

STATE OF NEW YORK
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

In the Matter of Compliance with Section 27-1313 of the
Environmental Conservation Law ("ECL") by:

INTERNATIONAL BUSINESS MACHINES CORPORATION (I.B.M.),
Respondent.

ORDER
ON
CONSENT

WHEREAS:

1. IBM has heretofore reported to the Department of Environmental Conservation (the "Department") and the New York State Department of Health that, based upon analyses of samples removed from IBM's monitoring wells (which had previously been installed by IBM as part of its water protection program) IBM had discovered that chemicals were present in the groundwater beneath IBM's facility located off Route 52, in the Town of East Fishkill, County of Dutchess, State of New York (the "Facility").
2. IBM commenced a voluntary investigation of the Facility in an effort to determine the concentration and location of these chemicals and to establish the reason for their presence in the groundwater; that investigation is continuing. IBM also took voluntary remedial actions to contain these chemicals and to extract and treat them and, further, to monitor the groundwater at several locations within and outside the boundary line of the Facility. A Ground Water Status Report dated January, 1981, submitted to the Department, summarizes such activity to that date.
3. On January 23, 1981, the Department placed the Facility on the registry of Inactive Hazardous Waste Disposal Sites as a result of the discovery of chemicals in the groundwater at such Facility.
4. Pursuant to Section 27-1313 of the ECL, the Commissioner of Environmental Conservation may order the owner of an inactive hazardous waste disposal site, after notice and an opportunity for a hearing, (a) to develop an inactive hazardous waste disposal site remedial program, subject to the approval of the Department, at such site, and (b) to implement such program within reasonable time limits specified in the Order.
5. The Department has requested IBM to submit a written plan (the "Plan") to the Department for approval, setting forth those actions heretofore taken and those hereafter to be implemented by IBM. Further, the Department has requested that IBM bind itself to the provisions of the Plan by consenting to the issuing and entering of this Order and that IBM agree to be bound by the terms, provisions and conditions herein contained.

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6. By consenting to the form and entry of this Order, IBM does not admit that the Facility is an inactive hazardous waste disposal site subject to Title 13 of Article 27 of the New York State Environmental Conservation Law ("ECL"), denies the applicability of such Law and does not admit to any violation of any other provision of the ECL or any other State or Federal Law. However, IBM joins with the Department in its desire to resolve this matter amicably and does hereby agree to continue its investigation and the implementation of the activities more fully described in the Plan.

NOW, having considered this matter and being duly advised, it is ORDERED that:

- I. IBM hereby affirmatively waives its right to notice and opportunity for a hearing granted under provision of the laws of the State of New York; provided that the waiver shall not be applicable and shall be considered null and void if the Department or the New York State Department of Health propose to raise new matters or impose new obligations on IBM not covered by the Plan or propose to modify the Plan in any respect, and, provided further that such waiver applies only to those obligations IBM has assumed herein.
- II. The Department acknowledges that IBM has submitted the Plan for extraction and treatment of chemicals in the groundwater at the Facility for review and approval by the Department. Such Plan provides timetables for all proposed actions.
- III. Within ten (10) days of approval by the Department of the Plan, IBM shall submit the Plan in final form to the Department. The Department shall have 30 days from service of this Order and following any resubmittals by IBM in which to review such proposed plan, and if the Department has expressed neither approval or disapproval of the Plan within such 30 days, the Plan shall be deemed approved as proposed and shall be deemed a final Plan. In the event that reviews by the Department have been timely and IBM has not submitted an approvable Plan by July 1, 1981, or such later date as agreed to by the parties, this Order may, on five days written notice to IBM, be declared null and void and the Department shall initiate a formal enforcement proceeding to finally resolve the subject matter of this Order.
- IV. The Plan, in final form, shall be appended to this Order, thereby incorporated herein and made a part hereof as a Schedule of Compliance.

