

STATE OF NEW YORK: DEPARTMENT OF ENVIRONMENTAL CONSERVATION

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In the Matter of a Field
Investigation to Identify Any
Threat to the Environment Caused
by the Disposal of Industrial
and Hazardous Wastes by

ORDER
ON
CONSENT

Index #

ASTRO ELECTROPLATING, INC.

Respondent

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WHEREAS,

1. The New York State Department of Environmental Conservation (the "Department") is responsible for the enforcement of Article 27, Title 13, of the Environmental Conservation Law of the State of New York (the "ECL"), entitled "Inactive Hazardous Waste Disposal Sites".

2. Astro Electroplating, Inc., the "Respondent", owns and operates an electroplating facility in Suffolk County, New York.

3. Respondent leases property at 170 Central Avenue, Farmingdale, Town of Babylon, County of Suffolk, State of New York (the "Site"). A map of the Site is attached hereto and is hereby incorporated into this Order as Appendix "A".

4. Investigations at the Site indicate Respondent disposed of certain hazardous and industrial wastes at the site from 1977 to 1987.

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

6. The Department alleges that the hazardous and industrial wastes, hazardous waste constituents, and toxic degradation products thereof at the Site constitute a significant threat to the environment.

7. 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."

8. The Department and Respondent acknowledge that the goals of this Order shall be that Respondent shall develop and implement a field investigation program to:

- (i) determine the nature of the wastes and the areal extent and vertical distribution of the wastes disposed of at the Site;
- (ii) identify any releases or migration of hazardous waste, as that term is defined in ECL 27-1301(1),

- and/or industrial waste, from the Site to other on-Site and off-Site areas; and
- (iii) evaluate the on-Site and off-Site impacts of such migration of the industrial wastes released by Respondent upon the environment.

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 provisions, terms and conditions hereof.

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

1. All investigations, proposals, reports, plans, remedial programs, and supplements and revisions thereto required by this Order shall address both on-Site and off-Site contamination caused by the disposal of hazardous and industrial wastes at and in the vicinity of the Site, and shall be prepared, designed and executed in accordance with Requisite Technology. As used in this Order, Requisite Technology means engineering, scientific and construction principles and practices subject to the Department's approval, which (a) are technologically feasible, and (b) will most effectively identify, mitigate and eliminate any present or potential future threat to the environment posed by the disposal of hazardous and industrial wastes at and in the vicinity of the Site by the Respondent. This section shall be considered complied with upon approval of the report by the Department.

The failure of Respondent to submit or undertake a proposal, report, field investigation, or any supplement or revision thereof, which is in accordance with Requisite Technology shall constitute a violation of this Order.

II. As used herein, "hazardous wastes" shall mean hazardous, any hazardous constituents thereof, and any toxic degradation products of such wastes and of such constituents.

III. Respondent shall undertake a field investigation of the Site and of areas off-Site affected by the disposal of hazardous and industrial wastes (the "Field Investigation"), subject to the limitations contained in Paragraph XIV.

IV. Within forty-five (45) days after the effective date of this Order, Respondent shall submit to the Department a proposed written scope of work (the "Proposal") outlining the nature and extent of the work to be undertaken in conducting the Field Investigation. At a minimum, the Proposal shall meet the requirements of the generic workplan attached hereto as Appendix "B" and shall include the names of the consulting firm(s), contractor(s) and laboratory to be performing the work.

V. Within 30 days after receipt of the Proposal, the Department shall provide written notification to Respondent of its approval or disapproval of the Proposal. If the Department approves the Proposal, Respondent shall perform the Remedial Investigation in accordance with the Proposal. If the Department

disapproves the Proposal because it is not in compliance with Department standards, or Appendix B, or Requisite Technology, then within 30 days after receipt of the Department's objections to the Proposal, Respondent shall revise the Proposal in accordance with the terms, provisions and conditions of this Order and shall submit to the Department a Proposal which has been revised in accordance with the Department's objections (the "Revised Proposal").

Within fifteen (15) days after receipt of the Revised Proposal, the Department shall provide written notification to Respondent of its approval or disapproval of the Revised Proposal. If the Department approves the Revised Proposal, Respondent shall perform the Field Investigation in accordance with the Revised Proposal.

If the Department disapproves the Revised Proposal, the Respondent may be in violation of this Order, not having submitted an approvable Proposal in accordance with the terms, provisions and conditions of this Order.

The approved Proposal or the approved Revised Proposal shall be attached hereto and shall be incorporated into this Order as Appendix "C". Such Proposal shall hereafter be referred to as the "Approved Proposal".

