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Consent Order. HW. 734051. 1990-05-04. IRM order

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New York State Department of Environmental Conservation

MEMORANDUM



FYI
John
Sut
Charlie

TO: Ned Sullivan
FROM: David Markell, Director, DEE
SUBJECT: Duva Inactive Site Consent Order, Index # A7-0225-90-03
DATE: May 4, 1990

Attached for your review, approval, and signature are two copies of a Consent Order for the above-referenced site. This Order requires the three PRPs, General Electric, the Estate of Peter Duva, and Donald W. Miller, Inc. to implement an IRM that will consist, among other things, of pumping and treating the contaminated groundwater.

This Order was negotiated by Marianna Wojnas of the Albany Field Unit of DEE, and technical assistance was provided by Craig Jackson and Karen Mairuano of DHWR, and Al Grant of the Albany Field Unit.

Please let me know if you would like to discuss this matter in more detail.

Thanks.

cc: Commissioner Jorling
Langdon Marsh
Marc Gerstman
Madeline Gallo
Mike O'Toole
Bill Krichbaum

File
DUVA
Constr.
OmanCo.

STATE OF NEW YORK: DEPARTMENT OF ENVIRONMENTAL CONSERVATION

In the Matter of the
Development and Implementation
of an Interim Remedial Measure
at 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 # A7-0225-90-03
SITE # 734051

General Electric Company,
Estate of Peter Duva, and
Donald W. Miller, Inc.,

Respondents.

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. Respondent, General Electric Company ("GE"), a corporation organized and existing under the laws of the State of New York, is doing business in the State of New York with a facility at Electronics Parkway, Syracuse, New York.

3. Respondent, Estate of Peter Duva, is the estate of an individual who died on May 29, 1989 in Onondaga County, New York. Prior to his death, Peter Duva resided in the Town of Clay, State of New York. Frances Duva is the duly appointed representative of his Estate.

4. Respondent, Donald W. Miller, Inc., is a corporation organized and existing under the laws of the State of New York, and is doing business in the State of New York.

5. The Department has identified and classified the Site as an inactive hazardous waste disposal site, as that term is defined in ECL §27-1301(2), and has listed it in the Registry of Inactive Hazardous Waste Disposal Sites in New York State as Site Number 734051. A map of the Site which is located on Taft Road in the Town of Clay, is attached to this Order as Appendix "A".

6. The Department has classified the Site as a Classification "2", pursuant to ECL §27-1305(4)(b), having found that the Site presents a "significant threat to the public health or environment - action required".

7. Pursuant to ECL §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 alleges that the Duva Site is located upgradient from a housing development which has been adversely impacted by the flow of organic contaminants from the Site.

9. The Department and the Respondents acknowledge that the goals of this Order are that the Respondents shall perform

the Approved Interim Remedial Measure at the Site, attached to this Order as Exhibit "B".

10. Respondents hereby waive their rights to a hearing in this matter related to the work to be performed pursuant to this Order, as set forth in Exhibit "B", in the manner provided by law, consent to the issuance and entry of this Order, and agree to be bound by the specific terms hereof. Respondents' consent to and compliance with this Order does not constitute an admission of liability or an admission by any Respondent of any law or fact or of the applicability of any law to conditions at this Site.

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

I. By May 21, 1990, Respondents shall commence implementation of the Approved Interim Remedial Measure which is attached as Appendix "B" and incorporated into this Order, thereby making it an enforceable part hereof.

II. Respondents shall provide the Department and Respondents with notice at least five (5) working days in advance of work to be conducted pursuant to the terms of this Order.

III. Respondents 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 Respondents, and any areas

necessary to gain access thereto, for purposes of inspection and of making or causing to be made such sampling and tests as the Department deems necessary and for assurance that Respondents comply with the terms of this Order.

IV. If any Respondent retains a third-party professional consultant, contractor and/or laboratory to perform the obligations required by this Order, such consultant, contractor, and/or laboratory shall be acceptable to the Department.

V. Respondents shall not suffer any penalty under any of the terms of this Order, or be subject to any proceeding or actions for any remedy or relief, if they cannot comply with any requirements hereof because of an act of God or war, provided, however, that any Respondent shall immediately notify the Department in writing when it obtains knowledge of any such condition and request an extension or modification of the terms of this Order.

