

STATE OF NEW YORK : DEPARTMENT OF ENVIRONMENTAL CONSERVATION
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In the Matter of the Development
and Implementation of a Site Investigation
for an Inactive Hazardous Waste Disposal
Site Pursuant to Article 27, Title 13
of the Environmental Conservation Law of
the State of New York by

ORDER
ON
CONSENT

SAMUEL G. KEYWELL CO.

Index #B9-0333-90-05

RESPONDENT
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1. The New York State Department of Environmental Conservation (the "Department" or "DEC") 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". This Order is entered into under authority of ECL 3-0301 and 27-1301 et seq. and 71-2705 and 71-2727.

2. Respondent, Samuel G. Keywell Co., a corporation organized and existing under the laws of the State Michigan, is doing business in the State of New York. Respondent, through its Vac Air Alloys Division, owns a plant site on property located on Falconer-Frewsburg Road, Town of Carroll, County of Chautauqua, State of New York (the "Site").

3. Based upon available information, the Department alleges that hazardous wastes have been disposed of at the Site.

4. 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 or

operator 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 site, and (ii) to implement such program within reasonable time limits specified in the Order.

5. The Department and Respondent acknowledge that the goal of this Order shall be that Respondent, with the approval of the Department, shall develop a site investigation work plan and shall perform the site investigation by implementing the work plan in accordance with the schedule contained therein.

6. Respondent, without any admission of law or fact, having waived its right to a hearing herein as provided by law only with regard to the site investigation covered by this Order, and having consented to the issuance and entry of this Order, agrees to be bound by the terms hereof. This Order does not relieve Respondent or any other responsible person of any obligations created by Article 27, Title 13 of the ECL to perform any further investigation of site conditions, including a Remedial Investigation and Feasibility Study and, if necessary, remediation of the Site.

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

I. Within 30 days after the effective date of this Order, Respondent shall submit to the Department all data within its possession or control regarding environmental conditions on-

Site and off-Site and other information described below, to the extent that such data have not previously been provided to the Department. The data shall include:

a) a complete history and description of the Site, including the types, quantities, physical state, location and dates of disposal of hazardous waste, if known; as well as the names of potentially responsible parties; and

b) a description of the results of all previous investigations of the Site and areas in the vicinity of the Site, including copies of all available topographic and property surveys, hydrogeologic and engineering studies including all data and reports, and aerial photographs.

II. After the effective date of this Order, the Respondent shall permit any duly designated officer, employee, consultant, contractor or agent of the Department to access files in the Respondent's control related to paragraph I in this Order.

III. The Respondent acknowledges that any data, results or information obtained pursuant to this Order on Consent form the basis of and are a part of an ongoing criminal investigation.

IV. Within 14 days of the effective date of this Order, Respondent shall submit to the Department a work plan for the Site Investigation (the "Work Plan") which shall include a health and safety plan for the protection of persons at and in the vicinity of the Site prepared in accordance with 29 C.F.R. Section 1910 by a certified health and safety professional. The

Work Plan shall be consistent with the National Contingency Plan.

V. DEC shall notify Respondent in writing of its approval or disapproval of the Work Plan. If DEC approves the Work Plan, Respondent shall perform the Site Investigation in accordance with the approved Work Plan and schedules contained in that Work Plan.

If the Department disapproves the Work Plan, the Department shall notify Respondent in writing of the Department's objections. Within 14 days after receipt of notice of disapproval, Respondent shall revise the Work Plan in accordance with the Department's specific comments and submit a revised Work Plan.

If the revised Work Plan fails to address the Department's specific comments and the Department provides written notice to the Respondent of disapproval of the revised Work Plan, Respondent shall be in violation of this Order and the ECL. This is without prejudice, however, to Respondent'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 Respondent and to the Department.

The approved Work Plan shall be attached as Appendix "A" and incorporated into this Order.

VI. The Respondent shall perform the site investigation according to the schedule in Appendix "A" under the oversight of the Department, and shall submit a complete report of its

performance of such site investigation (the "Report") to the Department. The Report shall include all data generated, and all other information obtained during the site investigation. Any modifications or revisions to Appendix "A" which maybe required due to unanticipated field conditions shall be subject to approval by the Department. The Report shall be prepared and certified by an engineer licensed to practice by the State of New York, acceptable to the Department, who is authorized to offer engineering services in accordance with Article 145 of the New York State Education Law, who shall certify that all activities that comprised the site investigation were performed in full accordance with Appendix "A".

VII. The Department shall determine if the site investigation was conducted and if the Report was 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.

If the Department disapproves all or any portion of the Report for failure to fulfill the terms of the Order, the Respondent shall revise the Report and/or supplement and re-perform the investigation 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 site investigation re-performed or supplemented shall be reasonable and shall be specified by the Department in its notice of disapproval.

If the Department disapproves the Revised Report, Respondent shall be in violation of this Order and the ECL. This is without prejudice, however, to Respondent'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 Respondent and to the Department.

The approved Work Plan shall be attached as Appendix "A" and incorporated into this Order.

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 "B".

