

STATE OF NEW YORK: DEPARTMENT OF ENVIRONMENTAL CONSERVATION

In the Matter of the Development and
Implementation of a Focused Remedial
Investigation, Focused Feasibility
Study and Interim Remedial Measure
Program for an Inactive Hazardous Waste
Disposal Site Under Article 27, Title
13 and Article 71, Title 27 of the
Environmental Conservation Law of
the State of New York by

ORDER
ON
CONSENT

INDEX No. W1-0713-94-12

Photocircuits Corporation

Respondent

Site # 130009

WHEREAS,

1. The New York State Department of Environmental Conservation (the "Department") is responsible for enforcement of Article 27, Title 13 of the Environmental Conservation Law of the State of New York ("ECL"), entitled "Inactive Hazardous Waste Disposal Sites." This Order is issued pursuant to the Department's authority under, inter alia, ECL Article 27, Title 13 and ECL 3-0301.
2. Photocircuits Corporation ("Respondent"), owns and operates a facility located at 31 Sea Cliff Avenue, Glen Cove, Nassau County, New York (hereinafter referred to as the "Site"). The Site is in the Sea Cliff Avenue Industrial Area on the south side of Sea Cliff Avenue. Respondent manufactures printed circuit boards. Photocircuits Corporation acquired the property from Kollmorgen Corporation in 1986. A Site Map is attached hereto as Appendix "A".
3. The Department has designated the Site as an inactive hazardous waste disposal site, as that term is defined at ECL 27-1301.2, and alleges that it presents a significant threat to the public health or environment. The Site has been listed in the Registry of Inactive Hazardous Waste Disposal Sites in New York State as Photocircuits Corporation with Site Number 130009. The Department has classified the Site with a Classification "2" pursuant to ECL 27-1305.4.b.

4. A. Pursuant to ECL 27-1313.3.a, whenever the Commissioner of Environmental Conservation (the "Commissioner") "finds that hazardous wastes at an inactive hazardous waste disposal site constitute a significant threat to the environment, he may order the owner of such site and/or any person responsible for the disposal of hazardous wastes at such site (i) to develop an inactive hazardous waste disposal site remedial program, subject to the approval of the department, at such site, and (ii) to implement such program within reasonable time limits specified in the order."

B. Any person under order pursuant to ECL 27-1313.3.a has a duty imposed by ECL Article 27, Title 13 to carry out the remedial program committed to under order. ECL Section 71-2705 provides that any person who fails to perform any duty imposed by ECL Article 27, Title 13 shall be liable for civil, administrative and/or criminal sanctions.

C. The Department also has the power, inter alia, to provide for the prevention and abatement of all water, land, and air pollution. See, e.g., ECL 3-0301.1.i.

5. The Department and Respondent agree that the goals of this Order are for Respondent to (i) develop and implement a Focused Remedial Investigation ("FRI") for the Site; (ii) develop and implement a Focused Feasibility Study ("FFS") for the Site; (iii) develop and implement Interim Remedial Measures ("IRMs") for the Site; and (iv) reimburse the State's administrative costs for the Site, as provided for in this Order.

6. The Focused Remedial Investigation/Focused Feasibility Study does not constitute an RI/FS, which, if required, would be addressed under a separate document. Respondent reserves its right to submit a Registry petition to reclassify the Site pursuant to 6 NYCRR 375-1.9.

7. In August 1996, Respondent conducted a Preliminary Site Investigation at the Site to verify and update the results of previous investigations. Respondent has submitted the results of this Preliminary Site Investigation to the Department.

8. Respondent, neither admitting nor denying the foregoing, and having waived its right to a hearing herein as provided by law, and having consented to the issuance and entry of this Order, without the admission, adjudication or finding of liability or of any issue of law or fact, agrees to be bound by its terms. Respondent consents to and agrees not to contest the authority or jurisdiction of the Department to issue or enforce this Order, and agrees not to contest the validity of this Order or its terms.

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

I. FRI/IRM Work Plan Contents and Submittals

A. Respondent has submitted to the Department a Focused Remedial Investigation/ Interim Remedial Measures Work Plan (the FRI/IRM Work Plan), which describes the methods and procedures to be implemented in performing a Focused Remedial Investigation at the Site and evaluates alternative remedial technologies for an IRM at the Site. This FRI/IRM Work Plan will be approved concurrently with the execution of this Order by the Commissioner or his designee. The Approved FRI/IRM Work Plan is attached as Appendix "B" to this Order and is incorporated into this Order.

B. The Work Plan incorporates all of the elements of a Remedial Investigation as set forth in the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA") [42 USC 9601 *et seq.*], as amended, the National Contingency Plan ("NCP") of March 8, 1990 [40 CFR Part 300], the USEPA guidance document entitled "Guidance for Conducting Remedial Investigations and Feasibility Studies under CERCLA," dated October 1988, and any subsequent revisions to that guidance document in effect at the time the Work Plan was submitted, and appropriate USEPA and Department technical and administrative guidance documents, as those terms are defined in 6 NYCRR 375-1.10(e), which are applicable to the Focused Remedial Investigation contemplated by this Order.

