

Yonkers Sherburne

STATE OF NEW YORK: DEPARTMENT OF ENVIRONMENTAL CONSERVATION

In the Matter of the
Development and Implementation
of a Remedial Investigation, a
Feasibility Study and a Remedial
Program for an Inactive Hazardous
Waste Disposal Site, under
Article 27, Title 13, of the
Environmental Conservation Law
of the State of New York
by:

ORDER
ON
CONSENT

INDEX #A701578810
SITE #709010

GENERAL INSTRUMENT CORPORATION

Respondent.

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. General Instrument Corporation (the "Respondent"), a corporation organized and existing under the laws of the State of Delaware, manufactured antennas, metal products and electrical assemblies, from 1969 to December, 1983, at its facility in the Village of Sherburne, Chenango County, New York (the "Site"). A map of the Site is attached to this Order as Appendix "A".

3. The Department alleges that hazardous substances were discharged from Respondent's facility to soils and groundwater at the site, resulting in contamination of the soil and the groundwater at the site. Samples of groundwater taken by the Respondent from wells located at

the Site, and voluntarily reported to the Department, have revealed the presence of the following contaminants: trans-1,2 dichloroethene, chloroform, 1,1,1 trichloroethane, trichloroethane, 1,1 dichloroethane, carbon tetrachloride, methylene chloride, chlorobenzene, toluene, benzene, 1,1,2 trichloroethene, tetrachloroethene, vinyl chloride, xylene, ethyl benzene, trichlorofluoromethane and 1,1,2,2 tetrachloroethane.

4. Respondent has over the past few years initiated a series of tests to determine the extent of groundwater contamination which have been submitted to the Department.

5. The Site has been designated by the Department as an inactive hazardous waste disposal site, as that term is defined in ECL Section 27-1301(2), and has been listed in the Registry of Inactive Hazardous Waste Disposal Sites in New York State as Site Number 709010.

6. The Department has identified and classified the Site pursuant to ECL Section 27-1305, under classification 2, as a "significant threat to the public health or environment - action required".

7. Pursuant to ECL Section 27-1313(3)(a), whenever the Commissioner of Environmental Conservation (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 the Respondent acknowledge that the goals of this Order are that:

a. Respondent shall develop and implement a Remedial Program, including a Remedial Investigation/Feasibility Study, for the Site, which shall be subject to the approval of the Department.

b. Respondent shall implement the Remedial Program within the time-frames specified hereinafter.

9. Respondent, without admitting any liability, having waived its right to a hearing in this matter in the manner provided by law, hereby consents to the issuance and entry of this Order and agrees to be bound by its terms.

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

I. All activities and submittals required by this Order shall address both on-Site and, if necessary, off-Site contamination, and shall be 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 identify, mitigate and eliminate, to the maximum extent practicable,

any present or potential threat to the public health or environment posed by the presence of hazardous waste at the Site and any release or threatened release of hazardous waste at or from the Site.

II. Within 45 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, and other information described below, 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, location and dates of disposal of hazardous waste as well as the names of other responsible parties; 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 reasonably available topographic and property surveys, engineering studies and aerial photographs.

III. Respondent shall perform a Remedial Investigation/Feasibility Study in accordance with the work plan attached to this Order as Appendix "B" (the "Work Plan"). The Work Plan shall be an enforceable part of this Order.

IV. In accordance with the time schedule contained in the Work Plan, Respondent shall perform the Remedial Investigation and submit to the Department a Remedial

Investigation Report. During the Remedial Investigation, when work is being performed, Respondent shall have on-Site a full time representative who is qualified to inspect the work. The Report shall include all data generated and all other information obtained during the Remedial Investigation, provide all of the assessments and evaluations set forth in CERCLA and the current NCP, and identify any additional data that must be collected. The Report shall include a certification by Respondent's consultant that all activities that comprised the Remedial Investigation were performed in full accordance with the approved Work Plan.

V. The Department reserves the right to seek a modification and/or an amplification and expansion of the Remedial Investigation and Report by Respondent if the Department determines, as a result of reviewing data generated by the Remedial Investigation or as a result of discovering previously unknown environmental conditions related to the disposal of hazardous wastes at the Site, that further work is necessary.

