244282

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A PROFESSIONAL CORPORATION
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NEWARK, NJ 07101-9819

RESPONSE & PREVENTION BRANCH
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WRITER'S DIRECT LINE:

201-535-5300

FILE#

36150-00002

June 18, 1997

VIA CERTIFIED MAIL
Chancery Division
ATTN: Claire Michaels
Superior Court of New Jersey
Somerset County Courthouse
20 N. Bridge & Main Streets
POB 3000
Somerville, New Jersey 08876

Re: Towne Laboratories, Inc. v. Carl Curtis, et al.

Dear Ms. Michaels:

As per my recent telephone conversation with Ms. Madorran, Judge Diana's Law Clerk, enclosed for filing is an original, plus two copies, of Plaintiff's Order to Show Cause Under Summary Proceeding Pursuant to *N.J.S.A.* 58:10B-16. Kindly file the original and stamp "filed" on the additional copy of the Order, for return to this office using the enclosed self-addressed stamped envelope. Please charge Hannoch Weisman's account, #0041600, for any applicable filing fee.

Thank you in advance for your attention to this matter.

Very truly yours,

Marco A. Gonzalez, Jr.

Marco A. Gonzalez, Jr.

Enclosures

0161992.02

RECEIVED/FILED
97 JUN 20 PM 12:01
WILFRED P. DIANA
ASSIGNMENT JUDGE
VICINAGE 13

HANNOCH WEISMAN
A Professional Corporation
4 Becker Farm Road
Roseland, New Jersey 07068
(201) 535-5300
ATTORNEYS FOR TOWNE LABORATORIES, INC.

SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION:
SOMERSET COUNTY
DOCKET NO. SOM-C-12040-97

TOWNE LABORATORIES, INC.,

Plaintiff,

v.

CARL CURTIS, COLOR TECHNOLOGY, INC., JAMES DOE, JOSEPH DOE, JEREMY DOE, JANE DOE AND JOAN DOE (the last five names being fictitious names), STATE OF NEW JERSEY, DEPARTMENT OF ENVIRONMENTAL PROTECTION and NEW JERSEY SPILL AND COMPENSATION FUND ADMINISTRATOR,

Defendants.

Civil Action

ORDER TO SHOW CAUSE UNDER SUMMARY PROCEEDING PURSUANT TO SECTION 40 OF THE INDUSTRIAL SITE RECOVERY ACT, P.L. 1993, C. 139, N.J.S.A. 58:10B-16

This matter having come before the court as a of Summary Proceeding Pursuant to Section 40 of the Industrial Site Recovery Act, P.L. 1993, C. 139, N.J.S.A. 58:10B-16, by Plaintiff, Towne Laboratories, Inc. (hereinafter "Towne Labs" or "Plaintiff"), against Defendants Carl Curtis, Color Technology, Inc., and James Doe, Joseph Doe, Jeremy Doe, Jane Doe and Joan Doe (the last five names being fictitious names) (hereinafter "Defendant Owners"), and their respective agents, servants, employees, respective successors, permitted assigns, designees, contractors, and those acting in concert with such defendants, seeks an order granting Plaintiff access to Defendant Owners' Property (hereinafter "Color Tech Property"), for the purpose of installing, operating, maintaining, and sampling ground water monitoring wells, and performing such other work as may be required, necessary or advisable in accordance with ISRA and under NJDEP mandates pursuant to ISRA Case No. 93452;

AND IT FURTHER APPEARING that in order to obtain reimbursement for costs incurred by Plaintiff due to the discharges by or at the Color Tech Property, Plaintiff filed a claim on February 2, 1990 against Defendant New Jersey Spill Compensation Fund, currently pending under Claim No. 90-0013S, in which Plaintiff intends to amend its claim and seek reimbursement for all costs associated with NJDEP's demands under ISRA Case No. 93452 to obtain the required access to the Color Tech Property along with other damages related thereto;

AND IT FURTHER APPEARING that Defendant Owners have denied Plaintiff's repeated and good faith attempts to secure an access agreement to conduct the mandated work on the Color Tech Property and, Defendant NJDEP has continued its position that Plaintiff complete the ordered work despite Defendant's Owners' denial of access to the Color Tech Property; and for good cause shown;

IT IS, on this 20th day of June, 1997,

ORDERED, that Defendant Owners, Defendant NJDEP and Defendant N.J. Spill Compensation Fund Administrator be and hereby are directed to show cause before the Honorable Wilfred P. Diana, in the Superior Court of New Jersey, Chancery Division, Somerset County,

0155449.02

Somerset County Courthouse, N. Bridge & Main Streets, Somerville, New Jersey, on August 19 1997 before the undersigned at 9:00 am, why judgment should not be entered in favor of Plaintiff as requested in Plaintiff's Complaint for access and/or alternative relief, or such other relief as the Court deems appropriate and it is further

ORDERED, that counsel for Plaintiff ~~forward to~~ serve upon each Defendant a copy of this Order to Show Cause, together with a copy of the Complaint under Summary Proceedings, and supporting Affidavits within 7 days of the filing of this Order to Show Cause, by personal service, regular mail & certified mail, return receipt requested.

By Wilfred P. Diana

WILFRED P. DIANA, A.J.S.C.

DATED: June 20, 1997

0155449.02

HANNOCH WEISMAN
A Professional Corporation
4 Becker Farm Road
Roseland, New Jersey 07068
(201) 535-5300
ATTORNEYS FOR TOWNE LABORATORIES, INC.

SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION:
SOMERSET COUNTY
DOCKET NO.

TOWNE LABORATORIES, INC.,

Plaintiff,

v.

CARL CURTIS, COLOR TECHNOLOGY, INC., JAMES DOE, JOSEPH DOE, JEREMY DOE, JANE DOE AND JOAN DOE (the last five names being fictitious names), STATE OF NEW JERSEY, DEPARTMENT OF ENVIRONMENTAL PROTECTION and NEW JERSEY SPILL AND COMPENSATION FUND ADMINISTRATOR,

Defendants.

Civil Action

SUMMARY PROCEEDING UNDER SECTION 40 OF P.L. 1993, C. 139, N.J.S.A. 58:10B-16

Plaintiff, Towne Laboratories, Inc. (hereinafter "Towne Labs" or "Plaintiff"), by way of Complaint against defendants states as follows:

PARTIES

1. Plaintiff Towne Laboratories, Inc,. is a New Jersey corporation, having an address for the purposes hereof in care of Mr. John Obzansky, President, 93 East Spring Street, Somerville, New Jersey ("Towne Labs"). Plaintiff is the former owner of certain real property commonly known as Lot 4, Block 127, located at 6-10 Bell Avenue, Somerville (the "Site"). On or about August 3, 1993, Plaintiff substantially transferred or conveyed all of its assets, including the Site, to Towne Technologies, Inc.

