

2021 Hazardous Waste Scanning Project

File Form Naming Convention.

(File_Type).(Program).(Site_Number).(YYYY-MM-DD).(File_Name).pdf

Note 1: Each category is separated by a period "."

Note 2: Each word within category is separated by an underscore "_"

Specific File Naming Convention Label:

Consent Order . HW . 932020 . 1989 - 08 - 04 . 10500 - Cayuga .pdf

STATE OF NEW YORK: DEPARTMENT OF ENVIRONMENTAL CONSERVATION

In the Matter of the
Development and Implementation
of an Interim Remedial Program
Pursuant to Article 27, of the
Environmental Conservation
Law of the State of New York
by

ORDER
ON
CONSENT

OCCIDENTAL CHEMICAL CORPORATION

Respondent

INDEX #B9-0263-89-03

WHEREAS,

1. The New York State Department of Environmental Conservation (the "Department") is responsible for enforcement of Article 27 of the Environmental Conservation Law of the State of New York ("ECL"), entitled "Collection, Treatment and Disposal of Refuse and Other Solid Waste."

2. Occidental Chemical Corporation (the "Respondent") is a corporation organized and existing under the laws of the State of New York, and owns and operates an industrial facility in the City of Niagara Falls, County of Niagara, State of New York.

3. Pursuant to the discovery of chemicals in soils used as fill at the Niagara Falls Community Church at 10500 Cayuga Drive in Niagara Falls (the "Site"), the Department and Respondent have been conducting an investigation to determine the nature and extent of contamination at the Site and also to determine whether any remedial action might be required.

4. In 1988, the presence of chemicals in soils was discovered beneath the parking lot at the Site by a worker installing a new storm sewer line to provide better drainage for the parking lot. The trench was backfilled and some soil was stockpiled near the parking lot.

5. After consultation with the New York State Department of Health (NYSDOH), the Department collected soil samples which were then analyzed for the presence of chemicals. Thereafter, further sampling was undertaken to define the limits of the presence of chemicals.

6. On the basis of the investigation performed to date, as well as other information developed by Department investigators, it appears that fill may have been placed over the natural soil/clay to raise its level in order to construct the Site parking lot. The Site and the area of chemical presence is set forth on Appendix A.

7. The Respondent has reviewed the results of the Department's soil sample analyses, has analyzed split samples of the Department's second round of sampling and has concluded that the types of chemicals detected include types of chemicals that have been used or produced at the Respondent's Niagara Falls plant. The Respondent's investigation also indicated that some fill was taken from its Niagara Falls plant for use in filling at the Site.

8. As a result of the foregoing and its own investigations, the Department has determined that several truckloads of soil, which may have been contaminated by the

presence of chlorinated organic chemicals, were taken from excavations at the Respondent's Niagara Falls plant and placed at the Site in the area of the parking lot behind the church.

9. Respondent shall develop and submit to the Department a detailed work plan for an Interim Remedial Program for the Site (the "Work Plan"). The goal of the Work Plan is to remove, sample, confirm the extent of, analyze and characterize, and properly dispose of any contaminated materials and restore the Site, all in accordance with all applicable federal and state laws, health and safety requirements and with appropriate citizen participation.

10. The Department and Respondent agree that the goal of this Order shall be for Respondent to develop and implement the Interim Remedial Program as specified in the Work Plan.

11. Respondent, 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. Within 30 days of the effective date of this Order, Respondent shall submit to the Department a Work Plan for an Interim Remedial Program for the Site. The Interim Remedial Program shall include plans and specifications for remedial activities and a schedule for implementation of the Work

Plan. The Work Plan shall include:

a. a description of the investigation that the Respondent will conduct wherein it shall make every reasonable effort to determine (1) the source within its Niagara Falls facility of the materials that contaminated the removed soils and (2) whether the removed soils are hazardous waste. Respondent shall also make every reasonable effort to identify any other locations where similar material from the source may have been deposited;

b. a description of the methods and procedures for confirmation of the areal and vertical extent of contaminated soils;

c. the methods and procedures for soil removal, transportation and storage of removed soils;

d. based upon appropriate characterization of the removed soil, plans for proper disposal of the contaminated soil in accordance with applicable laws, statutes and regulations;

e. A Spill Contingency Plan describing the procedures to be used in responding to spills during any of the actions specified in the Work Plan, including the procedures to be used in (i) notifying the appropriate government agencies; (ii) analyzing the nature and content of the spill (iii) collecting and disposing of such material; and (iv) decontaminating the area of the spill.

