

STATE OF NEW YORK: DEPARTMENT OF ENVIRONMENTAL CONSERVATION

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
Glenwood Realty, LLC,
Respondent.

ORDER
ON
CONSENT
INDEX # A4-0381-9902

Site #1-30-034

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. Respondent owns property located at 1 Shore Road, Glenwood Landing, in the Town of North Hempstead, Nassau County (the "Site"). Prior to 1984, the Site was leased by Respondent to the Penetrex Processing Company which operated a dry cleaning establishment on a portion of the Site. The Department alleges that during the period of time Penetrex leased the property, organic solvents were disposed of on the property.
3. 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 1-30-034. The Department has classified the Site as a Classification "2" pursuant to ECL 27-1305.4.b.
4. 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 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.

5. The Department and Respondent agree that the goals of this Order are for Respondent to (i) develop and implement a Focused Remedial Investigation/Feasibility Study ("RI/FS") for the Site; and (ii) reimburse the State's administrative costs.

6. 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:

A. A concise summary of information held by Respondent and Respondent's attorneys and 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 at the Site; and

B. A comprehensive list of all existing relevant environmental, engineering, topographical or surveyor studies or reports with titles, authors, and subject matter, and, within 15 days of the Department's request after having reviewed such list, copies of any such materials.

II. Performance and Reporting of Focused Remedial Investigation

A. Respondent shall commence and perform the Focused Remedial Investigation in accordance with the schedule contained in the Department-approved Focused RI/FS Work Plan which is attached to this Order as Appendix "A" and made an enforceable part of this Order.

B. During the performance of the field activities undertaken pursuant to the Focused Remedial Investigation, Respondent shall have on-Site at all times a representative who is qualified

to supervise such field activities.

C. Within the time frame set forth in the Department-approved Focused RI/FS Work Plan, Respondent shall submit to the Department a Focused Remedial Investigation Report (“FRI Report”) founded upon its performance of the work described in the Department-approved Focused RI/FS Work Plan. The FRI Report shall include:

(1) a description of all work performed during implementation of the Department-approved Focused RI/FS Work Plan and all data generated and all other relevant information obtained during the Focused Remedial Investigation;

(2) all of the assessments and evaluations set forth in the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, (“CERCLA”)[42 USC 9601 *et seq.*], as amended, the National Contingency Plan (“NCP”) of March 8, 1990, 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 Focused RI/FS Work Plan was submitted, and appropriate USEPA and Department technical and administrative guidance documents as set forth in the Department-approved Focused RI/FS Work Plan;

(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 Focused Remedial Investigation that all activities that comprised the Focused Remedial Investigation were performed in full accordance with the Department-approved Focused RI/FS Work Plan.

III. Feasibility Study

A. In accordance with the schedule contained in the Department-approved Focused RI/FS Work Plan, Respondent shall submit a complete Focused 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 Focused Feasibility Study shall be prepared by and have the signature and seal of a professional engineer who shall certify that the Focused Feasibility Study was prepared in accordance with this Order.

B. Respondent shall perform and prepare the Focused Feasibility Study in accordance with the Department-approved Focused RI/FS Work Plan and in a manner consistent with CERCLA, the NCP, and the guidance documents identified in Subparagraph II.D.2.

C. After the Department's approval of the Focused Feasibility Study, Respondent shall cooperate with and assist the Department in soliciting public comment on the Focused RI/FS and on

the proposed remedial action plan, in accordance with CERCLA, the NCP, the guidance documents identified in Subparagraph II.C. 2, and with any Department policy and guidance documents in effect at the time the public comment period is initiated.

IV. 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 Department's 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 as outlined in the Department's publication, "New York State Inactive Hazardous Waste Citizen Participation Plan," dated June 1998, and any subsequent revisions thereto, and 6 NYCRR Part 375. Respondent shall then carry out such IRM in accordance with the requirements of the approved IRM Work Plan, detailed documents and specifications, and this Order. 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.

4. During implementation of all construction activities identified in the Department-approved IRM Work Plan, Respondent shall have on-Site at all times a representative who is qualified to supervise the work done.

