

STATE OF NEW YORK: DEPARTMENT OF ENVIRONMENTAL CONSERVATION

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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 #  
W1-0674-94-01

**Bulova Corporation,  
Respondent.**

Site Code # 1-52-139

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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 entered into pursuant to the Department's authority under ECL Article 27, Title 13 and ECL 3-0301.

2. Bulova Corporation ("Respondent") is the former owner of a site located at Church and Washington Streets, Sag Harbor, New York (the "Site"). Although the Department's investigation is not yet complete, there is evidence of soil and groundwater contamination on site.

3. The Site is an inactive hazardous waste disposal site as that term is defined at ECL 27-1301.2, and has been listed in the Registry of Inactive Hazardous Waste Disposal Sites in New York State as Site Number 1-52-139. 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 (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 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. 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 an inactive hazardous waste disposal site remedial program ("Remedial Program") for the Site that shall include a Remedial Investigation/Feasibility Study ("RI/FS"), design and implementation of the selected remedial alternative, and operation, maintenance and monitoring of the selected remedial alternative; and (ii) reimburse the State's administrative costs.

6. The Department and Respondent further agree that a goal of the Remedial Program is to remediate the Site to a condition which will permit it to be used for residential purposes.

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 being duly advised, IT IS ORDERED THAT:

I. RI/FS Work Plan Contents and Submittals

A. Respondent has submitted to the Department a detailed work plan describing the methods and procedures to be implemented in performing an RI/FS for the Site ("RI/FS Work Plan"). The RI/FS Work Plan, attached hereto as Appendix A, has been found to be approvable by the Department and will be approved upon the Department's execution of this Order.

B. (1) The RI/FS Work Plan includes the following:

a. A chronological description of the anticipated RI/FS activities together with a schedule for the performance of these activities.

b. A Sampling and Analysis Plan that

includes:

(i) A quality assurance project plan that describes the quality assurance and quality control protocols necessary to achieve the initial data quality objectives. This plan designates a data validation expert and describes such individual's qualifications and experience.

(ii) A field sampling plan that defines sampling and data gathering methods in a manner consistent with the "Compendium of Superfund Field Operations Method" (EPA/540/P-87/001, OSWER Directive 9355.0-14, December 1987) as supplemented by the Department.

c. A health and safety plan to protect persons at and in the vicinity of the Site during the performance of the RI/FS which was prepared in accordance with 29 CFR 1910 and all other applicable standards by a certified health and safety professional. Respondent shall add supplemental items to this plan if necessary to ensure the health and safety of all persons at or in the vicinity of the Site during the performance of any work pursuant to this Order.

d. A citizen participation plan that is consistent with the Department's publication, "New York State Inactive Hazardous Waste Site Citizen Participation Plan," dated August 30, 1988, and any subsequent revisions thereto, and 6 NYCRR Part 375, dated May 1992.

(2) The RI/FS Work Plan incorporates all elements of a RI/FS as set forth in the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA") [42 U.S.C. 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 as of the effective date of this Order, and appropriate USEPA and Department technical and administrative guidance documents.

## II. Performance and Reporting of Remedial Investigation

A. Within 30 days after the effective date of this Order, Respondent shall commence the Remedial Investigation.

B. Respondent shall perform the Remedial Investigation in accordance with the Department-approved RI/FS Work Plan.

C. During the performance of construction or

sampling activities associated with the 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 RI/FS Work Plan, Respondent shall prepare a Remedial Investigation Report that shall:

(1) include all data generated and all other information obtained during the Remedial Investigation:

(2) provide all of the assessments and evaluations set forth in CERCLA, the NCP, and the guidance documents identified in Subparagraph I.B(2) of this Order;

(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 Remedial Investigation that all activities that comprised the Remedial Investigation were performed in full accordance with the Department-approved RI/FS Work Plan.

