

STATE OF NEW YORK: DEPARTMENT OF ENVIRONMENTAL CONSERVATION

In the Matter of the
Development and Implementation
of a Remedial Investigation and
Feasibility Study 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

ORDER
ON
CONSENT
INDEX # B9-0226-88-07

SCA SERVICES, INC.
Respondent.

Site Code #915015

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." This Order is entered into pursuant to the Department's authority under ECL Article 71 and ECL Article 27, Title 13 and ECL Section 3-0301.

2. SCA Services, Inc. ("Respondent"), is a corporation organized and existing under the laws of the State of Delaware, and is duly authorized to do business in the State of New York. Respondent currently owns a facility known as Chem Trol located on Lake Avenue in Hamburg, New York in the County of Erie (the "Site").

3. The Site is an inactive hazardous waste disposal site, as that term is defined at 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 915015. The Department has classified the Site as a Classification "2" pursuant to ECL Section 27-1305.4.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. The Department and Respondent acknowledge that the goals of this Order shall be that Respondent (i) develop and implement a Remedial Investigation/Feasibility Study ("RI/FS") for the inactive hazardous waste disposal site, subject to the approval of the Department, and implement such investigation and study within the time periods specified; and (ii) reimburse the Department's administrative costs.

6. Respondent has submitted and the Department has approved an RI/FS Work Plan which is incorporated into this Order and which is attached as Appendix "A". The Work Plan provides for performance of the RI/FS in compliance with the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA") as amended; the National Contingency

Plan ("NCP"), 40 C.F.R. Part 300; applicable EPA guidance documents relating to the performance of the RI/FS, including the EPA draft guidance document entitled "Guidance for Conducting Remedial Investigation and Feasibility Studies under CERCLA" dated October, 1988 and any subsequent revisions thereto; and the ECL, regulations and Department Technical and Administrative Guidance Memoranda and any other subsequent amendments or revisions thereto.

7. Definitions

A. "Duplicate Samples" shall mean multiple samples, collected at the same time from exactly the same location, using the same sampling apparatus, collected into identical containers prepared identically, filled to the same volume, and thereafter identically handled and preserved.

B. "Hazardous Wastes" shall mean hazardous wastes as defined in 6 NYCRR Part 371.

C. "Split Samples" shall mean whole samples divided into aliquots.

8. Respondent, having waived its right to a hearing herein as provided by law, and having consented to the issuance and entry of this Order, without any adjudication of law or fact, agrees to be bound by its terms. Respondent's consent to and compliance with this Order does not constitute, and shall not be construed as an admission of liability for any purpose or an admission by Respondent of law or fact or of the applicability of any law to conditions at the site. Respondent

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. Performance and Reporting of Remedial Investigation

A. Pursuant to the approved schedule in Appendix "A", Respondent shall commence and perform the Remedial Investigation in accordance with this Order and with the Department-approved RI/FS Work Plan in Appendix "A" and any Department-approved modifications thereto.

B. During the performance of the Remedial Investigation, Respondent shall have on-Site a full-time representative who is qualified to supervise the work done.

C. Within the time frame set forth in the RI/FS Work Plan, Respondent shall prepare and submit to the Department a Remedial Investigation Report that shall:

(1) include all data generated and all other information obtained during the Remedial Investigation:

(2) provide all of the assessments and evaluations set forth in CERCLA, the NCP, and the guidance documents identified in Appendix "A";

(3) identify any additional data that must be collected; and

(4) include a certification by the individual or firm with primary responsibility for the day to day performance of the Remedial Investigation that all activities that comprised the Remedial Investigation were performed in full accordance with the Department-approved RI/FS Work Plan.

II. Feasibility Study

A. Pursuant to the schedule and specifications in Appendix "A", Respondent shall submit to the Department a Feasibility Study evaluating on-Site and off-Site remedial actions to eliminate, to the maximum extent practicable, all health and environmental hazards and potential hazards attributable to hazardous waste disposal at the Site. The Feasibility Study shall be prepared by and have the signature and seal of a professional engineer who shall certify that the Feasibility Study was prepared in accordance with this Order and with Appendix "A".

B. Respondent shall perform and prepare the Feasibility Study in accordance with this Order the Department-approved RI/FS Work Plan in Appendix "A" and with any Department-approved modifications thereto, and in a manner consistent with CERCLA, the NCP, and the guidance documents identified in Appendix "A".

C. Pursuant to the schedule in Appendix "A", the Department shall solicit public comment on the RI/FS and the proposed remedial action plan identified therein, in accordance with CERCLA, the NCP, the guidance documents identified in

Appendix "A", and with any Department policy and guidance documents in effect at the time the public comment period is initiated. Respondent shall cooperate and assist the Department in soliciting public comment on the RI/FS, as specified in Appendix "A".

