

**New York State Department of Environmental Conservation**  
**Division of Environmental Enforcement**  
270 Michigan Avenue, Buffalo, New York 14203  
**Phone:** (716) 851-7050 • **FAX:** (716) 851-7067  
**Website:** www.dec.state.ny.us

*Frank*



June 29, 1999

Susan Roberts, Esq.  
Bausch & Lomb Incorporated  
One Bausch & Lomb Plaza  
Rochester, New York 14604-2701

Re: RD/RA Order on Consent, Index # B8-0173-97-07,  
for the former Frame Center Site, Site # 8-28-061

Dear Ms. Roberts:

Enclosed is a fully endorsed original of the Order on Consent for remediation of the former Frame Center. As conveyed to you by telephone, the Order was signed and effective on June 21, 1999. Please submit the required schedule for implementation of the remedial activities before July 22, 1999.

Thank you for your cooperation.

Sincerely,

*Glen R. Bailey*

Glen R. Bailey  
Senior Attorney  
Division of Environmental Enforcement

GRB:B:JAB  
B083B&L9

Enclosure

cc: J. Hicks  
P. D'Amato  
M. J. Peachey  
E. Hausaman

RECEIVED

JUN 30 1999

DEPT/HAZ WASTE REMED  
REGION 8

STATE OF NEW YORK: DEPARTMENT OF ENVIRONMENTAL CONSERVATION  
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In the Matter of the  
Development and Implementation  
of a Remedial Program for an  
Inactive Hazardous Waste Disposal  
Site, Under Article 27, Title 13,  
and Article 71, Title 27 of the  
Environmental Conservation Law  
of the State of New York by

ORDER  
ON  
CONSENT

Index # B8-0173-97-07

BAUSCH & LOMB INCORPORATED

Respondent

Site Code # 8-28-061  
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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 Environmental Conservation Law of the State of New York ("ECL"), entitled "Inactive Hazardous Waste Disposal Sites." This Order is issued pursuant to the Department's authority under ECL Article 27, Title 13 and under ECL 3-0301.

2. Bausch & Lomb Incorporated ("Respondent"), is a corporation doing business in the State of New York in that Respondent has owned and operated real property in the Town of Chili, Monroe County, known as the Bausch & Lomb Frame Center. A portion of that real property is an inactive hazardous waste disposal site, as that term is defined at ECL 27-1301.2, and has been listed in the Registry of Inactive Hazardous Waste Disposal Sites in New York State as Site Number 8-28-061 ("the Site").

The Department has classified the Site as a Classification "2" pursuant to ECL 27-1305.4.b.

3. Respondent has conducted a remedial investigation and feasibility study at the Site, and has conducted an interim remedial measure for a distinguishable area of contamination, and has submitted reports detailing its activities, all pursuant to an Order on Consent, Index # B8-0173-87-02, issued on September 10, 1990, and amended on June 5, 1995.

4. A. Pursuant to ECL 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."

B. Any person under order pursuant to ECL 27-1313.3.a has a duty imposed by ECL Article 27, Title 13 to carry out the remedial program committed to under order. ECL 71-2705 provides that any person who fails to perform any duty imposed by ECL Article 27, Title 13 shall be liable for civil, administrative and/or criminal sanctions.

C. The Department also has the power, inter alia, to provide for the prevention and abatement of all water, land,



and air pollution. ECL 3-0301.1.i.

5. Following a period of public comment, the Department selected a final remedial alternative for the Site in a Record of Decision ("ROD"). Additional data gathered for designing the remedial program demonstrated the necessity to modify the remedial alternative, resulting in the Department's issuance of an Explanation of Significant Differences ("ESD") acknowledging the modification. The Department has concluded that the implementation and operation, maintenance and monitoring of the selected remedial alternative will be protective of human health and the environment at the Site. The ROD and the ESD are attached to this Order as Appendix "A" and are incorporated as an enforceable part of this Order.

