

STATE OF NEW YORK
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

In the Matter of the Implementation of a
Settlement and 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:

B & K METALS, INC.,
A7-0346-96-09

formerly known as
OBERDORFER FOUNDRIES, INC.,
as successor-by-merger of
OSWEGO CASTINGS, INC.,

Respondent:
Site # 738033

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 ("ECL"), entitled "Inactive
Hazardous Waste Disposal Sites." This Order is entered into pursuant to the
Department's authority under ECL Article 27, Title 13, and relevant sections of the
State Finance Law.

2. Respondent, B & K Metals, Inc. (formerly known as Oberdorfer Foundries,
Inc.) is the successor-by-merger of Oswego Castings, Inc. and is a corporation
organized and existing under laws of the State of New York, and is doing business in
the State of New York.

Consent, #A7-0252-90-12, for the performance by Respondent of a remedial

7. On July 19, 1993, the Department and Respondent entered into an Order on

the order."

such site, and (ii) to implement such programs within reasonable time limits specified in

waste disposal site remedial program, subject to the approval of the department, at

the disposal of hazardous wastes at such site (i) to develop an inactive hazardous

environment, he may order the owner of such site and/or any person responsible for

inactive hazardous waste disposal site constitute a significant threat to the

Environmental Conservation (the "Commissioner") finds that hazardous wastes at an

6. Pursuant to ECL §27-1313(3)(a), whenever the Commissioner of

and hereby incorporated into this Order as Appendix "A".

near the intersection of Mitchell and Seneca Streets in the City of Oswego, is attached

Sites in New York State, as Site Number 738033. A map of the Site, which is located

listed it as a classification "2" in the Registry of Inactive Hazardous Waste Disposal

hazardous waste disposal site, as that term is defined at ECL §27-1301(2), and has

5. The Department has identified and classified this Site as an inactive

contaminated with polychlorinated biphenyls ("PCBs").

to core sands were disposed of and released at the Site, and certain soils are

4. The Department alleges that hazardous wastes including, but not limited

hereinafter referred to as the "Site".

an industrial die casting business at a facility in Oswego, New York. The facility is

3. For approximately 30 years, from 1956-1986, Oswego Castings, Inc. ran

practical and efficient benefit from Respondent's limited financial resources, expedite

12. Therefore, in furtherance of the Department's obligation to attain the most

the IRM measures referenced in Paragraph Eight herein.

forementioned RI/FS Order on Consent and any future remedial obligations other than

and diminishing assets which prevent it from completing its obligations under the

That disclosure indicates that Respondent is a non-operating corporation with limited

11. Furthermore, Respondent has made financial disclosure to the Department.

closing and site rehabilitation costs agreed to by the parties to the transfer.

sale and re-use is the receipt by Respondent of the proceeds of the sale less legitimate

development and beneficial re-use of the Site. Inherent to the Site's proposed transfer,

transferees fully informed the Department regarding the proposed commercial re-

10. In furtherance of the anticipated transfer, Respondent and the prospective

accordance with the RI/FS Order and the ECL.

notice to the Department regarding a transfer and sale of the Site to third parties in

9. Subsequent to the acceptance of the RI report, Respondent gave formal

in Appendix "C".

undertaking several on-site IRM measures in accordance with that Order, as attached

Respondent in accordance with the above referenced Order. Respondent is also

8. On February 16, 1996, the Department accepted a final RI report from

omitted).

state and federal law (attached and incorporated hereto as Appendix "B", attachments

investigation and feasibility study ("RI/FS") for the site in accordance with applicable

THAT:

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

to conditions at this Site.

or an admission by the Respondent of any law or fact, or the applicability of any law, as

consent to, and compliance with, this Order does not constitute an admission of liability

the issuance and entry of this Order, agrees to be bound by its terms. Respondent's

to the obligations pursuant to this Order, as provided by law, and having consented to

13. The Respondent hereby waives its right to a hearing in this matter related

Program for the Site.