III. Interim Remedial Measures

Before the effective date of the ROD, Respondent may propose interim remedial measures ("IRMs") for the Site on an as-needed basis. In proposing each IRM, Respondent shall submit to the Department a work plan which includes a chronological description of the anticipated IRM activities together with a schedule for the performance of those activities. Upon the Department's determination that the proposal is an appropriate interim remedial measure and upon the Department's approval of such work plan, the work plan shall be incorporated into and become an enforceable part of this Order; and Respondent shall submit to the Department for its review and (as appropriate) approval, in accordance with the schedule contained in the Department-approved work plan, detailed documents and specifications prepared, signed, and sealed by a professional engineer to implement the Department-approved IRM. Such documents shall include a health and safety plan, contingency plan, and (if the Department requires such) a citizen participation plan that 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. Respondent shall then carry out such IRM in accordance with the requirements of the approved work plan, detailed documents and specifications, and this Order. Within the schedule contained in the Department-approved work plan, Respondent shall submit to the Department a final engineering report prepared by a professional engineer that includes a certification by that individual that all activities that comprised the IRM were performed in full accordance with the Department-approved work plan, detailed documents and specifications, and this Order. Within the schedule contained in the Department-approved work plan, Respondent shall submit to the Department a report or reports documenting the performance of the IRM. Respondent shall notify the Department of any significant difficulties that may be encountered in implementing the Department-approved work plan, detailed documents, or specifications and shall not modify any obligation unless first approved by the Department.

IV. Progress Reports

Respondent or its consultants shall submit to the parties set forth in paragraph XIII, one copy 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 received or generated by Respondent or Respondent's 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's 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 twentieth day of every month following the effective date of this Order. Nothing contained in the monthly progress reports shall be deemed to waive any rights Respondent has under this Order including but not limited to, invocation of dispute resolution or Force Majeure procedures.

V. 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 with the RI/FS Work Plan in Appendix "A". The Department shall act in good faith to comply with the time frames for review set forth in Appendix "A", but shall not be bound by these time frames. The Department shall notify Respondent in writing of its approval or disapproval of the submittal. 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 the schedule specified in the notice of disapproval, Respondent shall make a revised submittal to the Department that addresses and resolves 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, unless Respondent requests an opportunity to respond to the Department's objections pursuant to the dispute resolution mechanism in paragraph VI, Respondent shall be in violation of this Order and the Department may take any action or pursue whatever rights it has 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.

B. The Department may require Respondent to modify and/or amplify and expand a submittal or work related to 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.

VI. If the Department disapproves a revised submittal, Respondent shall be in violation of this Order unless, within 10 days of receipt of the Department's notice of disapproval, Respondent requests to meet with the Director of the Division of Hazardous Waste Remediation ("the Director") in order to discuss the Department's objections and Respondent is available to meet immediately thereafter. At this meeting, Respondent shall be given an opportunity to present its responses to the Department's objections, and the Director shall have the authority to modify and/or withdraw such objections. Respondent shall revise the submittal in accordance with the Department's specific comments, as modified, except for those which have been withdrawn by the Director, and shall submit a revised Report. The period of time within which the submittal must be revised as specified by the Department in its notice of disapproval shall control unless the Department revises the time frame during the meeting referenced above.

After receipt of the revised submittal, the Department shall notify the Respondent in writing of its approval or

disapproval of the revised submittal.

If the revised submittal fails to address the Department's specific comments, as modified, and the Department disapproves the revised Report for this reason, Respondent shall be in violation of this Order and the ECL.

The invocation of formal dispute resolution procedures under this Section shall not of itself extend, postpone or affect in any way any other obligation of the Settling Defendants under this Order. The Respondent may, within forty-five (45) days of the Department's disapproval of the revised report pursuant to this section, initiate judicial review of such disapproval pursuant to Article Seventy-Eight (78) of the Civil Practice Laws and Rules of the State of New York. Payment of stipulated penalties with respect to the disputed matter shall be stayed pending resolution of the dispute pursuant to this Section. Notwithstanding the stay of payment, stipulated penalties shall accrue from the first day of noncompliance with any applicable provision of this Order. On the event that the Settling Defendant does not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section VI.

VII. 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 shall be liable for payment to

the Department of the sums set forth below as stipulated penalties for each day or part thereof that the Respondent is in violation of the terms of this Order. Except as provided in paragraph VI, all penalties begin to accrue on the first day Respondent is in violation of the terms of this Order and continue to accrue through the final day of correction of any violation. Such sums shall be due and payable within 15 days after receipt of notification from the Department assessing the penalties. Penalties shall be paid by check, made payable to "New York State Department of Environmental Conservation" and shall be mailed to the Director, Division of Environmental Enforcement, N.Y.S.D.E.C., 50 Wolf Road, Albany, New York 12233-5500. Payment of the penalties shall not in any way alter Respondent's obligation to complete performance under the terms of this Order. Stipulated penalties shall be due and payable under this subparagraph pursuant to the following schedule:

<u>Period of Non-Compliance</u>	<u>Penalty Per Day</u>
First through 15th day	\$ 500
16th through 30th day	\$ 1,000
31st day and thereafter	\$ 2,500

B. Respondent shall not suffer any penalty under this Order or be subject to any proceeding or action if it cannot comply with any requirement hereof because of 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. Respondent shall, within ten days of when it obtains knowledge of any such condition, notify the Department in writing. Respondent 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. Increased costs or expenses of 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 nonattainment of the goals, standards and requirements of this Order do not constitute conditions or events warranting the relief set forth in this subparagraph.

