

270 Michigan Avenue, Buffalo, NY 14203-2999

January 7, 1992

CERTIFIED MAIL

Ronald F. Spears, Jr.
Senior Environmental Specialist
The Carborundum Company
1625 Buffalo Avenue
Niagara Falls, NY 14302

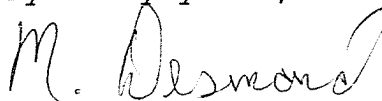
Re: Carborundum Specialty Products, New York State
Inactive Hazardous Waste Disposal Site #932102

Dear Mr. Spears:

Enclosed find one original Order on Consent for the Carborundum site which was executed by the Department on December 23, 1991.

Thank you for your assistance in resolving this matter.

Very truly yours,



Maura C. Desmond
Senior Attorney
Division of Environmental
Enforcement

MCD/mf
A:D173carb

Enclosure

cc: Richard Frankoski
Manager Environmental Properties
BP America, Inc.
200 Public Square
Cleveland, OH 44114-2375

bcc: A. Carlson/R. Tramontano - NYSDOH Albany
W. Mugden - USEPA
M. Doster - Region 9
P. Nelson - Region 9 (w/o encl)

RECEIVED

JAN 8 1992

N.Y.S. DEPT. OF
ENVIRONMENTAL CONSERVATION
REGION 9

STATE OF NEW YORK: DEPARTMENT OF ENVIRONMENTAL CONSERVATION

In the Matter of the
Development and Implementation
of a Remedial Program for an
Inactive Hazardous Waste Disposal
Site, Under Article 27, Title 13,
of the Environmental Conservation
Law of the State of New York
by

ORDER
ON
CONSENT

THE CARBORUNDUM COMPANY
Specialty Graphite Unit of the
Metaullics Systems Division

Respondent

Site #932102
INDEX #B9-0229-88-07

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 under authority of ECL §27-1301 et seq. and §§71-2705(1) and 71-2727.

2. The Carborundum Company - Specialty Graphite Unit of the Metaullics Systems Division ("Respondent") is a corporation organized and existing under the laws of the State of Delaware and is doing business in the State of New York in that Respondent owns and operates an industrial facility at 2050 Cory Drive in the Town of Wheatfield, County of Niagara, State of New York (the "Site").

3. The Site is an inactive hazardous waste disposal site, as that term is defined at ECL Section 27-1301(2). The Site has been listed in the Registry of Inactive Hazardous Waste Disposal

Sites in New York State as Site Number 932102. The Department has classified the Site as a Classification "2" pursuant to ECL Section 27-1305(4)(b) having found that the Site presents a "significant threat to the public health or environment - action required". Respondent denies that the Site presents a "significant threat to the public health or environment" and Respondent does not agree with the classification "2" for the Site by the Department. Respondent, nevertheless, enters into and agrees to abide by the terms of this Order.

4. Pursuant to ECL Section 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."

5. The Respondent entered into a Consent Order with the Department on February 9, 1989, whereby Respondent agreed to perform a Remedial Investigation/Feasibility Study at the Site.

The Respondent has fulfilled the technical obligations under the February 9, 1989 Consent order and has identified and characterized the contamination and developed the final remedial action at the "Site" using requisite technology not inconsistent

with the Superfund Amendments and Reauthorization Act of 1986 and the EPA document entitled "Guidance for Conducting Remedial Investigations and Feasibility Studies Under CERCLA" (March 1988).

6. The Commissioner executed a Record of Decision on August 21, 1991 selecting the final remedial program for the Site.

7. The Department and Respondent agree that the goals of this Order shall be the development and implementation by the Respondent of a Remedial Program for the Site in accordance with the Record of Decision. (The Record of Decision is attached to this Order as Appendix "A".)

8. Respondent, having waived its right to a hearing herein pursuant to ECL Section 27-1313(4), and having consented to the issuance and entry of this Order, agrees to be bound by its terms.

NOW, having considered this matter and being duly advised,
IT IS ORDERED THAT:

I. Respondent has and shall continue to retain qualified professional consultants, contractors, laboratories quality assurance, quality control personnel and data validators to perform the technical, engineering and analytical obligations required by this Order.

II. Within 30 days after the effective date of this Order, Respondent shall submit to the Department all data within its possession or control regarding environmental conditions on-site

and off-Site and other information described below, to the extent that such data have not previously been provided to the Department.

III. Within 30 days after the effective date of this Order, Respondent shall submit to the Department the Remedial Design Work Plan.

The Remedial Design Work Plan shall be prepared and certified by an individual registered to practice professional engineering by the State of New York, who may be an employee of Respondent, or an individual or member of a firm which is authorized to offer engineering services in accordance with Article 145 of the New York State Education Law.

The Remedial Design Work Plan shall include the following:

a. A detailed description of the means by which each essential element of the Remedial Program will be performed, to include but not be limited to:

1. the collection, destruction, treatment and/or disposal of hazardous wastes, and their constituents and degradation products, and any soil or other materials contaminated thereby;

2. the collection, destruction, treatment, and/or disposal of contaminated groundwater, leachate and air;

3. physical security and posting of the Site;

4. health and safety of persons living

and/or working at or in the vicinity of the Site;

5. quality control and quality assurance procedures and protocols to be applied during implementation of the Remedial Program;

6. monitoring which integrates needs which are present both on-Site and off-Site during implementation of the Remedial Program; and

b. A schedule for submission to the Department of "Biddable Quality" documents for the Remedial Program, including plans and specifications prepared and certified by an individual registered to practice professional engineering by the State of New York who may be an employee of the Respondent, or an individual or member of a firm which is authorized to offer engineering services in accordance with Article 145 of the New York State Education Law. These plans shall satisfy all applicable local, state and federal laws, rules and regulations;

c. A time schedule for the Remedial Program and provisions for periodic work-in-progress reports during the Remedial Program;

d. The parameters, conditions, procedures and protocols to determine the effectiveness of the Remedial Program, including a schedule for periodic sampling of groundwater monitoring wells on-Site and off-Site;

e. A description of operation, maintenance and monitoring activities to be undertaken following completion of the Remedial Program, including the number of years during which

such activities will be performed;

f. A contingency plan describing organized, planned, and technically coordinated courses of action to be followed in case of emergency or other special conditions, including but not limited to equipment breakdowns, fire, odor, explosion, spills, receipt or release of hazardous or toxic materials or substances, and other incidents that could threaten human health or safety or the environment; and

g. A health and safety plan for the protection of persons at and in the vicinity of the Site during construction and after completion of the Remedial Program. The Plan shall be prepared in accordance with 29 C.F.R. 1910 by a certified health and safety professional.

IV. A. (1) The Department shall review each of the submittals Respondent makes pursuant to this Order to determine whether it was prepared, and/or 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. All Department-approved submittals shall be attached to, and shall 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 (or

such longer time period as is designated by the Department in its written notice) after receiving written notice that its submittal has been disapproved, Respondent shall make a revised submittal to the Department that addresses 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 invokes the dispute resolution mechanism set forth in paragraph XXI of this Order within 10 days of receipt of written notice of disapproval. 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.

C. In the event the Department disapproves the revision of a submittal which has been submitted pursuant to Paragraph III of this Order, or in the event the Department requires modification and/or amplification and expansion of a submittal pursuant to Paragraph IV.B. of this Order, Respondent shall have the right during the ten day period immediately

following receipt of written notification of the Department's determination to invoke the dispute resolution mechanism set forth in Paragraph XXI.

V. A. Respondent shall implement the Remedial Program in accordance with the approved Remedial Design Work Plan which shall be attached hereto as Appendix "B" and the schedule contained therein. Respondent must obtain written approval from the Department prior to deviating from the approved Remedial Design Work Plan.

B. During implementation of all construction activities identified in the Remedial Design Work Plan, Respondent shall have on-site a representative who is qualified to inspect the work on a basis consistent with generally accepted industry practices.

C. Respondent shall submit to the Department 4 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 a summary of all results of sampling and tests and all other data received or generated by Respondent or its contractors or agents in the previous month whether conducted pursuant to this Order or conducted independently by Respondent; (iii) identify all work plans, reports and other deliverables required by this Order which were completed and submitted during the previous month; (iv) describe all actions, including, but not limited to, data collection and implementation of work plans, which 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 description of efforts made to mitigate those delays or anticipated delays; (vi) include any modifications to any work plans that Respondent has proposed to the Department or that have been approved by the Department; and (vii) describe all activities undertaken in support of the Citizen Participation Plan during the previous month and those to be undertaken in the next month. Respondent shall submit these progress reports to the Department by the tenth day of every month following the effective date of this Consent Order.

D. Within 60 days after completion of the construction activities identified in the Remedial Design Work Plan, Respondent shall submit a Remedial Action Construction Closeout Report ("Closeout Report"). The Closeout Report will include documentation and sampling test results substantiating that the performance standards have been met and will also include as-built drawings, a final engineering report (each reflecting all changes made during construction), final operation, maintenance and monitoring plan and a certification that the Remedial Design was completed in accordance with the approved plans and specifications. Such certification shall be made by an individual registered to practice professional

engineering by the State of New York who may be an employee of the Respondent, or an individual or member of a firm which is authorized to offer engineering services in accordance with Article 145 of the New York State Education Law and who supervised and inspected the work as it was performed.

E. Prior to its acceptance and approval of the Closeout Report and the engineer's certification that construction was completed in accordance with the approved Remedial Design, the Department may require the Respondent to modify the Remedial Design and Construction if the Department determines that such modification is necessary due to:

1. environmental conditions on-site or off-site which are related to the presence of hazardous wastes at the site and were unknown to the Department at the time of the effective date of this Order, or

2. information received, in whole or in part, after the effective date of this Order, where such unknown environmental conditions or such information indicates that the Remedial Program is not protective of human health or the environment.

In the event the Department requires modification of the Remedial Design and Construction, Respondent shall have the right during the ten day period immediately following receipt of written notification of such Department determination to invoke the dispute resolution mechanism set forth in Paragraph XXI of this Order.

F. After receipt of the Closeout Report including as-built drawings, final engineering report and certification, the Department shall notify Respondent in writing whether it is satisfied that all construction activities have been completed in compliance with the approved Remedial Design. In the event the Department determines that all construction activities have not been completed in accordance with the approved Remedial Design, Respondent shall have the right during the ten day period immediately following receipt of the written notification of such Department determination to invoke the dispute resolution mechanism set forth in Paragraph XXI.

VI. If the Department concludes that any element of the Remedial Program fails to operate in accordance with the Remedial Design or otherwise fails to protect human health or the environment, the Department may require the Respondent to take whatever action is necessary to ensure that the Remedial Program operates in accordance with the Remedial Design or that the Remedial Program otherwise protects human health and the environment.

In the event the Department requires Respondent to take any action pursuant to this Paragraph, Respondent shall have the right during the ten day period immediately following receipt of notification of such Department's written requirement to invoke the dispute resolution mechanism set forth in Paragraph XXI of this Order.

VII. Respondent shall operate, maintain and monitor all

elements of the Remedial Program for the period of years set forth in the Record of Decision, implement the contingency plan contained in the approved Remedial Design as appropriate, and implement the health and safety plan contained in the approved Remedial Design after completion. Respondent shall perform reviews at least every 5 years. Reviews may also be performed by Respondent at periods of less than 5 years should such a review be appropriate. Respondent may apply for site delisting or termination of a specific aspect of the Remedial Program at any time, if the Remedial Action Objectives set forth in the Record of Decision are obtained.

In the event Respondent does not agree with any determination made by the Department concerning any Respondent review of the Remedial Program pursuant to this paragraph, Respondent shall have the right during the ten day period immediately following receipt of written notification of such Department determination to invoke the dispute resolution mechanism set forth in Paragraph XXI of this Order.

VIII. 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 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 Consent Order, and shall submit these results in the status reports required under the Remedial Design

Work Plan and this Order. If the Department takes a sample, Respondent has the right, when possible, to take a split sample of same. With the exception of samples taken for the purpose of determining compliance with Department issued permits or discharge or emission limitations, the Department shall make reasonable efforts to provide the Respondent with five (5) days notice prior to taking samples.

IX. Respondent shall provide notice to the Department at least five (5) working days in advance of any field activities to be conducted pursuant to this Order.

X. 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. For purposes of this Paragraph "best efforts" includes the payment of reasonable sums of money in consideration. If any access or authorization required to perform this Order is not obtained despite best efforts within 45 days of the effective date of this Order, or within 45 days of the date the Department notifies the Respondent in writing that additional access beyond that previously secured is necessary, Respondent shall promptly notify the Department, and shall include in that notification a summary of the steps Respondent has taken to attempt to obtain such access or authorization. In the event that Respondent through its best efforts is unable to obtain the access or authorization necessary to perform its obligations under this Order, the

Department shall, consistent with its legal authority, assist in obtaining such access or authorizations for or on behalf of Respondent. The Department shall grant appropriate extensions of time for the fulfillment of the terms of this Order. The Department may, as it deems appropriate, assist Respondent in obtaining access. Respondent shall reimburse the Department, in accordance with the procedures in paragraph XX, for all costs incurred by the Department in obtaining access (including, but not limited to, attorneys fees).