2. Upon information and belief one or both Defendants Carl Curtis, who resides in 243 Davidson Avenue, Ramsey, NJ 07445, and/or a corporate entity now or formerly known as Color Technology, Inc. ("Color Tech"), are (is) the owner(s) of certain real property (together referred to as "Defendant Owners"), commonly known as Lot 1, Block 127, located at Cornell Street, Somerville, NJ (the "Color Tech Property"), which is immediately adjacent to the Site.

3. Upon information and belief, Color Tech operated a facility that produced color dispersions in solid forms for use by paint, plastic and printing manufactures since 1983 at the Color Tech Property.

4. Upon information and belief, Carl Curtis owns all or part of Color Technology, Inc. and is or was an officer and/or shareholder of Color Technology, Inc ("Color Tech").

5. Defendants James Doe, Joseph Doe, Jeremy Doe, Jane Doe and Joan Doe (all fictitious names) are other persons or entities with interests in the Property as owners or operators.

6. Defendant The New Jersey Department of Environmental Protection ("NJDEP"), having its offices at 401 State Street, CN 402, Trenton, NJ 08625, is a principal de-

partment in the Executive Branch of the Government of the State of New Jersey. *N.J.S.A.* 13:1D-1.

7. Defendant New Jersey Spill and Compensation Fund Administrator ("Spill Fund"), having its offices at 401 State Street, CN 402, Trenton, NJ 08625, Trenton, New Jersey, is the chief executive of the Spill Fund pursuant to *N.J.S.A.* 58: 10-23.11, et seq. The Spill Fund was established by the legislature to provide a fund "for swift and adequate compensation" to a persons damaged by the discharge of hazardous substances within or outside the jurisdiction of the State of New Jersey which "constitutes a threat to the economy and environment of this State." *N.J.S.A.* 58:10-23.11a.

BACKGROUND

8. Plaintiff is involved in an investigation pursuant to the New Jersey Environmental Cleanup Responsibility Act, *N.J.S.A.* 13:1K-6, *et seq.* ("ECRA") (now the Industrial Site Recovery Act, *N.J.S.A.* 13:1K-6 *et seq.* (amended 1993) ("ISRA") and the regulations promulgated thereunder as modified from time to time, at its former manufacturing facility in Somerville, NJ (the "Facility") (ECRA and ISRA are collectively referred to as ISRA). commenced in 1993 under ISRA Case Number 93452.

9. By letter dated August 1, 1996, NJDEP instructed Plaintiff to install a well(s) on the Property to assess various issues under ISRA Case Number 93452. Plaintiff does not believe a well is necessary. Nevertheless, Plaintiff has asked Defendants Curtis and Color Tech for access. They have denied access.

10. NJDEP is charged by statute with enforcing the laws of the State of New Jersey concerning the protection of the environment. *N.J.S.A.* 13:1D-9e. NJDEP has authority to regulate cleanup activities under ISRA and all supplements and amendments thereto. *N.J.S.A.* 13:1K-6 *et seq.* (as amended 1993). NJDEP is joined, among other reasons, so that if the Court

determines to deny access for any reason, NJDEP will be bound as a party to the Court's determination in future ISRA proceedings and/or any related matter.

11. On or about May 1, 1989, a fire occurred at the Color Tech Property which involved the discharge of certain substances into a potable water source. The NJDEP conducted an investigation under Case No. 89-05-01-0546 and advised Color Technology, Inc., in part, to obtain approval from the local sewerage treatment plant to discharge its dyestuff materials into the sanitary sewer.

12. Defendant Owners and others may also have had other spills or discharges of hazardous substances at or about the Color Tech Property. In accordance with *N.J.S.A.* 58:10B-16, this action does not assert claims against Defendant Owners for damages that may have been or hereafter may be sustained by Plaintiff by reason of the foregoing.

13. On or about August 8, 1989, Plaintiff, under the notification procedures pursuant to *N.J.S.A.* 13:1K-15 *et seq.* and *N.J.S.A.* 58:10-23.11 *et seq.*, forwarded information to NJDEP regarding Color Technology's improper storage of hazardous substances and data which revealed that excessive levels of copper and lead in stormwater was being discharged from a pipe into an adjoining ditch directly from the Color Tech Property.

14. Plaintiff has advised NJDEP that certain contaminants on its Site are background contaminants and/or contaminants migrating from the Color Tech Property to the Site.

15. Defendant NJDEP improperly has required Plaintiff to investigate whether ground water from Plaintiff's Site was and is contaminated by volatile organic compounds migration from the Color Tech Property. NJDEP requires Plaintiff to install, operate, maintain and sample ground water monitoring wells on the Property. At the same time, or thereafter, Plaintiff may also be required to conduct additional work and/or remediation on the Property under ISRA pursuant to NJDEP demands under Case No. 93452.

16. Upon information and belief, in or about February 1996, Color Tech sold and/or transferred substantially all or some of its assets and company name, including assets located at Color Tech Property, to Pan Chemical Corporation without compliance with ISRA. *N.J.S.A.* 13:1K-9(a) and *N.J.S.A.* 13:1K-6, *et seq.* NJDEP has not enforced ISRA against Color Tech so as to relieve Plaintiff of the demand for sampling on the Color Tech Property.

17. Upon information and belief, on June 5, 1997, the Star-Ledger published an article relating to the Color Tech Property, reporting that the United States Environmental Protection Agency ("EPA") initiated an "investigation into problems at Color Technology." The Star-Ledger article reported that conditions at the Color Tech Property "included the improper storage of hundreds of drums of toxic and flammable liquids, including methyl ethyl ketone, acetone and dimethylfloramide, solvents and petroleum-based chemicals." A copy of the June 5, 1997 Star-Ledger article is attached hereto as Exhibit A.

18. In order to obtain reimbursement for costs incurred by Towne Labs due to the discharges by or at the Color Tech Property described above, Towne Labs filed a claim on February 2, 1990 against the New Jersey Spill Compensation Fund, currently pending under Claim No. 90-0013S. Plaintiff intends to amend its claim and seek reimbursement for all costs associated with NJDEP's demands to obtain access to the Color Tech Property along with other damages related thereto. Plaintiff's rights to reimbursement from the Spill fund are not the subject of this action. Nonetheless, defendant Spill Fund Administrator is joined because should the Spill Fund object to the occurrence of this proceeding or any of the decisions hereunder, Defendant should be bound as a party to the Court's determinations in this and any other related proceedings.

