

**State of New York
Department of Environmental Conservation**

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In the Matter of the Settlement of Claims Related to
an Inactive Hazardous Waste Disposal Site under
Article 27, Title 13 and Article 71, Title 27
of the Environmental Conservation Law

**Order on Consent
and
Administrative Settlement**

-by-

Index No. R8-20181016-12

Digital Alert Systems, Inc.

("Settling Respondent").
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Whereas:

1. The New York State Department of Environmental Conservation (the "Department") is responsible for enforcement of the Environmental Conservation Law of the State of New York ("ECL") and the New York State Finance Law ("SFL") and such laws provide the Department authority to enter into this Order on Consent and Administrative Settlement (the "Order").
2. The Department is responsible for carrying out the policy of the State of New York (the "State") to conserve, improve and protect its natural resources and environment and control water, land, and air pollution consistent with the authority granted to the Department and the Commissioner by Article 1, Title 3 of the ECL.
3. The Department also has the authority, *inter alia*, to provide for the prevention and abatement of all water, land, and air pollution. See, e.g., ECL 3-0301.1(i).
4. This Order is issued pursuant to the Department's authority under, *inter alia*, ECL Article 27, Title 13, ECL Article 71, Title 27, and ECL 3-0301 and Section 97-b of the SFL, and resolves Settling Respondent's liability to the State under the ECL and Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended ("CERCLA") 42 U.S.C. § 9601 *et seq.*, to the extent set forth herein.
5. Digital Alert Systems, Inc. (formerly known as Monroe Electronics, Inc.) ("Settling Respondent") is a corporation doing business in New York State and has a facility located at 100 Housel Avenue, Lyndonville, New York 14098. The location of the facility is more specifically identified as a parcel found on the Orleans County Tax Map ID 24.16-1-2 (the "Site" or the "Property").
6. The Site is currently listed in the *Registry of Inactive Hazardous Waste Disposal Sites in New York State* (DEC Site No. 837013) as a Class 2 site; A Record of Decision (ROD) was issued for the Site
7. The actions that Settling Respondent is expected to complete pursuant to this Order are:

Draft and submit to the Department for review and approval a Remedial Design for the Site which shall provide the details necessary for the construction, operation, optimization, maintenance and monitoring of the remedial program, as discussed below. Green

remediation principals and techniques shall be implemented to the extent feasible in the design, implementation and site management of the remedy as found in the Department's program policy DER-31. The Remedial Design shall include a schedule for all proposed activities and reports that will be submitted.

Use enhanced in-situ bioremediation to treat CVOC contamination in the overburden and bedrock groundwater in the area downgradient of the suspected source area located beneath the manufacturing building at the Site. Groundwater exhibiting concentrations of total CVOCs greater than 1000 ug/L will be targeted. The area to be treated, the method and depth of injection must be confirmed during the Remedial Design.

Use in-situ chemical reduction to supplement the bioremediation groundwater remedy to further treat CVOC contamination in overburden and bedrock groundwater. The method and depth of injection will be determined during Remedial Design.

Installation of an acceptable cover system to allow for commercial use of the Site. The cover will consist of either existing Site structures, such as buildings, pavement and sidewalks comprising Site development, or a soil cover in areas where the upper one foot of exposed surface soil exceeds applicable soil cleanup objectives. The extent of impacted soil as well as the areas to be covered will be determined during the Remedial Design. Soil cover material must meet the soil cleanup objectives for cover material as set forth in 6NYCRR §375-6.7(d). As an option to the placement of a cover system, the Department will consider a proposal by Respondent for the blending of impacted surface soil with uncontaminated soil located below the impacted surface soil; any blended soil will need to meet Department SCOs for cover material.

Development and filing of an Institutional Control in the form of an appropriate environmental easement, which shall prohibit the use of the on-Site house for residential purposes and restrict the use of groundwater as a source of potable or process water, without necessary groundwater treatment as determined by the New York State Department of Health or the Orleans County Department of Health.