VI. The failure of any Respondent to comply with any term of this Order specifically related to its obligation under this Order shall constitute a default and a failure to perform an obligation under this Order and under the ECL.

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

a. any legal or equitable rights or claims, actions, suits, causes of action or demands whatsoever that the Department may have against anyone other than Respondents,

their directors, officers, employees, servants, agents, successors and assigns;

b. the Department's right to enforce at law or in equity the terms and conditions of this Order against Respondents, their directors, officers, employees, servants, agents, successors and assigns in the event that Respondents shall fail to satisfy any of the terms specifically related to their obligations under this Order hereof:

c. the Department's right to bring any action at law or in equity against any person with respect to areas or resources that may have been affected or contaminated as a result of the release or migration of hazardous wastes or constituents or industrial wastes at or from the Site or from areas in the vicinity of the Site including but not limited to claims for natural resources damages;

d. any action or proceeding to which the Department may be entitled in connection with, relating to, or arising out of the presence of hazardous wastes at the Site, or the release or migration of hazardous wastes from the Site; and

e. any of Respondents' defenses against such claims, actions, proceedings, causes of actions or demands.

VIII. 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.

IX. Respondents 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 terms of this Order. Said Indemnification shall not include indemnification in any form for negligence or willful misconduct on the part of the State of New York, the Department or their representatives and employees.

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

XI. If Respondents desire to deviate from the provisions of this Order in any way, they shall make timely written application therefore to the Commissioner, setting forth reasonable grounds for the relief sought.

XII. The terms of this Order shall be deemed to bind the Respondents, their officers, directors, agents, servants, employees, successors and assigns to the extent their obligations are set forth herein.

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

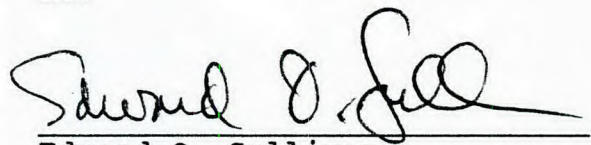
XIV. The terms hereof shall constitute the complete and entire Order between the Respondents and the Department concerning the Site. No terms, conditions, understandings or agreements purporting to modify or vary the terms hereof shall be binding unless made in writing and subscribed by the party

to be bound. No informal advise, guidance, suggestions or comments by the Department regarding reports, proposals, plans, specifications, schedules or any other writing submitted by the Respondents shall be construed as relieving the Respondents of their obligations to obtain such formal approvals as may be required by this Order.

DATED: Albany, New York
May 4, 1990

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

BY:


Edward O. Sullivan
Deputy Commissioner

CONSENT BY RESPONDENT

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

GENERAL ELECTRIC COMPANY

By: James P. Gallen *RM*Title: Mgr. Mfg. Eng. & In.Date: 5/2/90

STATE OF NEW YORK)

) S.S.:

COUNTY OF Onondaga

On this 2 day of May, 1990, before me personally came James P. Gallen, to me known, who being duly sworn, did depose and say that he resides in Mauldin; that he is the Mgr. - Mfg. Eng. & Facilities of the General Electric 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.~~

Pauline S. Wohn
Notary Public

PAULINE S. WOHN
Notary Public in the State of New York
Qualified in Onondaga County No. 34-432100
My Comm. Expires 10/1/91

CONSENT BY RESPONDENT

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

ESTATE OF PETER DUVA

By: x Frances DuvuTitle: EXECUTRIXDate: 4/23/90

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

On this 23 day of April, 198⁹⁰, before me personally came FRANCES DUVA, to me known, who being duly sworn, did depose and say that she resides in TOWN OF CLAY; that she is the EXECUTRIX of the ESTATE OF PETER DUVA corporation described in and which executed the foregoing instrument; ~~that she 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.~~

[Signature]
 Notary Public in the State of New York
 Qualified in Onondaga Co. No. 34-6768950
 My Commission Expires April 30, 1990

CONSENT BY RESPONDENT

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

DONALD W. MILLER, INC.

By: Donald W. MillerTitle: PRESIDENTDate: 4/24/90

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

On this 24th day of April, 1989, before me personally came Donald W. Miller, to me known, who being duly sworn, did depose and say that he resides in Town of Cicero; that he is the President of the Donald W. Miller, Inc. 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.