19. Plaintiff, through its environmental consultant Levine Fricke-Recon ("Recon"), has requested that Defendant Owners grant Plaintiff access to the Property to conduct the work described in this complaint. Defendant Owners have not granted Plaintiff's requests for access. Since August 12, 1996, Towne Labs, through its consultant Recon, made three requests

that Mr. Curtis and Color Technology grant Plaintiff access to the Color Tech Property to perform the work required by the NJDEP. On March 4, 1997, Defendant Owners were requested to grant access, and was warned that if this request was denied, Plaintiff would initiate this Complaint in accordance with NJDEP requirements. By letter dated April 4, 1997 Defendant Carl Curtis responded to Plaintiff's March 4 letter by stating that he "can not comply with [Plaintiff's] request for access." Defendant Curtis' April 4, 1997 letter is attached hereto as Exhibit B.

20. Plaintiff has tendered to Defendant Owners a proposed form of access agreement. This agreement addressed, among other things, the following topics: entry notice, nature of work, restoration, indemnification, and insurance. The proposed access agreement is attached hereto as Exhibit C.

COUNT I

21. Plaintiff repeats and realleges all prior allegations as if set forth herein.

22. Section 40(a) of ISRA, *N.J.S.A.* 58:10B-16, if valid, permits Plaintiff to seek and obtain an order granting access to the Property in a summary manner if good faith efforts to gain access fail. This section states in relevant part:

> If, after a good faith effort, the person undertaking the remediation and the property owner fail to reach an agreement concerning access to the property, the person undertaking the remediation shall seek an order from the Superior Court directing the property owner to grant reasonable access to the property and the court may proceed in the action in a summary manner.

23. Plaintiff asked and Defendants denied Plaintiff's reasonable good faiths efforts to gain access to the Color Tech Property.

WHEREFORE, Plaintiff requests that this Court issue an Order declaring and requiring that:

(a) Defendant Owners and Defendant Doe(s), and their respective agents, servants, employees, respective successors, permitted assigns, designees, contractors, and those

acting in concert with such defendants, grant Plaintiff access to the Color Tech Property for the purpose of installing, operating, maintaining, and sampling ground water monitoring wells, and performing such other work as may be required necessary or advisable in accordance with ISRA under ISRA Case No. 93452;

(b) The grant of access be made in consideration of the following terms and conditions:

Plaintiff and Defendant Owners shall execute and perform an access agreement, attached hereto as Exhibit C, in which Plaintiff as Licensee, makes assurances to Defendant Owners that Plaintiff will: conduct all work in a workmanlike manner, take reasonable steps to comply with applicable laws, provide 24-hour notice to Defendant Owners of its entry onto the Property, restore and repair damage done to the Property as a result of the planned work, properly seal the well once the work is completed or the agreement is terminated, indemnify Defendant Owners for certain occurrences, provide and maintain insurance, and limit the scope of the work to whatever is necessary or advisable under ISRA;

(c) Defendant Spill Fund be bound by any determinations of law and fact under this action or any related future proceedings;

(d) Plaintiff is not barred from later asserting any and all rights and claims it may have against the Defendants in accordance with *N.J.S.A.* 58:10B-16; and/or

(e) Such other relief on such terms and conditions as the Court deems just and proper.

COUNT II

24. Plaintiff repeats and realleges all prior allegations as if set forth herein.

25. Defendant NJDEP has requested and demanded that Plaintiff obtain access to the Property.

26. Plaintiff has advised Defendant NJDEP that Defendant Owners have refused access to the Property, and that Plaintiff does not believe access is necessary, advisable or obtainable.

27. If relief under Count I is denied, it will be impossible for Plaintiff to obtain access to the Property and perform the work presently required by the NJDEP under ISRA.

28. NJDEP has threatened to seek civil or civil administrative penalties for Plaintiff's failure to abide by NJDEP's demands concerning access to the property. Attached hereto as Exhibit D is a copy of the August 1, 1996 letter from NJDEP.

WHEREFORE, Plaintiff requests that in the event relief under Count I is denied, this Court issue an Order declaring that:

(a) Plaintiff is not required, permitted or obligated to have access to the Property,

(b) Defendant NJDEP be enjoined from continuing to require that Plaintiff obtain access to the Property and from penalizing Plaintiff in any way for failure to obtain such access and conduct such work,

(c) Defendant Spill Fund be bound by any determinations of law and fact under this action or any related future proceedings,

(d) Defendant Spill Fund be estopped from ever asserting that Plaintiff' access suit costs are not related to Plaintiff's Spill Fund claims; and/or

(e) Such other relief on such terms and conditions that the Court deems just and proper.

HANNOCH WEISMAN
A Professional Corporation
Attorneys for Plaintiff

By _____
Richard J. Conway, Jr.
A Member of the Firm

DATED: June 12, 1997

0142073.05

HANNOCH WEISMAN
A Professional Corporation
4 Becker Farm Road
Roseland, New Jersey 07068
(201) 535-5300
ATTORNEYS FOR TOWNE LABORATORIES, INC.

SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION: SOMERSET COUNTY
DOCKET NO. ---

Towne Laboratories, Inc.,

Plaintiff,

v.

CARL CURTIS, COLOR SCIENCES CORP., formerly known or doing business as COLOR TECHNOLOGY, INC., JAMES DOE, JOSEPH DOE, JEREMY DOE, JANE DOE AND JOAN DOE (the last five names being fictitious names), STATE OF NEW JERSEY, DEPARTMENT OF ENVIRONMENTAL PROTECTION and NEW JERSEY SPILL AND COMPENSATION FUND ADMINISTRATOR,

Defendants.

Civil Action

AFFIDAVIT OF JOHN J. OBZANSKY

STATE OF NEW JERSEY:
: ss.
COUNTY OF SOMERSET

I, JOHN J. OBZANSKY, of full age, being duly sworn according to law, upon his oath, deposes and says:

1. I am submitting this Affidavit in support of Plaintiff's summary proceeding under Section 40 of the Industrial Site Recovery Act, P.L. 1993, C. 139, N.J.S.A. 58:10B-16.

2. I am President of Towne Laboratories, Inc., a New Jersey corporation, having an address for the purposes hereof in care of Mr. John Obzansky, 93 East Spring Street, Somerville, New Jersey ("Towne Labs").

3. Plaintiff is the former owner of certain real property commonly known as Lot 4, Block 127, located at 6-10 Bell Avenue, Somerville (the "Site"). On or about August 3, 1993, Plaintiff sold substantially all of its assets, including the Site, to Towne Technologies, Inc.

4. Prior to the transferring of Towne Labs assets, Towne Labs retained William Brokaw, a Scientific Associate for Environmental Management of Levine-Fricke-Recon ("Recon"), a consulting firm of engineers, hydrogeologists and applied scientists, to provide consulting services to Plaintiff. Mr. Brokaw was retained to conduct an investigation of certain real property commonly known as Lot 4, Block 127, located at 6-10 Bell Avenue, Somerville, NJ ("Site"), and to advise me of what actions would likely be required if the site were to trigger ECRA. I named Mr. Brokaw, under my authority as President of Towne Labs, as the company's agent to collect data and submit the required information to the NJDEP relative to the ISRA requirements at the Bell Avenue site.

