

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 #W1-0674-94-01

Bulova Corporation,
Respondent.

Site Code # 152139

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 entered into pursuant to the Department's authority under ECL Article 27, Title 13 and ECL 3-0301.

2. Bulova Corporation ("Respondent") is the former owner of a site located at Church and Washington Streets, Sag Harbor, New York (the "Site"). Although the Department's investigation is not yet complete, there is evidence of soil and groundwater contamination on site.

3. The Site is an inactive hazardous waste disposal site, as that term is defined at ECL 27-1301.2. The Site has been listed in the Registry of Inactive Hazardous Waste Disposal Sites in New York State as Site Number 152139. 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 an

Interim Remedial Measure Program ("IRM Program") for the Site consisting of installation and operation of on-site soil vent and air sparging systems and ancillary equipment; and (ii) reimburse the State's administrative costs.

6. 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. 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. Site Information

Prior to execution of this Order, Respondent has submitted to the Department a brief history and description of the Site, including the types, quantities, physical state, location, and dates of disposal of hazardous waste including methods of disposal and spillage of such wastes; and a comprehensive list and copies of all existing relevant reports with titles, authors, and subject matter, as well as a description of the results of all previous investigations of

the Site.

II. IRM Work Plan Contents and Submittals

Respondent has submitted to the Department a detailed work plan (the "IRM Work Plan"), describing the methods and procedures to be implemented in performing an IRM Program at the Site, consisting of: conceptual design documents; detailed engineering design documents; pilot test data; an operations and maintenance plan; a sampling and monitoring plan; a quality assurance project plan; and a health and safety plan. The IRM Work Plan, attached hereto as Appendix "A," has been found to be approvable by the Department and will be approved upon the Commissioner's execution of this Order.

III. Performance and Reporting of IRM Program

A. Upon the Commissioner's designees execution of this Order, Respondent shall commence the IRM Program. The Department has determined to exempt Respondent from the requirement to obtain any permits issuable by the Department for the performance of the IRM program provided that Respondent meets all of the substantive requirements applicable to the IRM program.

B. Respondent shall perform the IRM Program in

accordance with the Department-approved IRM Work Plan.

C. During the performance of construction activities associated with 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 Work Plan, Respondent must prepare an IRM report ("IRM Report") regarding installation and startup of the remediation system that includes all data generated and all other information obtained during the first month of operation of the IRM Program, including as-built drawings, and identifies any additional data that must be collected. The IRM Report shall be prepared and/or reviewed by and have the signature and seal of a professional engineer who shall certify that the IRM Report was prepared in accordance with this Order.

IV. Progress Reports

Because the IRM field work requires more than two months for completion, Respondent shall submit to the parties identified in subparagraph XII.B 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, if field construction activities last longer than 6 weeks; 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 following the effective date of this Order. During the construction phase of the IRM, 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 required by the IRM Work Plan to determine whether they were prepared, and whether the work done to generate the data and other information in the submittals 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 submittals. 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 15 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, unless Respondent requests an opportunity to

respond to the Department's objections pursuant to the Dispute Resolution section, infra, 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. The Department may require Respondent to modify and/or amplify and expand a submittal 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. Respondent may propose modifications, amplifications and/or expansions of the IRM program to the Department for its approval.

C. If the Department disapproves a revised submittal, Respondent shall be in violation of this Order unless, within 10 days of receipt of the Department's notice of disapproval, Respondent requests to meet with the Director of the Division of Hazardous Waste Remediation ("the Director") in order to discuss the Department's objections and Respondent is available to meet immediately thereafter. At this meeting, Respondent shall be given an opportunity to present its responses to the Department's objections, and the Director

shall have the authority to modify and/or withdraw such objections. Respondent shall revise the submittal in accordance with the Department's specific comments, as modified, except for those which have been withdrawn by the Director, and shall submit a revised Report. The period of time within which the submittal must be revised as specified by the Department in its notice of disapproval shall control unless the Department revises the time frame during the meeting referenced above.

