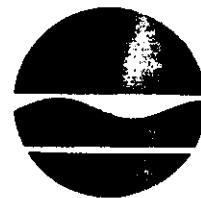


New York State Department of Environmental Conservation
50 Wolf Road, Albany, New York 12233



September 24, 1990

Thomas C. Jorling
Commissioner

Via UPS Overnight Mail

G.S. Peter Bergen
LeBoeuf, Lamb, Leiby & MacRae
520 Madison Avenue
New York, New York 10022

Re: Sulzer Turbosystems International/Order on Consent

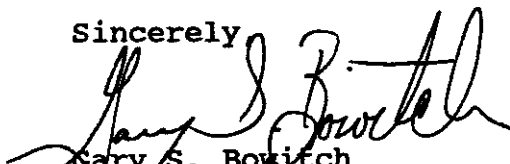
Dear Peter:

Enclosed please find a copy of a fully executed Consent Order for the Sulzer Turbosystems Site. This letter will also acknowledge the Department's receipt of the \$28,000 penalty payment as called for in the Order.

Please ensure that you client timely undertakes all the obligations embodied in the Order.

I've enjoyed working with you on this project. If you have any further questions, please feel free to contact me.

Sincerely



Gary S. Bowitch
Senior Attorney
Division of Environmental
Enforcement

encl.

bcc: R. Ozols (w/ attach)
S. Wood/C. Honikel (w/ attach)
G. Bobersky (w/ attach)
W. Winch (w/ attach)

F. Biferia (w/o)

**STATE OF NEW YORK:
DEPARTMENT OF ENVIRONMENTAL CONSERVATION**

In the Matter of Violations of
Article 27, Titles 9 and 13 of the
Environmental Conservation Law and
the Development and Implementation
of Phase II Investigation
by:

**ORDER
ON
CONSENT**

INDEX # A4-0214-89-09

**SULZER TURBOSYSTEMS INTERNATIONAL,
A Division of Sulzer Bingham Pumps, Inc.**

Respondent.

WHEREAS,

1. The New York State Department of Environmental Conservation (the "Department") is responsible for enforcement of Article 27, Titles 9 and 13 of the Environmental Conservation Law of the State of New York ("ECL") and the rules and regulations promulgated thereto, relating to the generation, transportation, storage and disposal of hazardous waste and the investigation of and remediation of the inactive hazardous waste disposal sites.

2. Sulzer Turbosystems International, a Division of Sulzer Bingham Pumps, Inc. (hereinafter "Respondent"), is a corporation organized under the laws of the State of Delaware, and is the owner of property, a former manufacturing facility, located at seven (7) Northway Lane (hereinafter referred to as the "Site"). A map of the Site is attached hereto, and is incorporated into this Order as Appendix "A".

HAZARDOUS WASTE GENERATION, STORAGE, AND DISPOSAL

3. Respondent, as a generator of hazardous wastes, is subject to Title 6 of the New York State Rules and Regulations (hereinafter "6 NYCRR"), Part 370, et. seq., promulgated pursuant to ECL Article 27, Title 9, which governs the generation, storage, transportation and disposal of hazardous wastes in New York State.

4. A May 1988 investigation of the Site by the Department's Bureau of Environmental Conservation Investigations revealed conditions at the Site which have been determined by the Department to constitute violations of the hazardous waste regulations as follows:

a. unpermitted storage and accumulation of approximately thirty (30) fifty-five gallon drums (hereinafter "Drums") of hazardous wastes on the Site for more than ninety (90) days in violation of 6 NYCRR 372.2(a)(8)(ii);

b. failure to mark said Drums with accumulation dates in accordance with 6 NYCRR 372.2(a)(8)(ii);

c. failure to make a determination of the hazardous nature of the waste in accordance with 6 NYCRR 372.2(a)(2);

d. failure to label the Drums and storage area "Hazardous Waste" in accordance with 6 NYCRR 373-1.1(d)(1)(iii)(c)(3);

e. failure to conduct weekly inspections of the area where the Drums were stored in accordance with 6 NYCRR 373.3.9(e);

- f. failure to post "No Smoking" signs in the Drum storage area where there is a hazard from ignitable or reactive waste;
- g. failure to make emergency response arrangements with local authorities as required by 6 NYCRR 373-3.3(g); and
- h. failure to prepare and maintain a "contingency plan" as required by 6 NYCRR 373-3.4.

