

4. ORDER ON CONSENT
Between DZUS FASTENER
CO., INC. (Respondent)
* NYSDEC, 12/28/89

See file Copy J. Slack

STATE OF NEW YORK
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

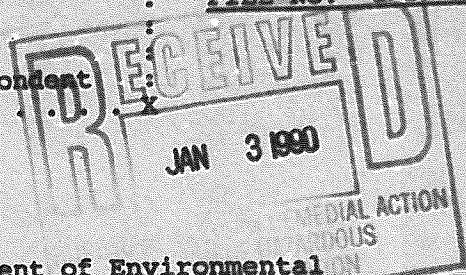
In the Matter of a Field Investigation
pursuant to §27-1313 of the Environmental
Conservation Law of the State of New York,
by

DZUS FASTENER CO., INC.

Respondent

ORDER ON CONSENT

FILE NO. 1-1399



WHEREAS,

1. The New York State Department of Environmental Conservation (the "Department") is responsible for the enforcement of Article 27, Title 13, of the Environmental Conservation Law of the State of New York (the "ECL"), entitled "Inactive Hazardous Waste Disposal Sites."
2. Dzus Fastener Co., Inc. (the "Respondent") is a corporation organized and existing under the Laws of the State of New York, and is doing business in the State of New York in that Respondent manufactures metal fasteners and springs.
3. Respondent owns property at 425 Union Boulevard, West Islip, New York (the "Site"). A map of the Site is attached hereto and is hereby incorporated into this Order as Appendix A.
4. The Site is listed as an inactive hazardous waste disposal site, as that term is defined in ECL §27-1301(2).
5. This Site has been designated as Site No. 152003, and the Department has assigned an SM Ranking of 22.20 for the Site, placing it in Classification 3.
6. Respondent undertakes to cooperate with the Department's objective of protecting the environment pursuant to ECL §27-1313(3)(a), which provides for the performance of investigations to determine whether remedial programs are necessary in the case of listed inactive hazardous waste disposal sites.
7. The Department and Respondent acknowledge that the goals of this Order shall be that Respondent shall carry out the field investigation program prepared by Holzmacher, McLendon & Murrell, P.C. ("H.M.") and approved by the DEC Staff described in Appendix B (the "Approved Work Plan") to determine whether the Site constitutes a significant threat to the environment.

*as amended by Appendix B1 attached hereto.

8. 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 these provisions, terms and conditions. The Department also agrees to be bound by these provisions, terms and conditions.

NOW, having considered this matter and being duly advised,

IT IS ORDERED THAT:

I. The failure of Respondent to submit or undertake a proposal, report, field investigation, or any supplement or revision thereof, in accordance with the Approved Work Plan, shall constitute a violation of this Order.

II. As used herein, "hazardous wastes" shall mean hazardous wastes, any hazardous constituents thereof, and any toxic degradation products of such wastes and of such constituents.

III. H²M shall, on behalf of Respondent, conduct the field investigation pursuant to the Approved Workplan, attached hereto and made a part hereof.

IV. Within 180 days after the date of this Order, Respondent shall submit to the Department, a Field Investigation Report (the "Report") based on its performance of the Field Investigation in accordance with the Approved Workplan. The Report shall include a copy of the Approved Workplan and all data obtained during the Field Investigation and completed site hazard ranking score sheets.

V. Within sixty (60) days after its receipt of the Report, the Department shall determine if the Field Investigation was conducted and the Report prepared in accordance with the terms, provisions and conditions of this Order and shall provide written notification to Respondent of its approval or disapproval of the Report.

VI. If the Department disapproves the Report, the Department's notification pursuant to V. above, shall contain notification of the Department's objections. Within ninety (90) days after its receipt of notice of disapproval, Respondent shall revise the Report and/or reperform or supplement the Field Investigation in accordance with the terms, provisions and conditions of this Order and shall submit to the Department, a Report which has been revised in accordance with the Department's objections (the "Revised Report"). The Respondent's failure to submit a Revised Report that answers the Department's objections to the Department's satisfaction, shall constitute a violation of this Order.

