

New York State Department of Environmental Conservation

Division of Legal Affairs, Region 4

1150 North Westcott Road, Schenectady, New York 12306-2014

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Denise M. Sheehan
Acting
Commissioner

CERTIFIED - RETURN RECEIPT REQUESTED

7004 1160 0005 0288 7010

April 22, 2005

Charles R. Waltz
Inactive Sites Manager
BASF
100 Campus Drive
Florham Park, NJ 07932

Re: Order on Consent
R4- 2005-0404-41

Dear Mr. Waltz:

Enclosed please find a copy of the fully executed Order on Consent referenced above.

This will also acknowledge receipt of \$25,000 as payment of the civil penalty pursuant to Paragraph I.

Sincerely,

Richard E. Ostrov
Assistant Regional Attorney
Region 4

Enclosure

cc: N. Lake-Martin, Esq
D. Reed-Green, P.E.
Lt. T. Duffy
Inv. Canfield
A. Geisendorfer
C. Van Guilder
D. Forgea
W. Wintsch
D. Lightsey ✓
H. Brezner

In the Matter of Violations of Article 27,
Title 13 of the Environmental Conservation Law;
and Order on Consent A4-0345-96-07

by

ORDER ON
CONSENT

File No.
R4-2005-0404-41

BASF Corporation

Respondent.

WHEREAS:

JURISDICTION

1. The New York State Department of Environmental Conservation (the "Department") is responsible for inactive hazardous waste disposal site remedial programs pursuant to Article 27, Title 13 of the Environmental Conservation Law (the "ECL").

FACTS

2. Respondent, BASF Corporation, 3000 Continental Drive North, Mount Olive, New Jersey 07828-1234, is responsible pursuant to Order on Consent A4-0345-96-07 to conduct a remedial cleanup of an inactive hazardous waste site at 36 Riverside Avenue, Rensselaer, New York (site number 442027) ("BASF site").

3. O'Brien and Gere, Inc. Of North America, 5000 Brittonfield Parkway, E. Syracuse, NY 13057 was contracted to perform remedial activities related to a cleanup of an inactive hazardous waste site at the BASF site.

4. O'Brien and Gere leased equipment from KC Supply in Green Island, New York during the fall of 2003 for cleaning up the BASF site. The rental equipment ("Bobcat loader") was returned to KC Supply on or about December 24, 2003.

5. The Department was notified on December 24, 2003 by KC Supply that the Bobcat loader was returned with contaminated material on its body. The Bobcat loader was taken off the BASF site by Respondent for pick up by KC Supply.

6. The Department staff hired a contractor to sample and test the material on the Bobcat loader and the analysis showed the presence of --arsenic, chromium, mercury, lead, zinc, 1,2,3-Trichlorobenzene, chlorobenzene, 1,2-dischlorobenzene, 2-Chloronapthalene, pheno and bis (2-ethyhexyl) phthalate.

VIOLATION

7. On May 31, 2002, the Department approved Respondent's "Process Building Interim Remedial Measure Work Plan" submitted pursuant to Order on Consent A4-0345-96-07.
8. Pursuant to Paragraph V of Order on Consent A4-0345-96-07 upon approval of the Department "...the IRM Work Plan shall be incorporated and into and become enforceable part of the Order.."
9. Section 3.6.2 of the Health and Safety Plan, part of the Process Building Interim Remedial Measure Work Plan, provides that "Before leaving the site, equipment will undergo a final wet decontamination at the decon pad located to the staging/loading area. Wet decon will consist of pressure washing or steam cleaning capable of removing all visible soil, residues and other debris adhering to the equipment."
10. The Health and Safety Plan at Page 1 Section 1 "Introduction" defines "Intrusive Tasks" as "...activities...that have the potential to cause health and safety concerns to site workers, the public, or the environment. Intrusive tasks typically have the potential to create exposures to site contaminants above HASP action levels, regulatory limits, or published guidelines...."
11. Section 1.4 title "Scope of Work" lists "equipment decontamination" as an intrusive task.
12. Section 1 "Introduction" of the "Health and Safety Plan" provides that it "incorporates by reference the Occupational Safety and health Administration ("OSHA") regulations contained in 29 CFR 1910 and 29 CFR 1926.
13. OSHA regulations at 1910.120(k)(2)(iii) "All employees leaving a contaminated area shall be appropriately decontaminated; all contaminated clothing and equipment leaving a contaminated area shall be appropriately disposed of or decontaminated."
14. Paragraph IX A. 1. of the Order on Consent A4-0345-96-07 provides that: "Respondent's failure to comply with any term of this order constitutes a violation of this Order and the ECL."
15. Respondent's contractor's failure to decontaminate the front loader and follow Section 3.6.2 of the Health and Safety Plan was a continuing violation of Order on Consent A4-0345-96-07 by Respondent from December 24, 2003 to April 29, 2004 when the Bobcat loader was properly decontaminated.

Respondent's Responsibility for Contractor Compliance

16. Paragraph XVI B of Order on Consent A4-0345-96-07 provides that Respondent is responsible "for the performance of the professionals retained by Respondent shall rest solely with Respondent."

