

STATE OF NEW YORK: DEPARTMENT OF ENVIRONMENTAL CONSERVATION
-----X

In the Matter of the Development
and Implementation of an Interim Remedial
Measure for an Inactive Hazardous Waste
Disposal Site Under Article 27, Title 13 of
Environmental Conservation Law by

ORDER
ON
CONSENT

PAUL BELL, d/b/a/ BELL'S FARM & HOME CENTER

AND

JOHN EBERENZ, INC.

Respondents

Site #851015
Index #B8-0313-89-12

-----X
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 Paul Bell, d/b/a Bell's Farm & Home Center operated a facility at the corner of Flower and Garden Streets in the Village of South Corning in the State of New York (the "Site").

3. Respondent John Eberenz, Inc. owns property at the corner of Flower and Garden Streets in the Village of South Corning, in the State of New York (the "Site").

4. The Department alleges that as a result of a fire at the Site in September 1989, hazardous wastes from Bell's Farm & Home Center were released to the environment, without any fault on the part of Respondents.

5. By notice dated January 25, 1990, the Department

notified respondents that the property at the corner of Flower and Garden Streets in the Village of South Corning had been classified by the Department as an Inactive Hazardous Waste Disposal Site as that term is defined in ECL §27-1301(2) and as a result thereof had been listed in the Registry of Inactive Hazardous Waste Disposal Sites in New York State as Site #851015. The Department has classified the Site as classification "2" having determined that the Site presented a "significant threat to the public health or environment - action required". Attached hereto, made a part hereof and marked as Appendix "A" is a copy of the Department's, Division of Hazardous Waste Remediation's Inactive Hazardous Waste Disposal Site Report form. The Department has classified the site as classification "2" having determined that the site presents a "significant threat to the public health or environment-action required".

6. To determine the extent of any health or environmental concerns resulting from the fire, respondent Bell engaged Groundwater Technology, Inc. to prepare a site assessment. Verbal information on the site assessment was provided by Mr. David Napier of the New York State Department of Health and Mr. Robert Hall, Senior Sanitary Engineer for the New York State Department of Environmental Conservation.

7. At the request of the Department, Respondent Bell d/b/a Bell's Farm & Home Center submitted to the Department the report of Groundwater Technology, Inc. dated February 9, 1990. Said report set forth preliminary findings resulting

from the work of Groundwater Technology, Inc. in December, 1989. The scope of the work included collecting and analyzing samples of soil peripheral to the fire area and sediments from the dry well and retention pond for the potential presence of agricultural and chemical species; installing four soil borings and subsequent monitor wells; gauging monitor wells and determining groundwater gradient; and sampling and analyzing monitor wells.

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

9. The Department and Respondents hereby agree that the goal of this Order is to establish the terms and conditions under which Respondent shall implement, with Department approval and oversight, a Work Plan for an Interim Remedial Measure ("IRM") which shall focus on eliminating immediate public health or environmental threats that may exist as a result of events occurring on the site and shall focus on further reducing contamination to the environment, and which shall include:

- A. (1) additional sampling of surficial soil to identify areas of contamination and determine background levels
(2) remediation of soil, if warranted;
- B. (1) sampling of pond water to obtain constituent chemistry for evaluation of disposal methods
(2) draining/pumping out pond water and proper disposal
(3) analyzing the pond sediment; remediation if warranted
(4) backfilling pond area with clean fill;
- C. (1) additional sampling of the water and sediment in the dry well
(2) remediation of water and sediment if warranted.

10. Respondents have developed and submitted to the Department a Work Plan for an IRM for the site. The goal of the IRM Work Plan is to implement a program as outlined in paragraph 9 of this Order. The IRM Work Plan has been approved by the Department and is attached to and is incorporated into this Order as Appendix "B".

11. Without waiving any of its rights under Section 27-1305 of the ECL and rules and regulations promulgated thereunder, Respondents waive their right to a hearing herein and otherwise consent to the issuance and entry of this Order, and agree to be bound by its terms. It is acknowledged by the Department and Respondents that this Order is issued without the taking of any testimony, without

trial, without any admissions or adjudication of any issue of fact or law, and without any admission of fact or liability or fault as to any allegation or subject arising out of this subject matter. This Order does not relieve the Respondents of any obligations they may have under Article 27, Title 13 of the ECL to perform any further investigation of site conditions, and, if necessary, to remediate the Site.

