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Consent Order. HW. 734051. 1990-12-21. RIFS Order

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New York State Department of Environmental Conservation
50 Wolf Road, Albany, New York 12233

File 0
RI/FS
Onondaga



Thomas C. Jorling
Commissioner

December 21, 1990

Dale McAllister, Esq.
General Electric Company
Electronics Park/6-112
PO Box 4840
Syracuse, New York 13221-4840

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Syracuse, New York 13202-2791

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Onondaga Plaza
217 South Salina Street
Syracuse, New York 13202

RE: Consent Order for Duva Property, Site No. 7-34051

Dear Counselors:

Enclosed for your records is a copy of the RI/FS Order on Consent which was signed on December 14, 1990 by Edward Sullivan, Deputy Commissioner.

Thank you for your cooperation in this matter.

Very truly yours,

Marianna Wojnas

Marianna Wojnas
Senior Attorney
Division of Environmental
Enforcement
(518) 457-3296

MW:ljd

cc: Charles Branagh (w/enclosure)
(duva1221.mw)

STATE OF NEW YORK:
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

In the Matter of the
Development and Implementation
of a focused Remedial Investigation,
Feasibility Study 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 # A7-0233-90-05

Site No. 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 enforcement of Article 27, Title 13 of the Environmental Conservation Law of the State of New York ("ECL"), entitled "Inactive Hazardous Waste Disposal Sites". This Order is entered into pursuant to the Department's authority under ECL Article 27, Title 13.

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 Duva 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 Exhibit 1.

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 and Respondents agree that the goal of this Order shall be the development and implementation by the Respondents of a focused Remedial Investigation/Feasibility Study, for the Site as attached to this Order as Exhibit II.

9. 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 "II", 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, having considered this matter and being duly advised, IT IS ORDERED THAT:

I. Respondents shall commence the implementation of the Work Plan for a focused Remedial Investigation/Feasibility Study (the "RI/FS Work Plan") previously submitted to the Department within 30 days of receiving written notice of the Department's approval of the Work Plan.

II. In accordance with the time schedule contained in the approved Work Plan, Respondents shall perform the Remedial Investigation and submit the status

reports and other deliverables (as defined in the Work Plan) and the Remedial Investigation Report. During the Remedial Investigation, Respondents 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:

(a) CERCLA,

(b) the NCP then in effect,

(c) in the USEPA draft guidance document entitled "Guidance for Conducting Remedial Investigations and Feasibility Studies Under CERCLA" dated October 1988, and any subsequent revisions to the guidance document then in effect,

(d) appropriate technical and administrative guidelines ("TAGMs") which have been developed as of the time of submission,

(e) applicable or relevant and appropriate requirements ("ARARs"), and the Report shall also identify any additional data that must be collected. The Remedial Investigation shall be prepared and certified by an engineer licensed to practice by the State of New York who may be an employee of the Respondents 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, who shall certify that all activities that comprise the Remedial Investigation were performed in full accordance with the approved Work Plan.

III. 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. The Department shall notify the Respondents in writing of its approval or disapproval of the Report.

If the Department disapproves the Report, it shall so notify the Respondents in writing, and shall state the reasons for its disapproval. Within 30 days after receiving written notice (or such longer time period as is designated by the Department in the written notice) that the Report has been disapproved, the Respondents shall submit a revised Report which addresses and resolves all of the Department's stated reasons for disapproving the first submitted Report.

After receipt of the revised Report, the Department shall notify the Respondents in writing of its approval or disapproval of the revised Report. If the Department disapproves the revised Report, the Respondents shall be deemed to be in violation of this Order. If the Department approves the revised Report, it shall be incorporated into this Order and made an enforceable part hereof.

IV. The Department reserves the right to require a modification and/or an amplification and expansion of the Remedial Investigation and Report by the Respondents if the Department reasonably determines, as a result of reviewing data

generated by the Remedial Investigation or as a result of reviewing any other data or facts, that further work is necessary.

