870
Harold Hager	421	Brainard Place	Painted Post, NY 14870
Andrea Naylor	427	Brainard Place	Painted Post, NY 14870
Ed Griffin	433	Brainard Place	Painted Post, NY 14870
Patricia Chang	439	Brainard Place	Painted Post, NY 14870
William Woodworth	447	Brainard Place	Painted Post, NY 14870
Current Resident	449	Brainard Place	Painted Post, NY 14870
Lisa Coleman	451	Brainard Place	Painted Post, NY 14870
Bob & Susie Halm	457	Brainard Place	Painted Post, NY 14870
Mary Williams	459	Brainard Place	Painted Post, NY 14870
Bradley Miller	461	Brainard Place	Painted Post, NY 14870
Mary Bondellio	463	Brainard Place	Painted Post, NY 14870

Ron Wilson	465	Brainard Place	Painted Post, NY 14870
Floyd Ziegenfuss	467	Brainard Place	Painted Post, NY 14870
Thomas Wenderlich	111	Charles Street	Painted Post, NY 14870
Edith Caton	112	Charles Street	Painted Post, NY 14870
Richard Winters	123	Charles Street	Painted Post, NY 14870
Stephen Vandermark	126	Charles Street	Painted Post, NY 14870
Kathleen Leipold	127	Charles Street	Painted Post, NY 14870
Patricia Kacyon	130	Charles Street	Painted Post, NY 14870
Maria Thompson	131	Charles Street	Painted Post, NY 14870
Joseph McClure	136	Charles Street	Painted Post, NY 14870
Darrell Hamel	137	Charles Street	Painted Post, NY 14870
Margaret Johnson	140	Charles Street	Painted Post, NY 14870
Karen Dutcher	143	Charles Street	Painted Post, NY 14870
Marge Rutledge	145	Charles Street	Painted Post, NY 14870
Charles Street School	165	Charles Street	Painted Post, NY 14870
Current Resident	16-12	Charles Street	Painted Post, NY 14870
Current Resident	205	Chemung Street	Painted Post, NY 14870
Alvin Hemly	208	Chemung Street	Painted Post, NY 14870
Duane Bakeman, Jr.	213	Chemung Street	Painted Post, NY 14870
George Bennett	218	Chemung Street	Painted Post, NY 14870
Eddie Connett	220	Chemung Street	Painted Post, NY 14870
Current Resident	225	Chemung Street	Painted Post, NY 14870
John DiaGiacomo	500	Chemung Street	Painted Post, NY 14870
Current Resident	502	Chemung Street	Painted Post, NY 14870
Thomas Colvin	504	Chemung Street	Painted Post, NY 14870
Erika Ormsby	506	Chemung Street	Painted Post, NY 14870
Current Resident	508	Chemung Street	Painted Post, NY 14870
Current Resident	510	Chemung Street	Painted Post, NY 14870
Susan Farmer	514	Chemung Street	Painted Post, NY 14870
Current Resident	516	Chemung Street	Painted Post, NY 14870
Robert Buchanan	518	Chemung Street	Painted Post, NY 14870
Current Resident	520	Chemung Street	Painted Post, NY 14870
Current Resident	522	Chemung Street	Painted Post, NY 14870
Shari Reynolds	524	Chemung Street	Painted Post, NY 14870
Larry Hankinson	524	Chemung Street	Painted Post, NY 14870
Current Resident	528	Chemung Street	Painted Post, NY 14870
Eugene Brush	530	Chemung Street	Painted Post, NY 14870
Mark Stevens	532	Chemung Street	Painted Post, NY 14870
Current Resident	534	Chemung Street	Painted Post, NY 14870
Eugene Cotter	538	Chemung Street	Painted Post, NY 14870
Joan Candleana	540	Chemung Street	Painted Post, NY 14870
Current Resident	550	Chemung Street	Painted Post, NY 14870
Nancy Givens	552	Chemung Street	Painted Post, NY 14870
Current Resident	558	Chemung Street	Painted Post, NY 14870
Paul Close	560	Chemung Street	Painted Post, NY 14870
Donald Kreamer	564	Chemung Street	Painted Post, NY 14870
Current Resident	566	Chemung Street	Painted Post, NY 14870
Current Resident	205	Maple Avenue	Painted Post, NY 14870
Current Resident	248	Maple Avenue	Painted Post, NY 14870

Current Resident	250	Maple Avenue	Painted Post, NY 14870
Richard Hoyt	501	Park Place	Painted Post, NY 14870
Peter Cook	503	Park Place	Painted Post, NY 14870
Allison Denning	507	Park Place	Painted Post, NY 14870
Brian & Lori Murphy	511	Park Place	Painted Post, NY 14870
Ron Stiles	515	Park Place	Painted Post, NY 14870
Joseph Stratton	519	Park Place	Painted Post, NY 14870
Alberta Tschantre	523	Park Place	Painted Post, NY 14870
Scott Nadia	527	Park Place	
Thomas Pierri	531	Park Place	Painted Post, NY 14870
Daniel Borden	535	Park Place	Painted Post, NY 14870
Betty Houghtaling	402	Pine Street	Painted Post, NY 14870
Julie & David Koeing	414	Pine Street	Painted Post, NY 14870
Pamel Price	420	Pine Street	Painted Post, NY 14870
Ken Burmeister	430	Pine Street	Painted Post, NY 14870
Janet Crans	440	Pine Street	Painted Post, NY 14870
James Dugan	446	Pine Street	Painted Post, NY 14870
Michael Dailey	448	Pine Street	Painted Post, NY 14870
Terry Hoopes	458	Pine Street	Painted Post, NY 14870
Carl Ramberg	460	Pine Street	Painted Post, NY 14870
Canelyn Stratton	464	Pine Street	Painted Post, NY 14870
James King	202	Rand Avenue	Painted Post, NY 14870
Tracy Fish	206	Rand Avenue	Painted Post, NY 14870
Claude Woodhouse	214	Rand Avenue	Painted Post, NY 14870
Current Resident	220	Rand Avenue	Painted Post, NY 14870
Terri Wenderlich	240	Rand Avenue	Painted Post, NY 14870
James Youngman, Jr.	242	Rand Avenue	Painted Post, NY 14870
Scott Stowell	248	Rand Avenue	Painted Post, NY 14870
Michael Preston	257	Rand Avenue	Painted Post, NY 14870
Ron Ruter	111	Steuben Street	Painted Post, NY 14870
Rob Galvin	115	Steuben Street	Painted Post, NY 14870
Current Resident	119	Steuben Street	Painted Post, NY 14870
Current Resident	125	Steuben Street	Painted Post, NY 14870
William Scheidweiler	127	Steuben Street	Painted Post, NY 14870
Ron Braden	131	Steuben Street	Painted Post, NY 14870
Howard Green	137	Steuben Street	Painted Post, NY 14870
Paul Appel	139	Steuben Street	Painted Post, NY 14870
Current Resident	204	W. Water Street	Painted Post, NY 14870
David Fowler	220	W. Water Street	Painted Post, NY 14870
Richard Davis	224	W. Water Street	Painted Post, NY 14870
William Wood	240	W. Water Street	Painted Post, NY 14870
Clarence Williams	302	W. Water Street	Painted Post, NY 14870
Jeff Boylan	308	W. Water Street	Painted Post, NY 14870
Gregory Dilorio	314	W. Water Street	Painted Post, NY 14870
Dale Coumbe	324	W. Water Street	Painted Post, NY 14870
Current Resident	330	W. Water Street	Painted Post, NY 14870
Theon Gestwicki	334	W. Water Street	Painted Post, NY 14870



Alan Kenyon

342 W. Water Street

Painted Post, NY 14870

Kristie Wormelsdorf

PO Box 415

Painted Post, NY 14870

Ron Stephens

PO Box 254

Painted Post, NY 14870

Joseph Steadman

PO Box 182

Painted Post, NY 14870

Mr. Lawrence Ennist
N.Y.S. D.E.C.
625 Broadway
Albany, NY 12233-7017

Mr. Michael Podd
N.Y.S. D.E.C., Region 9
270 Michigan Ave.
Buffalo, N.Y 14203

Community Outreach File
N.Y.S. D.E.C., Region 9
270 Michigan Avenue
Buffalo, NY 14203

Ms. Meaghan Boice-Green
N.Y.S. D.E.C., Region 9
270 Michigan Avenue
Buffalo, NY 14203

Mr. Daniel David
N.Y.S. D.E.C., Region 9
270 Michigan Avenue
Buffalo, NY 14203

Mr. Martin Doster
N.Y.S. D.E.C., Region 9
270 Michigan Avenue
Buffalo, NY 14203

Mr. Daniel King
N.Y.S. D.E.C., Region 9
270 Michigan Avenue
Buffalo, NY 14203

Mr. Gerald Mikol
N.Y.S. D.E.C., Region 9
270 Michigan Ave.
Buffalo, N.Y 14203

Mr. Cameron O'Connor
N.Y.S. D.O.H.
584 Delaware Avenue
Buffalo, NY 14202

Mr. Matt Forcucci
N.Y.S. D.O.H.
584 Delaware Avenue
Buffalo, NY 14202

Mr. Mark VanValkenburg
N.Y.S. D.O.H., Room 205
547 River Street
Troy, NY 12180

Mr. Michael Basile
USEPA - Public Info. Office
345 3rd Street, Rm. 530
Niagara Falls, NY 14303

Commissioner Michael Walters
Erie Co. Emergency Services
95 Franklin Street
Buffalo, NY 14202

Commissioner Laurence Rubin
Erie Co. Environment & Plan.
95 Franklin Street
Buffalo, NY 14202

Commissioner Anthony Billittier
Erie Co. Health Dept., Rm 931
95 Franklin Street
Buffalo, NY 14202

Honorable Joel Giambra
Erie County Executive
95 Franklin Street
Buffalo, NY 14202

Mr. Paul Leone
Erie County I.D.A.
275 Oak Street
Buffalo, NY 14203

Mr. Kevin Kelley
Erie County Legislature Clerk
25 Delaware Avenue
Buffalo, NY 14202

Mr. Patrick Daley
Erie County Local Emergency
95 Franklin Street
Buffalo, NY 14202

Ms. Tanya Alexander
National Fuel Gas
10 Lafayette Square
Buffalo, NY 14203

Mr. Alex Cukan, Director
Interfaith Center for Env.
1260 Delaware Avenue
Buffalo, NY 14209

Ms. Judy Robinson
Citizens Env. Coalition
543 Franklin Street
Buffalo, NY 14202-1109

Mr. Michael Davoli
N.Y.P.I.R.G., Suite 203
520 Lee Entrance
Amherst, NY 14226

Mr. Alfred Price
SUNY @ Buffalo, Planning Dept
3435 Main Street
Buffalo, NY 14214

Mr. Brian Smith
Citizens Campaign-Environment
3144 Main Street
Buffalo, NY 14214

Mr. Don Kill
Erie County Sportsmen's Fed.
55 Winstead Road
Lackawanna, NY 14218

Chairman Michael Kukla
Sierra Club, Niagara Group
791 Parkside Avenue
Buffalo, NY 14216



BROWNFIELD CLEANUP PROGRAM (BCP) APPLICATION

ECL ARTICLE 27 / TITLE 14

10/9/03

Applicant Information			
NAME Painted Post Development, LLC			
ADDRESS 4 Centre Drive			
CITY/TOWN Orchard Park, New York		ZIP CODE 14127	
PHONE (716) 667-1234	FAX (716) 667-1258	E-MAIL plkrog@krogcorp.com	
NAME OF APPLICANT'S REPRESENTATIVE Peter L. Krog			
ADDRESS 4 Centre Drive			
CITY/TOWN Orchard Park, NY		ZIP CODE 14127	
PHONE (716) 667-1234	FAX (716) 667-1258	E-MAIL plkrog@krogcorp.com	
<p>THE APPLICANT MUST CERTIFY THAT IT IS EITHER A PARTICIPANT OR VOLUNTEER IN ACCORDANCE WITH ECL § 27-1405 (1) BY CHECKING ONE OF THE BOXES BELOW:</p> <p><input type="checkbox"/> PARTICIPANT An applicant who either 1) was the owner of the site at the time of the disposal of hazardous waste or discharge of petroleum or 2) is otherwise a person responsible for the contamination, unless the liability arises solely as a result of ownership, operation of, or involvement with the site subsequent to the disposal of hazardous waste or discharge of petroleum.</p> <p><input checked="" type="checkbox"/> VOLUNTEER An applicant other than a participant, including an applicant whose liability arises solely as a result of ownership, operation of or involvement with the site subsequent to the disposal of hazardous waste or discharge of petroleum.</p> <p>NOTE: By checking this box, the applicant certifies that he/she has exercised appropriate care with respect to the hazardous waste found at the facility by taking reasonable steps to: i) stop any continuing discharge; ii) prevent any threatened future release; and iii) prevent or limit human, environmental, or natural resource exposure to any previously released hazardous waste.</p>			
Applicant Relationship to Property (check one): <input type="checkbox"/> Previous Owner <input type="checkbox"/> Current Owner <input checked="" type="checkbox"/> Potential /Future Purchaser <input type="checkbox"/> Other _____			
Current Owner/Operator Information			
OWNER'S NAME (if different from applicant) Ingersoll-Rand Company			
ADDRESS 200 Chestnut Ridge Road			
CITY/TOWN Woodcliff, NJ		ZIP CODE 07677	
PHONE (201) 573-3233	FAX (201) 573-3448	E-MAIL aaron.kleinbaum@irco.com	
OPERATOR'S NAME (if different from applicant)			
ADDRESS			
CITY/TOWN		ZIP CODE	
PHONE	FAX	E-MAIL	

Site Information

SITE NAME Ingersoll-Rand Foundry Site

SITE ADDRESS 450 West Water St. CITY/TOWN Painted Post, NY ZIP CODE 14870

COUNTY Steuben SITE SIZE (ACRES) 57.41

LATITUDE 42 N 09' 3" LONGITUDE 77 W 05' 65"

PLEASE ATTACH A COUNTY TAX MAP WITH IDENTIFIER NUMBERS, ALONG WITH ANY FIGURES NEEDED TO SHOW THE LOCATION AND BOUNDARIES OF THE SITE. ALSO INCLUDE A USGS 7.5 MINUTE QUAD MAP IN WHICH THE SITE IS LOCATED. See Attachment 1

1. DO THE SITE BOUNDARIES CORRESPOND TO TAX MAP METES AND BOUNDS? ☒ YES ☐ NO
IF NO, PLEASE ATTACH A METES AND BOUNDS DESCRIPTION OF THE SITE.
2. IS THE SITE PART OF A DESIGNATED BROWNFIELD OPPORTUNITY AREA PURSUANT TO GML970-R? IF YES, IDENTIFY AREA (NAME) _____ ☐ YES ☒ NO
3. IS THE SITE PART OF A DESIGNATED EN-Zone PURSUANT TO TL § 21(b)(6). IF YES, IDENTIFY AREA (NAME) _____ ☐ YES ☒ NO

Applicant Eligibility Information (Please refer to ECL § 27-1407)

1. ARE ANY ENFORCEMENT ACTIONS PENDING AGAINST THE APPLICANT REGARDING THIS SITE? ☐ YES ☒ NO
2. IS THE APPLICANT SUBJECT TO AN OUTSTANDING CLAIM BY THE SPILL FUND FOR THIS SITE? ☐ YES ☒ NO
3. HAS THE APPLICANT VIOLATED ANY PROVISION OF ECL ARTICLE 27? ☐ YES ☒ NO
4. HAS THE APPLICANT BEEN PREVIOUSLY DENIED ENTRY TO THE BCP? ☐ YES ☒ NO
5. HAS THE APPLICANT COMMITTED A NEGLIGENT OR INTENTIONALLY TORTIOUS ACT REGARDING HAZARDOUS WASTE OR PETROLEUM? ☐ YES ☒ NO
6. HAS THE APPLICANT BEEN CONVICTED OF A CRIMINAL OFFENSE THAT INVOLVES A VIOLENT FELONY, FRAUD, BRIBERY, PERJURY, THEFT, OR OFFENSE AGAINST PUBLIC ADMINISTRATION? ☐ YES ☒ NO
7. HAS THE APPLICANT KNOWINGLY FALSIFIED STATEMENTS OR CONCEALED MATERIAL FACTS IN A MATTER RELATED TO THE DEPARTMENT? ☐ YES ☒ NO
8. HAS THE APPLICANT, BASED ON THE PROVISIONS OF ECL ARTICLE 27-1407 (OR A SIMILAR PROVISION OF FEDERAL OR STATE LAW), COMMITTED AN ACT OR FAILED TO ACT, AND SUCH ACT OR FAILURE TO ACT COULD BE THE BASIS FOR DENIAL OF A BCP APPLICATION? ☐ YES ☒ NO