VI. After receipt of the Report, the Department shall determine if the Remedial Investigation was conducted and the Report prepared in accordance with the Work Plan and this Order, and shall notify Respondent in writing of its approval or disapproval of the Report.

If the Department disapproves the Report, it shall notify Respondent in writing of the its objections. Within 60 days of the Department's notice of disapproval,

Respondent shall revise the Report and/or reperform or supplement the Remedial Investigation, addressing each of the Department's objections, and shall submit a revised Report.

After receipt of the revised Report, the Department shall notify the Respondent in writing of its approval or disapproval of the revised Report.

If the Department disapproves the revised Report, Respondent shall be in violation of this Order, not having submitted an approvable document in accordance with the terms of this Order.

The approved Report shall be attached as Appendix "C" and incorporated into this Order.

VII. Within 90 days after receipt of the Department's approval of the Report, Respondent shall submit a Feasibility Study evaluating on-Site and, if necessary, off-Site remedial actions to eliminate, to the maximum extent practicable, all health and environmental hazards and potential hazards attributable to hazardous waste disposal at the Site. The Feasibility Study shall be prepared and certified by an engineer licensed to practice by the State of New York, who may be an employee of Respondent, or an individual or member of a firm which is authorized to offer engineering services in accordance with Article 145 of the New York State Education Law.

The Feasibility Study shall be performed in a manner that is consistent with CERCLA, as amended, the

current NCP and the USEPA draft guidance document entitled "Guidance for Conducting Remedial Investigations and Feasibility Studies under CERCLA," dated March 1988 and any subsequent revisions thereto.

VIII. After receipt of the Feasibility Study, the Department shall determine if it was prepared in accordance with this Order, and shall notify Respondent in writing of its approval or disapproval of the Feasibility Study.

If the Department disapproves the Feasibility Study, it shall notify Respondent in writing of its objections. Within 60 days after receipt of notice of disapproval, Respondent shall revise the Feasibility Study, addressing each of the Department's objections, and shall submit a revised Feasibility Study.

After receipt of the revised Feasibility Study, the Department shall notify Respondent in writing of its approval or disapproval of that document.

If the Department disapproves the revised Feasibility Study, Respondent shall be in violation of this Order, not having submitted an approvable document in accordance with the terms of this Order.

The approved Feasibility Study shall be attached as Appendix "D" and incorporated into this Order.

IX. Within 60 days after the Department's approval of the Feasibility Study, the Department and Respondent shall

solicit public comment on the Remedial Investigation/ Feasibility Study and the recommended remedial program in accordance with CERCLA, the NCP, and any relevant Department regulations, or policy and guidance documents in effect at the time the public comment period is to be initiated. After the close of the public comment period, the Department shall select a final remedial program for the site in a Record of Decision ("ROD").

X. Unless the ROD recommends the "no action" alternative, Respondent shall submit a Remedial Design within 90 days after the ROD is signed. The Remedial Design shall be prepared and certified by an engineer licensed to practice by the State of New York, who may be an employee of Respondent, or an individual or member of a firm which is authorized to offer engineering services in accordance with Article 145 of the New York State Education Law.

The Remedial Design shall include the following:

a. A detailed description of the means by which each essential element of the Remedial Program will be performed, to the extent found to be necessary, to include but not be limited to:

1. the collection, destruction, treatment and/or disposal of hazardous wastes, and their constituents and degradation products, and any soil or other materials contaminated thereby;

2. the collection, destruction, treatment, and/or disposal of contaminated groundwater, leachate and air;

3. physical security and posting of the Site;

4. health and safety of persons living and/or working at or in the vicinity of the Site;

5. quality control and quality assurance procedures and protocols to be applied during implementation of the Remedial Program; and

6. integrated monitoring on and off-site during implementation of the Remedial Program.

b. "Biddable Quality" documents for the Remedial Program, including plans and specifications prepared and certified by an engineer licensed to practice by the State of New York, which plans shall satisfy all applicable local, state and federal laws, rules and regulations;

c. A time schedule for the Remedial Program and provisions for periodic work-in-progress reports during the Remedial Program;

d. The parameters, conditions, procedures and protocols to determine the effectiveness of the Remedial Program, including a schedule for periodic sampling of groundwater monitoring wells on-Site and, if necessary, off-Site;

e. A description of operation, maintenance and monitoring activities to be undertaken following completion of the Remedial Program, including the number of years during which such activities will be performed.