II. Performance and Reporting of the FRI

A. Respondent shall commence the Focused Remedial Investigation for the Site in accordance with the schedule contained in the Department-approved FRI/IRM Work Plan.

B. Respondent shall perform the Focused Remedial Investigation for the Site in accordance with the Department-approved FRI/IRM Work Plan.

C. During the performance of the Focused Remedial Investigation, Respondent shall have on-Site a full-time representative who is qualified to supervise the work done.

D. Within the time frame set forth in the Department-approved Work Plan, Respondent shall prepare a Focused Remedial Investigation Report that shall:

1. include all data generated and all other information obtained during the Focused Remedial Investigation;
2. provide all of the assessments and evaluations required by the Work Plan;
3. identify any additional data that must be collected; and
4. include a certification by the individual or firm with primary responsibility for the day to day performance of the Focused Remedial Investigation that all activities that comprised the Focused Remedial Investigation were performed in full accordance with the Department-approved FRI/IRM Work Plan.

III. Focused Feasibility Study

A. Ninety (90) days after the Department's acceptance of the Focused Remedial Investigation Report, Respondent shall submit a Focused Feasibility Study for the Site, evaluating on-Site remedial actions to eliminate, to the maximum extent practicable, all health and environmental hazards and potential hazards attributable to hazardous waste disposal at the Site, as identified in the Focused Remedial Investigation Report. The Focused Feasibility Study shall be prepared by and have the signature and seal of a professional engineer who shall certify that the Focused Feasibility Study was prepared in accordance with this Order.

B. Respondent shall perform and prepare the Focused Feasibility Study in accordance with the Department-approved Work Plan and in a manner not inconsistent with CERCLA, the NCP, and the guidance documents identified in Subparagraph I.B.

C. After the Department's approval of the Focused Feasibility Study, Respondent shall cooperate and assist the Department in soliciting public comment on the Focused Feasibility Study and on the proposed remedial action plan, in accordance with CERCLA, the NCP, the guidance documents identified in Subparagraph I.B, and with any Department policy and guidance documents in effect at the time the public comment period is initiated. After the close of the public comment period, the Department shall select a final remedial alternative for the site in a Record of Decision ("ROD"). The ROD shall be incorporated into and become an enforceable part of this Order.

IV. Interim Remedial Measures

A. 1. The Department has approved the Interim Remedial Measure (IRM) described in the FRI/IRM Work Plan attached to this Order as Appendix B., as an appropriate IRM, and said IRM Work Plan is incorporated into and becomes an enforceable part of this Order.

2. Respondent may propose other Interim Remedial Measures ("IRMs") for the Site.

3. In proposing each IRM, Respondent shall submit to the Department a work plan that includes a chronological description of the anticipated IRM activities together with a schedule for performance of those activities (an "IRM Work Plan").

4. Upon the Department's determination that a proposal is an appropriate IRM and upon the Department's approval of such work plan, that IRM Work Plan shall be incorporated into and become an enforceable part of this Order; and Respondent shall submit to the Department for its review and (as appropriate) approval, in accordance with the schedule contained in the Department-approved IRM Work Plan, detailed documents and specifications prepared, signed, and sealed by a professional engineer to implement the Department-approved IRM. Such documents shall include a health and safety plan, contingency plan, and (if the Department requires such) a citizen participation plan that incorporates appropriate activities outlined in the Department's publication, "New York State Inactive Hazardous Waste Citizen Participation Plan," dated August 30, 1988, and any subsequent revisions thereto, and 6 NYCRR Part 375. Respondent shall then carry out such IRM in accordance with the requirements of the approved IRM Work Plan, detailed documents and specifications, and this Order. Respondent shall notify the Department of any significant difficulties that may be encountered in implementing the Department-approved work plan, detailed documents, or specifications and shall not modify any obligation unless first approved by the Department.

5. During implementation of all construction activities identified in the Department-approved IRM Work Plan or subsequent work plans, if any, Respondent shall have on-Site a full-time representative who is qualified to supervise the work done at the Site.

6. Within the schedule contained in the Department-approved IRM Work Plan, or subsequent work plans, if any, Respondent shall submit to the Department a final engineering report prepared by a professional engineer that includes a certification by that individual that all activities that comprised the Department-approved IRM were completed in accordance with the Department-approved IRM Work Plan and this Order.

a. If the performance of the Department-approved IRM encompassed construction activities, the final engineering report also shall include a detailed post-remedial operation and maintenance plan ("IRM O&M Plan"); "as-built" drawings and a final engineering report (each including all changes made to the Remedial Design during construction); and a certification by a professional engineer that the IRM was implemented and all construction activities were completed in accordance with the Department-approved detailed documents and specifications for the IRM and all such activities were personally witnessed by him or her or by a person under his or her direct supervision. The IRM O&M Plan, "as built" drawings, final engineering report, and certification must be prepared, signed, and sealed by a professional engineer.

b. Upon the Department's approval of the IRM O&M Plan, Respondent shall implement the IRM O&M Plan in accordance with the requirements of the Department approved IRM O&M Plan.