Site Eligibility Information (Please refer to ECL § 27-1405)

1. DOES THE SITE MEET THE DEFINITION OF A BROWNFIELD SITE (REAL PROPERTY, THE REDEVELOPMENT OR REUSE OF WHICH MAY BE COMPLICATED BY THE PRESENCE OR POTENTIAL PRESENCE OF A HAZARDOUS WASTE, PETROLEUM, POLLUTANT, OR CONTAMINANT)? ☒ YES ☐ NO
2. IS THE SITE LISTED ON THE NATIONAL PRIORITIES LIST? ☐ YES ☒ NO
3. IS THE SITE LISTED ON THE NYS REGISTRY OF INACTIVE HAZARDOUS WASTE DISPOSAL SITES? IF YES, PLEASE PROVIDE: SITE # _____ CLASS # _____ See Attachment 2 ☐ YES ☒ NO
4. IS THE SITE SUBJECT TO A PERMIT UNDER ECL ARTICLE 27, TITLE 9, OTHER THAN AN INTERIM STATUS FACILITY? ☐ YES ☒ NO
5. IS THE SITE SUBJECT TO A CLEANUP ORDER UNDER NAVIGATION LAW ARTICLE 12 OR ECL ARTICLE 17 TITLE 10? ☐ YES ☒ NO
6. IS THE SITE SUBJECT TO A STATE OR FEDERAL ENFORCEMENT ACTION RELATED TO HAZARDOUS WASTE OR PETROLEUM? ☐ YES ☒ NO

Project Description

PLEASE ATTACH A DESCRIPTION OF THE PROJECT WHICH INCLUDES THE FOLLOWING COMPONENTS: See Attachment 3

- PURPOSE AND SCOPE OF THE PROJECT
- ESTIMATED PROJECT SCHEDULE

Site's Environmental History

TO THE EXTENT THAT EXISTING INFORMATION/STUDIES/REPORTS ARE AVAILABLE TO THE APPLICANT, PLEASE ATTACH THE FOLLOWING:

1. **ENVIRONMENTAL DATA** See Attachment 4

A PHASE I ENVIRONMENTAL SITE ASSESSMENT REPORT PREPARED IN ACCORDANCE WITH ASTM E 1527 (American Society for Testing and Materials: Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process), AND ALL ENVIRONMENTAL REPORTS RELATED TO CONTAMINANTS ON OR EMANATING FROM THE SITE.

IF A FINAL INVESTIGATION REPORT IS INCLUDED, INDICATE WHETHER IT MEETS THE REQUIREMENTS OF ECL ARTICLE 27-1415(2):

☐ YES ☐ NO

2. **OWNERS** See Attachment 5

A LIST OF PREVIOUS OWNERS WITH NAMES, LAST KNOWN ADDRESSES AND TELEPHONE NUMBERS (DESCRIBE APPLICANT'S RELATIONSHIP, IF ANY, TO EACH PREVIOUS OWNER LISTED. IF NO RELATIONSHIP, PUT "NONE").

3. **OPERATORS** See Attachment 5

A LIST OF PREVIOUS OPERATORS WITH NAMES, LAST KNOWN ADDRESSES AND TELEPHONE NUMBER (DESCRIBE APPLICANT'S RELATIONSHIP, IF ANY, TO EACH PREVIOUS OPERATOR LISTED. IF NO RELATIONSHIP, PUT "NONE").

Contact List Information

PLEASE ATTACH, AT A MINIMUM, THE NAMES AND ADDRESSES OF THE FOLLOWING: See Attachment 6

1. THE CHIEF EXECUTIVE OFFICER AND ZONING BOARD CHAIRPERSON OF EACH COUNTY, CITY, TOWN AND VILLAGE IN WHICH THE SITE IS LOCATED.
2. RESIDENTS, OWNERS, AND OCCUPANTS OF THE SITE AND PROPERTIES ADJACENT TO THE SITE.
3. LOCAL NEWS MEDIA FROM WHICH THE COMMUNITY TYPICALLY OBTAINS INFORMATION.
4. THE PUBLIC WATER SUPPLIER WHICH SERVICES THE AREA IN WHICH THE SITE IS LOCATED.
5. ANY PERSON WHO HAS REQUESTED TO BE PLACED ON THE SITE CONTACT LIST.
6. THE ADMINISTRATOR OF ANY SCHOOL OR DAY CARE FACILITY LOCATED ON OR NEAR THE SITE.
7. THE LOCATION OF A DOCUMENT REPOSITORY FOR THE PROJECT (E.G., LOCAL LIBRARY)

Contaminant Information

INDICATE KNOWN OR SUSPECTED CONTAMINANTS AND THE MEDIA WHICH ARE KNOWN OR SUSPECTED TO HAVE BEEN AFFECTED:

Contaminant Category	Soil	Groundwater	Surface Water	Sediment	Soil Gas
Petroleum					
Chlorinated Solvents					
Other VOCs					
SVOCs	X				
Metals					
Pesticides					
PCBs					
Other*					

*Please describe: See Attachment 4

Land Use Factors (Please refer to ECL § 27-1415(3))

Current Use: ☐ Residential ☐ Commercial ☐ Industrial ☒ Other Vacant (Previously Industrial)

Future Use: ☐ Residential ☒ Commercial ☒ Industrial ☐ Other _____

Please check the appropriate boxes and provide an explanation as an attachment if appropriate.

Yes No Unknown

1. Do current historical and/or recent development patterns support the proposed use?

☒ ☐ ☐

2. Is the proposed use consistent with applicable zoning laws/maps?

☒ ☐ ☐

3. Is the proposed use consistent with applicable brownfield opportunity area designations? (See GML 970-r)	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
1. Is the proposed use consistent with applicable comprehensive community master plans, local waterfront revitalization plans, other adopted land use plans?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
5. Are there any Environmental Justice Concerns? (See §27-1415(3)(p)).	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
6. Are there any federal or State land use designations relating to this site?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
7. Do the population growth patterns and projections support the proposed use?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
8. Is the site accessible to existing infrastructure?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
9. Are there important cultural resources, including federal or state historic or heritage sites or Native American religious sites proximate to the site?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
10. Are there important federal, state or local natural resources, including waterways, wildlife refuges, wetlands, or critical habitats of endangered or threatened species proximate to the site?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
11. Are there floodplains proximate to the site? See Attachment 1	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
12. Are there any institutional controls currently applicable to the site? See Attachment 7	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
13. Describe on attachment the proximity to real property currently used for residential use, and to urban, commercial, industrial, agricultural, and recreational areas. See Attachment 4			
14. Describe on attachment the potential vulnerability of groundwater to contamination that might migrate from the site, including proximity to wellhead protection and groundwater recharge areas. See Attachment 4			
15. Describe on attachment the geography and geology of the site. See Attachment 4			
Note: the 16 th criteria relates to comments from the public, which would not be received at the time of application)			

Statement of Certification		
(By applicant who is an individual) I hereby affirm that information provided on this form and its attachments is true and complete to the best of my knowledge and belief. I am aware that any false statement made herein is punishable as a Class A misdemeanor pursuant to section 210.45 of the Penal Law. Date: _____ Signature: _____ Print Name: _____		
(By an applicant other than an individual) I certify that I am <u>Member</u> (title) of <u>Painted Post Development, LLC</u> (entity), that I am authorized by that entity to make this application; that this application was prepared by me or under my supervision and direction; and that information provided on this form and its attachments is true and complete to the best of my knowledge and belief. I am aware that any false statement made herein is punishable as a Class A misdemeanor pursuant to Section 210.45 of the Penal Law. Date: <u>5/12/04</u> Signature: <u>[Signature]</u> Print Name: <u>Peter L. Kroger</u>		

SUBMITTAL INFORMATION:

Four (4) complete copies, one with original signatures, are required.

- Three (3) of the copies, one with original signatures, must be sent to:

Chief, Site Control Section
New York State Department of Environmental Conservation
Division of Environmental Remediation
625 Broadway
Albany, NY 12233-7020

One (1) copy must be sent to the DEC regional contact in the regional office covering the county in which the site is located. Please check our website for the address of our regional offices: <http://www.dec.state.ny.us/website/der/index.html>

FOR DEPARTMENT USE ONLY

BCP SITE NO: _____ BCP SITE T&A CODE: _____ PROJECT MANAGER: _____

Schedule of Attachments to Brownfield Cleanup Program Application

Painted Post Development, LLC - Applicant

Attachment 1	Maps
Attachment 2	Site Eligibility Information - Question 3
Attachment 3	Project Description
Attachment 4	Site's Environmental History - Environmental Data
Attachment 5	Site's Environmental History - Previous Owners/Operators
Attachment 6	Contact List Information
Attachment 7	Deed Restriction

RECEIVED

JUN 10 2004

DER/HAZ. WASTE REMED
REGION 8

Attachment 1 - Maps

Steuben County Tax Maps

USGS 7.5 Minute Quad Map

Aerial Map

Floodplain Map

RECEIVED

JUN 10 2004

DEH/H...
REGION 8

RECEIVED



Department of Environmental Conservation

Division of Hazardous Waste Remediation

Ingersoll-Rand Foundry Inactive Hazardous Waste Site

Site Number 8-51-012
Village of Painted Post
Steuben County, New York

Record of Decision

J. L. WENNE

APR 11 1994

Dir. Facilities, Capital
& Environmental Affairs

March 1994



New York State Department of Environmental Conservation
MARIO M. CUOMO, Governor LANGDON MARSH, Acting Commissioner

DECLARATION STATEMENT - RECORD OF DECISION

Ingersoll-Rand Foundry - Inactive Hazardous Waste Site
Village of Painted Post, Steuben County, New York
Site No. 8-51-012

Statement of Purpose and Basis

The Record of Decision (ROD) presents the selected remedial action for the Ingersoll-Rand Foundry inactive hazardous waste disposal site which was chosen in accordance with the New York State Environmental Conservation Law (ECL). The remedial program selected is not inconsistent with the National Oil and Hazardous Substances Pollution Contingency Plan of March 8, 1990 (40CFR300).

This decision is based upon the Administrative Record of the New York State Department of Environmental Conservation (NYSDEC) for the Ingersoll-Rand Foundry Inactive Hazardous Waste Site and upon public input to the Proposed Remedial Action Plan (PRAP) presented by the NYSDEC. A bibliography of the documents included as a part of the Administrative Record is included in Appendix B of the ROD.

Assessment of the Site

Removal action completed earlier at the site has been found adequate; the site no longer poses a significant threat to public health or the environment. Implementing the response action selected in this ROD will insure continued site management required at the site.

Description of Selected Remedy

Based upon the results of the Groundwater Quality Assessment and Focused Feasibility Study (GQA and FFS) for the Ingersoll-Rand Foundry and the criteria identified for evaluation of alternatives, the NYSDEC has selected groundwater monitoring and institutional control as the remedy. The site will also be reclassified. The components of the remedy are as follows:

- Three years (five rounds) of groundwater monitoring for volatile organic compounds to determine if concentrations of these compounds continue to remain below New York State drinking water standard of 5 ppb;
- Institutional Controls: 1) maintain existing site security and fencing and 2) place a deed restriction on that portion of the I-R Foundry within 300 ft. radius of

monitoring well 2B to indicate presence of contaminated soil and to minimize potential for future human exposure. This area has limited subsurface soil contamination with semi-volatile organic compounds; and

- Reclassify the I-R Foundry to a class 4 site. A class 4 site is defined as a site that is properly closed but requires continued management.

New York State Department of Health Acceptance

The New York State Department of Health concurs with the remedy selected for this site as being protective of human health.

Declaration

The selected remedy is protective of human health and the environment, complies with State and Federal requirements that are legally applicable or relevant and appropriate to the remedial action to the extent practicable, and is cost effective.

As a part of the selected remedy, the site will be reclassified to class 4 in the New York State registry of inactive hazardous waste disposal sites, indicating that the site is properly closed but requires continued management. The results of groundwater monitoring will be evaluated to determine if additional reclassification or delisting the site from the registry is appropriate.

March 30, 2001
Date

Ann Hill DeBarbieri
Ann Hill DeBarbieri
Deputy Commissioner

INACTIVE HAZARDOUS WASTE SITE
ROD - SUMMARY SHEET

Site No.: 8-51-012
Name of the Site: Ingersoll-Rand Foundry Site
Town/County: Village of Painted Post, Steuben County

Prepared by: Region 8 Office
Manmohan D. Mehta, P.E., Project Manager

Description of the problem:

The Ingersoll-Rand (I-R) idled their Painted Post foundry in 1985. An environmental evaluation by I-R in 1986 identified several areas contaminated, primarily with elevated levels of PCBs, in the foundry buildings and in soils immediately outside. The surficial PCB cleanup was completed by the company in 1989 under NYSDEC consent order. Post-removal groundwater quality assessment did not detect PCBs in groundwater; low levels of TCA were detected (up to 2 ppb on-site and 8 ppb off-site). As the Village of Painted Post has also been detecting TCA, generally below 5 ppb, in their water supply well # 4 located approximately 500 feet northeast of the I-R Foundry, I-R was asked to conduct additional quarterly groundwater monitoring. The additional sampling did not indicate the foundry as the source of groundwater contamination. Subsurface soil contamination at one monitoring well - 2B (MW-2B), with elevated levels of polynuclear aromatic hydrocarbons (PAHs), which are semi-volatile organic compounds, was investigated and defined.

Description of the remedy:

The groundwater quality assessment did not indicate I-R Foundry as the source of TCA groundwater contamination. However, since the groundwater at the site and at the Village of Painted Post Village water supply well # 4 continues to detect low levels of TCA, continued limited on-site and off-site groundwater monitoring for an additional 3 years is proposed as a part of the selected remedy. The selected remedy also includes continued maintenance of existing fencing and site security and placing a deed restriction (agreed by I-R) for in-place PAH contaminated soil within a 300 ft. radius of MW-2B to prevent future human exposure. The site will be reclassified to class 4, indicating that the site is properly closed but requires continued management.

Cost:

The estimated present worth of the proposed remedy is \$ 65,900. The estimated cost of maintaining site security and preparing sampling and analysis plan is \$ 22,000 and the average annual operation and maintenance cost for 3 years is \$ 15,850.

Issues:

From 1920s until it closed in 1985, the I-R Foundry produced gray iron castings for their air compressor plant. A cleanup which primarily addressed PCB contamination in the building and the soils was completed at the foundry at an approximate cost of \$ 1.3 million under a NYSDEC consent order.

The remaining issue is the detection of low levels of TCA in groundwater, including the Village of Painted Post well # 4, located 500 ft. northeast of I-R Foundry. The TCA levels are generally below the New York State drinking water standard of 5 ppb. The Village of Painted Post has been blending water from its uncontaminated well # 3, located 900 ft. east of well # 4, with well # 4 water; TCA has not been detected in finished water after chlorination and other treatment.

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Appendix

- Appendix A: Responsiveness Summary
- Appendix B: Administrative Record

RECORD OF DECISION

Ingersoll-Rand Foundry Site
Painted Post, Steuben County, New York
Site # 851012
March 1994

SECTION 1: SITE LOCATION AND DESCRIPTION

The former Ingersoll-Rand (I-R) Foundry site consists of 287,000 sq. ft. of building space on 43 acres of land located on West Water Street in the Village of Painted Post, Steuben County (figure 1). It was in operation from approximately 1920 through December 1985. The Cohocton River is located approximately 1,200 feet south of the property. Land use surrounding the foundry is diverse. The area north of the foundry consists of residential land; open public land lies to the southwest. The remainder of the land surrounding the foundry is used for industrial, commercial and transportation purposes.

