

WHEN RECORDED, RETURN TO:

Randolph G. Abood
Ninigret Technology Park, L.C.
1700 South 4650 West
Salt Lake City, Utah 84104

9218067
11/05/2004 04:45 PM \$102.00
Book - 9058 Pg - 2210-2256
GARY W. OTT
RECORDER, SALT LAKE COUNTY, UTAH
PARSONS, BEHLE & LATIMER
201 S MAIN ST STE. 1800
SLC UT 84145-0898
BY: ZJM, DEPUTY - WI 47 P.

NOTICE OF OBLIGATIONS

This NOTICE OF OBLIGATIONS is executed by Ninigret Technology Park, L.C. ("Ninigret"), the Owner under that certain Site Management Plan for the Eastern Alum Ponds (the "Site Management Plan") submitted to and approved by the Utah Department of Environmental Quality, Division of Solid and Hazardous Waste ("UDEQ"), and is made with respect to that certain real property located in Salt Lake County, Utah (the "Property"), which is more particularly described in Exhibit "A" attached hereto and incorporated herein by this reference.

NOTICE is hereby given that:

1. A certified copy of the Site Management Plan is attached to a Notice of Site Management Plan for the Eastern Alum Ponds, dated November 4, 2004, which will be recorded in the Salt Lake County Recorder's Office contemporaneously with this Notice of Obligations.
2. Pursuant to Section 4 of the Site Management Plan, and effective the date the Notice of Site Management Plan for the Eastern Alum Ponds is recorded, each deed, title or other instrument of conveyance conveying an interest in the Property executed by Ninigret, or its successors in title to the Property, shall include a notice stating that the Property is subject to the Site Management Plan and shall reference the recorded location of the Site Management Plan and the restrictions applicable to the Property under the Site Management Plan.
3. The Property is subject to certain obligations concerning the implementation, administration and maintenance of the site management requirements pursuant to Section 4 of the Site Management Plan, which is more particularly described in Exhibit "B" attached hereto and incorporated herein by this reference.
4. The Property is subject to various obligations and duties concerning the providing of access to the Property pursuant to Section 5 of the Site Management Plan, which is more particularly described in Exhibit "B" attached hereto and incorporated herein by this reference.

DATED this 4th day of November 2004.

OWNER

NINIGRET TECHNOLOGY PARK, L.C.
by its sole manager:

THE NINIGRET GROUP, L.C.,
A Utah limited liability company

By Randolph G. Abood
Randolph G. Abood
Managing Member

STATE OF ~~UTAH~~ New York)
:
COUNTY OF ~~SALT LAKE~~)
New York

ss.

The foregoing instrument was acknowledged before me this 4th day of November 2004, by Randolph G. Abood, the Managing Member of The Ninigret Group, L.C., the sole manager of Ninigret Technology Park, L.C.

Valerie E. Fields
NOTARY PUBLIC
Residing at: _____

My Commission Expires:

VALERIE E. FIELDS
Notary Public, State Of New York
No. 24-4754159
Qualified In Kings County
Commission Expires September 30, 2005

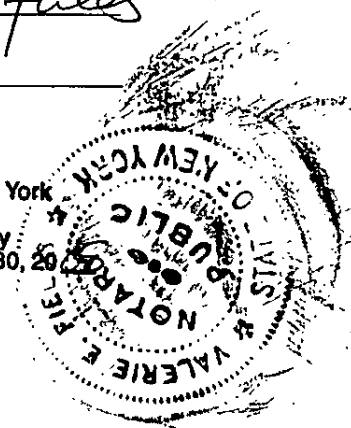


EXHIBIT A

EAST PARCEL PROPERTY DESCRIPTION

**Legal Description for
Ninigret Technology East, L.C. Parcel
Lying Westerly of Brighton Canal &
"KK" Geogrid Line**

A parcel of land located in the Southeast quarter of Section 7, the Southwest quarter of Section 8, the Northwest quarter of Section 17, and the Northeast quarter of Section 18, Township 1 South, Range 1 West, Salt Lake Base and Meridian, more particularly described as follows:

Beginning at the rebar and cap marked "BINGHAM ENG", found at the Northwest corner of Lot A, Sorenson Technology Park Plat 1 (as recorded in the Office of the Salt Lake County Recorder in Book 96-4P at page 132), which point is 2196.87 feet North $89^{\circ}54'49''$ East along the section line to the West line of said Plat 1 and 40.60 feet North $03^{\circ}29'33''$ West along said line and 2.92 feet North $19^{\circ}27'43''$ East from the Salt Lake County survey monument found marking the Southwest corner of said Section 8 (basis of bearings being South $89^{\circ}58'00''$ East 2637.65 feet between the Salt Lake County survey monuments found marking the Southwest corner and the South quarter corner of said Section 7), and running thence along the West line of said Lot A the following two courses: (1) South $19^{\circ}27'43''$ West 2.92 feet; (2) South $03^{\circ}29'33''$ East 1002.37 feet to the Southwest corner of said Lot A; thence South $89^{\circ}51'13''$ East 25.69 feet, more or less, to the center line of the existing Brighton Canal; thence along said line the following three (3) courses: (1) South $03^{\circ}16'27''$ East 64.89 feet; (2) South $23^{\circ}01'22''$ East 103.20 feet; (3) South $59^{\circ}11'22''$ East 371.87 feet; thence South $00^{\circ}35'39''$ East 1005.43 feet to the North line of that certain "Parcel 5" described under the heading "Excepting from said Parcel the following six parcels" in Book 6031 at Page 2704 in the Office of the Salt Lake County Recorder; thence South $89^{\circ}57'11''$ West 2900.53 feet along the North line of the Utah Power and Light right-of-way described in Book 2276 at Page 0495 in the Office of the Salt Lake County Recorder to a point on the Easterly right-of-way line of Bangerter Highway, as shown on those certain sheets 6, 7 and 8 of Utah State Department of Highways Project No. RS-0162(3) (West Valley Highway 2100 South to 700 South), dated 1/77; thence running along said Easterly line the following nine (9) courses: (1) North $42^{\circ}08'12''$ West 24.43 feet; (2) North $32^{\circ}51'07''$ West 101.85 feet; (3) North $27^{\circ}01'57''$ West 101.98 feet; (4) North $15^{\circ}43'22''$ West 1170.64 feet to the point of tangency with a 3688.96-foot radius curve to the right; (5) Northwesterly 996.81 feet along the arc of said curve through a central angle of $15^{\circ}28'56''$ (chord bears 993.78 feet North $07^{\circ}58'54''$ West) to a tangent line; (6) North $00^{\circ}14'32''$ West 15.26 feet; (7) South $89^{\circ}58'06''$ West 3.43 feet; (8) North $00^{\circ}27'29''$ West 29.51 feet; (9) South $89^{\circ}32'31''$ West 0.37 feet to the Southeasterly line of a relocated Railroad right-of-way, as shown on that certain Salt Lake City Corporation Project No. 38-808-4 (California Avenue right-of-way),