7. After receipt of the final engineering report and certification, the Department shall notify Respondent in writing whether the Department is satisfied that the IRM was completed in compliance with the Department-approved IRM Work Plan and design.

V. Progress Reports

Respondent shall submit to the parties identified in Subparagraph XV.B in the numbers specified therein copies of written quarterly progress reports that:

A. describe the actions which have been taken toward achieving compliance with this Order during the previous calendar quarter;

B. include all results of sampling and tests and all other data received or generated by Respondent or Respondent's contractors or agents in the previous quarter, including quality assurance/quality control information, whether conducted pursuant to this Order or conducted independently by Respondent;

C. identify all work plans, reports, and other deliverables required by this Order that were completed and submitted during the previous quarter;

D. describe all actions, including, but not limited to, data collection and implementation of work plans, that are scheduled for the next quarter and provide other information relating to the progress at the Site;

E. include information regarding percentage of completion, unresolved delays encountered or anticipated that may affect the future schedule for implementation of Respondent's obligations under the Order, and efforts made to mitigate those delays or anticipated delays;

F. include any modifications to any work plans that Respondent has proposed to the Department or that the Department has approved; and

G. describe all activities undertaken in support of the Citizen Participation Plan during the previous quarter and those to be undertaken in the next quarter. Respondent shall submit these progress reports to the Department by the tenth day of every quarter following the effective date of this Order.

Respondent also shall allow the Department to attend, and shall provide the Department at least seven days advance notice of, any of the following: prebid meetings, job progress meetings, substantial completion meeting and inspection, and final inspection and meeting; provided, however, that Respondent shall not be required under this Order on Consent to submit any portions of records and/or information that would disclose privileged mental impressions, conclusions, opinions, or legal theories, as provided for by applicable New York law.

VI. Review of Submittals

A. 1. The Department shall review each of the submittals Respondent makes pursuant to this Order to determine whether it was prepared, and whether the work done to generate the data and other information in the submittal was done, in accordance with this Order and generally accepted technical and scientific principles. The Department shall notify Respondent in writing of its approval or disapproval of the submittal, except for the health and safety plan submittal in the Work Plan, and the health and safety submittal in Subparagraph IV.A.4. All Department-approved submittals shall be incorporated into and become an enforceable part of this Order.

2. a. If the Department disapproves a submittal, it shall so notify Respondent in writing and shall specify the reasons for its disapproval. Within 30 days after receiving written notice that Respondent's submittal has been disapproved, Respondent shall make a revised submittal to the Department that addresses and endeavors to resolve all of the Department's stated reasons for disapproving the first submittal.

b. After receipt of the revised submittal, the Department shall notify Respondent in writing within 30 days of its approval or disapproval. If the Department disapproves the revised submittal, Respondent may notify the Department within 10 days of receipt of notification of disapproval from the Department that it will further revise the submittal and Respondent may submit one further revised submittal within 21 days of receipt of notification of Disapproval from the Department. If the Department disapproves the revised submittal, and no further revised submittal is made, or if the Department disapproves the further revised submittal once made, unless Respondent requests within 10 days of receipt of notice of the Department's disapproval of the revised submittal or further revised submittal, an opportunity to respond to the Department's objections pursuant to the dispute resolution procedure in Subparagraph VII.B., Respondent may be held in violation of this Order and the Department may take any action or pursue whatever rights it has pursuant to any provision of statutory or common law. If the Department approves the revised submittal or second revised submittal, it shall be incorporated into and become an enforceable part of this Order.

B. Respondent shall modify and/or amplify and expand a submittal upon the Department's direction to do so if the Department determines, as a result of reviewing data generated by an activity required under this Order or as a result of reviewing any other data or facts, that further work is necessary to ensure that the submittal is completed in accordance with this Order and generally accepted technical and scientific principles; provided, however, that the matters to be addressed by such modification or expansion are within the specific scope of work as described in the Work Plan.

VII. Dispute Resolution

A. Respondent's failure to comply with any term of this Order constitutes a violation of this Order and the ECL, subject to the provisions of Subparagraph VII.B., with respect to disputes arising over the approvability by the Department of a submittal of Respondent pursuant to Paragraph VI of this Order, and subject to the provisions of Subparagraph VII.C., with respect to disputes arising over the reimbursement by Respondent of State costs pursuant to Paragraph X. of this Order.

