

→ R. LANTZ

STATE OF NEW YORK: DEPARTMENT OF
ENVIRONMENTAL CONSERVATION

In the Matter of the Development
and Implementation of a Remedial
Investigation 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 # A7-0384-9903

ROHM & HAAS CO.,

Site Code # 360025

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. Rohm and Haas Co., ("Respondent"), of Philadelphia, PA., is the former owner of Electro Materials Corporation of America, Inc. ("EMCA"). EMCA formerly owned and operated a business at 605-609 Center Avenue, and 604-612 Fayette Avenue, Mamaroneck, New York (hereinafter referred to as "the Site") which manufactured electronic conducting paste during the years 1968 through 1988. As part of the manufacturing process, EMCA used and stored the solvent Freon 113 at the Site. Freon 113 and other organic solvents were detected in onsite soil and groundwater samples.

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

and or environment. The Site has been listed in the Registry of Inactive Hazardous Waste Disposal Sites in New York State as Site Number 360025. The Department classified the Site as a Class "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 Remedial Investigation ("RI") for the Site; (ii) develop and implement, where appropriate, interim remedial measures in accordance with paragraph IV of this Order; (iii) reimburse the State's administrative costs, and (iv) determine, based upon the data generated by the investigation, whether it is appropriate for the Department to commence the process for reclassification of the Site in the Registry.

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

Respondent has either provided to the Department, or shall provide to the Department as part of the Remedial Investigation Report set forth herein at Paragraph III all data within Respondent's possession or control regarding environmental conditions on-Site and off-Site.

II. RI Work Plan Contents and Submittals

A. Within 150 days ^{filed 3/31} after the effective date of this Order, Respondent shall submit to the Department a detailed work plan describing the methods and procedures to be implemented in performing an RI for the Site ("RI Work Plan").

B. The RI Work Plan shall include, but not be limited to, the following:

(1) A chronological description of the anticipated RI activities together with a schedule for the performance of these activities.

(2) A Sampling and Analysis Plan that shall include:

(a) A quality assurance plan that describes the quality assurance and quality control protocols necessary to achieve the data quality objectives. This plan shall designate a data validation expert and describe such individual's qualifications and experience.

(b) A field sampling plan that defines sampling and data gathering methods in a manner consistent with the "Field Methods Compendium," OSWER Directive 9285.2-11 (draft June 1993), as supplemented by the Department.

(3) A health and safety plan to protect persons at and in the vicinity of the Site during the performance of the RI to be prepared in accordance with 29 CFR 1910 and all other applicable standards by a certified health and safety professional. Respondent shall supplement this plan as necessary to ensure the health and safety of all persons at or in the vicinity of the Site during the performance of any work pursuant to this Order.

C. If good faith attempts to agree upon a Work Plan that will adequately characterize the conditions at the site fail, then this Order shall become null and void. However, Respondent's obligation to pay the Department's oversight costs as set forth in paragraph IX herein shall survive.

III. Performance and Reporting of Remedial Investigation

A. Respondent shall commence and perform the Remedial Investigation in accordance with the approved RI Work Plan and the schedule contained therein.

B. During the performance of the Remedial Investigation, Respondent shall have on-Site a duly delegated full-time representative who is qualified to supervise the work done.

C. Within the time frame set forth in the Department-approved RI Work Plan, Respondent shall prepare a Remedial Investigation Report that shall:

(1) include all data generated and all other information obtained during the Remedial Investigation;

(2) identify any additional data that must be collected; and

(3) include a certification by the individual or firm with responsibility for the day to day performance of the Remedial Investigation that all activities that comprised the Investigation were performed in full accordance with the Department-approved RI Work Plan.

IV. Interim Remedial Measures

A. Respondent may elect to propose one or more Interim Remedial Measures (IRMs) for the Site.

B. 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).

C. Upon Department's determination that the proposal is an appropriate IRM and upon 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 IRM. Such document shall include a health and safety plan, contingency plan, and (if the Department requires such) a citizen participation plan that incorporates appropriate activities outlined in the Department's publication, "Participation in New York's Hazardous Waste Site Remediation Program: A Guidebook," dated June 1998, 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.

D. Within the schedule contained in the Department-approved IRM Work Plan, Respondent shall submit a final engineering report prepared by a professional engineer with a certification by that individual that all activities that comprised the Department-approved IRM were completed in accordance with the Department-approved Work Plan and this Order.

E. During implementation of all construction activities identified in the Department-approved IRM Work Plan, Respondent shall have on-Site a full-time duly delegated representative who is qualified to supervise the work done.

(1) If the performance of the Department-approved IRM encompasses 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. The O&M Plan, "as built" drawings, final engineering report, and certification must be prepared, signed, and sealed by a professional engineer.

(2) 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 that Plan.

F. 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.

Upon the approval of the investigative work plan, Respondent shall submit, pursuant to Subparagraph XIII.B of this Order, copies of written monthly progress reports on or before the twentieth day of every month that shall:

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, whether conducted pursuant to this order or conducted independently by Respondent;

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.

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

G. describe all activities undertaken in support of the Citizen Participation Plan during the previous month and those to be undertaken in the next month.