Development and filing of a Site Management Plan (SMP) that would ensure that the Institutional and Engineering Controls remain in place and effective. The SMP may also include an Excavation Plan governing future disturbances of the Site; plans for further investigation and remediation of the Site should large scale development occur; evaluation of potential soil vapor intrusion in existing or future on-Site buildings; a monitoring plan for groundwater and vapor intrusion; and periodic reviews and certifications of the institutional and engineering controls.

8. Solely with regard to the matters set forth herein, Settling Respondent hereby waives any right to a hearing as may be provided by law, consents to the issuance and entry of this Order, and agrees to be bound by its terms. Settling 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, except as otherwise specifically provided in the Order.

NOW, having considered this matter and being duly advised, it is order that:

I. Property Specific Definitions

Unless otherwise expressly provided herein, terms used in this Order which are defined in ECL Article 27 or in regulations promulgated thereunder shall have the meaning assigned to them under said statute or regulations, or amendments thereto. The following terms shall have the following meaning:

- a. Property: The real property located at 100 Housel Avenue, Lyndonville, New York 14098 and more specifically identified as Orleans County Tax Map ID 24.16-1-2.
- b. Existing Contamination: Any hazardous waste, as that term is defined in 6 NYCRR Section 375-1.2(w), present or existing on or under the Site as of the effective date of this Order.

II. Appropriate Care, Cooperation, and Responsibilities of Settling Respondent Under this Order

- a. Settling Respondent shall exercise appropriate care¹ at the Site with respect to the Existing Contamination and shall comply with all applicable local, State, and federal laws and regulations. Settling Respondent and its successors shall affirmatively ensure that any development activities on the Property are in compliance with all applicable local, State, and federal laws and regulations, including but not limited to 6 NYCRR §§ 375-1.11(d) and 375-2.11(a), as well as any excavation or other applicable plans approved by the Department for the Site.
- b. Settling Respondent shall complete all of the Site activities described in ¶7 above and submit one or more reports to the Department that fully document the activities conducted, provides the results of the activities and any recommendations for further work at the Site.
- c. Settling Respondent shall grant an Environmental Easement to the Department for the Property as provided for in ECL Article 71, Title 36 and as set forth below (see Paragraph IV).
- d. Settling Respondent shall provide continued access to the Property as set forth below (see Paragraph V).
- e. Settling Respondent shall comply with any site management plan (SMP) which may be approved by the Department for the Property. The Department shall make any and all determinations related to the SMP without approval of Settling Respondent or any other person. Settling Respondent acknowledges that compliance with any SMP for the Property shall be at its own cost and expense.

III. Payment of State Costs

Provided Settling Respondent complies with the terms of this Order, it shall not be responsible for payment of State costs incurred prior to the effective date of this Order, or incurred as a result of this Order.

¹ As the term is defined in 42 U.S.C. § 9601(40)(D).

IV. Environmental Easement

- a. Settling Respondent shall grant the Department an Environmental Easement for the Property in accordance the provisions of ECL Article 71, Title 36, and 6 NYCRR 375-1.8(h)(2). Within sixty (60) days of the effective date of this Order, Settling Respondent shall submit to the Department an Environmental Easement package for the Property which meet the Department's requirements, including those set forth in guidance document DER-33, entitled "Institutional Controls: A Guide to Drafting and Recording Institutional Controls." Among the documents to be included in the package are the following:
 - i. an Environmental Easement for acceptance by the Commissioner or his designee;
 - ii. an Environmental Easement Checklist and Certification;
 - iii. documents relevant to title;
 - iv. a survey; and
 - v. Notice of Environmental Easement and other notices.
- b. Within thirty (30) days of the Department's acceptance of the Environmental Easement, Settling Respondent shall record them with the Orleans County Clerk. Settling Respondent shall provide the Department with a copy of such instrument certified by the Orleans County Clerk to be a true and faithful copy within thirty (30) days of such recording (or such longer period of time as may be required to obtain certified copies provided Settling Respondent advises the Department of the status of its efforts to obtain same within such thirty (30) day period). A copy of the Environmental Easement with the certification of the Orleans County Clerk shall be attached to this Order as Appendix "A" and shall be incorporated into and made an enforceable part of this Order.
- c. The Environmental Easement for the Property must, *inter alia*, limit its use and development to commercial use as defined in 6 NYCRR § 375-1.8(g)(2)(iii); require compliance with any SMP the Department may approve for the Property; restrict the use of groundwater as a source of potable or process water without necessary water quality treatment as determined by New York State Department of Health or Orleans County Department of Public Health and without the Department's written approval; and require the property owner to complete and submit to the Department a periodic certification of any institutional and engineering controls that may be put in place.

