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M. Doster

File

February 13, 1989

James V. Maher, Esq.
Allied-Signal, Inc.
P.O. Box 2245R
Morristown, New Jersey 07960

Re: Former Allied Specialty Chemicals Division Site,
River Road, Tonawanda, NY, Site #915003-6

Dear Mr. Maher:

Enclosed is a fully endorsed Order on Consent to address the Remedial Investigation at the referenced site. This Order includes the Work Plan as Appendix "A".

Sincerely,

Glen R. Bailey

Glen R. Bailey
Senior Attorney
Division of Environmental
Enforcement

GRB:jab

cc: with enclosure

Leon A. Mattioli
Allied-Signal, Inc.
P.O. Box 1017
Marcus Hook, PA 19061

M. O'Toole - DEC, Albany
P. Buechi - DEC, Buffalo
R. Tramontano - DOH, Albany
W. Mugdan - EPA, New York

STATE OF NEW YORK : DEPARTMENT OF ENVIRONMENTAL CONSERVATION

In the Matter of the Development and
Implementation of A Remedial 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

ALLIED-SIGNAL INC.

Respondent

Index # B9-0065-84-12
Site #915003-b

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 (the "ECL") entitled "Inactive Hazardous Waste Disposal Sites".

2. Allied-Signal, Inc. ("Respondent") is a corporation organized and existing under the laws of the State of Delaware as a successor in interest to Allied Corporation, and is doing business in the State of New York in that Respondent now operates several industrial facilities in the State and has in the past operated a facility known as the Tonawanda Plant located on River Road in the Town of Tonawanda, County of Erie, State of New York (the "Site").

3. Respondent has informed various State and Federal authorities that an area on the Site was utilized for the disposal of various catalysts which had been used in research

and development studies at the facility.

4. Laboratory analytical results from samples collected at the facility have demonstrated that the disposal area exhibits elevated levels of lead and chromium.

5. Wastes containing chromium and lead may constitute hazardous wastes pursuant to 6 NYCRR Part 371, and hazardous wastes pose a threat to the environment when improperly treated, handled, stored, transported or disposed.

6. The Site has been named as an inactive hazardous waste disposal site, as that term is defined in ECL Section 27-1301(2), and has been listed in the Registry of Inactive Hazardous Waste Disposal Sites in New York State as Site Number 915003-b.

7. The Department has identified and classified the Site pursuant to ECL Section 27-1305, under classification 2-a, a temporary classification assigned to sites that have inadequate and/or insufficient data for inclusion in any of the other classifications.

8. Respondent, through its consultants, has submitted to the Department a conceptual work plan for the investigation and remedial evaluation of the Site. The Department acknowledges that the conceptual work plan appears to address the necessary elements for a Remedial Investigation to identify the presence of environmental contamination resulting from the disposal activities at the Site.

9. Pursuant to ECL Section 27-1313(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."

10. The Department and Respondent acknowledge that the goals of this Order are that Respondent shall develop and implement a Remedial Investigation for an inactive hazardous waste disposal site, subject to the approval, oversight, and review by the Department. The program has been designed to identify any significant threat to the public health or environment.

11. Respondent, having waived its rights to a hearing herein as provided by law, and having consented to the issuance and entry of this Order without any admission or denial of liability, agrees to be bound by its terms.

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

I. Respondent shall retain a third-party professional consultant, contractor and/or laboratory to perform the technical, engineering and analytical obligations required by this Order. The qualifications and professional expertise of

any third party so employed shall be subject to the approval of the Department.

II. Respondent shall undertake and complete the Remedial Investigation program for the Site in accordance with the plan which has been approved by the Department. The plan and any comments, revisions, amendments or modifications specified by the Department are attached hereto at Appendix "A" as the Approved Proposal and are incorporated as a part of this Order. Respondent and any consultant, contractor or subcontractor shall conduct all activities in accordance with the procedures and protocols as specified in the Approved Proposal. The Department acknowledges that it has approved of the qualifications and technical expertise of the third parties identified in the Approved Proposal.