B. 1. If the Department disapproves a revised submittal and no further revised submittal is made, or if the Department disapproves a second revised submittal, Respondent shall be in violation of this Order unless, within 10 days of receipt of the Department's notice of disapproval, Respondent serves on the Department a request for an appointment of an Administrative Law Judge ("ALJ"), and a written statement of the issues in dispute, the relevant facts upon which the dispute is based, and factual data, analysis or opinion supporting its position, and all supporting documentation on which the Respondent relies (hereinafter called the "Statement of Position"). The Department shall serve its Statement of Position, including supporting documentation no later than ten (10) business days after receipt of Respondent's Statement of Position. Respondent shall have five (5) business days after receipt of the Department's Statement of Position within which to serve upon the Department a reply to the Department's Statement of Position, and in the event Respondent serves such a reply, the Department shall have five (5) business days after receipt of Respondent's reply to the Department's Statement of Position within which to serve upon Respondent the Department's reply to Respondent's reply to the Department's Statement of Position. In the event that the periods for exchange of Statements of Position and replies may cause a delay in the work being performed under this Order, the time periods may be shortened upon and in accordance with notice with notice by the Department as agreed to by Respondent.

2. An administrative record of any dispute under this Subparagraph shall be maintained by the Department. The record shall include the Statement of Position of each party pursuant to Subparagraph VII.B.1., and any relevant information. The record shall be available for review of all parties and the public. Upon review of the administrative record as developed pursuant to this Paragraph, the ALJ shall issue a final decision and order resolving the dispute. Respondent shall revise the submittal in accordance with the Department's specific comments, as may be modified by the ALJ and except for those which have been withdrawn by the ALJ, and shall submit a revised submittal. The period of time within which the submittal must be revised as specified by the Department in its notice of disapproval shall control unless the ALJ revises the time frame in the ALJ's final decision and order resolving the dispute.

3. After receipt of the revised submittal, the Department shall notify Respondent in writing of its approval or disapproval of the revised submittal. If the revised submittal fails to address the Department's specific comments, as may be modified by the ALJ, and the Department disapproves the revised submittal for this reason, Respondent shall be in violation of this Order and the ECL. In review by the ALJ of any dispute pursued under this Subparagraph, Respondent shall have the burden of proving that the Department's position is not consistent with generally acceptable technical and scientific principles.

4. The invocation of the procedures stated in this Subparagraph shall not extend, postpone, or modify Respondent's obligations under this Order with respect to any disputed items, unless and until the Department agrees or a court determines otherwise. The invocation of the procedures stated in this Subparagraph shall constitute an election of remedies by Respondent, and such election of this remedy shall constitute a waiver of any and all other remedies which may otherwise be available to Respondent regarding the issue in dispute, provided that Respondent's rights granted pursuant to Article 78 of the Civil Practice Law and Rules (CPLR) of New York are unaffected by the provisions of this Subparagraph.

C. 1. The dispute resolution procedure of this Subparagraph, which pertains to Paragraph X. (Payment of State Costs), applies to payment of State costs solely on the following grounds: (1) the cost documentation contains clerical errors; (2) the costs are not related to the Department's activities concerning the Site; (3) the work for which reimbursement is sought was not necessary; or (4) the costs are not reasonably related to the project.

2. If within 30 days after receipt of an itemized invoice from the Department for reimbursement of State costs as called for in Paragraph X. (Payment of State Costs) of this Order, Respondent fails to pay the sum indicated in said itemized invoice solely for any or all of the reasons enumerated in Subparagraph VII.C.1. of this Order, Respondent shall be in violation of this Order, unless, within 10 days following the 30 day period from Respondent's receipt of said itemized invoice from the Department, Respondent requests to meet with the Director of the Division of Environmental Remediation ("the Director") in order to discuss Respondent's basis for its refusal to pay said itemized invoice, and Respondent is available to meet immediately thereafter. At this meeting, Respondent shall be given an opportunity to present its objections to the payment of said itemized invoice, and the Director shall have the authority to modify and/or withdraw said itemized invoice. If Respondent subsequently fails to pay said itemized invoice in the amount and within the time period for payment determined by the Director, then Respondent shall be in violation of this Order and the ECL.

3. The invocation of the formal dispute resolution procedures under this Subparagraph shall not of itself extend, postpone or affect in any way any of Respondent's obligations under this Order. The invocation of the procedures stated in this Subparagraph shall constitute an election of remedies by Respondent, and such election of this remedy shall constitute a waiver of any and all other remedies which may otherwise be available to Respondent regarding the issue in dispute, provided that Respondent's rights granted pursuant to Article 78 of the Civil Practice Law and Rules (CPLR) of New York are unaffected by the provisions of this Subparagraph.

VIII. Compliance

Respondent shall not suffer any penalty under this Order or be subject to any proceeding or action if it cannot comply with any requirement hereof because of war, riot, fire, lightning, earthquake, flood, unusual or unforeseeable weather conditions, strike, shortages of labor and materials, obstruction or interference by adjoining landowners, or any fact or circumstance beyond Respondent's reasonable control. Respondent shall, within five days of when it obtains knowledge of any such condition, notify the Department in writing. Respondent shall include in such notice the measures taken and to be taken by Respondent to prevent or minimize any delays and shall request an appropriate extension or modification of this Order. Any extension of time hereunder shall be for a period of time not less than the period of delay resulting from such circumstance. Failure to give such notice within such five-day period constitutes a waiver of any claim that a delay is not subject to penalties. Respondent shall have the burden of proving that an event is a defense to compliance with this Order pursuant to this Paragraph.