V. Access

- a. Settling Respondent and any entity taking any title or interest in the Property from or through Settling Respondent hereby irrevocably consent, upon reasonable notice under the circumstances presented, to grant entry upon the Property (or areas in the vicinity of the Property which may be under the control of Settling Respondent) by any duly designated officer or employee of the Department or any State agency having

jurisdiction with respect to the hazardous wastes/substances on the Property; by any agent, consultant, contractor, or other person so authorized by the Commissioner, all of whom shall abide by the health and safety rules in effect for the Property, for statutorily or regulatorily authorized purposes, including: (i) inspecting, sampling, and testing; (ii) any activities necessary for the Department to effectuate and ensure Settling Respondent's compliance with the Order; and (iii) any other activities necessary to the design and implementation of any construction or environmental treatment procedures necessary to effectuate interim remedial measures and/or remedies at the Property in accordance with applicable state and federal law.

- b. Settling Respondent shall have the right to obtain split samples, duplicate samples, or both, of all substances and materials sampled at its sole cost and expense. The Department shall make the results of all sampling and scientific measurements taken under this Paragraph available to Settling Respondent in the format which the Department receives it upon Settling Respondent's request.
- c. Settling Respondent shall use its best efforts to ensure that its successors in interest, lessees, and sublessees of the Property provide reasonable access.

VI. Release and Covenant Not to Sue

- a. Taking effect upon the Department's receipt from Settling Respondent the copy of the Department-accepted Environmental Easement which certifies its filing in the Orleans County Clerk's Office, as described in Paragraph IV.b, the Department, releases and covenants not to sue, and shall forbear from bringing any action, proceeding, or suit pursuant to the Environmental Conservation Law, or the State Finance Law, and from referring to the Attorney General any claim for recovery of costs incurred by the Department, against the Settling Respondent and its secured creditors and insurers, or any of its past, present or future members, shareholders, employees, officers, directors, agents or servants based upon the release or threatened release of Existing Contamination at the Property, including but not limited to any action pursuant to Section 9607(a) of CERCLA, 42 U.S.C. § 9607(a), provided that Settling Respondent complies with all terms of this Order. Nonetheless, the Department hereby reserves all of its respective rights concerning, and such release and covenant not to sue shall not extend to, any further investigation or remedial action the Department deems necessary due to:
 - i. environmental conditions or information related to the Property which were unknown at the time this release and covenant not to sue was issued and which indicate that this Order cannot be implemented with sufficient protection of human health and the environment;
 - ii. Settling Respondent's failure to implement the Order; or
 - iii. fraud committed by Settling Respondent in entering into or implementing the Order.
- b. Additionally, the Department hereby reserves all rights concerning, and any such release and covenant to sue shall not extend to, any Settling Respondent who causes or allows a release or a threat of release at the Property of any hazardous waste (as that term is defined at 6 NYCRR § 375-1.2(w)) or petroleum (as that term is defined in

Navigation Law § 172[15]), other than Existing Contamination; nor to any party who is otherwise responsible under law for the remediation of the Existing Contamination independent of any obligation that party may have respecting same resulting solely from the execution of this Order.

- c. Notwithstanding the above, however, with respect to any claim or cause of action asserted by the Department, the party seeking the benefit of this release and covenant not to sue shall bear the burden of proving that the claim or cause of action, or any part thereof, is attributable solely to the Existing Contamination.