6. The Department and Respondent agree that the goals of this Order are for Respondent to (i) develop and implement, in accordance with the ROD as modified by the ESD, an inactive hazardous waste disposal site remedial program ("Remedial Program") for the Site that shall include design and implementation, and operation, maintenance and monitoring of the selected remedial alternative; and (ii) reimburse the State's recoverable administrative costs in accordance with this Order.

7. Respondent, having waived its right to a hearing herein as provided by law, and having consented to the issuance and entry of this Order, agrees to be bound by its terms. Respondent consents to and agrees not to contest the authority

or jurisdiction of the Department to issue or enforce this Order, and agrees not to contest the validity of this Order or its terms.

8. Nothing contained in this Order, nor Respondent's consent to issuance of this Order, shall be construed as an admission by Respondent. Respondent neither admits nor denies any of the Department's findings or conclusions of law contained in this Order. Respondent does not admit liability or violation of the law to the Department or to any other governmental entity or to third parties regarding any responsibility or fault addressed in this Order, except that Respondent agrees, with regard to the State, not to challenge any obligation to comply with this Order. However, nothing contained in this Order shall be construed to prohibit Respondent from defending against an allegation that it violated a specific requirement contained in this Order.

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

I. Remedial Program Contents

A. Within 30 days after the effective date of this Order, Respondent shall submit to the Department a schedule for the development of the design to implement the remedial alternative selected for the Site by the Department in the ROD.

B. In accordance with the schedule as approved by the Department, Respondent shall develop and submit the remedial

design and the work plan for its construction, implementation and operation (the "Remedial Program") for approval. The remedial design shall be prepared by and have the signature and seal of a professional engineer who shall certify that the remedial design was prepared in accordance with this Order. The Remedial Program shall include the following:

1. A Remedial Design/Remedial Action Work Plan that includes a detailed description of the remedial objectives and the means by which each element of the selected remedial alternative will be implemented to achieve those objectives, including, but not limited to:
  - a. the construction and operation of any structures;
  - b. the collection, destruction, treatment, and/or disposal of hazardous wastes and substances and their constituents and degradation products, and of any soil or other materials contaminated thereby;
  - c. the collection, destruction, treatment, and/or disposal of contaminated groundwater, leachate, and air;
  - d. physical security and posting of the Site for those areas where access should be restricted;
  - e. health and safety of persons living and/or working at or in the vicinity of the Site during the implementation of the Remedial Program;

f. quality control and quality assurance procedures and protocols to be applied during implementation of the Remedial Program; and

g. monitoring which integrates needs which are present on-Site and off-Site during implementation of the Department-selected remedial alternative.

2. A time schedule to implement the Remedial Program;

3. A groundwater monitoring plan which sets forth the parameters, conditions, procedures, and protocols to determine the effectiveness of the Remedial Program;

4. A description of operation, maintenance, and monitoring activities to be undertaken after the Department has approved construction of the remedial design ("O&M Plan"), including the number of years during which such activities will be performed;

5. A contingency plan to be implemented if any element of the Remedial Program fails to achieve any of its objectives or otherwise fails to protect human health or the environment;

6. A health and safety plan providing for the protection of persons at and in the vicinity of the Site during construction. This plan shall be prepared by a certified health and safety professional in accordance with 29 CFR 1910;

7. A citizen participation plan which



incorporates appropriate activities outlined in the Department's publication, " Citizen Participation in New York's Hazardous Waste Site Remediation Program: A Guidebook," dated June 1998, and any subsequent revisions thereto, and 6 NYCRR Part 375; and

8. "Biddable Quality" documents for the Remedial Program including, but not limited to, documents and specifications prepared, signed, and sealed by a professional engineer. These plans shall satisfy all applicable local, state and federal laws, rules and regulations.

## II. Remedial Design, Construction and Reporting

A. Respondent shall implement the Remedial Program in accordance with the Department-approved remedial design and work plans and schedules.

B. During implementation of all construction activities identified in the remedial design, Respondent shall have on-Site a full-time representative who is qualified to supervise the work done.

C. Within 60 days after completion of the construction activities identified in the remedial design, Respondent shall submit to the Department "as-built" drawings and a final engineering report (each including all changes made to the remedial design during construction); and a certification by a professional engineer that the remedial design was implemented and all construction activities were completed in accordance with the Department-approved remedial design. The



"as built" drawings, final engineering report, and certification must be prepared, signed, and sealed by a professional engineer.