5. In or about August 1996, I was advised by Mr. Brokaw that, under ISRA Case No. 93452, NJDEP instructed plaintiff via letter dated August 1, 1996, that plaintiff install three (3) additional monitoring wells, two (2) within the property-bounds of the Site formerly owned by plaintiff; and one (1) on certain real property commonly known as the former Color

Technology, Inc. facility, on Lot 1, Block 127, located at Cornell Street, Somerville, NJ ("Color Tech Property"), which is immediately adjacent to the Site.

6. Based on information provided from Mr. Brokaw, plaintiff claims that all of the ground water contamination found on-site is from the off-site operations at the Color Tech Property. On or about May 1, 1989, a fire occurred at the Color Tech Property which involved the discharge of certain substances into a potable water source. I was aware of this incident because I had occasion to conduct business at the Site in or about May 1989.

JOHN J. OBZANSKY

Sworn to and subscribed to before me
this 27 day of May, 1997.

NOTARY PUBLIC

KATHLEEN VICLA
NOTARY PUBLIC OF NEW JERSEY
My Commission Expires Nov. 20, 1998

0147576.02

HANNOCH WEISMAN
A Professional Corporation
4 Becker Farm Road
Roseland, New Jersey 07068
(201) 535-5300
ATTORNEYS FOR TOWNE LABORATORIES, INC.

SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION: SOMERSET COUNTY
DOCKET NO. ---

Towne Laboratories, Inc.,

Plaintiff,

v.

CARL CURTIS, COLOR SCIENCES CORP., formerly known or doing business as COLOR TECHNOLOGY, INC., JAMES DOE, JOSEPH DOE, JEREMY DOE, JANE DOE AND JOAN DOE (the last five names being fictitious names), STATE OF NEW JERSEY, DEPARTMENT OF ENVIRONMENTAL PROTECTION and NEW JERSEY SPILL AND COMPENSATION FUND ADMINISTRATOR,

Defendants.

Civil Action

AFFIDAVIT OF WILLIAM BROKAW

Levine·Fricke·Recon
ENGINEERS, HYDROGEOLOGISTS & APPLIED SCIENTISTS

LETTER OF TRANSMITTAL

May 14, 1997

Hannoch Weisman
A Professional Corporation
4 Becker Farm Road
Roseland, NJ 07068

Re: Affidavit of William Brokaw

The following items are enclosed via Fed Ex.

Description	No. of Copies
Civil Action - Affidavit of William Brokaw	1

The item(s) are transmitted:

- ☒ At your request
- ☐ For your review/comment
- ☐ For your approval
- ☐ For your action
- ☐ For your files
- ☐ For your information

Comments:

Sincerely,

William Brokaw/ymt

William S. Brokaw, CHMM
Scientific Associate, Environmental Management

Approved by:

Joanne C. Scully/dmc

Joanne Jeager Scully, PE, CIH
Vice President

WSB/ymt
Enclosure
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5 JOHNSON DRIVE, P.O. BOX 130, RARITAN, NEW JERSEY 08869-0130 *phone* (908) 526-1000 *fax* (908) 526-7886
Offices Worldwide.

STATE OF NEW JERSEY:

: ss.

COUNTY OF SOMERSET

I, WILLIAM BROKAW, of full age, being duly sworn according to law, upon his oath, deposes and says:

1. I am submitting this Affidavit in support of plaintiff's summary proceeding under Section 40 of the Industrial Site Recovery Act, P.L. 1993, C. 139, N.J.S.A. 58:10B-16.

2. I am a Scientific Associate for Environmental Management of Levine-Fricke-Recon ("Recon"), a consulting firm of engineers, hydrogeologists and applied scientists, with its principal place of business at 5 Johnson Drive, Raritan, New Jersey 08869. Recon provides consulting services to plaintiff, Towne Laboratories, Inc. ("Towne Labs"). As Scientific Associate, I am responsible for overseeing the Towne Labs ISRA case. Mr. Obzansky, President of Towne Labs, named me as his agent to collect data and submit the required information to the NJDEP relative to the ISRA requirements at the Bell Avenue site.

3. On or about October 21, 1988, Recon was retained by the plaintiff to provide consulting services in connection with certain real property commonly known as Lot 4, Block 127, located at 6-10 Bell Avenue, Somerville, NJ ("Site"). These services consisted of evaluating the environmental conditions of the site and to advise Mr. Obzansky what actions would likely be required if the site were to trigger ECRA.

4. On or about August 2, 1993, plaintiff became involved in an investigation pursuant to the New Jersey Environmental Cleanup Responsibility Act, *N.J.S.A.* 13:1K-6, *et seq.* ("ECRA") (now the Industrial Site Recovery Act, *N.J.S.A.* 13:1K-6 *et seq.* (amended 1993) ("ISRA"), at its former manufacturing facility on 6-10 Bell Avenue, Somerset, NJ (the "Facility") (ECRA and ISRA are collectively referred to as ISRA) under ISRA Case Number 93452.

5. As part of its actions under ISRA, Towne Labs abandoned one of their underground storage tanks, conducted a site assessment and installed monitoring wells to assess the groundwater through the Facility. The results of the initial groundwater evaluations were submitted to the NJDEP on or about April 28, 1995. After reviewing the data, the NJDEP instructed plaintiff via letter, on August 1, 1996, that plaintiff install three (3) additional monitoring wells" two (2) within the property-bounds of the Facility owned by plaintiff; and one (1) on certain real property commonly known as the former Color Technology, Inc. facility, on Lot 1, Block 127, located at Cornell Street, Somerville, NJ ("Color Tech Property"), which is immediately adjacent to the Facility. A copy of the August 1, 1996 letter with a map showing the locations of the proposed monitoring wells is attached hereto as Exhibit 1.

6. On or about August 6, 1996, I reviewed the tax records of the Borough of Somerville, NJ for the owner of the Color Tech Property. Upon reviewing tax records for the year 1996, said records identified defendant, Mr. Carl Curtis, President of Color Technology, Inc., 243 Davidson Avenue, Ramsey, NJ 07446, as the current owner of the Color Tech Property.

7. On August 12, 1996, I and Recon Operations Manager Robert Charnow forwarded a certified letter to Mr. Curtis notifying him of the NJDEP's directive and requesting permission to access the Color Tech Property to install a shallow monitoring well for the purpose of collecting groundwater samples for laboratory analysis, as per the NJDEP directive. On August 20, 1996, Recon received the return receipt from the August 12 certified letter, acknowledging that Mr. Curtis had received same. Attached hereto as Exhibit 2 is a true and accurate copy of the August 12, 1996 letter.