### III. Feasibility Study

A. Within 30 days after receipt of the Department's approval of the Remedial Investigation Report, Respondent shall submit a Feasibility Study evaluating on-Site and off-Site remedial actions to reduce or eliminate, to the maximum extent practicable and which will permit the Site to be used for residential purposes, all health and environmental hazards and potential hazards attributable to hazardous waste disposal at the Site. The Feasibility Study shall be prepared by GT Engineering, P.C. and shall have the signature and seal of a professional engineer from that firm who shall certify that the Feasibility Study was prepared in accordance with this Order.

B. Respondent shall perform and prepare the Feasibility Study in accordance with the Department-approved RI/FS Work Plan and in a manner consistent with CERCLA, the NCP, and the guidance documents identified in Subparagraph I.B(2).

C. After the Department's approval of the Feasibility Study, Respondent shall cooperate and assist the Department in soliciting public comment on the RI/FS and on the proposed remedial action plan, in accordance with CERCLA, the NCP, the guidance documents identified in Subparagraph I.B(2), and with any Department policy and guidance documents in effect at the time the public comment period is initiated.

The public comment period shall be initiated no later than 30 days after the Department's approval of the Feasibility Study. Within 60 days 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. Remedial Design Contents

A. Unless the ROD selects the "no action" alternative, within 120 days after the ROD is signed, Respondent shall submit to the Department a remedial design to implement the remedial alternative for the Site selected by the Department in the ROD (the "Remedial Design"). The Remedial Design shall be prepared by GT Engineering, P.C. and shall have the signature and seal of a professional engineer from that firm who shall certify that the Remedial Design was prepared in accordance with this Order.

B. The Remedial Design shall include the following:

1. A detailed description of the remedial objectives and the means by which each element of the selected remedial alternative will be implemented to achieve those objectives, including, but not limited to:

a. the construction and operation of any structures;

b. the collection, destruction, treatment, and/or disposal of hazardous wastes and substances and their constituents and degradation products, and of soil or other materials contaminated thereby;

c. the collection, destruction, treatment, and/or disposal of contaminated groundwater, leachate, and air;

d. physical security of areas to be remediated, and of remedial systems, and posting of the Site;

e. health and safety of persons living and/or working at or in the vicinity of the Site;

f. quality control and quality assurance procedures and protocols to be applied during implementation of the Remedial Design; and

g. appropriate on-Site and off-Site

monitoring during implementation of the Department-selected remedial alternative.

2. "Biddable Quality" documents for the Remedial Design including, but not limited to, documents and specifications prepared by GT Engineering, P.C., and signed and sealed by a professional engineer from that firm. These plans shall satisfy all applicable local, state and federal laws, rules and regulations;

3. A time schedule to implement the Remedial Design;

4. The parameters, conditions, procedures, and protocols to determine the effectiveness of the Remedial Design, including a schedule for periodic sampling of groundwater monitoring wells on-Site and off-Site;

5. A description of operation, maintenance, and monitoring activities to be undertaken after the Department has approved construction of the Remedial Design, including the number of years during which such activities will be performed;

6. A contingency plan to be implemented if any element of the Remedial Design fails to achieve any of its objectives including making the soils and groundwater at the Site suitable for residential occupancy;

7. A health and safety plan for the protection of persons at and in the vicinity of the Site during construction and after completion of construction. This plan shall be prepared in accordance with 29 CFR 1910 by a certified health and safety professional; and

8. A citizen participation plan which 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.

V. Remedial Design Construction and Reporting

A. Within 30 days after the Department's approval of the Remedial Design, Respondent shall commence implementation of the Department-approved Remedial Design.

B. Pursuant to 6 NYCRR § 375-1.7, the Department has determined to exempt Respondent from the requirement to obtain any permits issuable by the Department for the performance of the Remedial Program provided that Respondent meets all of the substantive requirements applicable to the

Remedial Program.

C. During implementation of all construction activities identified in the Remedial Design, Respondent shall have on-Site a full-time representative who is qualified to supervise the work done.