Michael A. Orsillo
 Notary Public
 Michael A. Orsillo
 Notary Public at the State of NY
 Onondaga Co. My commission
 expires in 1991

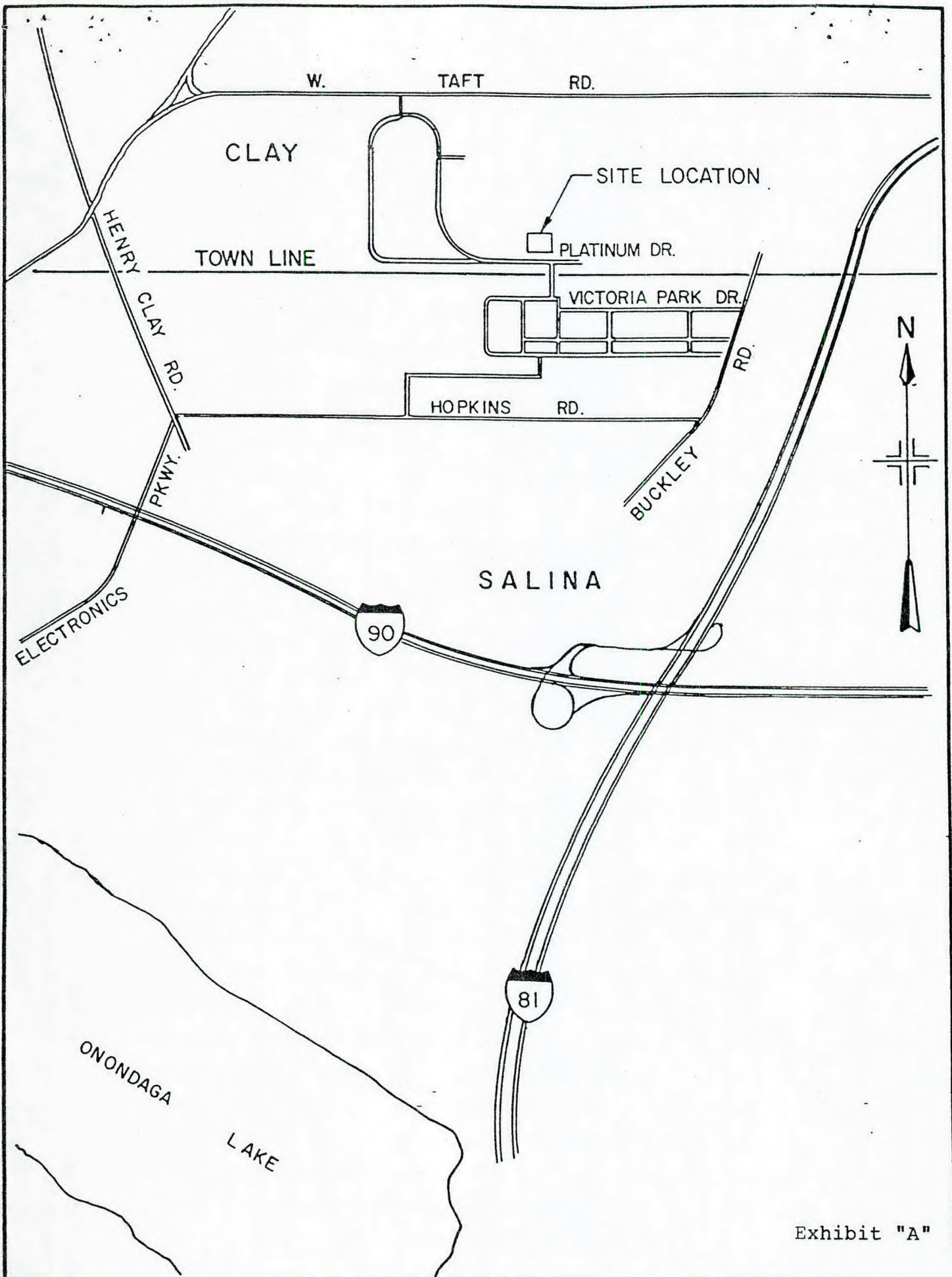


Exhibit "A"

**MALCOLM
PIRNIE**

SITE LOCATION MAP

MALCOLM PIRNIE, INC.

DATE: 3 - 90

FIGURE 2-1