V. Within 45 days after receipt of the Department's approval of the Remedial Investigation Report, the Respondents shall submit a Feasibility Study evaluating on-Site and off-Site remedial actions to eliminate, to the maximum extent practicable, all health and environmental hazards and potential hazards attributable to the Site. The Feasibility Study shall be prepared and certified by an engineer licensed to practice by the State of New York, and approved by the Department, who may be an employee of the Respondents, 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, the NCP then in effect, the USEPA draft guidance document entitled "Guidance for Conducting Remedial Investigations and Feasibility Studies under CERCLA," dated October 1988 and any subsequent revisions thereto, applicable or relevant and appropriate requirements ("ARARs") and appropriate technical and administrative guidelines ("TAGMS").

VI. After receipt of the Feasibility Study, the Department shall determine if the Feasibility Study was prepared in accordance with this Order. The Department shall notify the Respondents in writing of its approval or disapproval of the Feasibility Study.

If the Department disapproves the Feasibility Study, it shall so notify the Respondents in writing, and shall state the reasons for its disapproval. Within 30 days after receiving written notice (or such longer time period as is designated by the Department in the written notice) that the Feasibility Study has been disapproved, the Respondents shall submit a revised Feasibility Study which addresses and resolves all of the Department's stated reasons for disapproving the first submitted Feasibility Study.

After receipt of the revised Feasibility Study, the Department shall notify the Respondents in writing of its approval or disapproval of the revised Feasibility Study. If the Department disapproves the revised Feasibility Study, the Respondents shall be deemed to be in violation of this Order. If the Department approves the revised Feasibility Study it shall be incorporated into this Order and made an enforceable part hereof.

VII. The Department shall have the right to obtain split samples, duplicate samples, or both, of all substances and materials sampled by the Respondents and the Department shall also have the right to take its own samples. The Respondents shall make available to the Department the results of all sampling and/or tests or other data generated by the Respondents with respect to implementation of this Consent Order, and shall submit these results in the status reports required under the Work Plan.

VIII. The Respondents shall provide notice to the Department at least 10 working days in advance of any field activities to be conducted pursuant to this Order.

IX. The Respondents shall obtain whatever permits, easements, rights-of-way, rights-of-entry, approvals or authorizations are necessary to perform Respondents' obligations under this Order. The Respondents shall promptly notify the Department in the event of the Respondents' inability to obtain such authorizations on a timely basis.

X. The Respondents hereby consents to the entry upon the Site or areas in the vicinity of the Site which may be under the control of the Respondents, by any duly designated employee, consultant, contractor or agent of the Department or any State agency for purposes of inspection, sampling and testing and to ensure the Respondents' compliance with this Order.

XI. 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.

XII. 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, provided, however that any Respondent shall immediately notify the Department in writing when it obtains knowledge of any such condition, and requests an extension or modification of the terms of this Order.

XIII. The failure of the Respondents to comply with any term of this Order shall be a violation of this Order and the ECL.

XIV. 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 resources damages as a result of the release of threatened release of hazardous wastes or constituents at or from the Site or areas in the vicinity of the Site; and

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.

E. The Department's right to bring any action or proceeding against the Respondents for the purpose of recovering costs including, but not limited to, direct labor, overhead, travel, analytical costs and contractor costs incurred by the State of New York for negotiating Interim Order on Consent # A7-0025-90-03, Interim Order on Consent # A7-0232-90-05, and this Order, reviewing and revising submittals made pursuant to Interim Order on Consent # A7-0225-90-03, Interim Order on Consent # A7-0232-90-05, and this Order, overseeing activities conducted by the Respondents pursuant to Interim Order on Consent # A7-0225-90-03, Interim Order on Consent # A7-0232-90-05, and this Order, and collecting and analyzing samples taken pursuant to Interim Order on Consent # A7-0225-90-03, Interim Order on Consent # A7-0232-90-05, and this Order.

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

XVI. Nothing contained in this Order shall be construed as barring, adjudicating or in any way affecting any of Respondents' defenses against such claims, actions, proceedings, causes of actions or demands.

XVII. The 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 this Order by the Respondents, their directors, officers, employees, servants, agents, heirs, 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.

