

STATE OF NEW YORK : DEPARTMENT OF ENVIRONMENTAL CONSERVATION

In the Matter of the Development and
Implementation of a Remedial Program for
an Inactive Hazardous Waste Site Disposal
Site Pursuant to Article 27, Title 13 of
the Environmental Conservation Law of the
State of New York by

ORDER
ON
CONSENT

INGERSOLL RAND

Index #B8-0183-87-04
Site #851012

RESPONDENT

WHEREAS:

1. The New York State Department of Environmental Conservation (the "Department") is responsible for the enforcement of Article 27, Title 13, of the Environmental Conservation Law of the State of New York (the "ECL"), entitled "Inactive Hazardous Waste Disposal Sites".

2. Respondent, Ingersoll Rand, entered into a joint venture with Dresser Industries, Inc., as of December 31, 1986 and formed Dresser-Rand which is organized as a partnership, and existing under the laws of the State of New York. Dresser Rand presently owns and controls, and Ingersoll Rand formerly operated a facility commonly known as the Ingersoll Rand Foundry, located on Water Street in the Village of Painted Post, County of Steuben, State of New York, (the "Site").

3. Respondent's operation of the Ingersoll-Rand Foundry at the Site resulted in the spillage, leakage, or discharge of polychlorinated biphenyl (PCB)-contaminated oil and other materials which are now deemed waste materials.

RECEIVED

4. PCB and PCB-contaminated wastes are hazardous wastes as that term is defined in Section 27-1301(1) of the ECL and Section 371.4(e) of 6 NYCRR, which wastes persist in the environment and can constitute a significant threat to the environment when improperly treated, stored, disposed of or otherwise mis-managed.

5. As a result of the presence of PCB-contamination, the Site is deemed by the Department to be an inactive hazardous waste disposal site as that term is defined in Section 27-1301(2) of the ECL.

6. The Department alleges that the hazardous waste, and hazardous waste constituents thereof at the Site constitute a significant threat to the environment.

7. Pursuant to ECL Section 27-1313(3)(a), "whenever the Commissioner of Environmental Conservation (the "Commissioner") finds that hazardous waste at an inactive hazardous waste disposal site constitutes a significant threat to the environment, he may order the owner of such site and/or any person responsible for the disposal of hazardous waste at such site (i) to develop an inactive hazardous waste disposal site remedial program subject to the approval of the Department, at such sites and (ii) to implement such program within reasonable time limits specified in the Order".

8. Respondent and Dresser-Rand are persons responsible for the Site within the meaning of ECL Section 27-1313(3)(a).

9. Respondent, through its consultant(s), has conducted

an environmental evaluation of the contamination at the site and has submitted to the Department a work plan for remediation of the Site.

10. The Department and the Respondent acknowledge that the goal of this Order shall be that the Respondent fully implement the Work Plan, attached hereto as Appendix "A", as approved by the Department, within the time limit specified therein and any further investigation required to confirm that:

A. PCBs and PCB-contaminated wastes at the site have been eliminated so that PCB contamination remaining on-Site does not exceed the level of 10 ppm or 50 micro-grams per square meter (on non-porous surfaces).

B. Identified environmental hazards and potential hazards in connection with hazardous wastes at the Site have been abated or eliminated.

11. 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 the provisions, terms and conditions hereof.

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

I. Respondent shall implement the remedial program for the Site as set forth in the approved Work Plan attached hereto and identified as Appendix "A".

II. All proposals, reports, plans, investigations, remedial programs, and supplements and revisions thereto

required by this Order shall address both on-Site and if determined to be necessary, off-Site contamination caused by the discharge of hazardous and industrial wastes at the Site and shall be prepared, designed and executed in accordance with Requisite Technology. As used in this Order, Requisite Technology means engineering, scientific and construction principals and practices subject to the Department's approval, which (a) are technologically feasible and (b) will most effectively identify, mitigate and eliminate any present or potential future threat to the environment posed by hazardous waste and hazardous waste constituents at the Site.

The failure of Respondent to submit or undertake a proposal, report, construction program, or any supplement or revision thereof, in accordance with Requisite Technology shall, after receipt of written notice from the Department of any deficiency therein, shall constitute a violation of this Order.

