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September 14, 1990

VIA FEDERAL EXPRESS

Carl A. Steinbrenner
Bausch & Lomb
One Lincoln First Square
P.O. Box 54
Rochester, New York 14601

Re: Bausch & Lomb Frame Center Inactive Hazardous Waste
Site No. 828061, Signed RI/FS Consent Order

Dear Mr. Steinbrenner:

I enclose a signed, final copy of the Consent Order with the map and the approved Work Plan for the RI/FS for the above-referenced site. The terms and provisions of this Order were developed to address the specific circumstances of this particular site. Please contact me if any questions arise related to this Order.

Very truly yours,

Cheryl A. Peterson
Attorney
Division of Environmental
Enforcement

CAP/jab
A:P21BAUSH

cc: w/encl. (order only)
R. Hall - Albany
R. Tramontano - DOH, Albany
M. O'Toole - Albany
DEE Field Unit - Albany
DEE Field Unit - White Plains

M. Khalil - Region 8
W. Mugden - EPA Reg II

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HAZ. WASTE REM.
D.E.C. REG. #8

STATE OF NEW YORK : DEPARTMENT OF ENVIRONMENTAL CONSERVATION
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In the Matter of the Development and
Implementation of A Remedial Investigation and
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 (the "ECL") by:

ORDER
ON
CONSENT

BAUSCH & LOMB INCORPORATED

RESPONDENT

Site I.D. #828061
Index #B8-0173-87-02

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WHEREAS:

1. The New York State Department of Environmental Conservation (the "Department") is responsible for the enforcement of Article 27, Title 13 of the ECL entitled "Inactive Hazardous Waste Disposal Sites". This Order is entered into under authority of ECL §§27-1301 et seq. and 71-2705(1).

2. Respondent, Bausch & Lomb, Incorporated, a corporation organized and existing under the laws of the State of New York, is doing business in the State of New York in that Respondent owns and operates an industrial facility known as the Bausch & Lomb Frame Center (the "Site") located at 465 Paul Road in the Town of Chili, Monroe County, New York, a map of which is attached to and incorporated into this Order as Appendix "A".

3. Previous testing performed by Respondent at the Site has indicated the presence of solvents, acids and other hazardous waste or hazardous waste constituents ("hazardous

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waste") which the Department alleges exceed applicable groundwater standards.

4. The Site constitutes an inactive hazardous waste disposal site, as that term is defined in ECL Section 27-1301(2) and has been listed in the Registry of Inactive Hazardous Waste Disposal Sites in New York as Site Number 828061, under Classification 2.

5. Pursuant to ECL Section 27-1313(3)(a), the Commissioner of Environmental Conservation (the "Commissioner") "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".

6. Respondent is willing to cooperate reasonably with the Department by planning and conducting, at Respondent's expense, a Remedial Investigation/Feasibility Study ("RI/FS") of the Site. In furtherance of such willingness, Respondent has developed and submitted to the Department a detailed work plan for an RI/FS for the Site (the "Work Plan"). Such Work Plan, which has been approved by the Department is attached to and incorporated into this Order as Appendix "B".

7. The Department and Respondent acknowledge that the goal of this Order shall be that the Respondent undertake and



complete the RI/FS for the Site as contained in the Work Plan.

8. Respondent consents to the issuance and entry of this Order, waives the right to a hearing with respect to the entry of this Order and agrees to be bound by the terms herein. Neither Respondent's consent to this Order, nor the contents or scope of the Work Plan is intended to be, nor shall they be construed as, an admission of liability or obligation owed by Respondent to the Department or any other person or party, except for the obligation to comply with this Order.

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

I. Within forty-five (45) days of the effective date of this Order, Respondent shall commence the Remedial Investigation ("RI") as set forth in the Work Plan subject to oversight by the Department. Department oversight shall be in accordance with paragraphs X, XI and XII hereof. The Department must approve any modifications or revisions to the Work Plan. Respondent shall complete the RI in accordance with the schedule contained in the Work Plan.