f. A contingency plan to be implemented, to the extent that it is necessary, in the event that any element of the Remedial Program fails to operate in accordance with the Remedial Design within 30 years after completion of the Remedial Program; and

g. An evaluation of the need to take measures to provide for the protection of persons at and in the vicinity of the Site during construction and for 30 years after completion of the Remedial Program and a plan for the implementation of those measures, if necessary. The plan shall be prepared in accordance with 29 C.F.R. Section 1910 by a certified health and safety professional.

XI. After receipt of the Remedial Design, the Department shall notify Respondent in writing of its approval or disapproval of that document. If the Department approves the Remedial Design, the Respondent shall implement the Remedial Program in accordance with it.

If the Department disapproves the Remedial Design, it shall notify Respondent in writing of its objections. Within 60 days after receipt of notice of disapproval, Respondent shall revise the Remedial Design in accordance with the Department's specific comments and shall submit a revised Remedial Design to the Department.

After receipt of the revised Remedial Design, the Department shall notify Respondent in writing of its approval or disapproval of the revised Remedial Design. If the Department approves the revised Remedial Design,

Respondent shall implement the Remedial Program in accordance with that document.

If the Department disapproves the revised Remedial Design, Respondent shall be in violation of this Order, not having submitted an approvable document in accordance with the terms of this Order.

The approved Remedial Design shall be attached as Appendix "E" and incorporated into this Order.

XII. Respondent shall implement the Remedial Program in accordance with the approved Remedial Design. Respondent must obtain prior written approval from the Department prior to deviating from the approved Remedial Design in any material way. During implementation of the Remedial Program, Respondent shall have on-Site a full time representative who is qualified to inspect the work.

Within 60 days after completion of the Remedial Program, Respondent shall submit as-built drawings, a final engineering report and a certification that the Remedial Program was completed in accordance with the approved Remedial Design, all by an engineer licensed to practice by the State of New York.

XIII. After receipt of the as-built drawings, final engineering report and certification, the Department shall notify Respondent in writing whether it is satisfied with the quality and completeness of the Remedial Program as being protective of human health and the environment.

If the Department is not satisfied with the quality and completeness of the Remedial Program, the Department may take any action or pursue whatever rights it has pursuant to any provision of statutory or common law.

XIV. If, after review, the Department is satisfied with the quality and completeness of the Remedial Program as being protective of human health and the environment, then, except for the provisions of paragraphs "XV", "XXIII" and "XXIV" hereof, such acceptance shall constitute a full and complete satisfaction and release of each and every claim, demand, remedy or action whatsoever against Respondent, its directors, officers, employees, agents, successors and assigns, which the Department has or may have pursuant to Article 27, Title 13 of the ECL relative to or arising from the disposal of hazardous wastes at the Site; provided, however, that the Department specifically reserves all of its rights concerning, and any such release and satisfaction shall not extend to, any investigation or remediation the Department deems necessary due to:

- (1) environmental conditions on-site or off-site which are related to the disposal of hazardous wastes at the Site and were unknown to the Department at the time of its approval of the Remedial Investigation Report; or
- (2) information not available to the Department at the time of its approval of the Remedial Program,

and such unknown environmental conditions or information indicates that the Remedial Program is not protective of human health or the environment. The Department shall notify the Respondent of such environmental conditions or information and its basis for determining that the Remedial Program is not protective of human health and the environment.

This release shall inure only to the benefit of the Respondent, its directors, officers, employees, agents, successors and assigns, with respect to the aforesaid matter.

Nothing herein shall be construed as barring, diminishing, adjudicating or in any way affecting 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, its directors, officers, employees, agents, successors and assigns.

XV. Respondent shall operate, maintain and monitor all elements of the Remedial Program, implement the contingency plan in the event of a failure of any element of the Remedial Program, and implement any necessary health and safety measures, all in accordance with the approved Remedial Design.

XVI. The Department shall have the right to obtain split samples, duplicate samples, or both, of all substances and materials sampled by Respondent.

XVII. Respondent shall provide notice to the Department at least 10 days in advance of any field activities to be conducted pursuant to this Order.