8. By September 1996, Mr. Curtis had not contacted Recon to discuss our request for access to the Color Tech Property. On September 11, 1996, I forwarded a second letter, via certified mail, to Mr. Curtis requesting access to the Color Tech Property in order to comply with the NJDEP September 20, 1996, directive. Letters were sent to and received at Color Technology in Somerville and at 115-117 Moonachie Avenue in Carlstadt, NJ. However, the letter

sent to Mr. Curtis' home in Ramsey was returned unopened, in late September with the word "Refused" written on the envelope. Attached hereto as Exhibit 3, is a true and accurate copy of the September 11, 1996 letter.

9. By January 1997 I had still not heard from Mr. Curtis regarding our request for access to the Color Tech Property. On February 19, 1997, I forwarded a third request letter to Mr. Curtis, via certified mail, which receipt thereof was acknowledged by Mr. Curtis on February 27, 1997. Attached hereto as Exhibit 4, is a true and accurate copy of the February 18 letter.

10. On September 26, 1996, Mr. Curtis contacted me by telephone at my office in Raritan, NJ. Mr. Curtis evaded my request for permission to install the monitoring well on the Color Tech Property.

11. On March 24, 1997, I reviewed, for a second time, the tax records of the Borough of Somerville and verified that Mr. Curtis was shown as the recorded owner of the Color Tech Property.

WILLIAM BROKAW

Sworn to and subscribed to before me
this 21 day of May, 1997.

NOTARY PUBLIC

KAREN LEE O'BRIEN
NOTARY PUBLIC OF NEW JERSEY
My Commission Expires Jan. 19, 2000

0143527.01

1

ALL-STATE® LEGAL 800-222-0510 ED11 RECYCLED

State of New Jersey

Department of Environmental Protection

Christine Todd Whitman
Governor

Robert C. Shinn, Jr.
Commissioner

William Brokaw
Recon Systems, Inc.
5 Johnson Drive
P.O. Box 130
Raritan, NJ 08869

AUG 01 1996

Re: Remediation Agreement: In the Matter of Towne Laboratories, Inc. (Towne RA)
Towne Laboratories, Inc
Somerville Borough, Somerset County
ISRA Case #93452
Remedial Investigation Reports Dated: January 30, and March 29, 1996

Dear Mr. Brokaw:

Please be advised that the New Jersey Department of Environmental Protection (NJDEP) has completed its review of the above referenced Remedial Investigation Reports (RIRs). The NJDEP's comments regarding the RIRs are noted below:

I Hexavalent Chromium (Cr^{+6}) Sample Results

A. NJDEP has completed its quality assurance/quality control (QA/QC) review of the Cr^{+6} analytical results performed by the laboratory, Aqua Air Analytical, included with the above referenced RIRs, and hereby conditionally rejects the Cr^{+6} results for the following reasons:

1. The Laboratory failed to provide documentation for the pH adjustments (7.5 + or - 0.5) for method 3060;

2. The frequency for the Calibration Check Standard analyses can not be determined. The Laboratory failed to provide an analysis run log; and

3. The Laboratory failed to provide a post-verification spike analysis using a field sample.

Towne Laboratories, Inc. shall submit the missing QA/QC documentation, noted above, for NJDEP to complete it's review.

II Soil Comments

A. Please be advised that NJDEP will withhold comments regarding the need for any additional chromium investigation/remediation until after NJDEP has received and reviewed the Cr^{+6} QA/QC documentation noted above.

Historic Fill Materials

B. Towne Laboratories, Inc.'s Fill Location Map and the narrative description for the location of the historic fill material, including coal ash and cinders, included in the March 29, 1996 RIR, do not agree. Towne Laboratories, Inc.'s narrative description locates the fill on the eastern side of the facility, while the Map shows the fill on the western side of the facility. Towne Laboratories, Inc. shall correct this discrepancy.

C. Towne Laboratories, Inc. in its March 29, 1996 RIR, reported that the soil samples, which were collected to characterize the fill material, were not analyzed for metals (PPM) based upon prior soil results from sample location Swale 102/1. However, in its January 30, 1996 RIR, Towne Laboratories, Inc. reported that it believed that "the metals in the groundwater are apparently the result of the coal ash and cinders that have been observed in the soil". Additionally, the highest levels of metals found in the ground water were found in monitoring wells MW-1 and MW-2, which are on the other side (east) of the building from the swale. Towne Laboratories, Inc. has not demonstrated that metals are not a concern in the fill materials. Additional fill characterization for metals is required.

III Ground Water Comments

A. Towne Laboratories, Inc. continues to claim that all of the ground water contamination found on-site is from the off-site operations of Color Technology. Additionally, Towne Laboratories, Inc. states that NJDEP should investigate site conditions at Color Technology's facility, before NJDEP requires any further ground water investigation by Towne Laboratories, Inc. Please be advised that pursuant to the Industrial Site Recovery Act (ISRA), N.J.S.A. 13:1K-6 et seq., it is the responsibility of Towne Laboratories, Inc. to demonstrate that ALL of the ground water contamination found on-site is from an off-site source. In the January 29, 1996 RIR, Towne Laboratories, Inc. proposed resampling the monitoring wells for metals, since some of the metals contamination is suspected to be associated with historic fill and not from Color Technology. Additionally, Towne Laboratories, Inc. used the same solvents found in the ground water in its own operations, has sumps in its process areas that are in direct contact with the ground water and had historically discharged into the swale area between Color Technology's and Towne Laboratories, Inc.'s facilities. Towne Laboratories, Inc. has failed to demonstrate that all of the on-site ground water contamination at the above referenced facility is from an off-site source. Therefore, Towne Laboratories, Inc.'s proposal for no further ground water investigation is hereby denied.

B. NJDEP has reviewed Towne Laboratories, Inc.'s most recent Ground Water Flow data. Please be advised that NJDEP does not agree with Towne Laboratories, Inc.'s conclusion that the ground water flow is towards the southeast, from Color Technology's facility and across Towne Laboratories, Inc.'s facility. Towne Laboratories, Inc.'s Ground Water Contour Map shows the existence of a ground water mound underneath the building. Shallow ground water flow from the Color Technology (western) side of the facility appears to be parallel (south-southwest) to the building, while ground water flow on the other side of the building appears to be towards the southwest. Additional monitoring points are required to establish ground water flow direction.

C. Although NJDEP agrees with Towne Laboratories, Inc.'s conclusion that monitoring well MW-5 is drawing water from a deeper water bearing zone than the other monitoring wells on-site, Towne Laboratories, Inc. shall not seal MW-5 as proposed. Please be advised that elevated levels of chlorinated solvents have been found in this monitoring well. Additional investigation may be required depending on the results from Towne Laboratories, Inc.'s further investigation of shallow ground water flow in the area.

