

STATE OF NEW YORK: DEPARTMENT OF ENVIRONMENTAL CONSERVATION

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: In the Matter of a Field ORDER :
: Investigation to Identify Any ON :
: Threat to the Environment Caused CONSENT :
: by the Disposal of Industrial :
: and Hazardous Wastes by Index #W3-0071-86-06 :
: :
: BALCHEM CORPORATION :
: Respondent :
: :
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WHEREAS,

1. The New York State Department of Environmental Conservation (the "Department") is responsible for the enforcement of Article 27, Title 13, of the Environmental Conservation Law of the State of New York (the "ECL"), entitled "Inactive Hazardous Waste Disposal Sites".

2. Balchem Corporation, the "Respondent", is a corporation organized and existing under the laws of the State of ~~MARYLAND~~ New York, and is doing business in the State of New York in that Respondent operated a chemical manufacturing facility and is now engaged in the business of encapsulating food additives and repacking ethylene oxide into drums. This facility is located in Slate Hill, County of Orange, State of New York (the "Site"). A map of the Site is attached hereto and is hereby incorporated into this Order as Appendix "A".

3. During construction and excavation at the Site in 1982, approximately one hundred and forty (140) drums were discovered buried in the soil. These drums contained various wastes. Respondent removed these drums to a disposal facility. Respondent notified the Commissioner of the presence of these drums on July 8, 1982. Respondent subsequently transmitted a proposal to the Department on September 22, 1982 to conduct a field investigation at the Site.

4. Section 27-1305 of the ECL authorizes the Commissioner to establish a list of sites known as inactive hazardous waste disposal sites. The Site is an inactive hazardous waste disposal site (# 336032) as that term is defined in ECL Section 27-1301(2) and is classified as Class 2a - "insufficient information".

5. The Department and Respondent acknowledge that the goal of this Order shall be that Respondent develop and implement a field investigation program to:

- (i) determine the nature of the remaining wastes, if any, and the areal extent and vertical distribution of such wastes at the Site;

- (ii) identify any current and/or potential future releases or migration of hazardous waste, as that term is defined in ECL Section 27-1301(1), from the site to other on-Site and off-Site areas; and

- (iii) evaluate the on-Site and off-Site impacts of any such migration upon the environment.

6. Respondent, having waived its 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 provisions, terms and conditions hereof.

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

I. All investigations, proposals, reports, plans, remedial programs, and supplements and revisions thereto required by this Order shall address both on-Site and off-Site contamination (to the extent that the initial investigation demonstrates the existence of on-site contamination and access may be obtained to off-site areas) caused by the disposal of hazardous wastes at the Site, and shall be prepared, designed and executed in accordance with Requisite Technology. As used in this Order, Requisite Technology means engineering, scientific and construction principles and practices subject to the Department's approval, which (a) are technologically feasible, and (b) will most effectively identify any present or potential future threat to the environment posed by the disposal of hazardous wastes at the Site and (c) are practical means to be employed at the Site.

The failure of Respondent to submit or undertake a proposal, report, field investigation, or any supplement or revision thereof, which is in accordance with Requisite Technology shall constitute a violation of this Order.

II. As used herein, "hazardous wastes" shall be those hazardous wastes defined by 6 NYCRR 371 and any constituents or degradation products thereof.

III. Respondent shall undertake a field investigation of the Site and of areas off-Site affected by the disposal of hazardous and industrial wastes (the "Field Investigation").

IV. Respondent has submitted a proposed written scope of work (the "Work Plan") outlining the nature and extent of the work to be undertaken in conducting the Field Investigation. This Work Plan has been approved by the Department and the "Approved Work Plan" is attached as Appendix "B". Upon execution of this Consent Order, additional detail in the form of drilling procedures and protocols, health and safety plans and laboratory quality assurance/quality control program, must be provided to the Department prior to the commencement of any field work. Respondent shall perform the Field Investigation in accordance with the Approved Work Plan and additional detail as described above.

At a minimum, the Work Plan shall meet the requirements of the following:

- A. Generic Work Plan (Appendix "C")
- B. Oversight Checklist (Appendix "D")
- C. Guidelines for Exploratory Boring (Appendix "E")
- D. Soil Description Procedure (Appendix "F")

The Approved Work Plan subject to modifications as may be agreed to by the parties constitutes the agreement between the Commissioner and the Respondent on the nature and extent of the field investigation that is warranted at the Site.

V. Within one hundred and twenty (120) days of the date of execution of this Consent Order, provided that all required permits are issued on a timely basis, Respondent shall submit to the Department a Field Investigation Report (the "Report"), founded upon its performance of the Field Investigation in accordance with the Approved Work Plan. The Report shall include all data generated, and all other information obtained, during the Field Investigation and completed site Hazard Ranking Score sheets. The Report shall identify, and provide the rationale for, all deviations from the Approved Work Plan.