Notwithstanding any other provision in this release and covenant not to sue:

- i. if with respect to the Property there exists or may exist a claim of any kind or nature on the part of the New York State Environmental Protection and Spill Compensation Fund against any party, nothing in this order shall be construed or deemed to preclude the State of New York from recovering such claim.
 - ii. except as provided in this Order, 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 right to recover natural resources damages) with respect to any party, including Settling Respondent.
 - iii. nothing contained in this Order shall prejudice any rights of the Department to take any investigatory or remedial action it deems necessary if Settling Respondent fails to comply with the Order or if contamination other than Existing Contamination is encountered at the Property.
 - iv. nothing contained in this Order shall be construed to prohibit the Commissioner or his duly authorized representative from exercising any summary abatement powers.
 - v. nothing contained in this Order shall affect or be construed to affect the Department's right to terminate the Order and this release and covenant not to sue at any time if Settling Respondent fails to comply with the Order's terms and conditions.
 - vi. 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: (i) Settling Respondent may have against anyone other than the Department, including but not limited to rights of contribution under § 113(f)(B)(3) of CERCLA, 42 U.S.C. § 9613(f)(B)(3); and (ii) the Department may have against anyone other than the Settling Respondent and its past, present, or future members, shareholders, directors, officers, employees, agents, and servants that were not responsible under law for the development and implementation of a Remedial Program at the Property prior to the effective date of this Order, and their respective secured creditors and insurers.
- d. This release and covenant not to sue shall be null and void, *ab initio*, in the event of fraud relating to the execution or implementation of this Order or in the event of Settling Respondent's failure to comply with any provision of this Order.

VII. Penalties

- a. Settling Respondent's failure to comply with any term of this Order constitutes a violation of this Order, the ECL, and 6 NYCRR § 375-2.11(a)(4), and may subject Settling Respondent to payable penalties imposed by the Department.
- b. Payment of any penalties shall not in any way alter Settling Respondent's obligations under this Order.
- c. Settling Respondent shall not suffer any penalty or be subject to any proceeding or action in the event it cannot comply with any requirement of this Order as a result of any Force Majeure event as provided at 6 NYCRR § 375-1.5(b)(4). Settling Respondent must use best efforts to anticipate the potential Force Majeure event, best efforts to address any such event as it is occurring, and best efforts following the Force Majeure event to minimize delay to the greatest extent possible. "Force Majeure" does not include Settling Respondent's economic inability to comply with any obligation, the failure of Settling Respondent to make complete and timely application for any required approval or permit, and non-attainment of the goals, standards, and requirements of this Order.
- d. Settling Respondent shall notify the Department in writing within ten (10) days of the onset of any Force Majeure Event. Failure to give such notice within such ten (10) day period constitutes a waiver of any claim that a delay is not subject to penalties. Respondent shall be deemed to know of any circumstance which it, any entity controlled by it, or its contractors knew or should have known.
- e. Settling Respondent shall have the burden of proving by a preponderance of the evidence that (i) the delay or anticipated delay has been or will be caused by a Force Majeure event; (ii) the duration of the delay or the extension sought is warranted under the circumstances; (iii) best efforts were exercised to avoid and mitigate the effects of the delay; and (iv) Settling Respondent complied with the requirements of Subparagraph VII.d regarding timely notification.
- f. If the Department agrees that the delay or anticipated delay is attributable to a Force Majeure Event, the time for performance of the obligations that are affected by the Force Majeure Event shall be extended for a period of time equivalent to the time lost because of the Force Majeure event, in accordance with 6 NYCRR § 375-1.5(4).
- g. If the Department rejects Settling Respondent's assertion that an event provides a defense to non-compliance with this Order pursuant to Subparagraphs VII.c and d, Respondent shall be in violation of this Order.

VIII. Indemnification

Settling Respondent shall indemnify and hold the Department, the State of New York, and their representatives and employees harmless as provided by 6 NYCRR § 375-2.5(a)(3)(i).

