

NEW YORK STATE 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 and  
Article 71, Title 27 of the  
Environmental Conservation Law by  
Revere Smelting & Refining Corporation,  
Respondent

ORDER  
ON  
CONSENT

INDEX #A3-0402-9911

WHEREAS,

1. The New York State Department of Environmental Conservation (the "Department") is responsible for the enforcement of Article 27, Titles 9 and 13 of the Environmental Conservation Law of the State of New York ("ECL"), entitled "Industrial Hazardous Waste Management" and "Inactive Hazardous Waste Disposal Sites," respectively. This Order is issued pursuant to the Department's authority under, *inter alia*, ECL Article 27, Titles 9 and 13 and ECL 3-0301.
2. Revere Smelting & Refining Corporation ("Revere Smelting" or "Respondent") is a corporation organized and existing under the laws of the State of Delaware. Since 1972, Revere Smelting has operated a nonferrous metal recycling facility, which engages in secondary lead smelting, on Ballard Road in the Town of Middletown, Orange County.
3. The Revere Smelting facility is subject to regulation as a hazardous waste treatment, storage and disposal facility pursuant to ECL Article 27, Title 9. Corrective action requirements have been imposed upon Revere Smelting under the terms of permit #3-3352-00145/00001-0 ("permit"), as modified by Order #C3-5288-11-98, issued pursuant to Article 27, Title 9.
4. The fifty-five acre parcel upon which the Revere Smelting facility is located (the "Site") has been identified and classified by the Department as an "inactive hazardous waste disposal site," as that term is defined at ECL 27-1301.2, that presents a significant threat to public health or the environment. The Site has been listed in the *Registry of Inactive Hazardous Waste Disposal Sites in New York State* pursuant to ECL 27-1305.4. as Site Number 3-36-053.
5. ECL 71-2705 provides that any person who fails to perform any duty imposed by ECL Article 27, Titles 9 and 13 or any rule or regulation promulgated pursuant thereto, or any term or condition of any certificate or permit issued pursuant thereto, or any final determination

File on eDocs? \_\_\_\_\_ yes  no \_\_\_\_\_  
Site Name Revere  
Site # 336053  
County Orange  
Town Walden  
Foilable \_\_\_\_\_ yes  no \_\_\_\_\_  
Please write the eDoc file  
name description Operatic Unit

or order of the Commissioner, shall be liable for civil, criminal and/or administrative sanctions. ECL 71-2727.3 provides that the Commissioner may issue, modify and revoke orders requiring corrective action, including corrective action beyond the facility boundary where necessary to protect human health and the environment, for all releases of hazardous waste or constituents from any solid waste management unit at any treatment, storage or disposal unit which is permitted under Article 27, Title 9. The Department also has the power, *inter alia*, to provide for the prevention and abatement of all water, land, and air pollution. *See, e.g.*, ECL 3-0301.1.i.

6. Pursuant to ECL 27-1313.3.a, whenever 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.” Any person under such an order pursuant to ECL 27-1313.3.a has a duty imposed by ECL Article 27, Title 13 to carry out the remedial plan committed to under order.

7. Respondent has demonstrated that it is financially unable to fully comply with the corrective action requirements imposed by permit 3-3352-00145/00001-0, as modified by Order #C3-5288-11-98, in a timely manner, or to fully fund the development and implementation of an inactive hazardous waste disposal site remedial program for the Site as required by ECL Article 27, Title 13.

8. In order to prioritize corrective action/remedial activities, the Department has divided the Site into four operable units: Operable Unit 1 is defined as all on-Site soil which is not within Operable Unit 4; Operable Unit 2 is defined as all on-Site groundwater; Operable Unit 3 is defined as off-Site environmental media, including but not be limited to groundwater, soils, adjacent wetlands, ecosystem and/or any environmental media impacted by on-Site activities; and Operable Unit 4 is defined as the Revere Smelting plant area. The Department has determined that it is in the public interest for the necessary investigatory and remedial work connected with Operable Unit 1 and Operable Unit 2 to be performed as soon as practicable using monies from the hazardous waste remedial fund established pursuant to State Finance Law 97-b or from any other source that may be authorized by law and available for this purpose.

9. Respondent, having waived its right to a hearing herein as provided by law, and having consented to the issuance and entry of this Order, agrees to be bound by its terms. Respondent consents to and agrees not to contest the authority or jurisdiction of the Department to issue or enforce this Order, and agrees not to contest the validity of this Order or its terms.

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

I. Respondent has already undertaken certain environmental investigations at the Site, including Operable Units 1, 2, 3, and 4, pursuant to the corrective action and closure

requirements of Respondent's permit. To the extent that additional environmental investigations, including a Remedial Investigation/Feasibility Study ("RI/FS") and/or the design and implementation of a remedial program are required at Operable Unit 3, Respondent shall conduct such work pursuant to an additional consent order to be issued by the Commissioner which shall set forth the specific requirements for Operable Unit 3 and require Respondent to pay the State's administrative costs. Operable Unit 4 shall be addressed by the corrective action and closure requirements of Respondent's permit.