III. As used herein, "hazardous waste" shall mean hazardous waste as defined in ECL Section 27-1301(1) and the rules and regulations promulgated pursuant thereto and any hazardous constituents or toxic degradation products of such waste.

IV. Respondent shall submit to the Department throughout implementation of the approved Work Plan any and all monitoring and analytical results, manifests, certificates of destruction, or other documentation necessary to confirm compliance with the approved Work Plan and all

applicable statutes and regulations and to confirm that cleanup of surficial contamination has been accomplished so that PCB contamination remaining on-Site does not exceed the level of 10 parts per million and does not exceed the level of 50 micrograms per square meter on non-porous materials.

V. No later than sixty (60) days after completion of the implementation of the approved Work Plan (Appendix "A") Respondent shall submit to the Department: (a) a report concerning the remedial activities undertaken, with all supporting documents including a certification that construction was completed in accordance with the approved Work Plan (such certification shall be by a licensed professional engineer registered in the State of New York); together with (b) a proposal for a Post-Removal Investigation ("Proposal") designed to confirm that: (i) groundwater has not been contaminated by PCBs and PCB-contaminated waste at the Site and (ii) that the Remedial Program has abated and/or eliminated all identified health and environmental hazards and potential hazards presented by hazardous waste at the Site.

VI. Within thirty (30) days after receipt of the Report and Proposal for Post-Removal Investigation, the Department shall provide written notification to the Respondent of its approval or disapproval of the Report and Proposal.

If the Department approves the Report, the Department shall acknowledge completion of the Approved Work Plan and such Report shall become part of the Order and be attached

hereto as Appendix "B". If the Department determines that the Report has failed to confirm the Respondent's completion of the Approved Work Plan, the Department shall notify the Respondent, in writing, of the basis for the Department's inability to acknowledge such completion. The Respondent shall address the Department's objections by revising the Report or by undertaking any further actions necessary to confirm completion of the approved Work Plan. Upon the completion of such revisions or further actions, the Department shall acknowledge the completion of the Approved Work Plan in writing. After such acknowledgement, the Respondent may petition the Department for re-classification of the Site to a class 3 or a class 4 on the New York State Registry of Inactive Hazardous Waste Disposal Sites.

If the Department disapproves the Proposal, the Department shall notify the Respondent in writing of the Department's objections. Within thirty (30) days after its receipt of notice of disapproval, Respondent shall revise the Proposal and shall submit to the Department an investigation proposal which has been revised in accordance with the Department's objections (the " Revised Post-Removal Investigation Proposal"). Within thirty (30) days after its receipt of the Revised Post-Removal Investigation Proposal the Department shall determine if the Revised Post-Removal Investigation Proposal is in accordance with the terms, provisions and conditions of this Order and shall provide written notification to the Respondent of its approval or

disapproval of the Revised Post-Removal Investigation Proposal. If the Department disapproves the Revised Post-Removal Investigation Proposal, the Respondent shall have the option to discontinue its obligations with respect to the Post Removal Investigation and the Department shall have the right to pursue any legal remedies available to it, without prejudice to Respondent's right to contest any such actions. If Respondent elects to discontinue its obligations with respect to the Post Removal Investigation, Respondent shall not be deemed to be in violation of this Order.

The Post-Removal Investigation Proposal or the Revised Post-Removal Investigation Proposal, if approved by the Department, shall become incorporated in and made a part of this Order and shall be attached hereto as Appendix "C". Such Post-Removal Investigation Proposal shall hereafter be referred to as the Approved Post-Removal Investigation Work Plan.

VII. Within such period as may be allowed therefor by the Approved Post-Removal Investigation Work Plan, the Respondent shall implement the Approved Post-Removal Investigation and within forty-five (45) days thereafter, Respondent shall submit to the Department a report detailing the results of the Post-Removal Investigation.

VIII. Within thirty (30) days after receipt of the report of the Approved Post-Removal Investigation, the Department shall review the same. In the event the Department shall not be satisfied with the quality and

completeness of the remedial program as confirmed by the results of the Approved Post-Removal Investigation, Respondent shall be required to develop and implement the Supplementary Remedial Program to be submitted pursuant to paragraph IX below.