In the event Respondent is not in agreement with the Department determination concerning extension of time or modification of Order, Respondent shall have the right during the ten day period immediately following receipt of written notification of such Department determination to invoke the dispute resolution mechanism set forth in Paragraph XXI of this Order.

XI. Respondent shall permit any duly designated employee, consultant, contractor or agent of the Department or any State agency to enter upon the Site or areas in the vicinity of the Site which may be under the control of Respondent for purposes of inspection, sampling and testing and to assure Respondent's compliance with this Order. During implementation of the Remedial Program, Respondent shall provide the Department with reasonable use of suitable office space, including access to a telephone, and shall permit the Department full access to all records and job meetings.

XII. 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 an act of God, war, riot or strikes or because of any condition or event entirely beyond the control of Respondent or its agent or agents carrying out Respondent's obligations under this Order. Respondent shall immediately notify the Department in writing when it obtains knowledge of any such condition and request an appropriate extension or modification of this Order.

In the event Respondent is not in agreement with the Department determination concerning extension or modification of this Order, Respondent shall have the right during the ten day period immediately following receipt of Department's written determination concerning extension or modification to invoke the dispute resolution mechanism set forth in Paragraph XXI of this Order.

XIII. The failure of the Respondent to comply with any term of this Order shall be a violation of this Order and the ECL.

XIV. Nothing contained in this Order shall be construed as barring, diminishing, adjudicating or in any way affecting any of the Department's rights, which include, but are not limited to, the following:

a. the right to bring any action or proceeding against anyone other than Respondent, its directors, officers, employees, servants, agents, successors and assigns;

b. the right to enforce this order against Respondent, its directors, officers, employees, servants, agents, successors and assigns in the event that Respondent shall fail to satisfy any of the terms hereof;

c. the right to bring any action or proceeding against Respondent, its 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 wastes or constituents at or from the Site or areas in the vicinity of the Site.

XV. If, after review, the Department accepts and approves the engineer's certification that construction of the Remedial Program was completed in accordance with the approved Remedial Design, then, unless a supplementary remedial program is required pursuant to Paragraph VI, and except for the provisions of paragraphs III(f), VII, XIV, XVII and XX hereof, such acceptance shall constitute a full and complete satisfaction and release of each and every claim, demand, remedy or action whatsoever against Respondent, its directors, officers, employees, agents, successors and assigns, which the Department has or may have pursuant to Article 27, Title 13 of the ECL relative to or arising from the disposal of hazardous wastes at the Site; provided, however, that the Department specifically reserves all of its rights concerning, and any such release and satisfaction shall not extend to, any investigation or remediation the Department deems necessary due to:

(1) environmental conditions on-site or off-site which are related to the disposal of hazardous wastes at the Site and were unknown to the Department at the time of its approval of the Remedial Investigation Report; or

(2) information received, in whole or in part, after the Department's approval of the Remedial Investigation Report, and such unknown environmental conditions or information indicates that the Remedial Program is not protective of human health or the environment. The Department shall notify the Respondent of such environmental conditions or information and its basis for determining that the Remedial Program is not protective of human health and the environment.

This release shall inure only to the benefit of the Respondent, its directors, officers, employees, agents, successors and assigns, with respect to the aforesaid matter.

Nothing herein shall be construed as barring, diminishing, adjudicating or in any way affecting any legal or equitable rights or claims, actions, suits, causes of action or demands whatsoever that the Department may have against anyone other than Respondent, its directors, officers, employees, agents, successors and assigns.

XVI. This Order shall not be construed to prohibit the Commissioner or his duly authorized representative from exercising any summary abatement powers.

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 the fulfillment or attempted fulfillment of this Order by Respondent, its directors, officers, employees, servants, agents, successors or assigns. Respondent shall not indemnify the Department, the State of New York, and their representatives and employees for their unlawful, willful or malicious acts or omissions.

XVIII. The effective date of this order shall be the date a fully executed copy of the Order is received by the Respondent.

XIX. If Respondent desires that any provision of this Order be changed, it shall make timely written application signed by the Respondent to the Commissioner, setting forth reasonable grounds for the relief sought. A copy of such written application shall be delivered or mailed to the Department project manager for the Site.

XX. Within 30 days after receipt of an itemization of costs from the Department, Respondent shall pay to the Department a sum of money which shall represent reimbursement for the Department's reasonable expenses including, but not limited to, labor, overhead, travel, analytical costs and contractor costs incurred by the State of New York for negotiating this Order, reviewing and revising submittals made pursuant to this Order, overseeing activities conducted pursuant to this Order, and collecting and analyzing split samples.

Respondent shall not reimburse the Department for Department staff attorney time except as provided in Paragraph X of this Order. Other than for the costs associated with split samples, Respondent shall not reimburse the Department for costs associated with any State sampling activities undertaken pursuant to this Order unless specifically agreed to by Respondent.

Itemization of costs shall include an accounting of personal services indicating 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. This information shall be documented by the Department's quarterly reports of Direct Personal Service. The Department's approved fringe benefit and indirect cost rates shall be applied. Non-personal service costs shall be summarized by category of expense (supplies and materials, travel, contractual) and shall be documented by the New York State Office of the State Comptroller's quarterly expenditure reports. If Respondent objects to some or all of such claimed costs, Respondent may, during the 10 day period immediately following receipt of the itemization of costs from the Department, invoke the dispute resolution mechanism set forth in Paragraph XXI of this Order for those costs objected to. If Respondent does not invoke the dispute resolution mechanism within the 10 day period immediately following receipt of itemization of costs, Respondent shall pay all costs as presented by the Department.

Such payment shall be made by certified check payable to the New York State Department of Environmental Conservation for payment into the Hazardous Waste Remedial Fund established under Section 97-b of the State Finance Law. Payment shall be sent to the Bureau of Program Management, Division of Hazardous Waste Remediation, N.Y.S.D.E.C., 50 Wolf Road, Room 208 Albany, New York 12233-7010.

XXI. A. Whenever the dispute resolution mechanism is authorized under this Consent Order, the following is the procedure to be used: Respondent requests to meet with the Director of the Division of Hazardous Waste Remediation ("the Director") in order to discuss the Department's determination or requirement. At this meeting, Respondent shall be given an opportunity to present its responses to the Department's determination or requirement, and the Director shall have the authority to modify and/or withdraw such determination or requirement.

B. Following such meeting Respondent shall (1) revise any 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 submittal or (2), except as provided in subparagraph C, undertake any action required by the Department as modified by the Director. The period of time within which the submittal must be revised or the required action taken will be the period specified by the Department in its notice of determination or requirement unless

the Department revised the time frame during the meeting referenced above. After receipt of the revised submittal or performance of any required action by Respondent, the Department shall notify the Respondent in writing of its approval or disapproval. If the Department determination is one of disapproval both the Department and Respondent shall have the right to pursue whatever remedies at law may be legally available to them, without prejudice to either's right to contest the same.

C. Following the dispute resolution meeting and the Director's decision, when the Department requirement is a construction activity, the Respondent has the right to pursue whatever remedies at law may be legally available and to postpone the construction activity which was the subject of dispute resolution pending resolution of the dispute by judicial means. Any associated activities whose performance is dependent upon the outcome of resolution of the dispute may be postponed pending judicial resolution.

XXII. Within 30 days after the effective date of this Order, Respondent shall file a Declaration of Covenants and Restrictions with the Niagara County Clerk to give all parties who may acquire any interest in the Site notice of this Order.

XXIII. Respondent shall implement a citizen participation program in coordination with and subject to the approval of the Department. The citizen participation program shall be consistent with the Department's publication entitled "New York

State Inactive Hazardous Waste Site Citizen Participation Plan".

XXIV. In the event Respondent proposes to convey the whole or any part of its interest in the Site, Respondent shall, not fewer than 60 days prior to the proposed conveyance, notify the Department in writing of the identity of the transferee and of the nature and date of the proposed conveyance and shall notify the transferee in writing, with a copy to the Department, of the applicability of this Order.

XXV. All written communications required by this Order shall be transmitted by United State Postal Service, by private courier service, or hand delivered as follows:

A. Communication from Respondent shall be made as follows:

1. Director, Division of Hazardous Waste Remediation
New York State Department of Environmental Conservation
50 Wolf Road
Albany, new York 12233
2. Director, Bureau of Environmental Exposure Investigation
New York State Department of Health
2 University Place
Albany, New York 12203
3. Regional Engineer
Region 9
New York State Department of Environmental Conservation
600 Delaware Avenue
Buffalo, new York 14202-1073
4. Division of Environmental Enforcement
New York State Department of Environmental Conservation
600 Delaware Avenue
Buffalo, New York 14202-1073

B. Copies of work plans and reports shall be submitted

as follows:

1. 2 copies to the Director, Division of Hazardous Waste Remediation
 2. 1 copy to the Director, Bureau of Environmental Exposure Investigation
 3. 4 copies to Regional Engineer
- C. Communication to be made from the Department to the

Respondent shall be made as follows:

Mr. Richard Frankoski
Manager Environmental Properties
BP America, Inc.
200 Public Square
Cleveland, Ohio 44114-2375

Ronald F. Spears, Jr.
Senior Environmental Specialist
The Carborundum Company
1625 Buffalo Avenue
Niagara Falls, New York 14302

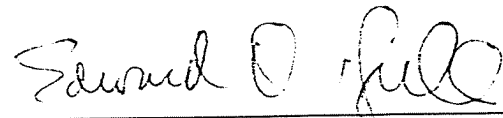
XXVI. Respondent, its officers, directors, agents, servants, employees, successors and assigns shall be bound by the terms of this Order.

XXVII. The terms hereof shall constitute the complete and entire Order between Respondent and the Department concerning the Site. No term, condition, understanding or agreement purporting to modify or vary the terms hereof 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 its obligation to obtain such formal approvals as
may be required by this Order.

DATED:

Albany, New York
Dec. 23, 1991



EDWARD O. 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, and agrees to be bound by this Order.

THE CARBORUNDUM COMPANY -
Specialty Graphite Unit of the
Metaullics Systems Division

By: _____

Luiz F. Kahl

(Type Name of Signer)

Title: _____
President

Date: _____
December 2, 1991

STATE OF NEW YORK)
) s.s.:
County OF NIAGARA)

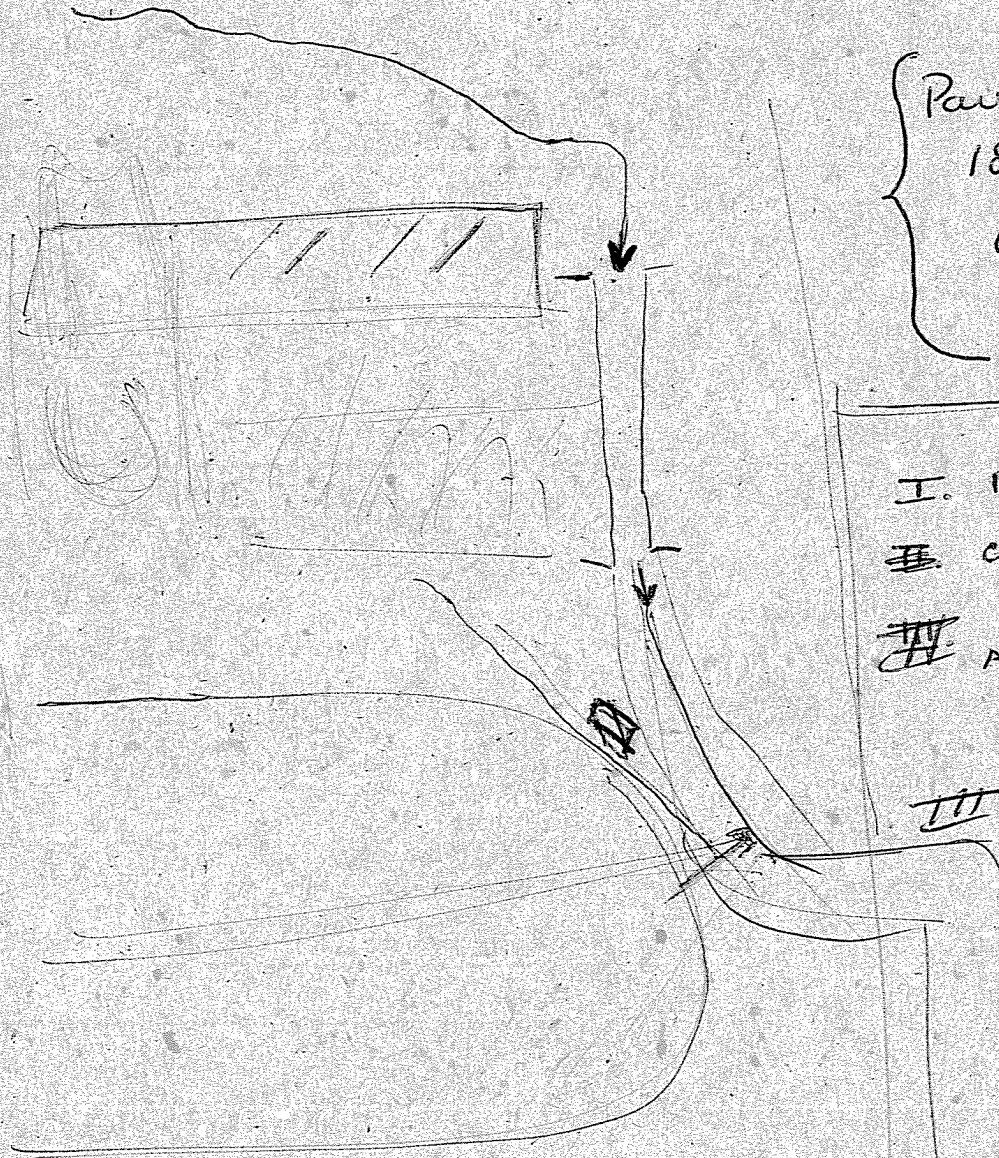
On this 2nd day of December, 1991,
before me personally came Luiz F. Kahl,
to me known, who being duly sworn, did depose and say that he
resides in Williamsville, New York; that
he is the President of the
Carborundum Company corporation described in and which
executed the foregoing instrument; that he 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 said
corporation and that he signed his name thereto by like order.