sheets 2 (dated 4/6/94 and labeled Vault No. 970091) and 3 (dated 3/31/94 and labeled Vault No. 970092), completed by H. W. Lochner, Inc., also being a point of non-tangency with a 539.00-foot radius curve to the right (radius point bears South 89°53'15" East), and running along said relocated railroad right-of-way the following four (4) courses: (1) Northeasterly 496.50 feet along the arc of said curve through a central angle of 52°46'39" (chord bears North 26°30'05" East 479.13 feet) to a tangent line; (2) North 52°53'24" East 304.83 feet to the point of tangency with a 609.00-foot radius curve to the left; (3) Northeasterly 327.45 feet along the arc of said curve through a central angle of 30°48'25" (chord bears North 37°29'21" East 323.52 feet) to a tangent line; (4) North 22°04'59" East 80.00 feet to the Southwesterly line of said California Avenue, as shown on said sheets 2 and 3; thence along said Southwesterly line the following three (3) courses: (1) South 68°39'23" East 774.67 feet; (2) South 67°55'01" East 1012.83 feet to the point of tangency of a 3885.00-foot radius curve to the left; (3) Southeasterly 701.48 feet along the arc of said curve through a central angle of 10°20'43" (chord bears South 73°05'22" East 700.53 feet) to the point of beginning. Contains 198.70 acres, more or less.

Part Parcel No. 15-17-100-016-4001

EXHIBIT B

NOTICE OF OBLIGATIONS CONCERNING ACCESS AND SITE MANAGEMENT REQUIREMENTS

This NOTICE OF OBLIGATIONS CONCERNING ACCESS AND SITE MANAGEMENT REQUIREMENTS is executed by Ninigret Technology Park, L.C. ("Ninigret"), the Owner under that certain Site Management Plan for the Eastern Alum Ponds (the "Site Management Plan") approved by the Utah Department of Environmental Quality, Division of Solid and Hazardous Waste ("UDEQ"), and is made with respect to that certain real property located in Salt Lake County, Utah (the "Property"), which is more particularly described in Exhibit "A" attached to the Notice of Obligations and incorporated herein by this reference.

NOTICE is hereby given, pursuant to the requirements of Sections 4 and 5 of the Site Management Plan, that the following obligations to provide access and to comply with site management requirements, are imposed on the Property under the Site Management Plan:

ACCESS AND SITE MANAGEMENT REQUIREMENTS

1. Commencing on the date of approval of the above-referenced Site Management Plan and in accordance with Paragraph 59 of the Stipulation and Consent Agreement No. 92060130 (the "Consent Agreement") between the Utah Solid and Hazardous Waste Control Board ("Board") and Engelhard Corporation, the predecessor-in-title to the Property, a copy of which is attached hereto as Attachment "A" and incorporated herein by this reference:

(a) Under the Site Management Plan, all activities conducted by Ninigret shall be subject to inspection and enforcement by the Board in accordance with the procedures in the Utah Solid and Hazardous Waste Act, Section 19-6-101 *et seq.*, Utah Code Annotated (1953) as amended.

(b) Ninigret and each of its successors in title shall provide the UDEQ and its representatives and its authorized contractors with access at all reasonable times to the Property for the purpose of conducting sampling and monitoring and observing activities carried out under the Site Management Plan. These individuals shall conduct themselves in a safe and prudent manner in accordance with the health and safety standards of the UDEQ.

2. Ninigret and its successors shall comply with the following site management requirements applicable to the Property:

(a) Land use restrictions shall be imposed to prevent residential development of the Property or use of the Property for growing edible crops or for child care or early education school purposes and to ensure that the Property is used solely for commercial and industrial purposes in the future.

(b) All notifications required by Paragraph 4.4 of the Site Management Plan shall be given in accordance with that paragraph.

(c) Groundwater restrictions shall be imposed to prevent extraction and use of groundwater from beneath the Property. A separate groundwater monitoring program will be established to monitor concentrations of chemicals in groundwater beneath the Property over time. The restriction on groundwater use may be modified or eased if the UDEQ determines it is appropriate, based on analytical results.

(d) All excavated material from the Property must either remain on the Property or be disposed of at an appropriately licensed treatment, storage and disposal facility.

(e) Neither the Site Management Plan, nor this Notice of Obligation, may be modified without the consent of UDEQ, which consent shall not be unreasonably withheld.

3. Ninigret shall impose each of the restrictions set out in this Notice on its successors in any deed or transfer of interest in the Property, which restrictions are intended to run with the Property and bind successors to the Property in perpetuity, unless UDEQ or its successors determine that such requirements can be reduced or eliminated in the future.

DATED this 4th day of March, 2004.

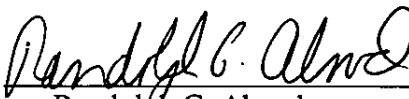
OWNER

NINIGRET TECHNOLOGY PARK, L.C.

by its sole manager:

THE NINIGRET GROUP, L.C.,

A Utah limited liability company

By 

Randolph G. Abood

Managing Member

STATE OF ~~UTAH~~ New York)
 :
COUNTY OF ~~SALT LAKE~~)
 New York

ss.

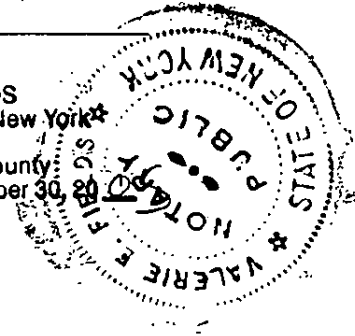
The foregoing instrument was acknowledged before me this 4th day of November, 2004, by Randolph G. Abood, the Managing Member of The Ninigret Group, L.C., the sole manager of Ninigret Technology Park, L.C.

Valerie E. Fields
NOTARY PUBLIC

My Commission Expires:

Residing at: _____

VALERIE E. FIELDS
Notary Public, State Of New York
No. 24-4754159
Qualified In Kings County
Commission Expires September 30, 2005

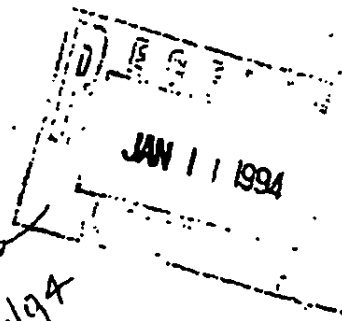


ATTACHMENT A
STIPULATION AND CONSENT AGREEMENT



DEPARTMENT OF ENVIRONMENTAL QUALITY
DIVISION OF SOLID AND HAZARDOUS WASTE

Michael O. Lewis
Governor
Dianne R. Nielson, Ph.D.
Executive Director
Dennis R. Downs
Director
288 North 1460 West
P.O. Box 144880
Salt Lake City, Utah 84114-4880
(801) 538-6170
(801) 538-6715 Fax
(801) 536-4414 T.D.D.