After the foundry was idled in December 1985, two main environmental concerns were identified:

1) surficial PCB contamination and 2) possible groundwater contamination. The PCB cleanup was completed in 1989 as an Interim Remedial Measure (IRM) at an approximate cost of \$ 1.3 million; a detailed description is given in Section 3.2 below. The impact of foundry operations on groundwater was studied under post-removal investigation which also included

investigation for an alleged drum disposal area.

SECTION 2: SITE HISTORY**2.1: Operational and Disposal History:**

The foundry produced gray iron castings principally for the I-R compressor plant, also located in Painted Post. The operations consisted of pattern construction, sand mold lines, melt furnaces, casting, shakeout, casting cleaning, and pattern and casting storage (figure 2).

In early 1986, an environmental evaluation and cleanup was performed by I-R as a part of their standard facility closure activity. Evidence of possible petroleum and polychlorinated biphenyl (PCB) contamination of soil and other surfaces inside the building which were a result of oil leakage and spills from transformers and capacitors was identified. In July 1986, I-R reported this to the New York State Department of Environmental Conservation (NYSDEC).

2.2: Remedial History

Under the facility closure activities, the above- and below-ground storage tanks were removed, machinery and equipment were cleaned and areas requiring further cleanup were evaluated. A report detailing this cleanup and identifying areas requiring further cleanup was submitted by the company in February 1987.

A work plan for further soil and building PCB cleanup, an IRM, was approved by the NYSDEC and a consent order was signed by NYSDEC and I-R in December 1987. The consent order also required I-R to perform post-removal investigation.

Under IRM, negotiated standards for PCB cleanup were established at 10 parts per million (ppm) for subsurface soil contamination and 50 microgram per square meter ($\mu\text{g}/\text{m}^2$) for surficial contamination of non-porous materials. The work plan required cleanup in 18 areas; twelve involved PCBs, while the remaining involved oils, grease, and general cleanup.

All work elements of the IRM work plan were successfully implemented in 1989. Documentation consisting of (1) a professional engineer's certification, (2) summary of on-site work activities, field observations, and verification sampling were submitted by I-R. The NYSDEC acknowledged completion of the activities performed under the work plan by letter dated January 11, 1990. During this cleanup, 490 gallons of liquid and 756 tons of solid hazardous waste was removed off-site to Model City, N.Y. and Chicago, Ill. for treatment and/or disposal. Cleanup

costs of the IRM, funded by I-R, were approximately \$ 1.3 million.

SECTION 3: CURRENT STATUS

Under post-removal investigation, I-R initially proposed a work plan for the groundwater quality assessment (GQA) beneath the foundry property. Since low levels (generally below 5 ppb) of 1,1,1-trichloroethane (TCA) were detected in the Village of Painted Post water supply well # 4, located approximately 500 feet northeast of the foundry, the scope of work was expanded to include off-site areas (figure 3). The revised work plan was designed to help determine the impact of the I-R Foundry operations on the quality of groundwater, in general, and the Village of Painted Post water supply well # 4, in particular. Field work for the GQA started in December 1991.

Based upon a complaint from a private citizen, a site investigation for alleged drum disposal at the site was initiated in May 1992.

3.1 Summary of the GQA

The purpose of the GQA was to define the nature and extent of any contamination resulting from previous activities at the I-R Foundry site.

The reports prepared to describe the GQA field activities and findings in detail for the I-R Foundry are: Interim Stratigraphy Report for Phase I - GQA dated January 1992; Phase II - GQA dated September 1992; Subsurface Investigation Report (alleged buried drum

investigation) dated February 9, 1993; Subsurface Evaluation of MW-2B - Additional GQA Investigation dated August 2, 1993; and Quarterly Monitoring Well Sampling Reports dated August 30, 1993, November 4, 1993, December 13, 1993, and February 1994. A summary of the GQA follows:

The GQA activities consisted of the following:

- Phase I GQA to determine subsurface conditions and collect data to finalize monitoring well construction; and
- Phase II GQA - construction of soil borings and monitoring wells for analysis of soils and groundwater as well as physical properties of soil and hydrogeologic conditions.

The analytical data obtained from the GQA was compared to NYS Applicable Standards, Criteria, and Guidance - SCGs (table 1) in determining remedial alternatives. Groundwater, drinking water and surface water SCGs identified for the I-R Foundry site were based on NYSDEC Ambient Water Quality Standards and Guidance Values and Part V of the NYS Sanitary Code. For the evaluation and interpretation of soil analytical results, NYSDEC soil cleanup guidelines for the protection of groundwater, background conditions, and risk-based remediation criteria were used to develop remediation goals for soil.

In December 1991, field activities for the Phase I of the GQA were performed. The Interim Stratigraphy Report was submitted by I-R in January 1992. Specific

monitoring well construction methods appropriate for the site were recommended by this report.

In March and April 1992, Phase II of the GQA was conducted. Thirteen monitoring wells were installed at seven locations (figure 3). Six deep monitoring wells (four on-site and two off-site) were installed to a depth of approximately 80 feet to match the well depth at the contaminated Village of Painted Post well # 4. The regional groundwater flow in the Painted Post area has been north-northwest to south-southeast. However, local groundwater flow direction near the site is influenced by the pumping activity of the Village of Painted Post water supply well # 4. No predominant vertical groundwater gradient was evident at the site.

The groundwater sampling did not detect PCBs, the main contaminant of concern at the foundry under the IRM. However, volatile organic compounds, primarily, TCA were detected in groundwater. The highest TCA level of 8 parts per billion (ppb) was detected in an off-site deep monitoring well-5A (MW-5A); the highest on-site TCA level was 2 ppb detected in deep well MW-4C (table 2). The New York State drinking water standard for TCA is 5 ppb. Trace levels of 1,1-dichloroethane, benzene, ethylbenzene, total xylene, and 1,4-dichlorobenzene were also detected in off-site monitoring wells MW-6 and MW-7. A report on groundwater quality assessment was submitted by I-R in September 1992.

A second round of sampling in March 1993, in general, confirmed these results (table 3).

The two rounds of monitoring well sampling completed for the GQA were considered inadequate to verify if the I-R Foundry was contributing to TCA levels detected in the Village of Painted Post well # 4. On June 30, 1993, I-R agreed to perform three additional rounds of quarterly groundwater sampling to account for seasonal variation. The Village of Painted Post well # 4 would be included in each sampling event.

The results of additional sampling confirmed previous data. The highest level of TCA detected during the GQA was in MW-5A, an off-site well (table 3). In summary, the results of GQA did not indicate the I-R Foundry to be the source of TCA contamination in groundwater. At this point, the site investigation was concluded. As a next step, since the groundwater at the site and at the Village of Painted Post detected low levels of TCA (below 5 ppb), it was decided to continue monitoring groundwater quality further as a part of continued site management. The Village of Painted Post, under the current State regulations, is required to monitor their water supply well # 4 on a quarterly basis.

During well drilling, polynuclear aromatic hydrocarbons (PAHs), which are semi-volatile organic compounds, were detected near well MW-2B. A further subsurface evaluation was conducted in this area (figure 4). Soil samples were collected from within the fill material and from the undisturbed soil at eight locations.

Subsequent analysis confirmed that the PAHs in the fill material were stationary and not migrating (table 4). The PAHs in the fill material appear to be petroleum based and are commonly found in creosote, coal tar, and heavy oil-type products. It is believed that treated wood debris disposed of on-site in the fill material and road oiling activities are the cause of the identified PAHs. A subsurface evaluation report of MW 2B dated August 2, 1993 was submitted by I-R.

3.2 Summary of Buried Drum Investigation

In November 1992, following allegations by a private citizen, a sub-surface evaluation was performed. Four trench excavations (approximately 970 linear feet) were advanced to evaluate the fill-natural soil interface of the area in question (figure 5). Each trench was evaluated for stained soil, suspect material, and buried drums. Head space screening was performed at 32 locations within the trenches and 13 soil samples were collected for laboratory analysis. No evidence of drum disposal or presence of solvents were observed in this area (table 5). A subsurface investigation report summarizing field activities and sampling results was submitted by I-R on February 9, 1993.

3.3 Summary of Exposure Pathways:

The focused feasibility study (FFS) report was submitted by I-R on February 1, 1994. The FFS report develops various remedial action alternatives, evaluates these alternatives, and recommends specific

alternative for remedial action at the I-R Foundry site that is protective of human health and the environment. The human and the environmental exposure pathways are discussed below.

3.3.1 Summary of Human Exposure Pathways:

A qualitative health risk assessment was prepared for the I-R Foundry site.

Two human exposure pathways that exist at the I-R Foundry site are: 1) exposure to groundwater; and 2) exposure to on-site soil.

Groundwater exposure: TCA levels identified in monitoring wells located on-site and in the Village of Painted Post well # 4, with one exception, have been below the New York State standard of 5 ppb (tables 2, 3 & 6). The Village of Painted Post, under the current State regulations, is required to monitor their supply well # 4 water quality, quarterly.

Soil exposure: Surficial soil remediation activities were performed at the I-R Foundry site under the NYSDEC consent order and oversight. Also, the foundry is currently fenced, and 24-hour site security is maintained.

Semi-volatile organic compounds detected at a depth of three to six feet below ground surface, in the area of well MW-2B, may pose an elevated level of risk to workers in a scenario where future site use includes invasive activities. Ingersoll-Rand has agreed to place a deed restriction on the site, indicating the

presence of in-place contaminated soil at MW-2B location.

3.3.2 Summary of Environmental Exposure Pathways:

No environmental exposure pathways were identified for the I-R Foundry site.

The semi-volatile organic compounds detected in soil near MW 2B are not exposed at surface and are not migrating. Also, the very low levels of TCA in groundwater at the site do not constitute an environmental threat.

SECTION 4: ENFORCEMENT STATUS

The NYSDEC and the I-R entered into a Consent Order on December 4, 1987. The Order obligates the responsible party to implement a removal action to pre-set cleanup levels and a post-removal site investigation.

Order on consent

Date: December 4, 1987

Index #: B8-0183-87-04

Subject: In the matter of Development and Implementation of a Remedial Program including Post-Removal Investigation for an Inactive Hazardous Waste Disposal Site, pursuant to Article 27, Title 13 of the Environmental Conservation Law.

Upon issuance of the Record of Decision, the NYSDEC will approach the PRP to implement the selected remedy.

SECTION 5: SUMMARY OF THE REMEDIATION GOALS

Goals for the remedial program have been established through the remedy selection process stated in 6NYCRR 375-1.10. These goals are established under the guideline of meeting all standard, criteria, and guidance (SCGs) and protecting human health and the environment.

At a minimum, the remedy selected should eliminate or mitigate all significant threats to public health and to the environment presented by the hazardous waste disposed of at the site through the proper application of scientific and engineering principles.

The goals selected for this site are:

- *Eliminate the threat to surface waters by eliminating any future contaminated surface run-off from the contaminated soils on site;*
- *Eliminate the potential for direct human or animal contact with the contaminated soils on site;*
- *Mitigate the impacts of contaminated groundwater to the environment;*
- *Prevent, to the extent possible, migration of contaminants; and*
- *Provide for attainment of SCGs for groundwater quality at the limit of the area of concern.*

SECTION 6: SUMMARY OF THE EVALUATION OF ALTERNATIVES

Potential remedial alternatives for the I-R Foundry site were identified, screened and

evaluated in a Feasibility Study. This evaluation is presented in a report entitled Focused Feasibility Study - Former Ingersoll Rand Foundry, Painted Post, New York. A summary of the detailed analysis follows.

6.1: Description of Alternatives

The potential remedies are intended to address the contaminated subsurface soils and groundwater at the site.

Alternative 1 - No Action

Under this alternative, no specific actions would be taken to improve the groundwater quality beneath the site. The groundwater beneath the site would be left in its current condition, and any changes would be a direct effect of natural processes, such as biological/chemical/physical degradation, adsorption, and dispersion. Also, no measures would be taken for the in-place contaminated soils.

No costs are associated with the implementation of this alternative.

Alternative 2 - Limited Action

Under this alternative, a groundwater monitoring program would be implemented to assess variations in the groundwater contaminant concentrations. The monitoring program would consist of sampling six on-site monitoring wells and two off-site monitoring wells for volatile organic compounds using USEPA Method 502.2. This alternative also includes institutional controls: maintaining current site security and fencing and placing a

deed restriction to indicate in-place contaminated soil at MW-2B location.

Present Worth: \$ 65,900*

Capital Cost (includes
sampling & analysis
plan - SAP): \$ 22,000

Average Annual Operation
& Maintenance (O&M): \$ 15,750

Time to implement: 3 years.

* includes 5 rounds of sampling.

Alternative 3 - Institutional control

Under this alternative, institutional controls would be placed on the facility property for the contaminated soil and groundwater. The groundwater would be left to its current condition. Existing fencing and site security would be maintained to restrict access to the site. Also, a deed restriction would be enacted for in-place contaminated soil at MW 2B location.

Capital Cost: \$ 14,850

No other costs are involved.

6.2 Evaluation of Remedial Alternatives

The criteria used to compare the potential remedial alternatives are defined in the regulation that directs the remediation of inactive hazardous waste sites in New York State (6NYCRR Part 375). For each of the criteria, a brief description is provided followed by an evaluation of the alternatives against that criterion. A detailed discussion of the evaluation

criteria and comparative analysis is contained in the Focused Feasibility Study.

The first two evaluation criteria are termed "threshold criteria" and must be satisfied in order for an alternative to be considered for selection.

1. Compliance with New York State Standards, Criteria, and Guidance (SCGs). Compliance with SCGs addresses whether or not a remedy will meet applicable environmental laws, regulations, standards, and guidance.

Alternative 1 - No Action and Alternative 3 - Institutional Control would only partially meet this criterion because there would be no verification that SCGs were met. Alternative 2 - Limited Action would meet this criterion.

2. Protection of Human Health and the Environment. This criterion is an overall evaluation of health and environmental impacts to assess whether each alternative is protective.

Alternative 1 - No Action would not meet this criterion. Alternative 2 - Limited Action and Alternative 3 - Institutional Control would meet this criterion.

The next five "primary balancing criteria" are used to compare the positive and negative aspects of each of the remedial strategies.

3. Short-term Effectiveness. The potential short-term adverse impacts of the remedial action upon the community, the workers, and the environment during the construction and implementation are

evaluated. The length of time needed to achieve the remedial objectives is also estimated and compared with the other alternatives.

All the remedial alternatives would meet this criterion as no threats are posed by the current site usage.

4. Long-term Effectiveness and Permanence. This criterion evaluates the long-term effectiveness of alternatives after implementation of the response actions. If wastes or treated residuals remain on-site after the selected remedy has been implemented, the following items are evaluated: 1) the magnitude of the remaining risks; 2) the adequacy of the controls intended to limit the risk; and 3) the reliability of these controls.

Alternative 1 - No Action would not meet this criterion as it would not address in-place soil contamination at the site. Alternative 2 - Limited Action and Alternative 3 - institutional control would meet this criterion as it considers deed restriction for the in-place contaminated soil.

5. Reduction of Toxicity, Mobility or Volume. Preference is given to alternatives that permanently and significantly reduce the toxicity, mobility or volume of the wastes at the site.

None of the alternatives is required to meet this criterion.

6. Implementability. The technical and administrative feasibility of implementing each alternative is evaluated. Technically, this includes the difficulties associated

with the construction, reliability of the technology, and ability to monitor the effectiveness of the remedy. Administratively, the availability of the necessary personal and material is evaluated along with potential difficulties in obtaining specific operating approvals, access for construction, etc..

All alternatives would meet this criterion as none pose difficulty in implementation of the remedial action.

7. Cost. Capital and operation and maintenance costs are estimated for each alternative and compared on a present worth basis. Although cost is the last balancing criterion evaluated, where two or more alternatives have met the requirements of the remaining criteria, cost effectiveness can be used as the basis for the final decision.

The cost data for the remedial alternatives are:

Alternative 1 - No Action

No costs are associated with this alternative.

Alternative 2 - Limited Action

Present Worth:	\$ 65,900
Capital Cost:	\$ 22,000
Average Annual O&M Cost:	\$ 15,750

Alternative 3 - Institutional Control

Capital Cost:	\$ 14,850
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This final criterion is considered a "modifying criterion" and is taken into account after evaluating those above. It is focused upon after public comments on the Proposed Remedial Action Plan (PRAP) have been received.

