

J. S. Rose
→ Glen
PPD

June 4, 1991

CERTIFIED MAIL

David P. Flynn, Esq.
Phillips, Lytle, Hitchcock, Blaine
& Huber
One Marine Midland Center - Suite 3400
Buffalo, New York 14203-2887

Re: Allied-Signal, Inc. Tonawanda Plastics Site
#915003-b

Dear Mr. Flynn:

Attached is a fully endorsed Order on Consent for implementation of the removal program at the former Allied Specialty Chemicals Division site in Tonawanda as signed by Allied-Signal, Inc. and approved by Commissioner Thomas C. Jorling on May 30, 1991. It is my understanding that implementation of the selected remedial plan incorporated as Appendix "A" (not included here) is currently under way.

Thank you for your cooperation and assistance.

Sincerely,

Glen R. Bailey
Glen R. Bailey
Senior Attorney
Division of Environmental
Enforcement

GRB:jab
B159ALLD

Enclosure

cc: Robert A. Predale
Manager, Site Remediation
Hazardous Waste Task Force
Engineered Materials Sector
Allied-Signal, Inc.
P.O. Box 1139R
Morristown, New Jersey 07960

P. Buechi - Region 9
R. Tramontano - DOH, Albany
J. Moras - DHWR, Albany

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
of the Environmental Conservation
Law of the State of New York
by:

ORDER
ON
CONSENT

ALLIED-SIGNAL, INC.

Respondent

Site I.D. #915003-b
Index #B9-0065-90-10

WHEREAS,

1. The New York State Department of Environmental Conservation (the "Department") is responsible for the enforcement of Article 27, Title 13 of the Environmental Conservation Law of the State of New York ("ECL"), entitled "Inactive Hazardous Waste Disposal Sites".

2. Allied-Signal, Inc. ("Allied"), the Respondent herein, is a corporation organized and existing under the laws of the State of Delaware and is a successor in interest to Allied Chemical Corporation which operated an industrial facility within the State of New York, which generated wastes which were allegedly disposed of at the Site.

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

4. 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."

5. Respondent has developed a Remedial Plan including an implementation schedule, for the Site after reviewing results of the Remedial Investigation conducted pursuant to an Order on Consent with the Department, and the Department has reviewed and approved the Remedial Plan which is attached to and incorporated into this Order as Appendix "A".

6. The Department and Respondent agree that the goal of this Order shall be the implementation of a satisfactory remedial program for the Site which program shall include the design and implementation of the selected remedial plan set forth in Appendix "A" hereto.

7. Respondent, without admitting the veracity of any of the allegations contained herein or its liability with respect to any costs associated with the Site, 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.

NOW, having considered this matter and being duly

advised, IT IS ORDERED THAT:

I. All activities and submittals required by this Order shall be evaluated by the Department for consistency with the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. Section 9601 et seq., as amended ("CERCLA"), the National Contingency Plan (the "NCP"), the ECL, and appropriate technical and administrative guidelines, policies and procedures developed by the EPA or the Department.

II. Respondent has retained 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.

III. In accordance with the time schedule contained in the approved Remedial Plan, Respondent shall perform the remedial program and submit the status reports and other deliverables (as defined in the Remedial Plan) and the Remedial Report (the "Report"). During the field work associated with the remedial program, Respondent shall have on-Site a full-time representative who is qualified to inspect the work. The Report shall include all data generated and all other information obtained during the remedial program, and shall provide all of the required assessments and evaluations set forth in CERCLA, the NCP, the USEPA interim final guidance document entitled "Guidance for Conducting Remedial Investigations and Feasibility Studies under CERCLA" dated October 1988, and any subsequent

revisions to the guidance document then in effect, and appropriate technical and administrative guidelines as identified by the Department. The Report shall be prepared and certified by an engineer licensed to practice by the State of New York, who may be an employee of Respondent, or an individual or member of a firm which 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 remedial program were performed in material accordance with the approved Remedial Plan.

IV. After receipt of the Report, the Department shall determine if the remedial program was conducted and the Report prepared in material accordance with the Remedial Plan and this Order, and shall notify Respondent in writing of its approval or disapproval of the Report.

If the Department disapproves the Report, the Department shall notify Respondent in writing of the Department's objections. Respondent and the Department shall attempt to settle any issues arising out of these matters on an informal basis. Within 60 days Respondent shall revise the Report and/or re-perform or supplement the remedial program in accordance with the Department's specific comments and shall submit a revised Report. If it is necessary to supplement the remedial program, Respondent and the Department shall develop a reasonable schedule for the completion of such work and any necessary revision of the Report.

After receipt of the revised Report, the Department shall notify the Respondent in writing of its approval or disapproval of the revised Report.

If the Department disapproves the revised Report, the Respondent shall be deemed to be in violation of this Order.

If the Department disapproves the revised Report, such action shall constitute a final agency action for purposes of Article 78 of the Civil Practice Law and Rules.

If the Department approves the Report or revised Report, it shall be attached as Appendix "B" and incorporated into this Order.

V. The Department reserves the right to request a modification and/or an amplification and expansion of the remedial program and Report by Respondent if the Department reasonably determines, as a result of reviewing data generated by the remedial program or as a result of reviewing any other data or facts, that further work is necessary to accomplish the goal of this Order.

VI. Prior to its acceptance and approval of the engineer's certification that construction was completed in material accordance with the approved Remedial Plan, the Department may request Respondent to modify the Remedial Plan if the Department reasonably determines that such modification is necessary to accomplish the goal of this Order due to: (1) environmental conditions on-Site or off-Site which were unknown to the Department at the time of the effective date of this Order, or

(2) information received, in whole or in part, after the effective date of this Order, where such unknown environmental conditions or information indicates that the remedial program is not protective of human health or the environment.

