

New York State Department of Environmental Conservation

Division of Environmental Enforcement

270 Michigan Avenue, Buffalo, New York 14203

Phone: (716) 851-7050 • FAX: (716) 851-7067

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June 25, 1999

Craig Slater, Esq.
Harter, Secrest & Emery LLP
One Marine Midland Center
Suite 3550
Buffalo, New York 14203-2884

Re: Pierce & Stevens Corp. Facility; Sovereign Specialty Chemical, Inc.

Dear Mr. Slater:

Enclosed find one fully executed original consent order for the above named site.

Thank you for your assistance in resolving this matter.

Very truly yours,



Maura C. Desmond
Senior Attorney

cc: ~~Mr. Doster (with attach.)~~

MCD:d:k
A:D1196.15
Enc.

STATE OF NEW YORK: DEPARTMENT OF ENVIRONMENTAL CONSERVATION

In the Matter of the
Development and Implementation
of an Interim Remedial Measure 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

ORDER
ON
CONSENT
INDEX # B9-0546-98-12

Sovereign Specialty Chemicals, Inc.
Respondent.

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. Sovereign Specialty Chemicals, Inc. is a corporation with principal offices at 225 West Washington Street, Chicago, Illinois, which is the current owner of property known as the Pierce & Stevens Corp. facility located at 710 Ohio Street in the City of Buffalo (the "Property"). A portion of the property is the location of an above ground storage tank farm which is delineated on Appendix A (the "Site") which is attached to and incorporated into this order.
3. The Site may be an inactive hazardous waste disposal site, as that term is defined at ECL 27-1301.2. The Site is not currently listed in the Registry of Inactive Hazardous

Waste Disposal Sites in New York State.

4. The Department has the power, inter alia, to provide for the prevention and abatement of all water, land, and air pollution. See, e.g., ECL 3-0301.1.i.
5. In 1996 a Phase II Environmental Site Assessment of the property found soil and groundwater impacts from volatile and semi-volatile organic compounds.
6. In 1997 a Focused Soil Investigation of the tank farm area further evaluated and characterized the contamination on the property.
7. Respondent is undertaking an upgrade of the tank farm to comply with the standards of the Department Chemical Bulk Storage regulations (6 NYCRR Parts 598 and 599).
8. In connection with the upgrade Respondent will investigate and remediate areas of the property impacted by the operations of the tank farm.
9. The Department and Respondent agree that the goals of this Order are for Respondent to (i) develop and implement an Interim Remedial Measure Program ("IRM Program") for the Site in accordance with the IRM Program Work Plan which is, and/or shall be attached to and incorporated into this Order as Appendix B; and (ii) reimburse the State's administrative costs.
10. Respondent, 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 data within Respondent's possession or control regarding environmental conditions on-Site and off-Site, to the extent such data have not previously been provided to the Department.

II. Interim Remedial Measure Program

A. Attached and/or to be attached to this Order as Appendix B is a Work Plan ("IRM Program Work Plan") prepared and/or to be prepared by International Technology Corporation ("IT Corp"). The IRM Program Work Plan includes the following which have been approved by the Department:

1. Groundwater Investigation Work Plan, Pierce & Stevens, Inc., March 1999, and Field Sampling and QA Plan, April 1999;
2. Revised Removal Action Work Plan for the Tank Farm Footprint, ("Removal Action Work Plan") May 1999.

B. The IRM Program Work Plan also shall include the following which will be developed by Respondent in accordance with the schedules in the Groundwater Investigation Work Plan, the Field Sampling and QA Plan, and the Removal Action Work Plan, included in Appendix B, and implemented as appropriate following Department approval:

1. Groundwater Investigation Report which shall include results of the implementation of the Groundwater Investigation Work Plan and Field Sampling and QA Plan;

2. Removal Action Closure Report which shall include results of the implementation of the Removal Action Work Plan;

3. Site Investigation Work Plan for the balance of the Site followed by a Site Investigation Report which shall include a Remedial Action Plan for the balance of the Site including impacts to soil and groundwater if required by the Department.

III. Performance and Reporting of IRM Program

A. Respondent has commenced the IRM Program.

B. Respondent shall continue to perform the IRM Program in accordance with the Department-approved IRM Program Work Plan and the schedules contained therein.

C. During the performance of the IRM Program, Respondent must have on-Site a full-time representative who is qualified to supervise the work done.