5. Within the schedule contained in the Department-approved IRM 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 Department-approved IRM were completed in accordance with the Department-approved IRM Work Plan and this Order.

a. If the performance of the Department-approved IRM encompassed construction activities, the final engineering report also shall include a detailed post-remedial operation and maintenance plan ("IRM O&M Plan"); "as-built" drawings and a final engineering report (each including all changes made to the Remedial Design during construction); and a

certification by a professional engineer that the IRM was implemented and all construction activities were completed in accordance with the Department-approved detailed documents and specifications for the IRM and all such activities were personally witnessed by him or her or by a person under his or her direct supervision. The IRM O&M Plan, "as built" drawings, final engineering report, and certification must be prepared, signed, and sealed by a professional engineer.

b. Upon the Department's approval of the IRM O&M Plan, Respondent shall implement the IRM O&M Plan in accordance with the requirements of the Department-approved IRM O&M Plan.

6. After receipt of the final engineering report and certification, the Department shall notify Respondent in writing whether the Department is satisfied that the IRM was completed in compliance with the Department-approved IRM Work Plan and design.

V. Progress Reports

By the 10th day of every month following the effective date of this Order, Respondent shall submit to the parties identified in Subparagraph XIV.B in the numbers specified therein copies of written monthly progress reports that:

A. describe the actions which have been taken toward achieving compliance with this Order during the previous month;

B. 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, conducted pursuant to this Order;

C. identify all work plans, reports, and other deliverables required by this Order that were completed and submitted during the previous month;

D. 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;

E. include information regarding percentage of completion, unresolved delays encountered or anticipated that may affect the future schedule for implementation of Respondent's obligations under the Order, and efforts made to mitigate those delays or anticipated delays; and

F. include any modifications to any work plans that Respondent has proposed to the Department or that the Department has approved.

VI. 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 and 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 unless Respondent commences dispute resolution in accordance with Paragraph VII. If the Department approves the revised submittal, it shall be incorporated into and become an enforceable part of this Order.

B. Within 30 days of receipt of a written request from the Department specifying the reasons that further work is necessary, 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. The Department shall review the modified, amplified or expanded submittal pursuant to Subparagraph VI.A. The Department's determination to require a modification, amplification or expansion of a submittal under this Subparagraph shall be subject to dispute resolution pursuant to Paragraph VII.

VII. Dispute Resolution

Respondent may commence dispute resolution within 20 Days of Respondent's receipt of the Department's notice of disapproval of a submittal. Disputes regarding Work Plan development and revision shall be heard by the Bureau Director of the Division of Environmental Remediation's remedial bureau within which the Site is located. All other disputes subject to dispute resolution shall be heard by the Assistant Division Director of the Division of Environmental Remediation. Respondent shall serve upon the Department a request for dispute resolution and a written statement of the issues in dispute, the relevant facts upon which the dispute is based, factual data, analysis or opinion supporting its position, and all supporting documentation upon which Respondent relies (hereinafter called the "Statement of Position"). The Department shall serve its Statement of Position no later than 20 Days after receipt of Respondent's Statement of Position. Respondent shall have the burden of proving that the Department's position should not prevail. A meeting or

telephone conference can be scheduled if it will promote a resolution of the issues. A final decision resolving the dispute will be issued timely. The final decision shall constitute a final agency action and Respondent shall have the right to seek judicial review of the decision pursuant to Article 78 of the CPLR if Respondent commences such proceeding no later than 30 Days after receipt of a copy of the decision. If Respondent fails to comply with the final decision resolving the dispute within 30 days, it shall be in violation of this Order unless it seeks judicial review of such decision, in which event Respondent shall be in violation of this Order if it fails to comply with the judicial determination or settlement. The invocation of dispute resolution shall not extend, postpone or modify Respondent's obligations under this Agreement with respect to any item not in dispute unless or until the Department agrees or a court determines otherwise. The Department shall keep an administrative record which shall be available consistent with Article 6 of the Public Officers Law.