f. a sampling and analysis plan which 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;

(ii) a field confirmatory sampling plan to ensure full removal and that defines the sampling and data gathering methods in a manner consistent with the "Compendium of Superfund Field Operations Method" (EPA/540/P-87/001, OSWER Directive 9355.0-14, December 1987) as supplemented by the Department;

g. a health and safety plan that addresses the protection of persons working at and living in the vicinity of the Site during the performance of the Interim Remedial Program which shall satisfy the requirements of the Occupational Safety and Health Guidance for Hazardous Waste Site Activities (October 4, 1985 (DHH5 NIOSH) Publication No. 85-115 and USEPA's Standard Operating Safety Guides (November 1984)), or any amended versions thereof and which shall be prepared in accordance with 29 C.F.R. Section 1910 by a certified health and safety professional;

h. a schedule for implementation;

i. a plan for replacing any removed soil with clean fill, for re-paving the Site parking lot as necessary and for any other work necessary to restore the site.

The Department shall notify Respondent in writing of its approval or disapproval of the Work Plan. If the Department approves the Work Plan, Respondent shall perform the Interim Remedial Program in accordance with it.

If the Department disapproves the Work Plan, the

Department shall notify Respondent in writing of the Department's objections. Within 30 days after receipt of notice of disapproval, Respondent shall revise the Work Plan in accordance with the Department's specific comments and submit a revised Work Plan.

The Department shall notify Respondent in writing of its approval or disapproval of the revised Work Plan. If the Department approves the revised Work Plan, Respondent shall perform the Interim Remedial Program in accordance with the revised Work Plan.

If the Department disapproves the revised Work Plan, the Respondent shall implement a removal program as directed by the Department.

The approved Work Plan shall be attached as Appendix "B" and incorporated into this Order.

II. Respondent shall perform the Interim Remedial Program in accordance with the approved Work Plan which is attached as Appendix "B" and is incorporated into this Order. Any modifications or revisions to the Work Plan which may be required due to unanticipated field conditions shall be subject to approval by the Department. The implementation of the Work Plan and all activities related thereto shall be conducted utilizing sound engineering and scientific principles and practices which would be applicable to the remediation of an inactive hazardous waste disposal site. Respondent's application of such principles and practices shall not be deemed an admission that the Site is an inactive

hazardous waste disposal site.

III. In accordance with the time schedule contained in the approved Work Plan, Respondent shall perform the Interim Remedial Program and shall submit the status reports, data, documents and other deliverables as specified in the Work Plan and shall submit an Interim Remedial Program Report (the "Report"). During the performance of all work on-Site required to implement the Interim Remedial Program, Respondent or its consultant shall have a representative on-site who is qualified to inspect the work. The Report shall include all data generated and all other information obtained during the Interim Remedial Program and shall also include an assessment by the Respondent of the need for groundwater monitoring and a plan for the installation and operation of monitoring wells, if it is determined that such monitoring wells are necessary. 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.

IV. After receipt of the Report, the Department shall determine if the Interim Remedial Program was conducted and the Report prepared in accordance with the Work 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 shall revise the Report and/or reperform or supplement the Interim Remedial Program in accordance with specific comments as provided by the Department and shall submit a revised Report. The period of time within which the Report must be revised or the Interim Remedial Program reperformed or supplemented shall be specified by the Department in its notice of disapproval.

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 default of this Order.

The approved Report shall be attached as Appendix C and incorporated into this Order.

V. The Department reserves the right to seek a modification and/or an amplification and expansion of the Interim Remedial Program and Report by Respondent if the Department determines, as a result of reviewing data generated by the Interim Remedial Program or as a result of reviewing any other data or facts, that further work is necessary to locate, uncover, analyze and characterize, remove or dispose of the wastes at the Site, or to conduct groundwater monitoring.

