

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 Disposal
Site, Under Article 27, Title 13,
and Article 71, Title 27 of the
Environmental Conservation Law
of the State of New York
by

MOTOROLA, INC. and
TOWN OF MACHIAS, NEW YORK
Respondents.

ORDER
ON
CONSENT
INDEX #B9-0335-90-05

Site Code #905013

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 ECL Section 3-0301.

2. Respondent Motorola, Inc. ("Motorola"), a corporation organized and existing under the laws of the State of Delaware, is authorized to do business in New York. The Site is located on Very Road in the Town of Machias, County of Cattaraugus, New York, and is known as the Machias Gravel Pit Site (the "Site"). The Department alleges industrial wastes from Motorola's facility in Arcade, New York were disposed of on the Site. The Site is depicted on Appendix "A" attached hereto. A remedial program is necessary to address site contamination contravening New York State standards. Motorola has performed

a Remedial Investigation/Feasibility Study pursuant to a consent order with the Department which was executed on December 10, 1990.

3. Respondent Town of Machias ("Machias") is a municipality in the State of New York which was, at times material hereto, and is currently the owner of the Site.

4. Following a period of public comment, the Department selected a final remedial alternative for the Site in a Record of Decision ("ROD"). The ROD, attached to this Order as Appendix "B," is incorporated as an enforceable part of this Order.

5. 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 915013. The Department has classified the Site as a Classification "2" pursuant to ECL Section 27-1305.4.b.

6. A. 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."

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

C. The Department also has the power, inter alia, to provide for the prevention and abatement of all water, land, and air pollution. ECL Section 3-0301.1.i.

7. Motorola has indicated its willingness to develop and implement the remedial design and remedial action for the site. Machias will cooperate with Motorola and the Department and will allow such access to the site as may be necessary to accomplish the goals of this Order and Machias will conduct specified operation and maintenance activities as stated in Appendix "C".

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

9. Motorola has submitted, and the Department has approved, the Remedial Design Work Plan, which is incorporated herein and is attached in Appendix "D".

10. Respondents, having waived Respondents' right to a hearing herein as provided by law, and having consented to the issuance and entry of this Order, agree to be bound by its terms. Respondents consent to and agree not to contest the authority or jurisdiction of the Department to issue or enforce this Order, and agree not to contest the validity of this Order or its terms.

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

I. Remedial Design Contents

A. In accordance with the schedule in the Remedial Design Work Plan in Appendix "D", Motorola shall submit to the Department submittals indicated in the remedial design work plan to implement the remedial alternative for the Site selected by the Department in the ROD. Such submittals shall be prepared by and have the signature and seal of a professional engineer who shall certify that the submittals were prepared in accordance with this Order.

B. The submittals shall include the following:

1. A detailed description of the remedial objectives and the means by which each essential element of the

selected remedial alternative will be implemented to achieve those objectives, including, but not limited to:

a. the construction and operation of any structures;

b. the collection, destruction, treatment, and/or disposal of hazardous wastes and substances and their constituents and degradation products, and of any soil or other materials contaminated thereby;

c. the collection, destruction, treatment, and/or disposal of contaminated groundwater, leachate, and air;

d. physical security and posting of the Site;

e. health and safety of persons living and/or working at or in the vicinity of the Site;

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

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

2. A schedule for submission of "Biddable Quality" documents for the Remedial Design including, but not limited to, documents and specifications prepared, signed, and sealed by a professional engineer. These plans shall satisfy all applicable local, state and federal laws, rules and

regulations;

3. A time schedule to implement the Remedial Design;

4. The parameters, conditions, procedures, and protocols to determine the effectiveness of the Remedial Design, including a schedule for periodic sampling of groundwater monitoring wells on-Site and off-Site;

5. A description of operation, maintenance, and monitoring activities to be undertaken after the Department has approved construction of the Remedial Design, including the estimated number of years during which such activities will be performed;

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

7. A health and safety plan for the protection of persons at and in the vicinity of the Site during construction and after completion of construction. This plan shall be prepared in accordance with 29 C.F.R. 1910 by a certified health and safety professional; and

8. A citizen participation plan that is, at a minimum, consistent with 6 NYCRR Part 375.

II. Implementation of the Remedial Program

A. Motorola shall implement the remedial program for the site, selected by the Department in the ROD, in

accordance with the Remedial Design Work Plan in Appendix "D", the approved submittals thereunder, and the schedule contained therein.