IX. Entry upon Site

Respondent hereby consents to the entry upon the Site or areas in the vicinity of the Site which may be under the control of Respondent by any duly designated employee, consultant, contractor, or agent of the Department or any State agency for purposes of inspection, sampling, and testing and to ensure Respondent's compliance with this Order. The Department shall abide by the health and safety rules in effect for work performed at the Site under the terms of this Order. Should it be reasonably necessary and upon request, Respondent shall provide the Department with suitable office space at the Site, including access to a telephone, and shall permit the Department full access to all records relating to matters addressed by this order and job meetings, provided, however, that Respondent shall not be required under this Order on Consent to submit any portions of records and/or information that would disclose privileged mental impressions, conclusions, opinions, or legal theories, as provided for by applicable New York law.

X. Payment of State Costs

A. Within 30 days after receipt of an itemized invoice from the Department, Respondent shall pay to the Department a sum of money which shall represent reimbursement for the State's expenses including, but not limited to, direct labor, fringe benefits, indirect costs, travel, analytical costs, and contractor costs incurred by the State of New York for work related to the Site, as well as for negotiating this Order,

reviewing and revising submittals made pursuant to this Order, overseeing activities conducted pursuant to this Order, collecting and analyzing samples, and administrative costs associated with this Order. Such payment shall be made by check payable to the Department of Environmental Conservation and shall be sent to:

Bureau of Program Management
Division of Environmental Remediation
New York State Department of Environmental Conservation
50 Wolf Road
Albany, NY 12233-7010.

Personal service costs shall be documented by reports of Direct Personal Service, which shall identify the employee name, title, biweekly salary, and time spent (in hours) on the project during the billing period, as identified by an assigned time and activity code. Approved agency fringe benefit and indirect cost rates shall be applied. Non-personal service costs shall be summarized by category of expense (e.g., supplies, materials, travel, contractual) and shall be documented by expenditure reports.

B. Reimbursement by Respondent of past State costs incurred by the New York State Departments of Environmental Conservation and Health up to and including the effective date of this Order, as defined in Subparagraph XV.M. of the Order, is capped at Sixty Five Thousand (\$65,000.00) Dollars.

C. As provided for in Subparagraph VII.C.1. of this Order, Respondent can seek dispute resolution of reimbursement of State costs solely on the following grounds: (1) the cost documentation contains clerical errors; (2) the costs are not related to the Department's activities concerning the Site; (3) the work for which reimbursement is sought was not necessary; or (4) the costs are not reasonably related to the project. The dispute resolution procedure covering reimbursement by Respondent of State costs is contained in Subparagraph VII.C. of this Order.

XI. Department Reservation of Rights

A. Nothing contained in this Order shall be construed as barring, diminishing, adjudicating, or in any way affecting any of the Department's civil, criminal, or administrative rights or authorities.

B. Nothing contained in this Order shall be construed to prohibit the Commissioner or his duly authorized representative from exercising any summary abatement powers.

XII. Respondent's Reservation of Rights

A. Nothing contained in this Order shall be construed as barring, diminishing, adjudicating, or in any way affecting any rights Respondent may have to:

1. submit a Registry petition to reclassify the Site pursuant to 6 NYCRR 375-1.9;
2. seek judicial review of any decisions of the Department or the Commissioner under this Order;
3. seek a stay of enforcement of any order of the Department;
4. oppose the imposition or amount of penalties assessed by the Department pursuant to or with respect to or with respect to Respondent's obligations under this Order;
5. comply with this Order under protest;
6. assert claims against any of its insurers and/or potentially responsible parties with respect to the matters addressed in this Order, including, without limitation, claims for breach of contract, cost recovery, contribution, tortious conduct, and indemnity.
7. pursue all defenses, claims, demands and causes of action against any other person that Respondent may have with respect to any matter, action, event, claim, or proceeding relating in any way to the Site.

B. To the extent authorized under 42 U.S.C. 9613, and any other applicable law, Respondent shall not be liable for any claim, now or in the future, in the nature of contribution, indemnity or indemnification, however characterized, by potentially responsible parties regarding work Respondent shall have done in accordance with this Order and that shall have been approved by the Department. In any future action brought by Respondent against a potentially responsible party under CERCLA, as amended, the provisions of 42 U.S.C. 9613(f)(3) shall apply.

C. The existence of this Order or the fact that Respondent has participated in activities pursuant to this Order shall not constitute, be construed as, nor be considered an admission of liability, fault, or wrongdoing, or violation of any law, regulation, permit condition, or common law, by Respondent, and shall not give rise to any presumption of law or finding of fact which shall insure to the benefit of any third party. None of the statements in this Order shall be construed as a waiver of the attorney-client privilege or attorney work product privilege.