D. Towne Laboratories, Inc. shall install two additional shallow monitoring wells on-site (locations A & B) and one shallow monitoring well off-site (location C), in the approximate locations shown on the enclosed Figure 1. Towne Laboratories, Inc. may want to consider installing these three wells manually, like monitoring wells MW-3 and MW-4, to insure that these three new wells are installed into the same water bearing level as MW-1 through MW-4.

E. Please be advised that N.J.S.A. 58:10B-16 provides a cause of action for persons responsible for conducting the remediation (person(s)) to obtain access to property not owned by those person(s) for the purpose of conducting remediation activities on that site.

Pursuant to N.J.S.A. 58:10B-16, a person seeking access must first attempt to reach an agreement with the property owner. The person(s) seeking access must make "good faith efforts" to reach an agreement with the property owner. Should the person(s) seeking access fail to reach an agreement concerning access, the person(s) responsible to conduct the remediation shall seek an order from Superior Court directing the property owner to grant reasonable access to the property.

NJDEP will not impose or seek to impose civil or civil administrative penalties for the failure of a person(s) to perform a remediation on a property not owned by that person within the time schedule required by the applicable regulation if the following conditions have been satisfied:

1) The failure to perform the remediation was the result of an inability of the person(s) to enter upon real or personal property owned by another person; and

2) The person(s) took all appropriate action, pursuant to section N.J.S.A. 58:10B-16, to obtain access to the property. NJDEP shall evaluate whether the person(s) took "all appropriate action to obtain access to the property" based on compliance with the following requirements:

a) Within ten days of the identification of the need for remediation activities in an area or areas not owned by the person(s) responsible for conducting the remediation the person(s) shall send a written request for access to the property owner. The request shall include a site map indicating the scope of access required, the proposed locations of remediation activities, and a written description of the extent of access required. The written request shall also ask that the property owner respond in writing within thirty days to said request. This letter shall be sent certified mail/return receipt requested or by similar means. A copy of the letter and signed receipt shall be sent to the Department upon

return of the receipt to the person(s) responsible for conducting the remediation.

b) Should the off-site property owner fail to respond within thirty days, the person(s) responsible for conducting the remediation shall send a second request to the property owner. The person(s) seeking access shall request that the property owner respond in writing within fifteen days. The person(s) responsible for conducting the remediation must specifically inform the property owner that he (the person(s) responsible for conducting the remediation) will initiate an action in Superior Court, pursuant to N.J.S.A. 58:10B-16, if an access agreement cannot be executed within 90 days of receipt of the original request or if the property owner does not respond within the fifteen day period from receipt of the second notice. This letter shall be sent certified mail/return receipt requested or by similar means. A copy of the letter and signed receipt shall be sent to the NJDEP upon return of the receipt to the person(s) responsible for conducting the remediation.

c) Should the off-site property owner fail to respond to the second request for off-site access or deny the person's request for access or for any reason the responsible party fails to execute an agreement with the owner of the subject property within 90 days of receipt of the original request, the person(s) responsible for conducting the remediation shall immediately initiate an action in Superior Court to obtain an order granting reasonable access to the property, pursuant to N.J.S.A. 58:10B-16. The party seeking access shall submit a copy of all relevant correspondence and/or filings to the NJDEP.

d) Submit any additional information or documentation required pursuant to N.J.S.A. 58:10B-16.

The person(s) attempt to obtain access to off-site areas shall not interfere with the person(s) obligations to comply with all other scheduled remediation activities in a NJDEP-approved workplan, unless otherwise established by the NJDEP.

F. Towne Laboratories, Inc. shall collect ground water level measurements from monitoring wells MW-1 through MW-4 and the three new wells and prepare new ground water flow maps.

G. Towne Laboratories, Inc. shall collect one round of ground water samples from monitoring wells MW-1 through MW-4 and the three new wells and analyze them for EPA target compound list volatile organic or priority pollutant volatile organic scans including xylene with a library search (VO+10) and priority pollutant metals (PPM).

IV Other Requirements

A. Towne Laboratories, Inc. shall submit a copy of the Hazardous Waste Manifest #NJA 2102730 that has been signed by the receiving facility.

V General Requirements

A. Towne Laboratories, Inc. shall submit a Remedial Action Schedule which incorporates the investigation and/or remediation of all remaining areas of environmental concern in accordance with the N.J.A.C. 7:26E-6.5 within 30 calendar days of the receipt of this letter. Towne Laboratories, Inc. shall note the implementation and completion date for each remedial phase, submission dates of any workplans or interim reports for which Towne Laboratories, Inc. requests the NJDEP's review and the submission dates for all workplans and reports that require the NJDEP's approval, including any report in support of a no further action proposal. Be advised that, in accordance with N.J.S.A. 58:10B, Towne Laboratories, Inc. may remediate the site without prior submission or approval from the NJDEP; however, prior approval must be obtained from NJDEP for a remedial action involving ground water or surface water subject to N.J.S.A. 58:10A.

B. Towne Laboratories, Inc. shall submit the results or additional work plans in accordance with an approved schedule. Please note that only one copy of the Quality Assurance/Quality Control Deliverables is needed.

C. Towne Laboratories, Inc. shall submit summarized analytical results in accordance with the Technical Requirements For Site Remediation, N.J.A.C. 7:26E.

D. Towne Laboratories, Inc. shall collect all samples in accordance with the sampling protocol outlined in the May, 1992 edition of the NJDEP's "Field Sampling Procedures Manual".

E. Towne Laboratories, Inc. shall notify the assigned BEECRA Case Manager at least 14 calendar days prior to implementation of all field activities.

If you have any questions, please contact the Case Manager, Michael Mandracchia, at (609) 984-1845.

Sincerely,

Anne H. Wolf for

Maurice Migliarino, Section Chief
Bureau of Environmental Evaluation
and Cleanup Responsibility Assessment

Enclosure
c: Frank Camera, BEERA
Somerville Board of Health
Michael Obzansky, Towne Laboratories