8. Community Acceptance - Concerns of the community regarding the GQA report, FFS report, and the Proposed Remedial Action Plan were evaluated. A Responsiveness Summary is attached as appendix A. It describes public comments received and how the Department addressed the concerns raised. If the final remedy selected differed from the proposed remedy, notices to the public would have been issued describing the differences and reasons for the changes.

SECTION 7: SUMMARY OF THE SELECTED REMEDY

Based upon the results of the GQA and FFS, and the evaluation presented in Section 6, the NYSDEC has selected Alternative 2 - Limited Action as the remedy for this site. This selection is based upon the following:

Alternatives 1 - No action is not protective of human health and the environment. Alternative 2 - Limited Action meets all applicable criteria. Alternative 3 - Institutional Control only partially meets SCGs. Since only Alternative 2 - Limited Action meets both threshold criteria: compliance with SCGs and protection of human health and the environment, it is the preferred alternative.

The estimated present worth cost to implement the remedy is \$ 65,900. The estimated capital cost to maintain site security and prepare sampling and analysis plan for the remedy is estimated at \$ 22,000 and the estimated average annual operation and maintenance cost is \$ 15,750.

The elements of the selected remedy are as follows:

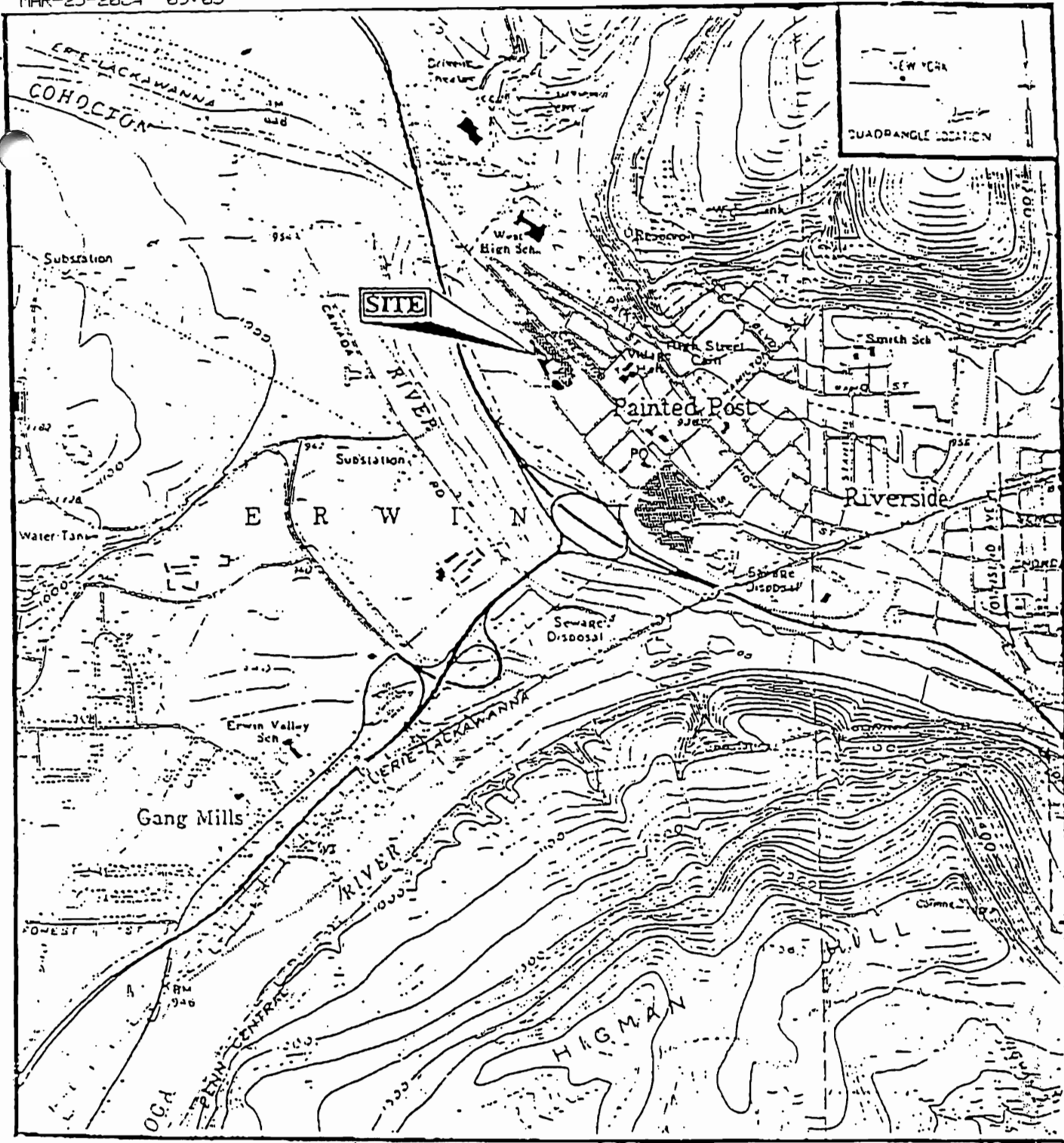
1. Preparation of a sampling and analysis plan to monitor the groundwater quality at the site and immediately off-site for a period of 3 years (five rounds). This plan would outline sampling locations, frequency, and analytical parameters and methodology.
2. Sample locations are: six on-site monitoring wells detecting TCA, and two off-site wells MW 5A&B. The samples will be analyzed for volatile organic compound using USEPA Method 502.2.
3. Placing a deed restriction on the I-R Foundry property indicating the presence of in-place contaminated soil in the MW 2B area.

The chosen alternative includes reclassifying the site to a class 4 which indicates the site is properly closed but requires continued management. The results of the groundwater monitoring will be evaluated to determine if additional reclassification or delisting the site is appropriate.

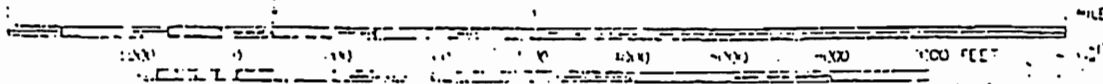
SECTION 8: HIGHLIGHTS OF COMMUNITY PARTICIPATION

<u>Item</u>	<u>Date Issued</u>
Fact Sheet	3/21/91
Fact Sheet/Public Meeting Announcement.....	2/25/94
Public Comment Period.....	2/25-3/28/94
Public Meeting.....	3/7/94

Comments received from the public and the responses from NYSDEC and NYSDOH are included in the attached Responsiveness Summary (Appendix A). The public comments did not modify the selected remedy.



SCALE



SOURCE : U.S.G.S. CORNING QUADRANGLE

INGERSOLL - RAND
FOUNDRY

PAINTED POST, N.Y.

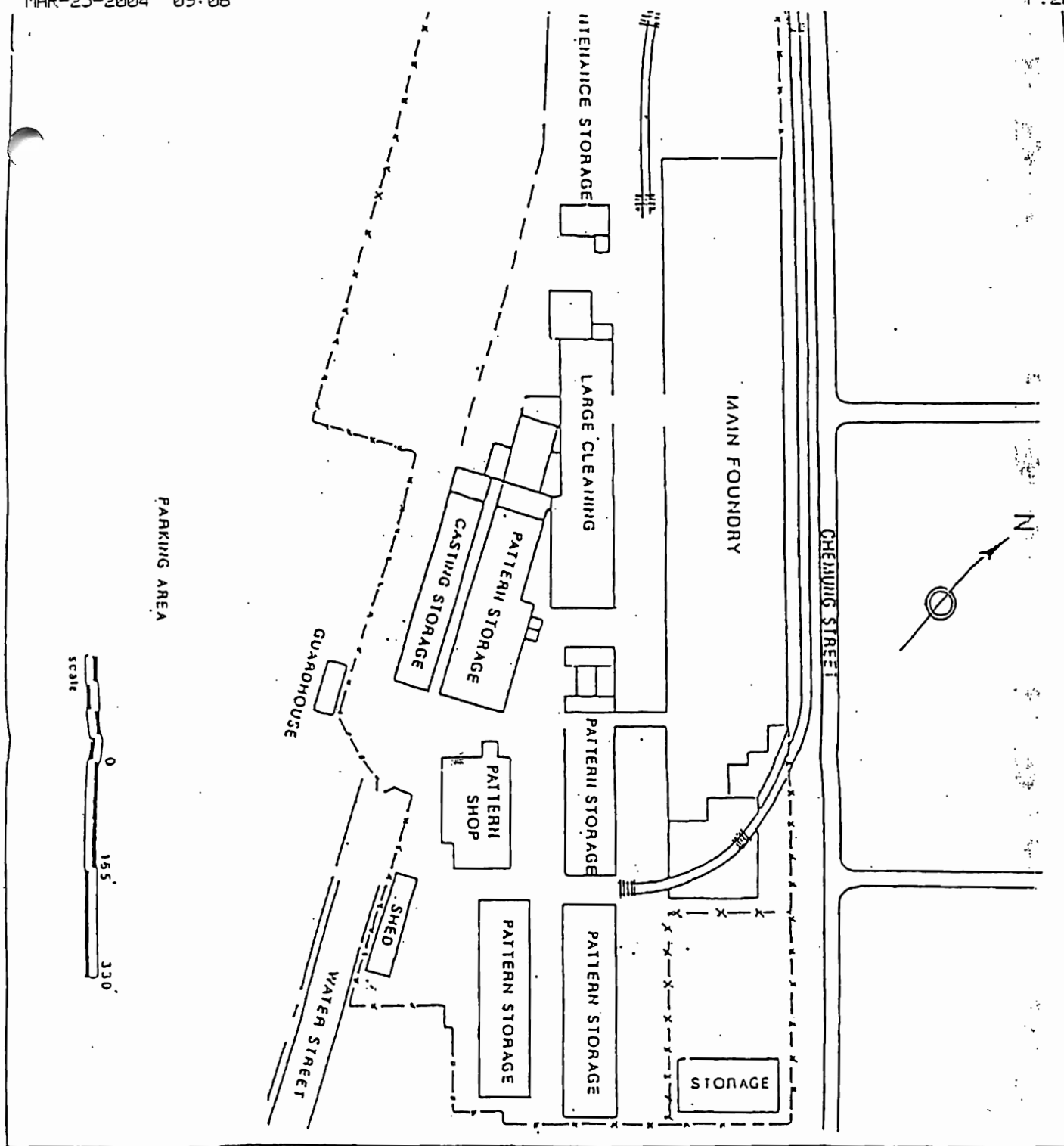


LAW ENVIRONMENTAL
ALBANY, N.Y.

SITE LOCATION

PROJECT NO. 52-1532

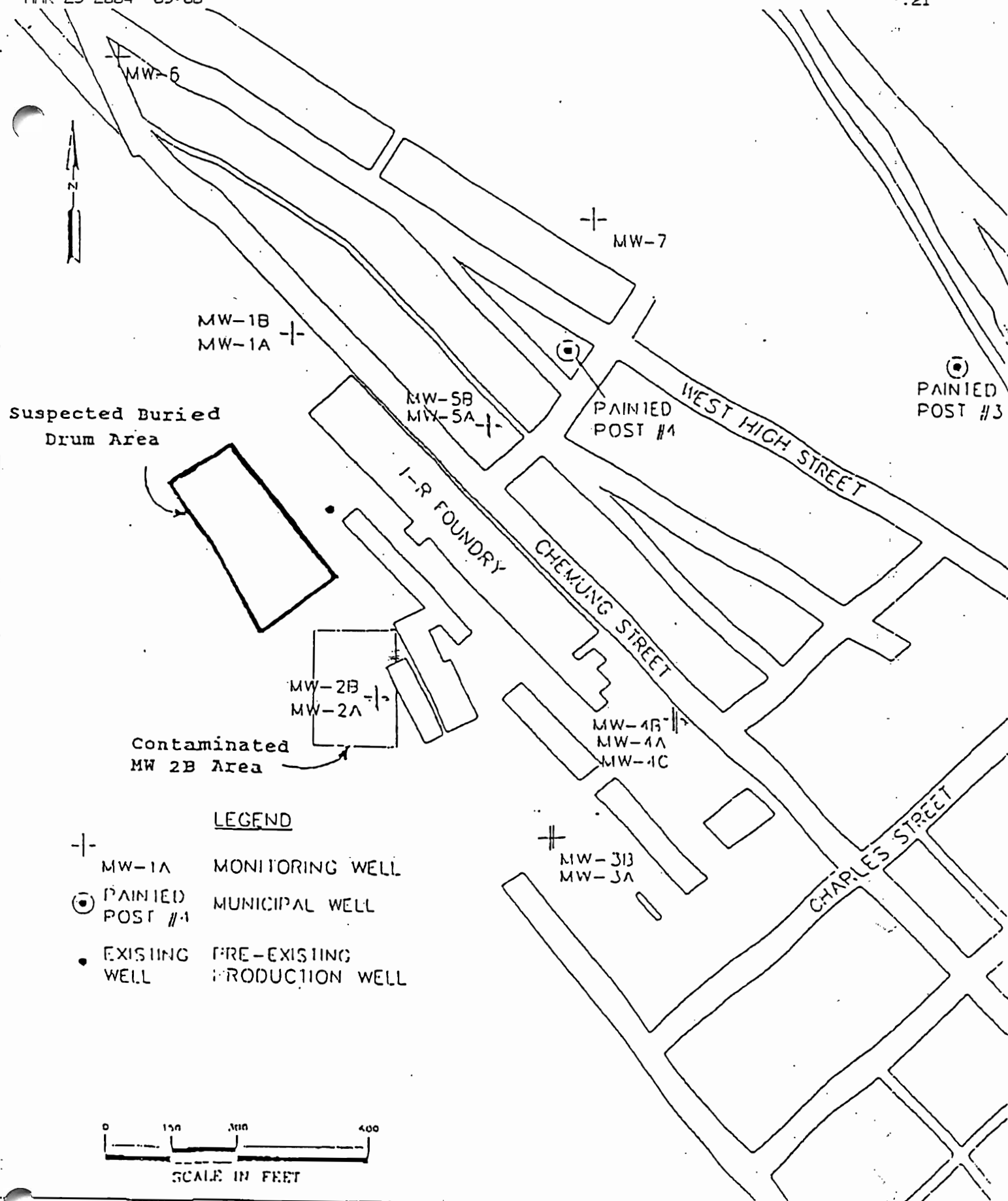
FIGURE 1



SITE PLAN

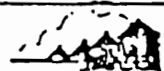
Ingersoll-Rand Foundry Location, Painted Post, NY





INGERSOLL-RAND COMPANY

Site Map - Post-removal Investigation



Wenck

Wenck Associates, Inc. 1000 Pioneer Creek Cir.
Environmental Engineers Maple Plain, MN 55359

AUG 1992

Figure 3



SB-7

SB-8

SB-6

MW-2B
MW-2A

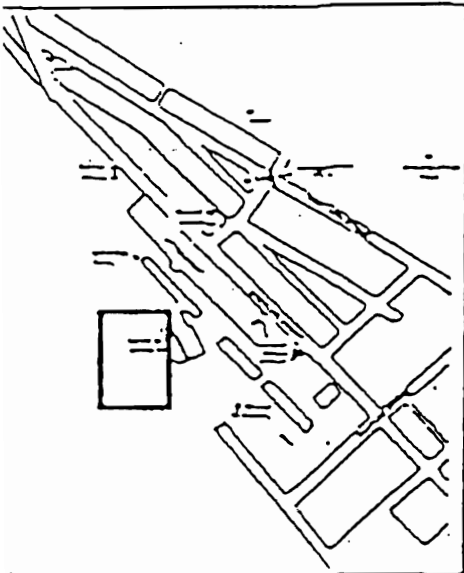
SB-1

SB-2

SB-5

SB-4

SB-3



FENCE

LEGEND

○ MW-3A	MONITORING WELL LOCATION
● EXISTING WELL	PRE-EXISTING PRODUCTION WELL
⊙ PAINTED POST NO. 3	MUNICIPAL WELL
● SB-3	PROPOSED TEST BORING LOCATION