B. During implementation of all construction activities identified in the Remedial Design, Motorola shall have on-Site a full-time representative who is qualified to supervise the work done. In the event that the Motorola, in the course of undertaking construction activities, determines that modifications are required, the Department shall use its best efforts to review such proposed modifications as expeditiously as possible to enable construction activities to be completed as scheduled.

C. Within 60 days after completion of the construction activities identified in the Remedial Design, Motorola shall submit, pursuant to paragraph IV, to the Department a remedial program construction closeout report ("Closeout Report"). The Closeout Report shall include documentation and sampling test results substantiating that the construction phase of the RD/RA Work Plan has been completed in accordance with the requirements of the RD/RA Work Plan and the "as built" drawings; which shall also include a final operation and maintenance and monitoring plan ("O & M Plan"); "as-built" drawings; all changes made to the Remedial Design which are set out in the Remedial Design and/or Remedial Design Work Plan; and a certification by a professional engineer that the Remedial Design was implemented and all construction activities

were completed in accordance with the Department-approved Remedial Design Work Plan and the submittals thereunder. The O & M Plan, "as built" drawings, final engineering report, and certification must be prepared, signed, and sealed by a professional engineer.

D. Upon the Department's approval of the O & M Plan, Motorola and Machias shall implement the O & M Plan in accordance with the requirements of the Department-approved O & M Plan and Appendix "C" and Appendix "D".

E. After receipt of the Closeout Report including "as-built" drawings, final engineering report, and certification, the Department shall notify Motorola in writing within 60 days of its receipt of the Closeout Report whether the Department is satisfied that all construction activities have been completed in compliance with the approved Remedial Design and the Remedial Design Work Plan. In the event the Department determines, in accordance with paragraph IV, that any construction activities have not been completed in accordance with the approved Remedial Design and the approved Remedial Design Work Plan, Motorola shall be in violation of this Order and the ECL, and the Department may take any action or pursue whatever rights it has pursuant to statutory or common law, unless Motorola invokes the dispute resolution mechanism set forth in paragraph XII herein within 20 days of Motorola's receipt of such written notice. This is without prejudice, however, the Motorola's right to contest any

allegation that it has violated this Order and without prejudice to any and all legal rights and remedies otherwise available to Motorola and the Department, except as specified in paragraph XII.

F. If the Department concludes that any element of the Remedial Program fails to achieve its objectives or otherwise fails to protect human health or the environment, Motorola shall take whatever action the Department determines necessary to achieve those objectives or to ensure that the Remedial Program otherwise protects human health and the environment or it shall be in violation of this Order and the ECL unless Motorola invokes the dispute resolution clause in paragraph XII herein within twenty days of receipt of written notice of such determination. This is without prejudice, however, to Motorola's right to contest any allegation that it has violated this Order and without prejudice to any and all legal rights and remedies otherwise available to Motorola and to the Department, except as specified in paragraph XII.

III. Progress Reports

Motorola shall submit to the parties set forth in paragraph XI the number of copies specified therein of written monthly progress reports as specified in Appendix "D", that:

- (i) describe the actions which have been taken toward achieving compliance with this Order during the previous month;
- (ii) include all results of sampling and tests and all other data received or generated by Motorola or Motorola's contractors or

agents in the previous month, including quality assurance/quality control information, whether conducted pursuant to this Order or conducted independently by Motorola; (iii) identify all work plans, reports, and other deliverables required by this Order that were completed and submitted during the previous month; (iv) describe all actions, including, but not limited to, data collection and implementation of work plans, that are scheduled for the next month and provide other information relating to the progress at the Site; (v) include information regarding percentage of completion, unresolved delays encountered or anticipated that may affect the future schedule for implementation of the Motorola's obligations under the Order, and efforts made to mitigate those delays or anticipated delays; (vi) include any modifications to any work plans that Motorola has proposed to the Department or that the Department has approved; and (vii) describe all activities undertaken in support of the Citizen Participation Plan during the previous month and those to be undertaken in the next month. Motorola shall submit these progress reports to the Department by the tenth day of every month following the effective date of this Order.

IV. Review of Submittals

A. (1) The Department shall review each of the submittals Respondents make pursuant to this Order to determine whether it was prepared, and whether the work done to generate the data and other information in the submittal was done, in

accordance with this Order and generally accepted technical and scientific principles. The Department shall notify Respondents in writing of its approval or disapproval of the submittal, except for the submittal discussed in Paragraph I.B.(7). All Department-approved submittals shall be incorporated into and become an enforceable part of this Order.