D. Within 60 days after completion of the construction activities identified in the Remedial Design, Respondent shall submit to the Department a detailed post-remedial operation and maintenance plan ("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 from GT Engineering, P.C. that the Remedial Design was implemented and all construction activities were completed in accordance with the Department-approved Remedial Design. The O & M Plan, "as built" drawings, final engineering report, and certification must be prepared by GT Engineering, P.C., and signed and sealed by a professional engineer from that firm.

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

F. After receipt of the "as-built" drawings, final engineering report, and certification, the Department shall notify Respondent in writing whether the Department is satisfied that all construction activities have been completed in compliance with the approved Remedial Design.

G. If the Department concludes that any element of the Remedial Program fails to achieve its objectives or otherwise fails to protect human health or the environment, the Department may request Respondent to submit for its approval a Supplemental Remedial Design meeting the requirements of Section IV of this Order. If Respondent declines to submit a Supplemental Remedial Design, the Department reserves its rights to take appropriate action as authorized by law.

**VI. Progress Reports**

Respondent shall submit to the parties identified in Subparagraph XV. B in the numbers specified therein copies of written monthly progress reports that: (i) describe the actions which have been taken toward achieving compliance with this Order during the previous month; (ii) 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 month, including quality assurance/quality control information, whether conducted pursuant to this Order or

conducted independently by Respondent; (iii) identify all work plans, reports, and other deliverables required by this Order that were completed and submitted during the previous month; (iv) describe all actions, including, but not limited to, data collection and implementation of work plans, that are scheduled for the next month and provide other information relating to the progress at the Site; (v) 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; (vi) include any modifications to any work plans that Respondent has proposed to the Department or that the Department has approved; and (vii) describe all activities undertaken in support of the Citizen Participation Plan during the previous month and those to be undertaken in the next month. Respondent shall submit these progress reports to the Department by the tenth day of every month 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.

#### VII. Review of Submittals

A. (1) The Department shall review each of the submittals (defined in Paragraph VII.C. below) 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 within 60 days of the Department's receipt thereof, except for the submittals discussed in Subparagraph I.B(1)(c) and in Subparagraph IV.B(7). 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 and shall specify in writing the reasons for its disapproval, and shall provide Respondent with an opportunity to meet with the Department to discuss the basis for the 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) Within 30 days 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 for the same reason(s) it disapproved the initial submittal, 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, unless Respondent invokes the dispute resolution provisions of Section VIII of this Order. 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 Section VIII of this Order, Respondent shall modify, amplify and/or 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.

C. For purposes of this Section VII, the term "submittal" means the Remedial Investigation Report (Paragraph II.D.), the Feasibility Study (Paragraph III.A.), the Remedial Design (Paragraph IV.A.), the operation and Maintenance Plan (Paragraph V.D.), any Supplemental Remedial Design (Paragraph V.G.), and any phased or supplemental versions of the above documents.

#### VIII. Resolution of Disputes

Any disputes concerning activities or deliverables required under this Order shall be resolved as follows:

A. The Department and Respondent shall attempt to resolve expeditiously and informally any disputes concerning the meaning, implementation or application of this Order or the performance of the Remedial Program required hereunder.

B. If a dispute cannot be resolved informally within 10 business days, Respondent must institute formal dispute resolution in accordance with the following procedure or comply within an additional 10 business days with the Department's position on any issue in dispute.

(1) Respondent shall notify the Department in writing of any good faith disagreements or objections with respect to the meaning, implementation or application of this Order within ten (10) business days of the date of the end of informal negotiations. Said notice shall set forth the specific points of the dispute, the position Respondent maintains should be adopted, the factual and legal basis for Respondent's position, and any matters Respondent considers necessary for the Department's determination.

(2) Within ten (10) business days of receipt, the Department shall provide a written response to Respondent setting forth its position and the basis therefor. During the five (5) business days following Respondent's receipt of the response, the parties shall attempt to negotiate, in good faith, a resolution of their differences.

