

STATE OF NEW YORK: DEPARTMENT OF
ENVIRONMENTAL CONSERVATION

In the Matter of the Development
and Implementation of a Remedial
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 # W1-0793-97-07

BULOVA CORPORATION

Site Code #1-30-084

Respondent.

WHEREAS,

1. The New York State Department of Environmental Conservation (hereinafter "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. Bulova Corporation ("Respondent") formerly operated a manufacturing facility at 101 Green Acres Road, Village of Valley Stream, Nassau County, New York ("Site") between the years 1948 and 1993. The Tax Map Number for the Site is Section 39, Block 553, Lot 10. A site map is attached to this Order as Appendix "A".
3. The Site is an inactive hazardous waste disposal site, as that term is defined at ECL 27-1301.2. The Site has been listed in the Registry of Inactive Hazardous Waste Disposal Sites in New York State as Site Number 1-30-084. The Department has classified the Site as 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 to (i) 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 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. Following a period of public comment, the Department selected a final remedial alternative for the Site in a Record of Decision ("ROD"). The ROD, attached to this Order as Appendix "B" is incorporated as an enforceable part of this Order.

6. The Department and Respondent agree that the goals of this Order are for Respondent to (i) develop and implement, in accordance with the ROD, an inactive hazardous waste disposal site remedial program ("Remedial Program") for the Site that shall consist of operation, maintenance and monitoring as set forth in the selected remedial alternative; and (ii) reimburse the State's administrative costs.

7. Respondent, having made no admissions but having waived Respondent's right to a hearing herein as provided by law, and having consented to the issuance and entry of this Order, agrees to be bound by 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 having been duly advised, IT IS ORDERED THAT:

I. Remedial Program Contents

The remedial alternative selected in the ROD was the "no further action" alternative, with (a) periodic monitoring in the southeastern part of the Site and off-Site downgradient areas for two years in order to measure the effectiveness of the source removal completed and continuing degradation of groundwater contaminants over time, (b) periodic review of monitoring results to determine if further monitoring or remedial action is necessary, and (c) institutional controls restricting access to groundwater.

II. Implementation of Remedy

A. Within 45 days after the effective date of this Order, Respondent shall commence implementation of the O & M Work Plan (the "Work Plan") attached to this Order and made part of it as Appendix "C."

III. Progress Reports

Respondent shall submit to the parties identified in Subparagraph XII.B in the numbers

specified therein copies of written bi-annual progress reports that:

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

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 reporting period, including quality assurance/quality control information, whether conducted pursuant to this Order or conducted independently by Respondent.

IV. Review of Submittals

A. 1. The Department shall review each submittal 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. All submittals approved by the Department 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 resolves all of the Department's stated reasons for disapproving the first submittal. Respondent shall not be in violation of this Order based solely on the Department's initial disapproval of the first submittal.

b. After receipt of the revised submittal, the Department shall notify Respondent in writing of its approval or disapproval. If the Department disapproves the revised submittal on the same grounds as its disapproval of the initial submittal, unless Respondent requests an opportunity to respond to the Department's objections pursuant to the dispute resolution provisions contained in Paragraph V of this Order, Respondent shall be 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, it shall be incorporated into and become an enforceable part of this Order.

B. Subject to the dispute resolution provisions of Paragraph V of this Order, 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 such modification, amplification and/or expansion of the submittal is necessary to accomplish the goals of this Order. Any such direction by the Department shall be in writing, and shall state with specificity the basis and reasons for the Department's determination that such modification, amplification and/or expansion is necessary.

V. Dispute Resolution

A. If the Department disapproves a revised submittal, Respondent shall be in violation of this Order unless, within 15 days of receipt of the Department's notice of disapproval, Respondent requests the appointment of an Administrative Law Judge ("ALJ") in order to discuss the Department's objections. Respondent shall be available to meet immediately thereafter. At this meeting, Respondent shall be given an opportunity to present its responses to the Department's objections, and the ALJ shall have the authority to modify and/or withdraw such objections. 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 is as specified by the Department in its notice of disapproval unless the ALJ revises the time frame during or after the meeting.

B. 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 modified, and the Department disapproves the revised submittal for this reason, Respondent shall be in violation of this Order.

C. The invocation of formal dispute resolution procedures under this Paragraph shall not of itself extend, postpone or affect in any way any of Respondent's obligations under this Order that are not the subject of the dispute resolution procedures set forth in this Paragraph V. The invocation of the procedures stated in this Paragraph 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(s) in dispute.

D. The dispute resolution procedures of this Paragraph V may be invoked by Respondent to challenged a direction by the Department under Subparagraph IV.B to modify, amplify and/or expand a submittal.

E. With respect to the final decision of the ALJ, Respondent shall have those rights granted pursuant to Article 78 of the Civil Practice Law and Rules of New York, provided that the petition is filed within thirty (30) days of Respondent's receipt of the final decision and order issued by the ALJ.