XIII. Indemnification

Respondent shall indemnify and hold the Department, the State of New York, and their representatives and employees harmless for all claims, suits, actions, damages, and costs of every name and description arising out of or resulting from the fulfillment or attempted fulfillment of this Order by Respondent and/or any of Respondent's directors, officers, employees, servants, agents, successors, and assigns. Respondent, however, shall not be obligated to indemnify the Department, the State of New York, and their representatives and employees for any liability arising from any unlawful, willful, wanton or malicious acts, or acts constituting gross negligence by the Department, the State of New York, and their representatives and employees during the course of any activities conducted pursuant to this Order.

XIV. Public Notice

A. Within 30 days after the effective date of this Order, Respondent shall file a Declaration of Covenants and Restrictions with the Nassau County Clerk's Office to give all parties who may acquire any interest in the Site notice of this Order.

B. If Respondent proposes to convey the whole or any part of Respondent's ownership interest in the Site, Respondent shall, not fewer than 60 days before the date of conveyance, notify the Department in writing of the identity of the transferee and of the nature and proposed date of the conveyance and shall notify the transferee in writing, with a copy to the Department, of the applicability of this Order.

XV. Communications

A. All written communications required by this Order shall be transmitted by United States Postal Service, by private courier service, or hand delivered as follows:

Communication from Respondent shall be sent to:

1. Chittibabu Vasudevan, Ph.D., P.E.
Chief, Remedial Section A.
Bureau of Eastern Remedial Action
Division of Environmental Remediation
NYS Dept. of Environmental Conservation
50 Wolf Road
Albany, New York 12233-7010
2. G. Anders Carlson, Ph.D.
Director, Bureau of Environmental Exposure Investigation
New York State Department of Health
2 University Place
Albany, New York 12203
3. John F. Byrne, Esq.
Senior Attorney
N.Y.S. Dept. of Environmental Conservation
Division of Environmental Enforcement
200 White Plains Road - 5th Floor
Tarrytown, New York 10591-5805
4. Joseph Jones
Project Manager
Remedial Section A.
Bureau of Eastern Remedial Action
Division of Environmental Remediation
NYS Dept. of Environmental Conservation
50 Wolf Road
Albany, New York 12233-7010

Communication to be made from the Department to Respondent shall be sent to:

1. Louis J. Stans
Director of Engineering
Photocircuits Corporation
31 Sea Cliff Avenue
Glen Cove, New York 11542
2. Mark C. Pennington, Esq.
Morgan, Lewis & Bockius
101 Park Avenue
New York, New York 10178-0060

B. Copies of work plans and reports shall be submitted as follows:

One copy to:

Chittibabu Vasudevan, Ph.D., P.E.
Chief, Remedial Section A.
Bureau of Eastern Remedial Action
Division of Environmental Remediation
NYS Dept. of Environmental Conservation
50 Wolf Road
Albany, New York 12233-7010

Three copies (one unbound) to:

Joseph Jones
Project Manager
Remedial Section A.
Bureau of Eastern Remedial Action
Division of Environmental Remediation
NYS Dept. of Environmental Conservation
50 Wolf Road
Albany, New York 12233-7010

Two copies to:

G. Anders Carlson, Ph.D.
Director, Bureau of Environmental Exposure Investigation
New York State Department of Health
2 University Place
Albany, New York 12203

One copy to:

Robert Becherer, P.E.
NYS Dept. of Environmental Conservation
Division of Environmental Remediation
Region 1 Office
S.U.N.Y. Campus - Building 40
Stony Brook, New York 11790-2356

One copy to:

John F. Byrne, Esq.
Senior Attorney
N.Y.S. Dept. of Environmental Conservation
Division of Environmental Enforcement
200 White Plains Road - 5th Floor
Tarrytown, New York 10591-5805

C. 1. Within 30 days of the Department's approval of any report submitted pursuant to this Order, Respondent shall submit to the Director, Division of Environmental Remediation, 50 Wolf Road, Albany, New York 12233-7010, a computer readable magnetic media copy of the approved report in American Standard Code for Information Interchange (ASCII) format.

2. Within 30 days after the Department's approval of the FRI and the FFS, Respondent shall submit to the Department one microfilm copy (16 millimeter roll film M type cartridge) of the Department-approved FRI/FFS, as well as all other Department-approved submittals. Respondent shall submit same to Chittibabu Vasudevan, Ph.D., P.E.

D. The Department and Respondent reserve the right to designate additional or different addressees for communication or written notice to the other.

