

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

In the Matter of
RealCo, Inc.,
Respondent

ORDER
ON
CONSENT
INDEX #A9-0393-9907

WHEREAS,

1. The New York State Department of Environmental Conservation (the "Department") is responsible for the enforcement of Article 27, Titles 9 and 13 of the Environmental Conservation Law of the State of New York ("ECL"), entitled "Industrial Hazardous Waste Management" and "Inactive Hazardous Waste Disposal Sites," respectively. This Order is issued pursuant to the Department's authority under, *inter alia*, ECL Article 27, Titles 9 and 13 and ECL 3-0301.

2. RealCo, Inc., (hereinafter "RealCo" or "Respondent") is a corporation organized and doing business under the laws of Delaware. RealCo will take title to certain real and personal property currently owned by AL Tech Specialty Steel Corporation (hereinafter "AL Tech") which is located on Willowbrook Avenue in Dunkirk, New York (hereinafter the "Dunkirk Facility") and Spring Street Road in Watervliet, New York (hereinafter the "Watervliet Facility"). RealCo shall undertake as its primary activity the environmental remediation required at the Dunkirk and Watervliet facilities.

3. The Dunkirk and Watervliet Facilities are subject to Department Order #R4-1467-9302, effective August 4, 1995 (hereinafter the "AL Tech Order"), whereby AL Tech is legally obligated, *inter alia*, to establish an Environmental Remediation Trust Fund (hereinafter the

“Trust Fund”) to finance all environmental remedial, compliance and closure activities at the Dunkirk and Watervliet Facilities. The Trust Fund was established on March 29, 1999. A copy of the Order is attached as Exhibit “A.” A copy of the Trust Fund Agreement is attached as Exhibit “B.” Drawings delineating those portions of the Dunkirk and Watervliet facilities which will be owned by RealCo are attached as Exhibit “C.” The listing of personal property is attached as Exhibit “D.”

4. Subsequent to the issuance of the AL Tech Order, on December 31, 1997, AL Tech filed a petition for reorganization under title 11 of chapter 11 of the United States Code in the United States Bankruptcy Court for the Western District of New York under the caption *In Re AL Tech Speciality Steel Corporation*, Case No. 97-18096B.

5. On July 30, 1999, the Bankruptcy Court approved a Plan of Reorganization (the “Plan”) and entered an Order of Confirmation on August 18, 1999 in connection with the AL Tech bankruptcy proceedings.

6. The Dunkirk and Watervliet Facilities have historically been subject to regulation as hazardous waste treatment, storage and disposal facilities pursuant to ECL Article 27, Title 9. ECL 71-2705 provides that any person who fails to perform any duty imposed by ECL Article 27, Titles 9 and 13 or any rule or regulation promulgated pursuant thereto, or any final determination or order of the Commissioner, shall be liable for civil, criminal and/or administrative sanctions. ECL 71-2727.3 provides that the Commissioner may issue, modify and revoke orders requiring corrective action, including corrective action beyond the facility boundary where necessary to protect human health and the environment, for all releases of hazardous waste or constituents from any solid waste management unit at any treatment, storage or disposal unit which is permitted or which has or had interim status under ECL Article 27, Title

9. The Department also has the power, *inter alia*, to provide for the prevention and abatement of all water, land, and air pollution. *See, e.g.*, ECL 3-0301.1.i. Corrective action requirements for the Dunkirk and Watervliet Facilities have been imposed upon AL Tech under the terms of the AL Tech Order and under permit #4-0126-11/27-0 issued for the Watervliet Facility pursuant to ECL Article 27, Title 9.

7. Portions of the Dunkirk and Watervliet facilities have also been identified by the Department as inactive hazardous waste disposal sites which have been determined to pose a significant threat to public health and the environment. The Dunkirk Facility has been listed on the *Registry of Inactive Hazardous Waste Disposal Sites in New York State* as Site Number 9-070-22 and has been classified by the Department as a Classification 2 pursuant to ECL 27-1305.4.b. Portions of the Watervliet Facility have been listed on the *Registry of Inactive Hazardous Waste Disposal Sites in New York State* as Site Number 4-010-03 and have been classified by the Department as a Classification 2 pursuant to ECL 27-1305.4.b.

8. Pursuant to ECL 27-1313.3.a, whenever 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.” Any person under such an order pursuant to ECL 27-1313.3.a has a duty imposed by ECL Article 27, Title 13 to carry out the remedial plan committed to under order.