NOTARY PUBLIC

CHARLENE M. COFF
Notary Public, State of New York
Qualified in Niagara County
My Commission Expires Sept. 30, 1992

Un. Rd. → William St.
Library.

Paul Kaier
181 Hillpine Rd
CHIC. 14227



- I. Phase II
- II. ~~concre~~
- III. DEC. Adn. 42
 - A. sig. street
 - B. 1st ave.
- III. Short Feather
 - A. Short ERM - for poster cover.
 - B. Long RIPS for 1.6w Rm 2: OFF 5x
 - 3. Treat st.
- IV. Conc → 10a.
 - A. City
 - 1. ERM
 - 2. RIPS

270 Michigan Avenue, Buffalo, NY 14203-2999

November 18, 1991

VIA FEDERAL EXPRESS

Richard M. Frankoski
Manager, Environmental Properties
BP America, Inc.
200 Public Square
Cleveland, OH 44114-2375

Re: Carborundum Specialty Products
New York State Inactive Hazardous Waste
Disposal Site #932102

Dear Mr. Frankoski:

Enclosed find duplicate originals of the Order on Consent, both of which must be signed by the appropriate representative of the Carborundum Company and returned to the undersigned. Following signature by the Commissioner, one fully executed original will be returned to Carborundum.

I have also enclosed for your information a copy of the Consent Order which shades all the additions and lines through the deletions. You will note that with one exception the Department has accommodated all the concerns expressed in your letter of October 23, 1991.

The Department will not revise Paragraph XXI in the manner requested in your letter. It is the Department's position that Carborundum must revise any submittal and attempt to comply with Department determinations.

The Department will consider this the final form of the Consent Order. It had been the Department's understanding, and, we believe, the understanding of all parties to this process, that the Consent Order would be signed within the week following the Record of Decision. The Record of Decision was signed August 21, 1991 and your most recent additional comments on the Consent Order were not sent until October 23, 1991. Throughout the period of negotiations the Department has been readily available for discussion and has provided prompt responses to comments and questions. It is the Department's position that a more than reasonable period of time has been accorded

negotiations for this remedial program and consent order. We will, therefore, expect the signed Orders to be returned to this address on or before December 3, 1991.

Please contact the undersigned at 716-851-7050 if you have any questions.

Very truly yours,



Maura C. Desmond
Senior Attorney
Division of Environmental
Enforcement

MCD/mf
A:D150carb

Enclosure

cc: (w/enclosure-shaded copy)
Ronald F. Spears, Jr.
The Carborundum Company
2050 Cory Road
Sanborn, NY 14132

Martin Doster - Region 9 (w/o enclosure)



BP AMERICA

BP America Inc.
200 Public Square
Cleveland, Ohio 44114-2375
(216) 586-4141

MD

October 23, 1991

Ms. Maura Desmond
New York State Department of
Environmental Conservation
600 Delaware Avenue
Buffalo, NY 14202-1073

RE: Carborundum Specialty Products
Town of Wheatfield Site (#932102)

In performing its final review of the September 24, 1991 draft of the Consent Order Carborundum identified additional areas of concern. The most notable involve the dispute resolution procedure. In its present form Carborundum can invoke dispute resolution if the DEC disapproves a revised submittal [Paragraph IV A(2)(b)]. Although the order does not specifically define what constitutes a submittal, it provides for dispute resolution at two distinct points in the remedial program. They are: (1) after submission of the Remedial Action Close Out Report [Paragraph V(F)]; and (2) if Carborundum objects to a DEC reimbursement request (Paragraph XX).

It is assumed that it is the intent that DEC's disapproval of a number of other "submissions" required under the Consent Order could also trigger dispute resolution. Carborundum would intend that these other submissions include:

- (1) the Remedial Design Work Plan;
- (2) any supplemental design, work plan or report required by the Remedial Design Work Plan; and
- (3) Remedial Program review document required by Paragraph VII.

In addition, it is Carborundum's position that dispute resolution should also apply if:

- (1) Carborundum is required to modify the approved remedial design [Paragraph V(F)], or
- (2) take any action to ensure that the Remedial Program operates in accordance with the Remedial Design (Paragraph VI)

Ms. Maura Desmond

Page 2

- (3) the DEC denies any request of an extension of time to fulfill the terms of the Order due to Carborundum's inability to obtain access (Paragraph X), or
- (4) for any other reason described in Paragraph XII.

Carborundum requests that the language of the Consent Order be clarified with respect to these points.

The following additional concerns have also been identified:

- Submittal Review. Paragraph IV A(2)(9), page 7.

If the DEC disapproves a submission, Carborundum will address all the DEC's concerns in the revised submission but cannot agree to "resolve" them. The words "and resolves" should be deleted from line 4.

- Monthly Progress Reports. Paragraph V C, page 8.

For the record, an understanding has been reached with Mr. M. Doster that monthly progress reports as required by the Order will be brief (in general not to be more than 2 pages long). Any pertinent reports or data will be attached. Based on this understanding, the language of Paragraph V is accepted.

- Split Samples. Paragraph VIII, pages 11 and 12.

The DEC should notify and provide Carborundum an opportunity to split all DEC samples not just duplicates. Delete "duplicate" from line 25, page 11 and line 3, page 12.

- Access. Paragraph X, page 12.

Typo on Line 24; substitute "or" for "an".

- Force Majeure. Paragraph XII, page 13.

There is a continuing risk that labor strikes could preclude access to the site.

Strikes should be included in the list of events for temporary noncompliance.


Ms. Maura Desmond
Page 3

- Dispute Resolution. Paragraph XXI, page 18.

If Carborundum disagrees with the Director's determination, it should initially be able to pursue whatever remedies may be available at that time and not be required to develop a revised submission. Insert "have the opportunity to" after "shall" in line 24, page 18. Change "Report" to "submittal" line 1, page 19. Change "must" to "may" line 2, page 19. Insert "or if respondent disagrees with the Director's determination" after "revised submittal" line 8, page 19.

I anticipate that these comments represent the final issues of concern to Carborundum and BP America. It is our intent that resolution of these issues will result in the final execution of the Consent Order. Please provide me with your response when available.

Sincerely,


Richard M. Frankoski
Manager, Environmental Properties

RMF:rd
.am9

cc: R.F. Spears (Carborundum)
M.L. Doster (NYSDEC)
D.L. Bell (BPA)
D.R. Langshaw (BPA)
Tom Ferraro (E&E)

600 Delaware Avenue, Buffalo, NY 14202-1073

September 24, 1991

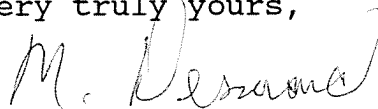
Ronald F. Spears, Jr.
Senior Environmental Specialist
The Carborundum Company
1625 Buffalo Avenue
Niagara Falls, NY 14302

Re: Carborundum Specialty Products, Site #932102

Dear Mr. Spears:

Enclosed find duplicate originals of the Order on Consent for the above-named site. Please have the appropriate representative of Carborundum sign both originals and return them to me. One fully executed original will be returned to you following signature by the Deputy Commissioner. We would appreciate your prompt attention to this matter.

Very truly yours,



Maura C. Desmond
Senior Attorney
Division of Environmental
Enforcement

MCD/mf
A:D115carb

Enclosures

cc: M. Doster (w/encl)

STATE OF NEW YORK: DEPARTMENT OF ENVIRONMENTAL CONSERVATION

In the Matter of the
Development and Implementation
of a Remedial Program for an
Inactive Hazardous Waste Disposal
Site, Under Article 27, Title 13,
of the Environmental Conservation
Law of the State of New York
by

ORDER
ON
CONSENT

THE CARBORUNDUM COMPANY
Specialty Graphite Unit of the
Metaullics Systems Division

Respondent

Site #932102
INDEX #B9-0229-88-07

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 under authority of ECL §27-1301 et seq. and §§71-2705(1) and 71-2727.

2. The Carborundum Company - Specialty Graphite Unit of the Metaullics Systems Division ("Respondent") is a corporation organized and existing under the laws of the State of Delaware and is doing business in the State of New York in that Respondent owns and operates an industrial facility at 2050 Cory Drive in the Town of Wheatfield, County of Niagara, State of New York (the "Site").

3. The Site is an inactive hazardous waste disposal site, as that term is defined at ECL Section 27-1301(2). The Site has been listed in the Registry of Inactive Hazardous Waste Disposal

Sites in New York State as Site Number 932102. The Department has classified the Site as a Classification "2" pursuant to ECL Section 27-1305(4)(b) having found that the Site presents a "significant threat to the public health or environment - action required". Respondent denies that the Site presents a "significant threat to the public health or environment" and Respondent does not agree with the classification "2" for the Site by the Department. Respondent, nevertheless, enters into and agrees to abide by the terms of this Order.

4. Pursuant to ECL Section 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."

5. The Respondent entered into a Consent Order with the Department on February 9, 1989, whereby Respondent agreed to perform a Remedial Investigation/Feasibility Study at the Site.

The Respondent has fulfilled the technical obligations under the February 9, 1989 Consent order and has identified and characterized the contamination and developed the final remedial action at the "Site" using requisite technology not inconsistent

with the Superfund Amendments and Reauthorization Act of 1986 and the EPA document entitled "Guidance for Conducting Remedial Investigations and Feasibility Studies Under CERCLA" (March 1988).

6. The Commissioner executed a Record of Decision on August 21, 1991 selecting the final remedial program for the Site.

7. The Department and Respondent agree that the goals of this Order shall be the development and implementation by the Respondent of a Remedial Program for the Site in accordance with the Record of Decision. (The Record of Decision is attached to this Order as Appendix "A".)

8. Respondent, having waived its right to a hearing herein pursuant to ECL Section 27-1313(4), and having consented to the issuance and entry of this Order, agrees to be bound by its terms.

NOW, having considered this matter and being duly advised, IT IS ORDERED THAT:

I. Respondent has and shall continue to retain qualified professional consultants, contractors, laboratories quality assurance, quality control personnel and data validators to perform the technical, engineering and analytical obligations required by this Order.

II. Within 30 days after the effective date of this Order, Respondent shall submit to the Department all data within its possession or control regarding environmental conditions on-Site

and off-Site and other information described below, to the extent that such data have not previously been provided to the Department.

III. Within 30 days after the effective date of this Order, Respondent shall submit to the Department the Remedial Design Work Plan.

The Remedial Design Work Plan shall be prepared and certified by an individual registered to practice professional engineering by the State of New York, who may be an employee of Respondent, or an individual or member of a firm which is authorized to offer engineering services in accordance with Article 145 of the New York State Education Law.

The Remedial Design Work Plan shall include the following:

a. A detailed description of the means by which each essential element of the Remedial Program will be performed, to include but not be limited to:

1. the collection, destruction, treatment and/or disposal of hazardous wastes, and their constituents and degradation products, and any soil or other materials contaminated thereby;

2. the collection, destruction, treatment, and/or disposal of contaminated groundwater, leachate and air;

3. physical security and posting of the Site;

4. health and safety of persons living

and/or working at or in the vicinity of the Site;

5. quality control and quality assurance procedures and protocols to be applied during implementation of the Remedial Program;

6. monitoring which integrates needs which are present both on-Site and off-Site during implementation of the Remedial Program; and

b. A schedule for submission to the Department of "Biddable Quality" documents for the Remedial Program, including plans and specifications prepared and certified by an individual registered to practice professional engineering by the State of New York who may be an employee of the Respondent, or an individual or member of a firm which is authorized to offer engineering services in accordance with Article 145 of the New York State Education Law. These plans shall satisfy all applicable local, state and federal laws, rules and regulations;

c. A time schedule for the Remedial Program and provisions for periodic work-in-progress reports during the Remedial Program;

d. The parameters, conditions, procedures and protocols to determine the effectiveness of the Remedial Program, including a schedule for periodic sampling of groundwater monitoring wells on-Site and off-Site;

e. A description of operation, maintenance and monitoring activities to be undertaken following completion of the Remedial Program, including the number of years during which

such activities will be performed;

f. A contingency plan describing organized, planned, and technically coordinated courses of action to be followed in case of emergency or other special conditions, including but not limited to equipment breakdowns, fire, odor, explosion, spills, receipt or release of hazardous or toxic materials or substances, and other incidents that could threaten human health or safety or the environment; and

g. A health and safety plan for the protection of persons at and in the vicinity of the Site during construction and after completion of the Remedial Program. The Plan shall be prepared in accordance with 29 C.F.R. 1910 by a certified health and safety professional.