(iv) For the Department to develop and implement an appropriate Remedial

costs in accordance with applicable state law; and,

claims for the recovery and/or reimbursement of lawfully incurred Site related response

thousand dollars (\$100,000.00) in full satisfaction of the Department's past and future

(iii) Respondent to make payment to the Department the sum of one hundred

response costs; and,

future remediation of the Site and/or reimbursement of the Department's site related

(ii) Provide releases as set forth herein from legal liabilities associated with the

the above referenced RI/FS Order except as stated herein;

(i) Terminate Respondent's obligation to perform further work at the Site under

the site, the Department and Respondent agree that the goals of this Order are to:

the environmental remediation of the site and allow the safe and beneficial re-use of

I. Payment by Respondent

Within ten days of the release of escrow monies pursuant to the Purchase

Agreement referenced in Paragraph 10 herein, Respondent will pay to the Department the amount of one hundred thousand dollars (\$100,000.00) in full satisfaction of

Respondent's obligations under the RI/FS Order and of the Department's claim for the reimbursement of past and future Site related response costs as incurred pursuant to applicable state and federal law except as stated herein. Such payment shall be by certified check payable to the Department of Environmental Conservation. Payment shall be sent to the Bureau of Program Management, Division of Environmental

Remediation, New York State Department of Environmental Conservation, 50 Wolf Road, Albany, New York 12233-7010.

II. Upon receipt and acknowledgment of the payment referenced in

Paragraph I herein, then except for the provisions of Paragraphs XIX and XXIV of the RI/FS Order, the Department's acceptance of that payment shall constitute a release for each and every claim, demand, remedy or action whatsoever against Respondent, its present and former directors, officers, employees, agents, affiliates, heirs,

successors and assigns, individually and in their respective capacities, which the

Department has or may have pursuant to Article 27, Title 13 of the ECL,

42 U.S.C. 9601, et. seq., or state common law, relative to or arising from the disposal of hazardous wastes and/or substances at the Site; provided, however, that the

Department specifically reserves all rights concerning, and any such release and

satisfaction shall not extend to, any investigation or remediation the Department deems

necessary due to:

(I) environmental conditions on-site or off-site which are related to the

disposal of hazardous wastes and/or substances at the Site which were unknown to and could not have been reasonably known by the Department at the time of the

Remedial Investigation Report; or

(II) information received, in whole or in part, after the Department's approval of the Remedial Investigation Report, and such unknown environmental conditions or information indicates that the terms of this Order are not reasonably protective of

human health or the environment. The Department shall notify Respondent of such

environmental conditions or information and its basis for determining that the Order is not protective of human health and the environment.

This release shall inure only to the benefit of Respondent, its present and former directors, officers, affiliates, heirs, employees, agents, successors and assigns,

individually and in their respective capacities.

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 present and former directors, officers, employees, agents, affiliates,

heirs, successors and assigns, individually and in their respective capacities.

III. Penalties

Respondent's failure to comply with any term of this Order constitutes a

violation of this Order and the ECL.

IV. Indemnification

The 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 the Respondent, its directors, officers, employees, servants, agents, heirs, successors and/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 agents, representatives or employees.

V. Department Reservation of Rights

A. Nothing contained in this Order shall be construed as barring, diminishing, adjudicating, or in any way affecting any of the Department's civil, criminal or administrative rights or authorities, except as stated herein.

B. Nothing contained in this Order shall be construed to prohibit the Commissioner or his duly authorized representative from exercising any summary abatement powers.

VI. Miscellaneous

A. Respondent and Respondent's officers, directors, agents, servants, employees, successors, and assigns shall be bound by this Order. Any change in ownership or corporate status of Respondent including, but not limited to, any transfer of assets or real or personal property shall in no way alter Respondent's

Commissioner setting forth reasonable grounds for the relief sought. Copies of such

Respondent shall make timely written application, signed by Respondent, to the

2. If Respondent desires that any provision of this Order be changed,

required by this Order.

Respondent of Respondent's obligation to obtain such formal approvals as may be

plan, specification, schedule, or any other submittal shall be construed as relieving guidance, suggestion, or comment by the Department regarding any report, proposal,

made in writing and subscribed by the party to be bound. No informal advice,

agreement purporting to modify or vary any term of this Order shall be binding unless

the terms of the settlement outlined herein. No term, condition, understanding, or

concerning the Site's remediation as an Inactive Hazardous Waste Disposal Site and

IX. 1. The terms of this Order constitute the complete and entire Order

of the provisions of this Order.

of reference only and shall be disregarded in the construction and interpretation of any

VIII. The section headings set forth in this Order are included for convenience

otherwise specified.