VII. The Department shall have the right to obtain split samples, duplicate samples, or both, of all substances and materials sampled by Respondent. If the Department obtains its own samples at the Site, it should allow Respondent to split such samples at Respondent's request.

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

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

X. Within forty-five (45) days after receipt of an acceptable statement of expenses from the Department, Respondent shall pay to the Department a sum of money not to exceed forty thousand dollars (\$40,000) which shall represent reimbursement for the Department's reasonable expenses including, but not limited to, direct labor, overhead, travel, analytical costs and contractor costs incurred by the State of New York for work performed at the Site. 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 Hazardous Waste Remediation, N.Y.S.D.E.C., 50 Wolf Road, Albany, New York 12233.

Itemization of the costs shall include an accounting of personnel services indicating the employee name, title, bi-weekly 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 the Department's quarterly reports of Direct Personal Service. The Department's approved fringe benefit and indirect cost rates shall be applied. Non-personnel service costs shall be summarized by category of expense (supplies, materials, travel, contractual) and shall be documented by the New York State Office of the State Comptroller's quarterly expenditure reports.

XI. Respondent shall permit any duly designated employee, consultant, contractor or agent of the Department or any State agency to enter at reasonable times upon the Site or areas in the vicinity of the Site which may be under the control of Respondent for purposes of inspection, sampling and testing and to assure Respondent's compliance with this Order. Such persons shall comply with the requirements of the Health and Safety Plan included in Appendix "A" hereto.

XII. Respondent shall not suffer any penalty under this Order, or be subject to any proceeding or action, if it cannot comply with any requirements hereof because of an act of God, war or riot or other unforeseeable cause beyond the reasonable control of Respondent. 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.

XIII. The failure of Respondent to comply with any term of this Order shall be a violation of this Order and the ECL, subject to notice and an opportunity to be heard.

XIV. 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 are not limited to, the following:

a. the Department's right to bring any action or proceeding against anyone other than Respondent;

b. the Department's right to enforce this Order against Respondent, its directors, officers, employees, servants, agents, successors and assigns in the event that Respondent shall fail to satisfy any of the terms hereof;

c. the Department's right to bring any action or proceeding against Respondent, its directors, officers, employees, servants, agents, 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, and;

d. the Department's right to bring any action or proceeding against Respondent, its directors, officers, employees, servants, agents, successors and assigns with respect

to hazardous substances that are present at the site or that have migrated from the site and present a significant threat to human health or the environment.

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

XVI. Respondent shall indemnify and hold the Department, the State of New York, and its 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 Respondent, its directors, officers, employees, servants, agents, successors or assigns. Respondent does not assume liability for any claims, suits, actions, damages or costs which result from the unlawful, willful or malicious acts of the Department, the State of New York, or their representatives and employees.

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

XVIII. If Respondent desires that any provision of this Order be changed, it shall make timely written application to the Commissioner, setting forth reasonable grounds for the relief sought. A copy of such written application shall be delivered or mailed to the Department project manager for the site.

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

A. Communication from Respondent shall be made as follows:

1. Director, Division of Hazardous Waste Remediation
New York State Department of Environmental Conservation
50 Wolf Road
Albany, New York 12233
2. Director, Bureau of Environmental Exposure Investigation
New York State Department of Health
2 University Place
Albany, New York 12203
3. Regional Hazardous Waste Engineer
Region 9
New York State Department of Environmental Conservation
600 Delaware Avenue
Buffalo, New York 14202-1073
4. Division of Environmental Enforcement
New York State Department of Environmental Conservation
600 Delaware Avenue
Buffalo, New York 14202-1073

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

1. Six copies to the Director, Division of Hazardous Waste Remediation.
2. Two copies to the Director, Bureau of Environmental Exposure Investigation.
3. One copy to Regional Hazardous Waste Engineer.
4. One copy to Division of Environmental Enforcement

C. Communication to be made from the Department to the

Respondent shall be made as follows:
Robert A. Predale, Manager
Site Remediation
Hazardous Waste Task Force
Engineered Materials Sector
Allied-Signal, Inc.
P.O. Box 1139R
Morristown, New Jersey 07960


David P. Flynn, Esq.
Phillips, Lytle, Hitchcock, Blaine
& Huber
Suite 3400
One Marine Midland Center
Buffalo, New York 14203-2887

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

XX. The terms of this order shall be deemed to bind Respondent and its successors and assigns. Respondent's officers, directors, employees, servants and agents shall be obliged to comply with the relevant terms of this Order in the performance of their designated duties on behalf of Respondent.

XXI. 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 submittals shall be construed as relieving Respondent of its obligations to obtain such formal approvals as may be required by this Order.

DATED: May 30th, New York
1991


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

CONSENT BY RESPONDENT

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

ALLIED-SIGNAL CORPORATION

By: *J. Schutt*

JAMES A. SCHUTT
(Type Name of Signer)

Title: Director - Site Remediation

Date: May 7, 1991

STATE OF NEW ^{Jersey} ~~YORK~~)
) S.S.:
COUNTY OF Morris)

On this 7 day of May, 1991,
before me personally came J. Schutt, to me
known, who being duly sworn, did depose and say that he resides
in New Jersey; that he is the
Director - Site Remediation of Allied-Signal Inc., the
corporation described in and which executed the foregoing
instrument; that he signed his name hereto on behalf of said
corporation, and that he is authorized to obligate the
corporation in such matters pursuant to the constitution, by-
laws, and duly delegated powers of the corporation in accordance
with his title.

Judith A. Hepburn
Notary Public