II. Any modifications or revisions submitted for Departmental approval shall be prepared, designed and implemented in accordance with Requisite Technology. As used in this Order, Requisite Technology means engineering, scientific and construction principles and practices, which (a) are technologically feasible, and (b) will cost

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effectively identify, mitigate and/or eliminate, as appropriate, any significant threat to health or the environment posed by the disposal of hazardous wastes at the Site. The Department will not withhold approval of any modifications or revisions which are in accordance with Requisite Technology.

The failure of Respondent to submit or undertake the Work Plan or to submit modifications or undertake submitted modifications or revisions in accordance with Requisite Technology, shall constitute a default and a failure to perform an obligation under this Order and under the ECL §71-2705. Any modifications or revisions submitted in addition to Appendix "B" shall be in writing, approved by the Department, and incorporated into this Order as Appendix "C".

III. As used herein, "hazardous wastes" shall mean hazardous wastes as defined in ECL §27-1301(1), 6 NYCRR Part 371, and any hazardous constituents or toxic degradation products of such wastes.

IV. In accordance with the schedule contained in the Work Plan, Respondent shall submit to the Department an RI report (the "Report"), founded upon its performance of the RI in accordance with the Work Plan. The Report shall include all relevant data generated and all other relevant information obtained during the RI and shall provide such assessments and evaluations required pursuant to the Comprehensive Environmental Response, Compensation and



Liability Act of 1980, 42 U.S.C. Sections 9601 et seq., as amended ("CERCLA"), the current National Contingency Plan ("NCP") and the USEPA interim final guidance document entitled "Guidance for Conducting Remedial Investigations and Feasibility Studies under CERCLA", dated October 1988, and shall identify any additional data that must be collected. The EPA guidance document shall be applied in a manner reflecting reasonable technical considerations, and they shall be applied in a manner reflecting the specific circumstances of the site.

V. The Department reserves the right to request a modification and/or amplification and expansion of the RI and Report by Respondent to address specific areas if further investigation is necessary, as a result of reviewing the Report or data generated by the RI or as a result of reviewing other data or facts.

VI. Within sixty (60) days after its receipt of the Report, the Department shall determine if the RI was conducted, and the Report prepared in accordance with the terms of this Order and the Work Plan and shall provide written notification to Respondent of its approval or disapproval of the Report.

If the Department disapproves the Report, the Department shall notify Respondent in writing of the Department's objections in sufficient detail to allow the Respondent to remedy any of the alleged defects. Within sixty days after its receipt of notice of disapproval,

Respondent shall either (a) revise the Report and/or, if necessary, re-perform or supplement the RI in accordance with the terms of this Order, and within thirty days after its completion of any supplemental work, submit to the Department a Report which has been revised in accordance with the Department's objections (the "Revised Report"), or (b) notify the Department in writing that it believes that the Report meets the requirements of this Order.

Within 60 days after its receipt of the Revised Report, if any, the Department shall determine if the Revised Report is in accordance with the terms of this Order and the elements of the Work Plan and shall provide written notification to Respondent of its approval or disapproval of the Revised Report.

If the Department disapproves the Revised Report, or if Respondent elects not to submit a Revised Report following receipt of any Department objections, the Department shall have the right to consider the Respondent to be in default of this Order for having failed to submit an approvable Report and/or conduct the RI in accordance with the terms of the Work Plan and this Order; without prejudice, however, to the Respondent's right to contest any allegation that it has violated this Order, and without prejudice to any and all legal rights and remedies otherwise available to Respondent and to the Department.

The Report or the Revised Report, whichever is approved by the Department, shall be attached to and incorporated



into this Order as Appendix "D", (the "Approved Report").

VII. In accordance with the schedule contained in the Work Plan, Respondent shall submit to the Department the Feasibility Study (the "FS") 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 FS shall be performed in a manner that is consistent with CERCLA as amended, the current NCP and the USEPA interim final document "Guidance for Conducting Remedial Investigations and Feasibility Studies under CERCLA", dated October 1988. The EPA guidance document shall be applied in a manner reflecting reasonable technical considerations, and they shall be applied in a manner reflecting the specific circumstances of the site.