XVIII. Respondent shall exercise reasonable efforts to obtain whatever permits, easements, rights-of-way, rights-of-entry, approvals or authorizations are necessary to perform Respondent's obligations under this Order. If Respondent's efforts are unsuccessful, the Department shall assist the Respondent in any manner that it deems appropriate.

XIX. Respondent shall permit any duly designated employee, consultant, contractor or agent of the Department or any State agency to enter upon the Site or areas in the vicinity of the Site which may be under the control of Respondent for purposes of inspection, sampling and testing and to assure Respondent's compliance with this Order. During implementation of the Remedial Program, Respondent shall provide the Department with suitable office space at the site, including access to a telephone, and shall permit the Department full access to all records and job meetings.

- XX. Respondent shall retain professional consultants, contractors and laboratories acceptable to the Department to perform the technical, engineering and analytical obligations required by this Order, and shall designate a Project Manager and a qualified Quality Assurance Officer for this project. The experience, capabilities and qualifications of the firms or individuals selected by Respondent shall be

submitted to the Department for approval prior to initiation of any activities for which they will be responsible.

XXI. Respondent shall not suffer any penalty under this Order, 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, or other condition as to which negligence or willful misconduct on the part of the Respondent was not a cause. Respondent shall immediately notify the Department in writing when it obtains knowledge of any such condition and request an appropriate extension or modification of this Order.

XXII. The failure of the Respondent, other than a de minimis failure, to comply with any term of this Order shall be a violation of this Order and the ECL.

XXIII. 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 shall fail to satisfy any of the terms hereof; and

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 damages.

XXIV. This Order shall not be construed to prohibit the Commissioner or his duly authorized representative from exercising any summary abatement powers.

XXV. 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.

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

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

XXVIII. In the event 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 of 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.

XXIX. All written communications required by this Order shall be transmitted by United States Postal Service, by private courier service, or hand delivered as follows:

A. Communication from Respondent shall be made as follows:

1. Director, Division of Environmental
Enforcement
New York State Department of
Environmental Conservation
50 Wolf Road - Room 609
Albany, New York 12233
2. Director, Division of Hazardous Waste
Remediation
New York State Department of
Environmental Conservation
50 Wolf Road - Room 212
Albany, New York 12233
3. Director, Bureau of Environmental
Exposure Investigation
New York State Department of Health
2 University Place
Albany, New York 12203
4. Paul Van Cott, Esq.
New York State Department of
Environmental Conservation
Division of Environmental Enforcement
50 Wolf Road - Room 415
Albany, New York 12233

B. Communication to be made from the Department to the Respondent shall be made as follows: One copy to: Charles S. Warren, Esq., Berle, Kass & Case, 45 Rockefeller Plaza, New York, New York 10111; One copy to: David S. Machlowitz, Esq., Senior Attorney, General Instrument Corporation, 767 5th Avenue, New York, New York 10153.

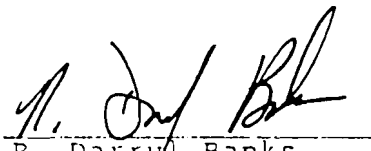
XXXI. Respondent, its officers, directors, agents, servants, employees, successors and assigns shall be bound by this Order. Nothing herein shall be construed to bind any other entity.

XXXII. The terms 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 submittals shall be construed as relieving Respondent of its obligations to obtain such formal approvals as may be required by this Order.

DATED: Albany, New York
September 5, 1989

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

By:



R. Darryl Banks
Deputy Commissioner

CONSENT BY RESPONDENT

Respondent hereby consents to the issuing and entering of this Order, waives its right to a hearing herein as provided by law, and agrees to be bound by this Order.

GENERAL INSTRUMENT CORPORATION

By:

Title:

Date:

STATE OF NEW YORK)

) s.s.:

COUNTY OF

On this 1st day of August, 1984, before me personally came Roger H. Hefner to me known, who being duly sworn, did depose and say that he resides in New York State; that he is the VP-Manufacturing of the General Instrument 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.

Notary Public

DAVID S. MACHLOWITZ
Notary Public, State of New York
No. 01470487
Qualified in New York County
Commission Expires March 20, 1990