SUSPECTED INACTIVE HAZARDOUS WASTE DISPOSAL SITE

5. The Site is a suspected inactive hazardous waste disposal site, as defined by ECL Section 27-1301(2), and the Department has classified the Site, pursuant to ECL Sections 27-1303 and 27-1305, under classification "2a". The Site was listed, on August 28, 1989, in the Registry of Inactive Hazardous Waste Disposal Sites as Site Number 401038.

6. In the course of its investigation, the Department has determined that there exist pollutants on-Site, including trichlorethylene, 1,2 dichloroethylene, benzene, xylene and toluene.

7. Pursuant to ECL § 27-1313(3)(a), whenever 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."

8. The Department and Respondent acknowledge that the goals of this Order shall be:

a. to resolve the allegations of paragraph 4 hereof, by Respondent's agreement to pay a civil penalty as hereinafter provided; and

b. to establish and set out the agreement between the Respondent and the Department pursuant to which Respondent will develop and implement an investigation of the Site to identify any threat to the environment that may exist ("Phase II Investigation"), in accordance with the terms of a Department approved investigative proposal, as described in Paragraph VI, below.

9. The Department and Respondent acknowledge that, depending on the results of the Phase II Investigation, this Order on Consent may need to be supplemented in order to provide for a remedial investigation and feasibility study and/or remediation of any present or potential significant threat to the environment and/or public health at the Site and any affected off-site areas. Nothing herein shall be construed as requiring Respondent to enter into any such supplemental Order or an amendment to this Order.

10. Environmental Conservation Law § 71-2705 provides for a civil penalty not to exceed to \$25,000 for each day of violation of Title 9 of Article 27 of the

Environmental Conservation Law and any rule or regulation promulgated pursuant thereto.

11. Respondent, without admitting the allegations contained herein, having waived its right to a hearing as provided by law with respect to this Order, and given that Respondent and the Department have consented to the issuance and entry of this Order, agree to be bound by the provisions and terms hereof.

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

I. Respondent shall pay to the Department a civil penalty in the sum of **TWENTY-EIGHT THOUSAND (\$28,000.00)** in settlement of Respondent's alleged violations of Title 9 of Article 27 of the ECL and 6 NYCRR Parts 372 and 373, in accordance with Paragraph II below.

II. Simultaneous with Respondent's signing of this Order, Respondent shall pay the above-specified penalty to the Department by check or money order, made payable to the Department of Environmental Conservation and mailed to the Department of Environmental Conservation, 50 Wolf Road, Room 502, Albany, New York 12233; Attention: Gary S. Bowitch, Esq.

III. Nothing in this Order shall be construed as releasing the Respondent for any liability it may have for any regulatory fees due and owing to the State

pursuant to ECL Article 72; and the Department specifically reserves its right to seek payment of such fees as may be authorized by law.

IV. All activities and submittals required by this Order shall be in accordance with Requisite Technology (as hereinafter defined). In addition, all submissions required of Respondent pursuant to this Order shall include the certification of a licensed professional engineer, registered in the State of New York.

As used in this Order, Requisite Technology means engineering, scientific and construction principles and practices 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 and/or industrial wastes at and in the vicinity of the Site.

The failure of Respondent to submit or undertake in good faith a proposal, report, field investigation, or any supplement or revision thereof, in accordance with Requisite Technology shall be deemed by the Department to constitute a violation of this Order.

V. Within 30 days after the effective date of this Order, Respondent shall submit to the Department all data within its possession or control regarding environmental conditions on-Site and off-Site, to the extent that such data have not previously been provided to the Department. The data shall include:

A. A brief history and description of the Site, including the types, quantities, physical state and location of hazardous waste disposal at the Site; and

B. A description of the results of all previous investigations of the Site and areas in the vicinity of the Site, including copies of all available topographic and property surveys, engineering studies and aerial photographs.