VIII. Within sixty (60) days after its receipt of the FS, the Department shall determine if the FS was prepared in accordance with the terms of this Order, and shall provide written notification of its approval or disapproval.

If the Department disapproves the FS, the Department shall notify Respondent in writing of the Department's objections in sufficient detail to allow the Respondent to remedy any of the alleged defects. Within forty-five days after its receipt of notice of disapproval, Respondent shall either revise the FS and submit to the Department a FS which has been revised in accordance with the Department's objections (the "Revised FS"), or notify

the Department in writing that it believes that the FS meets all the requirements of this Order.

Within forty-five (45) days after its receipt of the Revised FS, if any, the Department shall determine if the Revised FS is in accordance with the terms of this Order, and shall provide written notification to Respondent of its approval or disapproval of the Revised FS.

If the Department disapproves the Revised FS, or if the Respondent elects not to submit a Revised FS following receipt of any Department objections, the Department shall have the right to consider Respondent to be in default of this Order for having failed to submit an approvable FS in accordance with the terms of the Work Plan and this Order, without prejudice, however, to the Respondent's right to contest any allegation that it has violated this Order, and without prejudice to any and all legal rights and remedies otherwise available to Respondent and to the Department.

The FS or the Revised FS, whichever is approved by the Department, shall be attached to and incorporated into this Order as Appendix "E" (the "Approved FS").

IX. Respondent and the Department shall cooperate in the preparation and implementation of a Citizen Participation Plan for the Site.

X. The Department shall have the right to obtain "split samples" or "duplicate samples", at the Department's option, of all substances and materials sampled by



Respondent pursuant to this Order.

XI. Respondent and the Department shall mutually agree on an appropriate date for the start of any field work, including, but not limited to, excavating, drilling or sampling to be conducted pursuant to the terms of this Order, but in no case shall such activities be scheduled fewer than 10 working days in advance of such activities.

XII. In connection with DEC oversight of field activities undertaken pursuant to this Consent Order and in accordance with paragraphs X and XI herein, Respondent 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 during normal business hours which may be under the control of Respondent for inspection purposes and for the purpose of making or causing to be made such sampling and tests as the Department deems necessary, and for ascertaining Respondent's compliance with the provisions of this Agreement. Such Department representative shall identify himself to Respondent's security or reception personnel, shall comply with Respondent's established security procedures for all plant visitors, and shall comply with the Department's established safety procedures for any such inspections. In the event that Respondent conducts any acts of investigation or construction outside of normal business



hours, representatives of the Department shall have access to the Site, and any necessary areas in the vicinity of the Site as described above, during all times when such investigation or construction shall occur.

XIII. Respondent has retained Blasland & Bouck Engineers, P.C., an engineering firm licensed to practice engineering in New York to perform the RI/FS required by this Order. The engineering firm shall certify after each phase that the RI and the FS were performed and completed in accordance with the Order on Consent and the Work Plan. The analytical obligation shall be performed by OBG Laboratories, Inc. or a laboratory technically acceptable to the Department. Respondent has submitted as part of Appendix "B" a health and safety plan for the protection of persons at and in the vicinity of the Site during the performance of the RI which was prepared in accordance with 29 C.F.R. Section 1910 by a certified health and safety professional. Respondent has also submitted as part of Appendix "B" a Quality Assurance/Quality Control plan.

XIV. Respondent shall not suffer any penalty under this Order, or be subject to any proceedings or actions, if it cannot comply with any requirements hereof because of an act of God, war, riot, strike, catastrophe or other condition as to which negligence or willful misconduct on the part of Respondent was not the proximate cause, provided, however, that Respondent shall immediately notify the Department in



writing when it obtains knowledge of any such condition and requests an appropriate extension or modification of the provisions hereof.

XV. Respondent shall use its best efforts to obtain any permits, approvals, or authorizations which are necessary in order to perform its obligations under this Order. Respondent shall promptly notify the Department in the event of its inability to obtain such authorizations on a timely basis. In the event Respondent is unable to obtain the necessary authorizations required to perform the RI, the Department shall, consistent with its legal authority, assist in obtaining all such authorizations Respondent was unable to obtain.