III. Within 90 days of the date specified for completion of the Remedial Investigation, Respondent shall submit to the Department a Remedial Investigation Report (the "Report"), founded upon its performance of the Remedial Investigation in accordance with the Approved Proposal. The Report shall include a certification by the project manager or supervisor that the work conducted was performed in accordance with the Approved Proposal and a copy of all data generated, and all other information obtained, during the Remedial Investigation. The Report shall be subject to the review and approval of the Department. If the Department disapproves the Report, the Department shall notify Respondent in writing of the reasons for such disapproval.

Within 30 days of receipt of such notice, or such greater period as the Department may allow, the Respondent shall revise and resubmit the Report, addressing each of the Department's objections.

If the Department disapproves the revised Report, the Department may take any action and pursue any remedy which may be available to the Department, including penalties against Respondent for failure to submit an approvable Report. Respondent retains all of its rights, including that of appeal.

IV. The Department reserves the right to require a modification and/or amplification and expansion of the Remedial Investigation and Report by Respondent to address specific areas if the Department determines that further investigation is necessary, as a result of reviewing data generated by the Remedial Investigation or as a result of reviewing other data or facts.

V. Upon approval of the Report, Respondent and the Department shall each evaluate the necessity for and requirements of a Feasibility Study and Remedial Design to address the Site. In the event that the Department shall determine that further action is necessary, the parties will negotiate a supplemental Order on Consent to address the matter.

VI. The right of the Department to enforce the terms of this Order shall not be affected by any release contained herein.

VII. Respondent shall provide notice to the Department of any field work (including, but not limited to, any excavating, drilling or sampling) to be conducted pursuant to the terms of this Order at least five (5) working days in advance of such activities.

VIII. Respondent shall permit any duly designated officer, employee, consultant, contractor or agent of the Department to enter upon the Site or areas in the vicinity of the Site which may be under the control of Respondent, and any areas necessary to gain access thereto, 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 Respondent's compliance with the provisions of this Order.

IX. The Department shall have the right to obtain "split samples" or "duplicate samples" or both, at the Department's option, of all substances and materials sampled by Respondent pursuant to this Order.

X. It shall be the responsibility of the Respondent to identify and obtain whatever permits, easements, rights-of-way, rights-of-entry, approvals or authorizations which are necessary in order to perform Respondent's other obligations pursuant to this Order.

XI. Following the review of the Remedial Investigation Report by the Department, Respondent shall pay to the Department a sum of money which shall be determined by the Department and which shall represent reimbursement for

documented expenses including but not limited to direct labor, overhead, analytical costs, contractor costs, travel and lodging expenses and equipment which have been incurred by the State of New York for reviewing and oversight of the proposals and programs pursuant to this Order. Such payment shall be credited to the Hazardous Waste Remedial Fund. In no event shall the reimbursement for such expenses exceed Thirty Thousand Dollars (\$30,000.00).

XII. As used in this Order, "hazardous waste" shall mean a waste which appears on the list or satisfies the characteristics promulgated by the Commissioner pursuant to ECL Section 27-0903 and found at 6 NYCRR Part 371, and any hazardous constituents or hazardous degradation products of a waste or combination of wastes which because of its quantity, concentration, or physical, chemical or infectious characteristics may pose a substantial present or potential hazard to human health or the environment.

XIII. Respondent shall not suffer any penalty under any of the terms hereof, or be subject to any proceedings or actions for any remedy or relief, if it cannot comply with any requirements of the terms hereof because of an act of God, war, riot or other condition as to which negligence or willful misconduct on the part of Respondent was not the proximate cause, provided, however, that Respondent shall immediately notify the Department in writing when it obtains knowledge of any such condition and request an appropriate extension or modification of the terms of this Order.

XIV. The failure of Respondent to comply with any terms of this Order shall constitute a default and a failure to perform an obligation under this Order and under the ECL.