NOTE: DRAWING NOT TO SCALE



CAPSULE

ENVIRONMENTAL ENGINEERING INC.
1470 DUNDAS AVENUE, SUITE 210
ST. PAUL, MINNESOTA 55118
612-338-0000

INGERSOLL-RAND COMPANY
PAINTED POST, NEW YORK

PROPOSED TEST BORING LOCATIONS

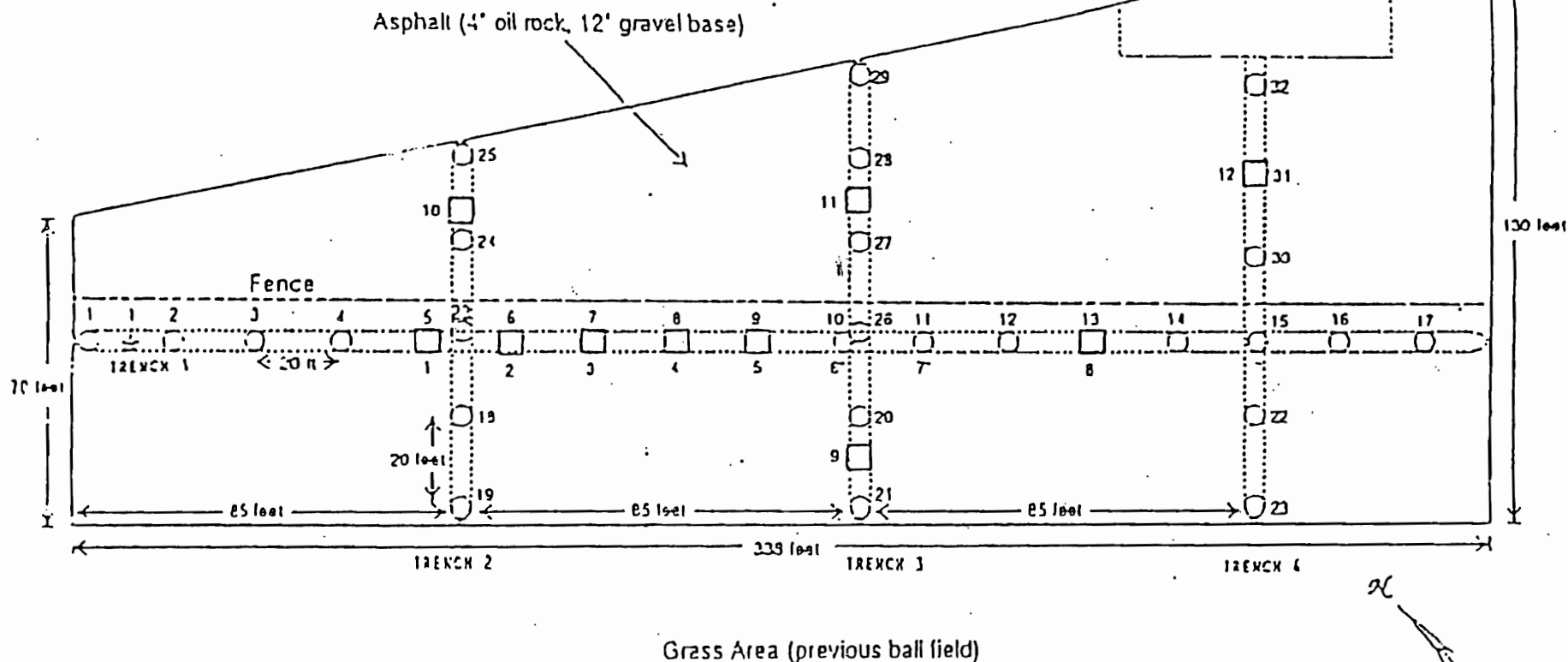
DATE: MARCH 1988

FIGURE NO. 4

Main Foundry Facility

Transformer Area
(35,000 Volts)

DEC 10 1993
Z. WASTEWATER
DIEC. MEC #8



ENVIRONMENTAL PRODUCTS & SERVICES, INC.

DATE: November 16, 1992

PROJECT NO.: 2AB8961

Soil Sampling
(November 9 - 12, 1992)

□ Environmental Samples ○ Headspace Samples

* Drum Sample

○ Trenches

5, 7 Environmental samples collected,
but not submitted (based on field screening).

SCALE: 1" = 40'

FIGURE NO.: 5

DRAWN BY: DHC (from Caputo)

LOCATION: Painted Post, NY

Painted Post Foundry

PROJ

MPK-20-201 / 03:00

TABLE - 1

APPLICABLE OR RELEVANT AND APPROPRIATE REQUIREMENTS (ARARS)
 FOR CHEMICALS OF CONCERN
 INGERSOLL-RAND FOUNDRY, PAINTED POST, NEW YORK
 New York State SCGs

MEDIUM	REQUIREMENTS	CITATION
Groundwater	Groundwater must meet NYS Class GA groundwater standards. These standards are most stringent of: <ul style="list-style-type: none"> - Standards for Class GA Groundwater - NYS MCLs for Public Water Supplies - MCLs promulgated under the safe Drinking water Act 	6 NYCRR Part 703 6 NYCRR Part 703.5 10 NYCRR Subpart 5-1 40 CFR Part 141 10 NYCRR Part 170
Surface water	Surface water at the site must meet NYS Ambient Water Quality Standards for Class D Water bodies.	6 NYCRR Part 701.14
Soil	<ul style="list-style-type: none"> - Soils at the site must meet NYS Guidance Memorandum for Soil Cleanup Objectives and Cleanup Levels - NYS Cleanup Criteria for Aquatic Sediments 	NYSDEC TAGM # 4046 November 16, 1993 NYSDEC Fish & Wildlife Criteria

TABLE 2
Volatile Organics Water Quality Data Summary
Groundwater Quality Assessment
Ingersoll-Rand Foundry
Painted Post, NY

Sample I.D.	Date	1,1- Dichloro- ethane	cis-1,2- Dichloro- ethene	Chloroform	1,1,1- Trichloro- ethane	Trichloro- ethene
NY Standard (A)		5	5	7	5	5
MW - 1A	05-May-92	ND	ND	ND	(0.2)	ND
MW - 1B	08-May-92	ND	ND	ND	1	ND
MW - 2A	12-May-92	ND	ND	ND	ND	ND
MW - 2B	12-May-92	ND	1	ND	ND	(0.7)
MW - 3A	13-May-92	ND	ND	ND	ND	ND
MW - 3B	13-May-92	ND	ND	ND	(0.3)	ND
MW - 4A	13-May-92	ND	ND	ND	ND	ND
MW - 4B	13-May-92	(0.3)	ND	ND	ND	ND
MW - 4C	13-May-92	1	ND	ND	2	1
MW - 5A	12-May-92	1	ND	ND	8	ND
MW - 5B	13-May-92	ND	ND	(0.1)	(0.6)	(0.1)
MW - 6	08-May-92	ND	ND	ND	(0.0)	ND
MW - 7	08-May-92	1	ND	ND	2	ND

NOTES:

Values shown in parentheses are Estimated Values where the result is less than the sample quantitation limit but greater than zero.

(A) - New York State Department of Environmental Quality (1991)

(1) - Applies to the sum of para and ortho isomers

TICs - Tentatively Identified Compounds

* - Denotes that this compound was also detected in the associated blank

ND - Non-detectable

All concentration units are micrograms per liter (ug/l)

TABLE - 3

SUMMARY OF QUARTERLY MONITORING WELL SAMPLE ANALYSIS
TCA RESULTS

All concentration units are micrograms per liter (ug/l)

SAMPLE I.D.	March 1993 First Quarter	July 1993 Second Quarter	October 1993 Third Quarter	December 1993 Fourth Quarter
MW-1A	0.2	0.49	ND	ND
MW-1B	1	1.5	0.41	0.69
MW-2A	ND	ND	ND	ND
MW-2B	ND	0.30	ND	0.34
MW-3A	ND	ND	ND	ND
MW-3B	ND	0.55	ND	0.31
MW-4A	0.7	0.76	0.29	ND
MW-4B	ND	ND	ND	ND
MW-4C	2	1.3	0.50	0.45
MW-5A	7	0.83*	5.4	4.7
MW-5A DUPE	NA	6.5	5.0	NA
MW-5B	0.5	6.3*	0.20	0.27
MW-6	2	ND	ND	ND
MW-7	ND	0.73	1.3	ND
Municipal Well 4	NA	4.1	3.4	ND**
NY STANDARD	5	5	5	5

* An error was made by the laboratory during the second quarter sampling event by transposing sample designator 5A and 5B. Results for MW-5A Dupe are reflective of actual ground water conditions at this location.

NA - Not Applicable, no duplicate or municipal well samples collected during these sampling events.

** - Municipal well #4 sample was collected by the Village of Painted Post, New York, Water Department on November 4, 1993.

TCA - 1,1,1-Trichloroethane

ND - Nondetectable

TABLE 4

TABLE 1
SUBSURFACE EVALUATION OF MW-2B, DATED FEBRUARY 9, 1993
SEMI-VOLATILE COMPOUND RESULTS
FORMER INGERSOLL-RAND FOUNDRY, VILLAGE OF PAINTED POST, NEW YORK

LOCATION	DEPTH	BENZO(A) ANTHRACENE	BENZO(B) FLUORANTHENE	BENZO(K) FLUORANTHENE	BENZO(GH) PERYLENE	BENZO(I) PYRENE	CHRYSENE	INDENO (1,2,3-CD) FLUORANTHENE	PYRENE	PHENANTHRENE	PP
SB-1	•	•	•	•	•	•	•	•	•	•	•
SB-2	3'	210	820	220	350	250	400	220	380	220	•
SB-2	6'	270(J)	500(J)	180(J)	79(J)	180(J)	770(J)	390(J)	98(J)	460	•
SB-3	3'	6600	13000	8700	3700	9700	8800	5700	4600	840	•
SB-3	13'	170(J)	280(J)	140(J)	160(J)	200(J)	270(J)	160(J)	200(J)	NO	•
SB-4	3'	1700	5000	2900	1600	1700	3600	2100	1700	550	•
SB-5	•	•	•	•	•	•	•	•	•	•	•
SB-6	3'	7700	18000	14000	2100	10000	14000	8200	2800	2100	•
SB-6	7'	NO	NO	NO	NO	NO	NO	NO	NO	NO	•
SB-7	3'	6600	24000	22000	4700	12000	1500	6200	6300	1700	•
SB-7	11'	NO	NO	NO	NO	350(J)	NO	NO	NO	NO	•
SB-8	3'	3700	14000	9100	2000	5100	5600	3600	2700	2400	•
SB-8	8'	NO	100(J)	NO	43(J)	NO	NO	NO	NO	NO	•

NO = NOT DETECTED

• = UNABLE TO COLLECT SOIL SAMPLES DUE TO SUBSURFACE OBSTRUCTIONS

ALL VALUES ARE REPORTED IN PARTS PER BILLION

(J) = Indicates an estimated value. This flag is used either when measuring a concentration for tentatively identified compounds where a 1:1 response is assumed, or when the mass spectral data indicate the presence of a compound that meets the identification criteria but the result is less than the sample quantitation limit but greater than zero.

TABLE 3

Volatile Organic Compounds
Subsurface Investigation Report, Dated February 9, 1993
Ingersoll-Rand Company, Painted Post, New York

Sample I.D.	Methylene Chloride	Acetone	Benzene	Ethyl Benzene	Other Compounds
Soil Sample 1	1 (J)	ND	ND	ND	
Soil Sample 2	ND	ND	ND	ND	
Soil Sample 3	ND	ND	ND	ND	
Soil Sample 4	2 (J)	ND	ND	ND	
Soil Sample 5	ND	ND	ND	ND	
Soil Sample 6	ND	ND	ND	ND	
Soil Sample 7	ND	ND	ND	ND	
Soil Sample 8	10 (J)	ND	ND	ND	
Soil Sample 9	ND	ND	ND	ND	
Soil Sample 10	2 (J)	ND	1 (J)	0.8	1 (J) 4-Methyl-2-pentanone 0.05 (J) Styrene 0.9 (J) Toluene
Soil Sample 11	ND	440	ND	ND	32.0 2-Butanone
Soil Sample 12	1 (J)	ND	ND	ND	6.0 (J) 2-Butanone
Drum Sample 1	4 (J)	ND	ND	ND	

J - Indicates and estimated value. This flag is used either when estimating a concentration for tentatively identified compounds where a 1:1 response is assumed, or when the mass spectral data indicate the presence of a compound that meets the identification criteria but the result is less than the sample quantitation limit but greater than zero.

TABLE 6

VILLAGE OF PAINTED POST WELL # 4 SAMPLING RESULTS

DATE OF SAMPLE COLLECTION	TCA LEVEL in Parts per billion (ppb)	NEW YORK STATE DRINKING WATER STANDARD in ppb
3/13/91	Non-detected	5
5/15/91	2	5
7/31/91	3	5
11/27/91	Non-detected	5
3/18/92	Non-detected	5
6/17/92	Non-detected	5
9/2/92	4	5
12/16/92	1	5
3/10/93	4	5
7/29/93	3	5
8/30/93	6	5
11/4/93	Non-detected	5

TCA = 1,1,1-Trichloroethane

Appendix - A

Responsiveness Summary

RESPONSIVENESS SUMMARY

Ingersoll-Rand Foundry Site
Painted Post, Steuben county, New York
Site ID # 851012

The following are responses from the New York State Department of Environmental Conservation (NYSDEC) and the New York State Department of Health (NYSDOH), to the questions and comments made at the March 7, 1994 public meeting which presented the proposed remedial action plan for the Ingersoll-Rand (I-R) Foundry site. Some of the questions are grouped together or divided to formulate an appropriate response and to avoid repetition; a dash at the beginning indicates a grouped or divided question.

This responsiveness summary forms a part of the Record of Decision issued by the NYSDEC for the site.

Q. How large is the suspected drum area?

A. The suspected drum area is south of the main former foundry building in the northwest corner of the facility property. Pursuant to a NYSDEC approved work plan, I-R investigated an area 338 feet long and varying in width between 70 and 130 feet. The total area was 33,800 square feet. This investigation was done through the use of four trenches; totalling 980 linear feet. All trenches were excavated from the surface through all fill material to natural sediment. Soil samples were screened using an HNu photoionization meter and visual observation. Select samples were collected and analyzed at a laboratory. No drums were identified during the trenching operation, and no contamination was identified.

Q. Did I understand you correctly that you concluded that Ingersoll-Rand was not the cause of the groundwater contamination?

A. The results obtained from sampling thirteen monitoring wells (nine on-site and four off-site) five times in different seasons did not indicate the I-R Foundry to be the source of TCA in the groundwater. It is important to understand, however, that the levels identified on-site and in the Village of Painted Post municipal well #4 (with the exception of one sampling event) were below the New York State (NYS) drinking water standard of 5 parts per billion (ppb). The only monitoring well that consistently exceeded 5 ppb was MW-5A located off-site, northeast of the foundry.

- Q. In monitoring of the groundwater, you recommend semi-annual monitoring, yet when you conducted the study, it was monitored four times a year; would it be a prudent measure to continue to make sure that the groundwater is safe?

Are you done after three years?

- A. The Village of Painted Post water supply well #4 has been monitored on a quarterly basis for a period of three years with very little fluctuation in the concentration of 1,1,1-trichloroethane (TCA). Similarly, the results of five sampling events for 13 monitoring wells have been fairly consistent. Based upon the fact that the levels have not changed significantly, it is our belief that semi-annual monitoring for the first two years and annual monitoring the third year for a total of five events is sufficient to detect anomalies. After three years, the monitoring results will be re-evaluated to determine if further monitoring is needed.

The Village of Painted Post, under current State regulations, is required to monitor their water supply well # 4, on a quarterly basis.

- Q. The Village of Painted Post public water supply Well #4 is fluctuating. It may show more contamination.
- A. Compared with other sites managed by NYSDEC, the data from municipal well #4 and the I-R monitoring network is remarkably consistent. However, as a precautionary measure, the Village of Painted Post will continue to monitor its water supply well quarterly.
- Q. Most recently in 1993, the highest level for TCA was 6 ppb; it is still over NYS drinking water standards.
- A. The most recent result of November 1993 indicates non-detect for TCA. Only once over the past 30 months, the contaminant level in municipal well #4 has exceeded the NYS drinking water standard of 5 ppb.
- Q. Why are the depths of the deep wells at Ingersoll-Rand not the same as the municipality (village wells)?
- A. The main objective of installing the deep wells was to determine if the foundry is the source of TCA found in the Village of Painted Post water supply well # 4. The depths of these wells were, therefore, kept approximately in the same range as that of the Village of Painted Post water supply well # 4. The Village of Painted Post well # 4 is approximately 79' deep; the deep monitoring wells are screened at a depth of 80'.

