

June 29, 1993

Thomas C. Jorling
Commissioner

Certified Mail
Return Receipt Requested

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



Re: AlliedSignal, Inc. Order on Consent for the
Buffalo Color Sites

Dear Mr. Flynn:

Enclosed is a fully endorsed original of the Order on Consent for the remedial program at the Buffalo Color Area D inactive hazardous waste disposal sites. As you know, this Order was signed yesterday by Ann Hill DeBarbieri, Director of Environmental Remediation and Deputy Commissioner, on behalf of Commissioner Jorling. I have made copies of this Order for my files and for the persons copied below.

Thank you for your cooperation in bringing this matter to this resolution.

Sincerely,

Glen R. Bailey
Senior Attorney
Division of Environmental
Enforcement

GRB:B:jab
B99BFCLR.3

Enclosure

cc: Mr. David A. Paley
AlliedSignal, Inc.
101 Columbus Road
Morristown, NJ 07962-1139

Mr. G. A. Carlson, DOH
Mr. M. O'Toole
Mr. J. Spagnoli

John Black
Pam C.
cc: *Emil W.*
Bill Hays
Consent Order file
JAS, RF cover only

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
by

ORDER
ON
CONSENT
INDEX #B9-0014-84-01RD

ALLIEDSIGNAL, INC.

Respondent

Site Code #9-15-012

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. A. Respondent AlliedSignal, Inc. is a corporation organized and existing under the laws of the State of Delaware and, for purposes of this Order, is a successor in interest to Allied Chemical Corporation which had previously owned and operated the facility at 340 Elk Street, prior to its transfer to Buffalo Color Corporation.

B. During the course of operations at the facility, areas within the property had been utilized for the storage and disposal of waste and excess material. Some of these areas have been designated as hazardous waste disposal sites and listed in

the New York State Inactive Hazardous Waste Disposal Site Registry. These listed sites are included in the area designated as the Plant D Area, and are collectively referred to as "the Site."

3. Following a period of public comment, the Department selected a final remedial alternative for the Site in a Record of Decision ("ROD"). The ROD is attached to this Order as Appendix "A."

4. 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, 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 9-15-012. The Department has classified the Site as a Classification "2" pursuant to ECL Section 27-1305.4.b.

5. 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.

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

7. Respondent, having waived its rights 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. Respondent 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. The consent by Respondent to the terms of this Order shall not be deemed to be any admission of fact or law.

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

I. Remedial Design Contents

A. In accordance with the schedule provided in the Scope of Work ("SOW") which is attached to and incorporated in this Order as Appendix "B", Respondent shall submit to the Department a remedial design and a work plan to implement the remedial alternative for the Site identified by the Department in the ROD (the "Remedial Design"). The final Remedial Design shall be prepared by and have the signature and seal of a professional engineer who shall certify that the Remedial Design was prepared in accordance with this Order.

B. The Remedial Design 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 Remedial Design.

2. "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 number of years during which such activities will be performed;

6. A health and safety plan for the protection of persons from conditions attributable to the Site 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

7. A citizen participation plan which incorporates appropriate activities outlined in the Department's publication, "New York State Inactive Hazardous Waste Citizen Participation Plan," dated August 30, 1988, and any subsequent revisions thereto.

II. Remedial Design Construction and Reporting

A. Within 90 days of the Department's approval of the elements of the Remedial Design, Respondent shall commence construction of the Remedial Design.

B. Respondent shall implement the Remedial Design in accordance with the Department-approved Remedial Design.

C. During implementation of all construction activities identified in the Remedial Design, Respondent shall have on-Site a full-time representative who is qualified to supervise the work done.

D. Within 90 days after completion of the construction activities identified in the Remedial Design, Respondent shall submit to the Department a detailed post-remedial operation and maintenance plan ("O & M Plan"); "as-built" drawings and a final engineering report (each including all changes made to the Remedial Design during

construction); 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. The O & M Plan, "as built" drawings, final engineering report, and certification must be prepared, signed, and sealed by a professional engineer.

E. Upon the Department's approval of the O & M Plan, Respondent shall implement the O & M Plan in accordance with the requirements of the Department-approved O & M Plan.

F. After receipt of the "as-built" drawings, final engineering report, and certification, the Department shall notify Respondent in writing whether the Department is satisfied that all construction activities have been completed in compliance with the approved Remedial Design.

G. Prior to its acceptance and approval of the engineer's certification that construction was completed in accordance with the approved Remedial Design, the Department may seek to require Respondent to modify the Remedial Design and alter the construction and the O & M Plan if the Department determines that such modification is necessary due to:

1. environmental conditions which are related to the presence of hazardous wastes at the Site and were unknown to the Department at the time of its approval of the Remedial Design, or

2. information received in whole or in part after the Department's approval of the Remedial Design, where

such information or environmental conditions indicate that the Remedial Program is not sufficiently protective of human health or the environment.