*Copy to
WLC given
to
Dennis
1/17/94*

*EJE
Natalie Nelson
1/17/94*

January 4, 1994

Natalie E. Nelson
Engelhard Corporation
101 Wood Avenue
Iselin, NJ 08830-0770

CERTIFIED MAIL
Return Receipt Requested

SUBJECT: Engelhard's Copy of Consent Agreement No. 92060130, executed December 21, 1993

Dear Ms Nelson:

Enclosed is Engelhard's signed copy of Consent Agreement No. 92060130 (The Agreement) for corrective action at Engelhard's Salt Lake City facility. The Agreement was signed on December 21, 1993 which is the effective date of the Agreement.

Counting from the effective date, the first requirement of the Agreement, the Current Conditions Report (Task I) cited in paragraph 25 of the agreement will be due by April 3, 1993, ninety (90) days from December 21, 1993

If you have any further questions, please contact Chris Cline of this office at (801) 538-6170.

Sincerely,

Dennis R. Downs
Dennis R. Downs, Executive Secretary
Utah Solid and Hazardous Waste Control Board

RECEIVED BY:
THOMAS S. BROWN

JAN 18 1994

enclosure

- c: Vern Loveless, Acting General Manager
Engelhard Salt Lake Plant
- Thomas L. Schlenker, M.D., M.P.H., Department Director
Salt Lake City/County Health Department

COPIES TO:
CIRC. TO:
RETURN
FILE: *21. Salt Lake City*

BEFORE THE UTAH SOLID AND HAZARDOUS WASTE CONTROL BOARD:

---0000000---

In the matter of:	:	
Engelhard Corporation	:	Stipulation and
Catalysts and Chemicals Division	:	Consent Agreement
Salt Lake City Plant	:	No. 92060130
UTD009073800	:	

---0000000---

This STIPULATION AND CONSENT AGREEMENT (CONSENT AGREEMENT) is issued by the Utah Solid and Hazardous Waste Control Board ("the Board") pursuant to the Utah Solid and Hazardous Waste Act (the Act), §19-6-101 ~~et seq.~~, Utah Code Annotated, (1953, as amended).

ENGELHARD CORPORATION- Consent Agreement

JURISDICTION

1. The Board has jurisdiction over the subject matter of this CONSENT AGREEMENT pursuant to Section 19-6-112 of the Act and jurisdiction over the Division of Solid and Hazardous Waste (DSHW) and Engelhard Corporation (Engelhard) (the Parties).

STIPULATIONS

2. Engelhard is a corporation licensed to do business in Utah.
3. Engelhard owns and operates a petroleum catalyst manufacturing and regeneration facility in Salt Lake County, Utah.
4. At the site, hazardous wastes and wastes containing hazardous constituents have been treated, stored and disposed as defined in the Act and R315 of the Utah Administrative Code (the Rules).
5. Engelhard is a "person" as defined in section 19-1-103(4) of the Utah Code Annotated (1953, as amended), and is subject to all applicable provisions of the Act and the Utah Administrative Code (the Rules)
6. Engelhard is subject to the applicable provisions of the Rules.
7. On July 3, 1980, timely notification and a permit application (Part A) for hazardous waste activities was submitted as required by Section 3010 of the Resource Conservation

ENGELHARD CORPORATION- Consent Agreement

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and Recovery Act (RCRA) 42 U.S.C. §6930 and §19-6-108 of the Act. The owners of the Engelhard facility at that time thereby obtained "interim status" as a hazardous waste storage facility. The current Part A application was filed by Engelhard on 25 September, 1990.

8. On 2 November, 1988, Engelhard filed a Part B permit application for a hazardous waste storage permit to meet the requirements of interim status. The Executive Secretary of the Bureau of Solid and Hazardous Waste (predecessor to the DSHW) issued a Notice of Deficiency on 23 June, 1989.
9. On 14 November, 1991, representatives of the DSHW, accompanied by representatives of Engelhard, conducted a Visual Site Inspection (VSI) of the Engelhard facility as part of a RCRA Facility Assessment (RFA), which is required to complete the corrective action and closure/post-closure portions of the Hazardous Waste Storage Permit. During the VSI, Solid Waste Management Units (SWMUs) which had been previously identified were examined to determine if they should be included in the RFA and in the subsequent closure process.
10. In a meeting held at the DSHW offices on 19 December, 1991, Engelhard informed the Division that there were additional units that they believed might be identified as SWMUs which had not been noted during the VSI or in previous Part B permit submittals, and that they would include these units with or as an addendum to the Part B permit which was being readied for submittal.

ENGELHARD CORPORATION- Consent Agreement

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11. R315-8-6.12 of the Rules requires that as part of the permitting process, the owner or operator of the facility seeking plan approval must institute corrective action as necessary to protect human health and the environment for all releases of hazardous waste or constituents from any solid waste management unit at the facility, regardless of the time at which waste was placed in such unit and provides for the ability to compel corrective action beyond the facility boundary where necessary. This provision also requires that the owner or operator of the facility demonstrate financial assurance for any required corrective action, and allows schedules of compliance to be used for the corrective action.
12. On 16 January, 1992 Engelhard submitted a revised Part B permit application which addressed the issues identified in the June 23, 1989 Notice of Deficiency. The permit application sought plan approval for three (3) storage units at the Engelhard facility. These three units are:
- a. the NORTH PAD, located in the northeast section of the plant yard. (See appendix 1, Site Location Maps)
 - b. the BOILER PAD, located west of the silos.
 - c. the WEST PAD, located along the west boundary of the plant yard.
13. A Hazardous Waste Storage Permit was issued by the Executive Secretary to Engelhard on April 12, 1993. Ongoing solid and hazardous waste management in the storage units listed in paragraph 12 above is specified in this permit. However, clean-up of

ENGELHARD CORPORATION- Consent Agreement

contamination which has occurred as a result of past solid waste management activities will be included in this CONSENT AGREEMENT.

14. Engelhard has indicated that the facility is being offered for sale or will close. Whether sold or closed, Engelhard desires to remain the primary responsible party for corrective action on the SWMUs identified in the revised Part B permit application. Engelhard representatives have indicated that they wish to enter into a Consent Agreement which will outline administrative requirements for clean-up and closure of the identified SWMUs and replace the corrective action module of the hazardous waste storage permit. This objective is intended to be achieved in this CONSENT AGREEMENT.

15. On 10 February, 1992, Engelhard submitted a revised inventory of SWMUs known to exist at the Engelhard facility as part of the revised Part B Permit application of 16 January, 1992. These SWMUs are identified in the document: "Revised Inventory of Solid Waste Management Units, Vol. I and II" Engelhard Corp., 7 February, 1992.