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

XIX. If any 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. A copy of such written application shall be delivered or mailed to:

Craig Jackson, P.E.
Chief Technical Support Section
Division of Hazardous Waste Remediation
Department of Environmental Conservation
50 Wolf Road
Albany, New York 12233

XX. Within 30 days after the effective date of this Order, Respondent, Donald W. Miller, Inc. shall file a Declaration of Covenants and Restrictions with the Onondaga County Clerk to give all parties who may acquire any interest in the Site notice of this Order.

XXI. In the event that Respondent Donald W. Miller, Inc. proposes to convey the whole or any part of its ownership interest in the Site during the period of time that this Order is in effect, Respondent Donald W. Miller, Inc. 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.

XXII. 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 shall be made as follows:

1. Division of Environmental Enforcement
New York State Department of
Environmental Conservation
50 Wolf Road
Albany, New York 12233
Attention: David Markell, Esq., Director
2. Division of Hazardous Waste Remediation
New York State Department of
Environmental Conservation
50 Wolf Road
Albany, New York 12233
Attention: Michael J. O'Toole, Jr., P.E., Director
3. Bureau of Environmental Exposure Investigation
New York State Department of Health
2 University Place
Albany, New York 12203
Attention: Ronald Tramontano, Director
4. Division of Environmental Enforcement
Albany Field Unit
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
Regional 7
615 Erie Boulevard West
Syracuse, New York 13204
Attention: William Krichbaum, Director

B. Copies of work plans and reports shall be submitted as follows:

1. Four copies to the Director, Division of Hazardous Waste Remediation.
2. Two copies to the Director, Bureau of Environmental Exposure Investigation.
3. One copy to Division of Environmental Enforcement Albany Field Unit.
4. One copy to the Region 7 Director.

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

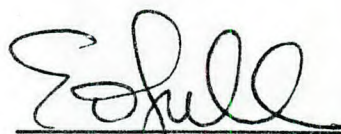
1. Dale McAllister, Esq.
General Electric Company
Electronics Park/6-112
PO Box 4820
Syracuse, New York 13221-4840
2. Doreen A. Simmons, Esq. (for Donald W. Miller, Inc.)
Hancock & Estabrook Esq.
1400 Mony Tower One
Syracuse, New York 13202-2791
3. Herman I. Harding, Esq. (for Estate of Peter Duva)
Goldberg, Harding & Talev
Onondaga Plaza
217 South Salina Street
Syracuse, New York 13202

XXIII. The terms of this Order shall bind the Respondents, their officers, directors, agents, servants, employees, heirs, successors and assigns to the extent their obligations are set forth herein. Nothing herein shall be construed to bind any entity not specifically bound by the specific terms of this Order.

XXIV. The terms hereof shall constitute the complete and entire Order between the Respondents and the Department concerning the focused RI/FS 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 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
December 14, 1990

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



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: Kenneth H. Meashey

Title: Manager, Environment Health and Safety

Date: November 27, 1990

STATE OF NEW YORK)

) s.s.:

COUNTY OF Onondaga)

On this 27th day of November, 1990, before me personally came Kenneth H. Meashey, to me known, who being duly sworn, did depose and say that he resides in Manlius, New York; that he is the Manager, Environment Health and Safety of the General Electric Company corporation, the corporation described herein and that 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

ESTATE OF PETER DUVA

Date: 12/1/90

On this 1 day of December, ¹⁹⁹⁰~~1989~~, before me personally came FRANCES DUVA, to me known, who being duly sworn, did depose and say that she resides in Liverpool NY; 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.

John L. Harding
Notary Public
My Commission Expires
April 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.

DONALD W. MILLER, INC.

By: Donald W. Miller

Title: PRESIDENT

Date: November 28, 1990

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

On this 28th day of November, 1990, before me personally came Donald W. Miller, to me known, who being duly sworn, did depose and say that he resides in Oneida County; that he is the President of the Donald W. Miller Inc., the corporation described herein and that 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.

Carol J. Gifford-Browne
Notary Public

CAROL J. GIFFORD-BROWNE
Notary Public-St. of New York
Qual. In Onon. Co.-No.4881118
My Comm. Exp Dec. 29, 1990.

(duva-3)