IX. In the event that either the Department or Respondent finds that any of the elements of the Remedial Program has failed to meet, or is inconsistent with Requisite Technology, with the requirements and goals of this Order, or with the provisions of Appendices "A" and "C", at any time prior to completion of activities required pursuant to the Approved Work Plan or during the Approved Post-Remedial Investigation, one shall immediately notify the other in writing of such failure. Immediately upon discovery or immediately upon its receipt of written notification from the Department of such failure, Respondent shall investigate to determine that the Remedial Program did in fact fail to meet the provisions of this Order or Appendices "A" and "C" and determine the causes therefor, and shall develop a Supplementary Remedial Program (the "SRP") to correct the failure and shall submit the SRP, which shall include a written scope of work and time schedule for implementation, to the Department within sixty (60) days of the discovery or receipt of such written notification.

Within thirty (30) days of receipt of the SRP, the Department shall provide written notification to the Respondent of its approval or disapproval of the SRP. If the

Department approves the SRP, Respondent shall implement the elements of the SRP in accordance with the proposal therefor.

If the Department disapproves the SRP, the Department shall notify Respondent in writing of the Department's objections. Within thirty (30) days after receipt of notice of disapproval, Respondent shall revise the SRP in accordance with the terms, provisions and conditions of this Order, and shall submit to the Department an SRP which has been revised substantially to address the Department's objections (the "Revised SRP").

Within fifteen (15) days of receipt of the Revised SRP, the Department shall provide written notification to the Respondent of its approval or disapproval of the Revised SRP. If the Department approves the Revised SRP, Respondent shall implement the elements of the Revised SRP in accordance with its provisions.

In the event that the Department disapproves of the Revised SRP, the Respondent shall have the option to discontinue its obligations with respect to the Supplemental Remedial Program and the Department shall have the right to pursue any legal remedies available to it, without prejudice to Respondent's right to contest any such actions. If Respondent elects to discontinue its obligations with respect to the Supplemental Remedial Program, Respondent shall not be deemed to be in violation of this Order.

X. The SRP or Revised SRP, if approved by the Department ("Approved SRP"), shall become incorporated in and

made a part of this Order and shall be attached hereto as Appendix "D".

Respondent shall complete the construction and other elements of the Approved SRP in accordance with its provisions and schedules.

XI. Upon completion of the SRP, if one is deemed necessary pursuant to paragraphs VIII or IX above, and the receipt and review by the Department of the reports generated by such completion, the Department shall acknowledge such completion in writing within ten (10) working days.

XII. At the closure of the monitoring period required pursuant to the Post-Removal Investigation Work Plan and any Supplemental Remedial Program, if required pursuant to paragraphs VIII or IX, the Department shall determine whether the goals of this Order have been achieved, and upon such affirmative determination, the Department shall re-classify the Site as a Classification 5 Site in the New York State Hazardous Waste Site Registry. After such re-classification, the Respondent may petition the Department for the deletion of the Site from the New York State Registry of Inactive Hazardous Waste Disposal Sites.

XIII. Respondent and the Department shall mutually agree on an appropriate date for the start of any excavating, sampling or field activities to be conducted pursuant to the terms of this Order, but in no case shall such activities be scheduled less than five (5) working days in advance of such activities, unless oral permission is first obtained from the

Department representative overseeing the project.

XIV. Upon reasonable notice, consistent with paragraph XIII above, the Respondent shall permit any duly designated officer, employee, consultant, contractor or agent of the Department to enter upon the Site and to make such tests as are determined by the Department to be reasonably necessary to ascertain Respondent's compliance with this Order.

XV. The Department shall designate representatives who shall have the authority to consult with Respondents concerning adjustments or modifications to the Work Plan and Post-Removal Investigation on the Supplementary Remedial Program as contained in Appendices "A", "C" and "D", which are necessitated by actual field conditions encountered. Such representatives shall have authority to act on behalf of the Department with respect to such adjustments or modifications. Any such adjustments or modifications to Appendices "A", "C" and "D" must be mutually agreed to by the Department and Respondents and shall be in writing.