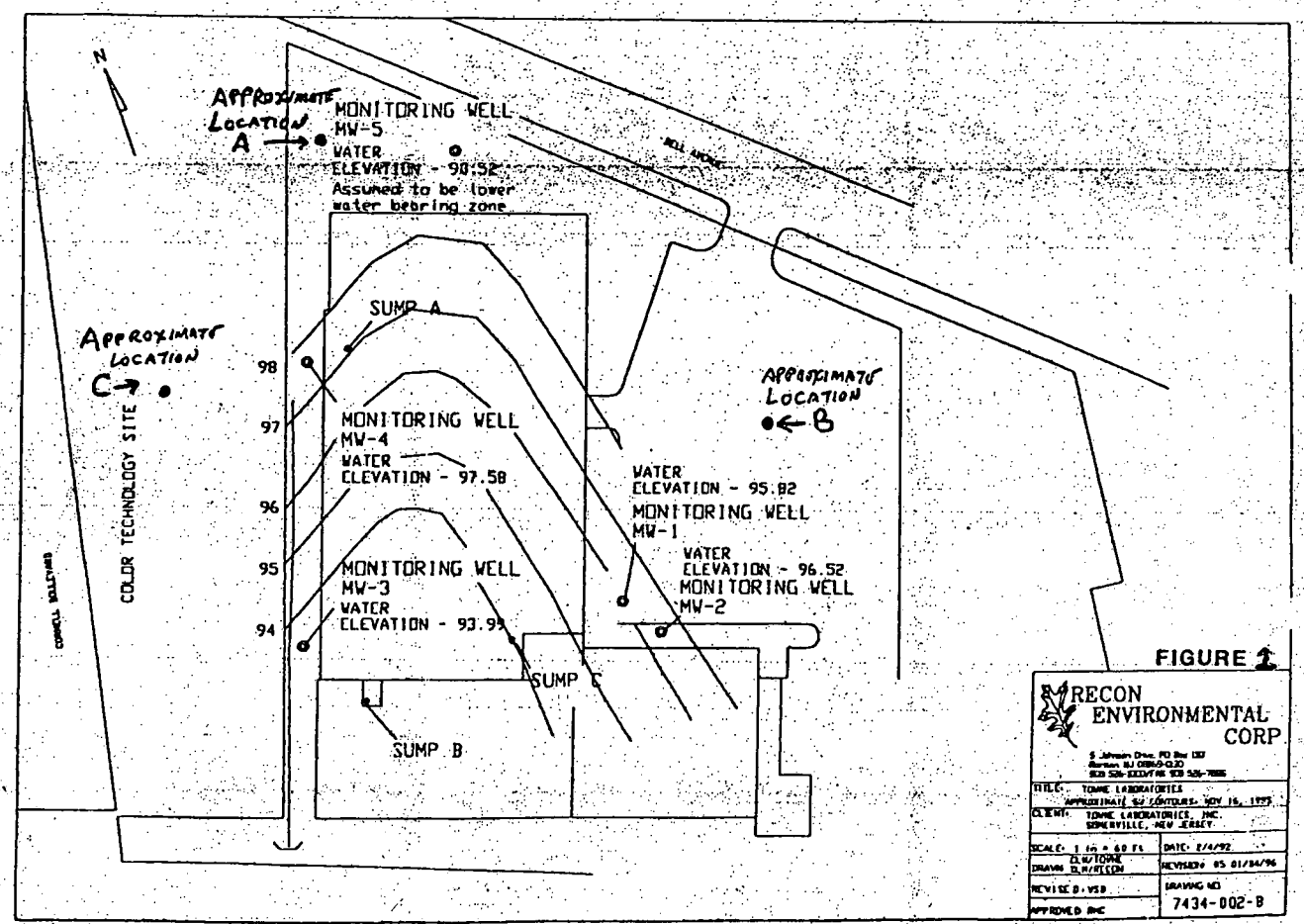

N
APPROXIMATE LOCATION A
MONITORING WELL MW-5
WATER ELEVATION - 90.52
Assumed to be lower water bearing zone
SUMP A
APPROXIMATE LOCATION C
98
97
96
95
94
MONITORING WELL MW-4
WATER ELEVATION - 97.58
MONITORING WELL MW-3
WATER ELEVATION - 93.99
SUMP B
SUMP C
APPROXIMATE LOCATION B
WATER ELEVATION - 95.82
MONITORING WELL MW-1
WATER ELEVATION - 96.52
MONITORING WELL MW-2
COLOR TECHNOLOGY SITE
CORNELL BOULEVARD
RECON ENVIRONMENTAL CORP
TITLE: TOWNE LABORATORIES
CLIENT: TOWNE LABORATORIES, INC. SOMERVILLE, NEW JERSEY
SCALE: 1 in = 60 Ft
DATE: 2/4/92
DRAWN: CLH/TOWNE CLH/RECON
REVISION: 05 01/24/96
REVISED: VSD
DRAWING NO. 7434-002-B
APPROVED: RHC

FIGURE 1

2

ALL-STATE® LEGAL 800-222-0510 ED11 RECYCLED

RECON Environmental Corp.

August 12, 1996
CERTIFIED MAIL

COPY

Mr. Carl Curtiss
243 Davidson Avenue
Ramsey NJ 07446

Re: Site Access to COLOR TECHNOLOGY Site
RECON Project No. EM6-7615

Dear Mr. Curtiss:

RECON ENVIRONMENTAL CORP. (RECON) provides consulting services to TOWNE LABORATORIES which owns the property next to the COLOR TECHNOLOGY property at Block 127 Lot 1 in Somerville, Somerset County, NJ. Recently, TOWNE LABORATORIES abandoned one of their underground storage tanks, conducted a site assessment and installed monitoring wells to assess the groundwater. The results were submitted to the NJDEP which requested that TOWNE install three additional wells. The NJDEP specified that two of the wells be installed on the TOWNE property and one of the wells be installed on the COLOR TECHNOLOGY property (see enclosed map which shows well location specified by the NJDEP).

We request your permission to install a shallow monitoring well on your site and to collect groundwater samples for laboratory analysis (as directed by the NJDEP). RECON would need to drive a truck-mounted drill rig onto the site to install the well. Two weeks later we would require access to collect a water sample from the well.

To comply with this directive from the NJDEP, we need to receive your response to our request within thirty (30) days from the date of receipt of this letter. Thank you for your attention to this matter.