II. The Department shall develop and implement an inactive hazardous waste disposal site remedial program for Operable Unit 1 and Operable Unit 2; Respondent shall reimburse the State of New York for all expenditures incurred in the development and implementation of such inactive hazardous waste disposal site remedial program which are not inconsistent with the National Contingency Plan (40 C.F.R. Part 300) (the "Costs") including, but not limited to, direct labor, fringe benefits, indirect costs, travel, analytical costs, contractor costs, and administrative expenses incurred by the State of New York for work related to the Site. Personal service costs shall be documented by reports of Direct Personal Service, which shall identify the employee name, title, biweekly salary, and time spent (in hours) on the project during the billing period, as identified by an assigned time and activity code. Approved agency fringe benefit and indirect cost rates shall be applied. Non-personal service costs shall be summarized by category of expense (e.g., supplies, materials, travel, contractual) and shall be documented by expenditure reports. Respondent shall pay to the Department, to the extent there are State Costs which have not been reimbursed by Respondent pursuant to this Order, the sum of one million dollars (\$1,000,000) per annum, commencing with a payment of one million dollars (\$1,000,000) due no later than January 15, 2002, and continuing with annual payments of one million dollars (\$1,000,000) each as follows: one million dollars (\$1,000,000) due no later than January 15, 2003; one million dollars (\$1,000,000) due no later than January 15, 2004; one million dollars (\$1,000,000) due no later than January 14, 2005; one million dollars (\$1,000,000) due no later than January 16, 2006; and one million dollars (\$1,000,000) due no later than January 15, 2007. In the event the State Costs exceed six million dollars (\$6,000,000) for Operable Unit 1, a payment equal to the full amount by which the State Costs exceed six million dollars (\$6,000,000) shall be due no later than January 15, 2008, so that Respondent's cumulative payments reimburse the Department in full for all State Costs incurred to investigate and remediate Operable Unit 1 and Operable Unit 2. Respondent's obligation to reimburse the Department pursuant to this paragraph shall be deemed fully satisfied once Respondent's cumulative payments are equal to the amount of the State Costs. Each payment shall be made by certified check payable to the Department of Environmental Conservation and shall be sent to Bureau of Program Management, Division of Environmental Remediation, New York State Department of Environmental Conservation, 50 Wolf Road, Albany, NY 12233-7010.

III. In the event that Respondent has in its possession or control any data, reports or other technical information which is relevant to the work to be performed at the Site which has not been provided to the Department, Respondent shall provide a copy of such data, reports or other technical information to the Department within 30 days of receipt of a request for same.

IV. A. Respondent may propose to implement one or more Interim Remedial Measures ("IRMs") for the Site. Respondent shall submit to the Department a work plan that includes a chronological description of the anticipated IRM activities together with a schedule for performance of those activities (an "IRM Work Plan"). Upon the Department's determination that the proposal is an appropriate IRM and upon the Department's approval of such work plan, the IRM Work Plan shall be incorporated into and become an enforceable part of this Order, and Respondent shall submit to the Department for its review and (as appropriate) approval, in accordance with the schedule contained in the Department-approved IRM Work Plan, detailed documents and specifications prepared, signed, and sealed by a professional engineer to implement the Department-approved IRM. Such documents shall include a health and safety plan, contingency plan, and (if the Department requires such) a citizen participation plan that incorporates appropriate activities outlined in the Department's publication entitled *Citizen Participation in New York's Hazardous Waste Site Remediation Program* dated June 1998, and any subsequent revisions thereto, and 6 NYCRR Part 375. Respondent shall then carry out such IRM in accordance with the requirements of the approved IRM Work Plan, detailed documents and specifications, and this Order. Respondent shall notify the Department of any significant difficulties that may be encountered in implementing the Department-approved work plan, detailed documents, or specifications and shall not modify any obligation unless first approved by the Department.

B. During implementation of all construction activities identified in the Department-approved IRM Work Plan, Respondent shall have on-Site a representative (either an employee, a consultant or a contractor) who is qualified to supervise the work done.

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

D. If the performance of the Department-approved IRM encompassed construction activities, the final engineering report also shall include a detailed post-remedial operation and maintenance plan ("IRM O&M Plan"); "as-built" drawings and a final engineering report (each including all changes made during construction); and a certification by a professional engineer that the IRM was implemented and all construction activities were completed in accordance with the Department-approved detailed documents and specifications and that all such activities were personally witnessed by him or her or by a person under his or her direct supervision. The IRM O&M Plan, "as built" drawings, final engineering report, and certification must be prepared, signed, and sealed by a professional engineer.

E. Respondent shall implement the IRM O&M Plan upon the Department's approval.

F. After receipt of the final engineering report and certification, the Department shall notify Respondent in writing whether the Department is satisfied that the IRM was completed in compliance with the Department-approved IRM Work Plan and design.