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

I. Respondents shall undertake and implement the Interim Remedial Measure as described in Appendix "B" and the schedule contained therein in accordance with the details specified therein. Any modifications or revisions to the work plan, attached as Appendix "B", which may be required due to unanticipated field conditions shall be subject to approval by the Department.

II. In accordance with the schedule in the IRM Work Plan, Respondents shall submit to the Department a Report containing all monitoring and analytical results obtained during performance of the IRM Work Plan, and any other documentation necessary to confirm compliance with the IRM Work Plan and all applicable statutes and regulations.

III. The Department shall determine if the Interim Remedial Measure was conducted and the Report prepared in accordance with the terms of this Order, and shall provide

written notification to the Respondent of its approval or disapproval of the Report. Approval of the Report shall constitute the Department's acknowledgment that the IRM was performed in compliance with Appendix "B" and with the terms of this Order.

If the Department disapproves all or any portion of the Report for failure to fulfill the terms of the Order or Appendix "B", the Respondent shall revise the Report and/or supplement and re-perform the IRM Work Plan in accordance with the Department's specific comments and shall submit a revised Report. The period of time within which the Report must be revised or the Interim Remedial Measure re-performed or supplemented shall be specified by the Department in its notice of disapproval, and such period of time shall be reasonable and practical.

If the Department disapproves the Revised Report, Respondent shall be in violation of this Order unless the Respondent invokes the dispute resolution mechanism identified in paragraph XIX of this order within 5 days of receipt of such disapproval.

The Report or the Revised Report, whichever is approved by the Department shall become incorporated in and made a part of this Order and shall be attached as Appendix "C".

IV. The Department reserves the right to request a modification of, or an amplification and expansion of the IRM Work Plan, or the Report, by Respondents, if the Department determines as a result of reviewing data generated

by the Interim Remedial Measure or as a result of reviewing other data or facts, that further work is necessary to locate, uncover, analyze and characterize, remove or dispose of wastes at the Site or to conduct groundwater monitoring.

V. Respondents shall provide oral notice to the Department of any field activities to be initiated pursuant to the terms of this Order at least 5 working days in advance of such activities.

VI. Respondents shall permit any duly designated officer, employee, consultant, contractor, or agent of the Department or any state agency to enter upon the Site or areas in the vicinity of the Site under the control of Respondents, for inspection purposes and for the purpose of making or causing to be made such sampling and tests as the Department deems necessary, and for ascertaining Respondents' compliance with the provisions of this Order. The Department and its representatives, employees or agents shall follow the Health & Safety Plan developed by Respondents as set forth in Appendix "B".

VII. Respondents shall obtain whatever permits, easements, rights-of-way, rights-of-entry, approvals, or authorizations are necessary to perform their obligations under this Order. Respondents shall promptly notify the Department in the event of their inability to obtain such authorizations on a timely basis. In the event Respondents are unable to obtain the necessary authorizations required to perform the requirements under this Order, the Department

shall, consistent with its legal authority, assist in obtaining such authorizations or modify this Order to reflect the changes required due to the circumstances. Respondents shall have no further obligation with respect to said permits, easements, rights-of-way, rights-of-entry, approvals or authorizations except to make all reasonable efforts to assist the Department as the Department deems necessary in obtaining the same.

VIII. Respondents have retained and shall continue to retain professional consultants, contractors and/or laboratories to perform the technical engineering and analytical obligations required by this Order. The experience, capabilities and qualifications of the firms or individuals selected by Respondents shall be submitted to the Department for approval and approved prior to the initiation of any activities for which they will be responsible. During the implementation of the IRM Work Plan, Respondents shall have on-Site a representative who is qualified to inspect the work. The representative shall be required to be present on-site at a minimum at all times the activities are occurring on site. The representative shall certify to the best of his or her knowledge that the Interim Remedial Measure was completed in accordance with the IRM Work Plan and this Order.

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

by Respondents pursuant to this Order. Results of said samples shall be furnished to Respondents as soon as practicable.

X. Respondent shall be excused for any delay and Respondent shall not suffer any penalty under this Order, or be subject to any proceeding or action, if it cannot comply with any requirements hereof because of an act of God, war or riot, or other condition as to which negligence or willful misconduct on the part of the Respondent was not a proximate cause, including but not limited to delays attributable solely to weather conditions or difficulties in obtaining easements or rights-of-way. An act of God is an unforeseeable disaster arising exclusively from natural causes which the exercise of ordinary human prudence could not have prevented. Respondent shall within five (5) days notify the Department in writing when it obtains knowledge of any such condition, and shall include in such notice 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 in a timely manner shall constitute a waiver of any defense to a claim that a delay is subject to penalties. Respondent shall have the burden of proving that an event is a defense to compliance with this Order pursuant to this section.