VII. All references to "days" in this Order are to calendar days unless

environmental pilot projects of the State University of New York (at Oswego).

B. The Department shall cooperate to the extent practicable with

Order in the performance of their designated duties on behalf of Respondent.

servants, and agents shall be obliged to comply with the relevant provisions of this

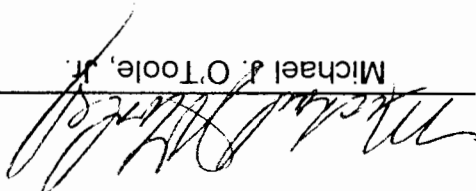
responsibilities under this Order. Respondent's officers, directors, employees,

written application shall be delivered or mailed to the Field Unit Leader, Central Field Unit, 50 Wolf Road, Albany, New York 12233-5500 and to the Bureau Chief, Western Remedial Bureau, New York State Department of Environmental Conservation, 50 Wolf Road, Albany, New York 12233-7010.

X. The effective date of this Order is the date the Commissioner or his designee signs it.

DATED: Albany, New York
10/7
1996

MICHAEL D. ZAGATA
Commissioner
New York State Department of
Environmental Conservation

By: 
Michael J. O'Toole, Jr.

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.

By:

Kevin Digney
KEVIN DIGNEY

Title:

President

Date:

9-26-96

STATE OF NEW YORK)

(s.s.:

COUNTY OF)

On this 26th day of September, 1996, before me personally came Kevin Digney, to me known, who being

duly sworn, did depose and say that he resides in

Syracuse, New York; that he is the

President of the Respondent / B&K Metals, 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 corporation seal; that it was so affixed by the order of the Board of Directors of said corporation and that he signed his/her name thereto by like order.

DOREEN A. SIMMONS

Notary Public, the St. of New York
Qualified Onon. Co. No. 4608342
My Commission Exp. Mar. 30, 97

Notary Public

STATE OF NEW YORK:
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

In the Matter of the
Development and Implementation of a
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 # A7-0252-90-12
SITE # 738033
B & K METALS, INC.,
formerly known as
OBERDORFER FOUNDRIES, INC.,
as successor-by-merger of
OSWEGO CASTINGS, INC.,
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 ("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, B & K Metals, Inc. (formerly known as Oberdorfer Foundries, Inc.) is the successor-by-merger of Oswego Castings, Inc. and is a corporation organized and existing under laws of the State of New York, and doing business in the State of New York.
3. For approximately 30 years, from 1956-1986, Oswego Castings, Inc.

ran an industrial die casting business at a facility in Oswego, New York. The facility is hereinafter referred to as the "Site."

4. The Department alleges that buildings, core sands disposed of at the

Site, and certain soils are contaminated with polychlorinated biphenyls ("PCBs").

5. The Department has identified and classified this Site as an inactive

hazardous waste disposal site, as that term is defined at ECL § 27-1301(2), and

has listed it as a classification "2" in the Registry of Inactive Hazardous Waste

Disposal Sites in New York State, as Site Number 738033. A map of the Site,

which is located near the intersection of Mitchell and Seneca Streets in the City

of Oswego, is attached and hereby incorporated into this Order as Appendix "A."

6. 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."

7. The Department has approved the third January 1992 draft of

Respondent's work plan entitled, "Remedial Investigation/Feasibility Study Work

Plan, Oswego Castings Site" (the "Work Plan"). The approved draft was received

by the Department on February 16, 1993. The Work Plan is attached hereto as

quality control personnel and data validators which perform the technical,

III. All consultants, contractors, laboratories, quality assurance,

hazardous waste, as defined at ECL § 27-1301(1).

11. As used herein, the term "hazardous waste" shall mean

Site.