(2) (a) If the Department disapproves a submittal, it shall so notify Respondents in writing and shall specify the reasons for its disapproval. Within the period of time specified in the written notice that Respondents' submittal has been disapproved, Respondents shall make a revised submittal to the Department that addresses and resolves all of the Department's stated reasons for disapproving the first submittal.

(b) After receipt of the revised submittal, the Department shall notify Respondents in writing of its approval or disapproval. If the Department disapproves the revised submittal, that Respondent which has primary responsibility for the submittal shall be in violation of this Order and the ECL, and the Department may take any action or pursue whatever rights it has pursuant to any provision of statutory or common law unless that Respondent invokes the dispute resolution mechanism set forth in paragraph XII herein within twenty days of Respondents' receipt of such written notice. This is without prejudice to Respondents' right to contest any allegation that they have violated this Order and

without prejudice to any and all legal rights and remedies otherwise available to Respondents except as specified in paragraph XII. If the Department approves the revised submittal, it shall be incorporated into and become an enforceable part of this Order.

B. The Department may require Respondents to modify and/or amplify and expand a submittal and associated work if the Department determines, as a result of reviewing data generated by an activity required under this Order or as a result of reviewing any other data or facts, that such modification and/or amplification and expansion is necessary.

V. Penalties

A. Respondents' failure to comply with any term of this Order constitutes a violation of this Order and the ECL.

B. Respondents shall not suffer any penalty under this Order or be subject to any proceeding or action for any remedy or relief if they cannot comply with any requirements of this Order because of an act of God, war, or riot or because of any condition or event entirely beyond the control of Respondents or their agent or agents carrying out Respondents' obligations under this Order. Respondents shall, within ten days of when they obtain knowledge of any such condition, notify the Department in writing. Respondents shall include in such notice the measures taken and to be taken by Respondents to prevent or minimize any delays and shall request an appropriate extension or modification of this Order. Failure

to give such notice within such ten-day period constitutes a waiver of any claim that a delay is not subject to penalties. Respondents shall have the burden of proving that an event is a defense to compliance with this Order pursuant to this subparagraph.

Increased costs or expenses of any work to be performed under this Order; the financial inability of Respondents to perform such work; the failure of Respondents to make complete and timely application for any required approval or permit; and nonattainment of the goals, standards and requirements, except scheduling requirements due to events as specified above; of this Order do not constitute conditions or events warranting the relief set forth in this subparagraph.

VI. Entry upon Site

To the extent within its respective authority, each Respondent hereby consents to the entry upon the Site or areas in the vicinity of the Site by any duly designated employee, consultant, contractor, or agent of the Department or any State agency for purposes of inspection, sampling, and testing and to ensure Respondent's compliance with this Order. Respondents shall permit the Department full access to all records relating to matters addressed by this Order and job meetings.

VII. Payment of State Costs

Within 30 days after receipt of an itemized invoice from the Department, Motorola shall pay to the Department a sum of money which shall represent reimbursement for the State's

reasonable oversight expenses including, but not limited to, direct labor, fringe benefits, indirect costs, travel, analytical costs, and contractor costs incurred by the State of New York for work performed pursuant to this Order, as well as for reviewing and revising submittals made pursuant to this Order, overseeing activities conducted pursuant to this Order, collecting and analyzing samples, and administrative costs associated with this Order. Such payment shall be made by certified check payable to the Department of Environmental Conservation. Payment shall be sent to the Bureau of Program Management, Division of Hazardous Waste Remediation, N.Y.S.D.E.C., 50 Wolf Road, Albany, NY 12233-7010. Itemization of the costs shall include an accounting of personal services indicating the employee name, title, biweekly salary, and time spent (in hours) on the project during the billing period, as identified by an assigned time and activity code. This information shall be documented by quarterly reports of Direct Personal Service. Approved agency fringe benefit and indirect cost rates shall be applied. Non-personal service costs shall be summarized by category of expense (e.g., supplies, materials, travel, contractual) and shall be documented by the New York State Office of the State Comptroller's quarterly expenditure reports. In the event a good faith dispute arises between the parties regarding Respondent's payment obligations pursuant to this paragraph, the parties shall endeavor to negotiate resolution thereof.