H. Respondent also shall allow the Department to attend, and shall provide the Department as soon as possible with advance notice of, any of the following: prebid meetings, substantial completion meeting and inspection, and final inspection and meeting.

VI. Review of Submittals

A. The Department shall review each submittal 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, except for the submittals discussed in Subparagraph II.B(3). All Department-approved submittals shall be incorporated into and become an enforceable part of this Order.

B. 1. If the Department disapproves a submittal, it shall so notify Respondent in writing and shall specify the reasons for its disapproval. Within 25 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.

2. 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, 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.

VII. Penalties

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

(2) Respondent shall be liable for payment to the Department for the sums set forth below as stipulated penalties for each day or part thereof that the Respondent is in violation of the terms of this Order. All penalties begin to accrue on the first day Respondent is in violation of the terms of this Order and continue to accrue through the final day of correction of any violation. Such sums shall be due and payable within 15 days after receipt of notification from the Department assessing the penalties. If such payment is not received within 15 days after Respondent receives such notification from the Department, interest shall be payable at the annual rate of nine per centum on the overdue amount from the day on which it was due through, and including, date of payment. Penalties shall be paid by certified check or money order, made payable to "New York State Department of Environmental Conservation" and shall be delivered personally or by certified mail, return receipt requested, to the Director, Division of Environmental Enforcement, N.Y.S.D.E.C., 50 Wolf Road, Albany, New York 12233-5500. Payment of the penalties shall not in any way alter Respondent's obligation to complete performance under the terms of this Order. Stipulated penalties shall be due and payable pursuant to the following schedule:

<u>Period of Non-Compliance</u>	<u>Penalty Per Day</u>
First through 15 th day	\$500.00
16 th through 30 th day	\$1000.00
31 st and thereafter	\$2000.00

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 natural causes which the exercise of ordinary human prudence could not have prevented. Respondent shall, within ten 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 constitutes a waiver of any claim that a delay is not subject to penalties.

VIII. Entry upon Site

Respondent consents to use its best efforts to gain entry upon the Site or areas in its vicinity at reasonable times and upon reasonable notice by any duly designated employee, consultant, or agent of the Department or any State agency to inspect, sample, and to ensure Respondent's compliance with this Order.

IX. Payment of State Costs

Within 30 days after receipt of an itemized invoice from the Department, Respondent shall pay to the Department a sum of money, not to exceed \$7,500.00, 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. Such payment 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, travel) and shall be documented by expenditure reports.

X. 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 in this Order shall be construed to prohibit the Commissioner or his duly authorized representative from exercising any summary abatement powers.

XI. 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.

XII. Public Notice

Within 30 days after the effective date of this Order, Respondent shall use its best efforts to have the Site owner file a Notice with the Clerk of the County wherein the Site is located to give all parties who may acquire any interest in the Site notice of this Order.

XIII. 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:

Kathleen McCue
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
2 University Place
Albany, New York 12203

Salvatore Ervolina
Division of Environmental Remediation
New York State Department of Environmental Conservation
50 Wolf Road
Albany, NY 12233-7010

Anthony B. Quartararo, Esq.
Division of Environmental Enforcement
New York State Department of Environmental Conservation
50 Wolf Road, Room 627
Albany, NY 12233-5500

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

Audrey Friedel, Esq.
Rohm and Haas Co.
100 Independence Mall West
Philadelphia, PA 19106-2399

Robert Master
Rohm and Haas Co.
P.O. Box 584
Bristol, PA 19007

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

Four copies (one unbound) to Ms. McCue

Two copies to Director, Bureau of Environmental Exposure Investigation.

- C. 1. Within 30 days of the Department's approval of any report submitted pursuant to this Order, Respondent shall submit to Director, Division of Environmental Remediation, a computer readable magnetic media copy of the approved report in American Standard Code for Information Interchange (ASCII) format, or in an equivalent electronic format with prior approval from the Department.

2. Within 30 days of the Department's approval of the RI, Respondent shall submit one microfilm copy of the RI to Director, Division of Environmental Remediation.

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

XIV. Miscellaneous

A. All activities and submittals concerning the investigation as 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, and analytical obligations under this Order. The experience, capabilities, and qualifications of the firms or individuals selected shall be submitted to the Department within a reasonable time from 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 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. The Department shall also 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 as soon as possible prior to any field activities to be conducted pursuant to this Order.

E. Respondent shall use its best efforts to 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 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. Quartararo and to Ms. McCue

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

DATED: Albany, New York
March , 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. The undersigned verifies that he or she is duly authorized to execute this Order on behalf of the corporation.

By: Audrey Friedel

Title: Of Counsel

Date: 3-29-99

STATE OF PENNSYLVANIA)
) s.s.:
COUNTY OF Philadelphia

On this 29th day of March, 1999 before me personally came Audrey C. Friedel, to me known, who being duly sworn, did depose and say; that (s)he resides in Merion, Pa; and that (s)he signed his/her name on behalf of ROHM AND HAAS COMPANY, and was authorized to do so.

Senora V. Williams
Notary Public

NOTARIAL SEAL SENORA V WILLIAMS, Notary Public City of Philadelphia, Phila County My Commission Expires April 1 2000

