

APPENDIX E

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION  
CONSENT AGREEMENT INDEX R4-1379-92-07

STATE OF NEW YORK: DEPARTMENT OF ENVIRONMENTAL CONSERVATION

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In the Matter of the Alleged  
Violations of Environmental  
Conservation Law ("ECL") Article 17

ORDER ON  
CONSENT

File No.  
R4-1379-92-07

THE UNITED STATES DEPARTMENT OF THE ARMY  
WATERVLIET ARSENAL  
Watervliet, New York 12189-4050

Respondent.

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WHEREAS:

1. New York State Department of Environmental Conservation ("DEC") has administrative jurisdiction to abate and prevent the pollution of water of the State pursuant to Article 17 of the Environmental Conservation Law ("ECL") and the rules and regulations promulgated pursuant thereto.
2. Respondent, the United States Department of the Army, owns and operates the Watervliet Arsenal located in Watervliet, New York ("facility").
3. On February 25, 1992, Respondent notified the Department of leaks and/or cracks in a waste acid line.
4. Sampling of the unfiltered groundwater samples collected from excavations conducted during acid line repairs showed exceedences of state water quality standards at 6 NYCRR Part 703.5 for mercury, barium, chromium and lead.
5. Respondent has installed a well in the vicinity of manhole 34 D for the recovery of pollutants which are then discharged to the facility's on-site wastewater treatment plant.
6. Respondent has provided the Department with a site investigation plan for on-site impacts in the vicinity of manhole 34 D associated with the chemical discharges.

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7. Section 17-0501 of the Environmental Conservation Law provides that:

"It shall be unlawful for any person, directly or indirectly, to throw, drain, run or otherwise discharge into such waters (waters of the State of New York) organic or inorganic matter that shall cause or contribute to a condition in contravention of the standards adopted by the Department pursuant to Section 17-0301."

8. The Respondent, based on the above allegations, has violated ECL Section 17-0501 and caused the exceedences of state water quality standards at 6 NYCRR Part 703.5 for mercury, barium, chromium and lead.

9. Section 71-1929 of the ECL provides for a civil penalty of up to \$25,000 per day for a violation of any provision of Titles 1 through 11 of Article 17 of the ECL, or the rules, regulations, orders or determinations of the Commissioner promulgated thereto or the terms of a permit issued thereunder. Injunctive relief is also available.

10. Respondent has affirmatively waived its right to notice and hearing in the manner provided by law, and has consented to the issuing and entering of this Order and agrees to be bound by the terms, provisions and conditions contained herein.

NOW, having considered this matter and being duly advised, it is ORDERED that:

I. Respondent, its successors and assigns, shall be bound by the Order. Respondent shall be bound by the actions of its officers and employees when acting within the scope of their official duties and by its contractors when engaged in authorized activities.

II. The attached Schedule of Compliance is incorporated and made a part of the terms, conditions and provisions of this Order on Consent.

III. If, for any reason, Respondent desires that any provisions of this Order be changed, Respondent shall make timely written application to the Department's Region 4 Regional Director setting forth reasonable grounds for the relief sought. No change or modification of this Order shall be made or be effective except as may be specifically set forth in writing by the Department.

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IV. All reports and submissions herein required shall be made to the Region 4 headquarters, New York State Department of Environmental Conservation, 2176 Guilderland Avenue, Schenectady, New York, 12306, Att: Regional Spill Engineer.

V. This Order is deemed effective on the date signed by the Department.

VI. For the purpose of insuring compliance with this Order, duly authorized representatives of this Department shall be permitted access to the site in question during reasonable hours, in order to inspect and/or require such tests as may be deemed necessary to determine the status of Respondent's compliance with this Order.

VII. 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.

VIII. Respondent shall not be in default of this Order if Respondent is unable to comply with any provision of this Order solely because of an act of God, war, strike, riot or any other cause which (with the exception of war) Respondent could not have prevented and regarding which the negligence or willful misconduct on the part of Respondent was not a proximate cause. Respondent shall apply in writing to the Department within five (5) business days upon obtaining knowledge of any such event and request an appropriate modification to this Order.