After receipt of the revised submittal, the Department shall notify the Respondent in writing of its approval or disapproval of the revised submittal.

If the revised submittal fails to address the Department's specific comments, as modified, and the Department disapproves the revised Report for this reason, Respondent shall be in violation of this Order and the ECL.

The invocation of formal dispute resolution procedures under this Section shall not of itself extend, postpone or affect in any way any obligation of Respondent under this Order, except that accrual of any penalties with respect to the disputed matter shall be tolled pending resolution of the dispute pursuant to this Section.

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 events or circumstances beyond its reasonable control which the exercise of ordinary human prudence could not have prevented. Respondent shall, within five days of when it obtains knowledge of any such event or circumstance, 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 shall create a rebuttable presumption against a claim that the delay is not subject to penalties. Respondent shall have the burden of proving that an event or circumstance is a defense to compliance with this Order pursuant to Subparagraph VI.B.

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 properly trained and duly designated employee, consultant, 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, upon reasonable advance notice to Respondent. Such duly designated State employee, consultant or agent shall observe all applicable health and safety precautions and requirements, including those set out in the health and safety plan of the IRM Work Plan. Respondent shall provide the Department with suitable work 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

Within 15 days after the Commissioner's execution of this Order, Respondent shall pay to the Department a lump sum of \$20,000, and within 15 days and one year after the Commissioner's execution of this Order, Respondent shall pay to the Department an additional lump sum of \$20,000. Said sums 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 and to be incurred by the State of New York for work performed at the Site relative to this Order, as well as for

negotiating this Order, 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. 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 Hazardous Waste Remediation, N.Y.S.D.E.C., 50 Wolf Road, Albany, NY 12233-7010.

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 rights including, but not limited to nor exemplified by, the following:

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

2. the Department's right to enforce this Order against Respondent and/or any of Respondent's directors, officers, employees, servants, agents, successors, and assigns if Respondent fails to satisfy any of the terms of this Order;

3. the Department's right to bring any action or proceeding against Respondent and/or any of Respondent's 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 substances or constituents at or from the Site or areas in the vicinity of the Site;

4. the Department's right to bring any action or proceeding against Respondent and/or any of Respondent's directors, officers, employees, servants, agents, successors, and assigns with respect to hazardous substances that are present at the Site or that have migrated from the Site;

5. the Department's right to bring any criminal action against the Respondent and/or any of Respondent's directors, officers, employees, servants, agents, successors, and assigns; and

6. the Department's right to gather information and enter and inspect property and premises.

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 harmless the Department, the State of New York, and their representatives and employees, for all claims, suits, actions, damages, and costs of every name and description arising out of or resulting from Respondent's or its contractors' negligent, intentional, or reckless acts in connection with the fulfillment or attempted fulfillment of this Order.

However, Respondent shall not be required to indemnify the Department, the State of New York, and their representatives and employees regarding any liability arising from the negligent, reckless, or intentionally tortious acts or omissions of the Department, the State of New York, and their representatives and employees during the course of any activities conducted pursuant to this Order.

XI. Public Notice

Within 30 days after the effective date of this Order, Respondent shall file a copy of this Order with the Clerk of Suffolk County to give all parties who may acquire any interest in the Site notice 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:

1. Robert Knizek, P.E.
Division of Hazardous Waste Remediation
New York State Department of Environmental
Conservation
50 Wolf Road
Albany, New York 12233-7010
2. Andrew Carlson, Ph.D.
Director, Bureau of Environmental
Exposure Investigation
New York State Department of Health
2 University Place
Albany, New York 12203
3. Ajay Shah, P.E.
Div. of Hazardous Waste Remediation
NYSDEC - Region 1
S.U.N.Y. - Building 40
Stony Brook, New York 11794
4. Louis P. Oliva, Esq.
NYSDEC - Eastern Field Unit
200 White Plains Road
Fifth Floor
Tarrytown, New York 10591

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

1. Four copies (one unbound) to Robert Knizek, P.E.
2. Two copies to Andrew Carlson, Ph.D.
3. One copy to Ajay Shah, P.E.
4. One copy to Louis P. Oliva, Esq.