Site contamination resulting from the alleged disposal of hazardous waste at the

1. All activities and submissions required by this Order shall address

ORDERED THAT:

MON, having considered this matter and being duly advised, **IT IS**

or fact, or the applicability of any law, as to conditions at this Site.

constitute an admission of liability or an admission by ~~any~~ Respondent of any law

by its terms. Respondent's consent to, and compliance with, this Order does not

and having consented to the issuance and entry of this Order, agrees to be bound

related to the work to be performed pursuant to this Order, as provided by law,

9. The Respondent hereby waives its right to a hearing in this matter

Site.

as part of the Feasibility Study, of remedial actions for the buildings located at the

hereto as Appendix "B" and incorporated into this Order; and (ii) the evaluation,

Investigation/Feasibility Study ("RI/FS") as set forth in the work plan attached

shall be (i) the implementation by Respondent of the Remedial

8. The Department and Respondent agree that the goal of this Order

Appendix "B" and incorporated into this Order.

engineering and analytical obligations required by this Order shall be professionals acceptable to the Department. The experience, capabilities and qualifications of the firms or individuals selected by the Respondent shall be submitted to the Department within sixty days after the effective date of this Order, or within 15 days of the selection of the proposed consultant, whichever is later.

IV. The Department shall review each of the submittals made by the Respondent pursuant to this Order, and shall notify the Respondent in writing of its approval or disapproval of the submittal. All approved submittals shall be attached to this Order and shall become an enforceable part of this Order.

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

After receipt of the revised submittal, the Department shall notify the Respondent in writing of its approval or disapproval of the revised submittal. If the Department disapproves the revised submittal, the Respondent shall be deemed to be in violation of this Order unless, within twenty days of receipt of the Department's notice of disapproval, Respondent submits the written request necessary to invoke the dispute resolution provision set forth in Paragraph

If the Department approves the revised submittal, it shall be attached to this Order, and shall become an enforceable part hereof.

IV-A. If, within twenty days of Respondent's receipt of the Department's notice of disapproval described in Paragraph IV or within twenty days of Respondent's receipt of the Department's additional work notice described in Paragraph VII, Respondent has submitted a written request to the Department for dispute resolution, Respondent and the Director of the Division of Hazardous Waste Remediation ("the Director"), or others as mutually agreed to between Respondent and the Department, shall meet to discuss the Department's objections. Respondent must be available to meet immediately after requesting dispute resolution. At the meeting, Respondent shall be given an opportunity to present its responses to the Department's objections. The Department shall notify Respondent, in writing, of its specific comments, as modified, as soon as practicable after the meeting.

Upon receipt of such notification, Respondent shall revise the submittal in accordance with the Department's specific comments, as modified, and shall submit a revised submittal. The period of time for revision shall be determined during the meeting with the Director.

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

Respondent shall be in violation of this Order and the ECL.

Respondent may, within 30 days of the receipt of the Department's disapproval of the Respondent's revised submittal after the above referenced Director's meeting, initiate judicial review of such determination pursuant to Article 78 of the Civil Practice Law and Rules of the State of New York.

V. Prior to or within 90 days after the effective date of this Order, Respondent shall commence implementation of the RI/FS for the Site in accordance with the Work Plan.

In accordance with the time schedule contained in the Work Plan, Respondent shall perform the Remedial Investigation and submit a Remedial Investigation Report ("the Report").

The Report shall include all elements of a RI/FS as set forth in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. Sections 9601 et seq., as amended ("CERCLA"), the National Contingency Plan then in effect ("NCP"), 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, and appropriate technical and administrative guidelines which have been developed as of the time of submission. The Report shall include all data generated and all other information obtained during the Remedial Investigation, provide all the assessments and evaluations set forth in

CERCLA, the NCP then in effect, and the guidance documents referred to above, and 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 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, who shall certify that all activities that comprise the Remedial Investigation were performed in full accordance with the approved Work Plan.

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 all applicable provisions of this Order, including but not limited to Paragraph IV.

VII. The Department reserves the right to require a modification and/or an amplification and expansion of the Remedial Investigation and Report by the Respondent (the "Additional Work") if the Department 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.

Respondent shall proceed with the Additional Work unless, within 20 days after Respondent's receipt of the Department's notice that the Additional Work is required, Respondent objects to the Department in writing and invokes the dispute resolution provisions set forth in Paragraph IV-A.

VIII. Within 45 days after receipt of the Department's approval of

including, but not limited to, direct labor, overhead, travel, analytical costs and of money which shall represent reimbursement for the Department's expenses

X. The Respondent shall periodically pay to the Department, a sum

shall submit any necessary revisions.

writing of its approval or disapproval of the Feasibility Study, and the Respondent provided for in paragraph IV, the Department shall notify the Respondent in determine if the Feasibility Study was prepared in accordance with this Order. As

IX. After receipt of the Feasibility Study, the Department shall

revisions thereto, and appropriate technical and administrative guidelines.

