

FILE COPY

STATE OF NEW YORK: DEPARTMENT OF ENVIRONMENTAL CONSERVATION

In the Matter of the
Implementation of a 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:

ORDER
ON
CONSENT

R.D. SPECIALTIES, INC.

Respondent

Site I.D. #828062
Index #B8-0124-90-12

WHEREAS,

1. The New York State Department of Environmental Conservation (the "Department") is responsible for enforcement of Article 27, Title 13 of the Environmental Conservation Law of the State of New York ("ECL"), entitled "Inactive Hazardous Waste Disposal Sites". This Order is entered into pursuant to the Department's authority under ECL Article 27, Title 13 and Article 71, Title 27.

2. R.D. Specialties, Inc. ("Respondent"), a corporation organized and existing under the laws of the State of New York, operates a facility located at 560 Salt Road in the Town of Webster, Monroe County, New York, known as the "R.D. Specialties Site" (the "Site").

3. The Department alleges that the Site is an inactive hazardous waste disposal site, as that term is defined at ECL Section 27-1301(2) and presents a significant threat to the public health or environment. The site has been listed in the Registry of Inactive Hazardous Waste Disposal Sites in New York State as Site Number 828062. The Department has classified the Site as a Classification "2" pursuant to ECL Section

27-1305(4)(b).

4. The Site is a small rod manufacturing facility which discharged chromium plating rinse water to the environment from approximately 1966 to 1985 and, on one occasion prior to 1980, discharged a spent plating bath solution.

5. The Respondent notified the Department in 1985 that the prior practices had resulted in releases to the environment.

6. The Respondent entered into a consent order with the Department on December 20, 1988 whereby Respondent agreed to perform a Remedial Investigation/Feasibility Study at the Site.

Respondent has fulfilled the technical obligations under the December 20, 1988 consent order and has identified and characterized the contamination and developed the final remedial action at the "site" using requisite technology not inconsistent with the Superfund Amendments and Reauthorization Act of 1986 and the EPA document entitled "Guidance for Conducting Remedial Investigations and Feasibility Studies Under CERCLA" (March 1988).

7. Pursuant to ECL Section 27-1313(3)(a), whenever the Commissioner of Environmental Conservation (the "Commissioner") "finds that hazardous wastes at an inactive hazardous waste disposal site constitute a significant threat to the environment, he may order the owner of such site and/or any person responsible for the disposal of hazardous wastes at such site (i) to develop an inactive hazardous waste disposal site

remedial program, subject to the approval of the Department, at such site, and (ii) to implement such program within reasonable time limits specified in the order."

8. The Department has determined that it is appropriate to develop and implement a remedial program for this Site. Toward that end, the Department issued a Record of Decision for this site which was signed by the Deputy Commissioner for Environmental Remediation on March 21, 1991. (The Record of Decision which sets forth the selected remedial action plan for the Site is attached to this Order as Appendix "A".)

9. Respondent has agreed to be responsible for the remediation of this Site, however, Respondent has submitted documentation to the Department that at present it does not have sufficient financial resources to undertake the development and implementation of the selected inactive hazardous waste disposal site remedial program.

10. The Department Contractor Documents for the remedial program for the site are attached to this Order as Appendix "B".

11. In order to promote the public interest in effecting a timely remediation of the site, and in order to eliminate any further delay in remediation that litigation may cause, the Department has determined that it should undertake the remediation of the site directly and obtain reimbursement from the Respondent under terms similar to those obtainable had civil litigation been successfully brought by the Department

and enforcement of the ensuing judgment resulted in an installment repayment schedule.

12. The Department and Respondent desire to settle certain claims arising from the releases at the site without litigation and without the admission or adjudication of any issue of fact or law.

13. The Respondent has agreed to reimburse the Department for costs of the remedial program performed by the Department or its agents at this Site in accordance with the Record of Decision and the Contract Documents contained in the Appendices and for Department administrative costs.

14. The Department and Respondent agree that the goal of this Order shall be to (a) establish the terms and conditions under which Respondent shall reimburse the Department through periodic payments for Department costs expended in the development and the implementation of the final remedial alternative chosen for the Site and (b) to establish the terms and conditions under which Respondent shall implement the long-term groundwater monitoring program in accordance with the Record of Decision for the Site.