IX. Service to the Respondent of this Order on Consent shall be satisfied when a copy of the fully executed Order on Consent is mailed by Certified Mail to the address in the case caption.

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## SCHEDULE OF COMPLIANCE

1) Within 30 days of the effective date of this Order, Respondent shall submit to the Department for approval a site investigation plan, consistent with accepted engineering practices, to determine, based on good engineering practices, the complete extent of on-site groundwater contamination resulting from the leaks and/or cracks to the waste acid line in the vicinity of manhole 34 D, and determine whether there is potential for off-site groundwater contamination.

2) Respondent has sampled the well adjacent to manhole 34 D for the presence of mercury. If the sample from the well fails to reveal the presence of mercury in amounts exceeding the state groundwater standard for mercury, Respondent shall not be required to perform any further sampling for mercury under the Order. If mercury is present in the amounts exceeding the state groundwater standards in the well, mercury will be included in the list of substances investigated/remediated under paragraph 2 of the Order.

Within 90 days of approval of New York State Department of Environmental Conservation (NYSDEC) of the site investigation plan submitted pursuant to paragraph I, Respondent shall submit a report to the Department containing an analysis of groundwater sampling data collected and analyzed for unfiltered and filtered samples for barium, cadmium, chromium, (all chromium measured in filtered samples will be consider hex chromium) copper, lead, nickel, zinc, oil and grease, pH (range), and manganese, and shall submit a groundwater contour map, boring/monitoring well installation logs, and laboratory analytical results. Within 30 days of approval by NYSDEC of the Respondent's site investigation report, the Respondent shall submit a remediation plan<sup>SP</sup> with an expeditious schedule for implementation. The groundwater remediation plan with an expeditious schedule for implementation shall include a complete groundwater plume delineation (including any offsite impacts) and either:

a) substantiate, based on the groundwater sampling, the adequacy of the interim recovery system as the long term groundwater remediation method; or

b) provide for modifications and/or additions or replacement of the existing interim recovery system as the long term groundwater remediation method.

3) Respondent shall maintain operation of the existing recovery system ("interim recovery system") in accordance with the groundwater remediation plan approved pursuant to paragraph 2 and should the approved groundwater remediation plan require the full replacement of it, Respondent shall operate it until the replacement system is operational.

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4. Respondent shall continue to operate the approved groundwater recovery system for at least three months after demonstrating through appropriate testing and sampling methods that the affected groundwater meets state groundwater standards in 6 NYCRR Part 703.5. Respondent shall continue quarterly testing of monitoring wells for one year after initially demonstrating that affected groundwater meets state groundwater standards in 6 NYCRR Part 703.5.

5) All discharges from recovery system(s) shall be discharged to the facility's wastewater treatment system.

6) Respondent is responsible for obtaining access for all off-site work and remediation required by this Order.

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DATED: Schenectady, New York  
5/20, 1993

Thomas C. Jorling  
Commissioner  
New York State Department of  
Environmental Conservation

BY:

Anthony Adamczyk  
Anthony Adamczyk  
Regional Director  
Region 4

CONSENT BY RESPONDENT

Respondent hereby consents to the issuing and entering of this Order, waives her right to a hearing herein, and agrees to be bound by the provisions, terms and conditions contained herein.

Bernard P. Thomas  
Bernard P. Thomas, Colonel, OD  
Commander, Watervliet Arsenal  
DATE: May 18, 1993

STATE OF NEW YORK  
COUNTY OF Albany ss:

On this 18th day of May, 1993 before me personally came Bernard P. Thomas, to me known, who, being by me duly sworn, did depose and say that he resides in \_\_\_\_\_ and that he executed the foregoing instrument as duly authorized by the named Respondent.

Diane M. Gleason  
Notary Public  
DIANE M. GLEASON  
Notary Public, State of New York  
No. 478814  
Qualified in Albany County  
My Commission Expires 11/30/93

A:watervl.wp