

1-52-004  
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STATE OF NEW YORK: DEPARTMENT OF ENVIRONMENTAL CONSERVATION

RECEIVED

In the Matter of the  
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  
of the State of New York by

APR - 4 1997

Bureau of Eastern  
Remedial Action

ORDER  
ON  
CONSENT

INDEX # W1-0705-94-08

Mairoll, Inc.,  
Respondent.

Old Sump  
Site Code #1-52-004

WHEREAS,

1. The New York State Department of Environmental Conservation (the "Department") is responsible for enforcement of Article 27, Title 13 of the Environmental Conservation Law of the State of New York ("ECL"), entitled "Inactive Hazardous Waste Disposal Sites." This Order is issued pursuant to the Department's authority under, *inter alia*, ECL Article 27, Title 13, ECL Article 3, Title 3, and ECL Article 27, Title 7.

2. Mairoll, Inc. ("Respondent"), is a corporation organized and existing under the laws of the State of Delaware and is the corporate successor to Fairchild Industries, Inc. Respondent owns property located on Route 110 (Broadway) in the Town of Babylon, County of Suffolk, State of New York also known as the "Old Sump" or the "Old Recharge Basin" (hereinafter referred to as "the Site"). A map of the Site is attached to this Order as Appendix A.

3. The Department has determined that the Site is an inactive hazardous waste disposal site, as that term is defined at ECL 27-1301.2. The Site has been listed in the Registry of Inactive Hazardous Waste Disposal Sites in New York State as Site Number 1-52-004. The Department has classified the Site as a Classification "2" pursuant to ECL 27-1305.4.b.

4. A. Pursuant to ECL 27-1313.3.a, whenever the Commissioner of Environmental Conservation (the "Commissioner") "finds that hazardous wastes at an inactive hazardous waste disposal site constitute a significant threat to the environment, he may order the owner of such site and/or any person responsible for the disposal of hazardous wastes at such site (i) to develop an inactive hazardous waste disposal site remedial program, subject to the approval of the department, at such site, and (ii) to implement such program within reasonable time limits specified in the order."

B. Any person under order pursuant to ECL 27-1313.3.a has a duty imposed by ECL Article 27, Title 13 to carry out the remedial program committed to under order. ECL 71-2705 provides that any person who fails to perform any duty imposed by ECL Article 27, Title 13 shall be liable for civil, administrative and/or criminal sanctions.

C. The Department also has the power, *inter alia*, to provide for the prevention and abatement of all water, land, and air pollution. See, e.g., ECL 3-0301.1.i.

5. Following a period of public comment, the Department selected a final remedial alternative for the Site in a Record of Decision ("ROD"). The ROD, attached to this Order as Appendix B is incorporated as an enforceable part of this Order.

6. The Department and Respondent agree that the goals of this Order are for Respondent to (i) implement, in accordance with the ROD, an inactive hazardous waste disposal site remedial program ("Remedial Program") for the Site that shall include design and implementation, and operation, maintenance and monitoring of the selected remedial alternative; and (ii) reimburse the State's administrative costs as described herein. Respondent may, however, exceed the requirements of the selected remedial alternative in the ROD by electing to fill in the recharge basin (hereinafter "the Recharge Basin") located on the Site under the provisions of 6 NYCRR 360-8.6(b) and meeting the requirements set forth in Subparagraphs I.1.C and I.1.D of this Order.

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

8. Notwithstanding Respondent's agreement to carry out the terms of this Order, Respondent does not admit or acknowledge any liability, fault or wrongdoing or violation of law, regulation or permit of any kind whatsoever in any way related to the Site.

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

I. Remedial Program

A. Respondent shall implement the remedial alternative for the Site selected by the Department in the ROD (the

"Remedial Program") as provided in this Order. Respondent agrees that the volatile organic compound plume found in the southwest corner of the Republic Airport described in the April 1995 Main Plant Site Draft Remedial Investigation Report prepared by Eder Associates shall be addressed as part of the Fairchild Industries, Inc. Main Plant, Site # 1-52-130 Record of Decision.