XVI. A. Within ninety (90) days after approval by the Department of the FS or after receipt of an Accounting from the Department, whichever is later, Respondent shall pay (if no objection in writing is made pursuant to subpart B hereof) to the Department a sum of money which represents reimbursement of the reasonable administrative costs incurred by the Department for its activities in association with the RI/FS. In no event shall such payment exceed \$10,000. Costs shall include, but not be limited to, reasonable costs incurred for direct and indirect labor, overhead, travel, and any analytical costs incurred by the State of New York for negotiating this Order, reviewing and revising submittals made pursuant to this Order, overseeing activities conducted pursuant to this Order, and collecting and analyzing samples.

B. A detailed accounting of such administrative costs shall be prepared by the Department and transmitted to the Respondents at the time the Department approves the FS or the Revised FS and shall be attached to and incorporated into this Order as Appendix "F", the ("Accounting"). Respondent shall have sixty (60) days to review the Accounting and provide the Department with written notice of any objections. Any portion not objected to, shall be paid in accordance with subparagraph "A" above by certified check payable to the Department of Environmental Conservation which the Department has responsibility for paying into the Hazardous Waste Remedial Fund established under Section 97-b of the State Finance Law. Payment shall be sent to the Director, Division of Environmental Enforcement, N.Y.S. D.E.C., 50 Wolf Road, Albany, New York 12233. Any dispute regarding the administrative costs shall be resolved by negotiation between the parties without prejudice to any other rights and remedies of the parties.

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

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

b. the Department's right to enforce this Order against Respondent, its directors, officers, employees,

servants, agents, successors and assigns in the event that Respondent shall fail to satisfy any of the terms hereof;

c. the Department's right to bring any action or proceeding against Respondent, its directors, officers, employees, servants, agents, successors and assigns with respect to areas or resources that may have been affected or contaminated 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, including but not limited to claims for natural resources damages (provided, however, this sub-paragraph is expressly subject to subparagraph "e" of this Article); and

d. the Department's right to bring any action or proceeding against any responsible party to compel implementation of an inactive hazardous waste disposal site remedial program for the Site, and to obtain recovery of its costs in connection with the Site, (provided however, this sub-paragraph is expressly subject to sub-paragraph "e" of this Article);

e. as to the hazardous waste associated with the site and as to Respondent's performance of the RI/FS including the commitment to pay to the Department administrative costs referred to in paragraph XVI of this Order, the Department agrees not to seek penalties associated with ECL Title 13 or to commence any legal action or proceeding to require ECL Title 13 investigations or feasibility studies or remediation or payment of



administrative costs, except as outlined in paragraph XVIII, against Respondent, its subsidiaries and affiliates, and their directors, officers, employees, servants, agents, successors and assigns, while Respondent is performing the RI/FS so long as Respondent is in compliance with the terms of this Order; however the Department reserves its rights to pursue any penalties or legal action related to hazardous waste associated with the site after the Respondent has fulfilled its obligations for the RI/FS pursuant to this Order or if Respondent is in violation of the terms of this Order. The Respondent agrees to toll the statute of limitations for actions or penalties affected by this sub-paragraph for the time period beginning with the final signature date of this Order until sixty days after the Respondent has fulfilled its obligations pursuant to this Order or until sixty days after a dispute exists under paragraphs VI and VIII of this Order and either party sends written notice to the other that further informal discussion to resolve said dispute would not be beneficial or sixty days after Respondent is in violation of the terms of this Order; and

f. nothing contained in this Order shall be construed as barring, diminishing, adjudicating or in any way affecting Respondent's defenses, actions, proceedings, causes of actions or demands arising out of its activities at the Site with the exception as stated in paragraph 8 of this Order.



XVIII. 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, based upon information concerning environmental or health issues which may be discovered subsequent to the effective date of this Order.

XIX. With the exception of administrative costs referred to in paragraph XVI of this Order, 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 Respondent's conduct in the fulfillment or attempted fulfillment of this Order by Respondent, its directors, officers, employees, servants, agents, successors or assigns. Respondent does not assume liability for the negligent or intentionally tortious acts of the Department, the State of New York, and their representatives and employees.

