

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,
and Article 71, Title 27 of the
Environmental Conservation Law
of the State of New York by
by

ORDER
ON
CONSENT
INDEX # W1-0705-98-01

Mairoll, Inc.,
Respondent.

Site Code # 1-52-130

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 and ECL 3-0301.
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 Conklin Street in the Town of Farmingdale, County of Suffolk, State of New York which has been listed as an inactive hazardous waste disposal site (hereinafter referred to as "the Site"). To the extent that the boundaries of the inactive hazardous waste site are changed by the Department, "the Site" would be the location with the new boundaries designated by the Department. A map of the Site is attached to this Order as Appendix A.
3. Respondent intends to transfer ownership of the Site to a new entity known as Warthog, Inc. However, Respondent will retain responsibility for the implementation of this Order.
4. 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 1-51-130. The Department has classified the Site as a Classification "2" pursuant to ECL 27-1305.4.b.
5. 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 constitutes 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.

6. 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.

7. The Department and Respondent agree that the goals of this Order are for Respondent to (i) develop and 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 to the extent provided by Paragraph VII of this Order.

8. The Department acknowledges that Respondent has connected private wells located in or around the area of concern listed in the ROD to public water in the interest of public health even though data available through March 24, 1998 has not implicated Respondent in the volatile organic compound contamination affecting those wells. Respondent's actions or agreement to fund the connection of private homes to public drinking water is not and should not be interpreted as an admission of any responsibility or wrongdoing of any kind. Additionally, the Old Recharge Basin discussed in the ROD is not currently a source of groundwater contamination.

9. 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.

10. 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 Design Contents

A. Within 60 days of the effective date of this Order, Respondent shall submit to the Department a remedial design work plan to implement the remedial alternative for the Site selected by the Department in the ROD (the "Remedial Design Work Plan"). The Remedial Design Work Plan shall be prepared by and have the signature and seal of a professional engineer who shall certify that the Remedial Design Work Plan was prepared in accordance with this Order.

B. The Remedial Design Work Plan shall include the following:

1. A predesign investigation as described in the ROD on page 20 to detail the location of the extraction wells and/or the comparable remedial technology for the three dimensional treatment of the contaminated groundwater.

2. A detailed description of the remedial objectives and the means by which each element of the selected remedial alternative (listed on pages 20 through 22 of the ROD) will be implemented to achieve those objectives, including, but not limited to:

- a. the construction and operation of any structures;
- b. the collection, destruction, treatment, and/or disposal of hazardous wastes and substances and their constituents and degradation products, and of any soil or other materials contaminated thereby;
- c. the collection, destruction, treatment, and/or disposal of contaminated groundwater, leachate, and air;
- d. physical security and posting of the Site;
- e. quality control and quality assurance procedures and protocols to be applied during implementation of the Remedial Construction; and
- f. monitoring which integrates needs which are present on-Site and off-Site during implementation of the Department-selected remedial alternative;

3. A time schedule to implement the Remedial Design;

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

5. A description of operation, maintenance, and monitoring activities to be undertaken after the Department has approved construction of the Remedial Design, including the number of years during which such activities will be performed (where

appropriate) a specific description of the criteria to be used to decide when an operation of the remedy may be discontinued;

6. A Wellhead Treatment Contingency Plan as described in the ROD on pages 14 through 16 and page 21 paragraphs 9, 10, and 11 to be implemented if the evaluation of groundwater sampling results by the Department, the New York State Department of Health and the Suffolk County Department of Health Services indicates that wellhead treatment is necessary;

7. A contingency plan to be implemented if the Outpost Monitoring wells clusters described in the ROD on page 15 and page 21 paragraph 8 are not adequate to determine whether treatment of a municipal water supply well is needed to address impacts from the Main Plant Site Plume;

8. A contingency plan to be implemented if the pump and treat system or the comparable remedial technology fails to capture and treat the groundwater contaminant plume above 1,000 ppb total VOCs in a three dimensional capture zone as described on pages 12, 13, 19 through 23 and Figure 7 of the ROD;

9. A health and safety plan for the protection of persons at and in the vicinity of the Site during construction and after completion of construction. This plan shall be prepared in accordance with 29 CFR 1910 by a certified health and safety professional; and

10. A citizen participation plan which incorporates appropriate activities outlined in the Department's publication, "Citizen Participation in New York's Hazardous Waste Site Remediation Program: A Guidebook," dated June 1998, and any subsequent revisions thereto, and 6 NYCRR Part 375.