IX. Transfer of Ownership Interest/Change in Use

- a. If Settling Respondent proposes to convey the whole or any part of its ownership interest in the Property, or become aware of such conveyance, the Settling Respondent shall, not fewer than sixty (60) days before the date of conveyance, or within thirty (30) days after becoming aware of such conveyance, notify the Department in writing of the identity of the transferee and of the nature and proposed or actual date of the conveyance, and shall notify the transferee in writing, with a copy to the Department, of the applicability of this Order. However, such obligation shall not extend to a conveyance by means of a corporate reorganization or merger or the granting of any rights under any mortgage, deed, trust, assignment, judgment, lien, pledge, security agreement, lease, or any other right accruing to a person not affiliated with the Settling Respondent to secure the repayment of money or the performance of a duty or obligation.
- b. In the event of an assignment or transfer of either of the Property or an assignment or transfer of an interest in the Property, the assignor or transferor shall continue to be bound by all of the terms and conditions, and subject to all the benefits, of this Order except as the Department and the assignor or transferor agree otherwise and modify this Order, in writing. Moreover, prior to or simultaneous with any assignment or transfer of Property, the assignee or transferee must consent in writing to be bound by the terms of this Order. The release and covenant not to sue in Paragraph VII shall not be effective with respect to any assignees or transferees who fail to provide such written consent to the Department. In addition, the release and covenant not to sue shall not apply to any assignees or transferees which are responsible for, according to principles of statutory or common law liability, the disposal of hazardous wastes at the Property. Furthermore, it shall not apply to any transferees or assignees which have any relationship to persons which are liable, according to principles of statutory or common law liability, for the remediation of hazardous wastes at the Property.
- c. Settling Respondent shall notify the Department at least sixty (60) days in advance of any change of use, as defined in 6 NYCRR 375-2.2(a), which is proposed for the Property, in accordance with the provisions of 6 NYCRR 375-1.11(d). In the event the Department determines that the proposed change of use is prohibited, the Department shall notify Settling Respondent of such determination within forty-five (45) days of receipt of such notice.

X. Reservation of Rights

- a. The release and covenant not to sue set forth in Paragraph VI does not pertain to any matters other than those expressly specified therein.
- b. Except as provided in the release and covenant not to sue in Paragraph VI after its issuance and except as otherwise provided in this Order, nothing contained in this Order shall be construed as barring, diminishing, adjudicating, or in any way affecting any of the Department's rights or authorities, including, but not limited to, the right to recover natural resource damages, the right to take any investigatory or remedial action deemed necessary, and the right to exercise summary abatement powers with respect to any person, including Settling Respondent.

XI. Communications

- a. All written communications required by this Order shall be transmitted by United States Postal Service, by private courier service, or hand delivered as follows, with a copy by email:

- i. Communications from the Respondent shall be sent to:

Gail Dieter
Division of Environmental Remediation
New York State Department of Environmental Conservation
Bureau E, Section C
625 Broadway, 12th Floor
Albany, NY 12233-7017
gail.dieter@dec.ny.gov

Dennis Harkawik
Regional Attorney
New York State Department of Environmental Conservation
6274 East Avon-Lima Road
Avon, New York 14414
dennis.harkawik@dec.ny.gov

- ii. Communications from the Department to the Respondent shall be sent to:

Mr. Robert T. Vosteen
Monroe Electronics
100 Housel Avenue
Lyndonville, New York 14098
bobv@monroe-electronics.com

Alan J. Knauf
Knauf Shaw LLP
1400 Crossroads Building
2 State Street
Rochester, New York 14614
aknauf@nyenvlaw.com

XII. Termination of Order

- a. This Order shall terminate upon the Department's written determination that: (i) its terms and conditions, including compliance with the SMP, have been satisfied or (ii) the Department elects to terminate based on Settling Respondent's violation of the Order's terms, following written notice of the intended termination to Settling Respondent, giving Settling Respondent thirty (30) days to correct the violation (the "thirty-day notice"). The termination shall be effective ten (10) days after the thirty-day notice period has run unless the violation has been corrected to the Department's satisfaction (the "Termination Date").
- b. Notwithstanding the foregoing, the provisions contained in Paragraphs II, IV, V, and VIII shall survive the termination of this Order and any violation of such surviving

Paragraphs shall be a violation of this Order, the ECL, and 6 NYCRR § 375-2.11(a)(4), subjecting Settling Respondent to penalties as provided under Paragraph VII so long as such obligations accrued on or prior to the Termination Date.