D. Upon completion of the remedial design construction activities, Respondent shall implement the groundwater monitoring plan in accordance with the requirements of the Department-approved Remedial Program.

E. After receipt of the "as-built" drawings, final engineering report, and certification, the Department shall notify Respondent in writing whether the Department is satisfied that all construction activities have been completed in compliance with the approved Remedial Program.

F. If the Department concludes that any element of the Remedial Program fails to achieve its objectives or otherwise fails to protect human health or the environment, Respondent shall take whatever action the Department determines necessary to achieve those objectives or to ensure that the Remedial Program otherwise protects human health and the environment, unless objections are raised in accordance with Subparagraph IV.C below.

### III. Progress Reports

A. Until completion of all construction activities and approval of the final engineering report submitted in accordance with Subparagraph II.C, above, Respondent shall submit to the parties identified in Subparagraph X.B in the numbers specified therein copies of written monthly progress

reports that:

1. describe the actions which have been taken toward achieving compliance with this Order during the previous month;

2. include all results of sampling and tests and all other data received or generated by Respondent or Respondent's contractors or agents in the previous month, including quality assurance/quality control information, whether conducted pursuant to this Order or conducted independently by Respondent, unless otherwise provided;

3. describe all actions, including, but not limited to, data collection and implementation of work plans, that are scheduled for the next month;

4. include information regarding unresolved delays encountered or anticipated that may affect the future schedule for implementation of the Respondent's obligations under the Order, and efforts made to mitigate those delays or anticipated delays;

5. include any modifications to any work plans that Respondent has proposed to the Department or that the Department has approved; and

6. describe all activities undertaken in support of the Citizen Participation Plan during the previous month and those to be undertaken in the next month.

B. Respondent shall submit these progress reports

to the Department every month following the effective date of this Order.

C. Respondent also shall allow the Department to attend, and shall provide the Department at least seven days advance notice of, any of the following activities which are conducted in relation to the Remedial Program: prebid meetings, scheduled job progress meetings, substantial completion meeting and inspection, and final inspection and meeting.

#### IV. Review of Submittals

A. 1. The Department shall review each of the submittals Respondent makes pursuant to this Order to determine whether it was prepared, and whether the work done to generate the data and other information in the submittal was done, in accordance with this Order and generally accepted technical and scientific principles. The Department shall notify Respondent in writing of its approval or comments regarding its disapproval of the submittal, except for the submittal discussed in Subparagraph I.B(5). All Department-approved submittals shall be incorporated into and become an enforceable part of this Order.

2. a. If the Department disapproves a submittal, it shall so notify Respondent in writing and shall specify the reasons for its disapproval. Within 30 days after receiving written notice that Respondent's submittal has been disapproved, or within such other time as approved by the Department, Respondent shall make a revised submittal to the



Department that addresses and resolves all of the Department's stated reasons for disapproving the first submittal.

b. After receipt of the revised submittal, the Department shall notify Respondent in writing of its approval or disapproval. If the Department disapproves the revised submittal, Respondent shall be in violation of this Order and the Department may take any action or pursue whatever rights it has pursuant to any provision of statutory or common law. If the Department approves the revised submittal, it shall be incorporated into and become an enforceable part of this Order.

B. Respondent shall modify and/or amplify and expand a submittal upon the Department's direction to do so if the Department determines, as a result of reviewing data generated by an activity required under this Order or as a result of reviewing any other data or facts, that further work is necessary.

C. In the event of a dispute between the Department and Respondent regarding the disapproval of a submittal or the need for modification or amplification of a submittal pursuant to this Paragraph IV, the parties shall first attempt to resolve the dispute informally between them. If, within thirty (30) days of Respondent's receipt of the notice of the Department's disapproval of a submittal, informal discussions and negotiations do not appear to be resolving the dispute,

Respondent shall be entitled to invoke this Subparagraph IV.C to resolve the issues in dispute.