- V. IBM agrees to comply with each of the requirements set forth in the Plan in accordance with the approved timetable therein specified. If IBM fails to comply with the provisions of this Order, the Order shall be fully enforceable by a civil action in the Supreme Court of the State of New York and IBM hereby waives any right to assert that it is not obligated to comply with each and every provision of this Order. However, IBM's consent to this Order shall not be construed to bar or estop IBM from asserting any other defense in such civil action or in any litigation or proceeding that might hereafter arise.
- VI. The Department agrees that this Order is the appropriate remedy to address the matters contained in this Order. However, this Order shall not preclude the Department's use of other remedies available to it; provided, however, that so long as IBM is in compliance with this Order, the Department agrees that it will not pursue any other remedy.
- VII. IBM shall not be in default in compliance with this Order if IBM is unable to comply with any provision of this Order because of the actions of a national or local government body or courts, acts of God, war, refusal, non-cooperation, or adversary status of third parties (such as John Jay High School authorities or adjacent homeowners) prohibiting IBM from implementing offsite proposals, strikes, riots or catastrophes or other causes not within the control of IBM as to any of which the negligence or willful misconduct on the part of IBM was not the proximate cause. IBM shall apply in writing to the Department immediately upon obtaining knowledge of such event and the parties shall make an appropriate modification to the schedule contained in the Plan to the extent made necessary by such cause or causes.
- VIII. Subject to Article VII if, for any reason, IBM desires that any provision of this Order be changed, IBM shall make timely written application therefore to the Department's Commissioner or his designated representative setting forth reasonable grounds for the relief sought. No change or modification to this Order shall be made or be effective except as may be specifically set forth in writing by such Commissioner or Commissioner's representative upon timely written application by IBM for the relief sought.
- IX. All reports and submissions herein required shall be made to the Region 3 sub-office, New York State Department of Environmental Conservation, 202 Mamaroneck Avenue, White Plains, New York 10601 Attention: Gil Burns, Regional Engineer. All communication to IBM shall be made to IBM, Manager, Environmental Engineering Dept. 77-D, building 306-31A, East Fishkill, Route 52, Hopewell Junction, New York 12533.

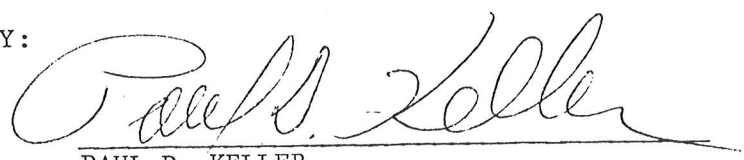
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- X. For the purpose of insuring compliance with this Order, duly authorized representatives of the Department shall be permitted access to the Facility during reasonable business hours, in order to inspect and/or require such tests as may be deemed necessary to determine the status of IBM's compliance herewith.
- XI. The provisions of this Order shall be deemed to bind IBM, its officers, directors, agents, employees, successors and assigns, and all persons, firms and corporations acting under or for it.

DATED: New Paltz, New York
April 27, 1981

ROBERT F. FLACKE, Commissioner
New York State Department of
Environmental Conservation

BY:



PAUL D. KELLER
Regional Director, Region 3

TO: I.B.M.
East Fishkill Facility
Route 52
Hopewell Junction, New York 12533

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CONSENT BY RESPONDENT

Respondent hereby consents to the issuing and entering of this Order, waives its rights to notice and hearing herein and agrees to be bound by the provisions, terms and conditions contained herein.

INTERNATIONAL BUSINESS MACHINES (I.B.M.)

BY:

P. P. Low

TITLE: East Fishkill General Manager

DATE: April 23, 1981

STATE OF New York)
COUNTY OF Westchester) ss:

On this 23rd day of April, 1981, before me personally came P. P. Low, to me known, who being by me duly sworn did depose and say that he resides in Greenwich, Connecticut, that he is General Manager, East Fishkill of International Business Machines Corp. the Corporation described in and which executed the foregoing instrument, and that he signed his name as authorized by said Corporation.

Alan R. Wolfert

Notary Public
ALAN R. WOLFERT
Notary Public, State of New York
No. 4502278
Qualified in Westchester County
Commission Expires March 30, 1983