(Reference 1) as follows:

- E-1 Pyrite Waste Piles and Surface Impoundments
- E-2 Clay Deposit Area
- E-3 Scrubber Sludge Waste Piles
- E-4 Sulfuric Acid Processing Area
- E-5 West Storage Pad
- E-6 Northwest Sump and Associated Trench
- E-7 Bull Pen Storage Pad
- E-8 Thickener Storage Pad
- E-9 Sulfuric Acid Sludge Tank Area
- E-10 Boiler Storage Pad
- E-11 Regeneration Area Sump and Associated Trench
- E-12 Regeneration Packaging Area
- E-13 Ammonia Tank Area
- E-14 Process Water Impoundment and Associated Trench

ENGELHARD CORPORATION- Consent Agreement

- E-15 Warehouse
- E-16 South Field Landfill
- E-17 South Field Drum Storage Pad
- E-18 Parking Lot Storage Pad
- E-19 Silos
- E-20 Alum Ponds
- E-21 North Storage Pad
- E-22 Laboratory Mercury Release Area
- E-23 Alum Diversion Area
- E-24 Oil Release Area
- E-25 Process Chemical Area
- E-26 Former Underground Storage Tank Area

16. The parties now wish to enter into an agreement outlining a comprehensive plan and schedule for appropriate corrective action and closure for the Solid Waste Management Units listed in paragraph 15 above without further administrative or judicial proceedings.
17. For the purposes of this CONSENT AGREEMENT, the parties agree and stipulate to the above stated facts.

CONSENT AGREEMENT

The parties hereto, without any adjudication of any issue of fact or law, hereby stipulate and agree as follows:

18. For purposes of corrective action and closure of RCRA regulated units at the Engelhard facility, the RCRA regulated units are the SWMUs listed in paragraph 15 above and in

ENGELHARD CORPORATION- Consent Agreement

Reference (1). The Board has jurisdiction over corrective action and closure of RCRA units and over the subject matter of this CONSENT AGREEMENT.

19. Engelhard will follow the terms and conditions set forth in this CONSENT AGREEMENT for the SWMUs listed in paragraph 15 above in lieu of a Corrective Action Module in the Part B permit and Plan Approval issued April 12, 1993.
20. Engelhard agrees to maintain financial assurance as required in R315-8-7 sufficient to cover the costs of closure and post-closure, or both, should either be necessary, of the SMWUs listed in Paragraph 15 and any other SMWUs identified during the course of closing the SMWUs listed in Paragraph 15 at any time in the future. This CONSENT AGREEMENT does not extend to ongoing hazardous waste management or future releases addressed in the final Hazardous Waste Storage Permit issued by the the Executive Secretary.
21. The parties now wish to set forth a procedure for corrective action for the SWMUs listed in Paragraph 15 at the Engelhard facility in accordance with the terms and conditions set forth in this CONSENT AGREEMENT:
22. Engelhard agrees to comply with the terms and conditions of this CONSENT AGREEMENT, together with Tables 1 - 3 of this CONSENT AGREEMENT.

RCRA Facility Investigation

ENGELHARD CORPORATION- Consent Agreement

23. Engelhard shall conduct a RCRA Facility Investigation (RFI) to:
- A. determine the nature and extent of known and suspected releases of hazardous wastes and/or hazardous waste constituents from each SWMU listed in paragraph 15 above;
 - B. determine the nature and extent of any off-site releases of hazardous wastes or hazardous waste constituents from the Engelhard facility; and
 - C. gather data to support the Corrective Action Plan (CAP).

Engelhard shall conduct the RFI in accordance with the approved workplan.

24. The RFI workplan and CAP submitted by Engelhard shall be reviewed and approved by the Executive Secretary based on the requirements of EPA Directive Number 9902.3, RCRA Corrective Action Plan Final Guidance Document (Reference 2). Engelhard shall then perform the RFI and CAP activities as specified in the approved work plans.

Current Conditions Report (Task I)

25. As part of the RFI Workplan, Engelhard shall within ninety (90) days of entry of this CONSENT AGREEMENT submit to the Executive Secretary a Current Conditions Report (designated as Task I) which shall summarize, update and clarify the facility

ENGELHARD CORPORATION- Consent Agreement

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information presented in the "Revised Inventory of Solid Waste Management Units" (Reference 1). This report shall include the following information:

- Dow*
- A. A summary of background information gathered during previous investigations or inspections, and other relevant data available for each SWMU which describes what is presently known or suspected about the nature, extent and rate of migration of contamination; and
 - B. past and current activities which are being undertaken at the facility.

RCRA Facility Investigation Workplan (Task II)

26. Engelhard shall within 90 calendar days of submittal of the Task I Current Conditions Report, submit to the Executive Secretary a RFI Workplan, designated as Task II, which shall include the development of several concurrently-prepared plans. The RFI Workplan shall be sufficiently detailed to meet the data collection and analysis requirements necessary to support later decisions made concerning which SWMUs require no further action and which SWMUs will require corrective measure alternative(s) which will be developed, evaluated and presented in the Corrective Action Plan (CAP). The RFI Workplan shall include the following:

- A. Project Management Plan detailing a discussion of the technical approach to the investigation, schedules, milestone reports and personnel;

ENGELHARD CORPORATION- Consent Agreement

- QA
- B. Data Collection Quality Assurance Plan documenting all monitoring procedures including: sampling, field measurements, and sample analyses performed during the investigation to characterize the environmental setting, source, and contamination, so as to ensure that all information, data and resulting decisions are statistically valid, and properly documented. The Data Collection Quality Assurance Plan shall include, but not be limited to, the following sections:
- i. Data Collection Strategy;
 - ii. Sampling Methods and Protocols;
 - iii. Field Measurement Methods and Protocols;
 - iv. Sample Analysis Methods and Protocols;
- C. Data Management Plan to document and track investigation data and results;
- D. Health and Safety Plan for safe conduct of corrective action activities;
- E. Community Relations Plan for public dissemination of information.
- F. Activity Completion Schedule to propose a schedule for submittal of the various components of the RFI which will enable the time frames of this CONSENT AGREEMENT to be met.

Upon receipt of approval in writing by the Executive Secretary, Engelhard shall implement the approved RFI Workplan.

RCRA Facility Investigation (Task III)

ENGELHARD CORPORATION- Consent Agreement

27. Engelhard shall conduct a RCRA Facility Investigation (RFI), designated as Task III. This investigation shall be conducted in accordance with Task II (the RFI Workplan) and shall produce data of adequate technical quality for each included SWMU to support either:

- i. the contention that no further action is required; or
- ii. corrective measure alternative(s) which will be developed, evaluated and presented in the Corrective Action Plan (CAP).

The RFI shall consist of:

A. Characterization of the environmental setting of each included SWMU at the Engelhard facility, including but not limited to:

- i. hydrogeology;
- ii. soils;
- iii. surface water and sediment;
- iv. air; and
- v. subsurface gases.

B. Source Characterization of all included SWMUs, including:

- i. the nature of the unit or disposal area; and
- ii. the type of waste placed in the unit as described by chemical and physical characteristics.

- C. Contamination characterization, including analysis of hazardous waste and hazardous waste constituents from waste management units and the effects of such hazardous waste and/or hazardous waste constituents on:
- i. groundwater;
 - ii. soils;
 - iii. surface water and sediment;
 - iv. air; and
 - v. subsurface gases.
- D. Potential Receptor identification describing potential for human health and environmental impact from contaminant exposure from the facility.

