

Sir/Madam:

Take notice that the within is a copy of  
the duly filed and entered in the office of  
the Clerk of Albany County on the      day  
of      19      .

Yours, etc.,

**ROBERT ABRAMS**

Attorney General,

Attorney for

The Capitol

Albany, NY 12224

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

THE STATE OF NEW YORK,

Plaintiff,

vs.

BECKER ELECTRONICS MANUFAC-  
TURING CORPORATION and  
FRED BECKER, JR.,

Defendants.

Index No. 85-CV-1308

CONSENT DECREE

**ROBERT ABRAMS**

Attorney General of the

State of New York

Attorney for Plaintiff

(518) 474-8480

Service of a copy of

within

is admitted

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

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AUG 24 1992

THE STATE OF NEW YORK,

Plaintiff,

vs.

BECKER ELECTRONICS MANUFACTURING  
CORPORATION and FRED BECKER, JR.,

Defendants.

CONSENT DECREE

Index No. 85-CV-1308

(McCURN)

CONSENT DECREE

The undersigned, having agreed and stipulated that a Consent Decree can be entered in this action incorporating a settlement agreement containing the following terms and conditions, and having determined that they are fair, reasonable, adequate to protect the public interest, and adequate to resolve the issues covered by this Consent Decree, and this Court having jurisdiction over this matter

THEREFORE, IT IS STIPULATED AND ORDERED AS FOLLOWS:

I. PURPOSE

The purpose of this Consent Decree is to provide the structure for partial reimbursement to the State for actions it has taken and will take in the future to protect the environment and human health in and around the Becker Electronics Manufacturing Corporation ("BEMC") site (the "Site") located on Route 145 in the Town of Durham, Greene County, New York. This decree resolves BEMC's liability to the State and requires

partial reimbursement of the State for the costs incurred by the State for its investigation and remediation of the hazardous substance conditions at the Site. Through the assignment of proceeds required pursuant to this Consent Decree, the State of New York (the "State") will be partially compensated for its past and future response costs incurred and which may be incurred by the State at the Site.

## II. BACKGROUND

1. The State brought suit against BEMC and Fred Becker, Jr., its president in August, 1985, pursuant to the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. § 9601, et seq., and the New York common law of public nuisance seeking a judgment requiring the defendants to assess, abate and remediate the hazardous waste contamination at and emanating from the Site.

2. The defendants entered into a Stipulation with the State in June, 1986 in which they agreed to monitor drinking water supplies of neighboring landowners for contaminants released from the Site and install and maintain filter systems on wells affected by contaminants released from the Site.

3. In March, 1990 the State moved for partial summary judgment against BEMC and Fred Becker, Jr., seeking to establish liability under CERCLA and public nuisance for the hazardous substance conditions at the Site. The State's summary judgment motion was decided in July, 1990. The Court granted the State's



motion as against BEMC finding BEMC liable for the State's past and future CERCLA response costs and, at the parties' request, adjourned the State's motion against Fred Becker, Jr. because of Mr. Becker's illness. Defendant Fred Becker, Jr. passed away prior to rescheduling argument on the State's motion against him.

4. The Parties recognize, and the Court, by entering this Consent Decree, finds that this Consent Decree has been negotiated by the Parties in good faith and that the implementation of this Consent Decree will assist in the cleanup of the Site and will avoid prolonged and fruitless litigation between the Parties. This Consent Decree is fair, reasonable, adequately protects the public interest, and is adequate to resolve the issues covered by this Decree.

### III. JURISDICTION

5. This Court has jurisdiction over the subject matter of this action to 28 U.S.C. §§ 1331 and 1345, and 42 U.S.C. §§ 9607 and 9613(b). This Court also has personal jurisdiction over the defendants. Solely for the purposes of this Partial Consent Decree, defendants waive all objections and defenses that they may have to jurisdiction of the Court or to venue in this District.

#### IV. PARTIES BOUND

6. This Consent Decree applies to and is binding upon the State, BEMC and the Estate of Fred Becker, Jr. Any change in ownership or corporate status of BEMC including, but not limited to, any transfer of assets or real or personal property, through probate or otherwise, shall in no way alter BEMC's responsibilities under this Partial Consent Decree.

#### V. CONSIDERATION

7. As partial consideration for settlement of this action, BEMC shall sell the Site and deliver the cash proceeds of the sale to the State as provided in Section VII, SALE OF THE BEMC SITE, once BEMC and the Estate of Fred Becker, Jr. receive notification from the State that final remedial action at the Site has been completed.

8. As consideration for the settlement of this action, the State agrees to dismiss the action without prejudice and without cost.

#### VI. SITE ACCESS

9. Commencing upon the effective date of this Partial Consent Decree, the State shall have access to the Site and any other property to which BEMC has access to carry out the investigation and remediation of hazardous substance conditions at and around the Site.

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10. Notwithstanding any provision of this Partial Consent Decree, the State retains all of its access authorities and access rights, including all enforcement authorities related thereto under any applicable statutes or regulations.

#### VII. SALE OF THE BEMC SITE

11.(a) Within 30 days of receipt of notification from the State that remediation of the Site has been completed, BEMC shall set a fair market value price for the Site and notify the State of such price. For purposes of this section, a fair market value price shall be established based the valuation of the Site by a licensed real estate broker. BEMC's valuation of the Site shall be delivered to the State within 10 days for review and approval. If the State objects to the valuation, the State may arrange for, or conduct, an appraisal of the Site at its own expense. BEMC shall list the Site for sale at the fair market value price within in 10 days of the State's acceptance of BEMC's valuation or, if the State conducts an appraisal of the Site, within 10 days of the receipt of the State's appraisal, whichever is later. BEMC shall use its best efforts to obtain a buyer for the Site at or near the fair market value or at the State's appraised value, as the case may be.