XVI. The Department shall have the right to obtain, for the purposes of comparative analysis, "split samples" or "duplicate samples", at the Department's option, of all substances and materials sampled by Respondent pursuant to this Order. As used herein: "split samples" shall mean whole samples divided into aliquots; "duplicate samples" shall mean multiple samples, collected at the same time from exactly the same location, using the same sampling apparatus, collected into identical containers prepared identically, filled to the

same volume, and thereafter identically handled and preserved. Similarly, the Respondent shall have the right to obtain split or duplicate samples of any and all samplings conducted by the Department with respect to this Site.

XVII. Respondent shall retain a third-party professional consultant, contractor and/or laboratory to perform the technical, engineering and analytical obligations required pursuant to this Order. The selected laboratory must be on the list of laboratories considered to be technically acceptable to the Department.

XVIII. Respondent shall not suffer any penalty under any other provisions, terms and conditions hereof, or be subject to any proceeding or action for any remedy or relief, if it cannot comply with any requirements of the provisions hereof because of an act of God, war, riot, strike or other condition as to which the negligence or willful misconduct on the part of the Respondent was not the proximate cause, provided, however, that Respondent shall immediately notify the Department in writing when it obtains knowledge of such condition and requests an appropriate extension or modifications hereof, which shall not be unreasonably withheld.

XIX. Upon completion of the work pursuant to the Approved Work Plan, and upon completion of the Post-Removal Investigation and any Supplemental Remedial Program required pursuant to paragraph VIII or IX above, and upon submission of costs by the Department in accordance with this paragraph,

Respondent shall pay to the Department a sum of money not to exceed twenty thousand dollars (\$20,000) representing reimbursement for oversight and review of the remedial program by the Department which shall include direct costs for personnel, contractors and sampling, (but shall not include indirect costs such as overhead) as may be incurred by the State of New York. A written summary of such administrative costs shall be prepared by the Department and transmitted to the Respondent within (30) days after Respondent's completion of the work. Within thirty (30) days of the receipt of such summary, Respondent shall, consistent with the terms of this paragraph, tender payment for such costs; to be made payable to the Hazardous Waste Remedial Fund.

Nothing contained in this paragraph nor the tendering over of the sums above-mentioned by the Respondent to the Department shall relieve any responsible parties, including the Respondent, from any potential fiscal liabilities as regards the Department's response costs arising from any other activities which may be taken by the Department and which are not reimbursed or excluded pursuant to this Order.

XX. In the event that Respondent proposes to convey the whole or any part of its ownership interest in the Site, while this Order remains in effect, Respondent shall, not less than thirty (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.

XXI. Upon adequate notice by the Department to the Respondent, Respondent shall indemnify and hold the Department, the State of New York, and their representatives and employees harmless for all claims, suits, actions, damages and costs of every name and description arising out of or resulting from the fulfillment or attempted fulfillment of the provisions hereof by Respondent, its directors, officers, employees, servants, agents, successors or assigns; provided, however, that the Respondent shall not indemnify the State for liability arising from the negligence of the State of New York, the Department, or its employees, agents, or contractors.

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

XXIII. Nothing contained in this Order shall be construed as barring, diminishing, adjudicating or any way affecting: (1) any legal or equitable rights or claims, actions, suits, causes of action, or demands whatsoever that the Department may have against anyone other than the Respondent, its directors, officers, employees, servants, agents, successors and assigns; (2) the Department's right to enforce at law or in equity the terms and conditions of this Order against Respondent, its directors, officers, employees,

servants, agents, successors and assigns in the event that Respondent shall fail to fulfill any of the provisions hereof; and (3) the Department's right to bring any action, at law or in equity 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 migration of hazardous waste from the Site. Nothing herein shall be construed as affecting the Department's right to commence any action or proceeding to which it may be entitled in connection with, relating to, or arising out of Respondent's disposal of hazardous waste at the Site, provided, however, that such right shall not extend to any matter covered by the terms of this Consent Order.

XXIV. The terms of this Order shall not be construed to prohibit the Commissioner of Environmental Conservation or Health or their duly authorized representatives from exercising any summary abatement powers, either at common law or as granted pursuant to statute or regulations.

XXV. The effective date of this Order shall be the date this Order is signed by the Commissioner or his designated representative.

XXVI. If, for any reason Respondent desires that any of the provisions of this Order be changed or modified, Respondent shall make timely written application therefor to the Commissioner setting forth reasonable grounds for the relief sought.