VI. 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 shall also

have the right to take its own samples. Similarly, Respondent shall have the right to obtain split samples, duplicate samples, or both, of all substances and materials sampled by the Department, after the effective date of this Order. All results of analysis of such sampling by each party shall be made known to either party.

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

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

Respondent shall promptly notify the Department in the event of its inability to obtain such authorizations on a timely basis. In the event Respondent is unable to obtain the necessary authorizations, the Department shall, consistent with its legal authority, assist in obtaining all such authorizations Respondent was unable to obtain.

IX. Respondent shall permit any duly designated employee, consultant, contractor or agent of the Department or any State agency to enter 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.

X. 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, riot, or other condition as to which negligence or willful misconduct on the part of the Respondent was not a proximate cause, including but not limited to, delays attributable solely to weather conditions or difficulties in obtaining necessary easements or rights-of-way, 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 this Order.

XI. The failure of the Respondent to comply with any term of this Order shall be a violation of this Order and the ECL.

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

a. the Department's right to bring any action or proceeding against anyone other than Respondent, its directors, officers, employees, servants, agents, successors and assigns;

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

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

XIV. Nothing in this Order or the Report required by this Order, is intended by Respondent to be an admission of fact or law, a waiver by, or estoppel against Respondent; however, the terms of this Order may be enforced in an action by the Department against the Respondent.

XV. 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, its directors, officers, employees, servants, agents, successors or assigns.

XVI. Respondent shall pay to the Department a sum of money which represents reimbursement of all reasonable

administrative costs incurred by the Department for its activities at this Site. Costs shall include, but not be limited to, reasonable response, sampling, analytical, contractor and oversight costs incurred by the Department. The Respondent will make such reimbursement within thirty (30) days of receipt of a written statement of costs from the Department. Such written statement of costs shall include sufficient information, as is available, to determine the reasonableness of the expenses. Any dispute regarding administrative costs shall be resolved by negotiation between the parties without prejudice to any other rights and remedies of the parties.

XVII. The Respondent agrees to provide notice of this Agreement to the church community and the public by posting at the church and by public meeting. The parties agree to attend the public meeting and to be available to respond to inquiries from the public.

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

XIX. 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:

New York State Department of
Environmental Conservation
Division of Hazardous Waste Remediation
Attention: Robert Schick, P.E.
50 Wolf Road
Albany, New York 12233

XX. 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 Environmental Enforcement
New York State Department of Environmental Conservation
50 Wolf Road
Albany, New York 12233
2. Director, Bureau of Western Remedial Action
Division of Hazardous Waste Remediation
New York State Department of Environmental Conservation
50 Wolf Road
Albany, New York 12233
3. Director, Bureau of Environmental Exposure Investigation
New York State Department of Health
2 University Place
Albany, New York 12203
4. Division of Environmental Enforcement
New York State Department of Environmental Conservation
600 Delaware Avenue
Buffalo, New York 14202-1073
5. Director, Region 9
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. One copy to the Director, Division of Environmental Enforcement.

2. Six copies to the Director, Bureau of Western Remedial Action, Division of Hazardous Waste Remediation.
3. Two copies to the Director, Bureau of Environmental Exposure Investigation.
4. One copy to the Division of Environmental Enforcement, Buffalo.
5. One copy to the Regional Director, Region 9.

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

Mr. Thomas L. Jennings
Vice-President, Environmental Affairs
Occidental Chemical Corporation
360 Rainbow Boulevard South
Niagara Falls, New York 14302

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

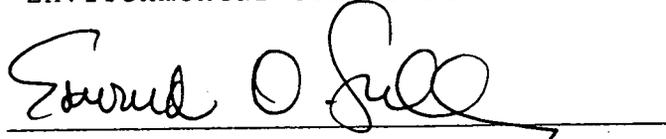
XXI. Respondent, its officers, directors, agents, servants, employees, successors and assigns shall be bound by this Order.