XVI. Miscellaneous

- A. All activities and submittals required by this Order shall address on-Site contamination resulting from the disposal of hazardous wastes at the Site.
- B. Respondent shall retain professional consultants, contractors, laboratories, quality assurance/quality control personnel, and third party data validators acceptable to the Department to perform the technical, engineering, and analytical obligations required by this Order. The experience, capabilities, and qualifications of the firms or individuals selected by Respondent shall be submitted to the Department within 15 days after the effective date of this Order. The Department's approval of these firms or individuals shall be obtained before the start of any activities for which Respondent and such firms or individuals will be responsible. The responsibility for the performance of the professionals retained by Respondent shall rest solely with Respondent.
- C. The Department shall have the right to obtain split samples, duplicate samples, or both, of all substances and materials sampled by Respondent, and the Department also shall have the right to take its own samples. Respondent shall make available to the Department the results of all sampling and/or tests or other data generated by Respondent with respect to implementation of this Order and shall submit these results in the progress reports required by this Order. The Department shall make available to Respondent the results of all sampling and/or tests or other data generated by the Department with respect to the implementation of this Order. Respondent shall have the right to obtain split samples of all substances and materials sampled by the Department.
- D. Respondent shall notify the Department at least 10 working days in advance of any field activities to be conducted pursuant to this Order.
- E. Except as provided herein, Respondent shall obtain all permits, approvals or other authorizations necessary to perform Respondent's obligations under this Order. If during the implementation of the FRI Work Plan, Respondent and the Department shall agree that it is not possible to sample in a location or locations described in the FRI Work Plan, and the only practicable alternative for obtaining the data required by the Work Plan is to move the sample location(s) to public or utility-owned or controlled property immediately adjacent to the Site, Respondent shall make diligent efforts to obtain the necessary easements, rights-of-way, or rights-of-entry for such relocated samples. If Respondent is unable despite diligent efforts to obtain such permits, easements, rights-of-way, rights-of-entry, approvals or authorizations necessary to perform its obligations under this Order, then Respondent shall promptly notify the Department and shall include in that notification a summary of the steps Respondent has taken to obtain all necessary permits, easements, rights-of-way, rights-of-entry, approvals or authorizations.

F. Respondent and Respondent's officers, directors, agents, servants, employees, successors, and assigns shall be bound by this Order. Any change in ownership or corporate status of Respondent including, but not limited to, any transfer of assets or real or personal property shall in no way alter Respondent's responsibilities under this Order. Respondent's officers, directors, employees, servants, and agents shall be obliged to comply with the relevant provisions of this Order in the performance of their designated duties on behalf of Respondent.

G. Respondent shall provide a copy of this Order to each contractor hired to perform work required by this Order and to each person representing Respondent with respect to either or both Sites and shall condition all contracts entered into in order to carry out the obligations identified in this Order upon performance in conformity with the terms of this Order. Respondent or Respondent's contractors shall provide written notice of this Order to all subcontractors hired to perform any portion of the work required by this Order. Respondent shall nonetheless be responsible for ensuring that Respondent's contractors and subcontractors perform the work in satisfaction of the requirements of this Order.

H. "Interim Remedial Measure" shall have the meaning set forth in 6 NYCRR Part 375.

I. All references to "professional engineer" in this Order are to an individual registered as a professional engineer in accordance with Article 145 of the New York State Education Law. If such individual is a member of a firm, that firm must be authorized to offer professional engineering services in the State of New York in accordance with Article 145 of the New York State Education Law.

J. All references to "days" in this Order are to calendar days unless otherwise specified.

K. The section headings set forth in this Order are included for convenience of reference only and shall be disregarded in the construction and interpretation of any of the provisions of this Order.

L. 1. No term, condition, understanding, or agreement purporting to modify or vary any term of this Order shall be binding unless made in writing and subscribed by the party to be bound. No informal advice, guidance, suggestion, or comment by the Department regarding any report, proposal, plan, specification, schedule, or any other submittal shall be construed as relieving Respondent of Respondent's obligation to obtain such formal approvals as may be required by this Order.

2. If Respondent desires that any provision of this Order be changed, Respondent shall make timely written application, signed by Respondent, to the Commissioner setting forth reasonable grounds for the relief sought. Copies of such written application shall be delivered or mailed to:

John F. Byrne, Esq.
Senior Attorney
NYS Dept. of Environmental Conservation
Division of Environmental Enforcement
200 White Plains Road
5th Floor
Tarrytown, New York 10591-5805

Joseph Jones
Project Manager
Remedial Section A.
Bureau of Eastern Remedial Action
Division of Environmental Remediation
NYS Dept. of Environmental Conservation
50 Wolf Road
Albany, New York 12233-7010


Chittibabu Vasudevan, Ph.D., P.E.
Chief, Remedial Section A.
Bureau of Eastern Remedial Action
Division of Environmental Remediation
NYS Dept. of Environmental Conservation
50 Wolf Road
Albany, New York 12233-7010

M. The effective date of this Order is the date the Commissioner or his designee signs it.

DATED: 3/31/97

JOHN P. CAHILL
Acting Commissioner
New York State Department
of Environmental Conservation

By:


Michael J. O'Toole, Jr.

