STATE OF NEW YORK: DEPARTMENT OF ENVIRONMENTAL ENFORCEMENT

In the Matter of the Petition of	DECLARATORY RULING
DOWZER ELECTRIC, a unit of GENERAL SIGNAL CORPORATION	27-13
For a Declaratory Ruling	

By Petition dated July 9, 1984, Dowzer Electric, a unit of the General Signal Corporation ("Dowzer"), seeks a declaratory ruling pursuant to §204 of the State Administrative Procedure Act and 6 NYCRR Part 619, as to whether or not the 1 to 2500 KVA electric distribution transformers which Dowzer tests and repairs at its facilities in Cortland, New York, under contract to electrical utilities are "wastes" within the meaning of 6 NYCRR Section 360.1(c)(2). If defined as "wastes", the transformers would be subject to transportation controls under 6 NYCRR Parts 364 and 365 and other hazardous waste regulations.

The oil in transformers may contain polychlorinated biphenyls (PCBs). Dowzer will not accept for repair any transformers having a PCB level of greater than 500 ppm; once repaired, Dowzer fills the transformer with new mineral oil or reused oil obtained from the draining of the transformers under repair and containing less than 50 ppm of PCBs. Since there have recently been several informal inquiries made to the Department of Environmental Conservation raising this same issue, it is in the public interest to grant this petition and clarify the application of the Environmental

Conservation Law ("ECL") and its regulations to the PCBs in transformers.

Dowzer's petition identifies several steps in the handling of transformers and the dielectric fluid which they contain:

1. Removal of the specific transformer with its dielectric fluid from use at utility poles and sites within 500 miles of Dowzer's repair facility in Cortland, New York, and transportation to Cortland.

2. Dowzer's testing of the transformer and, at the election of the utility contracting for Dowzer's services, either:

(i) draining the dielectric fluid, making the repairs, and replacing the dielectric fluid with new or reused fluids, or

(ii) draining the dielectric fluid and scraping the transformer and disposing of the fluid.

Dowzer either reuses dielectric oil reclaimed from transformers if PCB content is less than 50 ppm, or transmits fluids with more than 50 ppm of PCBs for disposal as a waste either to its PCB chemical destruction facility in Mt. Vernon, Illinois, or to a third party. As the oil leaves Dowzer, it is manifested as a waste and transported under placard as required by 6 NYCRR Part 365. Less than 10% of the transformers have oil with PCB content of 50 ppm or more.

Thus, Dowzer concedes that the dielectric fluid not reused in transformers is a "waste" as it is removed from Dowzer's Cortland plant. Dowzer's petition urges that until the utility contracting for transformer repair directs that it be scrapped, it is not yet a "waste" within the meaning of 6 NYCRR Section 360.1(c)(2)(ii).

In order to determine when the transformers with their oil contents become a waste, reference must be made to Article 27 of the ECL and the entire framework of state regulation of waste oil and PCBs. Article 27 covers the "collection, treatment and disposal of refuse and other solid waste." The legislative intent and the definitions provided in the relevent titles in Article 27 are instructive.

Title 3 of Article 27, ECL, requires permits for waste transporters "to protect the environment from mishandling and mismanagement of all regulated wastes from the site of generation to the site of ultimate treatment, storage or disposal." §27-0301, ECL, implemented by 6 NYCRR Part 364. It defines "waste" as any "discarded material . . . resulting from industrial . . . operations," with only specified exceptions, and "regulated waste" as including "waste oil" which expressly includes "dielectric fluid . . . which has been contaminated by physical or chemical impurities, through use . . . and has not subsequently been rerefined." §27-0303(4), (7) and (8), ECL.

Title 7 of Article 27 governs the solid waste and resource recovery facilities. "Solid Waste" encompasses all materials "discarded or rejected as being spent" with the exception of sewage and gaseous wastes. §27-0701(1), ECL, implemented by 6 NYCRR Part 360. "Resource recovery" means recovery of useable materials." §27-0701(4), ECL.