D. Within the time frame set forth in the IRM Program Work Plan, Respondent must prepare the reports described in Paragraph II of this Order that include all data generated and all other information obtained during the IRM Program and identify any additional data that must be collected. The reports shall be prepared by and have the signature and seal of a professional engineer who shall certify that each report was prepared, and the IRM Program was conducted, in accordance with this Order.

IV. Progress Reports

If the IRM Program field work requires more than two months for completion, Respondent shall submit to the parties identified in Paragraph XII in the numbers specified therein 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 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; and (vi) include any modifications to any work plans that Respondent has proposed to the Department or that the Department has approved. Respondent shall submit these progress reports to the Department by the tenth day of every month commencing the third month after the effective date of this Order.

Respondent also shall allow the Department to attend, and shall provide the Department at least seven days advance notice of, any of the following: prebid meetings, job progress meetings, substantial completion meeting and inspection, and final inspection and meeting.

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 generally accepted technical and scientific principles. 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 30 days after receiving written notice that Respondent's submittal has been disapproved, 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, 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. Respondent shall modify and/or amplify and expand a submittal upon the Department's direction to do so 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. Penalties

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

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 an unforeseeable disaster arising exclusively from events entirely beyond the control of Respondent or its agents, or natural causes which the exercise of ordinary human prudence could not have prevented. Respondent shall, within five days of when it obtains 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 five-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 Subparagraph VI.B.

C. 1. As long as Respondent complies with the terms of this Order, the Department shall not bring any action relative hereto which seeks relief which is inconsistent with or duplicative of relief provided for in this Order, except as provided for in Paragraph IX.

2. Upon the Department's approval of all submittals identified herein, and upon payment of all monies specified in Paragraph VIII, and except for the indemnification required by Paragraph X, Respondent shall have fulfilled its obligation pursuant to this Order.

VII. 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. 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.

VIII. Payment of State Costs

A. Within 45 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 expenses including, but not limited to, direct labor, fringe benefits, indirect costs, travel, analytical costs, and contractor costs incurred by the State of New York for work related to the Site to the effective date of this Order, as well as for reviewing and revising submittals made pursuant to this Order, overseeing activities conducted pursuant to this Order, collecting and analyzing samples, and administrative costs associated with this Order.

B. The total sum of money to be paid by Respondent pursuant to this Paragraph VIII shall not exceed \$60,000.

C. 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 Environmental 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 reports of Direct Personal Service. Approved agency 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 expenditure reports.

D. The Department reserves the right to seek reimbursement for any State costs associated with the Site which are not reimbursed under this Order.

IX. 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 civil, criminal, or administrative rights or authorities.

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

X. 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. In accordance with Article 27, Title 13, § 27-1313.1.b, in no event shall Respondent be required to reimburse, indemnify, or hold harmless the Department, the State of New York, or their representatives or employees for any unlawful, willful or malicious acts or omissions on the part of the State, State agencies, or their officers, employees or agents.

XI. 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 Erie County to give all parties who may acquire any interest in the Site notice of this Order.

B. If Respondent proposes to convey the whole or any part of Respondent's ownership interest in the Site, Respondent shall, not fewer than 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.

XII. 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:

Peter Buechi, Region 9
Division of Environmental Remediation
New York State Department of Environmental Conservation
270 Michigan Avenue
Buffalo, New York 14203

with copies to:

1. G. Anders Carlson, Ph.D.
Director, Bureau of Environmental Exposure Investigation
New York State Department of Health
2 University Place
Albany, New York 12203
2. Maura C. Desmond, Esq.
Division of Environmental Enforcement
New York State Department of Environmental Conservation
270 Michigan Avenue
Buffalo, New York 14203

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

1. Four copies (one unbound) to Region 9,
Division of Environmental Remediation.

2. Two copies to the Director, Bureau of Environmental Exposure Investigation.
3. One copy to Division of Environmental Enforcement.

C. Within 30 days after the Department's approval of the IRM Report, Respondent shall submit to the Department one microfilm copy (16 millimeter roll film M type cartridge) of all Department-approved drawings and submittals. Such submission shall be made to Peter Buechi.