VI. Respondent has submitted to the Department a detailed scope of work outlining the nature and extent of the work to be undertaken in conducting the Phase II Investigation (hereinafter "Work Plan"). This Work Plan has been approved by the Department and shall be attached to and incorporated into this Order as Appendix "B" (hereinafter, "Approved Proposal").

VII. As used herein, "hazardous wastes" shall mean any hazardous waste as defined in ECL Section 27-1301(1).

VIII. Respondent shall submit to the Department a Phase II Investigation report (the "Report"), founded upon its performance of the Phase II Investigation conducted in accordance with the scope of work and time schedule established by the Approved Proposal. During the Phase II Investigation, Respondent shall have a representative on-Site who is qualified to inspect the work, which representatives may be employees of its consultant. The Report shall include a copy of all data generated, and all other information obtained during the Phase II Investigation and completed site hazard ranking score sheets. The Report shall also include a certification by Respondent's consultant that all activities that comprised the Phase II Investigation were performed in accordance with the Approved Proposal.

IX. A. Within ninety (90) days after its receipt of the Report, the Department shall determine if the Phase II Investigation was conducted, and the Report prepared, in accordance with the terms and provisions of the Approved Proposal and this Order, and shall provide written notification to Respondent of its approval or disapproval of the Report. If the Department disapproves the Report, the Department shall notify Respondent in writing of the Department's specific objections and recommendations.

B. Within 60 days after its receipt of the notice of disapproval, Respondent shall revise the Report and/or reperform or supplement the Phase II Investigation in accordance with the terms of this Order and shall submit to the Department a Report which has been revised in accordance with the Department's specific objections and recommendations (the "Revised Report").

C. Within 30 days after its receipt of the Revised Report, the Department shall determine if the Revised Report was prepared in accordance with the terms and provisions of the Approved Proposal and this Order and shall provide written notification to Respondent of its approval or disapproval of the Revised Report.

D. If the Department, after prior consultation with Respondent and/or its consultants, disapproves the Revised Report, the Respondent shall be in violation of this Order, not having submitted an approvable report and/or conducted a Phase II Investigation in accordance with the terms of this Order.

E. The approved Report or the approved Revised Report (hereinafter "Approved Report") shall be attached hereto and incorporated into this Order as Appendix "C".

X. The Department shall have the right to obtain "split samples" or "duplicate samples", at the Department's option. 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. A copy of the Department's analysis shall be made available to Respondent.

XI. 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 ten (10) working days in advance of such activities.

XII. 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 deems necessary, and for ascertaining Respondent's compliance with the provisions of this Order.

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

XIV. Respondent has retained professional consultants, contractors and laboratories, 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 were submitted to the Department prior to entry into this Order and, will be updated and resubmitted in the event of change.

XV. Respondent shall not suffer any penalty under this Order, or be deemed to be in violation hereof or be subject to any proceeding or action, if it cannot comply with any requirements hereof because of an act of God, war, or riot provided however that Respondent immediately notify the Department in writing when it obtains knowledge of any such condition and request an appropriate extension or modification of this Order.

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. Nothing contained in this Order shall be construed as barring, diminishing, adjudicating or in any way affecting:

A. the Department's right to bring any action or proceeding against anyone other than Respondent, its directors, officers, employees, servants, agents, successors and assigns;

B. the Department's right to enforce this Order against Respondent, its directors, officers, employees, servants, agents, successors and assigns in the event that Respondent fails to satisfy any of the terms hereof;

C. the Department's right to bring any action or proceeding against Respondent, its directors, officers, employees, servants, agents, successors and assigns with respect to claims for natural resources damage as a result of the release or threatened release of hazardous wastes or constituents at or from the Site or areas in the vicinity of the Site; and

D. the Department's right to commence any action or proceeding to which it may be entitled with respect to hazardous wastes that are present at the Site or that have migrated from the Site, provided however, that the Department agrees not to commence an action to require Respondent to conduct a Phase II Investigation or to submit an approvable Phase II Report as long as Respondent complies with the terms of this Order or any modification thereof (i.e. the Department will not commence an action to require Respondent to do a Phase II Investigation or related work that Respondent previously has completed in a manner acceptable to the Department).

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 pursuant to Section 71-0301 of the ECL.