C. Within 90 days after the Department approves, in writing, the of the pre-design investigation report and the Remedial Design Work Plan, which ever occurs later, Respondent shall submit to the Department "Biddable Quality" documents for the Remedial Design including, but not limited to, documents and specifications prepared, signed, and sealed by a professional engineer. These plans shall satisfy all applicable local, state and federal laws, rules and regulations subject to Subparagraph XIII.E. After the Biddable Quality documents are approved by the Department, they along with the Department-approved Remedial Design Work Plan shall constitute the full Remedial Design.

II. Remedial Construction

A. Within such period of time after the Department's approval of the Remedial Design as the Department shall prescribe, which in any event shall be no less than 60 days, Respondent shall commence construction of the Department-approved Remedial Design.

B. Respondent shall implement the Remedial Design in accordance with the

Department-approved Remedial Design.

C. During implementation of all construction activities identified in the Remedial Design, Respondent shall have on-Site a full-time representative who is qualified to supervise the work done.

D. Within 60 days after completion of the construction activities identified in the Department-approved Remedial Design, Respondent shall submit to the Department a detailed post-remedial operation and maintenance plan ("O&M Plan"); "as-built" drawings and a final engineering report (each including all changes made to the Remedial Design during construction); and a certification that the Remedial Design was implemented and that all construction activities were completed in accordance with the Department-approved Remedial Design and were personally witnessed by him or her or by a person under his or her direct supervision. The O&M Plan, "as built" drawings, final engineering report, and certification must be prepared, signed, and sealed by a professional engineer.

E. Upon the Department's approval of the O&M Plan, Respondent shall implement the O&M Plan in accordance with the requirements of the Department-approved O&M Plan.

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

G. If the Department concludes that the pump and treat system or the comparable remedial technology fails to capture and treat the groundwater contaminant plume above 1,000 ppb total VOCs in a three dimensional capture zone; the Outpost Monitoring wells clusters are not adequate to determine whether treatment of a municipal water supply well is needed to address impacts from the Main Plant Site Plume; and/or wellhead treatment is not adequate, Respondent shall take whatever action the Department determines necessary to achieve those objectives to ensure that the Remedial Program protects human health and the environment. Respondent can object to the Department's proposal to revise the Remedial Design intended to carry out the Remedial Alternative identified in the ROD pursuant to the dispute resolution procedures set forth in Subparagraph IV.C of this Order. Nothing in this Order shall be construed to allow the consideration or resolution of any challenge to the ROD or any of its provisions.

III. Progress Reports

During the design and construction, Respondent shall submit to the parties identified in Subparagraph XII.B in the numbers specified therein copies of written monthly progress reports that:

A. describe the actions which have been taken toward achieving compliance

with this Order during the previous month;

B. include all results of sampling and tests and all other data received or generated by Respondent or Respondent's contractors or agents in the previous month, including quality assurance/quality control information, whether conducted pursuant to this Order or conducted independently by Respondent;

C. identify all work plans, reports, and other deliverables required by this Order that were completed and submitted during the previous month;

D. describe all actions, including, but not limited to, data collection and implementation of work plans, that are scheduled for the next month and provide other information relating to the progress at the Site;

E. include information regarding percentage of completion, unresolved delays encountered or anticipated that may affect the future schedule for implementation of Respondent's obligations under the Order, and efforts made to mitigate those delays or anticipated delays;

F. include any modifications to any work plans that Respondent has proposed to the Department or that the Department has approved; and

G. 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 Order.

During the period of operation and maintenance, Respondent shall submit progress reports on a quarterly basis which set forth the data in Subparagraphs III.A through III.G above, and in addition, shall submit an annual Operation, Maintenance and Monitoring Report.