9. Once title to the portions of the Dunkirk and Watervliet Facilities identified in Exhibit “C” are transferred to RealCo, RealCo may be subject to the provisions of the AL Tech

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Order as a subsequent owner or operator of the facility and/or subject to an Order under ECL Article 27, Title 13 as the owner of a site which has been determined to be a significant threat and/or as a person responsible for the disposal of hazardous wastes at such site, and/or subject to an Order under ECL 71-2727.3 requiring corrective action. The Department has determined that it is in the public interest to consent to the issuance of this Order as a means of resolving RealCo's potential liability for any contamination at the Dunkirk and Watervliet Facilities that existed prior to RealCo's ownership of the facilities which would otherwise result solely by reason of RealCo's ownership.

10. 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 its terms. Respondent consents to and agrees not to contest the authority or jurisdiction of the Department to issue or enforce this Order, and agrees not to contest the validity of this Order or its terms.

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

I. (A) The sum of \$1,000,000 (one million dollars) shall be paid from the AL Tech bankruptcy estate into the Trust Fund pursuant to the Plan; this payment shall be used to defray a portion of the costs that will be incurred for environmental remediation, compliance and closure activities at the Dunkirk and Watervliet Facilities. This payment shall be made on the effective date of the Plan, shall be made directly into the Trust Fund, and shall at no time be considered an asset of any entity other than the Trust Fund.

(B) In the event that the amount of money contributed to the Trust Fund from all sources is insufficient to finance all environmental remedial, compliance and closure activities required by the AL Tech Order at the Dunkirk and Watervliet Facilities, RealCo shall cause to be paid into the Trust Fund the proceeds of any sale of RealCo's real and/or personal assets. Such

payments shall be made contemporaneous with the sale of any such assets by RealCo, shall be made directly by the buyer(s) of any such assets into the Trust Fund, and shall at no time be considered an asset of any entity other than the Trust Fund. RealCo shall have an affirmative obligation to market its assets for the highest reasonable price. In the event that there are insufficient funds in the Trust Fund to complete all necessary remedial, compliance and closure activities at both the Watervliet and Dunkirk Facilities, the net proceeds of any such sales (less 5% of the net proceeds which may be retained by RealCo's management as an incentive to maximize its return on sales) shall be paid into the Trust Fund. In the event that the State of New York has expended money from any funding source to carry out any remedial, compliance and/or closure activities at either the Watervliet or the Dunkirk Facility, including but not limited to contractual costs and/or personal services costs incurred in connection with such facilities, the net proceeds of any such sales shall be paid to the State of New York for deposit into the appropriate account. This payment, and all other communications with the Department under this Order, shall be sent to the attention of the Director of Environmental Enforcement, 50 Wolf Road, Room 627, , Albany, New York, 12233-5500.

(C) RealCo shall, subject to the availability of monies in the Trust Fund, implement the remedial, compliance and closure activities required by the AL Tech Order, as well as any such activities that may subsequently be identified, subject to the oversight and approval of the Department. In the absence of the availability of sufficient funds in the Trust Fund, the Department will carry out such remedial projects as it deems necessary, as set out paragraph VI (3) of this Order. In addition, RealCo shall manage those operations at the Watervliet Facility that the Department determines are a necessary adjunct to any necessary remedial, compliance and/or closure activities and shall be authorized to use monies from the

Trust Fund for such purposes, subject to the approval of the Department. RealCo shall have an affirmative obligation to ensure that all such expenditures are minimized to the maximum extent feasible; in the event that the costs for any such activities are below the projected costs as approved by the Department, RealCo's management shall be entitled to retain 15% of the difference between the projected approved cost and the actual expenditure.

II. Commencing upon the date that it acquires title to the portions of the Dunkirk and Watervliet Facilities identified in Exhibit "C", RealCo consents to provide full access to all parts of each facility subject to the control of RealCo to any duly designated employee, consultant, contractor or agent of the Department or any other State agency for the purposes of performing and/or overseeing any remedial, compliance and/or closure activities required at the portions of the Dunkirk and Watervliet Facilities identified in Exhibit "C", including those specifically required under the AL Tech Order, as well as any that may subsequently be identified.

III. RealCo shall exercise due care at the Dunkirk and Watervliet Facilities with respect to any and all contamination that may be present as of the date of the transfer ("existing contamination") and shall refrain from any actions that may either exacerbate the existing contamination or interfere with any remedial, compliance or closure activities. RealCo recognizes that implementation of remedial, compliance and closure activities at the Dunkirk and Watervliet Facilities may interfere with its use of the property. RealCo agrees to cooperate fully with the Department in the implementation of all remedial, compliance and closure activities at the Dunkirk and Watervliet Facilities which may be owned or under the control of RealCo and further agrees not to interfere with such activities. In the event that RealCo becomes aware of any action or occurrence which causes or threatens a release of hazardous wastes, substances, pollutants or contaminants at or from either the Dunkirk or Watervliet Facility that constitutes an

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emergency situation or may present an immediate threat to public health, welfare or the environment, RealCo shall immediately take all appropriate action to prevent, abate, or minimize such release or threat of release, using monies from the Trust Fund, and shall immediately notify the Department.