Within thirty (30) days after the Respondent receives the written notification of approval from the Department pursuant to V. above, or within sixty (60) days of the date of the receipt of the revised Report, the Department and the Respondent shall confer to determine whether any remediation is necessary. As a result of such conference, the parties shall enter into such further Order on Consent as may be necessary to assure that remediation, if required, is accomplished.

VII. The Department reserves the right to require a modification and/or an amplification and expansion of the Field Investigation and Report by Respondent to address specific on-site and/or off-site areas, as a result of reviewing data generated by the Field Investigation or as a result of reviewing other data or facts. The Respondent reserves the right to pursue all available remedies at law or in equity, to dispute its responsibility for addressing the investigation of additional off-site areas, other than those discussed in Appendix B.

VIII. The Department shall review the Report and/or the Revised Report, and shall use the Report and/or the Revised Report as the basis for the development of the Site Hazard Ranking Score assigned to the Site for State (Federal) Superfund Site Ranking purposes.

IX. The Department shall have the right to obtain for the purpose of comparative analysis, "split samples" or "duplicate samples," at the Department's option, of all substances and materials sampled by Respondent pursuant to this Order.

X. Respondent shall provide notice to the Department of any excavating, drilling or sampling to be conducted pursuant to the terms of this Order at least five (5) business days in advance of such activities.

XI. Respondent shall permit any duly-designated officer, employee, consultant, contractor or agent of the Department to enter upon the Site or areas in the vicinity of the Site, which may be under the control of Respondent, and any areas necessary to gain access thereto, for inspection purposes and for the purpose of making or causing to be made, such sampling and tests as the Department deems necessary, and for ascertaining Respondent's compliance with the provisions of this Order.

XII. Respondent shall retain a third-party professional consultant, contractor, and/or laboratory to perform the technical, engineering and analytical obligations required by this Order. Said consultant, contractor, and/or laboratory shall be approved by the Department and shall have demonstrable experience, capabilities and qualifications in the type of work which they will be performing.

XIII. Respondent shall not suffer any penalty under any of the provisions, terms and conditions hereof, or be subject to any proceedings or actions for any remedy or relief for a violation of this Order, if it cannot comply with any requirements of the provisions hereof because of a Force majeure, 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 the provisions hereof.

XIV. If a dispute arises between the Department and the Respondent with respect to the Report or Revised Report which is not resolved through negotiation, then the Respondent shall have the right to pursue all available remedies at law and/or equity, other than those waived herein.

XV. The terms of this Order shall not be construed to prohibit the Commissioner or his duly-authorized representative from exercising any summary abatement powers, either at common law or as granted pursuant to statute or regulation. The terms of this Order shall not be construed to prohibit Respondent from pursuing its defenses and legal and equitable remedies, other than those waived herein.

XVI. Nothing contained in this Order shall be construed as barring, diminishing, adjudicating or in any way affecting (1) any legal or equitable rights or claims, actions, suits, causes of action or demands whatsoever that the Department may have against anyone other than the above-named Respondent; (2) the Department's right to enforce, at law or in equity, the terms and conditions of this Order against Respondent, in the event that Respondent shall fail to fulfill any of the provisions hereof; and (3) the Department's right to bring any action at law or in equity against Respondent, with respect to areas or resources that may have been affected or contaminated as a result of the release or migration of hazardous or industrial wastes from the Site or from areas in the vicinity of the Site. Nothing herein shall be construed as affecting the Department's right to commence any action or proceeding to which it may be entitled in connection with, relating to, or arising out of the presence of hazardous wastes at the site, or the migration of hazardous wastes from the Site specifically covered by this Order.

XVII. 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 fulfillment or attempted fulfillment of the provisions hereof by Respondent, its directors, officers, employees, servants, or agents.

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

XIX. If, for any reason, Respondent desires that any provision of this Order be changed, Respondent shall make timely written application therefor to the Commissioner, setting forth reasonable grounds for the relief sought.

XX. A. All communication required hereby to be made between the Department and Respondent shall be made in writing and transmitted by United States Postal Service return receipt requested or hand delivered to the addresses in Paragraph B hereunder.

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

1. Two copies to the Division of Hazardous Waste Remediation, Room 209, 50 Wolf Road, Albany, New York 12233.
2. Two copies to the Director, Division of Environmental Enforcement, Room 609, 50 Wolf Road, Albany, New York 12233
3. Two copies to the Regional Director, Region I, Building 40, S.U.N.Y., Stony Brook, New York 11794.