Investigation Analysis (Task IV)

28. Engelhard shall also prepare an analysis and summary of all information and results of analyses gathered for each SWMU. This task, Investigation Analysis, shall be designated as Task IV. The objective of this task shall be to ensure that the investigation data gathered pursuant to Task III, the RFI, are sufficient in quality and quantity to describe the nature and extent of contamination, potential threat to human health and the environment, and to produce the Corrective Action Plan (CAP), or to support the contention that no further action is required for a particular SWMU. The following information is required for Task IV:

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- A. Data Analysis of the type and extent of contamination at each SWMU including sources and migration pathways;
 - B. Protection Standards for groundwater, soil and any other relevant protection standards;
 - C. Pathway Analysis and Exposure Assessment for groundwater, soils, surface water and sediment, air and subsurface gases.
29. At the conclusion of Task III, the RFI, and Task IV, Investigation Analysis, Engelhard shall submit a RCRA Facility Investigation Task III Final Report to the Executive Secretary for approval. The Task III Final Report shall contain an Executive Summary and shall include information in accordance with paragraph 28 above.
30. Engelhard shall submit a Schedule of Activities and Reports to the Executive Secretary as required by Table 1, RFI Compliance Schedule.
31. Engelhard may incorporate and include by reference existing data and information in any RFI Task which meet quality assurance/quality control requirements, including data from reports previously submitted to the Executive Secretary.

**Notification Requirements for and Assessment of Previously
Unidentified Solid Waste Management Units**

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32. Engelhard shall notify the Executive Secretary in writing of any previously unidentified SWMU(s) not identified by this CONSENT AGREEMENT. Engelhard shall submit written notification within thirty (30) calendar days of identifying the SWMU(s). The notification shall include the location of the new SWMU(s) and information that describes its/their uses and types of wastes disposed of in the unit.
33. Within one hundred fifty (150) calendar days following identification of the previously unidentified SWMU(s), Engelhard shall submit a SWMU Assessment Plan to the Executive Secretary. The SWMU Assessment Plan shall include the following:
- A. Information concerning past and present operations at the units(s); and
 - B. Any groundwater, surface water, soil (surface or subsurface strata), or air sampling and analysis data needed to determine whether a release of hazardous waste or hazardous waste constituents from such unit(s) is likely to occur. The SWMU Assessment Plan shall demonstrate that the sampling and analysis program, if applicable, is capable of yielding representative samples and must include parameters sufficient to identify migration of hazardous waste and/or hazardous waste constituents from the newly discovered SWMUs to the environment.
34. Engelhard shall receive written approval from the Executive Secretary for the SWMU Assessment Plan; or,

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35. Engelhard shall receive written notice from the Executive Secretary of the submitted SWMU Assessment Plan's deficiencies which will specify a due date for submittal of a revised SWMU assessment plan.
36. If Engelhard is required to submit a revised SWMU Assessment Plan as provided in paragraph 35 above and that plan is found to be deficient, Engelhard shall receive written notice from the Executive Secretary of revisions incorporated by the Executive Secretary in the Engelhard's revised SWMU Assessment Plan. The revised SWMU Assessment Plan with the Executive Secretary's revisions shall then become the approved SWMU Assessment Plan. Engelhard would maintain the right to dispute the revised SWMU Assessment Plan as provided in paragraph 58 of this agreement.
37. The Executive Secretary reserves the right to request amendments to the SWMU Assessment Plan when necessary due to a material change in law or fact discovered. Upon the written request of the Executive Secretary, Engelhard shall submit for review and approval such amendments to the SWMU Assessment Plan with a reasonable time frame, not to exceed 45 days without the prior agreement of the Executive Secretary.
38. Engelhard shall implement the approved SWMU Assessment Plan within ninety (90) calendar days of receiving written notice of the approved SWMU Assessment Plan.
39. The SWMU Assessment Plan shall contain a schedule, including the submission date for a SWMU Assessment Report.

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40. The SWMU Assessment Report shall describe all results obtained from the implementation of the approved SWMU Assessment Plan. At a minimum, the Report shall provide the following information for each previously unidentified SWMU:
- A. The SWMU location, identified on a map;
 - B. The type and function of the unit, including general dimensions and a structural description;
 - C. The period during which the unit was operated; and
 - D. All known wastes that were or are being managed at the SWMU, and results of any sampling and analysis used to determine whether releases of hazardous wastes and/or hazardous waste constituents have occurred, are occurring or are likely to occur from the unit.
41. Based on the results of the SWMU Assessment Report, the Executive Secretary shall determine the need for further investigations at specific unit(s) included in the SWMU Assessment. If the Executive Secretary determines that such investigations are needed, the Executive Secretary shall require Engelhard to prepare a plan for such investigations. This plan shall be reviewed for approval as an appendix to the approved RFI Workplan.
42. The SWMU Assessment Plan, as approved by the Executive Secretary, as specified in this CONSENT AGREEMENT shall be appended to the approved RFI Workplan. Engelhard shall be notified by the Executive Secretary of the approval to incorporate the approved SWMU Assessment Plan into the RFI Workplan.

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43. Engelhard shall notify the Executive Secretary of any release(s) of hazardous waste or hazardous waste constituents discovered during the course of groundwater monitoring, field investigation, environmental auditing, or other activities undertaken during the RFI. The written notification shall be received by the Executive Secretary no later than fifteen (15) calendar days after discovery. Such releases may be from already documented or previously unidentified units. The Executive Secretary may require further investigation of the new releases if he deems appropriate. A plan for such investigation will be reviewed for approval as an appendix to the approved RFI Workplan.

DETERMINATION OF NO FURTHER ACTION

44. Based on the results of the RFI and other relevant information, Engelhard may submit a petition to the Executive Secretary to terminate the Corrective Action Schedule of Compliance for all SWMUs, or for individual SWMUs. The petition(s) shall contain information demonstrating that there are no releases of hazardous waste, including hazardous waste constituents, from SWMUs at the facility that pose a threat to human health or the environment. If, based upon review of the petition, the results of the RFI, and the information presented in Task IV (Investigation Analysis, paragraph 27), the Executive Secretary determines that the data, protection standards and pathway and exposure assessment demonstrate that releases or suspected releases which were investigated are non-existent or do not pose a threat to human health or the environment, the Executive Secretary may grant the requested petition.

45. The Executive Secretary shall notify Engelhard within ninety (90) days of the submittal of the petition for No Further Action on any SWMU as to his decision whether to grant or deny the petition. If the petition is denied, the Executive Secretary will specify the reasons for such denial, and specify what further information, if any, is needed. If the Petition is granted, Engelhard will not have any further obligation regarding that SWMU except as provided in paragraphs 46 and 47 of this CONSENT AGREEMENT.
46. A determination of No Further Action may include a condition requiring continued and periodic monitoring of air, soil, groundwater, or surface water, when site-specific circumstances indicate that releases of hazardous wastes, including hazardous waste constituents, are likely to occur. The Executive Secretary may include such a condition if necessary to protect human health and the environment.
47. A determination of No Further Action shall not preclude the Executive Secretary from requiring further investigations, studies, or remediation at a later date, if new information or subsequent analysis indicates that a release or the likelihood of a release from a SWMU has occurred. If clean-up or monitoring are taking place when the release or likelihood of a release is detected, the Executive Secretary will require further assessment to be made of the SWMU as provided in paragraph 32 of this CONSENT AGREEMENT. After the Executive Secretary has notified Engelhard pursuant to paragraph 65 that the CONSENT AGREEMENT is terminated, the executive Secretary must initiate a new action against Engelhard as contemplated in paragraph 64 of this

CONSENT AGREEMENT for SWMUs with a previous "No Further Action" determination which now require additional investigation or remediation.