IV. In consideration of RealCo's obligations pursuant to Paragraph I herein, and except as specifically provided for in this Paragraph IV, the Department releases and covenants not to sue or take administrative action against RealCo, its officers, directors, agents, employees, and shareholders pursuant to Article 27, Title 13 or Sections 71-2705 and 71-2727 of the ECL, Section 107(a) of CERCLA, or any other statutory, regulatory or common law provision including seeking injunctive relief in the nature of remedial and/or corrective action at the Dunkirk and/or Watervliet Facilities and/or recovery of costs incurred by the Department at the Dunkirk and/or Watervliet Facilities, including but not limited to, claims for damages (including natural resource damages), fees (including regulatory fees), oversight costs, fines, taxes, penalties or any other claims which arise out of the release or threat of release of hazardous wastes and/or substances at or from the Dunkirk or Watervliet Facilities and the implementation of any corrective and/or remedial action designed to address such releases; this release and covenant not to sue is expressly limited to existing contamination and does not in any way affect the liability of RealCo, its officers, directors, agents, employees and shareholders with respect to any contamination, release or threat of release or any violation of law, rule, regulation, permit or order that is attributable to RealCo's operations at the Dunkirk Facility or the Watervliet Facility or that, subject to the defenses set forth in 42USC9607(b)(3), occurs subsequent to the time RealCo takes title to any property listed in Exhibit "C." This release and covenant not to sue shall be deemed to be an administrative settlement within the meaning of 42USC9613, shall take

effect at the time the payment contemplated by this Order is made, and shall be deemed to fully satisfy the requirements for such a release as set forth in any and all applicable federal and State law, including but not limited to the Comprehensive Environmental Response and Compensation Liability Act and General Obligations Law Section 15-108. In the event that RealCo fails to comply with its obligations under this Order, the covenant not to sue and release contemplated by this Order shall be subject to termination by the Department, at the Department's sole discretion, and upon any such termination, such covenant not to sue and release shall cease to have any force or effect. This release and covenant not to sue shall only apply to RealCo's officers, directors, agents, employees and shareholders to the extent that any liability alleged is based solely upon their status as an officer, director, agent, employee or shareholder; the Department expressly reserves its right to bring suit or take administrative action against any such party in the event that liability may be alleged upon any other grounds.

V. In the event that RealCo proposes to convey all or any part of its interest in the Dunkirk and/or Watervliet Facilities, or any assets associated with such facilities, RealCo shall, not less than sixty days prior to the consummation of such proposed transaction, notify the Department in writing of the identity of the transferee and of the nature and extent of the proposed conveyance, and shall notify the transferee, with a copy to the Department, of the applicability of this Order, and the terms and conditions of this Order shall be binding upon such transferee. Further, in the event of any conveyance of real or personal assets, RealCo shall be bound by the terms set forth in Paragraph I.B of this Order.

VI. The Department further agrees as follows:

(1) Based upon conditions known as of the effective date of this Order, the Department agrees not to nominate either the Dunkirk Facility or the Watervliet Facility, or any

part of Site Number 9-070-22 or Site Number 4-010-03, for listing on the National Priorities List or to otherwise request federal action at such facilities.

(2) The Department will not object to the following:

(A) RealCo's acquisition of title to certain of the real and personal property comprising the Dunkirk and Watervliet Facilities;

(B) The transfer to RealCo, in accordance with applicable rules and regulations, of any permits which have been issued to AL Tech which may be necessary to undertake such responsibilities and obligations under the AL Tech Order; and

(C) RealCo's withdrawal from the Trust Fund, subject to the Department's approval, of funds for the following purposes: (i) the cost of implementing the remedial, compliance and closure activities required at the Watervliet and Dunkirk Facilities; and (ii) the reasonable operating expenses of RealCo, up to a maximum of \$2,500,000 (two million, five hundred thousand dollars) over a period of five years, measured from the date the Plan is confirmed.

(3) In the event that the funds deposited into the Trust Fund are insufficient to perform all of the activities required by the AL Tech Order at the Dunkirk and Watervliet Facilities, the Department will not, so long as RealCo is in full compliance with the terms of this Order, seek to obtain additional monies from RealCo but will, if no other sources of funds are available, seek to obtain such funding as may be authorized by law from the hazardous waste remedial fund, from other State funds as may be authorized and legally available for this purpose, and from any other source that may be authorized by law, in such amount as may be necessary to complete all actions the Department, in its sole discretion, deems necessary.

Nothing in the AL Tech Order or this Order shall be construed as requiring the Department or the State of New York to undertake any actions the Department does not deem necessary.