- c. Paragraph VI shall also survive the termination of this Order unless it is terminated pursuant to the same paragraph. Should Paragraph VI survive the termination of this Order, it shall remain subject to termination pursuant to the provisions of the same paragraph.

XIII. Miscellaneous

- a. The Settling Respondent's successors and assigns shall be bound by this Order and the terms of this Order shall inure to the benefit of the Settling Respondent and its successors. Any change in ownership or corporate status, including but not limited to, any transfer of assets or real or personal property, shall in no way alter such Settling Respondent's responsibilities under this Order.
- b. 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 provisions of this Order.
- c. The terms of this Order shall constitute the complete and entire agreement between the Department and the Settling Respondent concerning the actions required by this Order. 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 shall be construed as relieving Respondent of its obligation to obtain such formal approvals as required by this Order. Except as set forth herein, if the Respondent desires that any provision of this Order be changed, they shall make timely written application to the Commissioner with copies to the parties listed in Paragraph XI herein. The Commissioner or the Commissioner's designee shall endeavor to respond in 60 days.
- d. If Settling Respondent is a partnership, the obligations of all general partners, including limited partners who act as general partners, to finance and perform obligations under this Order and pay amounts owed to the Department under this Order are joint and several. In the event of the insolvency of or the failure of any of the general partners to implement the requirements of this Order, the remaining general partners shall complete all such requirements.
- e. All activities undertaken by the Settling Respondent pursuant to this Order shall be performed in accordance with the requirements of all applicable Federal and State laws, regulations and guidance documents.
- f. Unless otherwise expressly provided herein, terms used in this Order which are defined in ECL Article 27, Title 13 or in regulations promulgated under such statutes shall have the meaning assigned to them under such statutes or regulations.
- g. The Settling Respondent's obligations under this Order represent payment for or reimbursement of removal or response costs and shall not be deemed to constitute any type of fine or penalty.

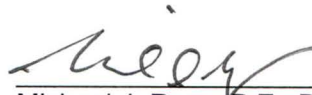
- h. This Order shall be filed in the Office of the Orleans County Clerk at the expense of the Respondent within five (5) days of receipt of an original signed document. Proof of recording shall be provided to the Department within thirty (30) days of the actual filing.
- i. This Order may be executed for the convenience of the parties thereto, individually or in combination, in one or more counterparts, each of which for all purposes shall be deemed to have the status of an executed original and all of which shall together constitute one and the same.
- j. The undersigned representative of each party certifies that he or she is fully authorized to enter into this Order and to execute and bind the party to its terms.
- k. The effective date of this order is the date the Commissioner or the Commissioner's designee signs this Order.

Dated:

APR 17 2019

BASIL B. SEGGOS
COMMISSIONER
NEW YORK STATE DEPARTMENT OF
ENVIRONMENTAL CONSERVATION

By:



Michael J. Ryan, P.E., Director
Division of Environmental Remediation

Consent by Settling Respondent

Settling Respondent hereby consents to the issuing and entering of this Order, waives Settling Respondent's right to a hearing herein as provided by law, and agrees to be bound by this Order.

By: PLA. 5.2/A

Title: EXEC VICE PRESIDENT

Date: MARCH 26, 2019

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

On the 26th day of March, in the year 2018, before me, the undersigned, personally appeared Robert T. Vosteen, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.


Signature and Office of individual
taking acknowledgment

MELISSA MARIE SLAUGHTER
NOTARY PUBLIC, State of New York
Registration No. 02SL6335805
Qualified in Monroe County
My Commission Expires January 19, 2020

Appendix “A” – Environmental Easement