XI. 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 right to bring any action or proceeding against anyone other than Respondents, their directors, officers, employees, servants, agents, successors and assigns;

b. the right to enforce this Order against Respondents, their directors, officers, employees, servants, agents, successors and assigns in the event that either Respondent shall fail to fulfill any of the provisions hereof;

c. the right to bring any action, at law or in equity against Respondents, their successors and assigns with respect to areas or resources that may have been affected or contaminated as a result of the release or threatened release of hazardous wastes or constituents at or from the Site, including but not limited to claims for natural resources damages; and

d. the right to bring any action or proceeding against any responsible party to compel the development and implementation of an inactive hazardous waste disposal site remedial program for the Site (including, but not limited to, a Remedial Investigation/Feasibility Study) and to obtain recovery of its costs as permitted by law, in connection with the Site.

XII. Nothing contained in this order shall be construed as barring, diminishing, adjudicating or in any way affecting any legal or equitable rights or claims, actions, suits or

causes of action whatsoever which Respondents may have against any one with respect to the subject matter of this Order, except as expressly specified in paragraphs 11 and XIX of this Order.

XIII. Within 60 days after the Department's approval of the Interim Remedial Measure Report, or 60 days after receipt of an invoice from the Department, whichever is later, Respondents shall pay to the Department a sum of money which shall represent reimbursement for the Department's expenses including, but not limited to, direct and indirect labor, overhead, travel, analytical costs and contractor costs incurred by the State of New York for negotiating this Order, reviewing and revising submittals made pursuant to this Order, overseeing activities conducted pursuant to this Order and collecting and analyzing samples, provided that such charges shall be supported by the names of employees performing work and the days and number of hours said work was performed. Respondents shall pay to the Department a sum not to exceed \$10,000. Such payment shall be made by certified check payable to the Department of Environmental Conservation for payment into the Hazardous Waste Remedial Fund established under Section 97-b of the State Finance Law. Payment shall be sent to the Director, Division of Environmental Enforcement, N.Y.S.D.E.C., 50 Wolf Road, Albany, New York 12233.

XIV. This Order shall not be construed to prohibit the Commissioner or his duly authorized representative from

exercising any summary abatement powers.

XV. Respondents 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 this Order by Respondents, their officers, employees, servants, agents, successors or assigns; provided, however, that the foregoing indemnification shall not apply where or if the Department or any officer or employee of the Department directs Respondents or their contractors to perform any act or do any thing during the course of implementing an approved work plan over the Respondents written objections, which act or thing is performed by Respondent or its contractor without negligence or willful misconduct.

XVI. Respondents shall have the option to participate in a Citizen Participation Program in coordination with and subject to the approval of the Department. If implemented by the Respondents, the Citizen Participation Program shall be consistent with the Department's publication entitled "New York State Inactive Hazardous Waste Site Citizen Participation Plan", unless the Department determines upon further investigation or in an administrative proceeding or action that this Site is no longer an inactive hazardous waste disposal site as defined by law, or unless the site has been reclassified to a Type 5 site pursuant to a petition by

Respondents under ECL §27-1305.

XVII. The effective date of this Order shall be five days after the date this Order is signed by the Commissioner or his designee.

XVIII. If Respondents desire that any term of this Order be changed, Respondents shall make timely written application to the Commissioner, setting forth reasonable grounds for the relief sought.

XIX. The Department and Respondents shall attempt to resolve expeditiously and informally any disagreements concerning implementation of this Order or any work required under this Order. In the event any dispute arising under this Order is not resolved expeditiously through informal means, any party desiring dispute resolution under this paragraph shall give written notice to the other parties within 5 days of identification of such dispute.