1. Within 30 days of the date on which the Department issues a notification to Respondent of its disapproval, Respondent shall be entitled to serve upon the Department a request for the appointment of an Administrative Law Judge ("ALJ") to resolve the dispute, along with a written statement of the issues in dispute and the relevant facts upon which the dispute is based and the factual data, analyses or opinions supporting Respondent's position, and all other supporting documentation on which Respondent relies ("Statement of Position"), with copies also delivered to Eric Hausmann at the address provided in Subparaghrph X.A, below.

2. The Department staff shall deliver its Statement of Position to the ALJ and to Respondent no later than fifteen (15) business days after receipt of Respondent's Statement of Position. If desired by the ALJ, a personal appearance before the ALJ to express each party's position may then be scheduled. Personal appearances before the ALJ shall be discretionary with the ALJ, and shall not be required to resolve matters pursuant to this process.

3. The Department shall compile an administrative record of any dispute pursuant to this subparagraph. The record shall include the Statement of Position of each party and any other identified relevant

information. The record shall be available for review to all parties and to the public.

4. Upon review of the administrative record, the ALJ shall issue a final decision and order resolving the dispute. Respondent shall have the burden of proving that there is no rational basis for the Department's position giving rise to the dispute. Respondent shall have those rights available pursuant to Article 78 of the Civil Practice Laws and Rules of the State of New York ("CPLR"), provided that a petition under Article 78 is filed within thirty (30) days of receipt of the decision and order issued by the ALJ.

5. The invocation of the procedures stated in this subparagraph shall not extend, postpone, or modify Respondent's obligations under this Order with respect to any undisputed items. Respondent shall not be in violation of this Order for failure to perform tasks or obligations which are directly related to the issues in dispute or which may be altered or revised in the resolution of the issues in dispute. The invocation of the procedures provided in this subparagraph shall constitute an election of remedies by the party initiating the proceedings, and such election of this remedy shall constitute a waiver of any and all other remedies which may otherwise have been available to the party regarding the issue in dispute.

V. Failure to Comply



A. Respondent's failure to comply with any term of this Order constitutes a violation of this Order and the ECL, unless the provisions of Subparagraph IV.C, above, have been invoked.

B. Respondent shall not be subject to any proceeding or action if it cannot comply with any requirement hereof because of an act of God, war, riot, strike, intervening acts of third parties which are beyond Respondent's control, or an occurrence arising from natural causes which the exercise of ordinary human prudence could not have prevented. Respondent shall, within ten days of when it obtains knowledge of any such occurrence or condition, notify the Department in writing. Respondent shall include in such notice a description of the measures taken and to be taken by Respondent to prevent or minimize any delays and shall request an appropriate extension or modification of this Order. Failure to give such notice within such ten-day period constitutes a waiver of any claim that a delay is not appropriately considered as a violation of this Order. Respondent shall have the burden of proving that an event is a defense to compliance with this Order pursuant to this Subparagraph V.B. Increased costs or expenses of any work to be performed under this Order, the financial inability of Respondent to perform such work, the failure of Respondent to make complete and timely application for any required approval or permit, and nonattainment of the goals, standards and

requirements of this Order do not constitute conditions or events warranting the relief set forth in this Subparagraph V.B.

VI. Entry upon Site

A. 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 and to ensure Respondent's compliance with this Order. Respondent shall provide the Department with suitable office space during construction at the Site, including access to a telephone, and shall permit the Department full access to all records relating to matters addressed by this Order and to job meetings.

B. Such Department representative shall comply with Respondent's established procedures for all visitors, which includes identification to appropriate security or reception personnel, and shall comply with the Department's established safety procedures for any such inspections. Nothing herein shall be construed as or applied to limit or condition any right to access to the Site which the Department may otherwise acquire, accrue, obtain or be entitled to.

VII. Payment of State Costs

A. Within 45 days of the effective date of this Order, Respondent shall pay to the Department the sum of \$43,227.19 which shall represent reimbursement in full for all

of the State's recoverable expenses incurred for the Site prior to February 24, 1998.