B. The Remedial Program selected in the ROD for the Site as described in Subparagraphs I.B.1 through I.B.5 *infra*. shall be implemented by Respondent if Respondent does not elect to fill the Recharge Basin under Subparagraph I.C. of this Order or if Respondents elects to fill the Recharge Basin but fails to complete the work. The Remedial Program shall include the following:

1. Within 30 days after the effective date of this Order, if Respondent does not elect to fill the Recharge Basin or if Respondents elects to fill the Recharge Basin pursuant to Subparagraph I.C of this Order, but fails to complete the work, Respondent shall place deed restrictions on the Site prohibiting access to and any new use of the Site without the Department's written approval. If the Recharge Basin is filled pursuant to this Order, said deed restrictions may be removed.

2. Within 30 days after the effective date of this Order, if Respondent does not elect to fill the Recharge Basin or if Respondents elects to fill the Recharge Basin pursuant to Subparagraph I.C of this Order, but fails to complete the work, Respondent shall inspect, locate, and repair any damage to the fence on the property line which is currently surrounding the Site. Respondent shall ensure that such fence is effective in preventing trespassers from entering onto the Site. If after such inspection the fence is deemed to be ineffective in preventing trespasser entry, Respondent shall, within 30 days of such inspection, submit to the Department plans for replacement or upgrade of the fence. Within 20 days of the Department's approval of such plans, Respondent shall install the appropriate replacement or upgrade.

3. Within 30 days after the effective date of this Order, if Respondent does not elect to fill the Recharge Basin or if Respondents elects to fill the Recharge Basin pursuant to Subparagraph I.C of this Order, but fails to complete the work, Respondent shall post the Site in a highly visible manner and with a sufficient number of signs so as to be seen from any approach to the site. The legend shall be legible from at least 25 feet, shall be written in English and Spanish and shall read: "HAZARDOUS MATERIALS, DANGER, UNAUTHORIZED PERSONNEL KEEP OUT, NO TRESPASSING, NO SWIMMING, NO FISHING."

4. If Respondent does not elect to fill the

Recharge Basin or if Respondent elects to fill the Recharge Basin pursuant to Subparagraph I.C, but fails to complete the work, Respondent shall inspect every year on or about March 1, May 1, June 1, July 1, August 1, September 1, and December 1 to determine if repairs, replacement, or upgrades to the fence and to the signs are needed. The purposes of these inspections are to ensure the continuing effectiveness of the fence in preventing trespassers from entering onto the Site and to ensure the continuing adequacy of the posting. Such inspections may be conducted by Respondent's employee or contractor. If repairs are needed, they shall be made within 15 days by an individual competent in the repair of fences and signs.

5. If as a result of the regular inspections, Respondent determines that the fence or signs must be replaced or upgraded, Respondent shall, within 30 days of such inspection, submit to the Department plans for replacement or upgrade of the fence or signs. Within 20 days of the Department's approval of such plans, Respondent shall install the appropriate replacement or upgrade. Additionally, the Department may determine, based on its own inspections, that the fence or signs must be replaced or upgraded. The Department shall notify Respondent in writing of such determination. Respondent shall, within 30 days of receipt of Department notification, submit to the Department plans for replacement or upgrade of the fence or signs. Within 20 days of the Department's approval of such plans, Respondent shall install the appropriate replacement or upgrade.