VIII. Entry upon Site

Respondent hereby 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. The Department shall make good faith efforts to provide reasonable notice for such entry. Respondent shall permit the Department full access to all records relating to matters addressed by this Order.

IX. Payment of State's Costs

Respondent shall pay to the Department a sum of money which shall represent reimbursement for the State's 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 to date, as well as 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 which are related to the development and implementation of the RI/FS. Such payment shall be made quarterly, within 30 days after receipt of an itemized invoice from the Department by 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, 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-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.

X. Department Reservation of Rights

A. 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, its directors, officers, employees, servants, agents, successors, and assigns;

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

3. 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;

4. 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;

5. the Department's right to bring any criminal action against the Respondent its directors, officers, employees, servants, agents, successors, and assigns;

6. the Department's right to require Respondent, its directors, officers, employees, servants, agents, successors, and assigns to develop and implement IRMs for the Site; and

7. 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.

C. Except in accordance with this Order, so long as Respondent is in compliance with the terms of this Order, the Department agrees not to commence any action or proceedings to which it may be entitled in connection with, relating to, or arising out of Respondent's alleged disposal of hazardous wastes at this site covered by this Order.

XI. 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 any of Respondent's directors, officers, employees, servants, agents, successors, and assigns. Respondent shall not indemnify the Department for the Department's own negligent actions.

XII. Public Notice

A. Within 30 days after the effective date of this Order, Respondent shall file a Declaration of Covenants and Restrictions with the Clerk of the County wherein the Site is located 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.

B. If Respondent proposes to convey the whole or any part of Respondent's ownership interest in the Site, Respondent shall, not fewer than sixty (60) days before the date of conveyance, notify the Department in writing of the identity of the transferee and of the nature and proposed date of the conveyance and shall notify the transferee in writing, with a copy to the Department, of the applicability of this Order.

XIII. Communications

A. All written communications between the Department and Respondent required by this Order shall be transmitted by United States Postal Service, by private courier service, hand delivered or faxed to the addresses below:

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

1. Regional Engineer, Region 9
New York State Department of
Environmental Conservation
270 Michigan Avenue
Buffalo, New York 14203-2999

2. Assistant Counsel, Division of
Environmental Enforcement
New York State Department of
Environmental Conservation
270 Michigan Avenue
Buffalo, New York 14203-2999

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

1. Four copies (one unbound) to
Regional Engineer, Region 9
New York State Department of Environmental
Conservation
270 Michigan Avenue
Buffalo, New York 14203-2999
2. Two copies to the Director, Bureau of
Environmental Exposure Investigation
New York State Department of Health
2 University Place
Albany, New York 12203
3. One copy to Director, Division of
Hazardous Waste Remediation
New York State Department of Environmental
Conservation
50 Wolf Road
Albany, New York 12233-7010
4. One copy to Assistant Counsel, Division
of Environmental Enforcement
New York State Department of Environmental
Conservation
270 Michigan Avenue
Buffalo, New York 14203-2999

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

Stephen T. Joyce
Remedial Projects Manager
Eastern Region
Waste Management of North America, Inc.
580 Edgewater Drive
Wakefield, MA 01880

- B. The Department and Respondent reserve the right

to designate additional or different addressees for communication or written notice to the other.

XIV. Miscellaneous

A. All activities and submittals required by this Order shall address both on-Site and off-Site contamination resulting from the disposal of hazardous wastes 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 has been and shall be approved by the Department. The Department's approval 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, 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 7 working days in advance of any field activities to be conducted pursuant to this Order.

E. Respondent shall make good faith, reasonable efforts to obtain whatever permits, easements, rights-of-way, rights-of-entry, approvals, or authorizations necessary to perform Respondent's obligations under this Order. If Respondent's good faith, reasonable efforts are unsuccessful, the Department, upon notification by Respondent, shall exercise its authority under the ECL to assist Respondent to obtain necessary authorization.

F. Respondent and Respondent's officers, directors, agents, servants, employees, successors, and assigns shall be deemed 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. Nothing herein shall be construed to bind any other entity.

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 in order 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 desires 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:


Assistant Counsel
Division of Environmental Enforcement
New York State Department of Environmental
Conservation
270 Michigan Avenue
Buffalo, New York 14203-2999

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

DATED: *Albany*, New York
October 15, 1992

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

By:


Ann Hill DeBarbieri
Deputy Commissioner

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.

SCA SERVICES, INC.

By: Gregory T. Sangalis
Gregory T. Sangalis
(Type Name of Signer)

Title: Assistant Secretary

Date: 9/18/92

STATE OF Pennsylvania
COUNTY OF Bucks } s.s.:

On this 18th day of September, 1992, before me personally came Gregory T. Sangalis, to me known, who, being by me duly sworn, did depose and say that he resides in _____; that he is the Assistant Secretary of the SCA Services, 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.

Rhonwen Baranek
Notary Public

NOTARIAL SEAL
RHONWEN BARANEK, Notary Public
Bensalem, Bucks County
My Commission Expires Feb. 15, 1993