15. Respondent, waives its right to a hearing herein as provided by law, consents to the issuance and entry of this Order, and agrees to be bound by its terms.

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

I. A. In accordance with the "Schedule of Payments" attached to and incorporated into this Order as Appendix "C", Respondent shall reimburse the Department for the Department's actual costs without interest for (a) the development of plans and specifications for the remedial program and Department administrative costs, and (b) the implementation of the remedial program. Respondent shall pay such costs in equal monthly installments of \$1607.14, until Department costs are paid in full. Such payments shall be made by certified check payable to the New York State Department of Environmental Conservation for payment into the Hazardous Waste Remedial Fund. Payments shall be sent to the Bureau of Program Management, Division of Hazardous Waste Remediation, NYSDEC, 50 Wolf Road, Room 208, Albany, New York 12233-7010. Respondent shall have the right at any time to pay in full the outstanding balance or any portion of the outstanding balance.

B. In the event Department costs for the development of the plans and specifications and implementation of the remedial program exceed \$135,000.00 the Department and the Respondent can renegotiate the duration of the monthly payments agreed to in Appendix "C" in order that the Department may recover its entire costs from the Respondent. Respondent shall continue to pay the monthly installments as described in Appendix C during any such re-negotiations until the terms of any new payment agreement are resolved. Nothing herein shall be deemed a waiver of the Department's right to bring an action

against Respondent after performance under this Order is completed to obtain recovery of Department unpaid costs in connection with the remedial program at the Site. In the event the Department seeks reimbursement of any costs in excess of \$135,000.00 the Department will provide itemization of all costs expended at the site. Nothing herein shall be deemed a waiver by Respondent of its right to contest any Department costs associated with the Site.

II. Following completion by the Department or its contractor of the final remedial program for the Site, Respondent shall periodically sample the groundwater from all monitoring wells installed on-Site, have the samples analyzed by an approved laboratory and submit the results to the Department. The frequency of the sampling, the period for monitoring the Site and the reassessment of the groundwater contamination after five years of periodic sampling, shall be as set forth in the Record of Decision.

III. The Respondent certifies that to the best of its knowledge and belief it has fully and accurately disclosed to the Department (a) the information currently in its possession or control which relates to the environmental conditions at the site, and (b) its financial status.

IV. The failure of the Respondent to comply with any provision of this Order shall be a violation of this Order and the ECL except as provided in Paragraph V herein.

V. A. Respondent shall not suffer any penalty under this

Order, or be subject to any proceeding or action, if it cannot comply with any requirements of this Order because of an act of God, war, riot, or because of any condition or event entirely beyond the control of Respondent or its agent or agents carrying out Respondent's obligations under this Order. Respondent shall immediately notify the Department in writing when it obtains knowledge of any such condition and request an appropriate extension or modification of this Order.

B. Respondent has executed a confession of judgment and affidavit for the amount to be paid to the Department by the Respondent pursuant to the terms of this Consent Order. The judgment shall be filed with the Clerk of Monroe County within 30 days of the execution of this Order.

C. In the event Respondent is unable to fulfill the requirements of this Order due to business failure, including insolvency, bankruptcy, or due to discontinuation of business operations, or, in the event of Respondent's unexcused failure to timely pay a monthly installment, at its discretion, the Department may seek enforcement of the judgment.

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

a. the Department's right to bring any action or proceeding against anyone other than Respondent, its 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 Respondent fails 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 claims for natural resources damages as a result of the release or threatened release of hazardous substances or constituents at or from the Site or areas in the vicinity of the Site.

VII. A. Except as provided in Paragraph VII.B, following completion of the remedial program as described in Appendices "A" and "B" subject to Paragraph VII(B) herein, and following Respondent's completion of payment in accordance with Paragraph I herein and Appendix "C" and except for the provisions of Paragraphs II, VI and XII herein, Respondent's fulfillment of this Order shall constitute a full and complete satisfaction and release of each and every claim, demand, remedy or action whatsoever against Respondent, and its directors, officers, employees, agents, successors and assigns.