#### C. Election to Fill Recharge Basin

Respondent may exceed the requirements of the Remedial Program selected in the ROD by electing prior to April 11, 1997 to fill (restore to grade as per the Department-approved grading plan) the Recharge Basin with clean fill as limited by 6 NYCRR § 360-8.6(b). Respondent shall notify the Department in writing if Respondent elects to fill the Recharge Basin. Respondent has submitted a Demolition and Filling Work Plan ("D&F Work Plan") which includes a grading plan to the Department. The D&F Work Plan provides:

(1) that the Fairchild Main Plant<sup>1</sup>, will be the

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<sup>1</sup> For purposes of this Order, "the Fairchild Main Plant" will be defined as including all those areas depicted as phase 1 through 5 on Sheet No. 1, dated 7-29-96, by Savik & Murray Consulting Engineers entitled "Source Material" which is part of the Demolition and Filling Work Plan, August 1996.

source of such material (other sources of material may be used only with prior written approval from the Department);

(2) that all proper manifesting for the transport and disposal of such material will be observed;

(3) that all necessary approvals, if any, from the Town of Babylon to transport such material will be obtained;

(4) that the requirements of 6 NYCRR 360-8.6(b)<sup>2</sup> shall be met;

(5) that all buildings on the Fairchild Main Plant

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<sup>2</sup>. 6 NYCRR 360-8.6(b) states:

*Exemptions.* A site is exempt from regulation under this Part, regardless of its size or location provided that no less than 30 days before starting site construction, the property owner sends a letter to the regional office of the department, and a copy to of the letter to the clerk of the town in which the project is located. The letter must state: the intention of using one or more of the types of solid waste described in this subdivision as grade adjustment fill; the exact nature, source and volume of that waste; the time period over which the activity will occur; the name of the contractor responsible for the work; the areal extent of the proposed fill; the finished grades of the fill area; the exact location of the project; and the intended future use of the filled area including a time schedule for implementing such use; and it does not receive for disposal any solid waste other than recognizable concrete and other masonry waste (including steel and fiberglass reinforcing rods that are embedded in concrete), asphalt pavement, sand, dirt, soil, brick, stone and glass that is not contaminated with spills of a petroleum product (contamination does not include asphalt or concrete pavement that has come into contact with petroleum products through normal vehicle use of the roadway), hazardous waste or industrial waste, and that is not commingled with any other solid waste that is placed for the sole purpose of land reclamation, such as grade adjustment before construction of a building, parking area, or roadway; and either: (1) such solid waste is generated and placed as fill on the same property; or (2) such solid waste being placed as fill is generated off-site and no fee or other form of consideration is required for the privilege of using the site for disposal purposes.

which will be demolished and all activities which were conducted in the identified building shall be listed, and that all materials not meeting the definition of clean fill as limited by 6 NYCRR 360-8.6(b) shall be removed prior to demolition, if possible, or separated out during demolition;

(6) that any such material suspected of being contaminated shall be sampled and analyzed for the presence of hazardous waste, and that any material found to be contaminated or not meeting the definition of clean fill as limited by 6 NYCRR 360-8.6(b) shall not be used as fill;

(7) a detailed description of the method of fill placement and compaction;

(8) a security plan which shall be implemented to provide security during off-hours on the Site and on the Fairchild Main Plant;

(9) a grading plan and a description of the availability of a sufficient quantity of material from the Fairchild Main Plant acceptable to the Department necessary to bring the Site to grade as per the grading plan (if there is insufficient material from the Fairchild Main Plant, Respondent will submit a description of material from other sources for the Department's approval);

(10) a demonstration of the availability of sufficient quantity of clean sand and gravel or other clean material acceptable to the Department to fill to five feet above the groundwater table to maintain groundwater separation;

(11) an Environmental Monitor as detailed in Subparagraph I.D; and

(12) a schedule for the demolition and filling.

Respondent shall be allowed to dispose of clean fill material as limited by 6 NYCRR 360-8.6(b), in accordance with the D&F Work Plan which shall be approved concurrently with the execution of this Order by the Commissioner or his designee. The approved D&F Work Plan shall be attached and incorporated into this Order as Appendix C.

#### D. On-site Environmental Monitor

1. An account to fund the Environmental Monitor(s) shall be established with the Department as follows:

(a) The sum of \$37,500.00 shall be submitted to the Department upon issuance of this Order. This sum is based on an estimate of annual Environmental Monitor program costs and is subject to quarterly revision. Subsequent quarterly payments shall be made for the duration of this Order to maintain an account balance sufficient to meet the next nine months' anticipated expenses. Quarterly payments shall be made for the duration of this Order in accordance with the following provisions. The maximum annual cost for the Environmental Monitor and associated costs covered by this account shall not exceed \$90,000.00.