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

Mr. Theodore Dzus, President
Dzus Fastener Company, Inc.
425 Union Boulevard
West Islip, New York 11795

and

Irving Like, Esq.
Reilly, Like & Schneider
200 West Main Street
Babylon, New York 11702

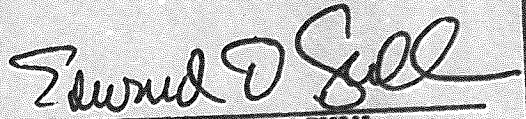
D. The Department and Respondent respectively reserve the right to designate other or different addresses on notice to the other.

E. No informal advice or guidance by the Department's officers or employees or representatives upon any plan, report, proposal, study or other document, or modifications or additions thereto, submitted by Respondent to the Department, shall relieve Respondent of any obligation it may have to obtain the Department's formal written approval of the same.

XXI. The provisions of this Order shall not be deemed to bind any entity not specifically bound by the terms of this Order.

XXII. The provisions hereof and all attachments hereto 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.

Dated: Albany, New York
December 28, 1989



EDWARD SULLIVAN
Deputy Commissioner
New York State Department of
Environmental Conservation

CONSENT BY RESPONDENT

Respondent hereby consents to the issuing and entering of this Order, waives its right to a hearing herein as provided by law, except as otherwise provided in said Order, and agrees to be bound by the provisions, terms and conditions contained in this Order.

DZUS FASTENER CO., INC.

By 

STATE OF NEW YORK)
ss.:
COUNTY OF SUFFOLK)

On this 18th day of July 1989, before me personally came Theodore Dzus Jr. to me known, who being duly sworn, deposed and said that he resides at 251 WILLETTS LANE WILSLIP, NY that he is the President of Dzus Fastener Co., Inc. THS the corporation described in and which executed the foregoing instrument; 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.


NOTARY PUBLIC

KATHLEEN L. GUINNESS
Notary Public, State of New York
01GU 4006137, Suffolk County
Term Expires June 30, 1992

**BEST
AVAILABLE
COPY**

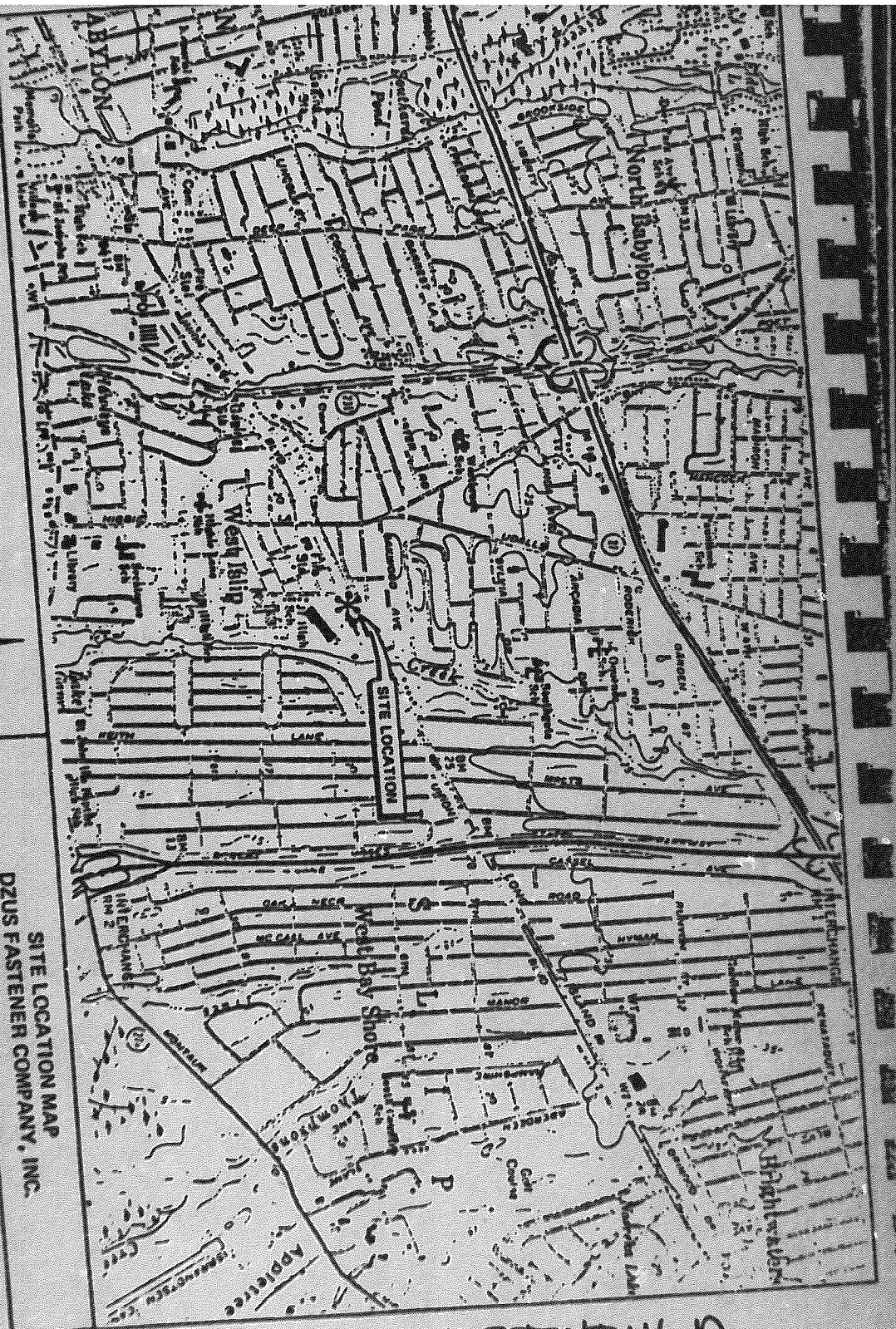
NOTE:
BASE MAP FROM USGS, BAY SHORE WEST QUAD, 1870