Respondent also shall allow the Department to attend, and shall provide the Department at least seven days advance notice of, any of the following: prebid meetings, job progress meetings, substantial completion meeting and inspection, and final inspection and meeting.

IV. 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, except for the submittals discussed in Subparagraph I.B.8. 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 endeavors to resolve 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 IV.C, 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 IV.C, 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.

C. If the Department disapproves a revised submittal, Respondent shall be in violation of this Order unless, within 10 days of receipt of the Department's notice of disapproval, Respondent serves 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 (10) business days after receipt of Respondent's Statement of Position. Respondent shall have ten (10) 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 ten (10) business days after receipt of Respondent 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 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.

An administrative record of any dispute under this Subparagraph shall be maintained by the Department. 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 by all parties and, consistent with the Freedom of Information Law (New York Public Officers Law Article 6), the public.

Upon review of the administrative record as developed pursuant to this Subparagraph, 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 in 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 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 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 Subparagraph, Respondent shall have the burden of proving that the Department's position should not prevail.

With respect to the final decision 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 the petition is filed within thirty (30) days of Respondent's receipt of the final decision and order being issued by the ALJ.

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

V. Compliance

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

B. Respondent shall not suffer any penalty under this Order or be subject to any proceeding or action for any remedy or relief if it cannot comply with any requirement of this Order because of an act of God, war, riot, or because of any condition or event beyond the control of Respondent or its agent or agents carrying out Respondent obligations under this Order. 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 Subparagraph V.B.

Increased costs or expenses of any work to be performed under this Order, the financial inability of Respondent to perform such work, the failure of Respondent to make complete and timely application for any required approval or permit, and nonattainment of the goals, standards and requirements of this Order do not constitute conditions or events warranting the relief set forth in Subparagraph V.B.

VI. 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 suitable office space at the Site, including access to a telephone, and shall permit the Department full access to all records relating to matters addressed by this Order and job meetings. The records relating to matters addressed by this Order may be maintained at a location other than at the Site including the offices of Respondent's contractor.

VII. Payment of State Costs

A. 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 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 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.

B. Respondent's obligation under this Paragraph to reimburse the Department from the date of the ROD through the completion of construction shall not exceed \$40,000.00 annually (such annual period shall be calculated for the effective date of this Order). Respondent's obligation under this Paragraph to reimburse the Department during the period of Operation and Maintenance shall not exceed \$3,300.00 in any one year. However, such caps shall not apply to or include all costs incurred by the State in obtaining access for the Respondent pursuant to Subparagraph XIII.E. The Department may aggregate its billing for more than one year. If construction exceeds the 24 month period, all costs incurred by the State for the remainder of the construction shall not be subject to the cap.

C. In the event of a dispute about the reasonableness of expenses claimed by the Department, Respondent shall have the right to challenge such claimed expenses in a proceeding brought pursuant to CPLR Article 78, and the Department's invoice declaring the claimed expenses shall be deemed a final agency adjudication.

VIII. 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 (including, but not limited to, nor exemplified by, the right to recover natural resource damages) or authorities. However, the Department will not bring an action to enforce this Order provided that Respondent complies with the terms of the Order.

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

IX. Respondents Reservation of Rights

Except as specifically provided in this Order, nothing contained herein shall be construed as barring, diminishing, adjudicating or in any way affecting:

(1) any equitable or legal rights, claims, causes of action, demands or defenses whatsoever that Respondents may have against the Department;

(2) any rights that Respondents may have to contest any allegation of violation of this Order; and

(3) any equitable or legal rights, claims, causes of action, demands or defenses whatsoever that Respondents may have against any persons or entities that are not parties to this Order.

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 wherein the Site is located to give all parties who may acquire any interest in the Site notice of this Order. Respondent shall provide proof of filing to the Department.