(b) Costs that are allocated to this project which are to be covered by this account include:

(1) Direct personnel service costs and fringe benefits of the Environmental Monitor and full-time supervisor, including the costs of replacement personnel for the person regularly assigned to these positions.

(2) Direct non-personal service costs, including without being limited to purchase or lease costs of a vehicle if necessary and its full operating costs, and any appropriate chemical sampling and analysis.

(3) Inflation increases and negotiated salary increase.

(4) Indirect support or overhead costs at the Department's Federally-approved Indirect Cost Rate.

Upon written request by Respondent, the Department shall make available to Respondent any records (e.g., vouchers, time records) relating to such Monitor's costs, consistent with applicable law.

(d) As noted, the Department may revise the required payment on a quarterly basis to include all costs of monitoring to the Department. The quarterly revision may take into account factors such as inflation, salary increases, accrued interest to be applied to the balance, changes in operating hours and procedures and the need for additional On-site Environmental Monitors and supervision of such Environmental Monitors by full-time Environmental Monitor supervisors. Upon written request by the Respondent, the Department shall provide Respondent with a written explanation of the basis for any modification.

(e) Within 30 days of written notice by the Department that a payment is due, payment shall be forwarded to the Department. Payment shall be sent to:

New York State Department of Environmental  
Conservation  
50 Wolf Road - Room 593  
Albany, NY 12233-1510  
ATTENTION: Director of Environmental Monitors

Payments are to be in advance of the period in which they will be expended.

(f) Upon termination of this Order and payment of any outstanding costs, the unexpended balance, including interest, will be returned to the Respondent.

(g) Failure to make the required payment shall be a violation of this Order. The Department reserves all rights to take appropriate action to enforce the above payment provisions.

(h) The Environmental Monitor shall, when present at any Respondent facility, abide by all of the Respondent's health and safety and operational requirements and policies; provided, however, that this Subparagraph shall not be construed as limiting the Environmental Monitors' powers as otherwise provided for by law and shall not result in the Environmental Monitor being less protected than the Environmental Monitor would be if he or she were to abide by State and Federal health and safety requirements.

(i) The Respondent shall furnish to the Environmental Monitor a current site policy and procedures manual for health and safety issues. Within ten days of any revision to the health and safety plan, the Respondent shall notify the Department, in writing, of such modification.

2. Respondent shall have an Environmental Monitor present during demolition of all building which are anticipated to constitute part of the clean fill as described *supra*. Respondent may start the demolition of buildings on the Fairchild Main Plant prior to its written notification to the Department of its election to fill the basin, provided however, that Respondent provides written notification to the Department of its intent to start demolition, establishes an account to fund an Environmental Monitor, follows the procedures for demolition set forth in the Department-approved Demolition and Filling Work Plan, and provides off-hours security for the Site and the Fairchild Main Plant. If after April 11, 1997, Respondent does not elect to fill the basin, the need for an Environmental Monitor will cease and after payment of any outstanding costs, the unexpended balance, including interest, will be returned to the Respondent.



## II. Inspection Reports

In the event that Respondent elects not to fill the Recharge Basin, Respondent shall submit to the parties identified in Subparagraph XI.B written inspection reports no later than 10 days following the inspection dates stated in Subparagraphs I.B.2 and I.B.4. that:

A. describe the current condition of the fence and signs;

B. describe the repairs, upgrades and/or replacements which are needed;

C. include the completion date of repairs, upgrades and/or replacements undertaken after the previous inspection; and

D. include a notarized certification that on the date of inspection the fence and signs were in a condition as to be effective in preventing trespassers from entering onto the Site.

These inspection reports will not be "submittals" under Paragraph III.