Corrective Action Plan

48. Engelhard shall submit to the Executive Secretary within 180 calendar days of approval of the final RFI Report, a Corrective Action Plan (CAP) for units that have been identified to have had a release of hazardous waste or hazardous waste constituents. The CAP shall address the following issues:
- A. Target cleanup objectives;
 - B. Corrective action(s) which shall satisfy target cleanup objectives;
 - C. Summary of all corrective measure alternatives examined for the CAP, including justification for selecting or not selecting the corrective action; and
 - D. Schedule for implementation of the corrective action(s) according to the time frame and schedule of this CONSENT AGREEMENT.
49. The purpose of the CAP is to develop and evaluate corrective action alternatives and to outline one (or more alternative) corrective action(s) which will satisfy the target cleanup objectives. The Executive Secretary shall review the CAP and approve, modify and approve, or disapprove and provide comments to Engelhard as to the corrections or modifications needed for the CAP. Within sixty (60) calendar days of receipt of comments, Engelhard shall modify the CAP or submit a new CAP for the Executive

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Secretary's approval. The Executive Secretary shall consider performance, reliability, implementability, safety, human health and environmental impact of the measure(s) in approving one (or more) of the corrective actions(s).

50. Upon approval of the CAP, Engelhard shall implement the corrective action(s) according to the schedule as approved in the CAP. The approved schedule for the CAP shall be incorporated in Table 2, Corrective Action Compliance Schedule. Engelhard shall furnish or retain all personnel, materials and services necessary for the implementation of the corrective action(s).
51. Engelhard shall submit the Schedule of Activities and Reports to the Executive Secretary as required by Table 2.

Interim Corrective Measures

52. Engelhard and/or the Executive Secretary may at any time during the term of this CONSENT AGREEMENT identify and propose to the other party any interim corrective measures. "Interim corrective measures" may include without limitation, measures to prevent or abate a potential or immediate threat to human health or the environment. If the parties agree on the appropriateness of such measures, Engelhard shall implement them on an agreed schedule. Disagreement shall be subject to dispute resolution under paragraph 58. The following factors shall be considered, but will not be limited to:
 - A. Time required to develop and implement a final remedy;

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- B. Actual and potential exposure of human and environmental receptors;
- C. Actual and potential contamination of drinking water supplies and sensitive ecosystems;
- D. The potential for further degradation of the medium absent of interim measures;
- E. Presence of hazardous waste in containers that may pose a threat of release;
- F. Presence and concentration of hazardous waste, including hazardous waste constituents, in soils that have the potential to migrate to groundwater or surface water;
- G. Weather conditions that may affect the current levels of contamination;
- H. Risks of fire, explosion or accident; and
- I. Other situations that may pose threats to human health and the environment.

Groundwater Monitoring

53. Groundwater monitoring conducted as part of the RFI shall be done in accordance with the procedures and requirements of R315-8-6.8. Samples will be analyzed for the parameters listed in Table 3.

Quality Assurance/ Quality Control

54. Effectiveness of the program contained in this CONSENT AGREEMENT is specifically dependent on proper sampling, analytical methods and techniques. Engelhard shall submit in the RFI Workplan a schedule for identifying proposed sampling, quality

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assurance, quality control and chain of custody procedures to the Executive Secretary for comment and approval at least 60 calendar days prior to proceeding with field or laboratory activities under this CONSENT AGREEMENT. Where Engelhard has collected or analyzed data pursuant to procedures not previously approved by the Executive Secretary, the Executive Secretary shall review such procedures and data for acceptability.

Split Samples

55. Upon request by an authorized representative of the Executive Secretary, Engelhard shall allow the Executive Secretary or his representatives to receive split samples of any samples collected by Engelhard pursuant to this CONSENT AGREEMENT. Upon request by an authorized representative of Engelhard, the Executive Secretary shall allow Engelhard to receive split samples of any samples collected by the Executive Secretary pursuant to his oversight of this CONSENT AGREEMENT.

CONFIDENTIAL INFORMATION

56. Any data or information provided under this CONSENT AGREEMENT which is identified by Engelhard as a proprietary process or trade secret will be treated as confidential by the Board and the Executive Secretary to the extent and under the procedures set forth in Utah Code Annotated 26-14-9.5 (1953, as amended) and applicable regulations.

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EXCHANGE OF DATA

57. The Executive Secretary and Engelhard's representatives will cooperate in the reporting and exchange of data developed pursuant to this CONSENT AGREEMENT. Results of all sampling and analyses and other relevant data generated by the parties or their agents or contractors will be exchanged within the time frame outlined in the approved workplan. If requested, the raw data, field notes and laboratory bench sheets and reports generated will be provided.

RESOLUTION OF DISPUTES

58. This CONSENT AGREEMENT expressly contemplates submission of certain plans, proposals and reports by Engelhard to the Executive Secretary for his review and approval. Where opportunity for review and approval is provided, Engelhard shall not proceed with the proposed activity unless and until approvals have been received. If agreement by Engelhard and the Executive Secretary cannot be reached regarding any plan, proposal or report under this CONSENT AGREEMENT, Engelhard or the Executive Secretary may commence a declaratory order proceeding under the Administrative Procedures Act and applicable regulations of the Board to resolve the disputed plan, proposal or report. The Board's decision in any adjudicative proceeding shall constitute final agency action and be subject to judicial review under applicable state law. Engelhard expressly reserves the right to contest any finding of fact or conclusion of law contained in this CONSENT AGREEMENT in any enforcement proceeding.

litigation or other administrative or judicial proceeding involving parties other than Engelhard and the Board.

SITE ACCESS AND ENFORCEMENT

59. All activities conducted by Engelhard under this CONSENT AGREEMENT shall be subject to inspection and enforcement by the Board in accordance with the procedures in the Act and the Code. Engelhard will provide reasonable access to its facilities upon request from the Executive Secretary for the purpose of monitoring, sampling and observing activities carried out under this CONSENT AGREEMENT.

FORCE MAJEURE

60. Engelhard's failure to meet or satisfy any requirements set out in this CONSENT AGREEMENT shall be excused for a reasonable time to the extent the failure is caused by events beyond Engelhard's control, including without limitation acts of God, public enemy, unforeseen strikes or work stoppages, fire, explosion, flood, tornado, earthquake, lightning, riot, sabotage or war.