III. Progress Reports

Respondent shall submit to the parties set forth in paragraph XII copies of written monthly progress reports 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 related to the Site received or generated by Respondent or Respondent' contractors or agents in the previous month, including quality assurance/quality control information, whether conducted pursuant to this Order or conducted independently by Respondent;
- (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 Respondent obligations under the Order, and efforts made to mitigate those delays or anticipated delays;
- (vi) include any modifications to any work plans that Respondent 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. Respondent shall submit these progress reports to the Department by the fifteenth 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 Respondent makes 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 Respondent 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 Respondent in writing and shall specify the reasons for its disapproval. Within 30 days after receiving written notice that Respondent's submittal has been disapproved, Respondent shall make a revised submittal to the Department to address and resolve all of the Department's stated reasons for disapproving the first submittal.

b. After receipt of the revised submittal, the Department shall notify Respondent in writing of its approval or disapproval. If the Department disapproves the

revised submittal, Respondent shall be in violation of this Order and the Department and Respondent may take any action or pursue whatever rights are available pursuant to any provision of statutory or common law. If the Department approves the revised submittal, it shall be incorporated into and become an enforceable part of this Order. The approval or disapproval of a revised submittal pursuant to this subparagraph shall be deemed a final agency determination regarding that submittal.

B. The Department may seek to require Respondent to modify and/or amplify and expand a submittal 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 further work is necessary.

V. Penalties

A. 1. Respondent's failure to comply with any term of this Order constitutes a violation of this Order and the ECL.

2. Respondent may be held liable for payment to the Department of a reasonable sum established pursuant to ECL Section 71-2705 for penalties for each day or part thereof that Respondent continues to be in violation of the terms of this Order after having first received notice thereof.

B. Respondent 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 requirement hereof because of an act of God, war, riot, or because of any condition or event entirely beyond the control of Respondent or its agent

or agents carrying out Respondent's obligations under this Order and which the exercise of ordinary human prudence could not have alleviated. Respondent shall, within ten days of when they obtain knowledge of any such condition, notify the Department in writing. Respondent shall include in such notice the measures taken and to be taken by Respondent 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. Respondent shall have the burden of proving that an event is a defense to compliance with this Order pursuant to this subparagraph V. B.

Increased costs or expenses for any work to be performed under this Order, the financial inability of Respondent to perform such work, the failure of Respondent to make complete and timely application for any required approval or permit, and the failure to attain the goals, standards and requirements of the Remedial Design do not constitute conditions or events warranting the relief set forth in this subparagraph.

VI. Entry upon Site

Respondent consents to the entry upon the Site or areas in the vicinity of the Site which may be under the control of the Respondent 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, subject to appropriate

safety measures. Respondent shall provide the Department with suitable office space at the Site, including access to a telephone, and shall permit the Department full access to all records relating to matters addressed by this Order and job meetings.

VII. Payment of Department Costs

Within 30 days after receipt of an itemized invoice from the Department, Respondent shall pay to the Department a sum of money which shall represent reimbursement for the State's reasonable administrative 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 for negotiating this Order, reviewing and revising submittals made pursuant to this Order, overseeing activities conducted pursuant to this Order, and collecting and analyzing samples. 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. The Department's approved 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. The Department shall provide Respondent with itemized invoices on an annual basis. Respondent shall submit payments to the Department in accordance with the amount of the invoice up to a total of three hundred thousand dollars (\$300,000.00) as payments in accordance with this Order.

VIII. Department Reservation of Rights

A. Unless expressly provided, 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 Respondent and/or any of Respondent's directors, officers, employees, servants, agents, successors, and assigns;

2. the Department's right to enforce this Order against Respondent and/or any of Respondent's directors, officers, employees, servants, agents, successors, and assigns whose designated duties on behalf of Respondent entail conduct necessary for compliance herewith, if Respondent fails to satisfy any of the terms of this Order;

3. the Department's right to bring any action or proceeding against Respondent and/or any of Respondent's 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 bring any action or proceeding against Respondent and/or any of Respondent's directors, officers, employees, servants, agents, successors, and assigns with respect to hazardous substances that may be present at the Site or that are released from the Site and are not addressed by this Remedial Program;

5. the Department's right to seek recovery of its costs and expenses which may have been or may be incurred at any time during the development and implementation of the inactive hazardous waste disposal site remedial program for this Site on Area D of the Buffalo Color facility and which costs and expenses have not otherwise been reimbursed and credited or accounted for; and

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

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

IX. Indemnification

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 this Order by Respondent, and/or Respondent's directors, officers, employees, servants, agents, successors, and assigns. Respondent shall not be required to indemnify and hold the Department, the State of New York and their representatives and employees harmless for claims, suits, actions, damages and costs arising out of or resulting from any unlawful, willful or malicious acts or omissions on the part of the State, State agencies, or their officers, employees or agents.