## III. Review of Submittals

A. 1. The Department shall review each of the submittals Respondent makes pursuant to this Order to determine whether it was prepared, and whether the work done to generate the data and other information in the submittal was done, in accordance with this Order and generally accepted technical and scientific principles. The Department shall notify Respondent in writing of its approval or disapproval of the submittal. All Department-approved submittals shall be incorporated into and become an enforceable part of this Order.

2. a. If the Department disapproves a submittal, it shall so notify Respondent in writing and shall specify the reasons for its disapproval. Within 20 days after receiving written notice that Respondent's submittal has been disapproved, Respondent shall make a revised submittal to the Department that addresses and resolves all of the Department's stated reasons for disapproving the first submittal.

b. After receipt of the revised submittal, the Department shall notify Respondent in writing of its approval or disapproval. If the Department disapproves the revised submittal, Respondent shall be in violation of this Order, unless Respondent requests an opportunity to respond to

the Department's objections pursuant to the dispute resolution procedure, Paragraph V, and the Department may take any action or pursue whatever rights it has pursuant to any provision of statutory or common law. If the Department approves the revised submittal, it shall be incorporated into and become an enforceable part of this Order.

B. Subject to the dispute resolution procedure in Paragraph V, Respondent shall modify and/or amplify and expand a submittal upon the Department's direction to do so 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.

#### IV. Compliance

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

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

<u>Period of Non-Compliance</u>	<u>Penalty Per Day</u>
First through 15th day	\$ 500
16th through 30th day	\$ 1,000
31st day and thereafter	\$ 1,500

C. If Respondent elects to fill the Recharge Basin, Respondent's failure to comply with the clean fill

requirements as limited by 6 NYCRR 360-8.6(b) constitutes a violation of this Order and the ECL.

D. In the event that Respondent elects to fill the Recharge Basin, but fails to complete the work:

1. Respondent shall immediately implement Subparagraphs I.B.1 through I.B.5 of this Order; and

2. The Department may elect to issue a Notice of Violation. Respondent shall be in violation of this Order unless, within 20 days of receipt of the Department's notice of violation, Respondent serves on the Department a request for an appointment of an Administrative Law Judge ("ALJ"), and a written statement of the reasons why Respondent is unable to complete the filling of the Recharge Basin, and factual data, analysis or opinion supporting its position, and all supporting documentation on which Respondents relies (hereinafter called the "Statement of Position"). The Department shall serve its Statement of Position, including supporting documentation no later than 20 business days after receipt of the Respondent's Statement of Position. Respondent shall have 15 business days after receipt of the Department's Statement of Position, and in the event Respondent serves such a reply, the Department shall have 15 business days after receipt of Respondent's reply to serve upon Respondent the Department's reply to the Respondent's reply to the Department's Statement of Position.

The Department shall maintain an administrative record of any dispute under this Subparagraph. The record shall include the Statement of Position of each party served pursuant to the preceding Subparagraph, and any relevant information. The record shall be available for review of all parties and the public.

In a review by the ALJ of the violation alleged by the Department under this Subparagraph, the Respondent shall have the burden of proving that the Department's position should not prevail.

Upon review of the administrative record as developed pursuant to this Paragraph, the ALJ shall issue a decision and order resolving the dispute. If the ALJ determines that Respondent is in violation of the Order, the ALJ may order Respondent to complete the work, and/or may assess penalties up to \$250.00 per day, with a maximum total penalty of no more than \$25,000.00.