VI. Within sixty (60) days after its receipt of the Report, the Department shall determine if the Field Investigation was conducted, and the Report prepared in accordance with the terms, provisions and conditions of this Order, and shall provide written notification to Respondent of its approval or disapproval of the Report. The approval or disapproval of the Report shall be based on the conformance of the Report with the agreed upon Work Plan, additional detail and exhibits as identified in Paragraph IV above. If the Department disapproves the Report, the Department shall notify Respondent in writing of the Department's objections.

Within thirty (30) days after its receipt of notice of disapproval, Respondent shall revise the Report and/or reperform or supplement the Field Investigation in accordance with the terms, provisions and conditions of this Order and shall submit to the Department a Report which has been revised in accordance with the Department's objections (the "Revised Report"). Within fifteen (15) days after its receipt of the Revised Report, the Department shall determine if the Revised Report is in accordance with the terms, provisions and conditions of this Order and shall provide written notification to Respondent of its approval or disapproval of the Revised Report. If the Department disapproves the Revised Report, the Respondent shall be in violation of this Order, not having submitted an approvable report and/or conducted a Field Investigation in accordance with the terms, provisions and conditions of this Order. The approved Report or the approved Revised Report shall be attached hereto and shall be incorporated into this Order as Appendix "G". Such Report shall hereafter be referred to as the "Approved Report."

VII. Nothing in this Order shall be considered a waiver of the Department's right to require a modification and/or an amplification and expansion of the Field Investigation and Report by Respondent to address specific off-Site areas if the Department determines that further off-Site investigation is necessary, as a result of reviewing the Approved Report or as a result of reviewing other data or facts. Said additional work not addressed in the Report shall be the subject of another Order on Consent if it can be agreed to by the Parties herein.

VIII. The Department shall review the Report and shall use the Report as the basis of the development of the Site Hazard Ranking Score assigned to the Site for State Superfund Site ranking purposes. If the Report shows no significant contamination at the Site, the Respondent may petition the Department to reclassify the Site and the Department, if it is appropriate, shall remove the Site from the registry of inactive hazardous waste disposal sites.

IX. The Department shall have the right to obtain "split samples" or "duplicate samples", at the Department's option, of all substances and materials sampled by Respondent pursuant to this Order. As used herein: "split samples" shall mean whole samples divided into aliquots; "duplicate samples" shall mean multiple samples, collected at the same time from exactly the same location, using the same sampling apparatus, collected into identical containers prepared identically, filled to the same volume, and thereafter identically handled and preserved.

X. Respondent shall provide notice to the Department of any field work, including, but not limited to, excavating, drilling or sampling to be conducted pursuant to the terms of this Order at least five (5) working days in advance of such activities.

XI. Respondent shall permit any duly designated officer, employee, consultant, contractor or agent of the Department to

enter upon the Site or areas in the vicinity of the Site which may be under the control of Respondent, and any areas necessary to gain access thereto, for inspection purposes and for the purpose of making or causing to be made such sampling and tests as the Department reasonably deems necessary, and for ascertaining Respondent's compliance with the provisions of this Order.

XII. Respondent shall obtain whatever permits, easements, rights-of-way, rights-of-entry, approvals or authorizations which are necessary in order to perform the Field Investigation and all of Respondent's other obligations pursuant to this Order.

XIII. Respondent shall retain a third-party professional consultant, contractor, and/or laboratory to perform the technical, engineering and analytical obligations required by this Order. Said consultant, contractor, and/or laboratory shall have demonstrable experience, capabilities and qualifications in the type of work which they will be performing.

XIV. Respondent shall not suffer any penalty under any of the provisions, terms and conditions hereof, or be subject to any proceedings or actions for any remedy or relief, if it cannot comply with any requirements of the provisions hereof because of an act of God, war, riot, or other condition as to which negligence or willful misconduct on the part of Respondent was not a proximate cause, provided, however, that Respondent shall

immediately notify the Department in writing when it obtains knowledge of any such condition and request an appropriate extension or modification of the provisions hereof.

XV. Within 30 days of the Department's approval of the Field Investigation Report, Respondent shall pay to the Department a sum of money not to exceed ten thousand dollars (\$10,000) which shall represent payment for the expenses including, but not limited to, direct labor, overhead, analytical costs, and contractor costs incurred and documented by the State of New York for oversight of the Field Investigation and review of the Field Investigation Report.

XVI. The failure of Respondent to comply with any provision of this Order shall constitute a default and a failure to perform an obligation under this Order and under the ECL.

XVII. A. Except as provided in paragraph B, nothing contained in this Order shall be construed as barring, diminishing, adjudicating or in any way affecting (1) 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, his employees, servants, agents, successors and assigns; (2) the Department's right to enforce, at law or in equity, the terms and conditions of this Order against Respondent, his employees, servants, agents, successors and assigns in the event that Respondent shall fail to fulfill any of the provisions

hereof; and (3) the Department's right to bring any action, at law or in equity against Respondent, his employees, servants, agents, successors and assigns with respect to areas or resources that may have been affected or contaminated as a result of the release or migration of hazardous or industrial wastes from the Site or from areas in the vicinity of the Site. Nothing herein shall be construed as affecting the Department's right to commence any action or proceeding to which it may be entitled in connection with, relating to, or arising out of Respondent's disposal of hazardous or industrial wastes at the Site.