X. Release and Settlement

A. 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. G., and except for the provisions of paragraphs II. E., VII, IX, and X. B. hereof, and except for any natural resources damages 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 issuance of the Record of Decision for this Site; or

2. information received, in whole or in part, after the Department's issuance of the ROD 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 or the environment.

B. 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.

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. Shive Mittal
Division of Hazardous Waste Remediation
New York State Department of Environmental
Conservation
50 Wolf Road
Albany, New York 12233-7010
2. Director, Bureau of Environmental
Exposure Investigation
New York State Department of Health
2 University Place
Albany, New York 12203
3. John J. Spagnoli, Regional Director
New York State Department of Environmental
Conservation - Region 9
270 Michigan Avenue
Buffalo, New York 14203-2999
4. Glen Bailey, Esq.
Division of Environmental Enforcement
New York State Department of Environmental
Conservation
270 Michigan Avenue
Buffalo, New York 14203-2999

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

1. Four copies (one unbound) to
Shive Mittal
Division of Hazardous Waste Remediation.
2. Two copies to the Director, Bureau of
Environmental Exposure Investigation.

3. One copy to the Region 9 Director
4. One copy to Glen Bailey, Esq.
Division of Environmental Enforcement

C. Within 30 days of the Department's approval of any report submitted pursuant to this Order, Respondent shall submit to Shive Mittal a computer readable magnetic media copy of the approved report in American Standard Code for Information Interchange (ASCII) format.

D. Communication to be made from the Department to the Respondent shall be sent to:

AlliedSignal, Inc.
Attn: Mr. David A. Paley
101 Columbus Road
Morristown, NJ 07962-1139

David Flynn, Esq.
Phillips, Lytle, Hitchcock, Blaine & Huber
3400 Marine Midland Center
Buffalo, NY 14203

E. The Department and Respondent reserve the right to designate additional or different addressees for communication on written notice to the other.

XIII. Miscellaneous

A. All activities and submittals required by this Order shall address on-Site contamination resulting from the disposal of hazardous waste at the Site.

B. Respondent 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 Respondent shall be submitted to the Department within 90 days after the effective date of this Order. The Department's acknowledgement of the capabilities of these firms or individuals shall be obtained before the start of any activities for which the Respondent and such firms or individuals will be responsible. The responsibility for the performance of the professionals retained by Respondent shall rest solely with Respondent.

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

D. Respondent shall notify the Department at least 14 working days in advance of the initiation of any stage of field activities to be conducted pursuant to this Order.

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

Policies and determinations related to the necessity for obtaining certain permits are specified in the Commissioner's Organization and Delegation Memorandum #90-37 and at 6 NYCRR 375-1.7.

F. Respondent and Respondent's officers, directors, agents, servants, employees, successors, and assigns, as appropriate, 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.

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

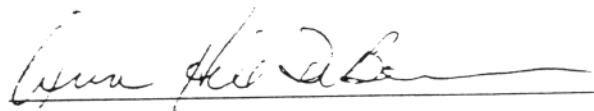
K. 1. The terms of this Order shall constitute the complete and entire Order between Respondent and the Department concerning the Site. No term, condition, understanding, or agreement purporting to modify or vary any term of this Order shall be binding unless made in writing and subscribed by the party 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 Respondent desire that any provision of this Order be changed, Respondent shall make timely written application, signed by the Respondent, to the Commissioner setting forth reasonable grounds for the relief sought. Copies of such written application shall be delivered or mailed to Shive Mittal and Glen Bailey.

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

DATED: *Buffalo* , New York
June 28 , 1993

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

A handwritten signature in cursive script, appearing to read "Thomas C. Jorling", is written over a horizontal line.

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.

ALLIEDSIGNAL, INC.

By: *James A. Schutt* *jsm*
James A. Schutt
(TYPE NAME OF SIGNER)

Title: Director, Manufacturing Services

Date: April 27, 1993

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

On this 27th day of April, 1993, before me personally came James A. Schutt, to me known, who being duly sworn, did depose and say that he resides in Morristown, NJ;

that he is the Director, Manufacturing Services of the AlliedSignal Inc. 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.

Constance D. Niemasz
NOTARY PUBLIC

CONSTANCE D. NIEMASZ
A Notary Public of New Jersey
My Commission Expires Jan. 23, 1995