NOTICE OF ACTIVITIES

61. Engelhard shall provide a minimum of fifteen (15) calendar days notice to the Executive Secretary, through designated contact(s), of any construction, sampling and/or drilling activities to be conducted under this CONSENT AGREEMENT.

LIABILITY

62. Neither the State nor any of its employees, nor any member of the Board shall be liable for any injuries or damages to persons, property or natural resources which result from acts or omissions by Engelhard or its agents or contractors in carrying out activities pursuant to this CONSENT AGREEMENT. The Board and its representatives shall comply with all rules and regulations established by Engelhard for the protection of health, safety, and security while on its property or property under its control. Some of the activities conducted pursuant to this CONSENT AGREEMENT may pose certain health and safety risks. The health and safety of Engelhard personnel and its contractors shall be the responsibility of Engelhard. Laboratory and field work shall be conducted in accordance with the health and safety plan outlined in the approved work plans.

RELATION TO OTHER LAWS/ PERMIT REQUIREMENTS

63. This CONSENT AGREEMENT is not to be construed as a permit, nor does it relieve Engelhard of any liabilities or obligations, including permitting requirements it might otherwise have under applicable state or federal statutes or regulations. However, the State shall not impose requirements on Engelhard through this CONSENT

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AGREEMENT that are inconsistent with any of Engelhard's obligations, including permitting requirements, it might otherwise have under applicable state or federal statutes or regulations.

RESERVATION OF RIGHTS AND PRIVILEGES

64. Neither the Executive Secretary nor any entity of the State shall be deemed to have waived any rights which it may otherwise exercise under applicable laws including, but not limited to, such actions as the State may deem necessary to prevent pollution of groundwater, protect the public health and environment, protect and maintain its natural resources, abate an imminent hazard or public nuisance, recover costs for State expenditures, and/or recover damages for loss, destruction or replacement of natural resources. Both parties expressly reserve any and all privileges including without limitation attorney work product and attorney-client privileges to which each is entitled by law. Nothing in this CONSENT AGREEMENT shall be construed as a waiver by either party of any of these privileges.

DURATION OF AGREEMENT

65. This CONSENT AGREEMENT shall terminate upon written notification by the Executive Secretary to Engelhard that compliance with all terms and conditions of the CONSENT AGREEMENT has been achieved. Such notification shall not be unreasonably withheld.

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MODIFICATION

66. This CONSENT AGREEMENT contains the entire agreement between the parties hereto concerning the subject matters treated herein. No agreements exist between the parties hereto concerning the matters treated herein other than as set forth above. This CONSENT AGREEMENT may not be amended, supplemented, or modified except through a writing executed by all parties hereto and approved by the Executive Secretary. This CONSENT AGREEMENT shall be governed by and construed in accordance with the laws of the State of Utah.

67. Engelhard shall submit a request for modifications of the interim compliance dates that do not affect the final compliance dates to the Executive Secretary for approval. If the Executive Secretary approves the interim compliance date modifications, Tables 1 and 2 of this CONSENT AGREEMENT shall incorporate the modified compliance dates as approved and such change shall not be considered a permit modification under this CONSENT AGREEMENT.

PARTIES BOUND

68. This CONSENT AGREEMENT shall be binding on the parties, their respective successors and assigns and all persons or entities acting under, through or for them.

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Engelhard and the Board consent to entry of this CONSENT AGREEMENT and agree to be bound thereby.

REIMBURSEMENT FOR OVERSIGHT

69. Engelhard shall reimburse the Executive Secretary for all reasonable costs related to plan review including DSHW contractor review for overseeing Engelhard's compliance with this CONSENT AGREEMENT. Engelhard will be billed on a quarterly basis for the costs of oversight. DSHW will identify on its billing statement all activities for which Engelhard is billed including, but not limited to, work performed by DSHW staff, costs of public notice and costs of contractors performing work for DSHW pursuant to this CONSENT AGREEMENT. At any time during the quarter following DSHW's submission of a bill to Engelhard, Engelhard may review the bill and all supporting documentation with the Executive Secretary. Any dispute concerning billing shall be resolved in accordance with paragraph 58 of this CONSENT AGREEMENT, Resolution of Disputes. Within 30 calendar days of such billing, Engelhard shall remit a check for the full amount of such costs. Payment should be mailed to:

Dennis R. Downs, Executive Secretary

Utah Solid and Hazardous Waste Control Board

P. O. Box 144880

Salt Lake City, Utah 84114-4880

Checks should be made payable to "Utah Department of Environmental Quality".

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70. The Executive Secretary may employ an independent contractor to review any plan or proposal submitted by Engelhard in accordance with this CONSENT AGREEMENT. Engelhard may request that the Executive Secretary have the proposal or plan reviewed by an environmental contractor under contract with the DSHW. Any work performed by such contractor shall be at Engelhard's expense and Engelhard will be billed for it pursuant to paragraph 69 of this CONSENT AGREEMENT.

DATED this 21st day of Dec, 1993.

ENGELHARD CORPORATION

Date: Dec. 21, 1993

William R. Gustafson

By: WILLIAM R. GUSTAFSON
Title: GROUP VICE PRESIDENT and GENERAL MANAGER
Engelhard Corporation
PETROLEUM CATALYSTS GROUP

THE UTAH SOLID AND HAZARDOUS WASTE CONTROL BOARD

Date: Dec. 21, 1993

Dennis R. Downs

By: Dennis R. Downs
Executive Secretary
Utah Solid and Hazardous Waste
Control Board

APPROVED AND ENTERED this 21st day of Dec, 1993

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REFERENCES

- 1) Revised Inventory of Solid Waste Management Units, Vol. I and II Engelhard Corp.,
7 February, 1992.
- 2) EPA Directive Number 9902.3, RCRA Corrective Action Plan Final Guidance Document

TABLE 1

RCRA Facility Investigation Compliance Schedule

Engelhard shall perform the activities as outlined below:

<u>Activity</u>	<u>Due Date</u>
1. Submit Task I- Current Conditions Report	Within ninety (90) days from entry of CONSENT AGREEMENT
2. Submit Draft Task II- RFI Workplan and Task III Schedule	Within ninety (90) days from submission of Task I Current Conditions Report
2. Begin Task II - RFI workplan and Task III - Facility Investigation	Within sixty (60) days of Executive Secretary's approved Task II and III Workplan and Schedule
4. Submit Task IV - Investigation Analysis	As indicated in the Executive Secretary's approved Task II and III Workplan and Schedule.
5. Progress Reports on Tasks II through IV	Quarterly, ninety (90) calendar days after the effective date of this CONSENT AGREEMENT [then every ninety (90) days after the RFI implementation].
6. Submit Tasks II and III Final and Summary Reports	As indicated in the Executive Secretary's approved Tasks II and III workplan and schedule.