VIII. 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 the action of a national or local government body or court, or an act of God, war, riot, or other unforeseeable disaster which the exercise of ordinary human prudence could not have prevented. Respondent shall, within 5 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 5 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 this subparagraph.

IX. 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 Respondent by any duly designated employee, consultant, contractor, or agent of the Department or any State agency for purposes of inspection, sampling, testing and ensuring Respondent's compliance with this Order. During Remedial Construction, 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 to job meetings.

X. Payment of State Costs

Respondent shall pay the amount of \$63,838 as reimbursement for the State's expenses incurred prior to March 30, 2000. Payments shall be made in four equal installments as follows:

\$15,959.50 due on or before January 1, 2002; \$15,959.50 due on or before January 1, 2003; \$15,959.50 due on or before January 1, 2004; and \$15,959.50 due on or before January 1, 2005.

Within 60 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 subsequent to March 30, 2000, 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. Payments shall be made by certified check payable to the Department of Environmental Conservation and shall be sent to:

Bureau of Program Management
Division of Environmental Remediation
New York State Department of Environmental Conservation
50 Wolf Road
Albany, NY 12233-7010.

Personal service costs shall be documented by reports of Direct Personal Service, which shall identify 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. 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.

Such invoice shall be sent to Respondent at the following address:

Glenwood Realty LLC
99 Mineola Avenue, P.O. Box 1356
Roslyn Heights, New York 11577

XI. 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 her duly authorized representative from exercising any summary abatement powers.

XII. 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.

XIII. 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 Nassau 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.

XIV. 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:

1. Communication from Respondent shall be sent to:

Chittibabu Vasudevan, Ph.D., P.E.
Division of Environmental Remediation
New York State Department of Environmental Conservation
50 Wolf Road
Albany, New York 12233-7010

with copies to:

Director, Bureau of Environmental Exposure Investigation
New York State Department of Health
Flanigan Square
547 River Street
Troy, New York 12180-2216

Regional Director
NYSDEC Region 1 Headquarters
SUNY Campus
Loop Road, Building 40
Stony Brook, New York 11790-2356

Deborah W. Christian, Esq.
NYSDEC
Division of Environmental Enforcement
50 Wolf Road
Albany, New York 12233-5500

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

David Yudelson, Esq.
Sive Paget & Riesel, P.C.
460 Park Avenue, 10th Floor
New York, New York 10022

Glenwood Realty LLC
99 Mineola Avenue, P.O. Box 1356
Roslyn Heights, New York 11577

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

Four copies (one unbound) to Dr. Vasudevan

Two copies to the Director, Bureau of Environmental Exposure Investigation.

One copy to the Regional Director, Region 1.

C. 1. Within 30 days of the Department's approval of any report submitted pursuant to this Order, Respondent shall submit to Dr. Vasudevan a computer readable magnetic media copy of the approved report in American Standard Code for Information Interchange (ASCII) format.

2. Within 30 days after the Department's approval of the Focused RI/FS, Respondent shall submit one microfilm copy of the Focused RI/FS to Dr. Vasudevan.

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

XV. 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 third party 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 shall be submitted to the Department within 30 days after the effective date of this Order. 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 Department acknowledges that P.W. Grosser Consulting has been retained by Respondent to implement the technical obligations under this Order and that such consultant is acceptable to the Department. 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 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 paragraph 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. 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.

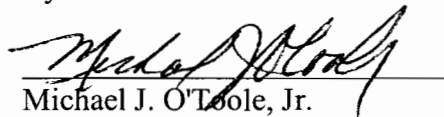
2. If Respondent desires that any provision of this Order be changed, Respondent shall make timely written application, signed by Respondent, to the Commissioner setting forth reasonable grounds for the relief sought. Copies of such written application shall be delivered or mailed to Mr. Vasudevan and to Ms. Christian. The Department will not arbitrarily or capriciously deny such application.

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

DATED: Albany, New York
9/21, 2001

ERIN M. CROTTY
COMMISSIONER
New York State Department
of Environmental Conservation

By:


Michael J. O'Toole, Jr.