#### V. Dispute Resolution for Submittals

If the Department disapproves a revised submittal or if

Respondent fails to modify or expand a submittal at the Department's direction, Respondent shall be in violation of this Order unless, within 10 days of receipt of the Department's notice of disapproval or notice to modify or expand, Respondent serves on the Department a request for an appointment of an Administrative Law Judge ("ALJ"), and a written statement of the issues in dispute, the relevant facts upon which the dispute is based, and factual data, analysis or opinion supporting its position, and all supporting documentation on which Respondent relies (hereinafter called the "Statement of Position"). The Department shall serve its Statement of Position, including supporting documentation no later than ten business (10) days after receipt of Respondent's Statement of Position. Respondent shall have five (5) business days after receipt of the Department's Statement of Position within which to serve upon the Department a reply to the Department's Statement of Position, and in the event Respondent serves such a reply, the Department shall have five (5) business days after receipt of Respondent's reply to the Department's Statement of Position within which to serve upon Respondent the Department's reply to Respondent's reply to the Department's Statement of Position. In the event that the periods for exchange of Statements of Position and replies may cause a delay in the work being performed under this Order, the time periods may be shortened upon and in accordance with notice by the Department as agreed to by Respondent.

The Department shall maintain an administrative record of any dispute under this Paragraph. The record shall include the Statement of Position of each party served pursuant to the preceding Subparagraph, and any relevant information. The record shall be available for review of all parties and the public.

Upon review of the administrative record as developed pursuant to this Paragraph, the ALJ shall issue a final decision and order resolving the dispute. Respondent shall revise the submittal in accordance with the Department's specific comments, as may be modified by the ALJ and except for those which have been withdrawn by the ALJ, and shall submit a revised submittal. The period of time within which the submittal must be revised as specified by the Department in its notice of disapproval shall control unless the ALJ revises the time frame in the ALJ's final decision and order resolving the dispute.

After receipt of the revised submittal, the Department shall notify 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 may be modified by the ALJ, and the Department disapproves the revised submittal for this reason, Respondent shall be in violation of this Order and the ECL.

In review by the ALJ of any dispute pursued under this Paragraph, Respondent shall have the burden of proving that there is no rational basis for the Department's position.

The invocation of the procedures stated in this Paragraph shall not extend, postpone or modify Respondent's obligations under this Order with respect to any disputed items, unless and until the Department agrees or a court determines otherwise. The invocation of the procedures stated in this Paragraph shall constitute an election of remedies by Respondent, and such election of this remedy shall constitute a waiver of any and all other remedies which may otherwise be available to Respondent regarding the issue in dispute.

With respect to the final determination of the ALJ, Respondent shall have those rights granted pursuant to Article 78 of the Civil Practice Law and Rules of New York (CPLR), provided that a Petition is filed within ten (10) business days of receipt of the final decision and order issued by the ALJ.

The invocation of the procedures stated in this Paragraph shall not extend, postpone or modify Respondent's obligations under this Order with respect to any disputed items, unless and until the Department agrees or a court determines otherwise.

#### VI. Force Majeure

Respondent shall not suffer any penalty under this Order or be subject to any proceeding or action if it cannot comply with any requirement hereof because of war, riot, or an unforeseeable disaster arising exclusively from natural causes which the exercise of ordinary human prudence could not have prevented, or any other event arising exclusively from causes beyond Respondent's control. Respondent shall, within five days of when it obtains knowledge of any such condition, notify the Department in writing. Respondent shall include in such notice the measures taken and to be taken by Respondent to prevent or minimize any delays and shall request an appropriate extension or modification of this Order. Failure to give such notice within such five-day period constitutes a waiver of any claim that a delay is not subject to penalties. Respondent shall have the burden of proving that an event is a defense to compliance with this Order pursuant to Paragraph VI.

#### VII. Entry upon Site

Respondent hereby consents to the entry upon the Site or areas in the vicinity of the Site which may be under the control of Respondent by any duly designated employee, consultant, contractor, or agent of the Department or any State agency for purposes of inspection, sampling, and testing and to ensure Respondent's compliance with this Order. During

Remedial Construction, Respondent shall provide the Department with access to a telephone, and shall permit the Department full access to all records relating to matters addressed by this Order and job meetings.