Q. Was NYSDEC aware that the general area northwest of the foundry was used as a disposal area in the 1920s - 1930s (MW-5A and MW-5B area)? Various sands, including core sand and petroleum distillates, were held there, not deep, but in shallow layers. Near the area listed as a suspected drum burial site and at the MW-1A and MW-1B location, patterns were stored. Oak and mahogany were exposed to distillates. They were weather dried, stored, and burned up. Patterns were in the field. This has been ongoing since its inception.

A. Initially, polychlorinated biphenyles (PCBs) were the main concern at the foundry; however, to account for other unknown past disposal activities, such as that you described, the soil and the groundwater were tested for a long list of chemicals. The only contaminant consistently detected was TCA at low levels in groundwater.

Q. Many people in the neighborhood, particularly women, have died from cancer. The number of cancer surgeries that people in the area have had over the past 15 years is high. Other illness have occurred as well. Some of the men from the neighborhood worked at the foundry, but none of the women with health problems worked at plants. One woman with medical problems was asked by her physician if she had been around any hazardous waste. Concern was expressed for neighborhood children's health as well as that of West High School students.

The school was built on a filled-up swamp; groundwater level is five feet below the surface.

A. A cancer fact sheet, developed by the NYSDOH Cancer Surveillance Program, was made available at the meeting. The fact sheet provided general information regarding cancer. Several residents were interested in discussing specific medical concerns with NYSDOH medical staff. NYSDOH medical staff will be contacting those residents.

Cancer develops in people of all ages but most often in the middle-aged and the elderly. Researchers do not fully understand why some people develop cancer while others do not. Most cancer cases in the United States are believed to be associated in some way with our personal habits, our life-style or our physical surroundings.

Exposure from the workplace is carefully investigated, although they are associated with only a small percentage of concerns. The neighborhood men who worked at the foundry may have had occupational exposures to chemicals used at the plant which increased their or their risk for developing health problems. In addition, the men may have carried

chemicals home with them on their clothing and may have exposed their families to these chemicals, thus potentially increasing the risk for the development of health problems in their families. If residents are concerned about occupational exposures, NYSDOH medical staff are available to discuss individual cases.

It is not likely that the neighborhood children and high school students were exposed to contaminants at the foundry. Site access to the foundry has been restricted by fencing and 24-hour security. Surface contamination, consisting of PCBs and oil and grease, was removed from the on-site soils and buildings at the I-R Foundry in 1988.

- Q. Groundwater at the site was tested and PCBs were found. There's something wrong with the groundwater and the drinking water.
- A. Groundwater samples that were collected at the site have shown the presence of low levels of volatile organic compounds, including TCA. The levels of these volatile organic compounds have not exceeded groundwater standards. PCBs were never found in groundwater samples collected from the site. PCBs were found in samples collected from on-site soils and other building surfaces. The PCB contamination was removed from the soils and building surfaces with NYSDEC oversight as a part of the site clean-up that occurred in 1988.

The Village of Painted Post's municipal water supply well # 4 has been sampled on a quarterly basis since 1989. Samples collected from this municipal well have shown the presence of low levels of TCA. The levels of that compound in the Village of Painted Post water supply well have remained below the drinking water standard of 5 ppb, with one exception. The sample taken in August 1993 had a TCA concentration of 6 ppb. A chemical fact sheet that discussed possible health effects from exposure to TCA was made available at the meeting. The compound has not been identified as a human carcinogen.

- Q. The fact sheet says 8 ppb, not 6 ppb.
- A. The 8 ppb concentration was detected at monitoring well MW-5A located off-site, whereas the 6 ppb concentration was detected at the Village of Painted Post water supply well #4.
- Q. There is no evidence that PCBs came from the plant. What about methyl chloroform? Didn't that come from the foundry? Was that solvent used at the plant? Do we know if TCA was

used in normal operations or you're not sure if TCA was used by Ingersoll-Rand?

A. PCB contamination was removed from the soils and building surfaces at the foundry in 1988. There is no evidence that the PCBs have migrated off of the facility grounds. Secondly, methyl chloroform (or TCA as it is more commonly called) is not a material that was used at the foundry. TCA is a typical degreasing solvent and is used more commonly where machining and fabrication operations occur. TCA is used to remove grease and oils from metal surfaces. These types of operations did not occur at the foundry. In addition, a records search of material safety data sheets and inventory records did not reveal that TCA was used at the foundry.

Q. What triggers a health study for an area like this? What methods do you use to conduct the study?

A. The need for a health study can be determined in different ways. If NYS Department of Health staff working on a particular site feel that a study is warranted, they can request a cancer incidence study. A cancer incidence study can also be requested by citizens.

Citizens can write a letter to the NYS Department of Health indicating the area of concern to them. NYSDOH will then develop a map outlining the area of concern and any additional area that must be included to make the study large enough to be statistically valid. The map and a letter will then be sent to the requesting citizen to ensure that the area they are concerned about was included. The cancer incidence study can then be performed.

A cancer incidence study uses information from the New York State Cancer Registry. Hospitals are required to report to the Registry any cancerous tumor diagnosed in New York State. The Registry includes the address of each patient at the time of their diagnosis. Information on the population of the study area is obtained from census data. The expected number of newly-diagnosed cancer cases, by sex and location of cancer in the body, is calculated based on the age and sex distribution of persons in the study area. The actual number of newly diagnosed cancer cases, by sex and location of cancer in the body, is counted from the New York State Registry records. It is then determined if a significant increase of cancers has occurred in the study area.

Q. If someone has a cancerous tumor removed and another tumor appears, will this appear on the cancer registry?

- A. If a patient has a cancerous tumor removed from one site in the body, such as breast, and a new cancerous tumor appears at a different site, such as the lung, the new cancer is recorded on the registry. Non-cancerous tumors are not recorded on the Registry.
- Q. I have a few questions on the water as it moves under ground. The groundwater is probably moving toward the river. Why not put in test wells between the foundry and the Cohocton River? Were the wells properly placed? I had a geologist look at this.
- A. Based upon the water level measurements that have been collected for the 13 wells installed by I-R, the groundwater flow direction is generally northwest to southeast, the same as the regional groundwater flow direction. In other words, groundwater flow is in a direction that is parallel to Chemung Street and is not going towards the Cohocton River. This data indicate it is not necessary to have any wells between the foundry and the river itself. If the geologist you refer to has any questions, please feel free to contact the NYSDEC - Avon Division of Hazardous Waste Remediation hydrogeologist.
- Q. Isn't it unusual that the groundwater flows in that direction?
- A. The redirection of the Cohocton River from its original river basin area may account for the change in the flow direction. In addition, the pumping activity of the municipal wells also influences the flow direction. Based upon the information that is available, groundwater flow direction is generally northwest to southeast parallel to Chemung Street.
- Q. If I-R did not cause contamination, what did? Could the flood of 1972 have carried some of it over to monitoring wells 5A and 5B?
- A. Based upon the information that has been collected from the wells that have been installed, it does not indicate that the I-R Foundry is the source of contamination. A source of the contamination has not been identified.

Although, the flood of 1972 may have dispersed some materials in locations that would not normally have been impacted, the fact remains that MW-5A and MW-5B are groundwater samples, and groundwater is located at approximately 13 feet below surface level. Based upon the lack of contamination in soil samples collected during the installation of wells MW-5A and MW-5B, it would appear that the contamination that has been identified in the ground

water is not the result of the deposition of TCA in this area as a result of the flood. If TCA had been deposited in the area surrounding MW-5A and MW-5B and was in fact impacting the groundwater, there would be evidence of the TCA in the overburden soils.

Q. Why weren't people told? We were not told a thing in 1985 and 1986 before it closed down. We found out in 1991/92 when the neighbors had a well put in their yard.

A. In 1985 and 1986, NYSDEC did not have as aggressive citizen participation program as it is now. The first NYSDEC guideline regarding this program was published in August 1988; it was included in Title 6 of New York Compilation of Rules and Regulation (6 NYCRR) part 375 - Inactive Hazardous Waste Disposal Site Remedial Program - in May 1992. A fact sheet giving update on site clean-up and groundwater investigation was distributed in March 1991. The monitoring well # 5 in your neighbor's back yard was installed in April 1992.

Q. MW-7 was in the middle of Craig Park. That was a swamp that was filled in.

A. MW-7 was installed in an effort to get a sidegradient sample to the Village of Painted Post water supply well #4. This well has identified low level TCA contamination in the groundwater. During the installation of MW-7, no contamination was detected in soil.

Q. Another concern relating to the time prior to the flood of 1972, there were two cupolas indicated north of the foundry. Was any sampling done in and around this area? In 1975, they tore down the two cupolas, one 100-ton and the other 90-ton because of OSHA, and put in three 20-ton electric furnaces in the same area.

A. The cleanup that was conducted occurred on either side of the electric melt furnaces. PCBs and oil were detected in these areas.

Q. I would like the data available from the area near the cupolas. Is Varsol, a petroleum distillate, a trade name. It comes in 55-gallon drums. Is that what you are talking about or is that a separate compound?

A. TCA is a chlorinated organic compound whereas Varsol is a petroleum distillate material. These materials represent two distinctly different types of compounds. Sampling data from the furnace area can be found in the document repository at the Corning Library on Denison Parkway. The title of the document is Final Analytical Review at the

Ingersoll-Rand Foundry Site, dated November 1, 1989.

Q. Was something like Varsol also tested for?

A. The analyses that were conducted for the site included volatiles, semi-volatiles, PCBs, grease and oils, and metals. As a result of the volatile and semi-volatile organic testing that was done, Varsol or Varsol-type materials would have been identified if present.

Q. The entire foundry had a wooden floor with creosote. I-R scooped the sand out and put it out in the field in the Water Street Extension area, right behind Rambler's Restaurant, across from Burger King.

A. The only creosote related semi-volatile organic compounds identified were in soil at the MW-2B location; these were found to be stationary and not migrating. There has been no indication of creosote contamination in the groundwater. The only contaminant identified in groundwater was TCA. TCA is not a compound that is associated with foundry sands or creosote block.

Q. TCA will dissipate into the ground and therefore is different from PCBs which will stay put. It's a slight amount of what was there 30 - 40 years ago. It could have been 10 to 100 times that amount. The TCA will leach into the ground and move on. Has nature taken its course?

A. The NYSDEC does not have data from 30 - 40 years ago which would provide information, along with the recent data, to show trends, migrating pathways, etc. Without this information, we can not determine what nature has done over time. However, you are right that TCA will move more readily than PCBs in soil.

Q. When the Village well sample showed TCA above the standard, didn't the municipality have to put a stripping tower or some kind of treatment system onto the well?

A. Treatment of a public water supply for contamination with volatile organic compounds (VOCs) usually is not required for one high sample result. First, the supply must have a maximum contaminant level (MCL) violation. In case of TCA, the MCL is 5 micrograms per liter ($\mu\text{g/l}$), which is 5 ppb. In order to get an MCL violation, this level must be exceeded on the average of the original and any check samples the water supplier takes. For example, if a quarterly sample has a level of 6 $\mu\text{g/l}$, the Village must take at least two check samples. If both check samples contain less than 5 $\mu\text{g/l}$ of the contaminant, the average of the samples will be less than 6 $\mu\text{g/l}$. Therefore, no MCL

violation has taken place. The samples from the Village well # 4 have consistently averaged well below 5 $\mu\text{g/l}$. Therefore, there has never been an MCL violation.

Another factor considered in determining if treatment is required is the level of chemical in the distribution system. In Painted Post's case, water from well # 4 with low levels of TCA is blended with water from well # 3, which is not contaminated. TCA has not been detected in the finished water after chlorination and other treatment. There would not be any point in installing a special treatment system when the chemical is not detected in the water supply.

As you may know, the City of Corning has a tower behind Wegmans that is used to treat Corning's water. However, the levels of contamination found in the City of Corning's well were 10 to 100 times higher than any level found in Painted Post wells.

Additionally, current laboratory tests cannot be relied upon to always give results that are accurate to the nearest 1 $\mu\text{g/l}$. At concentrations as low as 5 and 6 $\mu\text{g/l}$, there is no statistical difference in the numbers that are reported.

- Q. NYSDOH uses ppb; water pollution control uses ppt. Why is it that water pollution people use much more stringent guidelines?
- A. Water pollution control deals with many compounds and contaminants and the corresponding levels for release vary from ppb, ppm, mg/l. The NYSDEC Division of Water does have some water quality standards in the ppt range but detection at these levels is not reliable because the technology has not advanced to that point. Analytical results at the ppt level are not reproducible, reliable and are often theoretical or extrapolated values.
- Q. Representatives are here from Ingersoll-Rand, NYSDEC, NYSDOH, yet no one is here from the Village of Painted Post. Three of them (trustees) work at Ingersoll-Rand and I will let them know about their non-concern for residents.
- A. Representatives from the Village of Painted Post were informed of the meeting by fact sheet distributed on February 28, 1994, just as you were. The NYSDEC and the NYSDOH will continue to work with the Village of Painted Post for issues related to public water supply.
- Q. Will the Village of Painted Post wells continue to be monitored quarterly?

- A. The Village of Painted Post will continue to monitor municipal well #4 on a quarterly basis.
- Q. Could you please include standards or New York State limits for Table 4 of the proposed remedial action plan?
- A. The levels that have been identified in Table 4 are for semi-volatile compounds called polynuclear aromatic hydrocarbons (PAHs). There are no regulatory limits for these compounds. The guidance values being used at other similar sites are: for non-carcinogenic total PAHs in soil - 10,000 µg/kg (ppb) and for carcinogenic total PAHs in soil - 5,000 µg/kg. The area in question is a localized area around wells MB-2A and MB-2B and at 3 - 12 ft. depth. The concentrations that were found may pose an elevated level of risk to human health if exposure to these compounds should occur. A deed restriction, indicating the presence of this contamination in soil, will be placed for MW-2B area, as a part of the selected remedy.
- Q. Since contaminated soil was left at the site, and monitoring wells 5A and 5B have shown contamination, how safe is it for homeowners to dig in their yards? Can the contamination move through the air? Since how long that soil at MW-2B has been contaminated?
- A. The contaminated soil found in the MW-2B area of the site is a localized area around monitoring wells MW-2A and MW-2B located within the foundry. The contaminants are at a depth of 3 to 12 feet below ground surface and are stationary and not migrating through the soil or the groundwater. As they are semi-volatile materials and are found below surface level, the potential for their release to the air is minimal. A deed restriction will be placed on the site to indicate presence of contamination in this one specific area; this should minimize potential for future human exposure, if excavation is to occur. This soil contamination may have occurred many years ago.

When installing wells 5A and 5B, located on a neighbor's property, no soil contamination was detected. The low levels of TCA found in the groundwater is not likely to migrate to the surface or into the air. It is important to note that there is no human exposure to the groundwater at this location.

- Q. With respect to monitoring wells 5A and 5B, how far down do these wells go? What, if anything, can be done to lower the contamination at 5A and 5B?

How safe is the area near monitoring wells 5A and 5B?
Years ago it was not as safe.

A. Monitoring wells 5A and 5B represent a deep and a shallow well. Total depths for these wells are 79.5 feet and 26 feet, respectively. Based upon the contamination levels that have been identified (up to 8 ppb), and absence of human exposure to the groundwater at this location, remedial activity is not warranted for the groundwater. Also, it is not likely that the contaminants found at these depths and at these concentrations will migrate to the surface.

Q. In the empty drum storage area, parallel to Chemung Street, did you notice a pattern in the quarterly monitoring results, especially in the summertime? Is there a correlation between the decrease in the water table elevation (which is likely during summer months) and a rise in contaminant levels? Why was there no well at 120 feet?

A. There does not appear to be any significant change in contaminant levels as a result of seasonal groundwater fluctuations. Any variability of contaminant levels observed in these wells is statistically insignificant.

Monitoring wells 120 feet deep can be drilled, however, in this case, it was not necessary to go deeper than 80 feet which is the depth of Village of Painted Post water supply well # 4.