Feasibility Studies under CERCLA," dated October 1988, and any subsequent document entitled "Guidance for Conducting Remedial Investigations and consistent with CERCLA, the NCP then in effect, the USEPA draft guidance

The Feasibility Study shall be performed in a manner that is

Education Law.

offer engineering services in accordance with Article 145 of the New York State of the Respondent, or an individual or member of a firm which is authorized to State of New York, and approved by the Department, who may be an employee Study shall be prepared and certified by an engineer licensed to practice by the attributable to the Site, including the buildings located at the Site. The Feasibility extent practicable, all health and environmental hazards and potential hazards evaluating on-Site and off-Site remedial actions to eliminate, to the maximum the Remedial Investigation Report, the Respondent shall submit a Feasibility Study

contractor costs incurred by the State of New York for negotiating this Order, reviewing and revising submittals made pursuant to this Order, overseeing activities conducted by the Respondent pursuant to this Order, and collecting and analyzing samples taken pursuant to this Order. Payments shall be made quarterly, within 30 days after receipt of an itemized invoice from the Department. Itemization of costs shall include an accounting of personal services indicating the employee name, title, biweekly salary, and time spent (in hours) on the project during the billing period, as identified by an assigned time and activity code. This information shall be documented by the Department's quarterly reports of Direct Personal Service. The Department's approved fringe benefit and indirect cost rates shall be applied. Non-personal service costs shall be summarized by category of expense (e.g., supplies and materials, travel, contractual) and shall be documented by the New York State Office of the State Comptroller's quarterly expenditure reports. Such payment shall be by certified check payable to the Department of Environmental Conservation. Payment shall be sent to the Bureau of Program Management, Division of Hazardous Waste Remediation, NYSDDEC, 50 Wolf Road, Albany, New York 12233-7010. Notwithstanding the foregoing, the Respondent shall not be obligated to reimburse pursuant to this paragraph, costs incurred by the State in excess of \$20,000.00 (twenty thousand). The State and Respondent reserve all rights, claims and defenses with respect to any responses or oversight costs in excess of the aforementioned sum.

XIV. The Respondent hereby consents to the entry upon the Site or areas in the vicinity of the Site which may be under the control of the Respondent, by any duly designated employee, consultant, contractor or agent of the Department or any State agency for purposes of inspection, sampling and testing to ensure the Respondent's compliance with this Order. During periods when no agent or representative of Respondent is scheduled to be on-Site, the

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

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

XI. The Department shall have the right to obtain split samples, duplicate samples, or both, of all substances and materials sampled by the Respondent and the Department shall also have the right to take its own samples. In accordance with the time frames set forth in the Work Plan, the Respondent shall submit to the Department the results of any and all analytical data and reports generated by the Respondent with respect to implementation of this Order, and shall submit these results in the status reports required under the Work Plan.

Department shall give Respondent or its attorney 48 hours notice of the Department's intent to enter the Site.

XV. The 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. An act of God is defined as an unforeseeable disaster arising exclusively from natural causes which the exercise of ordinary human prudence could not have prevented. The Respondent shall, within 5 days, notify the Department in writing when it obtains knowledge of any such condition, and shall include in such notice the measures taken, and to be taken, by the Respondent to prevent or minimize any delays, and request an appropriate extension or modification of this Order.

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

XVII. 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 Respondent, its directors, officers, employees, servants, agents, successors and assigns;

B. The Department's right to enforce this Order against the Respondent, its directors, officers, employees, servants, agents, successors and assigns in the event that the Respondent shall fail to satisfy any of the terms

hereof;

C. The Department's right to bring any action or proceeding against the Respondent, its directors, officers, employees, agents, successors and assigns with respect to claims for natural resources 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 Respondent, its directors, officers, employees, agents, successors and assigns with respect to hazardous wastes that are present at the Site or that have migrated from the Site; and

E. The Department's right to gather information and enter and inspect property and premises.

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

XVIII. Nothing contained in this Order shall be construed to prohibit the Commissioner or his duly authorized representative from exercising any summary abatement powers.