IV. A. (1) The Department shall review each of the submittals Respondent makes pursuant to this Order to determine whether it was prepared, and/or 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. All Department-approved submittals shall be attached to, and shall 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 (or

such longer time period as is designated by the Department in its written notice) after receiving written notice that its 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 invokes the dispute resolution mechanism set forth in paragraph XXI of this Order within 10 days of receipt of written notice of disapproval. 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.

V. A. Respondent shall implement the Remedial Program in accordance with the approved Remedial Design Work Plan which shall be attached hereto as Appendix "B" and the schedule contained therein. Respondent must obtain written approval from the Department prior to deviating from the approved Remedial Design Work Plan.

B. During implementation of all construction activities identified in the Remedial Design Work Plan, Respondent shall have on-Site a representative who is qualified to inspect the work on a basis consistent with generally accepted industry practices.

C. Respondent shall submit to the Department 4 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 a summary of all results of sampling and tests and all other data received or generated by Respondent or its contractors or agents in the previous month whether conducted pursuant to this Order or conducted independently by Respondent; (iii) identify all work plans, reports and other deliverables required by this Order which were completed and submitted during the previous month; (iv) describe all actions, including, but not limited to, data collection and implementation of work plans, which 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 description of efforts made to mitigate those delays or anticipated delays; (vi) include any modifications to any work plans that Respondent has proposed to the Department or that have been approved by the Department; and (vii) describe all

activities undertaken in support of the Citizen Participation Plan during the previous month and those to be undertaken in the next month. Respondent shall submit these progress reports to the Department by the tenth day of every month following the effective date of this Consent Order.

D. Within 60 days after completion of the construction activities identified in the Remedial Design Work Plan, Respondent shall submit a Remedial Action Construction Closeout Report ("Closeout Report"). The Closeout Report will include documentation and sampling test results substantiating that the performance standards have been met and will also include as-built drawings, a final engineering report (each reflecting all changes made during construction), final operation, maintenance and monitoring plan and a certification that the Remedial Design was completed in accordance with the approved plans and specifications. Such certification shall be made by an individual registered to practice professional engineering by the State of New York who may be an employee of the Respondent, or an individual or member of a firm which is authorized to offer engineering services in accordance with Article 145 of the New York State Education Law and who supervised and inspected the work as it was performed.

E. Prior to its acceptance and approval of the Closeout Report and the engineer's certification that construction was completed in accordance with the approved Remedial Design, the Department may require the Respondent to

modify the Remedial Design and Construction if the Department determines that such modification is necessary due to:

1. environmental conditions on-site or off-site which are related to the presence of hazardous wastes at the site and were unknown to the Department at the time of the effective date of this Order, or

2. information received, in whole or in part, after the effective date of this Order, where such unknown environmental conditions or such information indicates that the Remedial Program is not protective of human health or the environment.

F. After receipt of the Closeout Report including as-built drawings, final engineering report and certification, the Department shall notify Respondent in writing whether it is satisfied that all construction activities have been completed in compliance with the approved Remedial Design. In the event the Department determines that all construction activities have not been completed in accordance with the approved Remedial Design, Respondent shall have the right during the ten day period immediately following receipt of the written notification by the Department to invoke the dispute resolution mechanism set forth in paragraph XXI.

VI. If the Department concludes that any element of the Remedial Program fails to operate in accordance with the Remedial Design or otherwise fails to protect human health or the environment, the Department may require the Respondent to

take whatever action is necessary to ensure that the Remedial Program operates in accordance with the Remedial Design or that the Remedial Program otherwise protects human health and the environment.

VII. Respondent shall operate, maintain and monitor all elements of the Remedial Program for the period of years set forth in the Record of Decision, implement the contingency plan contained in the approved Remedial Design as appropriate, and implement the health and safety plan contained in the approved Remedial Design after completion. Respondent shall perform reviews at least every 5 years. Reviews may also be performed by Respondent at periods of less than 5 years should such a review be appropriate. Respondent may apply for site delisting or termination of a specific aspect of the Remedial Program at any time, if the Remedial Action Objectives set forth in the Record of Decision are obtained.

VIII. 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 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 Consent Order, and shall submit these results in the status reports required under the Remedial Design Work Plan and this Order. If the Department takes a duplicate sample, Respondent has the right, when possible, to take a split

sample of same. The Department shall make reasonable efforts to provide the Respondent with five (5) days notice prior to taking duplicate samples.

IX. Respondent shall provide notice to the Department at least five (5) working days in advance of any field activities to be conducted pursuant to this Order.

X. 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. For purposes of this Paragraph "best efforts" includes the payment of reasonable sums of money in consideration. If any access or authorization required to perform this Order is not obtained despite best efforts within 45 days of the effective date of this Order, or within 45 days of the date the Department notifies the Respondent in writing that additional access beyond that previously secured is necessary, Respondent shall promptly notify the Department, and shall include in that notification a summary of the steps Respondent has taken to attempt to obtain such access or authorization. In the event that Respondent through its best efforts is unable to obtain the access or authorization necessary to perform its obligations under this Order, the Department shall, consistent with its legal authority, assist in obtaining such access or authorizations for an on behalf of Respondent. The Department shall grant appropriate extensions of time for the fulfillment of the terms of this Order. The

Department may, as it deems appropriate, assist Respondent in obtaining access. Respondent shall reimburse the Department, in accordance with the procedures in paragraph XX, for all costs incurred by the Department in obtaining access (including, but not limited to, attorneys fees).

XI. Respondent shall permit any duly designated employee, consultant, contractor or agent of the Department or any State agency to enter upon the Site or areas in the vicinity of the Site which may be under the control of Respondent for purposes of inspection, sampling and testing and to assure Respondent's compliance with this Order. During implementation of the Remedial Program, Respondent shall provide the Department with reasonable use of suitable office space, including access to a telephone, and shall permit the Department full access to all records and job meetings.

XII. 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 an act of God, war or riot or because of any condition or event entirely beyond the control of Respondent or its agent or agents carrying out Respondent's obligations under this Order. Respondent shall immediately notify the Department in writing when it obtains knowledge of any such condition and request an appropriate extension or modification of this Order.

XIII. The failure of the Respondent to comply with any term of this Order shall be a violation of this Order and the

ECL.

XIV. Nothing contained in this Order shall be construed as barring, diminishing, adjudicating or in any way affecting any of the Department's rights, which include, but are not limited to, the following:

a. the right to bring any action or proceeding against anyone other than Respondent, its directors, officers, employees, servants, agents, successors and assigns;

b. the right to enforce this order against Respondent, its directors, officers, employees, servants, agents, successors and assigns in the event that Respondent shall fail to satisfy any of the terms hereof;

c. the right to bring any action or proceeding against Respondent, its 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 wastes or constituents at or from the Site or areas in the vicinity of the Site.

XV. If, after review, the Department accepts and approves the engineer's certification that construction of the Remedial Program was completed in accordance with the approved Remedial Design, then, unless a supplementary remedial program is required pursuant to Paragraph VI, and except for the provisions of paragraphs III(f), VII, XIV, XVII and XX hereof, such acceptance shall constitute a full and complete satisfaction and release of each and every claim, demand, remedy or action

whatsoever against Respondent, its directors, officers, employees, agents, successors and assigns, which the Department has or may have pursuant to Article 27, Title 13 of the ECL relative to or arising from the disposal of hazardous wastes at the Site; provided, however, that the Department specifically reserves all of its rights concerning, and any such release and satisfaction shall not extend to, any investigation or remediation the Department deems necessary due to:

(1) environmental conditions on-site or off-site which are related to the disposal of hazardous wastes at the Site and were unknown to the Department at the time of its approval of the Remedial Investigation Report; or

(2) information received, in whole or in part, after the Department's approval of the Remedial Investigation Report, and such unknown environmental conditions or information indicates that the Remedial Program is not protective of human health or the environment. The Department shall notify the Respondent of such environmental conditions or information and its basis for determining that the Remedial Program is not protective of human health and the environment.

This release shall inure only to the benefit of the Respondent, its directors, officers, employees, agents, successors and assigns, with respect to the aforesaid matter.

Nothing herein shall be construed as barring, diminishing, adjudicating or in any way affecting any legal or equitable rights or claims, actions, suits, causes of action or demands

whatsoever that the Department may have against anyone other than Respondent, its directors, officers, employees, agents, successors and assigns.

XVI. This Order shall not be construed to prohibit the Commissioner or his duly authorized representative from exercising any summary abatement powers.

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 the fulfillment or attempted fulfillment of this Order by Respondent, its directors, officers, employees, servants, agents, successors or assigns. Respondent shall not indemnify the Department, the State of New York, and their representatives and employees for their unlawful, willful or malicious acts or omissions.

XVIII. The effective date of this order shall be the date a fully executed copy of the Order is received by the Respondent.

XIX. If Respondent desires that any provision of this Order be changed, it shall make timely written application signed by the Respondent to the Commissioner, setting forth reasonable grounds for the relief sought. A copy of such written application shall be delivered or mailed to the Department project manager for the Site.

XX. Within 30 days after receipt of an itemization of

costs from the Department, Respondent shall pay to the Department a sum of money which shall represent reimbursement for the Department's reasonable expenses including, but not limited to, labor, overhead, travel, analytical costs and contractor costs incurred by the State of New York for negotiating this Order, reviewing and revising submittals made pursuant to this Order, overseeing activities conducted pursuant to this Order, and collecting and analyzing split samples. Respondent shall not reimburse the Department for Department staff attorney time except as provided in Paragraph X of this Order. Other than for the costs associated with split samples, Respondent shall not reimburse the Department for costs associated with any State sampling activities undertaken pursuant to this Order unless specifically agreed to by Respondent.

Itemization of costs shall include an accounting of personal services indicating 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. This information shall be documented by the Department's quarterly reports of Direct Personal Service. The Department's approved fringe benefit and indirect cost rates shall be applied. Non-personal service costs shall be summarized by category of expense (supplies and materials, travel, contractual) and shall be documented by the New York State Office of the State Comptroller's quarterly expenditure reports.

If Respondent objects to some or all of such claimed costs, Respondent may, during the 10 day period immediately following receipt of the itemization of costs from the Department, invoke the dispute resolution mechanism set forth in Paragraph XXI of this Order for those costs objected to. If Respondent does not invoke the dispute resolution mechanism within the 10 day period immediately following receipt of itemization of costs, Respondent shall pay all costs as presented by the Department.

Such payment shall be made by certified check payable to the New York State Department of Environmental Conservation for payment into the Hazardous Waste Remedial Fund established under Section 97-b of the State Finance Law. Payment shall be sent to the Bureau of Program Management, Division of Hazardous Waste Remediation, N.Y.S.D.E.C., 50 Wolf Road, Room 208 Albany, New York 12233-7010.

XXI. Whenever the dispute resolution mechanism is authorized under this Consent Order, the following is the procedure to be used: Respondent requests to meet with the Director of the Division of Hazardous Waste Remediation ("the Director") in order to discuss the Department's objections. 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 will control unless the Department revised 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 Department disapproves the revised submittal, both the Department and Respondent shall have the right to pursue whatever remedies at law may be legally available to them, without prejudice to either's right to contest the same.

XXII. Within 30 days after the effective date of this Order, Respondent shall file a Declaration of Covenants and Restrictions with the Niagara County Clerk to give all parties who may acquire any interest in the Site notice of this Order.

XXIII. Respondent shall implement a citizen participation program in coordination with and subject to the approval of the Department. The citizen participation program shall be consistent with the Department's publication entitled "New York State Inactive Hazardous Waste Site Citizen Participation Plan".

XXIV. In the event Respondent proposes to convey the whole or any part of its interest in the Site, Respondent shall, not fewer than 60 days prior to the proposed conveyance, notify the Department in writing of the identity of the transferee and of the nature and date of the proposed conveyance and shall notify the transferee in writing, with a copy to the Department, of the

applicability of this Order.