B. The Department reserves all of its rights concerning, and any such release and satisfaction shall not extend to, any investigation or remediation the Department deems necessary due to

1. environmental conditions on-site or off-site

which are related to the disposal of hazardous substances at the Site and were unknown to the Department at the time of its approval of the Remedial Investigation Report; or

2. 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 Remedial Program is not protective of human health or the environment. The Department shall notify the Respondent of such environmental conditions or information and its basis for determining that the Remedial Program is not protective of human health and the environment.

VIII. 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.

IX. Respondent shall permit any duly designated employee, consultant, contractor or agent of the Department or any State agency to enter upon the Site for purposes related to the implementation of the Remedial Program at the site. The Department shall provide reasonable notice in advance of such entries.

X. Respondent shall cooperate with the Department's obtaining whatever permits, easements, rights-of-way, rights-of-entry, approvals or authorizations are necessary to perform the Remedial Program for the site.

XI. If Respondent desires that any provision of this

Order be changed, Respondent shall make timely written application to the Commissioner, setting forth reasonable grounds for the relief sought.

XII. Respondent shall indemnify and hold the Department, the State of New York, and its representatives and employees harmless for all claims, suits, actions, damages and costs of every name and description arising out of or resulting from work performed under the control of Respondent in the fulfillment or attempted fulfillment of the provisions of this Order.

XIII. The effective date of this Order shall be the date the executed Order is received by the Respondent.

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

XV. In the event Respondent is aware of a proposed conveyance of the whole or any part of the Site, Respondent shall, not less 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 proposed transferee in writing, with a copy to the Department, of the applicability of this Order.

XVI. Respondent shall cooperate with the Department in the development and implementation of a citizen participation

program for the Site. The citizen participation program shall be consistent with the Department's publication entitled "New York State Inactive Hazardous Waste Site Citizen Participation Plan".

XVII. All written communications required by this Order shall be transmitted by United States Postal Service, by private courier service, or hand delivered.

A. Communication from Respondent shall be made as follows:

New York State Department of
Environmental Conservation
Division of Environmental Enforcement
270 Michigan Avenue
Buffalo, New York 14203

New York State Department of
Environmental Conservation
Division of Hazardous Waste Remediation
6274 East Avon-Lima Road
Avon, New York 14414

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

New York State Department of Health
Bureau of Environmental Exposure
Investigation
2 University Place
Albany, New York 12203

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

Doug Krasucki
President
R.D. Specialties, Inc.
560 Salt Road
Webster, New York 14580

Jean H. McCreary, Esq.
Nixon Hargrave Devans & Doyle
Clinton Square
P.O. Box 1051
Rochester, NY 14603

XVIII. The provisions of this Order shall be deemed to bind the Department and the Respondent, its successors and assigns.

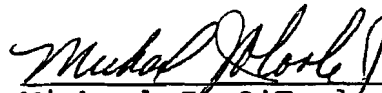
XIX. The provisions hereof shall constitute the complete and entire Order between Respondent and the Department concerning reimbursement to the Department for State funds expended for a Remedial Program. No term, condition, understanding or agreement purporting to modify or vary the terms hereof shall be binding unless made in writing and subscribed by the party to be bound. No informal advice, guidance, suggestion or comment by the Department regarding reports, proposals, plans, specifications, schedules or any other submittals shall be construed as relieving Respondent of its obligation to obtain such formal approval as may be required by this Order.

DATED: , New York

July 9 , 1992

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

By:


Michael J. O'Toole, Jr.
Acting Deputy Commissioner

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, and agrees to be bound by the provisions, terms and conditions contained herein.

R.D. SPECIALTIES, INC.