(3) If agreement cannot be achieved during the five (5) business day negotiation period, the matter shall be referred to the Director of the Department's Division of Hazardous Waste Remediation (the "Director"). Respondent shall then have five (5) business days to request a conference with the Director. Upon receipt of such request, the Director shall arrange to convene an informal conference for the purpose of discussing Respondent's objections and the basis for the Department's response. After this conference, the Director shall, within thirty (30) days, expeditiously resolve the dispute and provide Respondent with a written response that shall constitute the resolution of the dispute.

C. The invocation or implementation of the procedures stated in this Paragraph VIII shall not of itself extend, postpone or affect any of Respondent's obligations under this Order, unless the parties agree otherwise, except that accrual of any penalties or interest with respect to the disputed matter shall be tolled pending resolution of the dispute pursuant to this Paragraph VIII.

#### IX. Penalties

A. (1) Respondent's failure to comply with any term of this Order constitutes a violation of this Order and the ECL.

(2) Respondent shall be liable for payment to the Department of the sums set forth below as stipulated penalties for each day or part thereof that Respondent is in violation of the terms of this Order. All penalties begin to accrue on the first day Respondent is in violation of the terms of this Order and continue to accrue through the final day of correction of any violation. Subject to the dispute resolution provisions of Paragraph VIII of this Order, such

sums shall be due and payable within 15 days after receipt of notification from the Department assessing the penalties. If such payment is not received within 15 days after Respondent receives such notification from the Department, interest shall be payable at the annual rate of six per centum on the overdue amount from the day on which it was due through, and including, date of payment. Penalties shall be paid by certified check or money order, made payable to "New York State Department of Environmental Conservation" and shall be delivered personally or by certified mail, return receipt requested, to the Director, Division of Environmental Enforcement, N.Y.S.D.E.C., 50 Wolf Road, Albany, New York 12233-5500. Payment of the penalties shall not in any way alter Respondent's obligation to complete performance under the terms of this Order. Stipulated penalties shall be due and payable under this Subparagraph IX.A(2) pursuant to the following schedule:

<u>Period of Non-Compliance</u>	<u>Penalty Per Day</u>
First through 15th day	\$ 500
16th through 30th day	\$ 1,000
31st day and thereafter	\$ 1,500

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 hereof because of events or circumstances beyond Respondent's reasonable control which the exercise of ordinary human prudence could not have prevented. Respondent shall, within five days of when it becomes aware that any such event or circumstance may cause a delay in or prevent compliance with a requirement of this Order, 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. Failure to give such notice within such five-day period shall create a rebuttable presumption against the validity of a claim that the delay is not subject to penalties pursuant to this Subparagraph IX.B. Respondent shall have the burden of proving that an event or circumstance is a defense to compliance with this Order pursuant to this Subparagraph IX.B.

X. 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, upon reasonable advance notice to Respondent. Such duly designated State employee, consultant or agent shall

observe all applicable health and safety precautions and requirements, including those set out in the health and safety plan of the RI/FS Work Plan. During implementation of the Remedial Design, Respondent shall provide the Department with suitable work 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.

XI. Payment of State Costs

Subject to the dispute resolution provisions of Paragraph VIII of this Order, 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 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 itemized invoice shall not exceed \$15,000.00 in total for each of the calendar years 1995 and 1996, and \$10,000.00 in total per calendar year thereafter (this limit to be pro-rated for the final year that this Order is in effect). Such payment shall be made by certified check payable to the Department of Environmental Conservation. Payment shall be sent to the Bureau of Program Management, Division of Hazardous Waste Remediation, N.Y.S.D.E.C., 50 Wolf Road, Albany, NY 12233-7010. Itemization of the costs shall include an accounting of personal services indicating 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. This information shall be documented by quarterly reports of Direct Personal Service. 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 the New York State Office of the State Comptroller's quarterly expenditure reports. Upon request of Respondent, the Department shall make available to Respondent, for each employee whose time is included in the itemization of costs, the underlying time cards and similar time records that support the itemization.

XII. 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 rights, except as may be provided in Paragraph XVII of this Order.