B. If Respondent proposes to convey the whole or any part of Respondent's ownership interest in the Site, Respondent shall, not fewer than 30 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.

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:

1. Communication from Respondent shall be sent to:

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 copies to:

Steven M. Scharf, P.E.
Division of Environmental Remediation
New York State Department of Environmental Conservation
50 Wolf Road
Albany, New York 12233-7010

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

~~B. Michael Hodge~~
Assistant General Counsel
The Fairchild Corporation
45025 Aviation Drive, Suite 400
Dulles, Virginia 20166-7516

Susan Hall, Esq.

17500 Tysons Blvd
Suite 1400
Arlington, VA 22102

B. Copies of reports shall be submitted as follows:

1. Four copies (one unbound) to:
Steven M. Scharf, P.E.
Division of Environmental Remediation
New York State Department of Environmental Conservation
50 Wolf Road
Albany, New York 12233-7010
2. Two copies to:
G. Anders Carlson
Director, Bureau of Environmental Exposure Investigation
New York State Department of Health
2 University Place
Albany, New York 12203
3. One copy to:
Robert Becherer, Regional Engineer, Region 1
New York State Department of Environmental Conservation
SUNY Campus
Loop Road, Building 40
Stony Brook, NY 11790-2356
4. One copy to:
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. 1. Within 30 days of the Department's approval of any report submitted pursuant to this Order, Respondent shall submit to Director, Division of Environmental Remediation, a computer readable magnetic media copy of the approved report in American Standard Code for Information Interchange (ASCII) format.

2. Within 30 days after its approval of the drawings and submittals described in Subparagraph II.D of this Order, Respondent shall submit one microfilm copy (16 millimeter roll film M type cartridge) of such Department-approved drawings and submittals, as well as all other Department-approved submittals. Respondent shall submit same to Steven M. Scharf.

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

XIII. Miscellaneous

A. All activities and submittals required by this Order shall address both on-Site and off-Site contamination resulting from the disposal of hazardous wastes at the Site in accordance with the ROD.

B. Respondent has retained MAC Consultants, Inc. of Hauppauge, New York and Savick & Murray of Ronkonkoma to perform the technical, engineering, and analytical obligations required by this Order. The Department has reviewed the experience, capabilities, and qualifications of these firms and has determined that they are acceptable. If Respondent seeks to use other professional consultants, contractors, laboratories, quality assurance/ quality control personnel, and third party data validators 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. The Department's approval of these 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. Subject to the requirements of Subparagraph XIII.B, Respondent retains the right to select or change firms or individuals in its sole discretion.

C. 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 also shall 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 Order and shall submit these results in the progress reports required by this Order.

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

E. 1. Pursuant to 6 NYCRR 375-1.7, Respondent is exempt from the requirement to obtain any permit issuable by the Department so long as the criteria set forth in 6 NYCRR 375-1.7 (b) are met. Unless exempted by 6 NYCRR 375-1.7, Respondent shall use 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. However,

pursuant to 6 NYCRR 375-1.7 no permit, consent, approval or other authorization under any local government zoning, land-use, or other regulatory program shall be required.

2. For purposes of this Paragraph, "best efforts" includes the payments 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 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 the 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 Procedure in Paragraph VII, Payment of State Costs, for all costs incurred by the Department in obtaining access, including, but not limited to, attorney fees.

F. Respondent and Respondent's 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 shall oblige its officers, directors, employees, servants, and agents to comply with the relevant provisions of this Order in the performance of their designated duties on behalf of Respondent.

G. The Department will not seek to hold Warthog, Inc., the transferee of the Site, responsible as an owner of the Site, if Respondent fully complies with the terms of this Order.

H. 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.

I. All references to "professional engineer" in this Order are to an individual registered as a professional engineer in accordance with Article 145 of the New York State Education Law. If such individual is a member of a firm, that firm must be authorized to offer professional engineering services in the State of New York in accordance with Article 145 of the New York State Education Law.