(b) BEMC shall notify the State within five days of entering into a contract for the sale of the Site and shall provide the State with the name of the attorney retained to handle the closing for BEMC and an estimate of the anticipated



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closing costs, including attorney's fees, based on the hourly or flat rate charged for the closing work. The State reserves the right to reject the cost estimate if it is unreasonable or excessive.

(c) Within 30 days of closing on the sale of the Site, BEMC shall pay to the State so much of the net proceeds of the sale of the Site as will reimburse the State for its response costs (as the term is used in CERCLA and the National Contingency Plan) for cleanup of the Site. The balance of the sale price after payment of the State, if any, shall be deposited with the Green County Treasurer for disbursement in accordance with the further orders of this Court. For purposes of this Section, the net proceeds of the sale of the Site shall be the gross amount of the sale of the BEMC property less seller's expenses which may include sales commissions, attorney's fees and disbursements, transfer taxes, deed stamps, recording fees, abstract and survey expenses.

#### VIII. INDEMNIFICATION

12. BEMC and the Estate of Fred Becker, Jr., shall indemnify and hold harmless the State, its officers, employees and representatives, from claims, suits, actions, damages and costs of every name and description brought against the State arising out of or resulting from the negligent performance or negligent attempted performance by BEMC and/or the Estate of Fred Becker, Jr. of their obligations hereunder.

IX. EFFECTIVE DATE

13. The effective date of this Consent Decree shall be the date upon which this Consent Decree is entered by the Court, except as otherwise provided herein.

X. MODIFICATION BY AGREEMENT

14. This Consent Decree may be modified only upon the written consent of the Parties. All modifications shall become effective as of the date of approval by this Court.

XI. NOTICE REQUIREMENTS

15. The original copy of any communication required by this Consent Decree between or among any of the Parties shall be sent to the following designated representatives of the Parties:

STATE OF NEW YORK

Frank Bifera, Esq.  
Division of Environmental Enforcement  
Department of Environmental Conservation  
50 Wolf Road  
Albany, New York 12233

Steve Hammond, P.E.  
Division of Hazardous Waste Remediation  
Department of Environmental Conservation  
50 Wolf Road  
Albany, New York 12233

Albert M. Bronson, Esq.  
Assistant Attorney General  
New York State Department of Law  
The Capitol  
Albany, New York 12224  
(518) 474-8480



BEMC AND FRED BECKER, JR.

Jonathan Harvey, Esq.  
Harvey and Harvey, Harvey & Mumford  
29 Elk Street  
Albany, New York 12207

XII. ENFORCEMENT OF CONSENT ORDER

16. If either Party to this Consent Decree considers that the other Party has failed to comply with any term or condition of this Consent Decree, the Party alleging non-compliance may seek appropriate relief from this Court.

XIII. RETENTION OF JURISDICTION

17. This Court retains jurisdiction over both the subject matter of this Consent Decree and BEMC for the duration of the performance of the terms and provisions of this Decree for the purpose of enabling any of the Parties to apply to the Court at any time for such further order, direction, and relief as may be necessary or appropriate for the construction of this Consent Decree, or to effectuate or enforce compliance with its terms.

XIV. SIGNATORIES

18. Each undersigned representative of a Party to this Consent Decree certifies that he or she is fully authorized to enter into the terms and conditions of this Partial Consent Decree and to execute and legally bind such Party to this document.

So ordered this 6th day of  
September, 1992.

Neal S. McCann  
United States District Judge

The authorized representatives of the State and BEMC having reviewed the terms and conditions of this Partial Consent Decree hereby consent to its terms and conditions.

FOR THE STATE OF NEW YORK  
ROBERT ABRAMS  
Attorney General of the  
State of New York  
The Capitol  
Albany, New York 12224

Date: May 11, 1992

By:

Albert M. Bronson  
ALBERT M. BRONSON  
Assistant Attorney General  
(Bar Roll No. 101224)

FOR BECKER ELECTRONICS  
MANUFACTURING CORPORATION  
Harvey and Harvey, Harvey & Mumford  
29 Elk Street  
Albany, New York 12207

Date: May 12, 1992

By:

JONATHAN P. HARVEY, ESQ.

ACKNOWLEDGED AND AGREED TO:

CHEMICAL BANK  
41 State Street  
Albany, New York 12207

By:

Frank Adams VP

GREENE COUNTY  
County Administration Building  
Catskill, New York 12414

By: *Charles J. Brown*

GREENE COUNTY INDUSTRIAL  
DEVELOPMENT AGENCY  
County Court House  
Catskill, New York 12414

APPROVED BY  
*George J. Prewitt*  
COUNTY ATTORNEY

By: *J. J. Lomax*

NEW YORK ~~STATE~~ JOB DEVELOPMENT  
AUTHORITY 605 Third Ave., 26th Floor  
~~One Commerce Plaza New York, NY 10158~~  
~~Albany, New York 12210~~

By: *Garry P. Ryan*

SMALL BUSINESS ADMINISTRATION  
100 S. Clinton Street  
Syracuse, New York 13261

By: *Wesley D. Cople*  
Asst. State District Counsel