VIII. Payment of State Costs

Within 30 days after receipt of an itemized invoice from the Department, Respondent shall pay to the Department a sum of money which shall represent reimbursement for the State's expenses including, but not limited to, direct labor, fringe benefits, indirect costs, travel, analytical costs, and contractor costs incurred by the State of New York for work related to the Site from June 21, 1996 to the effective date of this Order, as well as for reviewing and revising submittals made pursuant to this Order, overseeing activities conducted pursuant to this Order, collecting and analyzing samples, and administrative costs associated with this Order. Such payment shall be made by certified check payable to the Department of Environmental Conservation and shall be sent to:

Bureau of Program Management  
Division of Environmental Remediation  
New York State Department of Environmental Conservation  
50 Wolf Road  
Albany, NY 12233-7010

Personal service costs shall be documented by reports of Direct Personal Service, which shall identify the employee name, title, biweekly salary, and time spent (in hours) on the project during the billing period, as identified by an assigned time and activity code. Approved agency fringe benefit and indirect cost rates shall be applied. Non-personal service costs shall be summarized by category of expense (e.g., supplies, materials, travel, contractual) and shall be documented by expenditure reports. The costs, excluding environmental monitor costs, under this Order for which Respondent is responsible shall not exceed a total of \$10,000. Environmental monitor costs are payable under Subparagraph I.D.

IX. Department Reservation of Rights

A. Nothing contained in this Order shall be construed as barring, diminishing, adjudicating, or in any way affecting any of the Department's civil, criminal, or administrative rights or authorities.

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

X. Indemnification

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

XI. Public Notice

A. Within 30 days after the effective date of this Order, Respondent shall file a Declaration of Covenants and Restrictions with the Clerk of the County of Suffolk to give all parties who may acquire any interest in the Site notice of this Order. This Declaration of Covenants and Restrictions may be removed from the records of the Clerk of Suffolk County if the Recharge Basin is filled in accordance with this Order thereby eliminating the need for institutional controls.

B. If Respondent proposes to convey the whole or any part of Respondent's 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. Upon completion of the filling of the Recharge Basin in accordance with this Order no notice is required.

XII. Communications

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

Communication from Respondent shall be sent to the Department's attorney:

Rosalie K. Rusinko, Esq.  
New York State Department of  
Environmental Conservation  
Division of Environmental Enforcement  
200 White Plains Road - 5th Floor  
Tarrytown, New York 10591

with a copies to:

Susan D. McCormick, P.E.  
Chief, Remedial Section B  
Bureau of Eastern Remedial Action

New York State Department of  
Environmental Conservation  
50 Wolf Road - Room 242  
Albany, New York 12233-7010

Tony Cava, P.E.  
Regional Solid Waste Engineer, Region 1  
New York State Department of  
Environmental Conservation  
Loop Road, Building 40  
Stony Brook, NY 11790-2356

B. Copies of reports shall be submitted as follows:

1. Michael J. O'Toole, Jr.  
Director, Division of Environmental Remediation  
New York State Department of Environmental  
Conservation  
50 Wolf Road  
Albany, New York 12233-7010
2. G. Anders Carlson  
Director, Bureau of Environmental  
Exposure Investigation  
New York State Department of Health  
2 University Place  
Albany, New York 12203
3. Susan D. McCormick, P.E.  
Chief, Remedial Section B  
Bureau of Eastern Remedial Action  
New York State Department of  
Environmental Conservation  
50 Wolf Road - Room 222  
Albany, New York 12233-7010
4. Tony Cava, P.E.  
Regional Solid Waste Engineer, Region 1  
New York State Department of  
Environmental Conservation  
Loop Road, Building 40  
Stony Brook, NY 11790-2356
5. Rosalie K. Rusinko, Esq.  
New York State Department of  
Environmental Conservation  
Division of Environmental Enforcement  
200 White Plains Road - 5th Floor  
Tarrytown, New York 10591



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

B. Michael Hodge  
Assistant General Counsel  
The Fairchild Corporation  
300 West Service Road  
Chantilly, Virginia 22021

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

## XII. Miscellaneous

A. Respondent shall retain professional consultants, contractors and/or individuals specializing in quality assurance/quality control acceptable to the Department to perform the respective inspection and maintenance obligations required by this Order. The experience, capabilities, and qualifications of the firm and/or individuals selected by Respondent shall be submitted to the Department within 10 days after the effective date of this Order. The Department's approval of the firms or individuals shall be obtained before the start of any activities for which Respondent and such firms or individuals will be responsible. The responsibility for the performance of the professionals retained by Respondent shall rest solely with Respondent.

