

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:

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

Respondents.

ORDER ON CONSENT

Index No.
A7-0232-90-05

Site No. 734051

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 a plume of organic contaminants flowing from the Site.

9. Order on Consent #A7-0225-90-03 focuses on the groundwater interim remedial measures to be implemented at the Site, which in conjunction with other actions already taken, should reduce the immediate threat of exposure from the plume of contamination in the groundwater impacting certain residences in this housing development.

10. The Department and the Respondents acknowledge that the goals of this Order are that the Respondents shall perform another Interim Remedial Measure at the Site which shall be attached to this Order as Exhibit "B" to address soil sampling, characterization, excavation and removal of contaminated soil in the areas where drums of waste were located.

11. Respondents hereby waive their rights to a hearing in this matter related to the work to be performed pursuant to this Order, as shall be 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. Except to the extent that this Order imposes additional requirements on the Respondents in relation to the Site, the terms and conditions of Order on Consent #A7-0225-90-03 shall remain unchanged and in full force and effect.

II. By June 22, 1990, the Respondents shall submit an approvable Interim Remedial Measure Work Plan (the "IRM Work Plan") to the Department. The IRM Work Plan should at a minimum include the following:

a. A report summarizing all field and analytical data previously generated which is relevant to the undertaking of the IRM Program;

b. A detailed description of the means by which each essential element of the IRM Program will be or has been performed

c. A time schedule for all IRM Program activities, including, if appropriate, construction, and provisions for periodic work-in-progress reports during the IRM Program;

d. The parameters, conditions, procedures and protocols which will be used to determine the effectiveness of the IRM Program;

e. A health and safety plan for the protection of persons at and in the vicinity of the Site during

implementation of the IRM Work Plan. The plan shall be prepared in accordance with 29 C.F.R. Section 1910 by a qualified safety professional.

In addition, the IRM Work Plan shall fully comply with all applicable Federal, State and local laws, regulations, standards and/or requirements. Further, all analytical testing shall be performed by a laboratory which is determined to be technically acceptable to the Department. All analytical sampling and testing shall be performed by persons who are properly qualified by training and experience. All analytical and sampling programs shall receive the prior review and approval of the Department's Project Engineer or Geologist and the Department's Quality Assurance/Quality Control (QA/QC) Officer.

III. The Department reserves the right to require the Respondents to generate additional data with respect to the Site if the Department determines, as a result of reviewing data previously generated or as a result of reviewing any other data or facts, that further investigation is necessary before the IRM Work Plan can be approved by the Department.

IV. If the Department approves the IRM Work Plan, the Respondents shall implement the IRM Program in accordance with it.

a. If the Department disapproves the IRM Work Plan, the Department shall notify the Respondents in writing of the

Department's objections. Within 15 days after receipt of notice of disapproval, the Respondents shall revise the IRM Work Plan in accordance with the Department's specific comments and submit a revised IRM Work Plan.

b. After review of the revised IRM Work Plan, the Department shall notify the Respondents in writing of its approval or disapproval of the revised IRM Work Plan. If the Department approves the revised IRM Work Plan, the Respondents shall timely implement the IRM Program in accordance with it.

c. If the Department disapproves the revised Work Plan, the Respondents shall be deemed to be in violation of this Order and the ECL.

V. Within two weeks of approval by the Department of the IRM Work Plan, Respondents shall commence implementation of the approved IRM Work Plan which shall be attached as Appendix "B" and incorporated into this Order.

VI. The Respondents shall complete the IRM Program in accordance with the approved IRM Work Plan. The Respondents must obtain prior written approval from the Department prior to deviating from the approved IRM Work Plan in any way. If applicable, during construction, the Respondents shall have on-site a full time representative who is qualified by training and experience to inspect the work and is authorized by the Respondents to do so.

Within 60 days after completion of the IRM Program, the Respondents shall submit a final engineering report and a certification that the remediation activities were completed in accordance with the approved IRM Work Plan, both by an engineer licensed to practice by the State of New York.

VII. Within 60 days after receipt of the final engineering report and certification, the Department shall notify the Respondents in writing whether it is satisfied with the quality and completeness of the IRM Program as being protective of human health and the environment. If the Department is not satisfied with the quality and completeness of the IRM Program, the Department may take any action or pursue whatever rights it has pursuant to any provision of statutory or common law.

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

IX. The Respondents shall provide notice to the Department at least 5 working days in advance of any field activities to be conducted pursuant to this Order.

X. The Respondents shall obtain whatever permits, easements, rights-of-way, rights-of-entry, approvals or authorizations are necessary in order to perform the Respondents' obligations under this Order.

XI. The Respondents 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 the Respondents for purposes of inspection, sampling and testing and to assure the Respondents' compliance with this Order.

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

XIII. The Respondents shall not suffer any penalty under this Order, or be subject to any proceeding or action, if they cannot comply with any requirements hereof because of an act of God, war or riot for any remedy or relief, provided, however that any 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.

XIV. The failure of the Respondents to comply with any term of this Order specifically related to its obligation under this Order, shall be a violation of this Order and the ECL.