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

XIII. Indemnification

Respondent shall indemnify and hold harmless the Department, the State of New York, and their representatives and employees for all claims, suits, actions, damages, and costs of every name and description arising out of or resulting from Respondent's or its contractors' negligent, intentional, or reckless acts in connection with the fulfillment or attempted fulfillment of this Order.

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 negligent, reckless, or intentionally tortious 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.

XIV. Public Notice

Within 30 days after the effective date of this Order, Respondent shall file a copy of this Order with the Clerk of Suffolk County.

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:

B. Communication from Respondent shall be sent to:

1. Susan McCormick, P.E.  
Division of Hazardous Waste Remediation  
New York State Department of Environmental  
Conservation  
50 Wolf Road  
Albany, New York 12233-7010
2. Andrew Carlson, Ph.D.  
Director, Bureau of Environmental  
Exposure Investigation  
New York State Department of Health  
2 University Place  
Albany, New York 12203
3. Ajay Shah, P.E.  
Div. of Hazardous Waste Remediation

NYSDEC - Region 1  
S.U.N.Y. - Building 40  
Stony Brook, New York 11794

4. Louis P. Oliva, Esq.  
NYSDEC - Eastern Field Unit  
200 White Plains Road  
Fifth Floor  
Tarrytown, New York 10591-5805

5. Mark A. Chertok, Esq.  
Sive, Paget & Riesel, P.C.  
460 Park Avenue  
New York, New York 10022

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

- P.E.
1. Four copies (one unbound) to Susan McCormick,
  2. Two copies to Andrew Carlson, Ph.D.
  3. One copy to Ajay Shah, P.E.
  4. One copy to Louis P. Oliva, Esq.
  5. One copy to Mark A. Chertok, Esq.

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

1. Mitchell H. Bernstein, Esq.  
Van Ness Feldman  
1050 Thomas Jefferson Street, N.W.  
Seventh Floor  
Washington, D.C. 20007-3877
2. Mr. Robert Weber  
Bulova Corporation  
One Bulova Avenue  
Woodside, NY 11377-7874
3. Mr. Paul Maus  
Ground Water Technology, Inc.  
101-1 Colin Drive  
Holbrook, NY 11741
4. Linda Nussbaum, Esq.  
Goodkind, Labaton, Rudoff & Sucharow  
122 East 42nd Street  
New York, NY 10168-0102
5. Mark A. Chertok, Esq.  
Sive, Paget & Riesel, P.C.

460 Park Avenue  
New York, New York 10022

E. 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 both on-Site and off-Site contamination resulting from the disposal of hazardous wastes at the Site.

B. Respondent shall retain, or have retained on its behalf, professional consultants, remediation contractors, laboratories, quality assurance/quality control personnel, and 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 30 days after the effective date of this Order. The Department's approval of these firms or individuals, which shall not be unreasonably withheld or delayed, shall be obtained before the start of any activities for which Respondent and such firms or individuals will be responsible. The responsibility under this Order for the performance of the professionals retained by Respondent shall rest solely with Respondent. Subject to the requirements of this paragraph, Respondent retains the right to select or change firms or individuals in its sole discretion.

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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 construction activities to be conducted pursuant to this Order, and at least 5 working days in advance of any operation and maintenance, or sampling or monitoring activities, to be conducted pursuant to this Order.

E. Respondent shall be responsible for obtaining all permits, easements, rights-of-way, rights-of-entry, approvals, or authorizations necessary to perform Respondent obligations under this Order.

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 be responsible for ensuring that Respondent and its consultants' 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 professional engineer 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 to calendar days unless otherwise specified.

J. 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.

K. (1) The terms of this Order shall constitute the complete and entire Order between Respondent and the Department concerning the Site. 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 Louis P. Oliva, Esq., NYSDEC, and to Susan McCormick, P.E., NYSDEC.