By: *[Signature]*

Douglas R. KRASUCKI
(Type Name of Signer)

Title: PRESIDENT

Date: 6/30/92

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

On this 30th day of June, 1992,
before me personally came Doug Krasucki, to me
known, who being duly sworn, did depose and say that he resides
in Webster, New York; that he is the
President of R.D. Specialties, Inc. the
corporation described in and which executed the foregoing
instrument; that he ~~knew the seal of~~ ^{has authority to bind} said corporation ^{by his signature} ~~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.~~

[Signature]
Notary Public

JEAN H. McCREARY
Notary Public in the State of New York
MONROE COUNTY
Commission Expires March 30, 1993
Sept

APPENDIX "C"

PAYMENT AGREEMENT

R.D. Specialties hereby agrees to pay to the New York State Department of Environmental Conservation for costs incurred by the Department in implementing the "approved remedial program" at property owned by R.D. Specialties at 560 Salt Road in Webster, New York. Payment shall be by certified check payable to the New York State Department of Environmental Conservation and shall be sent to Bureau of Program Management, Division of Hazardous Waste Remediation, New York State Department of Environmental Conservation, 50 Wolf Road, Room 208, Albany 12233-7010. R.D. Specialties hereby agrees to the following payment schedule.

<u>Payment Date</u>	<u>Amount</u>	<u>Outstanding Balance</u>
		\$134,999.76
June 1, 1992	1607.14	133,392.62
July 1	1607.14	131,785.48
August 1	1607.14	130,178.34
September 1	1607.14	128,571.20
October 1	1607.14	126,964.06
November 1	1607.14	125,356.92
December 1	1607.14	123,749.78
January 1, 1993	1607.14	122,142.64
February 1	1607.14	120,535.50
March 1	1607.14	118,928.36
April 1	1607.14	117,321.22
May 1	1607.14	115,714.08
June 1	1607.14	114,106.94
July 1	1607.14	112,499.80

<u>Payment Date</u>	<u>Amount</u>	<u>Outstanding Balance</u>
August 1	1607.14	110.892.66
September 1	1607.14	109,285.52
October 1	1607.14	107,678.38
November 1	1607.14	106,071.24
December 1	1607.14	104,464.10
January 1, 1994	1607.14	102,856.96
February 1	1607.14	101,249.82
March 1	1607.14	99,642.68
April 1	1607.14	98,035.54
May 1	1607.14	96,428.40
June 1	1607.14	94,821.26
July 1	1607.14	93,214.12
August 1	1607.14	91,606.98
September 1	1607.14	89,999.84
October 1	1607.14	88,392.70
November 1	1607.14	86,785.56
December 1	1607.14	85,178.42
January 1, 1995	1607.14	83,571.28
February 1	1607.14	81,964.14
March 1	1607.14	80,357.00
April 1	1607.14	78,749.86
May 1	1607.14	77,142.72
June 1	1607.14	75,535.58
July 1	1607.14	73,928.44
August 1	1607.14	72,321.30
September 1	1607.14	70,714.16
October 1	1607.14	69,107.02
November 1	1607.14	67,499.88
December 1	1607.14	65,892.74
January 1, 1996	1607.14	64,285.60
February 1	1607.14	62,678.46
March 1	1607.14	61,071.32
April 1	1607.14	59,464.18
May 1	1607.14	57,857.04
June 1	1607.14	57,249.90
July 1	1607.14	54,642.76
August 1	1607.14	53,035.62
September 1	1607.14	51,428.48
October 1	1607.14	49,821.34
November 1	1607.14	48,214.20
December 1	1607.14	46,607.06
January 1, 1997	1607.14	44,999.92
February 1	1607.14	43,392.78
March 1	1607.14	41,785.64
April 1	1607.14	40,178.50

<u>Payment Date</u>	<u>Amount</u>	<u>Outstanding Balance</u>
May 1	1607.14	38,571.36
June 1	1607.14	36,964.22
July 1	1607.14	35,357.08
August 1	1607.14	33,749.94
September 1	1607.14	32,142.80
October 1	1607.14	30,535.66
November 1	1607.14	28,928.52
December 1	1607.14	27,321.38
January 1, 1998	1607.14	25,714.24
February 1	1607.14	24,107.10
March 1	1607.14	22,499.96
April 1	1607.14	20,892.82
May 1	1607.14	19,285.68
June 1	1607.14	17,678.54
July 1	1607.14	16,071.40
August 1	1607.14	14,464.26
September 1	1607.14	12,857.12
October 1	1607.14	11,249.98
November 1	1607.14	9,642.84
December 1	1607.14	8,035.70
January 1, 1999	1607.14	6,428.56
February 1	1607.14	4,821.42
March 1	1607.14	3,214.28
April 1	1607.14	1,607.14