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 this Order by Respondent, its directors, officers, employees, servants, agents, successors or assigns. Respondent does not assume liability for the negligent or intentionally tortious acts of the Department, the State of New York or their representatives or employees.

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

XXI. If 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. Within 60 days after the effective date of this Order, Respondent shall file with the Albany County Clerk a notification, with a copy of this Order, which will give all parties who may acquire any interest in the Site notice of this Order. When the terms of this Order and any modifications thereto have been satisfied, the Department will provide Respondent, upon Respondent's request, with a written

instrument which states that the terms of this Order and any modifications thereof, have been complied with.

XXIII. In the event that Respondent proposes to convey the whole or any part of its ownership interest in the Site, Respondent shall, not fewer than 60 days prior to the proposed conveyance, notify the Department in writing of the identity of the transferee and the nature and date of the proposed conveyance and shall notify the transferee in writing, with a copy to the Department, of the applicability of this Order.

XXIV. 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 paragraphs B and C hereinunder. Alternatively, Federal Express, or a comparable courier service may be utilized.

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

1. One copy of the Division of Hazardous Waste Remediation, Room 212, 50 Wolf Road, Albany, New York 12233. Attention: Michael J. O'Toole, Jr., P.E., Director.

2. One copy of the Division of Environmental Enforcement, Room 415, 50 Wolf Road, Albany, New York 12233. Attention: Gary S. Bowitch, Esq.

3. One copy to the New York State Department of Environmental Conservation, 2176 Guilderland Avenue, Schenectady, New York 12306. Attention: Jane Magee, Regional Director.

4. One copy to the New York State Department of Health, Bureau of Environmental Exposure Investigations, 2 University Place, Room 205, Albany, New York 12203. Attention: Ronald Tramontano, Director.

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

1. Lisa B. Weinstein, C.P.A., Manager of Finance and Analysis, Sulzer USA Inc., 200 Park Avenue, New York, New York 10166-0068.

2. G. S. Peter Bergen, LeBoeuf, Lamb, Leiby & MacRae, 520 Madison Avenue, New York, New York 10022.

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

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


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
September 19, 1990

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

BY:

A handwritten signature in dark ink, appearing to read "E. Sullivan", written over a horizontal line.

Edward O. Sullivan
Deputy Commissioner

SULZER TURBOSYSTEMS INTERNATIONAL

By: F. C.

Title: *Ass. Loc.*

Date: 8/23/90

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

On this 23rd day of AUGUST, 1990, before me personally came FRANZ HEITLER, to me known, who duly sworn, did depose and say that he resides in SCARSDALE, NEW YORK; that he is the ASST SECRETARY of the SULZER TURBOSYSTEMS INTL corporation described in and which executed the foregoing instrument; that he knew the seal of said corporation; that the seal affixed to said instrument was such corporate seal; that it was so affixed by the order of the Board of Directors of said corporation, and that he signed his name thereto by like order.

James Fitzwilliam
Notary Public

JAMES T. FITZWILLIAM
Notary Public, State of New York
No. 41-4836827
Qualified in Queens County
Commission Expires Sept. 30, 1991

SULZER

SULZER BROS. INC.
200 Park Avenue
New York, N.Y. 10166-0068

DATE OF REMITTANCE OF ENV CHECK NO. 5610

INVOICE DATE	INVOICE NUMBER	DESCRIPTION	GROSS AMOUNT	DISCOUNTS, RETENTIONS, PAYMENTS TO DATE	NET AMOUNT THIS CHECK
		DEC	28000.00		28000.00
		TOTALS	28000.00		28000.00

SULZER

SULZER BROS. INC.
200 Park Avenue
New York, N.Y. 10166-0068

05610

CHEMICAL BANK
90 PRESIDENTIAL PLAZA
SYRACUSE, NY 13202

CHECK NUMBER

CHECK DATE

5610

AUGUST 22, 1990

PAY TWENTY EIGHT THOUSAND AND 00/100

PAY THIS AMOUNT
28000.00

TO THE ORDER OF: DEPARTMENT OF ENVIRONMENTAL CONSERVATION

James F. Sullivan
AUTHORIZED SIGNATURE

AUTHORIZED SIGNATURE

⑈005610⑈ ⑆021000128⑆ 755⑈50141⑈