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

K. 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.

L. To the extent provided under 42 U.S.C. 9613(2)(f), Respondent shall be entitled to contribution protection, provided Respondent fully complies with the terms of this Order.

M. 1. 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 and to Steven M. Scharf.

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

DATED: *March 30, 1999*

JOHN P. CAHILL
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.

Mairoll, Inc.

By: Donald E. Miller
Donald E. Miller

Title: ~~Executive~~ Vice President

Date: 3/25/99

STATE OF VIRGINIA)
) s.s.:
COUNTY OF FAIRFAX)

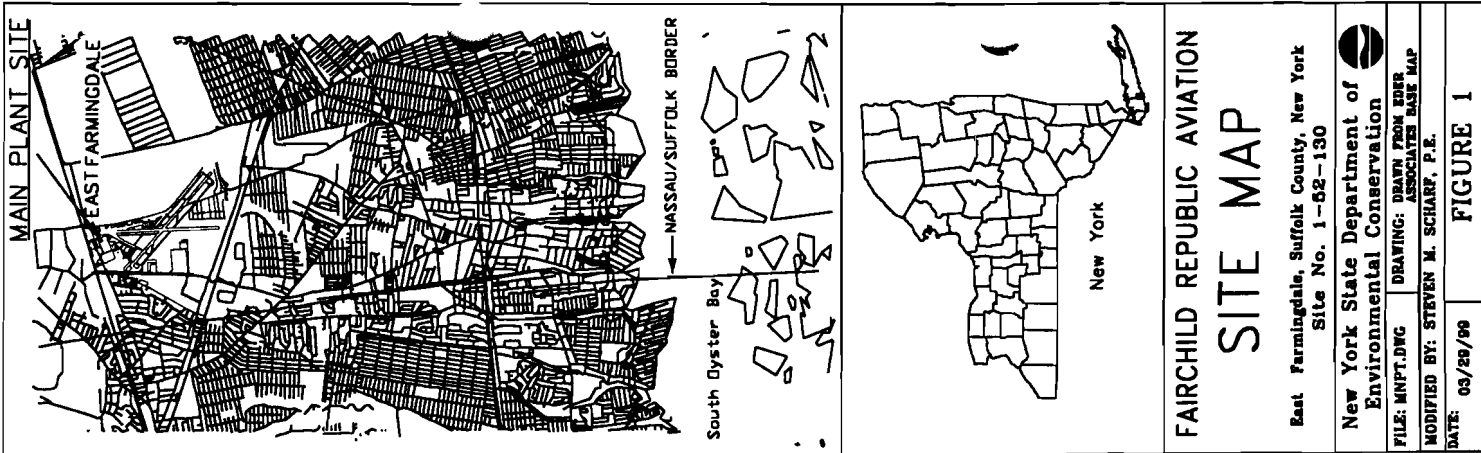
On this 25th day of March, 1999, before me personally came Donald E. Miller, to me known, who being duly sworn, did depose and say that he resides in Potomac, Maryland; that he is the Executive Vice President of Mairoll, Inc., the corporation described in and which executed the foregoing instrument; that he is authorized to sign his name thereto by the Board of Directors of said corporation.

Maria DeCriscio
Notary Public

MARIA DeCRISCIO
NOTARY PUBLIC COMMONWEALTH OF VIRGINIA
My Commission Expires May 31, 2000