XXV. All written communications required by this Order shall be transmitted by United State Postal Service, by private courier service, or hand delivered as follows:

A. Communication from Respondent shall be made as follows:

1. Director, Division of Hazardous Waste Remediation
New York State Department of Environmental Conservation
50 Wolf Road
Albany, new York 12233
2. Director, Bureau of Environmental Exposure Investigation
New York State Department of Health
2 University Place
Albany, New York 12203
3. Regional Engineer
Region 9
New York State Department of Environmental Conservation
600 Delaware Avenue
Buffalo, new York 14202-1073
4. Division of Environmental Enforcement
New York State Department of Environmental Conservation
600 Delaware Avenue
Buffalo, New York 14202-1073

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

1. 2 copies to the Director, Division of Hazardous Waste Remediation
2. 1 copy to the Director, Bureau of Environmental Exposure Investigation
3. 4 copies to Regional Engineer

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

Mr. Richard Frankoski
Manager Environmental Properties
BP America, Inc.
200 Public Square
Cleveland, Ohio 44114-2375

Ronald F. Spears, Jr.
Senior Environmental Specialist
The Carborundum Company
1625 Buffalo Avenue
Niagara Falls, New York 14302

XXVI. Respondent, its officers, directors, agents, servants, employees, successors and assigns shall be bound by the terms of this Order.

XXVII. The terms hereof shall constitute the complete and entire Order between Respondent and the Department concerning the Site. No term, condition, understanding or agreement purporting to modify or vary the terms hereof 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 its obligation to obtain such formal approvals as may be required by this Order.

DATED: , New York
, 1991

EDWARD O. SULLIVAN
Deputy Commissioner
New York State Department of
Environmental Conservation

600 Delaware Avenue, Buffalo, NY 14202-1073

September 24, 1991

Richard M. Frankoski
Manager, Environmental Properties
BP America, Inc.
200 Public Square
Cleveland, Ohio 44114-2375

Re: Carborundum Specialty Products
New York State Inactive Hazardous Waste
Disposal Site #932102

Dear Mr. Frankoski:

Enclosed find one copy of the Consent Order for the Carborundum Site. I have forwarded two originals to Ronald F. Spears at Carborundum in Niagara Falls. As we discussed on September 23, 1991, I have incorporated several of the proposed changes from your September 18th letter. Please note also that I have made a change to Paragraph XV: the reference to Paragraph "III(f)" was moved to maintain consistency in the Order.

The Department requests your prompt attention to this matter.

Very truly yours,

Maura C. Desmond
Senior Attorney
Division of Environmental
Enforcement

MCD/mf
A:D116carb

Enclosure

cc: M. Doster



BP AMERICA

BP America Inc.
200 Public Square
Cleveland, Ohio 44114-2375
(216) 586-4141

September 18, 1991

Ms. Maura Desmond
New York State Department
of Environmental Conservation
600 Delaware Avenue
Buffalo, NY 14202-1073

RE: Carborundum Specialty Products
Town of Wheatfield Site (#932102)

Dear Ms. Desmond:

BP America Inc. (BPA) is in receipt of the revised draft Consent Order (Draft Order) for the above site which was transmitted on August 19, 1991. After review of the Draft Order, only a few issues are still of concern or require clarification. The proposed changes to the Draft Order are as follows:

1. Paragraph V (page 9) - Monthly Progress Reports

The example Monthly Progress Report attached to your August 19, 1991 letter is acceptable for monthly reporting during Remedial Action. Appropriately, Items ii), vi) and vii) of Paragraph V(C) of the Draft Order (the reporting of sampling data, modifications to the work plans, and activities regarding the Citizen's Participation Plan) are not included in the example Monthly Progress Report. It is requested that reference to these items also be deleted from the Draft Order. Information related to these issues will be provided to the DEC by letter reports, when substantive actions occur.

2. Paragraph V(D) (page 10) Project Closeout Report

The intent of the report entitled "Project Closeout Report" was discussed with Martin Doster, P.E. on August 27, 1991. Mr. Doster explained that the report was intended to document the completion of the construction phase of the project and suggested that a title such as "Remedial Action Construction Closeout Report" would be more descriptive. It is requested that this change be incorporated into the Consent Order.

3. Paragraph VII, (page 12) Remediation Period and Contingency Plan

Period of Remediation: The first three lines of Paragraph VII state that "Respondent shall operate, maintain and monitor all elements of the Remedial Program for a period of years set forth in the Record of Decision." The ROD has not been available for review; however, we understand that the Project Remedial Action Plan (PRAP) contains language which is similar to the ROD. The PRAP (Paragraph 1, page 15) states that a review period will be conducted at least once every five years. Under current plans, soil remediation using vapor extraction would most likely be completed in three years. However, under the current text, no mechanism exists to review or end this portion of the remedial program once it has been completed or apply for site delisting.

To address this concern, it is requested that more specific language regarding review periods be included in the Draft Order such that the first three lines of Paragraph VII, page 12, are amended as follows:

"Respondent shall operate, maintain and monitor all elements of the remedial program for a period of years set forth in the Record of Decision. Respondent shall perform reviews at least every 5 years. Reviews may also be performed by Respondent at periods of less than 5 years should such a review be appropriate. Respondent may apply for site delisting or termination of a specific aspect of the Remedial Program at any time, if Remedial Action Objectives set forth in the Record of Decision are obtained."

Contingency Plan: Regarding the implementation of the contingency plan, BPA does not understand the need to modify the language in the July 3, 1991 Draft Order.

It is requested that the following section of the first paragraph on page 12 be retained:

"....implement the contingency plan contained in the approved Remedial Design in the event any element of the Remedial Program fails after completion or otherwise fails to protect human health or the environment,...."

4. Paragraph VIII, (page 12)

It is requested that the following sentence be added at the end of Paragraph VIII.

"The Department will provide the Respondent with five days notice prior to taking duplicate samples."

5. Paragraph XX (page 18)

BPA is willing to reimburse the state for costs associated with split sampling, but not for costs associated with any other state sampling activities undertaken pursuant to this order unless specifically agreed to in writing. It is therefore requested that the word "split" be inserted between "analyzing" and "samples" in line 4 of page 18.

6. Paragraph XXV (C) (page 18): Respondent Address


The following addresses should be inserted in the above-referenced paragraph.

Mr. Richard Frankoski
Manager, Environmental Properties
BP America, Inc.
200 Public Square
Cleveland, Ohio 44114-2375

Ronald F. Spears, Jr.
Senior Environmental Specialist
The Carborundum Company
1625 Buffalo Avenue
Niagara Falls, NY 14302

Please provide me with your response to these proposed changes at your convenience.

Sincerely,


Richard M. Frankoski
Manager, Environmental Properties

RMF:rd
.al3

cc: D.L. Bell, (BPA)
M. Doster (NYDEC)
R.F. Spears (Carborundum)
D.R. Langshaw (BPA)
T.E. Ferraro (E & E)



BP AMERICA

REC'D 8-13-91
Fr: DonLangshaw

BP America Inc.
200 Public Square
Cleveland, Ohio 44114-2375
(216) 586-4141

August 9, 1991

Ms. Maura Desmond
New York State Department of
Environmental Conservation
600 Delaware Avenue
Buffalo, NY 14202-1073

RE: Carborundum Specialty Products
Town of Wheatfield Site (#932102)

Dear Ms. Desmond:

BP America, Inc. (BPA) is in receipt of the revised draft Consent Order (Draft Order) for the above referenced site which was transmitted July 3, 1991. The Draft Order has addressed a majority of the concerns which were raised with respect to the previous draft; however, a limited number of issues are still of concern and/or require clarification. The proposed changes to the Draft Order are as follows:

1. Paragraph I (page 3) - Contractor Approval

It should be unnecessary to require that work be performed by DEC approved contractors. Such a requirement would create additional review functions that could delay the remedial work and increase response costs without providing any additional benefits. Such a requirement could also create additional liability concerns for the DEC.

BPA intends to hire qualified individuals for this project, and all work will be done in accordance with applicable federal, state, and local requirements.

It is unclear what criteria the DEC would use to determine what constitutes an acceptable contractor. The extent of information regarding the experience, capabilities, and qualifications of persons selected to perform work under this order is not specified.

It is requested that the proposed Draft Order language be replaced with language similar to that which was agreed to by the DEC in a May 14, 1991 RD/RA Consent Order entered into with Endicott Johnson (the "EJ Order") which provided:

"Respondent shall retain professional consultants, contractors, and laboratories fully capable of performing the technical, engineering, and analytical obligations required by this order."

Ms. Maura Desmond
Page 2
August 9, 1991

2. Paragraph III (page 3) - Work Plan Submission

The Draft Order specifies that a Remedial Design Work Plan with biddable quality documents will be required 30 days after the effective date of the Order. A work plan which contains the level of detail described in the Draft Order cannot be prepared in 30 days. Such a work plan exceeds the requirements for this project. A design work plan, which would provide a master plan for the remedial program, is more appropriate and could be completed within the proposed time frame.

This work plan would contain the following elements:

- A rationale approach and explanation for the overall remedial design.
- A schedule for the implementation of the remedial program.
- A monitoring and maintenance program to determine the effectiveness of site remediation.
- A health and safety plan which addresses the safety of site workers, Carborundum employees, area residents and site security.
- A plan for disposal of site generated wastes.

This work plan would not contain biddable quality documents, but rather a schedule for the submission of such documents. In addition, the remedial program should proceed in phases. It is anticipated that it would employ two phases of groundwater remediation and one phase of soil remediation. The overall approach has been previously discussed and, in principal, agreed to by the DEC.

In additional, BPA is unsure what would constitute the contingency plan which is referenced in Paragraphs III, Item f, page 6. Additional clarification is requested regarding contents of this plan.

Ms. Maura Desmond
Page 3
August 9, 1991

3. Paragraph IV and Paragraph XXI (pp. 6 and 18) - Dispute Resolution

By agreeing to this provision BPA would apparently waive any rights it may have to challenge a determination made by the Director of the Division of Hazardous Waste Remediations under an Article 78 proceeding or other available means. BPA sees no reason to relinquish its administration options.

It is requested that the last section of paragraph XXI (which provides that respondent will be in violation of the order if a submittal is disapproved) be changed as follows.

"If the Department disapproves the revised submittal, both the Department and Respondent shall have the right to pursue whatever remedies at law may be legally available to them, w/o prejudice to either's right to contest the same."

This language is similar to that used in the EJ Order.

4. Paragraph V (pages 8 and 9) - Construction Oversight

V(B): Full-time oversight of all construction activities is not necessary. A BPA representative will be available to inspect construction work on an as-needed basis. The representative will be on site during the start-up period and at critical periods of construction to insure that the design is completed to specifications. It is requested that the Draft Order be modified to provide for a flexible oversight procedure that is consistent with generally accepted industry practices.

V(C): This provision was not included in the previous draft and is not included in any other RD/RA orders which the DEC has entered into. While the need for the submission of periodic status reports to the DEC is understood, the frequency and detail of the reports required by the Draft Order are not.

Ms. Maura Desmond
Page 4
August 9, 1991

Summary progress reports which addresses the following subjects on a quarterly basis are considered adequate:

- General progress of the remedial program.
- All sampling and test results which are applicable to the remedial program.
- Any scheduling problems or scheduling changes regarding implementation of the remedial program and work plan modification.

V(D): It is unclear from this provision what type of information will be required in the Project Close-Out Report (i.e., what the standards will be and what documentation will be required to substantiate that performance standards have been met) and whether such a report can be prepared within 60 days of the completion of construction. More information regarding this requirement is necessary before further response can be made.

5. Paragraph VIII (page 11) - Split Sampling

The Draft Order should provide BPA with an opportunity to obtain splits of any samples taken by the DEC.

6. Paragraph X (p. 12) - Approvals

The RI/FS order entered into between Carborundum and the DEC at this site (the RI/FS Order) provided that the DEC assist Carborundum in obtaining authorizations to perform the work required by the Order if Carborundum was unable to do so on its own after using its best efforts (Paragraph XXI of RI/FS order). It also provided that the DEC would grant an appropriate extension of time if the work schedule was delayed due to the failure to obtain a necessary authorization. Similar language was included in the RD/RA Order entered into by DEC with DuPont and Olin on January 14, 1991 at the Gill Creek sight.

It is requested that language from paragraph XX.I of the RI/FS order be included in the Draft Order.

Ms. Maura Desmond
Page 5
August 9, 1991

7. Paragraph XII (p.13) - Force Majeure

The force majeure clause in the RI/FS order provided for additional acceptable basis for nonperformance including:

"site access delays or any other condition as to which negligen[t] or willful misconduct on the part of the Respondent was not the proximate cause..."

It is requested that similar language be included in this order.

8. Paragraph XX (p. 16) - Reimbursement

BPA will agree to reimburse the DEC for reasonable expenses incurred overseeing activities conducted pursuant to the Draft Order, but would like to clarify that BPA is not at this time agreeing to reimburse the DEC or the Department of Health for any analytical work performed at the site other than split sampling as will be described in the work plan.

It is requested that Paragraph XX, page 17, be modified as follows:

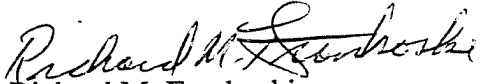
".....shall represent reimbursement for the department's reasonable expenses" (insert "reasonable" p. 17, line 2).