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

1. Mitchell H. Bernstein, Esq.
Van Ness Feldman
1050 Thomas Jefferson Street, N.W.
Seventh Floor
Washington, D.C. 20007
2. Mr. Robert Weber
Bulova Corporation
One Bulova Avenue
Woodside, NY 11377-7874
3. Mr. Paul Maus
Ground Water Technology, Inc.
101-1 Colin Drive
Holbrook, NY 11741
4. Linda Nussbaum, Esq.
Goodkind, Labation, Rudoff & Sucharow
122 East 42nd Street
New York, NY 10168-0102

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

XIII. Termination

This Order shall terminate upon completion of the IRM Program as specified in the final approved Operation and Maintenance plan. In the events that the IRM Program has not been completed at the time a Record of Decision ("ROD") for this Site is executed by the Department, and the operation of the IRM program is incorporated as an element of the ROD, then this Order shall terminate upon the execution of the ROD. If

the "no action" alternative is selected in the ROD, then the first sentence of this Section XIII shall apply.

XIV. Miscellaneous

A. Respondent shall retain, or have retained on its behalf, professional consultants, remediation contractors, laboratories, quality assurance/quality control personnel, and 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 the 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.

B. 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.

C. Respondent shall notify the Department at least 10 working days in advance of any construction field activities to be conducted pursuant to this Order. Respondent shall notify the Department at least 5 working days in advance of any operation and maintenance or sampling or monitoring field activities to be conducted pursuant to this Order after construction has been completed.

D. Respondent shall obtain all permits, easements, rights-of-way, rights-of-entry, approvals, or authorizations necessary to perform Respondent's obligations under this Order.

E. 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.

F. Respondent shall be responsible for ensuring that

Respondent and its consultants' contractors and subcontractors perform the work in satisfaction of the requirements of this Order.

G. "Interim Remedial Measure" shall have the meaning set forth in 6 NYCRR Part 375.

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.

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) Notwithstanding the provisions of paragraph IX. A.4., Respondent shall not be subject to an action or proceeding to require performance of the IRM Program, except as provided for under this Order.

(2) Except as provided in paragraph 6 of the

preamble to this Order, nothing contained in this Order constitutes, or shall be construed as, an admission by Respondent of any liability, responsibility or fault, nor as a waiver by Respondent of, or estoppel against Respondent relating to, any defense.

L. (1) The terms of this Order shall constitute the complete and entire IRM Order between Respondent and the Department concerning 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 the Respondent, to the Commissioner setting forth reasonable grounds for the relief sought. Copies of such written application shall be delivered or mailed to:

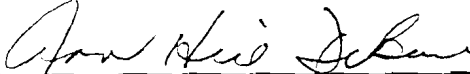
Louis P. Oliva and Robert Knizek

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

DATED: *Albany*, New York
July 11, 199~~4~~

THOMAS C. JORLING
Commissioner
New York State Department
of Environmental Conservation

By:


Ann Hill DeBarbieri
Deputy Commissioner

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]
ROBERT A. WEBER, V.P. OF OPERATIONS

Date: 1-17-94

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

On this 17th day of JANUARY, 1994, before me personally came Robert A. Weber, to me known, who being duly sworn, did depose and say that he resides in Glen Rock, New Jersey; that he is the Vice President, Operations of Bulova Corporation, the corporation described in the foregoing instrument; and that he was authorized to, and did, execute said instrument on behalf of Bulova Corporation.

[Signature]
Notary Public
JOHN GRASON TURNBULL
Notary Public, State of New York
No. 414696631
Qualified in Queens County
Certificate Filed in New York Co.
Term Expires Dec. 31, 1994