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

Kevin W. Johnston, CIH, CSP, Director
Health Safety & Environmental Affairs
Sovereign Specialty Chemicals, Inc.
710 Ohio Street
Buffalo, New York 14203

Timothy Bryan
IT Corporation
111 N. Canal Street
Suite 941
Chicago, IL 60606

Craig Slater, Esq.
Harter, Secrest & Emery LLP
One Marine Midland Center
Suite 3550
Buffalo, New York 14203-2884

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

XIII. Miscellaneous

A. All activities Respondent is required to undertake under this Order are

ordinary and necessary expenses for the continued operation of Respondent.

B. Respondent shall retain professional consultants, contractors, laboratories, quality assurance/quality control personnel, and third party data validators acceptable to the Department to perform the technical, engineering, and analytical obligations required by this Order. Respondent intends to use the services of International Technology Corporation to perform the work under this Order and this is acceptable to the Department. The experience, capabilities, and qualifications of any other firms or individuals selected by Respondent to perform work under this Order shall be submitted to the Department and the Department's approval of these firms or individuals shall be obtained before the start of any activities for which 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 10 working days in advance of any 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.

F. Respondent and Respondent's officers, directors, agents, servants, employees, successors, and assigns 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. Respondent's officers, directors, employees, servants, and agents shall be obliged to comply with the relevant provisions of this Order in the performance of their designated duties on behalf of Respondent.

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. If such individual is a member of a firm, that firm must be authorized to offer professional engineering services in the State of New York 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 constitute the complete and entire Order concerning the implementation of an Interim Remedial Measure Program for 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 Respondent, to the Commissioner setting forth reasonable grounds for the relief sought. Copies of such written application shall be delivered or mailed to Region 9 and to Division of Environmental Enforcement.

L. The effective date of this Order is the date the Commissioner or his designee signs it.

XIV. Contribution

A. Nothing in this Order shall be construed to create any rights in, or grant any cause of action to, any person not a party to this Order. The Department and Respondent expressly reserve any and all rights (including, but not limited to, any right to contribution), defenses, claims, demands, and causes of action which each party

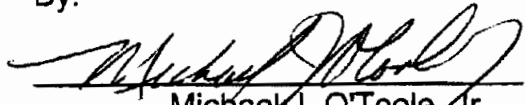
may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a party hereto.

B. With respect to potential actions or claims for contribution against Respondent for matters addressed in this Order, the Department agrees that Respondent is entitled to protection from any such contribution action and/or claim to the extent authorized under the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), §113(f)(2), 42 U.S.C. §9613(f)(2).

DATED: 6/18, New York
1999

JOHN P. CAHILL, Commissioner
New York State Department
of Environmental Conservation

By:


Michael J. O'Toole, Jr.

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.

By: [Signature]

SOVEREIGN SPECIALTY CHEMICALS, INC.

Title: Director Health Safety & Environmental Affairs

Date: June 8, 1999

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

On this 8th day of June, 1999, before me personally came Kevin W. Johnston, to me known, who being duly sworn, did depose and say that he resides in Erie County, N.Y.; that he is the Director, Health, Safety & Environmental Affairs of Sovereign Specialty Chemicals, INC. the corporation described in and which executed the foregoing instrument; ^{and that he signed his name by like order} ~~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.~~ KJ

Alice R. Thompson

Notary Public

Alice R. Thompson
Notary Public, State of New York
Qualified in Erie County
My Comm. Expires 11/30/00

The floor plan depicts a large, rectangular building with a complex internal layout. Key features include:

- Orientation:** A north arrow points towards the upper right corner of the page.
- Entrances and Access:** The main entrance is located on the left side, adjacent to a parking area labeled "NORTH PARKING". A street labeled "PERCE & STEVENS CORPORATION" and "710 OHIO STREET" runs along the bottom left.
- Internal Layout:** The building is divided into several sections, including a large central area labeled "CENTRAL ACCUMULATION AREAS" and a smaller section labeled "SECONDARY ACCUMULATION AREA".
- Rooms and Corridors:** Numerous rooms and corridors are shown, with some labeled with numbers (e.g., 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100).
- Structural Elements:** The plan shows various structural details, including walls, doors, windows, and stairs.
- Labels and Annotations:** Several labels are present, including "CENTRAL ACCUMULATION AREAS", "SECONDARY ACCUMULATION AREA", "NORTH PARKING", "PERCE & STEVENS CORPORATION", "710 OHIO STREET", and "CENTRAL ACCUMULATION AREAS".

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