....."including....analytical costs... incurred...collecting and analyzing split samples." (insert "split" p. 17, line 7).

Ms. Maura Desmond
Page 6
August 9, 1991

Please provide me with your response to these proposed changes at your convenience. Assuming we are in agreement in principle on these matters BPA is available to meet to finalize the terms of the Order.

Sincerely,


Richard M. Frankoski
Manager, Environmental Properties

RMF:rd
.ajl

cc: D.L. Bell (BPA)
Martin Doster
R.F. Spears (Carborundum)
D.R. Langshaw (BPA)
T.E. Ferraro (E & E)

Speed Letter.

To MARTIN DOSTER
Region 9

From MARA DESMOND
DEE

Subject CARBONDUM CONSENT ORDER

-No 9 & 10 FOLD

MESSAGE

Consent Order going out to PRP today

Please take note of Paragraphs 5, 7, III, IV
V, VI, VII, VIII, XV, XVI (!)
~~IX~~, ~~XIII~~, ~~XIV~~

Date 7-3-91 Signed Mara Desmond

REPLY

-No 9 FOLD

-No 10 FOLD

Date

Signed

DRAFT July 3, 1991

FILE COPY

STATE OF NEW YORK: DEPARTMENT OF ENVIRONMENTAL CONSERVATION

In the Matter of the
Development and Implementation
of a Remedial Program for an
Inactive Hazardous Waste Disposal
Site, Under Article 27, Title 13,
of the Environmental Conservation
Law of the State of New York
by

ORDER
ON
CONSENT

THE CARBORUNDUM COMPANY
Specialty Graphite Unit of the
Metaullics Systems Division

Respondent

Site #932102
INDEX #B9-0229-88-07

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 under authority of ECL §27-1301 et seq. and §§71-2705(1) and 71-2727.

2. The Carborundum Company - Specialty Graphite Unit of the Metaullics Systems Division ("Respondent") is a corporation organized and existing under the laws of the State of Delaware and is doing business in the State of New York in that Respondent owns and operates an industrial facility at 2050 Cory Drive in the Town of Wheatfield, County of Niagara, State of New York (the "Site").

3. The Site is an inactive hazardous waste disposal site,

DRAFT July 3, 1991

as that term is defined at ECL Section 27-1301(2). The Site has been listed in the Registry of Inactive Hazardous Waste Disposal Sites in New York State as Site Number 932102. The Department has classified the Site as a Classification "2" pursuant to ECL Section 27-1305(4)(b) having found that the Site presents a "significant threat to the public health or environment - action required". Respondent denies that the Site presents a "significant threat to the public health or environment" and Respondent does not agree with the classification "2" for the Site by the Department. Respondent, nevertheless, enters into and agrees to abide by the terms of this Order.

4. Pursuant to ECL Section 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."

5. The Respondent entered into a Consent Order with the Department on February 9, 1989, whereby Respondent agreed to perform a Remedial Investigation/Feasibility Study at the Site.

The Respondent has fulfilled the technical obligations

DRAFT July 3, 1991

under the February 9, 1989 Consent order and has identified and characterized the contamination and developed the final remedial action at the "Site" using requisite technology not inconsistent with the Superfund Amendments and Reauthorization Act of 1986 and the EPA document entitled "Guidance for Conducting Remedial Investigations and Feasibility Studies Under CERCLA" (March 1988).

6. The Commissioner executed a Record of Decision on _____ selecting the final remedial program for the Site.

7. The Department and Respondent agree that the goals of this Order shall be the development and implementation by the Respondent of a Remedial Program for the Site in accordance with the Record of Decision. (The Record of Decision is attached to this Order as Appendix "A".)

8. Respondent, having waived its right to a hearing herein pursuant to ECL Section 27-1313(4), and having consented to the issuance and entry of this Order, agrees to be bound by its terms.

NOW, having considered this matter and being duly advised,
IT IS ORDERED THAT:

I. Respondent has and shall continue to retain duly licensed professional consultants, contractors, laboratories quality assurance, quality control personnel and data validators [acceptable to the Department to perform the technical,

DRAFT July 3, 1991

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 for approval prior to initiation of any activities for which the Respondent and their consultants will be responsible.

II. Within 30 days after the effective date of this Order, Respondent shall submit to the Department all data within its possession or control regarding environmental conditions on-Site and off-Site and other information described below, to the extent that such data have not previously been provided to the Department.

III. Within 30 days after the effective date of this Order, Respondent shall submit to the Department the Remedial Design Work Plan.

The Remedial Design Work Plan shall be prepared and certified by an individual registered to practice professional engineering by the State of New York, who may be an employee of Respondent, or an individual or member of a firm which is authorized to offer engineering services in accordance with Article 145 of the New York State Education Law.

The Remedial Design Work Plan shall include the following:

a. A detailed description of the means by which each essential element of the Remedial Program will be

DRAFT July 3, 1991

performed, to include but not be limited to:

1. the collection, destruction, treatment and/or disposal of hazardous wastes, and their constituents and degradation products, and any soil or other materials contaminated thereby;
2. the collection, destruction, treatment, and/or disposal of contaminated groundwater, leachate and air;
3. physical security and posting of the Site;
4. health and safety of persons living and/or working at or in the vicinity of the Site;
5. quality control and quality assurance procedures and protocols to be applied during implementation of the Remedial Program;
6. monitoring which integrates needs which are present both on-Site and off-Site during implementation of the Remedial Program; and
 - b. "Biddable Quality" documents for the Remedial Program, including plans and specifications prepared and certified by an individual licensed to practice professional engineering by the State of New York who may be an employee of the Respondent, or an individual or member of a firm which is authorized to offer engineering services in accordance with Article 145 of the New York State Education Law. These plans shall satisfy all applicable local, state and federal laws,

DRAFT July 3, 1991

rules and regulations;

c. A time schedule for the Remedial Program and provisions for periodic work-in-progress reports during the Remedial Program;

d. The parameters, conditions, procedures and protocols to determine the effectiveness of the Remedial Program, including a schedule for periodic sampling of groundwater monitoring wells on-Site and off-Site;

e. A description of operation, maintenance and monitoring activities to be undertaken following completion of the Remedial Program, including the number of years during which such activities will be performed;

f. A contingency plan to be implemented in the event ^{of systems failure e.g. air emissions, spill response etc.} [that any element of the Remedial Program fails to operate in accordance with the Remedial Design or otherwise fails to protect human health or the environment] ^{delete} and

g. A health and safety plan for the protection of persons at and in the vicinity of the Site during construction and after completion of the Remedial Program. The Plan shall be prepared in accordance with 29 C.F.R. 1910 by a certified health and safety professional.

IV. A. (1) The Department shall review each of the submittals Respondent makes pursuant to this Order to determine whether it was prepared, and/or whether the work done to generate the data and other information in the submittal was

DRAFT July 3, 1991

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. All Department-approved submittals shall be attached to, and shall 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 (or such longer time period as is designated by the Department in its written notice) after receiving written notice that its 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 invokes the dispute resolution mechanism set forth in paragraph XXI of this Order within 10 days of receipt of written notice of disapproval. 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

DRAFT July 3, 1991

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.

V. A. Respondent shall implement the Remedial Program in accordance with the approved Remedial Design Work Plan which shall be attached hereto as Appendix "B" and the schedule contained therein. Respondent must obtain written approval from the Department prior to deviating from the approved Remedial Design Work Plan.

B. During implementation of all construction activities identified in the Remedial Design Work Plan, Respondent shall have on-site a ~~full-time~~ representative who is qualified to inspect the work, on a regular basis consistent w/ generally accepted industry practices.

C. Respondent shall submit to the Department 4 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 a summary of all results of sampling and tests and all other data received or generated by Respondent or its contractors or agents in the previous month whether conducted pursuant to this Order or conducted independently by Respondent; (iii) identify all work plans, reports and other deliverables required by this Order which were completed and submitted during the previous month; (iv) describe all actions, including, but not limited to, data

DRAFT July 3, 1991

collection and implementation of work plans, which 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 description of efforts made to mitigate those delays or anticipated delays; (vi) include any modifications to any work plans that Respondent has proposed to the Department or that have been approved by the Department; and (vii) describe all activities undertaken in support of the Citizen Participation Plan during the previous month and those to be undertaken in the next month. Respondent shall submit these progress reports to the Department by the tenth day of every month following the effective date of this Consent Order.

D. Within 60 days after completion of the construction activities identified in the Remedial Design Work Plan, Respondent shall submit a Project Closeout Report. The Project Closeout Report will include documentation and sampling test results substantiating that the performance standards have been met and will also include as-built drawings, a final engineering report (each reflecting all changes made during construction), final operation, maintenance and monitoring plan and a certification that the Remedial Design was completed in accordance with the approved plans and specifications. Such

DRAFT July 3, 1991

certification shall be made by an individual registered to practice professional engineering by the State of New York who may be an employee of the Respondent, or an individual or member of a firm which is authorized to offer engineering services in accordance with Article 145 of the New York State Education Law and who supervised and inspected the work as it was performed.

E. Prior to its acceptance and approval of the Project Closeout Report and the engineer's certification that construction was completed in accordance with the approved Remedial Design, the Department may require the Respondent to modify the Remedial Design and Construction if the Department determines that such modification is necessary due to:

1. environmental conditions on-site or off-site which are related to the presence of hazardous wastes at the site and were unknown to the Department at the time of the effective date of this Order, or

2. information received, in whole or in part, after the effective date of this Order, where such unknown environmental conditions or such information indicates that the Remedial Program is not protective of human health or the environment.

F. After receipt of the Project Closeout Report including as-built drawings, final engineering report and certification, the Department shall notify Respondent in writing whether it is satisfied that all construction activities have

DRAFT July 3, 1991

been completed in compliance with the approved Remedial Design. In the event the Department determines that all construction activities have not been completed in accordance with the approved Remedial Design, Respondent shall have the right during the ten day period immediately following receipt of the written notification by the Department to invoke the dispute resolution mechanism set forth in paragraph XXI.

VI. If the Department concludes that any element of the Remedial Program fails to operate in accordance with the Remedial Design or otherwise fails to protect human health or the environment, the Department may require the Respondent to take whatever action is necessary to ensure that the Remedial Program operates in accordance with the Remedial Design or that the Remedial Program otherwise protects human health and the environment.

VII. Respondent shall operate, maintain and monitor all elements of the Remedial Program for the period of years set forth in the Record of Decision, implement the contingency plan contained in the approved Remedial Design in the event any element of the Remedial Program fails after completion or otherwise fails to protect human health or the environment, and implement the health and safety plan contained in the approved Remedial Design after completion.

VIII. The Department shall have the right to obtain split samples, duplicate samples, or both, of all substances and

DRAFT July 3, 1991

materials sampled by Respondent and 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 Consent Order, and shall submit these results in the status reports required under the Remedial Design Work Plan and this Order.

IX. Respondent shall provide notice to the Department at least 5 working days in advance of any field activities to be conducted pursuant to this Order.

X. 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. For purposes of this Paragraph "best efforts" includes the payment of reasonable sums of money in consideration. If any access required to perform this Order is not obtained despite best efforts within 45 days of the effective date of this Order, or within 45 days of the date the Department notifies the Respondent in writing that additional access beyond that previously secured is necessary, Respondent shall promptly notify the Department, and shall include in that notification a summary of the steps Respondent has taken to attempt to obtain access. The Department may, as it deems appropriate, assist Respondent in obtaining access. Respondent shall reimburse the Department, in accordance with the

DRAFT July 3, 1991

procedures in paragraph XX, for all costs incurred by the Department in obtaining access (including, but not limited to, attorneys fees).

XI. Respondent shall permit any duly designated employee, consultant, contractor or agent of the Department or any State agency to enter upon the Site or areas in the vicinity of the Site which may be under the control of Respondent for purposes of inspection, sampling and testing and to assure Respondent's compliance with this Order. During implementation of the Remedial Program, Respondent shall provide the Department with reasonable use of suitable office space, including access to a telephone, and shall permit the Department full access to all records and job meetings.

XII. 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 an act of God, war or riot. Respondent shall immediately notify the Department in writing when it obtains knowledge of any such condition and request an appropriate extension or modification of this Order.

XIII. The failure of the Respondent to comply with any term of this Order shall be a violation of this Order and the ECL.

XIV. Nothing contained in this Order shall be construed as barring, diminishing, adjudicating or in any way affecting any of the Department's rights, which include, but are not limited

DRAFT July 3, 1991

to, the following:

a. the right to bring any action or proceeding against anyone other than Respondent, its directors, officers, employees, servants, agents, successors and assigns;

b. the right to enforce this order against Respondent, its directors, officers, employees, servants, agents, successors and assigns in the event that Respondent shall fail to satisfy any of the terms hereof;

c. the right to bring any action or proceeding against Respondent, its 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 wastes or constituents at or from the Site or areas in the vicinity of the Site.