L. The Department and Respondent have entered into



this Order in good faith to assure protection of human health and the environment, without trial or adjudication of any issue of fact or law. Accordingly, except as provided in Paragraph 7 of the preamble of this Order, nothing contained in this Order constitutes nor shall be construed as, and neither Respondent's execution of this Order, nor Respondent's compliance with any of the provisions hereof, constitutes nor shall 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, an defense. Except as specifically provided in this Order, nothing contained herein shall be construed as barring, diminishing, adjudicating or in any way affecting:

(1) Any equitable or legal rights, claims, causes of action, demands or defenses whatsoever that Respondent may have against the Department;

(2) Any rights that Respondent may have to contest any allegation of violation of this Order; and

(3) Any equitable or legal rights, claims, causes of action, demands or defenses whatsoever that Respondent may have against any persons or entities that are not parties to this Order.

M. The effective date of this Order shall be the date it is signed by the Commissioner or his designee.

#### XVII. Release

Within 60 days after receipt of the engineer's certification that construction of the Remedial Program was completed in accordance with the approved Remedial Design, the Department shall either approve the certification or provide Respondent with a written explanation of the Department's basis for withholding approval. If the Department approves the certification (or any supplemental certification), then, unless a supplementary remedial program is required pursuant to Subparagraphs IV.B.6. and V.G., and except for: (a) the provisions of Paragraph XIII of this Order, (b) future operation and maintenance of the Site, (c) reimbursement of Department expenditures at the Site in accordance with the provisions of Paragraph XI of this Order, and (d) any natural resource damage claims that may arise, such acceptance shall constitute a release for each and every claim, demand, remedy or action whatsoever against Respondent, its directors, officers, employees, agents, successors and assigns, which the Department has or may have pursuant to Article 27, Title 13 of the ECL concerning, relating to or arising from the disposal of hazardous wastes at the Site; provided, however, that the Department specifically reserves all of its rights concerning

and any such release and satisfaction shall not extend to, any investigation or remediation the Department deems necessary due to:

(1) environmental conditions on-Site or off-Site which are caused by the disposal of hazardous wastes at the Site and were unknown to the Department at the time of its approval of the Remedial Investigation Report; or

(2) information received after the Department's approval of the Remedial Investigation Report,

and such unknown environmental conditions or information demonstrates that the Remedial Program is not protective of human health or the environment. The Department shall notify Respondent of such environmental conditions or information and its basis for determining that the Remedial Program is not protective of human health and the environment.

This release shall inure only to the benefit of Respondent, its directors, officers, employees, agents, successors and assigns.

Nothing herein shall be construed as barring, diminishing, adjudicating or in any way affecting any legal or equitable rights or claims, actions, suits, causes of action or demands whatsoever that the Department may have against anyone other than Respondent, its directors, officers, employees, agents, successors and assigns.

DATED: Albany, New York

9/11 , 1995

MICHAEL D. ZAGATA  
Commissioner  
New York State Department  
of Environmental Conservation

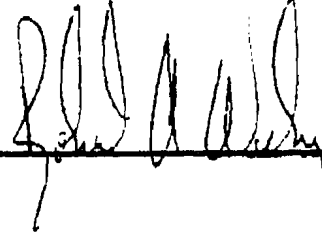
By:

  
\_\_\_\_\_  
Michael J. O'Toole, Jr.

CONSENT BY RESPONDENT

Bulova 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: 

Title: VICE PRESIDENT - OPERATIONS

Date: JUNE 23, 1995

STATE OF NEW YORK )  
COUNTY OF Queens ) s.s.:

On this 23 day of June, 1995, before me personally came Robert W. Weber, to me known, who being duly sworn, did depose and say that he resides in \_\_\_\_\_; that he is the Vice - President operations of Bulova Corporation, the corporation described in and which executed the foregoing instrument; and that he was authorized to, and did, execute said instrument on behalf of Bulova Corporation

  
Notary Public

STANLEY KAPITANSKY  
NOTARY PUBLIC, State of New York  
No. 24-7155865  
Qualified in Kings County  
Commission Expires March 30, 1998