APPENDIX A

SITE MAP

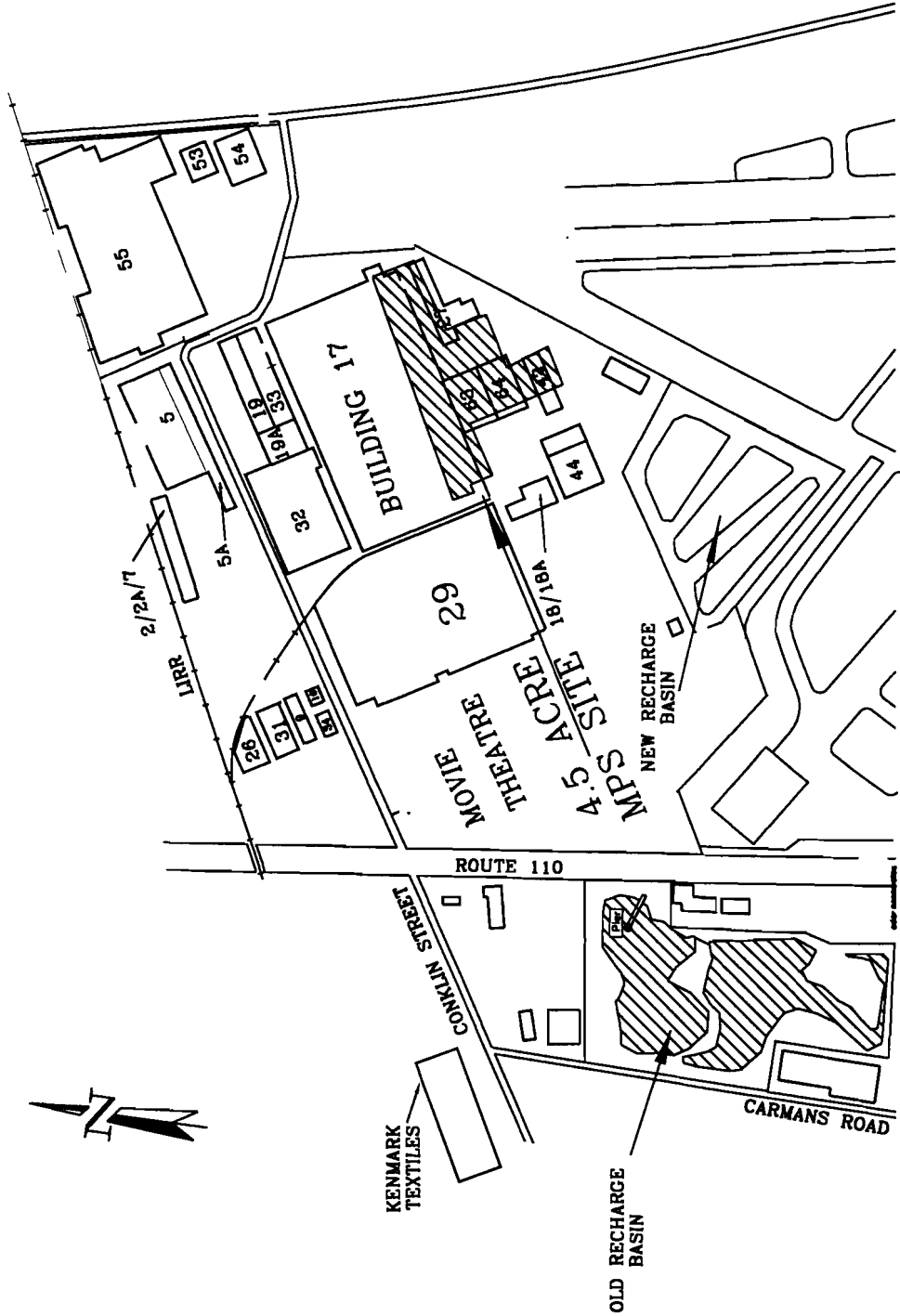


FAIRCHILD REPUBLIC AVIATION SITE MAP

East Farmingdale, Suffolk County, New York
Site No. 1-52-130

New York State Department of
Environmental Conservation
FILE: MNPT.DWG DRAWING: DRAWN FROM EDR
MODIFIED BY: STEVEN M. SCHARF, P.E.
DATE: 03/28/99

FIGURE 1



NOTES:

1. SCALE IS FOR ESTIMATING PURPOSES ONLY
2. BUILDINGS 17, 19, 19A, 27, 28, 32, 33, 42, 44, 53, 54, 55, 63 AND 64 NO LONGER EXIST
3. NOT ALL FORMER BUILDINGS ARE INCLUDED ON THIS FIGURE