B. The Commissioner agrees during the pendency of this Order not to initiate any enforcement action against Respondent covering the subject matter of the Order so long as Respondent is not in violation of the Order and is performing its obligations under the Order.

XVIII. The terms of this Order shall not be construed to prohibit the Commissioner or his duly authorized representative from exercising any summary abatement powers, either at common law or as granted pursuant to statute or regulation.

XIX. 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 the provisions hereof due

to the negligence or intentional torts by Respondent, its directors, officers, employees, servants, agents, successors or assigns.

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

XXI. If, for any reason, Respondent desires that any provision of this Order be changed, Respondent shall make timely written application therefor to the Commissioner, setting forth reasonable grounds for the relief sought.

XXII. In the event that Respondent proposes to convey the whole or any part of his ownership interest in the Site while the Site is listed on the registry of inactive hazardous waste disposal sites, Respondent shall, not less than 30 days prior to the consummation of such proposed conveyance, notify the Department in writing of the identity of the transferee and of the nature and date of the proposed conveyance. In advance of such proposed conveyance, Respondent shall notify the transferee in writing, with a copy to the Department, of the applicability of this Order.

XXIII. A. All communication required hereby to be made between the Department and Respondent shall be made in writing and transmitted by United States Postal Service return receipt requested or hand delivered to the addresses in paragraph B hereinunder.

B. Communication to be made from Respondent to the Department shall be made as follows:

1. Two copies to the Division of Solid and Hazardous Waste, Room 209, 50 Wolf Road Albany, New York 12233-0001.
2. Two copies to the Division of Environmental Enforcement, White Plains Field Unit 202 Mamaroneck Avenue, Room 304 White Plains, New York 10601-5381.
3. Two copies to the Regional Director, Reg. 3 Dept. of Environmental Conservation 21 South Putts Corner Road New Paltz, New York 12561.
4. Two copies to Ron Tramontano, New York State Department of Health, Empire State Plaza Albany, New York 12237.

C. Communication to be made from the Department to Respondent shall be made as follows:

1. Two copies to Balchem Corporation, P.O. Box 175 . Slate Hill, New York 10973. One copy each to:
(i) George Vail - Plant Manager
(ii) Herb Weiss - President.

D. The Department and Respondent respectively reserve the right to designate other or different addresses on notice to the other.

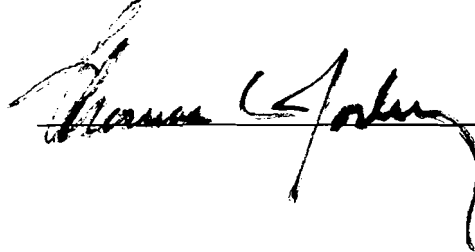
XXIV. The provisions of this Order shall be deemed to bind Respondent, his agents, servants, employees, successors and assigns.

XXV. Nothing herein shall be construed to bind any entity not specifically bound by the terms of this Order.

XXVI. The provisions hereof shall constitute the complete and entire Order between Respondent and the Department concerning the Site. No terms, conditions, understandings or agreements purporting to modify or vary the terms hereof shall be binding unless made in writing and subscribed by the party to be bound. No informal advice, guidance, suggestions or comments by the Department regarding reports, proposals, plans, specifications, schedules or any other writing submitted by Respondent shall be construed as relieving Respondent of his obligations to obtain such formal approvals as may be required by this Order.

DATED: Albany, New York
Sept. 24, 1987

THOMAS C. JORLING
Commissioner
New York State Department of
Environmental Conservation

A handwritten signature in dark ink, appearing to read "Thomas C. Jorling", is written over a horizontal line.

TO: Neil Orloff, Esq.
Morgan, Lewis & Bockuis
Attorneys for Respondent
101 Park Avenue
New York, New York 10175

CONSENT BY RESPONDENT

BALCHEM CORPORATION

Respondent hereby consents to the issuing and entering of the foregoing Order, waives his right to a hearing herein as provided by law, and agrees to be bound by the provisions, terms, and conditions contained herein.

By: Herb Weiss

Title: PRESIDENT

Date: 8-2-87

STATE OF NEW YORK)
) S.S.:
COUNTY OF ORANGE)

On this 3rd day of August, 1987, before me personally came Herb Weiss to me known, who, being by me duly sworn, did depose and say that he(~~she~~) is President of Balchem Corporation, the respondent described in the foregoing instrument, and that he(she) signed his(her) name as duly authorized.

Patricia A. Kierstead
Notary Public

PATRICIA A. KIERSTEAD
Notary Public, State of New York
Residing in Orange County
My Commission Expires 8/31/88