B. Within 60 days after receipt of an itemized invoice from the Department, Respondent shall pay to the Department a sum of money which shall represent reimbursement for the State's recoverable expenses including, but not limited to, direct labor, fringe benefits, indirect costs, travel, analytical costs, and contractor costs incurred by the State of New York for work performed at the Site after February 24, 1998, as well as for negotiating this Order, reviewing and revising submittals made pursuant to this Order, overseeing activities conducted pursuant to this Order, collecting and analyzing samples, and administrative costs associated with this Order.

C. Such payments shall be made by certified check payable to the Department of Environmental Conservation. Payment shall be sent to the Bureau of Program Management, Division of Environmental Remediation, N.Y.S.D.E.C., 50 Wolf Road, Albany, NY 12233-7010. Itemization of the 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 reports of Direct Personal Service. Approved agency fringe benefit and indirect cost rates shall be applied. Non-personal service costs shall be summarized by category of



expense (e.g., supplies, materials, travel, contractual) and shall be documented by expenditure reports.

VIII. 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 or Respondent's civil, criminal, administrative, or equitable rights or authorities.

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

IX. Indemnification

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 solely arising out of or resulting from the fulfillment or attempted fulfillment of this Order by Respondent, and/or any of Respondent's directors, officers, employees, servants, agents, successors, and assigns, except that such indemnity and hold harmless obligation shall not apply to any acts or omissions of the Department, the State of New York or their representatives or employees, constituting gross negligence or willful misconduct.

X. Communications

A. All written communications required by this Order shall be transmitted by United States Postal Service, by

private courier service, or hand delivered. Communications from Respondent to the Department shall be addressed to:

Eric Hausamann, P.E.  
Division of Environmental Remediation  
New York State Department of Environmental  
Conservation  
50 Wolf Road  
Albany, New York 12233-7010

with copies thereof sent to:

1. Director, Bureau of Environmental  
Exposure Investigation  
New York State Department of Health  
2 University Place  
Albany, New York 12203
2. New York State Department of Environmental  
Conservation  
Division of Environmental Remediation  
6271 East Avon-Lima Road  
Avon, New York 14414-0057
3. Richard Elliott, P.E.  
Monroe County Department of Health  
111 Westfall Road, Caller 632  
Rochester, New York 14692

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

1. Four copies (one unbound) to Eric Hausamann, Division of Environmental Remediation.
2. Two copies to the Director, Bureau of Environmental Exposure Investigation.
3. Two copies to the Division of Environmental Remediation, Region 8, Avon
4. One copy to Richard Elliott, Monroe County Department of Health

C. Following the Department's approval of any

report submitted pursuant to this Order, Respondent shall submit additional copies to Eric Hausamann in accordance with the number and format as specified by him in a request for additional copies in microfilm (16 millimeter roll film, M type cartridge).

D. Communication to be made from the Department to Respondent shall be sent to:

Susan Roberts, Esq.  
Bausch & Lomb, Incorporated  
One Bausch & Lomb Place  
Rochester, New York 14604-2701

and to: Frank Chiappone  
Senior Environmental Engineer  
Bausch & Lomb Incorporated  
One Bausch & Lomb Place  
Rochester, New York 14604-2701

and to: George M. Thomas  
Blasland, Bouck & Lee, Inc.  
6723 Towpath Road  
P. O. Box 66  
Syracuse, New York 13214-0066

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

#### XI. Miscellaneous

A. Respondent shall retain professional consultants, contractors, laboratories, quality assurance/quality control personnel, and data validators acceptable to the Department to perform the technical, engineering, and analytical obligations required by this Order.



The Department's approval of these firms or individuals shall be obtained before the start of any activities for which Respondent and such firms or individuals will be responsible. The responsibility for the performance of the professionals retained by Respondent shall rest solely with Respondent. The Department acknowledges that the firms and personnel from Blasland, Bouck & Lee, Inc., and BBL Environmental Services, Inc., have been previously approved as qualified to perform their required tasks for this project.