VIII. The Department reserves the right to require a modification of, or an amplification and expansion of the site investigation and Report by Respondent, if the Department reasonably determines that further work is necessary as a result of reviewing data generated by the Site Investigation or as a result of reviewing other data or facts. If the Respondent does not implement such modification, amplification or expansion within the time period indicated in the written notice thereof, the Respondent shall be in violation of this Order and the ECL. This is without prejudice, however, to Respondent'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 Respondent and to the Department.

IX. The Respondent shall submit to the Department throughout implementation of the approved Work Plan any and all

monitoring and analytical results, manifests, or other documentation necessary to confirm compliance with the approved Work Plan and all applicable statutes, regulations and guidance.

X. The Respondent shall permit any duly designated officer, employee, consultant, contractor, or agent of the Department or other government agency to enter upon the Site or areas in the vicinity of the Site which may be under the control of the Respondent, 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 the Respondent's compliance with the provisions of this Order.

XI. The Respondent shall provide notice to the Department of any field activities to be conducted pursuant to the terms of this Order at least 10 working days in advance of such activities.

XII. The Respondent shall obtain whatever permits, easements, rights-of-way, rights-of-entry, approvals, or authorizations are necessary to perform the Respondent's obligations under this Order.

XIII. The Respondent shall retain professional consultants, contractors, and laboratories 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 the Respondent shall be submitted to the Department for approval and shall be approved by the Department prior to

the initiation of any activities for which they will be responsible. During the implementation of the site investigation, the Respondent shall have on-Site a full-time representative who is qualified to inspect the work.

XIV. The Department shall have the right to obtain split samples or duplicate samples, or both, of all substances and materials sampled by the Respondent.

XV. The Respondent shall not suffer any penalty under this Order, nor be subject to any proceeding or action, if it cannot comply with any requirement hereof because of an act of God, war, or riot. The Respondent shall immediately notify the Department in writing when it obtains knowledge of any such condition and request an appropriate extension or modification of this Order.

XVI. The failure of the Respondent to comply with any terms of this Order shall constitute a violation of this Order and the ECL. The terms of this Order shall be carried out in accordance with all applicable Federal, State, and local laws.

XVII. Respondent shall implement a citizen participation program in coordination with and subject to the approval of the Department. The citizen participation program shall be consistent with the Department's publication entitled "New York State Inactive Hazardous Waste Site Citizen Participation Plan".

XVIII. Within 30 days after the effective date of this Order, or 30 days after receipt of an invoice from the Department, whichever is later, Respondent shall pay to the

Department a sum of money which shall represent reimbursement for the Department's expenses including, but not limited to, direct labor, overhead, travel, analytical costs and contractor costs incurred by the State of New York for reviewing and revising submittals made pursuant to this Order, overseeing activities conducted pursuant to this Order and collecting and analyzing samples. Subsequent payments shall be made on an annual basis, within 30 days after receipt of an invoice from the Department, during the period in which Respondent performs any activities under this Order. 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.

XIX. 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 the Respondent, its directors, officers, employees, servants, agents, successors and assigns;

b. the right to enforce this Order against the Respondent, its directors, officers, employees, servants, agents, successors

and assigns in the event that the Respondent shall fail to fulfill any of the provisions hereof;

c. the right to bring any action, or proceeding against the 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 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 in connection with the Site.

e. the Department's right to bring any criminal action against any party.

XX. This Order shall not be construed to prohibit the Commissioner or his duly authorized representative from exercising any summary abatement powers.

XXI. The 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 terms of

this Order by the Respondent, its directors, officers, employees, servants, agents, successors or assigns.

XXII. The effective date of this Order shall be the date it is signed by the Commissioner or his designee.

XXIII. If the Respondent desires that any term of this order be changed, the Respondent shall make timely written application signed by the Respondent to the Commissioner, setting forth reasonable grounds for the relief sought. Such application shall be sent to the Department project manager for the Site.

XXIV. Within 30 days after the effective date of this Order, the Respondent shall file a Declaration of Covenants and Restrictions with the Chautauqua County Clerk to give all parties who may acquire any interest in the Site notice of this Order. A certified copy of said filing shall be provided to the Department.

XXV. In the event that the Respondent proposes to convey the whole or any part of its ownership interest in the Site prior to completion of the obligations under this Order, Respondent 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.

XXVI. All written communications required by this Order shall be transmitted by United States Postal Service, by hand delivery, or by private courier service as follows:

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

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

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

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

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

Deborah R. Jennings, Counsel to
Samuel G. Keywell Company
Piper & Marbury
1100 Charles Center South
Baltimore, Maryland 21201
(301) 576-1603

J. M. Lozier, Executive Vice President
Samuel G. Keywell Company
11900 South Cottage Grove Avenue
Chicago, Illinois 60628
(312) 660-2060

XXVII. The provisions of this Order shall bind the Respondent, its officers, directors, agents, servants, employees, successors, and assigns.

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

Dated: DEC 14 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.

SAMUEL G. KEYWELL CO.

By: *J. M. Lozier*

J. M. Lozier

(Type Name of Signer)

Title: Executive Vice President

Date: December 5, 1990

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

On this 5th day of December, 1990,
before me personally came J. M. Lozier, to me
known, who being duly sworn, did depose and say that he resides
in Illinois; that he is the
Executive Vice President of Samuel G. Keywell 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.

Sherry L. Jackson
NOTARY PUBLIC