XV. Nothing contained in this Order shall be construed as barring, diminishing, adjudicating or in any way affecting any of the Department's rights including, but not limited to, the following:

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

b. the Department's right to enforce this Order against the Respondents, their directors, officers, employees, servants, agents, successors and assigns in the event that the Respondents shall fail to satisfy any of the terms hereof;

c. the Department's right to bring any action or proceeding against the Respondents, their directors, officers, employees, servants, agents, successors and assigns with respect to claims for natural resource damages 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;

d. the Department's right to bring any action or proceeding against the Respondents, their directors, officers, employees, servants, agents, successors and assigns with respect to hazardous wastes that are present at the Site or that have migrated from the Site and present a significant threat to human health or the environment; and

XVI Nothing contained in this Order shall be construed as barring, adjudicating or in any way affecting any of the Respondent's rights or defenses against such claims, actions or demands.

XVII. 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.

XVIII. The Respondents shall indemnify and hold the Department, the State of New York, and its representatives and employees harmless from 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 the Respondents, their directors, officers, employees, servants, agents, successors or assigns. 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.

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

XX. If the Respondents desire that any provision of this Order be changed, they shall make timely written application to the Commissioner, setting forth reasonable grounds for the relief sought.

XXI. 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 the Respondents to the Department shall be made as follows:

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

2. Bureau of Environmental Exposure
Investigation, New York State Department of Health, 2
University Place, Albany, New York 12203, Attention: Ronald
Tramontano, Director.

3. New York State Department of Health, 677
South Salina Street, Syracuse, New York 13202, Attention: Ron
Heerkens.

4. Division of Environmental Enforcement, Albany
Field Unit, Room 415, New York State Department of
Environmental Conservation, 50 Wolf Road, Albany, New York
12233, Attention, Marianna Wojnas, Esq.

5. New York State Department of Environmental
Conservation, State Office Building, Watertown, New York 13601,
Attention: Charles Branagh, Regional Hazardous Waste
Remediation Engineer.

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

1. General Electric Company, PO Box 4840,
Syracuse, New York 13221-4840; Attention: Mr. Ronald Brunozzi,
Dale McAllister, Esq.

2. Estate of Peter Duva, Herman L. Harding, Esq.,
217 South Salina Street, Syracuse, New York 13202; Frances
Duva, 4938 Vine Street, Liverpool, New York 13088.

3. Donald W. Miller, Inc., Hancock &
Estabrook, Doreen A. Simmons, Esq., MONY Tower I, PO Box 4976,
Syracuse, New York 13221-4976; Donald W. Miller, Inc., 5357
West Taft Road, North Syracuse, New York 13212, Attention: Mr.
Donald W. Miller.

C. The Department and the Respondents respectively
reserve the right to designate other or different addresses on
notice to the other.

XXII. The terms of this Order shall be deemed to bind
the Respondents, their directors, officers, employees,
servants, agents, successors and assigns. Nothing herein shall
be construed to bind any other entity.

XXIII. The terms hereof shall constitute the complete
and entire Order between the Respondents and the Department
concerning the IRM Program for 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 by the Respondents shall be construed as

DATED: 7/6/90, New York
1990

BY:

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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: W J Biloski WJB
EM
Title: Mgr. - Facilities
Date: 6-21-90

STATE OF NEW YORK)
COUNTY OF Onondaga) ss:

On this 21st day of June, 1990, before me personally came William J. Biloski, to me known, who being duly sworn, did depose and say that he resides in Syracuse, New York; that he is the Manager - Facilities of the corporation, the corporation described herein and he executed the foregoing instrument on behalf of said corporation, that he represents that he has the authorization to bind the corporation to this Order and that he has signed his name hereto.

Carmaline Lemmon
Notary Public

CARMALINE LEMMON
Notary Public in the State of New York
Qualified in Onondaga County No. 4807918
My Commission Expires June 30, 1992

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: Frances Duva

Title: Executrix

Date: June 21, 1990

STATE OF NEW YORK)
COUNTY OF Orondaga) ss:

On this 21 day of June, 1990, before me personally came Frances Duva, to me known, who being duly sworn, did depose and say that she resides in Orondaga County; that she is the Executrix of the Estate of Peter Duva, described herein and that as Executrix, she executed the foregoing instrument on behalf of the Estate of Peter Duva, that she represents that she has the authorization, as Executrix to bind the Estate of Peter Duva to this Order and that she has signed her name thereto.

Anthony M. D'Erubita
Notary Public

ANTHONY M. D'ERUBITA
Notary Public, State of New York
Qualified in Onon. Co. NO: 4962302
My Commission Expires 7/1/92

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. Miller

Title: PRESIDENT

Date: June 21, 1990

STATE OF NEW YORK)
COUNTY OF Onondaga) ss:

On this 21 day of June, 1990, before me personally came Donald W. Miller, to me known, who being duly sworn, did depose and say that he resides in Onondaga County; that he is the President of the corporation, the corporation described herein and he executed the foregoing instrument on behalf of said corporation, that he represents that he has the authorization to bind the corporation to this Order and that he has signed his name hereto.

Anthony M. D'Erbita
Notary Public

ANTHONY M. D'ERBITA
Notary Public, State of New York
Qualified in Gen. Co. No. 4862202
My Commission Expires 7/1/92