Within five (5) working days of the service of notice of dispute pursuant to this paragraph, the party which gave the notice shall serve on the other parties a written statement of the issues in dispute, the relevant facts upon which the dispute is based, and factual data, analysis or opinion supporting its position, and all supporting documentation on which such party relies (hereinafter called the "Statement of Position"). The other parties shall serve their Statement of Position, including supporting documentation, no later than five (5) working days after receipt of the complaining party's Statement of Position. In the event that these time

periods for exchange of Statements of Position may cause a delay in the work being performed under this Order, the time periods may be shortened upon and in accordance with written notice by the Department for good cause shown in that notice. The parties shall have 5 working days from receipt of the Statements of Position to resolve the dispute. If agreement is reached, such agreement shall be reduced to writing and signed by all parties and incorporated into this Order.

If agreement is not reached, an administrative record of any dispute under this paragraph shall be maintained by the Department. The record shall include the written notification of such dispute, the Statements of Position served pursuant to the preceding subparagraph, and any other relevant information. The record shall be available for review by all parties.

Upon review of the administrative record, the Commissioner or his designee shall issue a final decision setting forth the reasons for his decision and order resolving the dispute. The Commissioner's decision and Order shall be final and binding on all parties involved.

The invocation of the procedures stated in this paragraph shall not extend or postpone the Respondents' obligations under this Order with respect to the nondisputed items, unless and until the Department finds otherwise.

XX. Within 30 days after the effective date of this Order, Respondents shall file a Declaration of Covenants and Restrictions with the Steuben County Clerk to give all

parties who may acquire any interest in the Site notice of this Order.

XXI. In the event that Respondents propose to convey the whole or any part of their ownership interest in the Site, Respondents shall, not fewer than 60 days prior to the proposed conveyance, notify the Department in writing of the identity of the transferee and the nature and date of the proposed conveyance and shall notify the transferee in writing, with a copy to the Department, of the applicability of this Order, unless the Department determines after further investigation or in an administrative proceeding or action that this Site is no longer an inactive hazardous waste disposal site as defined by law, or unless the site has been reclassified to a type 5 site pursuant to a petition by Respondents under ECL §27-1305.

XXII. a. All communication required hereby to be made between the Department and Respondents shall be made in writing and transmitted by United States Postal Service or hand delivered by courier or overnight mail service to the addresses listed below.

b. Reports and submissions to be made from Respondents to the Department shall be made as follows:

2 copies to:

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

2 copies to:

New York State Department of
Environmental Conservation
6274 E. Avon-Lima Road
Avon, New York 14414

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

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

c. Communication to be made from Department to

Respondents shall be made as follows:

Richard D. Keyser, Esq.
Denton, Keyser, LaBrecque & Moore
Marine Midland Bank Building
150 Lake Street
Elmira, New York 14902-1503

Cynthia Hutchinson, Esq.
Sayles, Evans, Brayton, Palmer & Tifft
One West Church Street
Elmira, New York 14901

Mr. Lawrence Smith
H&A of New York, Inc.
189 North Water Street
Rochester, New York 14604

d. The Department and Respondents respectively reserve the right to designate other or different addressees on notice to the other.

XXIII. The provisions of this Order shall bind Respondents, their officers, directors, agents, servants, employees, successors and assigns.

XXIV. Respondents' failure to comply with any term of this Order shall constitute a violation of this Order. The terms of this order shall be carried out in accordance with all Federal, State and local laws.

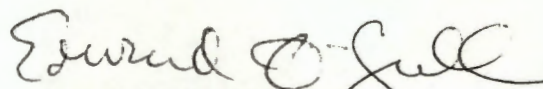
XXV. Respondents' obligations under this Consent Order shall terminate after the Department's approval pursuant to paragraph III in this Order.

XXVI. Respondents may petition at any time for reclassification of this site pursuant to applicable provisions of the ECL.

XXVII. The provisions hereof shall constitute the complete and entire Order between Respondents and the Department concerning the Site. No terms, conditions, understandings or agreements purporting to modify or vary the terms hereof shall be binding unless made in writing and subscribed by the party to be bound. No informal advice, guidance, suggestions or comments by the Department regarding reports, proposals, plans, specifications, schedules or any other writing submitted by Respondents shall be construed as

relieving Respondents of their obligations to obtain such formal approvals as may be required by this Order.

Dated: MAY 25 1990
Albany, New York



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

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.

PAUL BELL d/b/a/ BELL'S FARM & HOME CENTER

By: _____

Paul A. Bell

(Type Name of Signer)

Title: Owner

Date: May 18, 1990

STATE OF NEW YORK)

) SS.:

COUNTY OF STEUBEN)

On this 18th day of May, 1990,
before me personally came Paul A. Bell

to me known, who, known to me to be the same person described herein, and who executed the within instrument, and he duly acknowledged to me that he executed the same and who, being by me duly sworn, did depose and say that he resides in

Lynn A. Marrone
NOTARY PUBLIC

LYNN A. MARRONE
Notary Public, State of New York
Chemung County # 1965734
Commission Expires April 30, 1992

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.