Q. The preferred remedy includes maintaining an existing guard 24 hours a day. He is strictly a fire watcher. He can't keep people off the I-R Foundry property. It is not fenced in on the Chemung Street side of the foundry, vents are open, and there are open vents on roof. I have seen kids play in there.

A. Twenty-four-hour site security will continue to be maintained, as necessary, and will be used to restrict unauthorized access to the site. Maintenance of a fence around monitoring well 2B limiting access is also a part of the remedy.

Q. What is the definition of a class 4 site? Can it go up for public sale?

A. Classification code 4, as defined in the New York State Registry of Inactive Hazardous Waste Disposal Sites, means that the site is properly closed but requires continued management.

Yes, the site can go up for public sale.

Q. As a Class 4 the property can be sold; can it be sold for residential? Will there be any restrictions, only businesses? If it is sold, is there some way to make sure

the new owners know it was contaminated and it was cleaned up? Can it be homes; a development?

- A. As a class 4, the site can be sold for any purpose. There will be a deed restriction placed on a portion of the site near monitoring well 2B. Documents regarding the completed cleanup are available at the Corning library and at the Region 8 office of the NYSDEC. Moreover, it is our experience that the buyer(s) of such an industrial site are extremely cautious regarding the environmental liability issues. Zoning requirements are at the discretion of the local municipality.
- Q. Is there a timeframe (in reference to the proposed building demolition)? Will they keep the grass cut? There are rattlesnakes in there.
- A. I-R, in their March 7, 1994 letter to NYSDEC, have indicated that the proposed building demolition will take place in June 1994. Groundskeeping work be at the discretion of I-R.
- Q. Is any part of the facility being used for storage? I see trucks going by every day.
- A. Yes, the facility is being used for pattern storage.
- Q. There's a liability involved in purchasing a past or current inactive hazardous waste site. Will businesses be held liable for "X" number of years in the future?
- A. Businesses responsible for causing contamination can be held liable for any number of years in the future. A "Responsible Party" by definition means any or all of the following: (1) the current owner and the current operator of the site or any portion thereof; (2) the owner, and operator, of the site or any portion thereof at the time any hazardous waste disposal occurred; (3) any person who generated any hazardous waste that was disposed of at the site; (4) any person who transported any hazardous waste to the site, provided that such site was selected by that person; (5) any person who disposed of any hazardous waste at the site; (6) any person who, by contract, agreement, or otherwise arranged for the transportation of any hazardous waste to the site or the disposal of any hazardous waste at the site; (7) any other person determined to be responsible according to applicable principles of statutory or common law liability.
- Q. I have heard or read in newspapers, radio, and TV that Ingersoll-Rand has been the subject of environmental monitoring. There are 37 (discharge) points into the Cohocton and Chemung Rivers for (monitoring) contamination.

Are any of these monitoring points focused between the foundry and the Cohocton River? Over the past five years, Ingersoll-Rand has been cited for pollution. Was this from the plant itself?

I know I-R has a spill team when they lose coolants. At what frequency (daily, weekly, monthly, quarterly) they are being monitored? . The river use to be right next to the main plant and was moved over 400 yards.

A. The Ingersoll-Rand Foundry site, which is the subject of this investigation, was idled in December 1985. The NYSDEC knows of no discharge or of a reason why there would be a discharge from this facility. To our knowledge, this foundry site has not been cited for environmental problems over the past five years. What you are referring to, may relate to different corporate properties in Painted Post.

Q. Are the (discharge) points needed at the foundry?

A. The NYSDEC knows of no reason for discharge points at the foundry. The only monitoring that will be done at the foundry will be for the groundwater.

C. At the regular planning board meeting, a geographical mapping system with information from the EPA and SPDES register is being developed. Maps of the Painted Post area are being verified locally.

Q. Is it possible or to test air quality over the site? Is the air polluted? As the groundwater goes down, what is it doing to the air? Is it likely that higher temperatures cause more air pollution?

A. Semi-volatile organic compounds were identified in a localized area at location MW-2B at 3 - 12 feet below the ground surface. Also trace levels of TCA in groundwater at 20 - 80 ft depth are not likely to migrate to the surface. No air pollution problems are thus expected at this site even at higher ambient temperatures.

Q. When the cupolas were in place between 1940 - 1970, I-R purchased car engine blocks which were used for castings for the base metal iron process. I-R loaded these blocks from the top down into the heat; oil and ethylene glycol were vaporized and there were explosions and BOOM. At that point, could they have been contaminating the environment? Everything was black, there would be soot on cars, clothes, even the inside of windows in the winter. What is your experience with respect to this?

Castings, engine blocks, and molten metal exploded and the

gases were not all completely destroyed. A stack of transmissions were stored near monitoring well #1. The fumes were atrocious and smoke would go into our house.

A. The loading of castings for base metal iron into the cupolas resulted in the incineration of some of the organic compounds present due to the high temperatures encountered. Although some residual organic material may have remained, the more probable cause of the black soot was the coke that was used to fire the cupolas. The Department has no data to confirm any releases from the processes to which you are referring.

Q. There is an existing production well (the foundry water well which is not used for drinking). Was it tested?

A. There were actually two production wells on site. Both wells were tested initially in 1985 and no contamination was found.

Q. How will the new storm water regulations impact this facility? Industries have rules. How will this site be treated by SPDES permit?

A. This site is not regulated by the new storm water regulations since it is not in operation. As stated earlier, the Department is not aware of any need for a State Pollution Discharge Elimination System (SPDES) permit at this site.

Q. Are there any storm drains that drain to the village to our street? If there are holes or seepage, could that be causing contamination?

If pipes are open, soil contamination could be deeper down, even after the flood of 1972?

A. Yes, there are storm drains on the facility property. The direction that they drain is unknown. However, if the storm drains were to leak, the material would have to percolate down through the soil to get to the groundwater. Sampling has not indicated any contaminant sources in the soils near any storm drains.

A. For the material to impact groundwater, it would have to percolate down through the soil to get to the groundwater. Sampling has not indicated any contaminant sources in soils that could be the cause of the TCA contamination found in the groundwater including the Village of Painted Post municipal well #4.

Q. Can it wash into the street? Even our storm sewer on

Chemung Street, when it rains, turns into a canal. You cannot even drive a car from the curb to the railroad track, a distance of 100 - 150 yards.

A. Although the potential may have existed for materials to wash along the surface, in order to get to the groundwater, contaminants would need to percolate down through all of the soils to get to the groundwater table. There has been no indication of soil contamination in the areas where monitoring wells have been placed.

Q. Could contamination in monitoring well 5A be from this?

We know there was a huge cistern by those wells.

A. During the installation of monitoring wells MW-5A and MW-5B, screening and sampling was conducted. There was no indication of TCA in the soil. Groundwater TCA levels at monitoring well 5A are consistently in the range of 5 - 8 ppb, which marginally exceed the 5 ppb NYS Drinking Water Standard. The source of this TCA can not be determined from this investigation. Monitoring well 5A is located approximately 250 ft. northeast of the I-R Foundry. It is believed to be cross gradient or downgradient, depending upon the pumping activity of the public water supply well. It is important to note that the public is not exposed to groundwater at this location.

Q. Did you find the top and bottom of the water table?

A. Wells were installed to look at both surface and deep contamination. Deeper wells were installed to what was believed to be the bottom of the aquifer in a number of areas.

Appendix - B

Administrative Record

ADMINISTRATIVE RECORD

- 1) Final Analytical Review for Ingersoll-Rand Foundry Site, November 1, 1989
- 2) Revised Proposal for Groundwater Quality Assessment, August 12, 1991
- 3) Interim Stratigraphy Report for Phase - I Groundwater Quality Assessment, January 1992
- 4) Fact Sheet by New York State Department of Environmental Conservation, March 1992
- 5) Groundwater Quality Assessment - Ingersoll-Rand Foundry, September 1992
- 6) Subsurface Investigation Report (alleged drum disposal area), February 9, 1993
- 7) Subsurface evaluation of MW-2B - Additional Groundwater Quality Assessment, August 2, 1993
- 8) First Quarter Well Sampling Event Report, August 30, 1993
- 9) Second Quarter Well Sampling Event Report, November 4, 1993
- 10) Third Quarter Well Sampling Event Report, December 13, 1993
- 11) Fourth Quarter Well Sampling Event Report, February 8, 1994
- 12) Focussed Feasibility Study Report - Former Ingersoll-Rand Foundry, February 25, 1994
- 13) Fact Sheet/Public Meeting Announcement, February 1994
- 14) Record of Decision (ROD), including Responsiveness Summary of March 7, 1994 public meeting

DECLARATION
OF
CONDITIONS, COVENANTS AND
RESTRICTIONS

STEARNS COUNTY
CLERK'S OFFICE
JAN 10 1 25 PM '01

Made By: Ingersoll-Rand Company ✓
200 Chestnut Ridge Road
Woodcliff, New Jersey 07675

DECLARATION OF CONDITIONS, COVENANTS AND RESTRICTIONS

THIS DECLARATION OF CONDITIONS, COVENANTS AND RESTRICTIONS, made this 15 day of December, 2000, by Ingersoll-Rand Company, a New Jersey corporation, and having a principal place of business at 200 Chestnut Ridge Road, Woodcliff, New Jersey 07675 (herein "I-R").

WITNESSETH:

WHEREAS, I-R is the owner of certain lands situate in the Village of Painted Post on Water Street, in the County of Steuben, State of New York, containing approximately 57.413 acres with certain improvements, more particularly depicted on a certain deed dated July 20, 2000, and recorded on July 26, 2000 in Liber 1667 of Deeds at Page 312 in the office of the Steuben County Clerk, Bath, New York (said lands hereinafter referred to as the "Premises"), and as depicted on Schedule A herein, including a portion of said Premises as depicted as the contaminated MW-2B area; and

WHEREAS, the history of the Premises is described more fully in Schedule B herein; and

WHEREAS, certain governmental agencies and I-R have conducted environmental investigations at and near the Premises, the scope and result of each of which are described more fully in SCHEDULE B herein; and

WHEREAS, a selected remedial action at the Premises contemplates the recording of a deed restriction identifying the presence of certain environmental conditions at the Premises, as described more fully in SCHEDULE B herein; and

WHEREAS, I-R seeks to impose conditions, covenants and restrictions on the Premises for the purpose of promoting, benefitting, preserving and protecting the health and safety of the public and the environment all as related to the foregoing; and

WHEREAS, I-R was the owner of the Premises until on or about December 1985 when Dresser-Rand Company, a general partnership doing business in the State of New York, and having a principal place of business in Corning, New York ("D-R") was formed as part of a joint venture and title to the Premises was transferred from I-R to D-R; and

WHEREAS, D-R transferred the Premises back to I-R on July 20, 2000, with recording on July 26, 2000; and

WHEREAS, I-R seeks to impose conditions and restrictions on the Premises for the benefit of itself.

NOW, THEREFORE, (i) I-R, on behalf of itself, its successors and assigns, hereby declares and (ii) each and every person or entity who shall be an owner of the Premises or any part thereof, hereby covenants and agrees on behalf of itself, its successors and assigns, that the Premises or any part thereof shall be held, transferred, sold, conveyed, occupied and developed subject to the following conditions, covenants and restrictions:

1. Notice and warning is hereby provided that polynuclear aromatic hydrocarbons (PAHs), which are semi-volatile organic compounds, are located in soils at and below the ground surface of the Premises. Notice and warning is hereby provided that these PAHs may pose an elevated risk to workers in a scenario where future site use includes invasive activities at or below the Premises, and appropriate precautions should be taken.

2. No disturbance or excavation of surface or subsurface soils or other materials at or below the Premises, shall occur without prior written notice to, and prior written approval of, I-R.
3. No use of the Premises may occur for other than industrial or commercial purposes.
4. Any activity or use not specifically permitted hereby or any activity prohibited pursuant hereto shall be forbidden.

A. Conditions, Covenants and Restrictions to Run with the Premises.

Said conditions, covenants and restrictions shall run with the Premises and every part thereof and shall bind all owners and occupiers of the Premises or any part thereof, and their respective successors and assigns; all parties claiming by, through, or under them or any of them shall be taken to hold, agree and covenant with all owners of the Premises or any part thereof, and their respective successors and assigns and each of them, to conform to and observe said conditions, covenants and restrictions.

B. Enforceability.

Said conditions, covenants and restrictions shall inure to the benefit of and be enforceable by I-R and by each and every person or entity who shall be an owner of the Premises or any part thereof, and their respective successors and assigns, and shall also benefit I-R, its successors and assigns. Said conditions, covenants and restrictions shall not give rise, by implication or otherwise, to a reciprocal condition, covenant or restriction burdening or binding upon the other lands or any part thereof owned by I-R benefitted hereby or hereafter, by actions at law or by suits in equity. As it may be impossible to measure monetarily the damages which may

accrue to the beneficiaries hereunder by reason of a violation of this Declaration, any beneficiary hereunder shall be entitled to relief by way of injunction or specific performance, as well as any other relief available at law or in equity, to enforce the provisions hereof.

The failure of any beneficiary hereunder to enforce any provision of this Declaration shall in no event be construed as a waiver of the right of that beneficiary or any other beneficiary hereunder to enforce any provision of this Declaration as to the same or a similar violation occurring prior or subsequent to any such failure to enforce. No liability shall attach to I-R or any subsidiary or other affiliate of I-R (or any officer, director, employee, member, agent, committee or committee member of any of them) or to any other beneficiary hereunder (excepting, however, the subject owner in breach) for failure to enforce the provisions of this Declaration.

If I-R or any other beneficiary hereunder successfully brings an action to extinguish a breach or otherwise enforce the provisions of this Declaration, the costs of such action, including legal fees, shall become a binding, personal obligation of the owner in breach.

C. Amendments and Termination.

Any amendment or termination of this Declaration affecting any part of the Premises shall require the written consent of all owners of the Premises or any part thereof, which consent shall not be unreasonably withheld, and of I-R, or its successors or assigns, whose consent may be withheld in its sole discretion.

Any amendment or termination of this Declaration shall not become effective until the instrument evidencing such change has been duly recorded in the Steuben County Clerk's Office.

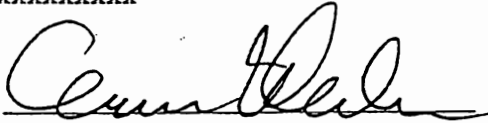
Neither this Declaration nor any amendment to this Declaration shall be interpreted as permitting any action or thing prohibited by the applicable laws, ordinances, rules or regulations of any governmental authority having jurisdiction over the part of the Premises affected or by specific restrictions imposed by any other instrument relating to the Premises or to such part of the Premises.

No change of conditions or circumstances shall operate to amend this Declaration, and this Declaration may be amended only in the manner provided herein.

The determination by any court of competent jurisdiction that any provision of this Declaration is unenforceable, invalid or void shall not affect the enforceability or validity of any other provision hereof.