XV. If, after review, the Department accepts and approves the engineer's certification that construction of the Remedial Program was completed in accordance with the approved Remedial Design, then, unless a supplementary remedial program is required pursuant to Paragraph III(f) or VI, and except for the provisions of paragraphs VII, XVII and XX hereof, such acceptance shall constitute a full and complete satisfaction and release of each and every claim, demand, remedy or action whatsoever against Respondent, its directors, officers, employees, agents, successors and assigns, which the Department has or may have pursuant to Article 27, Title 13 of the ECL

DRAFT July 3, 1991

relative to or arising from the disposal of hazardous wastes at the Site; provided, however, that the Department specifically reserves all of its rights concerning, and any such release and satisfaction shall not extend to, any investigation or remediation the Department deems necessary due to:

(1) environmental conditions on-site or off-site which are related to the disposal of hazardous wastes at the Site and were unknown to the Department at the time of its approval of the Remedial Investigation Report; or

(2) information received, in whole or in part, after the Department's approval of the Remedial Investigation Report, and such unknown environmental conditions or information indicates that the Remedial Program is not protective of human health or the environment. The Department shall notify the Respondent of such environmental conditions or information and its basis for determining that the Remedial Program is not protective of human health and the environment.

This release shall inure only to the benefit of the Respondent, its directors, officers, employees, agents, successors and assigns, with respect to the aforesaid matter.

Nothing herein shall be construed as barring, diminishing, adjudicating or in any way affecting any legal or equitable rights or claims, actions, suits, causes of action or demands whatsoever that the Department may have against anyone other than Respondent, its directors, officers, employees, agents,

DRAFT July 3, 1991

successors and assigns.

XVI. This Order shall not be construed to prohibit the Commissioner or his duly authorized representative from exercising any summary abatement powers.

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 the fulfillment or attempted fulfillment of this Order by Respondent, its directors, officers, employees, servants, agents, successors or assigns. Respondent shall not indemnify the Department, the State of New York, and their representatives and employees for their unlawful, willful or malicious acts or omissions.

XVIII. The effective date of this order shall be the date a fully executed copy of the Order is received by the Respondent.

XIX. If Respondent desires that any provision of this Order be changed, it shall make timely written application signed by the Respondent to the Commissioner, setting forth reasonable grounds for the relief sought. A copy of such written application shall be delivered or mailed to the Department project manager for the Site.

XX. Within 30 days after receipt of an itemization of costs from the Department, Respondent shall pay to the

DRAFT July 3, 1991

Department a sum of money which shall represent reimbursement for the Department's expenses including, but not limited to, labor, overhead, travel, analytical costs and contractor costs incurred by the State of New York for negotiating this Order, reviewing and revising submittals made pursuant to this order, overseeing activities conducted pursuant to this Order, and collecting and analyzing samples. Respondent shall not reimburse the Department for Department staff attorney time.

Itemization of costs shall include an accounting of personal services indicating 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. This information shall be documented by the Department's quarterly reports of Direct Personal Service. The Department's approved fringe benefit and indirect cost rates shall be applied. Non-personal service costs shall be summarized by category of expense (supplies and materials, travel, contractual) and shall be documented by the New York State Office of the State Comptroller's quarterly expenditure reports. If Respondent objects to some or all of such claimed costs, Respondent may, during the 10 day period immediately following receipt of the itemization of costs from the Department, invoke the dispute resolution mechanism set forth in Paragraph XXI of this Order for those costs objected to. If Respondent does not invoke the dispute resolution mechanism within the 10 day period

DRAFT July 3, 1991

immediately following receipt of itemization of costs, Respondent shall pay all costs as presented by the Department.

Such payment shall be made by certified check payable to the New York State Department of Environmental Conservation for payment into the Hazardous Waste Remedial Fund established under Section 97-b of the State Finance Law. Payment shall be sent to the Bureau of Program Management, Division of Hazardous Waste Remediation, N.Y.S.D.E.C., 50 Wolf Road, Room 208 Albany, New York 12233-7010.

XXI. Whenever the dispute resolution mechanism is authorized under this Consent Order, the following is the procedure to be used: Respondent requests to meet with the Director of the Division of Hazardous Waste Remediation ("the Director") in order to discuss the Department's objections. 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 will control unless the Department revised the time frame during the meeting referenced above.

After receipt of the revised submittal, the Department

DRAFT July 3, 1991

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.

XXII. Within 30 days after the effective date of this Order, Respondent shall file a Declaration of Covenants and Restrictions with the Niagara County Clerk to give all parties who may acquire any interest in the Site notice of this Order.

XXIII. Respondent shall implement a citizen participation program in coordination with and subject to the approval of the Department. The citizen participation program shall be consistent with the Department's publication entitled "New York State Inactive Hazardous Waste Site Citizen Participation Plan".

XXIV. In the event Respondent proposes to convey the whole or any part of its interest in the Site, Respondent shall, not fewer than 60 days prior to the proposed conveyance, notify the Department in writing of the identify of the transferee and of the nature and date of the proposed conveyance and shall notify the transferee in writing, with a copy to the Department, of the applicability of this order.

XXV. All written communications required by this order shall be transmitted by United State Postal Service, by private courier service, or hand delivered as follows:

DRAFT July 3, 1991

A. Communication from Respondent shall be made as follows:

1. Director, Division of Hazardous Waste Remediation
New York State Department of Environmental Conservation
50 Wolf Road
Albany, new York 12233
2. Director, Bureau of Environmental Exposure Investigation
New York State Department of Health
2 University Place
Albany, New York 12203
3. Regional Engineer
Region 9
New York State Department of Environmental Conservation
600 Delaware Avenue
Buffalo, new York 14202-1073
4. Division of Environmental Enforcement
New York State Department of Environmental Conservation
600 Delaware Avenue
Buffalo, New York 14202-1073

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

1. 2 copies to the Director, Division of Hazardous Waste Remediation
2. 1 copy to the Director, Bureau of Environmental Exposure Investigation
3. 4 copies to Regional Engineer

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

DRAFT July 3, 1991

XXVI. Respondent, its officers, directors, agents, servants, employees, successors and assigns shall be bound by the terms of this Order.

XXVII. The terms hereof shall constitute the complete and entire Order between Respondent and the Department concerning the Site. No term, condition, understanding or agreement purporting to modify or vary the terms hereof 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 its obligation to obtain such formal approvals as may be required by this Order.

DATED: , New York
, 1991

EDWARD O. SULLIVAN
Deputy Commissioner
New York State Department of
Environmental Conservation

DRAFT July 3, 1991

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, and agrees to be bound by this Order.

THE CARBORUNDUM COMPANY -
Specialty Graphite Unit of the
Metaullics Systems Division

By: _____

(Type Name of Signer)

Title: _____

Date: _____

STATE OF NEW YORK)
) s.s.:
County OF)

On this _____ day of _____, 19____,
before me personally came _____,
to me known, who being duly sworn, did depose and say that he
resides in _____; that
he is the _____ of 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 said
corporation and that he signed his name thereto by like order.

NOTARY PUBLIC



BP AMERICA

BP America Inc.
200 Public Square
Cleveland, Ohio 44114-2375
(216) 586-4141

MLD

May 21, 1991

Ms. Maura Desmond
New York State Department of
Environmental Conservation
600 Delaware Avenue
Buffalo, NY 14202-1073

Dear Ms. Desmond:

The purpose of this letter is to provide suggested revisions for the proposed Remedial Design/Remedial Action (RD/RA) Consent Order for the Carborundum site in the Town of Wheatfield, New York (Site No. 932102). These suggested revisions are based on BP America's Inc. (BPA's) initial review of the Order. Additional comments may be forthcoming in one to two weeks based on further review of the proposed Order by BPA's legal department. BPA's comments are as follows:

1. Paragraph 3 (pages 1 and 2): The RI/FS order entered into by Carborundum and the DEC for this site has a similar paragraph, but states that "Respondent denies that the site presents a significant threat to human health or the environment..." Similar language should be included in this order.
2. Paragraph 5 (page 2): This paragraph should state that the RI/FS has been reviewed and approved by the NYSDEC and has been found to be in accordance with CERCLA and the National Contingency Plan.
3. Paragraph 6 (Page 2): This paragraph should state that the goal of the order is to develop and implement a remedial program in accordance with the ROD which establishes remedial requirements for the site.
4. Paragraph 7 (page 3): After herein add", pursuant to ECL, Section 27-1313 (4),".
5. Paragraph I (page 3): Change "The site" in the first sentence to "The Department finds the site". The Department should not have the right to review or approve BPA's consultants or contractors so long as they are qualified to perform the work (i.e., licensed engineer) and the work is done according to an approved work plan.

Ms. Maura Desmond
May 21, 1991
Page Two

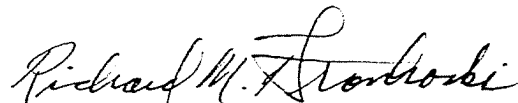
6. Paragraph III (page 3): Submissions should be tied to the effective date of Order rather than the signing of the ROD. It is anticipated that the consent order will be executed right after the ROD has been signed. In addition, BPA requests that RD work plans be submitted in phases as follows:
 - o Phase I Groundwater Design: 60 days after order is signed.
 - o Phase II Groundwater Design: 270 days after start-up of Phase I remediation.
 - o Soil Remediation Design: 90 days after order is signed.
7. Paragraph IV (page 5): The dispute resolution mechanism included in the RI/FS order (or a variation of that mechanism) should also be included in this order. (See paragraphs IX and X of the RI/FS order for proposed language.) BPA should have the right to invoke dispute resolution if the Department disapproves the remedial design.
8. Paragraph V (page 6): An authorized representative of BPA, who is qualified to inspect the work, will provide full-time oversight of the implementation of the Remedial Program, but that person should not be required to be on site full-time. BPA assumes that the Remedial Program refers only to the period through design, construction, and start-up and that the reports and drawings specified herein will be submitted 60 days following the last start-up period.
9. Paragraph VI (page 6): BP should have the right to invoke dispute resolution if the Department does not approve the remedial design or seeks to require BPA to take any additional action contemplated by this paragraph.
10. Paragraph VIII (page 8): Respondent requests that the words "Remedial Design" be changed to the "Record of Decision and the proposed Remedial Action Plan".
11. Paragraph X (page 9): BPA would prefer to provide five (5) days notice instead of ten (10).
12. Paragraph XII (page 9): Respondent plans to provide NYSDEC use of their facilities including reasonable use of telephones and office space. A full-time office for NYSDEC use is not contemplated by BPA at this time.

Ms. Maura Desmond
May 21, 1991
Page Three

13. Paragraph XI (page 9): BPA will agree to make reasonable attempts to obtain permits, easements, etc. If BPA is unsuccessful, the Department should be required to use its statutory powers to assist.
14. Paragraph XV (d) (page 10): This paragraph should be deleted. So long as BPA satisfies the requirements of this Consent Order, it is assumed that the Department is waiving its rights to bring an action with respect to the migration of hazardous wastes from the site.
15. Paragraph XVII (page 10): BPA should only be required to indemnify the Department for losses caused by BPA's acts which are negligent or intentional and the Department should be required to indemnify BPA for the losses caused by the Department's acts which are negligent or intentional.
16. Paragraph XX (page 11): BPA should only be required to reimburse the Department for its direct oversight costs and should not be required to pay the Department's legal costs associated with this remedial program. In addition, BPA should be given the ability to require a detailed substantiation of all Department costs and billings on a monthly basis. To the extent BPA disagrees with the Department's costs, BPA should have the right to invoke dispute resolution.
17. An additional paragraph should be added stating that the order does not become effective until a fully executed copy is provided to BPA.

BPA would like to meet with you to discuss these preliminary comments at your convenience. Please contact me to schedule an appropriate time.

Sincerely,



Richard M. Frankoski
Manager, Environmental Properties

RMF:rd
.ah2

cc: Martin Doster, NYSDEC
David Bell, BPA
Tom Ferraro, E&E

O - mLD
X - M. Desmond



BP AMERICA

BP America Inc.
200 Public Square
Cleveland, Ohio 44114-2375
(216) 586-4141

May 10, 1991

Mr. Martin L. Doster
New York State Department of
Environmental Conservation
Division of Hazardous Waste Remediation
600 Delaware Avenue
Buffalo, NY 14202-1073


Subject: Consent Order Review. Design Work Plan Review.

Dear Mr. Doster:

BP America Inc. (BPA) is forwarding to the New York State Department of Environmental Conservation (NYSDEC) seven copies of the Design Work Plan for the first phase of groundwater design at the Carborundum Facility in Sanborn, NY (Site Number 932102). This work plan is being sent today by our consultant for the site, Ecology and Environmental Inc. (E&E). BPA understands that prior to agency review, the NYSDEC requires BPA to indicate when comments can be expected from BPA regarding the Consent Order for the site. The Consent Order is currently under review at BPA. We expect that comments will be sent to the NYSDEC by Tuesday, May 21, 1991.