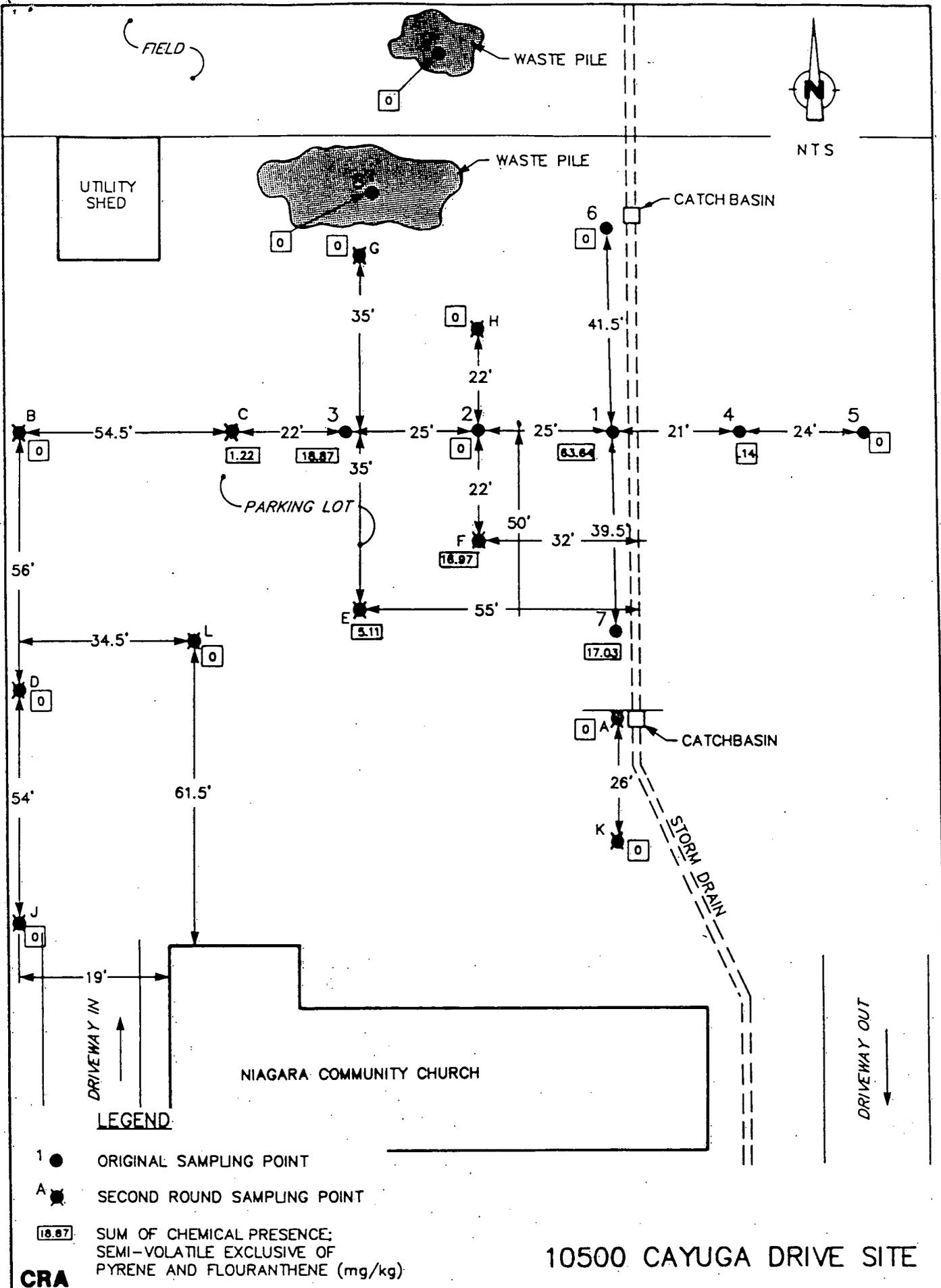
XXII. The terms hereof shall constitute the complete and entire Order between Respondent and the Department concerning the Site. No terms, conditions, understandings or agreements purporting to modify or vary the terms hereof shall be binding unless made in writing and subscribed by the party to be bound. 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: Albany, New York
August 14, 1989

EDWARD O. SULLIVAN
Deputy Commissioner
New York State Department of
Environmental Conservation

A handwritten signature in cursive script, reading "Edward O. Sullivan", is written over a horizontal line. The signature is fluid and stylized, with a long horizontal stroke at the end.



10500 CAYUGA DRIVE SITE

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