VI. Within 15 weeks from approval of the Proposal, Respondent shall submit to the Department a Field Investigation report (the "Report"), founded upon its performance of the Field

Investigation in accordance with the Approved Proposal. The Report shall include a copy of the Approved Proposal and all data generated, and all other information obtained, during the Field Investigation and completed site hazard ranking score sheets.

VII. Within sixty (60) days after its receipt of the Report, the Department shall determine if the Field Investigation was conducted, and the Report prepared in accordance with the terms, provisions and conditions of this Order, and shall provide written notification to Respondent of its approval or disapproval of the Report. If the Department disapproves the Report, the Department shall notify Respondent in writing of the Department's objections. Within sixty (60) days after its receipt of notice of disapproval, Respondent shall revise the Report and/or reperform or supplement the Field Investigation in accordance with the terms, provisions and conditions of this Order and shall submit to the Department a Report which has been revised in accordance with the Department's objections (the "Revised Report").

Within fifteen (15) days after its receipt of the Revised Report, the Department shall determine if the Revised Report is in accordance with the terms, provisions and conditions of this Order and shall provide written notification to Respondent of its approval or disapproval of the Revised Report. If the Department disapproves the Revised Report, the Respondent may be in violation of this Order, not having submitted an approvable report and/or

conducted a Field Investigation in accordance with the terms, provisions and conditions of this Order.

VIII. The Department reserves the right to require a modification and/or an amplification and expansion of the Field Investigation and Report by Respondent to address specific off-Site areas if the Department determines that further off-Site investigation is necessary, as a result of reviewing data generated by the Field Investigation or as a result of reviewing other data or facts, provided, however, that Respondent is responsible only for any site or off-site contamination that can be demonstrated by comparison to upgradient wells and background data. The Report shall be attached hereto and shall be incorporated into this Order as Appendix "C".

IX. The Department shall review the Report and shall use the Report as the basis of the development of the Site Hazard Ranking Score assigned to the Site for State Superfund Site ranking purposes.

X. The Department shall have the right to obtain "split samples" or "duplicate samples", at the Department's option, of all substances and materials sampled by Respondent pursuant to this Order. As used herein: "split samples" shall mean whole samples divided into aliquots; "duplicate samples" shall mean multiple samples, collected at the same time from exactly the same location, using the same sampling apparatus, collected into

identical containers prepared identically, filled to the same volume, and thereafter identically handled and preserved.

XI. Respondent shall provide notice to the Department of any field work, including, but not limited to, excavating, drilling or sampling to be conducted pursuant to the terms of this Order at least five (5) working days in advance of such activities.

XII. Upon request with reasonable notice, Respondent shall permit any duly designated officer, employee, consultant, contractor or agent of the Department to enter upon the Site or areas in the vicinity of the Site which may be under the control of Respondent, and any areas necessary to gain access thereto, for inspection purposes and for the purpose of making or causing to be made such sampling and tests as the Department deems necessary, and for ascertaining Respondent's compliance with the provisions of this Order.

XIII. Respondent shall obtain whatever permits, easements, rights-of-way, rights-of-entry, approvals or authorizations which are necessary in order to perform the Field Investigation and all of Respondent's other obligations pursuant to this Order. Upon refusal of access by third parties, the Department shall assist the Respondent, if necessary, to obtain said access to third parties' property. If the Department cannot obtain access, Respondent shall not be held in violation of this Order.

XIV. Respondent shall retain a third-party professional consultant, contractor and/or laboratory to perform the technical, engineering, and analytical obligations required by this Order. Said consultant, contractor and/or laboratory shall have demonstrable experience and qualifications in the type of work which they will be performing.

XV. Respondent shall not suffer any penalty under any of the provisions, terms and conditions hereof, or be subject to any proceedings or actions for any remedy or relief, if it cannot comply with any requirements of the provisions hereof because of an act of God, war, riot, or other condition as to which negligence or willful misconduct on the part of Respondent was not a proximate cause, provided, however, that Respondent shall immediately notify the Department in writing when it obtains knowledge of any such condition and request an appropriate extension or modification of the provisions hereof.

XVI. Within 30 days of the Department's approval of the Field Investigation Proposal, Respondent shall pay to the Department a sum of money which shall be determined by the Department and which shall represent payment for the actual expenses including, but not limited to, direct labor, overhead, analytical costs, and contractor costs incurred by the State of New York and the County of Suffolk for oversight of the Field Investigation and review of the Field Investigation Report. The Respondent shall not be required to reimburse the State for costs that exceed fifteen thousand (\$15,000) dollars for said Field Investigation Program oversight.