V. Respondent hereby consents to the entry upon the Site or areas in the vicinity of the Site which may be under the control of Respondent by any duly designated employee, consultant, contractor, or agent of the Department or the State ("State Representatives"). State representatives shall comply with Respondent's health and safety requirements applicable to the Ballard Road facility; in the event of a conflict between Respondent's Health and Safety requirements applicable to the Ballard Road facility and any other health and safety requirements applicable to the State Representatives, the State Representatives shall comply with the more protective requirement. Respondent agrees to cooperate fully with the Department in the implementation of all investigatory and remedial activities at the Site and further agrees not to interfere with such activities. In the event that Respondent becomes aware of any action or occurrence which causes or threatens a release of hazardous wastes, substances, pollutants, or contaminants at or from the Site or any area in the vicinity of the Site that constitutes an emergency situation or that may present an immediate threat to public health, welfare or the environment, Respondent shall immediately take all appropriate action to prevent, abate, or minimize such release or threat of release and shall immediately notify the Department.

VI. Respondent shall exercise due care at the Site with respect to any and all contamination that may be present and shall refrain from any actions that may either exacerbate Site conditions or interfere with any investigatory or remedial activities.

VII. A. All written communications required by this Agreement shall be transmitted by United States Postal Service, by private courier service, or hand delivered.

1. Communication from Respondent shall be sent to:

Kevin Carpenter, P. E.  
Division of Environmental Remediation  
New York State Department of Environmental Conservation  
50 Wolf Road  
Albany, New York 12233-7010  
Note: four copies (one unbound) of work plans are required to be sent.

G. Anders Carlson  
Director, Bureau of Environmental Exposure Investigation  
New York State Department of Health  
Flanigan Square  
547 River Street  
Troy, New York 12180-2216

Note: two copies of work plans are required to be sent, and

Deborah W. Christian, Esq.  
Division of Environmental Enforcement  
New York State Department of Environmental Conservation  
50 Wolf Road  
Albany, New York 12233-5500

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

Philip H. Gitlen, Esq.  
Whiteman Osterman & Hanna  
One Commerce Plaza  
Albany, New York 12260

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

VIII. Nothing contained in this Order shall be construed as barring, diminishing, adjudicating, or in any way affecting any of the Department's civil, criminal, or administrative rights or authorities, including, but not limited to, claims for natural resource damages. Nothing contained in this Order shall be construed as barring, diminishing, adjudicating, or in any way affecting any rights or claims of Respondent with respect to any person or entity that is not a party to this Order.

IX. Nothing contained in this Order shall be construed to prohibit the Commissioner or his duly authorized representative from exercising any summary abatement powers.

X. Nothing contained in this Order shall be construed to prohibit the Commissioner or his duly authorized representative from nominating the Site for listing on the National Priorities List or from otherwise requesting federal action in connection with the Site.

XI. Respondent shall indemnify and hold the Department, the State of New York, and their representatives and employees harmless for all claims, suits, actions, damages, and costs of every name and description arising out of or resulting from the fulfillment or attempted fulfillment of this Order by Respondent and/or any of its directors, officers, employees, servants, agents, successors, and assigns.

XII. Within 30 days after the effective date of this Order, Respondent shall file a Notice with the Orange County Clerk sufficient to give all parties who may acquire any interest in the Site notice of this Order and shall provide the Department with evidence of such filing. Such Notice may be terminated upon written notification from the Department that Respondent has satisfactorily fulfilled all obligations required by this Order. Further, in the event that the

Record of Decision for Operable Unit 1 and/or Operable Unit 2 requires institutional or engineering controls be placed upon such Operable Unit, Respondent shall record an instrument with the Orange County Clerk, to run with the land, that provides for such covenants and restrictions on the use of such Operable Unit.

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

XIV. This Order constitutes the entire agreement between the Department and Respondent concerning the remedial program for Operable Unit 1 and Operable Unit 2 and supersedes the requirements set forth in the corrective action module of Respondent's permit, as modified, in so far as such requirements pertain to Operable Unit 1 and Operable Unit 2.

XV. No term, condition, understanding, or agreement purporting to modify or vary any term of this Order shall be binding unless made in writing and subscribed by the party to be bound.

XVI. If Respondent desires that any provision of this Order be changed, it shall make timely written application to the Commissioner setting forth reasonable grounds for the relief sought, with copies to Mr. Carpenter and Ms. Christian.

XVII. Respondent's failure to comply with any term of this Order shall be a violation of this Order and the ECL.

XVIII. In the event that Respondent determines that, due to improved financial conditions, it will be able to design and implement the remedy for Operable Unit 1 and/or Operable Unit 2, Respondent may notify the Department of such determination within 30 days after issuance of the Record of Decision ("ROD") for such operable unit and Respondent shall design and implement the remedy selected for such operable unit in the ROD pursuant to a consent order to be issued by the Commissioner.

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

DATED: Albany, New York

September 28, 2000

JOHN P. CAHILL

Commissioner

New York State Department of  
Environmental Conservation

BY: Michael J. O'Toole, Jr.

Michael J. O'Toole, Jr.

James J. And...