JOHN EBERENZ, INC.

By: Eileen E. Bell
Eileen E. Bell
 (Type Name of Signer)

Title: Treasurer

Date: May 18, 1990

[illegible]

On this 18th day of May, 1990,
before me personally came Eileen E. Bell
to me known, who, being by me duly sworn, did depose and say
that he resides in Steuben County; that he is
the Treasurer of John Eberenz, Inc., 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.

Reynold A. Marone
NOTARY PUBLIC

Appendix "A"

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION
DIVISION OF HAZARDOUS WASTE REMEDIATION
INACTIVE HAZARDOUS WASTE DISPOSAL REPORT

CLASSIFICATION CODE: 2 REGION: 8 SITE CODE: 851015
EPA ID:

NAME OF SITE : Bell's Farm & Home Center
STREET ADDRESS: Corner of Flower and Garden Streets
TOWN/CITY: CORNING COUNTY: STEUBEN ZIP: 14830

SITE TYPE: Open Dump- Structure-X Lagoon- Landfill- Treatment Pond-
ESTIMATED SIZE: Acres

SITE OWNER/OPERATOR INFORMATION:

CURRENT OWNER NAME....: ** Multi - Owner Site **
CURRENT OWNER ADDRESS...: * * * * *
OWNER(S) DURING USE....: John Eberenz Inc.
OPERATOR DURING USE....: Paul Bell
OPERATOR ADDRESS.....: Corner of Flower Ave. and Garden St., Corn
PERIOD ASSOCIATED WITH HAZARDOUS WASTE: From Sept. 1989 To Present

SITE DESCRIPTION:

Bell's Farm and Home Center was an operating Agway Store that caught fire on September 5, 1989. A substantial amount of water, estimated at almost one million gallons, was used to subdue this fire. The large volume of water caused a number of potentially hazardous materials to be washed out of the building area and released into the environment. Among the materials released were various types of pesticides, herbicides, and fertilizer. The materials contaminated the nearby soil, a dry well, and an adjacent pond. A water sample taken from the dry well by the NYSDOH showed contamination by 2,4 D at a level of 1800 ppb. DDT-chlorobenzodioxin contamination was noted at 600 parts per trillion. A water sample was also taken from the nearby retention pond. Analysis revealed the presence of 2,4 D at 120 ppb, malathion at 20 ppb and diazinon at 20 ppb. The well that supplies drinking water to the village of South Corning is about 400 feet away from the store. There is substantial concern that this well has been or may become contaminated by the migration of hazardous materials. As a precautionary measure, the well has been shut down.

Mr. Bell, the owner of the store, hired a private consultant to do a groundwater investigation. The potentially contaminated debris that had littered the property after the fire has since been removed. Mr. Bell submitted a report stating that further investigation is required. DEE is negotiating a Consent Order (CO) with Mr. Bell and his landlord for an IRM which will address surficial clean-up and reopening of the well.

HAZARDOUS WASTE DISPOSED:	Confirmed-X	Suspected-
TYPE		QUANTITY (units)
-----	-----	-----
Pesticides, Herbicides, and Insecticides		Unknown

SITE CODE: 851015

ANALYTICAL DATA AVAILABLE:

Air- Surface Water-X Groundwater-X Soil-X Sediment-

CONTRAVENTION OF STANDARDS:

Groundwater-X Drinking Water-X Surface Water-X Air-

LEGAL ACTION:

TYPE...: Consent Order State- X Federal-
STATUS: Negotiation in Progress- X Order Signed-

REMEDIAL ACTION:

Proposed-X Under design- In Progress- Completed-
NATURE OF ACTION: Investigation

NOTECHNICAL INFORMATION:

SOIL TYPE:

GROUNDWATER DEPTH:

ASSESSMENT OF ENVIRONMENTAL PROBLEMS:

Surface waters have been impacted by the release of hazardous substances including 2,4 D. Potential threat exists for contamination of the village well. Currently, the village well is not being used. Further soil and groundwater investigation will be required to further assess the extent of the problem.

ASSESSMENT OF HEALTH PROBLEMS:

Appendix "B"