TABLE 2**Corrective Action Compliance Schedule**

Engelhard shall prepare reports for the Corrective Action Plan as described below presenting the results of the CAP

	<u>Activity</u>	<u>Due Date</u>
1.	Submit Draft Corrective Action Plan (CAP)	Within one hundred eighty (180) days of the Executive Secretary's approval of the RFI Report.
2.	Submit Final CAP	Within sixty (60) days of receiving the Executive Secretary's comments on the Draft CAP.
3.	Submit Draft Construction Quality Assurance (CQA) program plan.	Prior to construction
4.	Final CQA Program Plan	Within sixty (60) days of the Executive Secretary's approval of the Draft CQA plan.
5.	Construction of corrective measures	As approved in final CAP
6.	Corrective Measure Construction Report	Ninety (90) days following completion of construction
7.	Progress Reports	Quarterly, ninety (90) days after the effective date of the CONSENT AGREEMENT, extending through implementation and completion of the CAP

GROUT WATER MONITORING PARAMETERS

General

Calcium
 Magnesium
 Potassium
 Sodium
 Sulfate
 Chloride
 Alkalinity
 Nitrate + Nitrite as N
 Fluoride
 Sulfide
 pH
 Specific Conductance
 Total Dissolved Solids
 Oil and Grease

Metals

Antimony
 Arsenic
 Barium
 Beryllium
 Cadmium
 Chromium
 Cobalt
 Lead
 Mercury
 Nickel
 Selenium
 Silver
 Vanadium

Volatile Organics

Benzene
 Carbon disulfide
 Chlorobenzene
 1,2-Dibromoethane
 1,2-Dichloroethane
 1,4-Dioxane
 Methyl Ethyl Ketone

Volatile Organics (Cont.)

Styrene
 Ethyl benzene
 Toluene
 Xylenes¹

Base/Neutral Organics

Anthracene
 Benz(a)anthracene
 Benzo(b)fluoranthene
 Benzo(k)fluoranthene
 Benzo(a)pyrene
 Bis(2-ethylhexyl)phthalate
 Butyl benzyl phthalate
 Chrysene
 Dibenz(a,h)acridine
 Dibenz(a,h)anthracene
 Di-n-butyl phthalate
 Dichlorobenzenes¹
 Diethyl phthalate
 Di-n-octyl phthalate
 Fluoranthene
 Indene
 Methyl chrysene
 1-Methylnaphthalene
 Naphthalene
 Phenanthrene
 Pyrene
 Pyridine
 Quinoline

Acid Organics

Benzenethiol
 Cresols¹
 2,4-Dimethylphenol
 2,4-Dinitrophenol
 4-Nitrophenol
 Phenol

1) Reported as ortho-, meta-, and para- isomers

ASSIGNMENT AND ASSUMPTION
OF CONSENT AGREEMENT AND PERMIT
[Engelhard Corporation/Ninigret Technology Park, L.C., Ninigret
Technology East, L.C. and Ninigret Technology West, L.C.]

THIS ASSIGNMENT (this "Assignment") is entered into as of the 16th day of July, 2002, between ENGELHARD CORPORATION, a Delaware corporation ("Assignor"), whose address is 101 Wood Avenue, Iselin, New Jersey 08830, and NINIGRET TECHNOLOGY PARK, L.C., a Utah limited liability company ("Ninigret Technology"), NINIGRET TECHNOLOGY EAST, L.C., a Utah limited liability company ("Ninigret East"), and NINIGRET TECHNOLOGY WEST, L.C., a Utah limited liability company ("Ninigret West") (Ninigret Technology, Ninigret East and Ninigret West are referred to in this Agreement collectively as "Assignees"), whose address is 1700 South 4650 West, Salt Lake City, Utah 84104. (Assignor and Assignees are referred to in this Agreement collectively as the "Parties" and individually as a "Party.")

FOR THE SUM OF TEN DOLLARS (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the Parties agree as follows:

1. **Definitions.** As used in this Assignment, each of the following terms shall have the meaning indicated:

1.1. "**Consent Agreement**" means the Stipulation and Consent Agreement, No. 92060130, dated December 21, 1993, issued by the Utah Solid and Hazardous Waste Control Board, a copy of which is attached as Exhibit A, incorporated by this reference.

1.2. "**Permit**" means the Resource Conservation and Recovery Act (RCRA) Part B Permit No. UTD009073800 for storage of hazardous wastes held by Assignor at its facility located at 3050 West Andrew Avenue, Salt Lake City, Utah.

1.3. "**Purchase Agreement**" means the Second Amended and Restated Purchase and Sale Agreement, dated July 16, 2002, entered into between The Harshaw Chemical Company, a New Jersey corporation and a wholly owned subsidiary of Assignor, as seller, and Assignees, as buyers.

2. **Purpose.** As an integral part of the purchase and sale transactions contemplated by the Purchase Agreement, the Parties have agreed to enter into this Assignment.

3. **Assignment; Acceptance.** Assignor assigns and transfers to Assignees all of Assignor's obligations under the Consent Agreement and the Permit. Assignees accept the foregoing assignment and jointly and severally assume and agree to pay and perform timely all of the obligations to be paid or performed by Assignor under the Consent Agreement and the Permit

including, without limitation, all applicable requirements under Utah Code Ann. R315-3 (Application and Plan Approval Procedures for Hazardous Waste Treatment, Storage, and Disposal Facilities), R315-8 (Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities), and Module I.S.1 of the Permit. Assignor represents and warrants to Assignees that Assignor has received no notice of default under the Consent Agreement or the Permit.

4. **Indemnification.** Assignees shall indemnify, defend and hold harmless Assignor from and against all claims, liabilities, losses, damages, costs and expenses (including, without limitation, attorneys' fees) caused by the failure of Assignees to timely pay or perform any obligation required to be paid or performed under the Consent Agreement or the Permit prior to, on and/or after the date of this Assignment.

5. **General Provisions.** A modification of or amendment to any provision contained in this Assignment shall be effective only if the modification or amendment is in writing and signed by both Parties. This Assignment shall inure to the benefit of, and be binding on, the Parties and their respective successors and assigns. This Assignment shall be governed by, and construed and interpreted in accordance with, the laws (excluding the choice of laws rules) of the State of Utah. This Assignment may be executed in any number of duplicate originals or counterparts, each of which when so executed shall constitute in the aggregate but one and the same document.

THE PARTIES have executed this Assignment on the respective dates set forth below, to be effective as of the date first set forth above.

ASSIGNOR:

ENGELHARD CORPORATION

By *Dan W. Uyle*

Its *Vice President*

Date *July 2, 2002*

ASSIGNEES:

NINIGRET TECHNOLOGY PARK, L.C.,
by its sole manager:

THE NINIGRET GROUP, L.C.,
a Utah limited liability company

By *Randolph G. Abood*

Randolph G. Abood
Managing Member

Date *July 1, 2002*

NINIGRET TECHNOLOGY EAST, L.C.,
by its sole manager:

THE NINIGRET GROUP, L.C.,
a Utah limited liability company

By Randolph G. Abood
Randolph G. Abood
Managing Member

Date July 1, 2002

NINIGRET TECHNOLOGY WEST, L.C.,
by its sole manager:

THE NINIGRET GROUP, L.C.,
a Utah limited liability company

By Randolph G. Abood
Randolph G. Abood
Managing Member

Date July 1, 2002