VIII. Department Reservation of Rights

A. Nothing contained in this Order shall be construed as barring, diminishing, adjudicating, or in any way affecting any of the Department's rights including, but not limited to nor exemplified by, the following:

1. the Department's right to bring any action or proceeding against anyone other than Respondents and/or any of Respondents' directors, officers, employees, servants, agents, successors, and assigns;

2. the Department's right to enforce this Order against Respondents and/or any of Respondents' successors and assigns, as appropriate, if Respondent fails to satisfy any of the terms of this Order;

3. the Department's right to bring any action or proceeding against Respondents and/or any of Respondents' 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;

4. the Department's right to gather information and enter and inspect property and premises.

B. As long as the Department deems Respondents are in compliance with the terms of this Order, which determination is subject to Motorola's right to invoke the dispute resolution clause as specified in paragraph XII, the Department will not take any action against Respondent to enforce the terms of this

Order, except as specified in subparagraph VIII.C.

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

D. If, after review, the Department accepts and approves the engineer's certification that construction of the Remedial Program was completed in accordance with the approved Remedial Design, then, unless a supplementary remedial program is required pursuant to Paragraph II.F., and except for the provisions of paragraph IX hereof, and except for the future Operation and Maintenance of the site, reimbursement of Department expenditures at the Site pursuant to paragraph VII, and any Natural Resource Damage claims that may arise, such acceptance shall constitute a release for each and every claim, demand, remedy or action whatsoever against Respondent, its directors, officers, employees, agents, successors and assigns, which the Department has or may have pursuant to Article 27, Title 13 of the ECL relative to or arising from the disposal of hazardous wastes at the Site; provided, however, that the Department specifically 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 wastes 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.

This release shall inure only to the benefit of the Respondent, its directors, officers, employees, agents, successors and assigns.

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 the Department may have against anyone other than Respondent, its directors, officers, employees, agents, successors and assigns.

IX. Indemnification

A. Motorola 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 Motorola, and/or Motorola's directors, officers, employees, servants, agents, successors, and assigns. Motorola

shall not indemnify and hold the Department, the State of New York and their representatives harmless for liabilities to third parties arising from any negligent acts or omissions of the Department, the State of New York and their servants, agents, representatives or employees.

B. Motorola shall indemnify and hold Machias, its representatives and employees harmless for all claims, suits, actions, damages and costs of every name and description arising out of or resulting from any negligent fulfillment or attempted fulfillment of this Order by Motorola and/or Motorola's directors, officers, employees, servants, agents, successors and assigns. Motorola shall not indemnify and hold Machias and its representatives harmless for liabilities to third parties arising from any negligent acts or omissions of Machias, its servants, agents, representatives or employees.

X. Public Notice

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

B. If Machias proposes to convey the whole or any part of its interest in the Site, Machias shall, not fewer than 60 days before the date of conveyance, notify the Department in writing of the identity of the transferee and of the nature and proposed date of the conveyance and shall notify the transferee

in writing, with a copy to the Department, of the applicability of this Order as long as this Order is in effect.

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:

Communication from Respondent shall be sent to:

1. Martin Doster, Region 9
New York State Department of Environmental
Conservation
270 Michigan Avenue
Buffalo, New York 14203
2. G. Anders Carlson, Ph.D., Bureau of
Environmental Exposure Investigation
New York State Department of Health
2 University Place
Albany, New York 12203
3. Director, Division of Hazardous Waste
Remediation
New York State Department of Environmental
Conservation
50 Wolf Road
Albany, New York 12233-7010
4. Cheryl Peterson
Division of Environmental Enforcement
New York State Department of Environmental

Conservation
270 Michigan Avenue
Buffalo, New York 14203

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

1. Four copies (one unbound) to Martin Doster,
Region 9
New York State Department of Environmental
Conservation
270 Michigan Avenue
Buffalo, New York 14203
2. Two copies to the G. Anders Carlson, Ph.D.,
Bureau of Environmental Exposure
Investigation.
3. One copy to Director, Division of Hazardous
Waste Remediation
New York State Department of Environmental
Conservation
50 Wolf Road
Albany, New York 12233-7010
4. One copy to Cheryl Peterson
Division of Environmental Enforcement
New York State Department of Environmental
Conservation
270 Michigan Avenue
Buffalo, New York 14203

C. Communication to be made from the Department to Respondents shall be sent to:

Town Supervisor
Town of Machias
Town Hall
Machias, NY 14101

Michael Loch
Motorola, Inc.
4000 Commercial Avenue
Northbrook, IL 60062

William Fairbank, Esq.
Motorola, Inc.
1301 E. Algonquin Road
Schaumburg, IL 60196

D. The Department and Respondents reserve the right to designate additional or different addressees for communication or written notice to the other.