XXVII. The failure of Respondent to comply with any provision of this Order or any Appendices thereto shall constitute a default and a failure to perform an obligation under the ECL.

XXVIII. All communications required hereby to be made between the Department and the Respondent shall be made in writing and transmitted by United States Postal Service, Return Receipt Requested, Federal Express Overnight Service or hand delivered to the addressees as listed hereunder.

A. Communications to be made from Respondent to the Department shall be made as follows:

1) Two (2) copies to:

New York State Department of Environmental Conservation
Division of Hazardous Waste Remediation
Attention: Michael J. O'Toole, Jr., Acting Director
50 Wolf Road
Albany, New York 12233-5500

2) One (1) copy to:

New York State Department of Environmental Conservation
Attention: Eric Seiffer, Director
Region 8
6274 East Avon-Lima Road
Avon, New York 14414

3) One (1) copy to:

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

4) One (1) copy to:

New York State Department of Health
Attention: Ronald Tramontano
Bureau of Environmental Exposure Investigation
2nd floor
2 University Place
Albany, New York 12237

B. All reports and other documents produced by the Respondent and submitted to the Department in the course of implementing this Order shall also be sent to:

1) One (1) copy to:

New York State Department of Environmental Conservation
Division of Hazardous Waste Remediation
Eastern Remedial Bureau
50 Wolf Road
Albany, New York 12233-5500

2) One (1) copy to:

New York State Department of Environmental Conservation
Attention: Monmohan Mehta
Division of Solid Waste
Region 8
6274 East Avon-Lima Road
Avon, New York 14414

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

1) One (1) copy to:

Ingersoll Rand Company, through its agent on-Site:
Capsule Engineering, Inc.

2) One (1) copy to:

Ingersoll Rand Company
Attention: Milt DeJean
200 Chestnut Ridge Road
Woodcliff Lake, New Jersey 07675

3) One (1) copy to:

Ingersoll-Rand Company, by its attorney:
McElroy, Deutsch & Mulvaney
Attention: Dennis Reznick, Esq.
218 Ridgedale Avenue
P.O. Box 2075
Morristown, New Jersey 07960

D. The Department and Respondent respectively reserve the right to designate other or different addresses on notice to the other.

E. No unwritten advice or guidance by the Department's

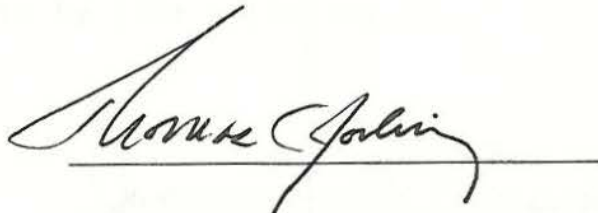
officers or employees or representatives, upon any plan, report, proposal, study or other document or modifications or additions thereto, submitted by Respondent to the Department, shall relieve Respondent of any obligation it may have to obtain the Department's written approval of the same.

XXIX. The provisions hereof shall constitute the complete entire Order between Respondent and the Department concerning this Site. No terms, conditions, understandings or agreements purporting to modify or vary the terms hereof shall be binding unless made in writing and subscribed to by the party to be bound.

DATED: *Dec. 4, 1987*

Albany, New York

Thomas C. Jorling
Commissioner
New York State Department of
Environmental Conservation

A handwritten signature in cursive script, reading "Thomas C. Jorling", is written over a horizontal line.

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.

INGERSOLL RAND COMPANY

By: Robert D. Krumme

Title: Vice President

Date: 10/2/87

STATE OF NEW JERSEY)
) SS.:
COUNTY OF BERGEN)

On this 2nd day of October, 1987,
before me personally came Robert D. Krumme
to me known, who, being by me duly sworn, did depose and say
that he resides in Larchmont, N.Y.; that he is
the Vice President of Ingersoll Rand Co., the
company described in and which executed the foregoing
instrument; that he knew the seal of said company; that the
seal affixed to said instrument was such seal; that it was so
affixed with the authority of said company, and that he
signed his name thereto by like authority.

Joanne D. Conway
NOTARY PUBLIC

JOANNE D. CONWAY
NOTARY PUBLIC OF NEW JERSEY
My Commission Expires April 30, 1991