17. Paragraph XVI H of Order on Consent A4-0345-96-07 provides that: "Respondent shall nonetheless be responsible for ensuring that Respondent's contractors and subcontractors perform the work in satisfaction of the requirements of this Order."

Stipulated Penalties Due Under Order on Consent

18. Pursuant to Paragraph IX A. 2 of Order on Consent A4-0345-96-07 Respondent is subject to stipulated penalties that begin to accrue on the first day of the violation and continue until the violation is corrected.

19. The stipulated penalties due for this violation are for purposes of this Order covered by Paragraph IX. A. (ii) of Order on Consent A4-0345-96-07 --\$100 for days 1-15, \$200 for days 16-30 and \$500 for days 31 and thereafter.

20. Stipulated penalties are due and payable under Paragraph IX of Order on Consent A4-0345-96-07 within 15 days after receipt of notification from the Department assessing the penalties.

21. The violation continued for 127 days until the Bobcat Loader was decontaminated on April 29, 2004.

22. The duration of the violation amounts to a stipulated penalty owed Respondent to the Department of \$52,500.

23. The Respondent hereby consents to the issuance and entry of the foregoing Order, waives its right to a hearing herein as provided by law, and agrees to be bound by the provisions, terms and conditions contained herein.

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

I. Civil Penalty

Respondent shall pay a civil penalty of FIFTY TWO THOUSAND FIVE HUNDRED DOLLARS (\$52,500). TWENTY SEVEN THOUSAND FIVE HUNDRED DOLLARS (\$27,500) of civil penalty is suspended conditioned on Respondent's compliance with the terms, conditions and provisions of Order on Consent A4-0345-96-07 and all plans approved thereunder. Payment of the suspended penalty shall be due within fifteen (15) calendar days of the receipt by the Respondent of a notice of violation from the Department which sets out the violations of the Order. Payment of TWENTY FIVE THOUSAND DOLLARS (\$25,000) of the civil penalty is due with the return of the signed and notarized Order. This provision shall not limit the Department's right to seek stipulated penalties as well under Order on Consent A4-0345-96-07 for violations of terms, conditions and provisions of Order on Consent A4-0345-96-07 and plans approved thereunder.

II. Indemnification

Respondent shall indemnify and hold harmless New York State, DEC, and any of their representatives, employees or contractors for all claims, actions, damages, and costs of any name and description arising out of or resulting from the fulfillment or attempted fulfillment of the provisions of this Order by Respondent, their employees, contractors, servants, agents, successors or assigns.

III. Effective Date

The effective date of this Order shall be the date it is signed on behalf of DEC.

IV. Other Remedies

Nothing contained in this Order shall be construed as barring, diminishing, adjudicating or in any way affecting the following: (1) any legal, administrative or equitable rights or claims, actions, suits, causes of action or demands whatsoever that DEC may have against anyone other than Respondent; (2) DEC's right to enforce, administratively or otherwise, the terms, provisions and conditions of this Order against Respondent, its employees, servants, agents, successors and assigns in the event that Respondent shall be in breach of the provisions hereof, and to subject Respondent to penalties for such violations, or for other violations of the ECL; (3) DEC's right to commence any action or proceeding, administratively or otherwise, relating to or arising out of any disposal of hazardous wastes at any site, as those wastes are defined by applicable regulations, and to subject Respondent to penalties for such violations, or for other violations of the ECL; and (4) DEC's right to bring any action or

proceeding against Respondent and/or any of Respondent's employees, servants, agents, successors and assigns with respect to claims for natural resource damages; or (5) the Respondent's right to challenge any such action by the Department, whether by administrative hearing or otherwise, to the extent otherwise permitted by law or this Order on Consent.

IV. Entire Agreement

This Order constitutes the entire agreement of the parties, and no provision of the agreement shall be deemed waived or otherwise modified except as is specifically set forth in a writing executed by the Commissioner or Regional Director of DEC indicating an intent to modify this Order.

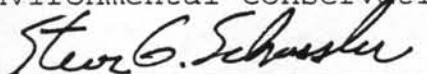
V. Order on Consent A4-0345-96-07

Nothing in this Order on Consent shall supercede the requirements of Order on Consent A4-0345-96-07 including but not limited to plans approved thereunder except as to the added suspended penalties in Paragraph I above.

Date: April 21, 2005

Denis M. Sheehan
Acting Commissioner
New York State Department of
Environmental Conservation


BY:



Steven G. Schassler
Regional Director
Region 4

CONSENT BY RESPONDENT

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



BASF Corporation

INACTIVE SITES MANAGER
Title:

DATE: 4/20/05

CONSENT BY RESPONDENT

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

On the 10th day of April in the year 2005 before me, the undersigned, a Notary Public in and for the State, personally appeared Charles R. Waltz, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Deborah A. Mobley
Notary Public
Qualified in the County of:
My Commission Expires:

DEBORAH A. MOBLEY
Notary Public, State of New Jersey
No. 48269
Qualified in Morris County
Commission Expires 10/07/2007