Sincerely,

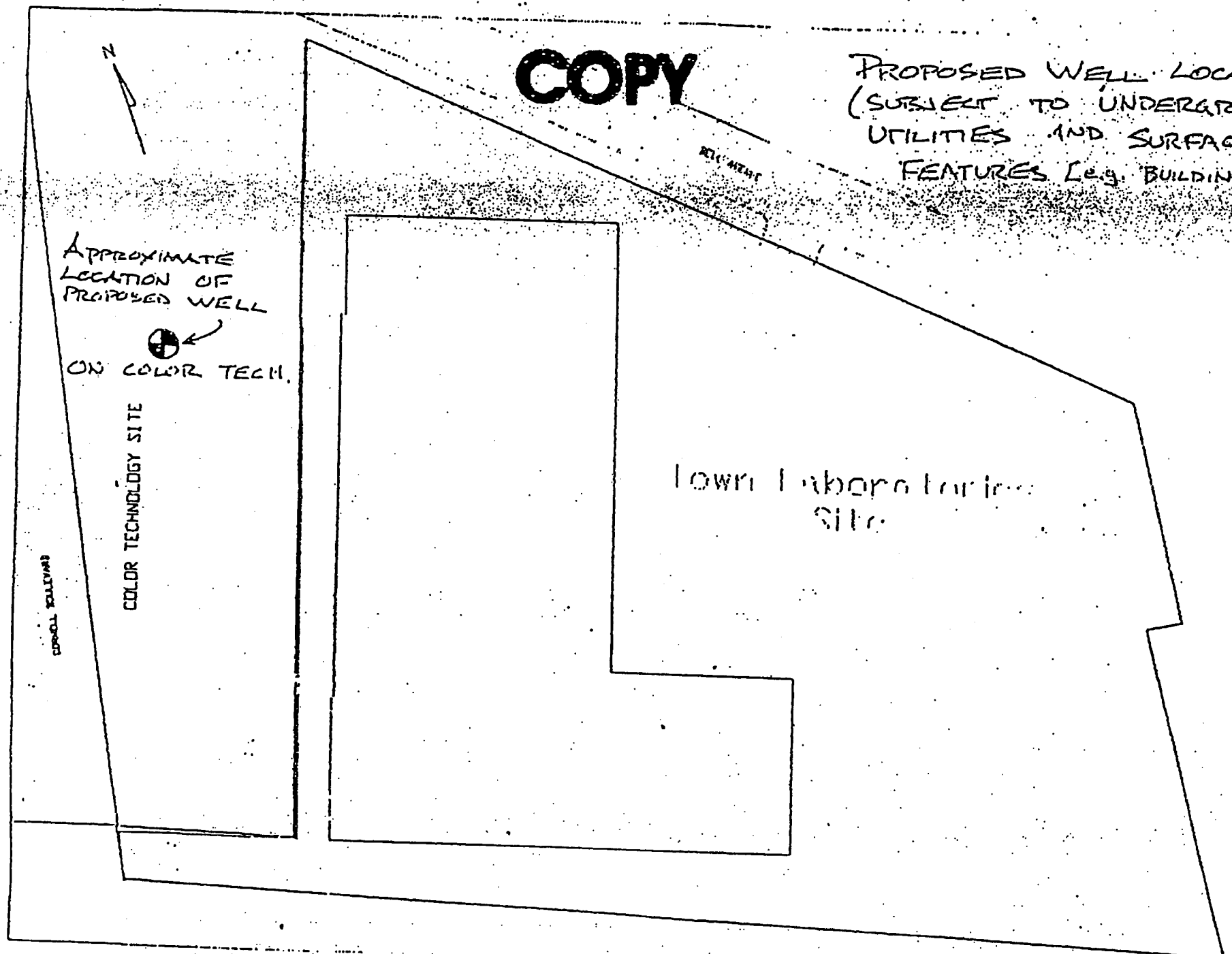
William S. Brokaw
Scientific Associate
Environmental Management

Reviewed by:

Robert M. Chernow, CPG
Operations Manager, Environmental Management

WSB\klo
o:\doclam\jobs\760017615.96
cc: John Obzansky, TOWNE LABORATORIES
Richard Conway, Esq. HANNOCH WEISMAN

5 Johnson Drive, P.O. Box 130, Raritan, NJ 08869 • (908) 526-1000 • Fax (908) 526-7886
A Levine•Fricke•Recon Group Company


COPY
PROPOSED WELL LOCATION (SUBJECT TO UNDERGROUND UTILITIES AND SURFACE FEATURES [e.g. BUILDINGS])
N
APPROXIMATE LOCATION OF PROPOSED WELL
ON COLOR TECH.
COLOR TECHNOLOGY SITE
Town Laboratories Site

3

ALL-STATE® LEGAL 800-222-0510 ED11 RECYCLED

Recon Environmental Corp.

September 11, 1996
CERTIFIED MAIL

Mr. Carl Curtiss
243 Davidson Avenue
Ramsey NJ 07446

Re: Second Request
Site Access to COLOR TECHNOLOGY Site
RECON Project No. EM6-7615

Dear Mr. Curtiss:

On August 12, 1996, we sent you a letter (copy attached) to request your permission to install a shallow monitoring well on your site and to collect groundwater samples for laboratory analysis (as directed by the NJDEP). As indicated in our letter, RECON would need to drive a truck-mounted drill rig onto the site to install the well. Two weeks later we would require access to collect a water sample from the well.

We have not received your response to our access request and therefore we are submitting this second request. To comply with this directive from the NJDEP we need to receive your response to this second request within fifteen (15) days. Please be advised that TOWNE LABORATORIES will initiate an action in Superior Court pursuant to NJSA 58:10B-16 if an access agreement cannot be executed within 90 days of receipt of the original request or if you do not respond within fifteen (15) days from the date of receiving this second request.

Sincerely,

William S. Brokaw
Scientific Associate
Environmental Management

Reviewed by:

Michael D. Weaver, CPG
Senior Geologist

WSB\klo
o:\doc\em\jobs\7600\7615.96
cc: John Obzansky, TOWNE LABORATORIES
Richard Conway, Esq. HANNOCH WEISMAN
President, COLOR TECHNOLOGY (Somerville, NJ)
President, COLOR TECHNOLOGY (Carlstadt, NJ)

5 Johnson Drive, P.O. Box 130, Raritan, NJ 08869 • (908) 526-1000 • Fax (908) 526-7886
A Levine•Fricke•Recon Group Company

4

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Levine·Fricke·Recon
ENGINEERS, HYDROGEOLOGISTS & APPLIED SCIENTISTS

February 18, 1997
CERTIFIED MAIL

LFR-EM5-7434

Mr. Carl Curtiss
243 Davidson Avenue
Ramsey NJ 07446

Re: Third Request
Site Access to Color Technology Site

Dear Mr. Curtiss:

On August 12, 1996 and again on September 11, 1996 we sent you letters (copies attached) to request your permission to install a shallow monitoring well on your site and to collect groundwater samples for laboratory analysis (as directed by the NJDEP). As indicated in our letters, Towne Laboratories will need to drive a truck-mounted drill rig onto the site to install the well. Two weeks later access will be required to collect a water sample from the well. Access will also be required at later dates for subsequent sampling.

We have not received your written response to our access request and therefore we are submitting this third request. To comply with this directive from the NJDEP we need to receive your written response to this third request immediately. Please be advised that Towne Laboratories will initiate an action in Superior Court pursuant to NJSA 58:10B-16 if you do not respond to this request or if an access agreement cannot be executed.

Sincerely,

William S. Brokaw
Scientific Associate
Environmental Management

Approved by:

Robert M. Chernow, CPG
Manager, Operations
Environmental Management

WSB/tal
o:\doc\em\jobs\7400\7434isra.ltr

cc: John Obzansky, Towne Laboratories
Richard Conway, Esq. Hannoch Weisman
President, Color Technology (Somerville, NJ)
President, Color Technology (Carlstadt, NJ)

5 JOHNSON DRIVE, P.O. BOX 130, RARITAN, NEW JERSEY 08869-0130 phone (908) 526-1000 fax (908) 526-7886
Offices Worldwide.