

STATE OF NEW YORK: DEPARTMENT OF ENVIRONMENTAL CONSERVATION

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In the Matter of the
Development and Implementation
of a Remedial Investigation/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 # B9-0505-96-12

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BUFFALO URBAN RENEWAL AGENCY
Respondent.

ORDER

Site Code #915167

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 issued pursuant to the Department's authority under, inter alia, ECL Article 27, Title 13 and ECL 3-0301.
2. The Buffalo Urban Renewal Agency ("BURA") is a public benefit corporation with offices located at 920 City Hall in the City of Buffalo, County of Erie. BURA is the current owner of property ("the Site") known as the Fourth Street Site, 43 Carolina Street in the City of Buffalo. A map of the Site, attached to this Order as Appendix A, is incorporated as a part of the Order.
3. For the purposes of this Order, BURA shall be known as "the Respondent".
4. The Site was allegedly formerly utilized by the Citizen Gas Works. A series of environmental investigations including soil/tar and groundwater sampling revealed, among other things, the presence in varying levels of benzene, toluene, xylenes polycyclic aromatic

hydrocarbons ("PAHs") and phenolic compounds. Additionally, the tar material was determined to be hazardous waste based upon the Target Compound Leachate Process ("TCLP").

5. The Department has determined that the Site is an inactive hazardous waste disposal site, as that term is defined at ECL 27-1301.2, and presents a significant threat to the public health or environment. The Site has been listed by the Department in the Registry of Inactive Hazardous Waste Disposal Sites in New York State as Site Number 915167. The Department has classified the Site as a Classification "2" pursuant to ECL 27-1305.4.b.

6. A. Pursuant to ECL 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 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 3-0301.1.i.

7. The Department and Respondent agree that the goals of this Order are for Respondent to

- (i) develop and implement a Remedial Investigation/Feasibility Study ("RI/FS") for the Site; and
- (ii) reimburse the State's administrative costs.

8. Respondent, without admitting any facts or liability, having waived Respondent's right to a hearing herein as provided by law, and having consented to the issuance and entry of this Order, agrees to be bound by its terms. Respondent consents to and agrees not to contest the authority or jurisdiction of the Department to issue or enforce this Order, and agrees not to contest the validity of this Order or its terms.

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

I. Initial Submittal

Within 30 days after the effective date of this Order, Respondent shall submit to the Department all known data within Respondent's possession or control regarding environmental conditions on-Site and off-Site, and other information described below, unless the Department informs Respondent that such data have previously been provided to the Department. The data and other information shall include:

A. A brief history and description of the Site, including the types, quantities, physical state, location, and dates of disposal of hazardous waste including methods of disposal and spillage of such wastes based upon data and information known to Respondent;

B. A concise summary of information held by Respondent and Respondent's consultants with respect to all persons responsible for such disposal of hazardous wastes, including but not limited to names, addresses, dates of disposal and any proof linking each such person responsible with hazardous wastes identified pursuant to Subparagraph I.A; and

C. A comprehensive list and copies of all existing relevant reports with titles, authors, and subject matter, as well as a description of the results of all previous investigations of the Site and areas in the vicinity of the Site, including copies of all available topographic and property surveys, engineering studies and aerial photographs known to the Respondent.

II. RI/FS Work Plan Contents and Submittals

A. Within 45 days after the effective date of this Order, Respondent shall submit to the Department a detailed work plan describing the methods and procedures to be implemented in performing an RI/FS for the Site ("RI/FS Work Plan").

B. (1) The RI/FS Work Plan shall include, but not be limited to, the following:

a. A chronological description of the anticipated RI/FS activities together with a schedule for the performance of these activities.

b. A Sampling and Analysis Plan that shall include:

(i) A quality assurance project plan that describes the quality assurance and quality control protocols necessary to achieve the initial data quality objectives. This plan shall designate a data validation expert and must describe such individual's qualifications and experience.

(ii) A field sampling plan that defines sampling and data gathering methods in a manner consistent with the "Field Methods Compendium," OSWER Directive 9285.2-11 (draft June 1993), as supplemented by the Department.

c. A health and safety plan to protect persons at and in the vicinity of the Site during the performance of the RI/FS which shall be prepared in accordance with 29 CFR 1910

and all other applicable standards by a certified health and safety professional. Respondent shall add supplemental items to this plan necessary to ensure the health and safety of all persons at or in the vicinity of the Site during the performance of any work pursuant to this Order.

d. A citizen participation plan that is, at a minimum, consistent with the Department's publication, Draft : "Citizens Participation in New York's Hazardous Waste Site Remediation Program: A Guidebook", and any subsequent revisions thereto, and 6 NYCRR Part 375.

(2) The RI/FS Work Plan shall incorporate all elements of a RI/FS as set forth in the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA") [42 USC 9601 et seq.], as amended, the National Contingency Plan ("NCP") of March 8, 1990 [40 CFR Part 300], the USEPA guidance document entitled "Guidance for Conducting Remedial Investigations and Feasibility Studies under CERCLA," dated October 1988, and any subsequent revisions to that guidance document in effect at the time the RI/FS Work Plan is submitted, and appropriate USEPA and Department technical and administrative guidance documents.

III. Performance and Reporting of Remedial Investigation

A. Respondent shall commence the Remedial Investigation in accordance with the schedule contained in the Department-approved RI/FS Work Plan.

B. Respondent shall perform the Remedial Investigation in accordance with the Department-approved RI/FS Work Plan.

C. During the performance of the Remedial Investigation, Respondent shall have on-Site

a full-time representative who is qualified to supervise the work done.

D. Within the time frame set forth in the Department-approved RI/FS Work Plan, Respondent shall prepare 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 Subparagraph II.B.2;

(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.

IV. Feasibility Study

A. In accordance with the schedule contained in the Department-approved RI/FS Work Plan, Respondent shall submit a complete 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 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.

B. Respondent shall perform and prepare the Feasibility Study in accordance with the Department-approved RI/FS Work Plan and in a manner consistent with CERCLA, the NCP,

and the guidance documents identified in Subparagraph II.B.2.

C. After the Department's approval of the Feasibility Study, Respondent shall cooperate and assist the Department in soliciting public comment on the RI/FS and on the proposed remedial action plan, in accordance with CERCLA, the NCP, the guidance documents identified in Subparagraph II.B.2, and with any Department policy and guidance documents in effect at the time the public comment period is initiated. After the close of the public comment period, the Department shall select a final remedial alternative for the site in a Record of Decision ("ROD"). The ROD shall be incorporated into and become an enforceable part of this Order.

V. Interim Remedial Measures

- A. 1. Respondent may propose one or more IRMs for the Site.
2. In proposing each IRM, Respondent shall submit to the Department a work plan that includes a chronological description of the anticipated IRM activities together with a schedule for performance of those activities (an "IRM Work Plan" for that Site).
3. Upon the Department's determination that the proposal is an appropriate IRM and upon the Departments' approval of such work plan, the IRM 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 IRM 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