VI. Penalties

A. Respondent's failure to comply with any term of this Order constitutes a violation of this Order and the ECL.

B. Respondent shall not suffer any penalty under this Order or be subject to any proceeding or action if it cannot comply with any requirement of this Order because of fire, lightning, earthquake, flood, adverse weather conditions, strike, shortages of labor and materials, war, riot, inability to obtain reasonable State access to perform its obligations under this Order

despite its good faith efforts, obstruction or interference by adjoining landowners, or any other fact or circumstance beyond Respondent's reasonable control ("*force majeure* event"). Respondent shall, within fifteen days of when it obtains knowledge of any such *force majeure* event, 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. Respondent shall have the burden of proving by a preponderance of the evidence that an event is a defense to compliance with this Order pursuant to this Subparagraph VI.B of this Order.

VII. 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 properly trained and 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. Respondent shall permit the Department full access to all records to matters addressed by this Order and job meetings.

VIII. Payment of State Costs

Within 30 days after receipt of an 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 prior to the effective date of this Order, as well as for 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. State costs for work conducted pursuant to this Order shall not exceed \$2,500 annually commencing with the effective date of this Order. Such payment shall be made by certified check payable to 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.

IX. 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 (including, but not limited to, nor exemplified by, the right to recovery natural resource damages) 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.

C. Nothing contained in this Order constitutes or shall be construed as, and Respondent's compliance with or performance under this Order does not constitute, and shall not be construed as, an admission by Respondent of any liability, responsibility or fault, nor as a waiver by Respondent of, or estoppel against Respondent relating to, any defense.

X. 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. However, Respondent shall not be required to indemnify the Department, the State of New York, and their representatives and employees regarding any liability arising from grossly negligent, reckless or intentional acts or omissions of the Department, the State of New York, and their representatives and employees during the course of any activities conducted pursuant to this Order.

XI. Public Notice/Deed Restriction

Within 30 days after the effective date of this Order, Respondent shall use best efforts to cause the current owner of the Site to file a Declaration of Covenants and Restrictions in a form acceptable to the Department with the Clerk of Nassau County located to give all parties who may acquire any interest in the Site notice of this Order and to prohibit the installation of potable water wells at the Site.

XII. 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:

1. Communication from Respondent shall be sent to:

Crystal Montroy
Division of Environmental Remediation
New York State Department of Environmental Conservation
50 Wolf Road
Albany, New York 12233-7010

with copies to:

Director, Bureau of Environmental Exposure Investigation
New York State Department of Health
2 University Place
Albany, New York 12203

Walter Parish, P.E.
Division of Environmental Remediation
New York State Department of Environmental Conservation
SUNY Campus
Loop Road, Building 40
Stony Brook, NY 11790-2356

Dale A. Desnoyers, Esq.
New York State Department of Environmental Conservation
50 Wolf Road, Rm 627
Albany, NY 12233-5550

2. Communication from the Department to Respondent shall be sent to:

Mitchell H. Bernstein, Esq.
Van Ness Feldman, P.C.
1050 Thomas Jefferson Street N.W.
Washington, D.C. 20007-3877

Robert Weber
Vice President of Operations
Bulova Corporation
One Bulova Avenue
Woodside, New York 11377-7874

B. Copies of reports shall be submitted as follows:

Four copies (one unbound) to Crystal Montroy.

Two copies to the Director, Bureau of Environmental Exposure Investigation.

One copy to Walter Parish, P.E.

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

XIII. Miscellaneous

A. All activities and submittals required by this Order shall address both on-Site and off-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 and qualifications of the firms or persons 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.

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. Respondent shall obtain all permits, easements, rights-of-way, rights-of-entry, approvals, or authorizations necessary to perform Respondent's obligations under this Order.

F. Respondent and, in the performance of their designated duties on behalf of Respondent, its officers, directors, agents, servants and employees, and Respondent's 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.

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 the Site 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 its 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 remain responsible for ensuring that Respondent's

contractors and subcontractors perform the work in satisfaction of the requirements of this Order.

H. 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.

I. All references to "days" in this Order are calendar days unless otherwise specified. If any time period under this Order ends on a Saturday, Sunday or State or federal holiday, then the applicable time period shall expire on the next calendar day that is not a Saturday, Sunday or State or federal holiday.

J. The paragraph 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.

K. 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 Dale Desnoyers, Esq. and to Crystal Montroy.

L. The effective date of this Order is the date the Commissioner or his designee signs it, except that monitoring conducted in June 2000 in accordance with the Work Plan shall be considered the first quarterly sampling event for purposes of the two-year monitoring period.

DATED: Albany, New York
June 27, 2000

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

By: 
Michael J. O'Toole, Jr.

CONSENT BY RESPONDENT

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: _____

Robert A. Weber

Title: Vice President of Operations/Bulova Corporation

Date: _____

6/27/00

STATE OF NEW YORK)

) ss:

COUNTY OF _____)

On the 27th day of June, in the year 2000, before me, the undersigned, personally appeared, Robert A. Weber, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Glenn M. Parker
Notary Public

GLENN M. PARKER
NOTARY PUBLIC, State of New York
No. 01PA5039619
Qualified in Suffolk County
Commission Expires Feb. 21, 2001