XX. The effective date of this Order shall be the date it is received by the Respondent after the Order has been signed by the Commissioner or his designee and mailed to Respondent by certified mail, return receipt requested..

XXI. If, for any reason, Respondent desires that any terms of this Order be changed, Respondent shall make timely written application therefore to the Commissioner setting forth reasonable grounds for the relief sought.



XXII. Respondent agrees, in the event that Respondent proposes to convey the whole or any part of its ownership interest of the Site, to file a Declaration of Covenants and Restrictions with the real property records of the Monroe County Clerk's Office, for the purpose of providing notice of this Order to all potential purchasers of any portion of the Site. Said Declaration must indicate that any successor in title to any portion of the Site may be responsible for implementing the provisions of this Order. A certified copy of said filing shall be provided to the Department.

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 30 days prior to the consummation of such proposed conveyance, notify the Department in writing of the identity of the transferee and of the nature and date of the proposed conveyance. In advance of such proposed conveyance, Respondent shall notify the transferee in writing, with a copy to the Department, of the applicability of this Order.

XXIV. Respondent's obligations under this Order shall terminate after it has fulfilled its obligations pursuant paragraphs VI, VIII and XVI of this Order, and the Department has approved the RI/FS reports or until a court has ordered otherwise.

XXV. All communication required hereby to be made between the Department and Respondent shall be made in writing and transmitted by United States Postal Service

return receipt requested, by overnight delivery, or hand delivered to the address listed below. All reports and submissions herein required shall be submitted in duplicate to the following addresses:

A. Department

New York State Department of
Environmental Conservation
Division of Environmental Enforcement
600 Delaware Avenue
Buffalo, New York 14202-1073

New York State Department of
Environmental Conservation
Division of Hazardous Waste Remediation
50 Wolf Road
Albany, New York 12233-0001

New York State Department of
Environmental Conservation
6274 East Avon-Lima Road
Avon, New York 14414-0057

New York State Department of Health
Bureau of Environmental Exposure Investigation
2 University Place
Albany, New York 12237

B. Respondent

Vice President and General Counsel
Bausch & Lomb Incorporated
One Lincoln First Square
Rochester, New York 14601-0054

Director of Corporate Administrative Services
Bausch & Lomb Incorporated
1400 North Goodman Street
Rochester, New York 14692

XXVI. The terms of this Order shall be deemed to bind Respondent, its officers, directors, agents, servants, employees, successors and assigns.

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

XXVIII. The terms hereof shall constitute the complete and entire Order between Respondent and the Department concerning the Site. No terms, conditions, understandings or agreements purporting to modify or vary the terms hereof shall be binding unless made in writing and subscribed by the party to be bound. No informal advice, guidance, suggestions or comments by the Department regarding reports, proposals, plans, specifications, schedules or any other writing submitted by Respondent shall be construed as relieving Respondent of its obligations to obtain such formal approvals as may be required by this Order.

DATED: SEP 10 1990
Albany, New York

EDWARD O. SULLIVAN
Deputy Commissioner
New York State Department of
Environmental Conservation

Edward O. Sullivan

CONSENT BY RESPONDENT

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

BAUSCH & LOMB, INCORPORATED

BY: *Robert J. Palmisano*

TITLE: Vice President and
President, Eyewear Division
Robert J. Palmisano
(Type Name of Signer)

DATE: August 16, 1990

State of New York)
County of) s.s.:
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On this 16th day of August, 1990,
before me personally came Robert J. Palmisano
to me known, who, being by me duly sworn, did depose
and say that he resides in Rochester, NY; that he
is the ^{vice president} + president, Eyewear of Bausch + Lomb Incorporated the
corporation described in and which executed the foregoing
instrument; that he signed his name hereto on behalf of said
corporation, and that he is authorized to obligate the
corporation in such matters pursuant to the articles of
incorporation, by-laws and duly delegated powers of the
corporation in accordance with his title.

Catherine M. Hedges
NOTARY PUBLIC

CATHERINE M. HEDGES
Notary Public in the State of New York
MONROE COUNTY
Commission Expires July 11, 1992

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