XV. Nothing contained in this Order shall be construed as barring, diminishing, adjudicating or in any way affecting:

(a) 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, servants, agents, successors and assigns;

(b) the Department's right to enforce, at law or in equity, the terms and conditions of this Order against Respondent, its directors, officers, employees, servants, agents, successors and assigns in the event that Respondent shall fail to fulfill any of the provisions hereof; and

(c) the Department's right to bring any action, at law or in equity against Respondent, its directors, officers, employees, servants, agents, successors and assigns with respect to areas or resources that may have been affected or contaminated as a result of the release or migration of hazardous or industrial wastes at or from the Site or from areas in the vicinity of the Site; and

(d) the Department's right to bring any action or proceeding to which it may be entitled in connection with, relating to, or arising out of Respondent's disposal of hazardous wastes at the Site.

XVI. The terms of this Order shall not be construed to prohibit the Commissioner or his duly authorized representative from exercising any summary abatement powers, either at common law or as granted pursuant to statute or regulation.

XVII. 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 Respondent, its directors, officers, employees, servants, agents, successors or assigns.

XVIII. The effective date of this Order shall be the date on which Respondent receives a copy of this Order which has been signed by the Commissioner or his designee.

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

XX. A. All communication required hereby to be made between the Department and Respondent shall be made in writing and transmitted by United States Postal Service return receipt requested, or hand delivered or delivered via a similar carrier service which records delivery, to each of the addresses listed below.

B. Submissions to be made by Respondent to the Department shall be submitted in two copies to each of the

following addresses:

1. New York State Department of
Environmental Conservation
Division of Hazardous Waste Remediation
Bureau of Western Remediation
50 Wolf Road
Albany, New York 12233
2. New York State Department of
Environmental Conservation
Division of Environmental Enforcement
600 Delaware Avenue
Buffalo, New York 14202-1073
3. New York State Department of
Environmental Conservation
Division of Hazardous Waste Remediation
600 Delaware Avenue
Buffalo, New York 14202-1073
4. New York State Department of Health
Bureau of Environmental Exposure
Investigation
2 University Place
Albany, New York 12237

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

Leon A. Mattioli
Allied-Signal, Inc.
P.O. Box 1017
Marcus Hook, PA 19061

James V. Maher, Esq.
Allied-Signal, Inc.
P.O. Box 2245R
Morristown, New Jersey 07960

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

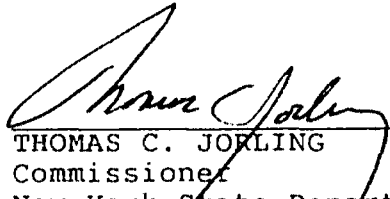
XXI. The terms of this Order shall be deemed to bind
Respondent, its officers, directors, agents, servants,
employees, successors and assigns.

XXII. Nothing herein shall be construed to bind any entity not specifically bound by the terms of this Order.

XXIII. The terms hereof shall constitute the complete and entire Order between Respondent 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 Respondent shall be construed as relieving Respondent of its obligations to obtain such formal approvals as may be required by this Order.

DATED: Feb. 1, 1987

Albany, New York


THOMAS C. JORLING
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.

ALLIED-SIGNAL, INC.

BY: F. M. P.

Executive Vice President and JUM
TITLE: President, Engineered Materials

DATE: SEPTEMBER 22, 1988

State of New Jersey)
County of MORRIS) s.s.:
)

On this 22nd day of SEPTEMBER, 1988,
before me personally came FREDERIC N. ROSES
to me known, who, being by me duly sworn, did depose
and say that he resides in NEW YORK, NY; that he
is the EXECUTIVE VICE PRESIDENT
ENGINEERED MATERIALS SECTOR of ALLIED-SIGNAL 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.

Michael D. Holie
NOTARY PUBLIC

MICHAEL D. HOLIE

NOTARY PUBLIC OF NEW JERSEY

My Commission Expires March 2, 1992.