XIX. The 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 the

Respondent, its directors, officers, employees, servants, agents, heirs, successors and/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 agents, representatives, or employees.

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

XXI. If the 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. Copies of such written application shall be delivered or mailed to:

Robert Schick, P.E.
Division of Hazardous Waste Remediation
Department of Environmental Conservation
50 Wolf Road
Albany, New York 12233-7010;

and

Dolores A. Tuohy, Esq.
Division of Environmental Enforcement
New York State Department of
Environmental Conservation
50 Wolf Road
Albany, New York 12233-5501

XXII. Within 30 days after the effective date of this Order,

Respondent shall file a Declaration of Covenants and Restrictions with the ~~Oswego~~ ~~Oswego~~ ~~Oswego~~ County Clerk to give all parties who may acquire any interest in the

Site notice of this Order.

XXIII. In the event that 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.

XXIV. Before the effective date of the ROD, Respondent may propose, on its own initiative or upon the request of the Department, interim remedial measures ("IRMs") for the Site on an as-needed basis. In proposing each IRM, Respondent shall submit to the Department a work plan which includes time frames for the completion of the IRM. Upon the Department's determination that the proposal is an appropriate interim remedial measure and its approval of such work plan, the work plan shall be incorporated into and become an enforceable part of this Order. Respondent shall then carry out such IRM in accordance with the requirements of the approved work plan, this Order and applicable provisions of 6 NYCRR Part 375.

XXV. 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 Respondent shall be made as

follows:

1. Division of Hazardous Waste Remediation
New York State Department of
Environmental Conservation

Conservation

follows:

2. Bureau of Environmental Exposure Investigation
NYS Department of Health
2 University Place
Albany, New York 12203
Attention: Director
 3. Division of Environmental Enforcement
Albany Field Unit
New York State Department of Environmental
Conservation
50 Wolf Road
Albany, New York 12233
Attention: Dolores A. Tuohy, Esq.
 4. New York State Department of Environmental
Region 7
615 Erie Boulevard West
Syracuse, New York 13204
Attention: Charles Branagh, P.E.,
Regional Hazardous Waste Remediation Engineer
Copies of work plans and reports shall be submitted as follows:
1. One copy 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. Four copies (one unbound) to the Region 7
Hazardous Waste Remediation Engineer.
- C. Communication to be made from the Department to the
Respondent shall be made as follows:

B & K Metals, Inc.
P. O. Box 5323
Syracuse, New York 13220
Attention: Kevin Digney

and

Doreen A. Simmons, Esq.
Hancock & Estabrook
P. O. Box 4976
1500 MONY Tower I
Syracuse, New York 13221-4976

D. The Department and the Respondent respectively reserve the right to designate additional or different addressees for communication or written notice to the other.

XXVI. The Respondent, its officers, directors, agents, servants, employees, heirs, successors and assigns shall be bound by this Order.

XXVII. The terms hereof shall constitute the complete and entire Order

between the Respondent and the Department concerning the 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 submissions shall be construed as relieving the Respondent of its obligations to obtain such formal approvals as may be required by this Order.

DATED: *Albany, New York*
July 19, 1993

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

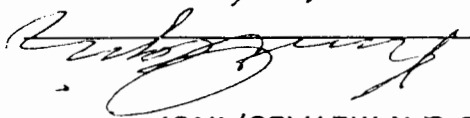
Ann Hill DeBarbieri
Ann Hill DeBarbieri
Deputy Commissioner

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 the provisions, terms and conditions contained in this Order.

B & K METALS, INC.

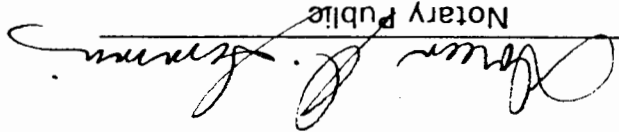
By:


Title: President

Date: _____

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

On this 24th day of May, 1993, before me personally came Kevin D. Bigney, to me known, who being duly sworn, did depose and say that he resides in Ontario County; that he is the President of the B&K Metals, Inc. 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.


Notary Public

DOREEN A. SIMMONS
Notary Public, 44 St. New York
Qualification: 6,8342
My Commission expires: 03, 95

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