XVII. Nothing contained in this Order shall be construed as barring, diminishing, adjudicating or in any way affecting (1) 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, servants, agents, successors and assigns; (2) the Department's right to enforce, at law or in equity, the terms and conditions of this Order against Respondent, its directors, officers, employees servants, agents, successors and assigns in the event that Respondent shall fail to fulfill any of the provisions hereof; and (3) the Department's right to bring any action, at law or in equity against Respondent, its directors, officers, employees, servants, agents, successors and assigns with respect to areas or resources that have been affected or contaminated as a result of the release or migration of hazardous or industrial wastes from the Site or from areas in the vicinity of the Site. Nothing herein shall be construed as affecting the Department's right to commence any action or proceeding to which it may be entitled in connection with, relating to, or arising out of Respondent's disposal of hazardous or industrial wastes at the Site.

XVIII. The terms of this Order shall not be construed to prohibit the Commissioner or his duly authorized representative from exercising any summary abatement powers, either at common law or as granted pursuant to statute or regulation.

XIX. 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 the provisions hereof by Respondent, its directors, officers, employees, servants, agents, successors or assigns.

XX. The effective date of this Order shall be the date this Order is signed by the Commissioner or his designee.

XXI. If, for any reason, Respondent desires that any provision of this Order be changed, Respondent shall make timely written application therefor to the Commissioner, setting forth reasonable grounds for the relief sought.

XXII. In the event that Respondent proposes to convey the whole or any part of its lease interest in the Site, Respondent shall, not less than 30 days prior to the consummation of such proposed conveyance, notify the Department in writing of the identity of the transferee and of the nature and date of the proposed conveyance. In advance of such proposed conveyance, Respondent shall notify the transferee in writing, with a copy to the Department, of the applicability of this Order.

XXIII. A. All communication required hereby to be made between the Department and Respondent shall be made in writing and transmitted by United States Postal Service Return Receipt Requested or hand delivered to the addresses in paragraph B hereinunder.

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

1. Two copies to: The Division of Solid and Hazardous Waste
50 Wolf Road - Room 209
Albany, New York 12233-2500
2. Two copies to: Rocky Piaggione, Esq.
Dept. of Environmental Conservation
Division of Environmental Enforcement
202 Mamaroneck Avenue - Room 304
White Plains, N.Y. 10601-5381
3. Two copies to: The Regional Director, Region I
Dept. of Environmental Conservation
Bldg. # 40 SUNY
Stony Brook, New York 11794

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

1. One copy to: James A. Kane, Esq.
585 Stewart Avenue
Garden City, New York 11530

D. The Department and Respondent respectively reserve the right to designate other or different addresses on notice to the other.

E. No informal advice or guidance by the Department's officers or employees or representatives upon any plan, report, proposal, study or other document, or modifications or additions thereto, submitted by Respondent to the Department, shall relieve Respondent of any obligation it may have to obtain the Department's formal written approval of the same.

XXIV. The provisions of this Order shall be deemed to bind Respondent, its officers, directors, agents, servants, employees, successors and assigns.

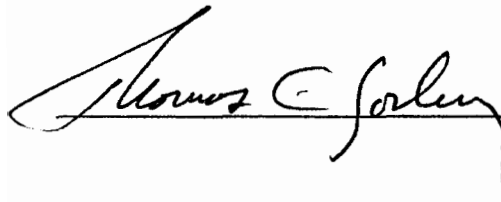
XXV. The provisions hereof shall constitute the complete and entire Order between Respondent and the Department concerning the Site. No terms, conditions, understandings or agreements purporting to modify or vary the terms hereof shall be binding unless made in writing and subscribed by the party to be bound.

XXVI. Respondent shall cease all unpermitted industrial discharges and cease the use of all unpermitted point source outlets immediately upon execution of this Order.

XXVII. Respondent shall modify any permit applications for industrial discharges to include or reflect the present industrial discharges and point source outlets or disconnect all unpermitted point source outlets immediately upon execution of this Order.

DATED: Albany, New York
July 23, , 1987

THOMAS C. JORLING
Commissioner
New York State Department of
Environmental Conservation

A handwritten signature in cursive script, reading "Thomas C. Jorling", is written over a horizontal line.

TO: James A. Kane, Esq.
585 Stewart Avenue
Garden City, N.Y. 11530

ASTRO ELECTROPLATING