Title 9 of Article 27 enacts in New York State law the comparable provisions of the federal Resource Conservation and Recovery Act of 1976, 42 U.S.C. §6901, et seq. "Waste" means "discarded material . . . resulting from industrial operations" excluding expressly only domestic sewage, nuclear wastes and waste water discharges regulated under the Clean Water Act. §27-0901(11), ECL, implemented by 6 NYCRR Part 366. "Hazardous waste" includes wastes which can cause or pose a hazard to human health or the environment when "improperly treated, stored, transported, disposed or otherwise managed." §27-0901(3), ECL. "Hazardous waste management" is defined as the systematic control of the collection, source separation, storage, transportation . . . recovery, and disposal of hazardous wastes." §27-0901(5). "Resource recovery" is defined to include the "process utilized to separate . . . hazardous waste" so that "the component materials or substances thereof may be beneficially used or reused . . ." §27-0901(13), ECL. Hazardous wastes must be manifested, as specified by the Department's regulations, and permits are

required for the storage, transport or disposal of hazardous wastes.

These statutory provisions on "waste" in turn, are clarified by the regulations implementing them, including the provisions of 6 NYCRR §360.1(c)(2). All these statutory and regulatory definitions must be read in pari materia. The regulations in 6 NYCRR Part 360 define "waste material" in relevant part to be "any solid, liquid, semi-solid, . . . which (i) is discarded, or is being accumulated, stored or . . . treated prior to being discarded; or (ii) has served its original intended use and sometime is discarded." 6 NYCRR Section 360.1(c)(2).

Since the dielectric fluid in the transformers may contain PCBs, a hazardous material, the "hazardous waste" definitions in 6 NYCRR Section 366.1(c)(1) and (2) and Section 366.4(e) are also relevant. Here too the test is whether the transformer or its dielectric fluid "has served its intended use and is sometimes discarded." "Wastes containing polychlorinated biphenyls" are expressly defined by 6 NYCRR §366.4(e) as being "all wastes containing 50 parts per million by weight or greater" of PCBs. Such wastes "shall be listed as hazardous wastes." PCB oil from transformers is expressly covered as waste #B001, with a hazard code as "Toxic Waste (T)."

Under the regulatory test germane here, if in the usual course of its business a company discards a generic material

which has served its original intended use, such generic material is a "waste." The transformer fluid is in every instance subject to being drained and relegated as a waste; it is not sufficient under these regulations to contend that the fluid only becomes a waste when the generator intends to so declare it. To interpret the "sometimes discarded" language otherwise would be to make the definition wholly unenforceable. See the analogous ruling in General Electric v. Flacke, 461 NYS2d 138 at 140 (Sup. Ct., Alb. Co., 1982): "Thus, in order to fully regulate hazardous wastes, with their great potential for harm the state must regulate generic materials and include those who seek to conserve resources and energy by recycling."

Even though the dielectric fluid and transformers subject to being discarded are a "waste," the fluid is also subject to the small generator exemption as set forth in 6 NYCRR Section 365.1(e)(1). If the generator stores, treats or disposes of his hazardous waste in an authorized solid waste management facility and makes a determination of the hazardous nature of the waste, small amounts of this waste are not subject to being manifested. Thus, where the contents of the transformer from each utility pole or pad are less than 100 kilograms of dielectric fluid, it is exempt from the manifesting and placarding requirements of a waste.

Since each utility knows the size of its transformers

as it contracts with Dowzer to have them repaired, it is possible to know in advance of removing any individual transformer whether or not it is exempt under 6 NYCRR §365.1(e)(1) or is a hazardous waste. If the dielectric fluid contains no PCBs and is not a hazardous material, it may not be a hazardous waste, although it is a generic waste. It is the responsibility of each generator to determine whether their wastes are hazardous at the site of generation. 6 NYCRR Section 365.2(a)(1). The site of generation is the utility pole itself.

In light of these considerations, Article 27, ECL and 6 NYCRR Sections 360.1(c)(2), 366(1)(c)(2) and 366.4(e) do bring the transformers within the definition of "waste." However, in most cases, the quantity of waste at each utility pole, the site of generation will be within the exemption, with the result that manifesting and placarding from the pole will not be required. Manifesting and placarding will be required from the pole wherever the exempt quantity is exceeded. Even where manifesting and placarding is not required from the utility pole itself, they will be required from any collection point where the aggregate amount of waste first exceeds the exempt quantity.

DATED: Albany, New York
July 24, 1984

Nicholas Robinson

NICHOLAS A. ROBINSON
Deputy Commissioner and
General Counsel