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

C. Respondent shall obtain all permits, easements, rights-of-way, rights-of-entry, approvals, or authorizations necessary to perform Respondent's obligations under this Order. However, Respondent is exempt from the requirement to obtain any permit issuable by the Department for an activity satisfying the criteria set out in 6 NYCRR 375-1.7(b).

D. Respondent and Respondent's officers, directors, agents, servants, employees, successors, and assigns shall be bound by this Order. Any change in ownership or corporate status of Respondent including, but not limited to, any transfer of assets or real or personal property shall in no way alter Respondent's responsibilities under this Order. Respondent's officers, directors, employees, servants, and agents shall be obliged to comply with the relevant provisions of this Order in the performance of their designated duties on behalf of Respondent.

E. Respondent shall provide a copy of this Order to

each contractor hired to perform work required by this Order and to each person representing Respondent with respect to the Site and shall condition all contracts entered into in order to carry out the obligations identified in this Order upon performance in conformity with the terms of this Order. Respondent or Respondent's contractors shall provide written notice of this Order to all subcontractors hired to perform any portion of the work required by this Order. Respondent shall nonetheless be responsible for ensuring that Respondent's contractors and subcontractors perform the work in satisfaction of the requirements of this Order.

F. All references to "days" in this Order are to calendar days unless otherwise specified.

G. The Paragraph headings set forth in this Order are included for convenience of reference only and shall be disregarded in the construction and interpretation of any of the provisions of this Order.

H. 1. The terms of this Order constitute the complete and entire Order concerning the Site's remediation as an inactive hazardous waste disposal site. No term, condition, understanding, or agreement purporting to modify or vary any term of this Order shall be binding unless made in writing and subscribed by the party to be bound. No informal advice, guidance, suggestion, or comment by the Department regarding any report, proposal, plan, specification, schedule, or any other submittal shall be construed as relieving Respondent of Respondent's obligation to obtain such formal approvals as may be required by this Order.

2. If Respondent desires that any provision of this Order be changed, Respondent shall make timely written application, signed by Respondent, to the Commissioner setting forth reasonable grounds for the relief sought. Copies of such written application shall be delivered or mailed to Rosalie K. Rusinko, Esq. and to Susan D. McCormick, P.E.

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

J. If Respondent does not elect to fill the Recharge Basin or if Respondent elects to fill the Recharge Basin but fails to complete the work, Respondent shall remove from the Main Plant all demolition debris stockpiled within six months of March 31, 1997 and shall remove subsequent demolition debris within 120 days of demolition.

K. This Order shall remain in full force and effect after the Site is delisted from the New York State Registry of Inactive Hazardous Waste Sites.

DATED:

2/31/97

JOHN P. CAHILL  
Acting Commissioner  
New York State Department  
of Environmental Conservation

By:

  
Michael J. O'Toole, Jr.

CONSENT BY RESPONDENT

Mairoll, Inc.

Respondent hereby consents to the issuing and entering of this Order, waives Respondent's right to a hearing herein as provided by law, and agrees to be bound by this Order.

BY: Donald E. Miller

Title: Vice President

Date: March 10, 1997

STATE OF Virginia )  
 ) s.s.:  
COUNTY OF Loudoun )

On this 10th day of March, 1997,  
before me personally came Donald E. Miller,  
to me known, who being duly sworn, did depose and say that he  
resides in Potomac, Maryland;  
that he is the Vice President of  
Mairoll, Inc., 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 Board of Directors of said corporation and  
that he signed his name thereto by like order.

Cheryl B. Miller  
Notary Public

My commission expires 10/31/98.