B. The Department shall have the right to obtain split samples, duplicate samples, or both, of all substances and materials sampled by Respondent pursuant to this Order, and the Department also shall have the right to take its own samples. Respondent shall make available to the Department the results of all sampling and/or tests or other data generated by Respondent with respect to implementation of this Order and shall submit these results in the progress reports required by this Order. The Department shall promptly make available to Respondent the results of all sampling and/or tests or other data collected or generated by the Department relative to this project.

C. Respondent shall notify the Department at least 10 days in advance of the initiation of any phase of field activities to be conducted pursuant to this Order. In the event of an unforeseen activity, Respondent shall notify the Department immediately upon recognition of the need for such

activity if it is to be initiated in less than 10 days hence.

D. Respondent shall use its best efforts to obtain all permits, easements, rights-of-way, rights-of-entry, approvals, or authorizations necessary to perform Respondent's obligations under this Order. Respondent shall promptly notify the Department of its inability to obtain such permits or authorizations on a timely basis. In the event that Respondent is unable to obtain the necessary permits or authorizations, the Department may, at its sole discretion and consistent with its legal authority, assist in obtaining such permits or authorizations which Respondent was unable to obtain. If such permits or authorizations cannot be reasonably obtained, then the relevant requirements pursuant to this Order may be modified accordingly.

E. 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 responsibilities under this Order. Respondent's officers, directors, employees, servants, and agents shall be obliged to comply with the relevant provisions of this Order in the performance of their designated duties on behalf of Respondent.

F. Respondent shall provide a copy of this Order to

each contractor hired to perform work required by this Order with respect to this Site, and shall require all such contractors to carry out their obligations in each contract in conformity with the requirements of this Order. Respondent or Respondent's contractors shall provide written notice of this Order to all subcontractors hired to perform any portion of the work required by this Order. Respondent shall nonetheless be responsible for ensuring that Respondent's contractors and subcontractors perform the work in satisfaction of the requirements of this Order.

G. All references to "professional engineer" in this Order are to an individual registered as a professional engineer in accordance with Article 145 of the New York State Education Law. If such individual is a member of a firm, that firm must be authorized to offer professional engineering services in the State of New York in accordance with Article 145 of the New York State Education Law.

H. All references to "days" in this Order are to calendar days unless otherwise specified.

I. The paragraph headings set forth in this Order are included for convenience of reference only and shall be disregarded in the construction and interpretation of any of the provisions of this Order.

J. 1. The terms of this Order shall constitute the complete and entire Order between Respondent and the



Department concerning the Site. No term, condition, understanding, or agreement purporting to modify or vary any term of this Order shall be binding unless made in writing and subscribed by the party to be bound. No informal advice, guidance, suggestion, or comment by the Department regarding any report, proposal, plan, specification, schedule, or any other submittal shall be construed as relieving Respondent of Respondent's obligation to obtain such formal approvals as may be required by this Order.

2. If Respondent desires that any provision of this Order be changed, Respondent shall make timely written application, signed by Respondent, to the Commissioner setting forth reasonable grounds for the relief sought. Copies of such written application shall be delivered or mailed to Eric Hausamann.

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

DATED: 6/21, New York, 1999

JOHN P. CAHILL  
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 Respondent's right to a hearing herein as provided by law, and agrees to be bound by this Order.

BAUSCH & LOMB INCORPORATED

By: Stephen C. McCluski  
(TYPE NAME OF SIGNER)

Title: Stephen C. McCluski

Date: Senior Vice President and Chief Financial Officer  
June 8, 1999

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

On this 8<sup>th</sup> day of June, 1999,  
before me personally came Stephen C. McCluski, to  
me known, who being duly sworn, did depose and say that he  
resides in Monroe County  
that he is the Senior Vice President and Chief Financial Officer of  
Bausch & Lomb Incorporated, the corporation described in and  
which executed the foregoing instrument; that he knew the seal  
of said corporation; that the seal affixed to said instrument  
was such corporate seal; that it was so affixed by the order of  
the Board of Directors of said corporation and that he signed  
his name thereto by like order.

Susan A. Roberts

Notary Public

SUSAN A. ROBERTS  
Notary Public, State of New York  
Qualified in Monroe County  
Commission Expires April 13, 2001