XII. Dispute Resolution

In the event parties cannot informally resolve disputes under this Order, the Department's position shall be binding on the Respondent with the primary responsibility for the action in question; except that if the Department disapproves a revised submittal pursuant to subparagraph IV.A.2.b., or pursuant to subparagraphs II.E or II.F., the Respondent with primary responsibility for the submittal shall be in violation of this Order unless, within 20 days of receipt of the Department's notice of disapproval, that Respondent serves on the Department's Director of Hazardous Waste Remediation ("the Director") 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 that Respondent relies (hereinafter called the "Statement of Position"). The Department shall serve its Statement of Position, including supporting documentation no later than 20 business days after receipt of that Respondent's Statement of Position. In the event that these 20-day 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 notice by the Department as agreed to by that Respondent.

An administrative record of any dispute under this paragraph shall be maintained by the Department. The record shall include the Statement of Position of each party served pursuant to the preceding subparagraph, and any relevant information. The record shall be available for review of all parties and the public.

Upon review of the administrative record as developed pursuant to this paragraph, the Director shall issue a final decision and order resolving the dispute. With respect to the final determination of the Director, that Respondent shall have those rights granted pursuant to Article 78 of the Civil Practice Law and Rules of New York (CPLR), provided that a Petition is filed within ten (10) business days of receipt of the final decision and order issued by the Director.

In review by the Director of any dispute pursued under this paragraph, that Respondent shall have the burden of

proving that there is no rational basis for the Department's position.

The invocation of the procedures stated in this paragraph shall not extend, postpone or modify that Respondent's obligations under this Order with respect to any nondisputed items, unless and until the Department agrees or a court determines otherwise. The invocation of the procedures stated in this paragraph shall constitute an election of remedies by the party initiating the proceedings, and such election of this remedy shall constitute a waiver of any and all other remedies which may otherwise be available to that party regarding the issue in dispute.

Nothing in this Order shall be construed to allow the consideration or resolution of any dispute regarding the ROD or any of its provisions.

XIII. Miscellaneous

A. All activities and submittals required by this Order shall address both on-Site and off-Site contamination, as specified in Appendix "D", resulting from the disposal of hazardous waste at the Site.

B. Motorola shall retain professional consultants, contractors, laboratories, quality assurance/quality control personnel, and data validators acceptable to the Department to perform the technical, engineering, and analytical obligations required by this Order. The experience, capabilities, and qualifications of the firms or individuals selected by Motorola

shall be submitted to the Department within 15 days after the effective date of this Order. The Department's approval of these firms or individuals shall be obtained before the start of any activities for which the Motorola and such firms or individuals will be responsible. The responsibility for the performance of the professionals retained by Motorola shall rest solely with Motorola.

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

D. Motorola and Machias shall notify the Department at least 10 working days in advance of any field activities to be conducted pursuant to this Order.

E. 1. Motorola shall use best efforts to obtain all permits, easements, rights-of-way, rights-of-entry, approvals, or authorizations necessary to perform Respondent's obligations under this Order. For purposes of this Paragraph "best efforts" include the payment of reasonable sums of money in consideration. If any access required to perform this Order is not obtained despite best efforts within 45 days of the

effective date of this Order, or within 45 days of the date the Department notifies the Motorola in writing that additional access beyond that previously secured is necessary, Motorola shall promptly notify the Department, and shall include in that notification a summary of the steps Motorola has taken to attempt to obtain access. The Department shall, consistent with its legal authority, assist Motorola in obtaining access. Motorola shall reimburse the Department, in accordance with the procedures in paragraph VII, for all costs incurred by the Department in obtaining access, including, but not limited to, attorneys fees.

2. Machias hereby grants to Motorola and the Department their respective agents, employees, contractors, subcontractors and invitees access to that portion of site owned by or controlled by Machias for purpose of carrying out activities pursuant to this Order access to the Site, the installation and use of appropriate sampling and testing devices, performing excavations and related work described in the Work Plan and such other actions as may be necessary to accomplish the goals of this Order. Machias shall execute and deliver to Motorola on a timely basis, such easements, rights of way, rights of entry or other authorizations and approvals necessary to carry out Motorola's obligations under this Order for areas which Machias owns or controls. Motorola will give Machias reasonable notice of all significant investigatory or remedial activities to be conducted on the Site and Motorola to

the maximum extent practicable will minimize interference with Machias' use and enjoyment of the Site.