SITE LOCATION MAP
DZUS FASTENER COMPANY, INC.

WOODWARD-CLYDE CONSULTANTS, INC.
CONSULTING ENGINEERS, GEOLOGISTS AND ENVIRONMENTAL SCIENTISTS
NEW YORK, NEW YORK

DR. BY:	DRS	SCALE: 1 IN. = 2000 FT	PROJ. NO.: EDC-6448-14
CKD. BY:	LEW	DATE: 28 AUGUST 1983	FIG. NO.: 1



APPENDIX A

H2M GROUP

Holzmacher, McLendon and Murrell, P.C. • Holzmacher, McLendon and Murrell, Inc. • H2M Labs, Inc.
Engineers, Architects, Planners, Scientists

575 Broad Hollow Road, Melville, NY 11747-5070
(516) 756-8000 • (201) 575-5400

July 12, 1989

Alexander M. Moskie, P.E.
Sr. Sanitary Engineer
NYS Department of Environmental Conservation
Building 40
S.U.N.Y.
Stony Brook, New York 11794

Re: Dzus Fasteners Company
NYSDEC Site No. 152-033
Phase II Work Plan

Dear Mr. Moskie:

This letter acknowledges receipt of your approval of the work plan in correspondence dated June 23, 1989. We accept your condition that the monitoring well dimensions will be determined (with DEC approval) in the field, disregarding Figure 7.


As you requested in our telephone conversation of July 7, 1989, the upgradient well will be located as far upgradient (north) as possible on site without compromising safety concerns related to the power lines located along the northern border of the site. High voltage overhead power lines running along the Dzus/railroad property line create a hazard for the drillers as the rigs' mast may cause electric current to jump to the rig. The precise location of the upgradient well will be determined (with DEC approval) in the field factoring in these concerns.

Regarding our schedule, the geophysical survey of the site is tentatively scheduled to be done on July 24. Drilling is scheduled to start on July 31.

Please call if you have any questions or comments.

Very truly yours,

HOLZMACHER, McLENDON & MURRELL, P.C.


Michael V. Tumulty, P.E.

MVT/lc

cc: Michael Knight, Dzus
Irving Likes, Esq.
James Kaczanowski, Dzus

ADDENDUM RA