VII. RealCo shall not suffer any penalty under this Order or be subject to any action or proceeding if it cannot comply with the requirements of this Order because of an action of a national, state or local government body or court, or an act of God, war, riot, catastrophe, or other unforeseeable event which the exercise of ordinary human prudence could not have prevented. RealCo shall, as soon as possible but in any event no later than five days of when it obtains knowledge of any such condition, notify the Department in writing. RealCo shall include in such notice the measures taken and to be taken by RealCo to prevent or minimize any delays and shall request an appropriate extension or modification of this Order. Failure to give such notice within such five day period shall constitute a waiver of any defense to noncompliance that may be raised pursuant to this Paragraph VII. RealCo shall have the burden of proving that an event falls within the meaning of this Paragraph VII.

VIII. Except as set forth in this Order, nothing contained in this Order shall be construed as barring, diminishing, adjudicating or in any way affecting any of the Department's civil, criminal or administrative rights or authorities, nor shall anything contained in this Order be construed to prohibit the Commissioner or his duly authorized representative from exercising any summary abatement powers.

IX. Nothing contained in this Order shall be construed to create any rights in, or grant any cause of action to, any person not a party to this Order. The Department and Respondent expressly reserve any and all rights (including, but not limited to, any right of contribution), defenses, claims, demands and causes of action they may have with respect to any matter,

transaction or occurrence relating in any way to the Dunkirk or Watervliet Facilities against any person not a party hereto.

X. By consenting to the issuance of this Order, RealCo does not admit nor intend to acknowledge any liability or fault with respect to any matters arising out of or relating to the Dunkirk and Watervliet Facilities. The provisions, terms and conditions of this Order, and any actions or submissions thereunder, shall not, in any action, proceeding or litigation whatsoever, whether brought by the State or any other party, be construed as or operate as an admission that RealCo has violated any law or regulation or otherwise committed a breach of duty at any time with regard to the Dunkirk and Watervliet Facilities.

XI. Respondent's failure to comply with any term of this Order, unless excused pursuant to Paragraph VII of this Order, shall be a violation of this Order and the ECL and shall cause the release and covenant not to sue contained in Paragraph IV herein to be subject to termination as set forth in Paragraph IV.

XII. Respondent and Respondent's officers, directors, agents, employees, shareholders, successors and assigns shall be bound by this Order. 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.

XIII. Respondent shall indemnify and hold harmless the Department, the State of New York, and their representatives and employees for all claims, suits, 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 officers, directors, agents, employees, shareholders, successors or assigns.

XIV. Respondent and Respondent's employees, servants, agents, lessees, sublessees, successors, and assigns hereby affirmatively waive any right they had or have to make a claim pursuant to Article 12 of the Navigation Law for existing contamination with respect to either the Dunkirk facility or the Watervliet facility, and further release and hold harmless the New York State Environmental Protection and Spill Compensation Fund ("Spill Fund") from any and all legal or equitable claims, suits, causes of action, or demands whatsoever that any of same has as a result of Respondent consenting to or fulfilling the terms of this Order with respect to the Dunkirk and Watervliet facilities. In order for Respondent to make a claim against the Spill Fund for future petroleum contamination, Respondent shall bear the burden of: 1) proving that the petroleum contamination at issue is not contamination that existed prior to the time that Respondent took title to the property, and 2) that Respondent is not a "discharger" under the Navigation Law in connection with the contamination at issue, but is rather an injured party, and is in all other ways entitled to make a claim under the Navigation Law.

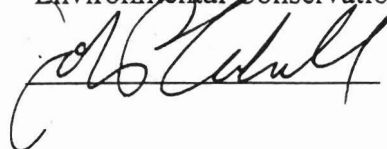
XV. This Order constitutes the entire agreement between the parties concerning the Dunkirk and Watervliet Facilities. No term, condition, understanding or agreement purporting to modify or vary any term of this Order shall be binding unless made in writing and subscribed by the party to be bound.

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

DATED: Albany, New York

Sept 8, 1999

JOHN P. CAHILL, Commissioner
New York State Department of
Environmental Conservation



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.

By:

Yong J. Park

Title:

President

Date:

September 1, 1999

STATE OF NEW YORK)

) s.s.:

COUNTY OF CHAUTAUGUA

On this 3 day of SEPTEMBER, 1999, before me personally came Y. JIN PARK, to me known, who being duly sworn, did depose and say that he resides in HAMBURG NY; that he is the PRESIDENT of REALCO 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.

Barbara A. Palmer
Notary Public

BARBARA A. PALMER
No. 01PA5060110
Notary Public, State of New York
Qualified in Chautauqua County
My Commission Expires 05/13/2000