F. Respondents and Respondents' successors and assigns, as appropriate, shall be bound by this Order; and Respondents' officers, directors, employees, servants, and agents shall be obliged to comply with the relevant provisions of this Order in the performance of their designated duties on behalf of Respondent. Any change in ownership or corporate status of Respondent including, but not limited to, any transfer of assets or real or personal property shall in no way alter Respondent's responsibilities under this Order.

G. Respondents shall provide a copy of this Order to each contractor hired to perform work required by this Order and to each person representing Respondents with respect to the Site and shall condition all contracts entered into in order to carry out the obligations identified in this Order upon performance in conformity with the terms of this Order. Respondents or Respondents' contractors shall provide written notice of this Order to all subcontractors hired to perform any portion of the work required by this Order. Respondents shall nonetheless be responsible for ensuring that Respondents' contractors and subcontractors perform the work in satisfaction of the requirements of this Order.

H. All references to "professional engineer" in this Order are to an individual registered as a professional engineer in accordance with Article 145 of the New York State

Education Law.

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

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

K. (1) The terms of this Order shall constitute the complete and entire Order between Respondent and the Department concerning the Site. No term, condition, understanding, or agreement purporting to modify or vary any term of this Order shall be binding unless made in writing and subscribed by the party to be bound. No informal advice, guidance, suggestion, or comment by the Department regarding any report, proposal, plan, specification, schedule, or any other submittal shall be construed as relieving Respondent of Respondent's obligation to obtain such formal approvals as may be required by this Order.

(2) If Respondents desire that any provision of this Order be changed, Respondents shall make timely written application, signed by the Respondents, to the Commissioner setting forth reasonable grounds for the relief sought. Copies of such written application shall be delivered or mailed to:

Cheryl Peterson, Esq.
Division of Environmental Enforcement
New York State Department of Environmental
Conservation
270 Michigan Avenue
Buffalo, New York 14203

L. This Order may be signed by counterpart.

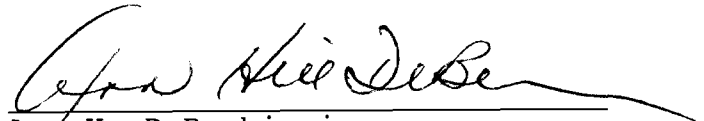
M. The effective date of this Order shall be five days after the date it is signed by the Commissioner or his designee.

DATED: *Albany*, New York

July 23, 1993

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

By:



Ann H. DeBarbieri
Deputy Commissioner

CONSENT BY RESPONDENT

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

MOTOROLA, INC.

By: Lee H Craft

(Type Name of Signer)

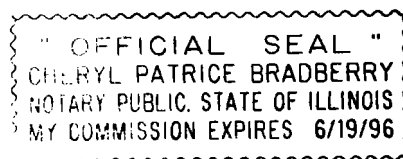
Title: Vice President & Director

Date: 7-1-93

ILLINOIS
STATE OF ~~NEW YORK~~)
COUNTY OF Cook) s.s.:

On this 1st day of July, 1993, before me personally came Lee H Craft, to me known, who, being by me duly sworn, did depose and say that he resides in Illinois; that he is the Vice President of the Motorola, 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.

Cheryl Patrice Bradberry
Notary Public



CONSENT BY RESPONDENT

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

TOWN OF MACHIAS, NEW YORK

By: Hal G. Payne

HAL G. PAYNE
(Type Name of Signer)

Title: Supervisor

Date: 7/2/93

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

On this 2 day of July, 1993,
before me personally came Hal G. Payne, to me
known, who being duly sworn, did depose and say that he resides
in Machias NY; that he is the Machias
Supervisor of the _____
municipality described in and which executed the foregoing
instrument; that he knew the seal of said municipality that the
seal affixed to said instrument was such municipal seal; that
it was so affixed by the order of the Town Board of Machias of
said municipality and that he signed his name thereto by like
order.

Donald Swanzy
Notary Public

DONALD SWANZ
Notary Public, State of New York
Qualified in Cattaraugus County
My Commission Expires September 30, 1993