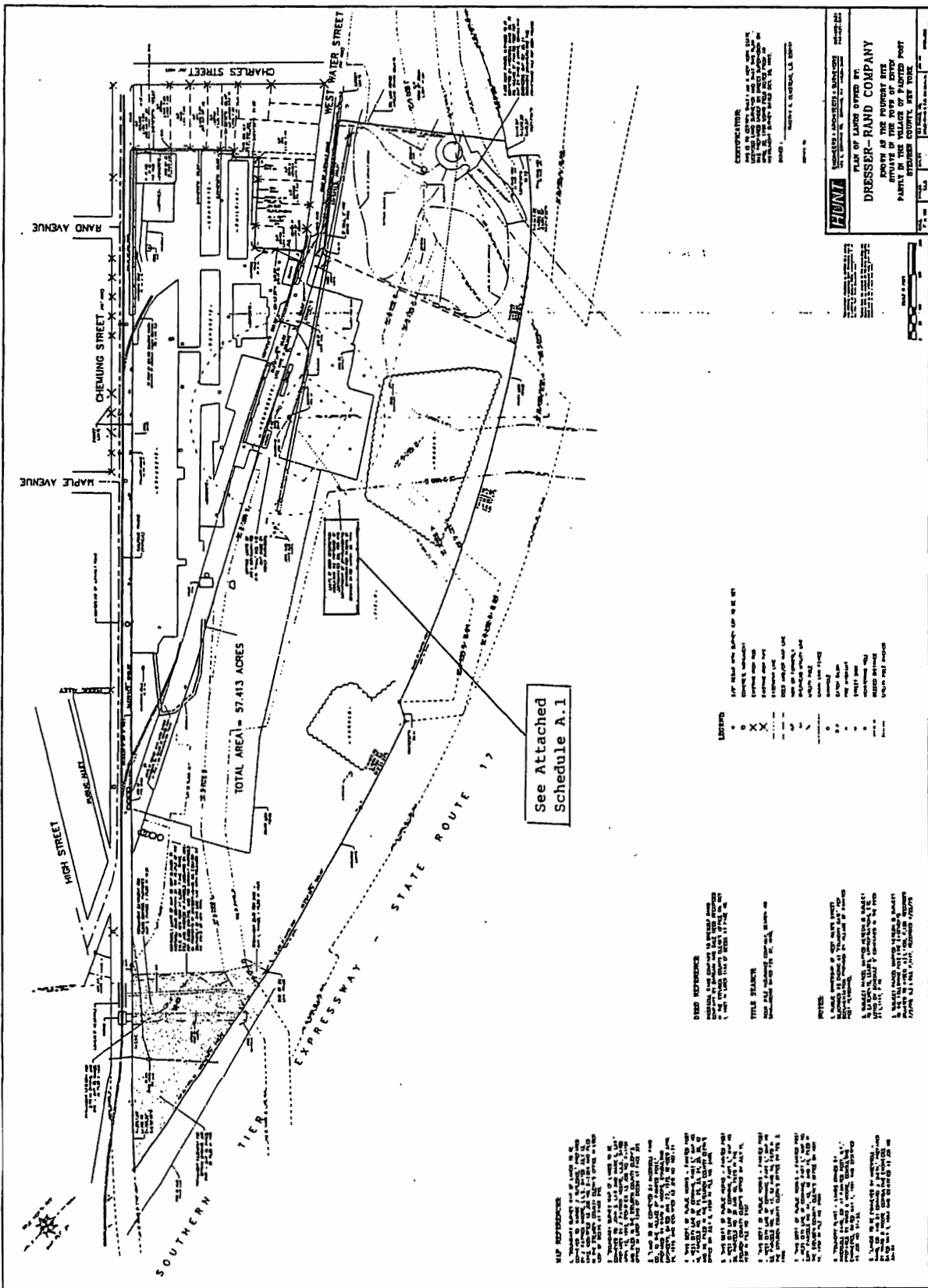
IN WITNESS WHEREOF, I-R has executed this Declaration as of the day and year first above written.

INGERSOLL-RAND COMPANY
By its Assistant General Counsel
ATTEST


Aaron Kleinbaum

~~INGERSOLL-RAND COMPANY~~
~~by its~~
~~*****~~

SCHEDULE A



SCHEDULE A.1

LIMITS OF DEED RESTRICTION INDICATING THE PRESENCE OF
CONTAMINATED SOIL PER NYS DEPARTMENT OF
ENVIRONMENTAL CONSERVATION RECORD OF DECISION DATED
MARCH 30, 1994.

SCHEDULE BHISTORY OF SITE AND PREMISES

The Premises consist of approximately 57 acres of land upon which there existed a 287,000+/- square foot foundry. The Foundry operated from approximately 1920 through December 1985, and produced gray iron castings principally for I-R's compressor plant located at a separate site in Painted Post, New York. The operations consisted of pattern construction, sand mold lines, melt furnaces, castings, shakeout, casting, clearing and pattern and casting storage. After the foundry was idled in December 1985, an environmental evaluation and cleanup was conducted by I-R as part of its facility closure activity. In addition, pursuant to an Order on Consent with New York State Department of Environmental Conservation ("NYSDEC"), I-R has performed further investigation and remediation activities at the Premises.

Documentary information with respect to the environmental investigations and cleanup that have taken place at the Premises, and any areas of the Premises that may have been impacted by releases of hazardous wastes, substances or constituents, can currently be obtained from documents submitted to NYSDEC at its Albany, New York office (currently at 50 Wolf Road, Albany, New York 12233), and its Region 9 office at Buffalo, New York (currently at 270 Michigan Avenue, Buffalo, New York 14208-2999). Further information with respect to past activities at the Premises, including the use of foundry sand as backfill throughout wide portions of the MW-2B area of the Premises, current activities, previous environmental investigations, information and investigations concerning the foundry sand at the Premises, groundwater quality, soil contamination, areas of possible environmental concern, topography, geology, hydrogeology, human health and environmental impacts, can be obtained from the documentary information and other documents submitted to the NYSDEC at the above-identified locations.

Such documentary information includes, but is not limited, to NYSDEC's Record of Decision, dated March 1994 ("ROD") entitled "Ingersoll-Rand Foundry Inactive Hazardous Waste Site; Site Number 8-51-012, Village of Painted Post, Steuben County, New York". That ROD, in part, summarizes environmental sampling data which identified polynuclear aromatic hydrocarbons ("PAHs") near monitoring well MW-2B, as depicted in Schedule A hereto. Soil samples collected from within the fill material in this area confirmed that the PAHs in the fill were stationary and not migrating. The PAHs in the fill material appear to be petroleum based, and are commonly found in creosote, coal tar, and heavy oil-type products. The PAHs have been detected in an approximately 300 foot radial area surrounding MW-2B, at a depth approximately three (3) to six (6) feet below ground surface.

The NYSDEC has determined that the PAHs at the Premises may pose an elevated risk to workers in a scenario where future use includes invasive activities at the Premises. To address this concern, as part of the NYSDEC's selected remedy under the ROD, a restriction is to be placed on the Premises indicating the presence of in-place soils contaminated by PAHs. The declaration by I-R in this Declaration is intended to satisfy the elements of the ROD's selected remedy, and minimize the potential for future human exposure if excavation is to occur at the Premises.

EXAMINED

Linda M. Hunter

STEUBEN COUNTY CLERK

STEUBEN COUNTY
CLERK'S OFFICE

JAN 10 1 15 PM '01

D+E

STATE OF NEW YORK : DEPARTMENT OF ENVIRONMENTAL CONSERVATION
-----X

In the Matter of the Development and
Implementation of a Remedial Program for
an Inactive Hazardous Waste Site Disposal
Site Pursuant to Article 27, Title 13 of
the Environmental Conservation Law of the
State of New York by

ORDER
ON
CONSENT

INGERSOLL RAND

Index #B8-0183-87-04
Site #851012

RESPONDENT
-----X

WHEREAS:

1. The New York State Department of Environmental Conservation (the "Department") is responsible for the enforcement of Article 27, Title 13, of the Environmental Conservation Law of the State of New York (the "ECL"), entitled "Inactive Hazardous Waste Disposal Sites".

2. Respondent, Ingersoll Rand, entered into a joint venture with Dresser Industries, Inc., as of December 31, 1986 and formed Dresser-Rand which is organized as a partnership, and existing under the laws of the State of New York. Dresser Rand presently owns and controls, and Ingersoll Rand formerly operated a facility commonly known as the Ingersoll Rand Foundry, located on Water Street in the Village of Painted Post, County of Steuben, State of New York, (the "Site").

3. Respondent's operation of the Ingersoll-Rand Foundry at the Site resulted in the spillage, leakage, or discharge of polychlorinated biphenyl (PCB)-contaminated oil and other materials which are now deemed waste materials.

4. PCB and PCB-contaminated wastes are hazardous wastes as that term is defined in Section 27-1301(1) of the ECL and Section 371.4(c) of 6 NYCRR, which wastes persist in the environment and can constitute a significant threat to the environment when improperly treated, stored, disposed of or otherwise mis-managed.

5. As a result of the presence of PCB-contamination, the Site is deemed by the Department to be an inactive hazardous waste disposal site as that term is defined in Section 27-1301(2) of the ECL.

6. The Department alleges that the hazardous waste, and hazardous waste constituents thereof at the Site constitute a significant threat to the environment.

7. Pursuant to ECL Section 27-1313(3)(a), "whenever the Commissioner of Environmental Conservation (the "Commissioner") finds that hazardous waste at an inactive hazardous waste disposal site constitutes a significant threat to the environment, he may order the owner of such site and/or any person responsible for the disposal of hazardous waste at such site (i) to develop an inactive hazardous waste disposal site remedial program subject to the approval of the Department, at such sites and (ii) to implement such program within reasonable time limits specified in the Order".

8. Respondent and Dresser-Rand are persons responsible for the Site within the meaning of ECL Section 27-1313(3)(a).

9. Respondent, through its consultant(s), has conducted

an environmental evaluation of the contamination at the site and has submitted to the Department a work plan for remediation of the Site.

10. The Department and the Respondent acknowledge that the goal of this Order shall be that the Respondent fully implement the Work Plan, attached hereto as Appendix "A", as approved by the Department, within the time limit specified therein and any further investigation required to confirm that:

A. PCBs and PCB-contaminated wastes at the site have been eliminated so that PCB contamination remaining on-Site does not exceed the level of 10 ppm or 50 micro-grams per square meter (on non-porous surfaces).

B. Identified environmental hazards and potential hazards in connection with hazardous wastes at the Site have been abated or eliminated.

11. Respondent, having waived its right to a hearing herein as provided by law, and having consented to the issuance and entry of this Order, agrees to be bound by the provisions, terms and conditions hereof.

NOW, having considered this matter and being duly advised, IT IS ORDERED THAT

I. Respondent shall implement the remedial program for the Site as set forth in the approved Work Plan attached hereto and identified as Appendix "A".

II. All proposals, reports, plans, investigations, remedial programs, and supplements and revisions thereto

required by this Order shall address both on-Site and if determined to be necessary, off-Site contamination caused by the discharge of hazardous and industrial wastes at the Site and shall be prepared, designed and executed in accordance with Requisite Technology. As used in this Order, Requisite Technology means engineering, scientific and construction principals and practices subject to the Department's approval, which (a) are technologically feasible and (b) will most effectively identify, mitigate and eliminate any present or potential future threat to the environment posed by hazardous waste and hazardous waste constituents at the Site.

The failure of Respondent to submit or undertake a proposal, report, construction program, or any supplement or revision thereof, in accordance with Requisite Technology shall, after receipt of written notice from the Department of any deficiency therein, shall constitute a violation of this Order.

III. As used herein, "hazardous waste" shall mean hazardous waste as defined in ECL Section 27-1301(1) and the rules and regulations promulgated pursuant thereto and any hazardous constituents or toxic degradation products of such waste.

IV. Respondent shall submit to the Department throughout implementation of the approved Work Plan any and all monitoring and analytical results, manifests, certificates of destruction, or other documentation necessary to confirm compliance with the approved Work Plan and all

applicable statutes and regulations and to confirm that cleanup of surficial contamination has been accomplished so that PCB contamination remaining on-Site does not exceed the level of 10 parts per million and does not exceed the level of 50 micrograms per square meter on non-porous materials.

V. No later than sixty (60) days after completion of the implementation of the approved Work Plan (Appendix "A") Respondent shall submit to the Department: (a) a report concerning the remedial activities undertaken, with all supporting documents including a certification that construction was completed in accordance with the approved Work Plan (such certification shall be by a licensed professional engineer registered in the State of New York); together with (b) a proposal for a Post-Removal Investigation ("Proposal") designed to confirm that: (i) groundwater has not been contaminated by PCBs and PCB-contaminated waste at the Site and (ii) that the Remedial Program has abated and/or eliminated all identified health and environmental hazards and potential hazards presented by hazardous waste at the Site.

VI. Within thirty (30) days after receipt of the Report and Proposal for Post-Removal Investigation, the Department shall provide written notification to the Respondent of its approval or disapproval of the Report and Proposal.

If the Department approves the Report, the Department shall acknowledge completion of the Approved Work Plan and such Report shall become part of the Order and be attached

hereto as Appendix "B". If the Department determines that the Report has failed to confirm the Respondent's completion of the Approved Work Plan, the Department shall notify the Respondent, in writing, of the basis for the Department's inability to acknowledge such completion. The Respondent shall address the Department's objections by revising the Report or by undertaking any further actions necessary to confirm completion of the approved Work Plan. Upon the completion of such revisions or further actions, the Department shall acknowledge the completion of the Approved Work Plan in writing. After such acknowledgement, the Respondent may petition the Department for re-classification of the Site to a class 3 or a class 4 on the New York State Registry of Inactive Hazardous Waste Disposal Sites.

If the Department disapproves the Proposal, the Department shall notify the Respondent in writing of the Department's objections. Within thirty (30) days after its receipt of notice of disapproval, Respondent shall revise the Proposal and shall submit to the Department an investigation proposal which has been revised in accordance with the Department's objections (the " Revised Post-Removal Investigation Proposal"). Within thirty (30) days after its receipt of the Revised Post-Removal Investigation Proposal the Department shall determine if the Revised Post-Removal Investigation Proposal is in accordance with the terms, provisions and conditions of this Order and shall provide written notification to the Respondent of its approval or

disapproval of the Revised Post-Removal Investigation Proposal. If the Department disapproves the Revised Post-Removal Investigation Proposal, the Respondent shall have the option to discontinue its obligations with respect to the Post Removal Investigation and the Department shall have the right to pursue any legal remedies available to it, without prejudice to Respondent's right to contest any such actions. If Respondent elects to discontinue its obligations with respect to the Post Removal Investigation, Respondent shall not be deemed to be in violation of this Order.

The Post-Removal Investigation Proposal or the Revised Post-Removal Investigation Proposal, if approved by the Department, shall become incorporated in and made a part of this Order and shall be attached hereto as Appendix "C". Such Post-Removal Investigation Proposal shall hereafter be referred to as the Approved Post-Removal Investigation Work Plan.

VII. Within such period as may be allowed therefor by the Approved Post-Removal Investigation Work Plan, the Respondent shall implement the Approved Post-Removal Investigation and within forty-five (45) days thereafter, Respondent shall submit to the Department a report detailing the results of the Post-Removal Investigation.

VIII. Within thirty (30) days after receipt of the report of the Approved Post-Removal Investigation, the Department shall review the same. In the event the Department shall not be satisfied with the quality and

completeness of the remedial program as confirmed by the results of the Approved Post-Removal Investigation, Respondent shall be required to develop and implement the Supplementary Remedial Program to be submitted pursuant to paragraph IX below.

IX. In the event that either the Department or Respondent finds that any of the elements of the Remedial Program has failed to meet, or is inconsistent with Requisite Technology, with the requirements and goals of this Order, or with the provisions of Appendices "A" and "C", at any time prior to completion of activities required pursuant to the Approved Work Plan or during the Approved Post-Remedial Investigation, one shall immediately notify the other in writing of such failure. Immediately upon discovery or immediately upon its receipt of written notification from the Department of such failure, Respondent shall investigate to determine that the Remedial Program did in fact fail to meet the provisions of this Order or Appendices "A" and "C" and determine the causes therefor, and shall develop a Supplementary Remedial Program (the "SRP") to correct the failure and shall submit the SRP, which shall include a written scope of work and time schedule for implementation, to the Department within sixty (60) days of the discovery or receipt of such written notification.

Within thirty (30) days of receipt of the SRP, the Department shall provide written notification to the Respondent of its approval or disapproval of the SRP. If the

Department approves the SRP, Respondent shall implement the elements of the SRP in accordance with the proposal therefor.

If the Department disapproves the SRP, the Department shall notify Respondent in writing of the Department's objections. Within thirty (30) days after receipt of notice of disapproval, Respondent shall revise the SRP in accordance with the terms, provisions and conditions of this Order, and shall submit to the Department an SRP which has been revised substantially to address the Department's objections (the "Revised SRP").

Within fifteen (15) days of receipt of the Revised SRP, the Department shall provide written notification to the Respondent of its approval or disapproval of the Revised SRP. If the Department approves the Revised SRP, Respondent shall implement the elements of the Revised SRP in accordance with its provisions.

In the event that the Department disapproves of the Revised SRP, the Respondent shall have the option to discontinue its obligations with respect to the Supplemental Remedial Program and the Department shall have the right to pursue any legal remedies available to it, without prejudice to Respondent's right to contest any such actions. If Respondent elects to discontinue its obligations with respect to the Supplemental Remedial Program, Respondent shall not be deemed to be in violation of this Order.

X. The SRP or Revised SRP, if approved by the Department ("Approved SRP"), shall become incorporated in and