CONSENT BY RESPONDENT

PHOTOCIRCUITS CORPORATION

Respondent hereby consents to the issuing and entering of this Order, waives Respondent's right to a hearing herein as provided by law, and agrees to be bound by this Order.

By: Louis J. Stans

Title: DIRECTOR OF ENGINEERING

Date: March 25, 1997

STATE OF NEW YORK)

COUNTY OF Nassau) S.S.:

CAROL A. HYMES
Notary Public, State of New York
No. 4843065
Qualified in Nassau County
Commission Expires

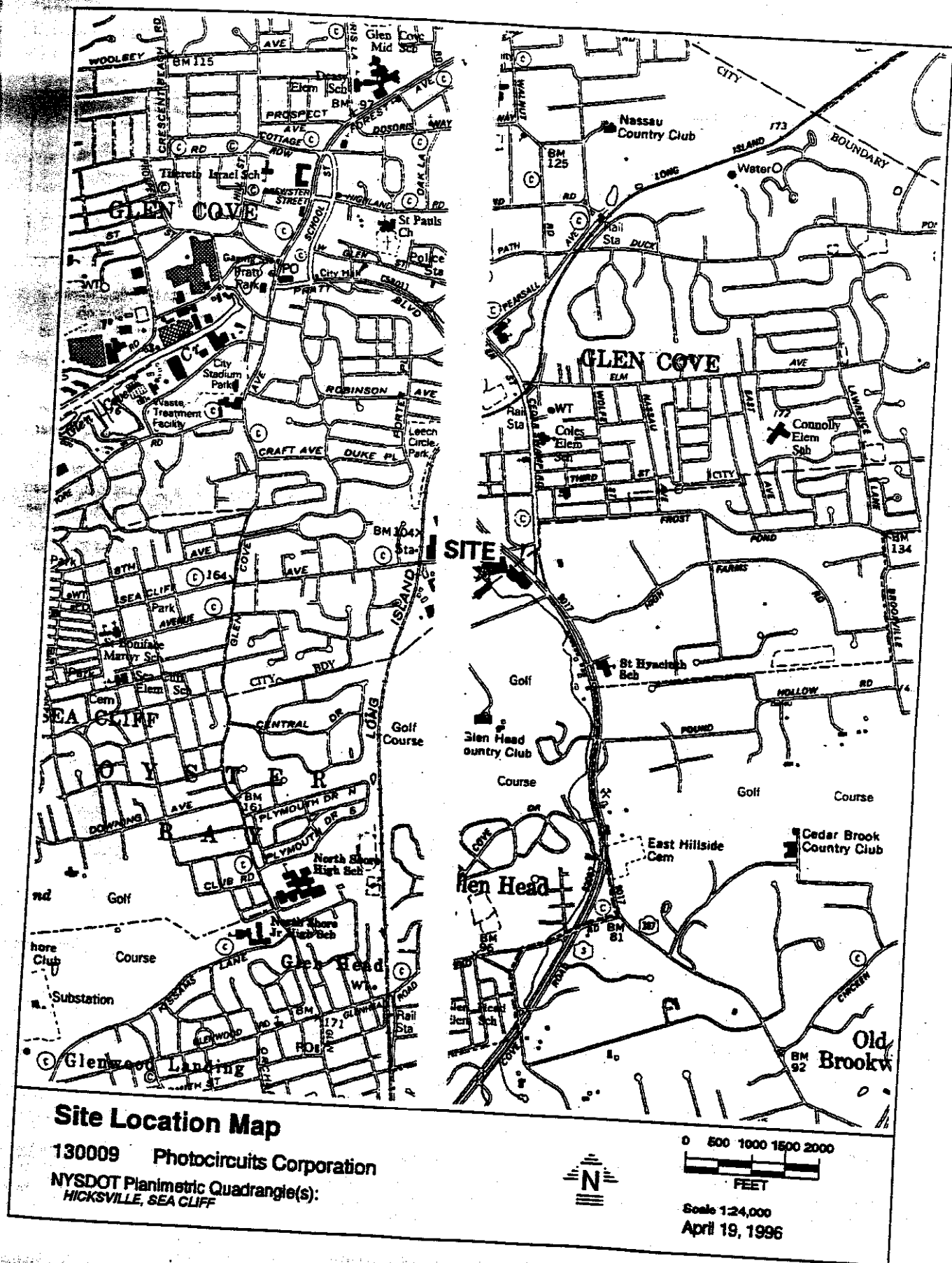
1/31/98

On this 25TH day of March, 1997, before me personally came Louis Stans, to me known, who being duly sworn, did depose and say that he/she resides in Suffolk County; that he/she is the Director of Engineering of Photocircuits Corp., the corporation described in and which executed the foregoing instrument; that he/she knew the seal of said corporation; that the seal affixed to said instrument was such corporate seal; that it was so affixed by the order of the Board of Directors of said corporation and that he/she signed his/her name thereto by like order.

Carol A. Hymes
Notary Public

APPENDIX A.

(SITE MAP)



APPENDIX B.

(WORK PLAN)