BPA trusts that this schedule will enable the NYSDEC to begin their review of the work plan in the near future. Should you have any questions, please do not hesitate to contact myself at (216) 586-6120 or Tom Ferraro of E&E at (716) 684-8060.

Sincerely,


Richard M. Frankoski
Manager, Environmental Properties

RMF:rd
.ah0

cc: D.L. Bell, (BPA)
T. Ferraro (E&E)

2/13/91

STATE OF NEW YORK: DEPARTMENT OF ENVIRONMENTAL CONSERVATION

In the Matter of the Development and Implementation of a Remedial Program for an Inactive Hazardous Waste Disposal Site, Under Article 27, Title 13, of the Environmental Conservation Law of the State of New York by

ORDER ON CONSENT

THE CARBORUNDUM COMPANY Specialty Graphite Unit of the Metallurgical Systems Division

Respondent

Site #932102 INDEX #B9-0229-88-07

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 under authority of ECL §27-1301 et seq. and §§71-2705(1) and 71-2727.

2. The Carborundum Company - Specialty Graphite Unit of the Metallurgical Systems Division ("Respondent") is a corporation organized and existing under the laws of the State of Delaware and is doing business in the State of New York in that Respondent owns and operates an industrial facility at 2050 Cory Drive in the Town of Wheatfield, County of Niagara, State of New York (the "Site").

3. The Site is an inactive hazardous waste disposal site, as that term is defined at ECL Section 27-1301(2). The Site has

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been listed in the Registry of Inactive Hazardous Waste Disposal Sites in New York State as Site Number 932102. The Department has classified the Site as a Classification "2" pursuant to ECL Section 27-1305(4)(b) having found that the Site presents a "significant threat to the public health or environment - action required".

4. Pursuant to ECL Section 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."

5. Respondent has developed and implemented a Remedial Investigation and Feasibility Study for this Site pursuant to an Order on Consent executed by the Commissioner on February 9, 1989.

6. The Department and Respondent agree that the goals of this Order shall be the development and implementation of a Remedial Program for the Site by Respondent, which program shall include the design and implementation of the selected remedial alternative, and operation, maintenance and monitoring of the selected remedial alternative.

7. 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.

NOW, having considered this matter and being duly advised, IT IS ORDERED THAT:

I. Respondent has and shall continue to retain duly licensed professional consultants, 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 for approval prior to initiation of any activities for which the Respondent and their consultants will be responsible.

II. Within 30 days after the effective date of this Order, Respondents shall submit to the Department all data within their possession or control regarding environmental conditions on-Site and off-Site and other information described below, to the extent that such data have not previously been provided to the Department.

III. Within 60 days after the Record of Decision ("ROD") is signed Respondent shall submit a Remedial Design to the Department. The Remedial Design shall be prepared and certified by an individual licensed to practice professional engineering by the State of New York, who may be an employee of Respondent,

or an individual or member of a firm which is authorized to offer engineering services in accordance with Article 145 of the new York State Education Law.

The Remedial Design shall include the following:

a. A detailed description of the means by which each essential element of the Remedial Program will be performed, to include but not be limited to:

1. the collection, destruction, treatment and/or disposal of hazardous wastes, and their constituents and degradation products, and any soil or other materials contaminated thereby;

2. the collection, destruction, treatment, and/or disposal of contaminated groundwater, leachate and air;

3. physical security and posting of the Site;

4. health and safety of persons living and/or working at or in the vicinity of the Site;

5. quality control and quality assurance procedures and protocols to be applied during implementation of the Remedial Program;

6. monitoring which integrates needs which are present both on-Site and off-Site during implementation of the Remedial Program; and

b. "Biddable Quality" documents for the Remedial Program, including plans and specifications prepared and certified by an individual licensed to practice professional engineering by the State of New York who may be an employee of the Respondent, or

an individual or member of a firm which is authorized to offer engineering services in accordance with Article 145 of the new York State Education Law. These plans shall satisfy all applicable local, state and federal laws, rules and regulations;

c. A time schedule for the Remedial Program and provisions for period work-in-progress reports during the Remedial Program;

d. The parameters, conditions, procedures and protocols to determine the effectiveness of the Remedial Program, including a schedule for periodic sampling of groundwater monitoring wells on-Site and off-Site;

e. A description of operation, maintenance and monitoring activities to be undertaken following completion of the Remedial Program, including the number of years during which such activities will be performed;

f. A contingency plan to be implemented in the event that any element of the Remedial Program fails to operate in accordance with the Remedial Design or otherwise fails to protect human health or the environment; and

g. A health and safety plan for the protection of persons at and in the vicinity of the Site during construction and after completion of the Remedial Program. The Plan shall be prepared in accordance with 29 C.F.R. 1910 by a certified health and safety professional.

IV. After receipt of the Remedial Design, the Department shall notify Respondent in writing of its approval or disapproval of the Remedial Design. If the Department approves

the Remedial Design, the Respondent shall implement the Remedial Program in accordance with it.

If the Department disapproves the Remedial Design, the Department shall notify Respondent in writing of the Department's specific objections. Within the time period specified in the notice of disapproval, Respondent shall revise the Remedial Design in accordance with the Department's specific comments and submit a revised Remedial Design.

After receipt of the revised Remedial Design, the Department shall notify Respondent in writing of its approval or disapproval of the revised Remedial Design. If the Department approves the revised Remedial Design, Respondent shall implement the Remedial Program in accordance with it.

If the Department disapproves the revised Remedial Design, the Respondent shall be in violation of this Order.

The approved Remedial Design shall be attached as Appendix "A" and incorporated into this Order.

V. Respondent shall implement the Remedial Program in accordance with the approved Remedial Design. Respondent must obtain written approval from the Department prior to deviating from the approved Remedial Design. During implementation of the Remedial Program, Respondent shall have on-Site a full-time representative who is qualified to inspect the work.

Within 30 days after completion of the Remedial Program, Respondent shall submit as-built drawings, a final engineering report, final operation, maintenance and monitoring report

AS-BUILT

reflecting all changes made during construction and a certification that the Remedial Program was completed in accordance with the approved Remedial Design, all by an individual licensed to practice professional engineering by the State of New York who may be an employee of the Respondent, or an individual or member of a firm which is authorized to offer engineering services in accordance with Article 145 of the New York State Education Law.

VI. After receipt of the as-built drawings, final engineering report and certification, the Department shall notify Respondent in writing whether it is satisfied that all construction activities have been completed in compliance with the approved Remedial Design.

If the Department concludes that any element of the Remedial Program fails to operate in accordance with the Remedial Design or otherwise fails to protect human health or the environment, the Department may require the Respondent to take whatever action is necessary to ensure that the Remedial Program operates in accordance with the Remedial Design or that the Remedial Program otherwise protects human health and the environment.

VII. Prior to its acceptance and approval of the professional engineer's certification that construction was completed in accordance with the approved Remedial Design, the Department may require the Respondent to modify the Remedial Design and Construction if the Department determines that such

modification is necessary due to:

(1) environmental conditions on-Site or off-Site which are related to the presence of hazardous wastes at the Site and were unknown to the Department at the time of the effective date of this Order, or

(2) information received, in whole or in part, after the effective date of this Order, where such unknown environmental conditions or information indicates that the Remedial Program is not protective of human health or the environment.

VIII. Respondent shall operate, maintain and monitor all elements of the Remedial Program for the period of years set forth in the approved Remedial Design, implement the contingency plan contained in the approved Remedial Design in the event any element of the Remedial Program fails after completion or otherwise fails to protect human health or the environment, and implement the health and safety plan contained in the approved Remedial Design after completion.

IX. 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 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 Consent Order, and shall submit these results in the status reports required under the Remedial Design.

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X. Respondent shall provide notice to the Department at least 10 working days in advance of any field activities to be conducted pursuant to this Order.

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

XII. Respondent shall permit any duly designated employee, consultant, contractor or agent of the Department or any State agency to enter upon the Site or areas in the vicinity of the Site which may be under the control of Respondent for purposes of inspection, sampling and testing and to assure Respondent's compliance with this Order. During implementation of the Remedial Program, 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 and job meetings.

XIII. 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 an act of God, war or riot. Respondent shall immediately notify the Department in writing when it obtains knowledge of any such condition and request an appropriate extension or modification of this Order.

XIV. The failure of the Respondent to comply with any term of this Order shall be a violation of this Order and the ECL.

XV. Nothing contained in this Order shall be construed as barring, diminishing, adjudicating or in any way affecting any

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of the Department's rights, which include, but are not limited to, the following:

- a. the right to bring any action or proceeding against anyone other than Respondent, its directors, officers, employees, servants, agents, successors and assigns;
- b. the right to enforce this order against Respondent, its directors, officers, employees, servants, agents, successors and assigns in the event that Respondent shall fail to satisfy any of the terms hereof;
- c. the right to bring any action or proceeding against Respondent, its 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 wastes or constituents at or from the Site or areas in the vicinity of the Site, and;
- d. the right to bring any action or proceeding against Respondent, its directors, officers, employees, servants, agents successors and assigns with respect to hazardous wastes that are present at the site or that have migrated from the site and present a significant threat to human health or the environment.

XVI. This Order shall not be construed to prohibit the Commissioner or his duly authorized representative from exercising any summary abatement powers.

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

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every name and description arising out of or resulting from the fulfillment or attempted fulfillment of this Order by Respondent, its directors, officers, employees, servants, agents, successors or assigns.

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

XIX. If Respondent desires that any provision of this Order be changed, it shall make timely written application signed by the Respondent to the Commissioner, setting forth reasonable grounds for the relief sought. A copy of such written application shall be delivered or mailed to the Department project manager for the Site.

XX. Within 30 days after receipt of an itemization of costs from the Department, Respondent shall pay to the Department a sum of money which shall represent reimbursement for the Department's expenses including, but not limited to, labor, overhead, travel, analytical costs and contractor costs incurred by the State of New York for negotiating this Order, reviewing and revising submittals made pursuant to this order, overseeing activities conducted pursuant to this Order, and collecting and analyzing samples.

Such payment shall be made by certified check payable to the New York State Department of Environmental Conservation for payment into the Hazardous Waste Remedial Fund established under Section 97-b of the State Finance Law. Payment shall be sent to the Director, Division of Hazardous Waste Remediation,

DRAFT

N.Y.S.D.E.C., 50 Wolf Road, Albany, New York 12233.

XXI. Within 30 days after the effective date of this Order, Respondent shall file a Declaration of Covenants and Restrictions with the Niagara County Clerk to give all parties who may acquire any interest in the Site notice of this Order.

XXII. Respondent shall implement a citizen participation program in coordination with and subject to the approval of the Department. The citizen participation program shall be consistent with the Department's publication entitled "New York State Inactive Hazardous Waste Site Citizen Participation Plan".

XXIII. In the event Respondent proposes to convey the whole or any part of its interest in the Site, Respondent shall, not fewer than 60 days prior to the proposed conveyance, notify the Department in writing of the identify of the transferee and of the nature and date of the proposed conveyance and shall notify the transferee in writing, with a copy to the Department, of the applicability of this order.

XXIV. All written communications required by this order shall be transmitted by United State Postal Service, by private courier service, or hand delivered as follows:

- A. Communication from Respondent shall be made as follows:
 - 1. Director, Division of Hazardous Waste Remediation
New York State Department of Environmental Conservation
50 Wolf Road
Albany, new York 12233

- SECRET
2. Director, Bureau of Environmental
Exposure Investigation
New York State Department of Health
2 University Place
Albany, New York 12203
 3. Regional Engineer
Region 9
New York State Department of
Environmental Conservation
600 Delaware Avenue
Buffalo, new York 14202-1073
 4. Division of Environmental Enforcement
New York State Department of
Environmental Conservation
600 Delaware Avenue
Buffalo, New York 14202-1073

B. Copies of work plans and reports shall be submitted

as follows:

1. _____ copies to the Director, Division of
Hazardous Waste Remediation
2. _____ copies to the Director, Bureau of
Environmental Exposure Investigation
3. _____ copy to Regional Engineer

C. Communication to be made from the Department to the

Respondent shall be made as follows:

XXV. Respondent, its officers, directors, agents, servants, employees, successors and assigns shall be bound by the terms of this Order.

XXVI. The terms hereof shall constitute the complete and entire Order between Respondent and the Department concerning the Site. No term, condition, understanding or agreement purporting to modify or vary the terms hereof 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 its obligations to obtain such formal approvals as may be required by this Order.

DATED: , New York
, 1991

EDWARD O. SULLIVAN
Deputy Commissioner
New York State Department of
Environmental Conservation

Speed Letter.

To M. DOSTER

From

M Desmond

Subject Carborundum Consent Order

-No 9 & 10 FOLD

MESSAGE

Attached find draft Consent
Order for Carborundum Site

Date

2/13/91

Signed

M. Desmond

REPLY

-No 9 FOLD

-No 10 FOLD

Date

Signed

Wilson Jones
44-902 3-PART PRINTED IN U.S.A.
Carbonless

RECIPIENT—RETAIN WHITE COPY, RETURN PINK COPY