

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

STATE OF NEW YORK,

Plaintiff,

-against-

LOVING CARE CLEANERS, INC., DONALD L.
STARKMAN, ANGELO FABBRI, GINO VESCHI,
LAKE MAHOPAC TAILOR, INC., ELIZABETH
IACOVONE, MAHOPAC LAUNDERAID & DRY
CLEANERS, INC., AND ROCCO ASTROLOGO,

Defendants.

99 Civ. 2718 (CLB)

JAN 28 2000

Partial
CONSENT DECREE

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Plaintiff State of New York (the "State") and Defendant Angelo Fabbri ("Defendant")

hereby agree as follows:

WHEREAS, hazardous substances have been detected in the water and soil at and around a site known as the Mahopac Business District Wells Site (the "Site"), located in the Village of Mahopac, Town of Carmel, Putnam County, New York;

WHEREAS, from 1981 until 1999 Angelo Fabbri was the owner of the real property and building at 61 East Lake Boulevard, Mahopac, New York, in which a dry cleaning business was located and operated, and from 1999 to the present said real property and building have been

owned by Clara Fabbri;

WHEREAS, the State has performed removal, remedial and response measures in relation to the Site, as those terms are defined or used in Sections 101(23)-(25) and 107(a) of the

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Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. §§ 9601(23)-(25) and 9607(a) ("Response Measures");

WHEREAS, the State, through the New York Department of Environmental Conservation and the New York State Department of Health, has incurred response costs in relation to the Site, including but not limited to costs of investigation, removal, design and implementation of a remedy, enforcement and oversight as those terms are defined or used in Sections 101(23)-(25) and 107(a) of CERCLA, 42 U.S.C. §§ 9601(23)-(25) and 9607(a) ("Response Costs"), in accordance with the National Oil and Hazardous Substances Pollution Contingency Plan, 40 C.F.R. Part 300 (the "NCP");

WHEREAS, on April 15, 1999, the State commenced this action in the United States District Court for the Southern District New York against Defendants by filing a complaint;

WHEREAS, the complaint seeks recovery under CERCLA and the common law of all Response Costs incurred by the State, or to be incurred, for Response Measures at the Site;

WHEREAS, the parties to this Consent Decree desire to resolve all claims which are asserted, or which could have been asserted, in the State's complaint, subject to ¶¶ 5.3 and 5.4 hereof, without the necessity of prolonged and complicated litigation before this Court, without admission of liability by Defendant or any admission or adjudication of any issue of law or fact;

NOW, THEREFORE, it is ORDERED, ADJUDGED AND DECREED:

I. PURPOSE OF DECREE.

1.1 The purpose of this Consent Decree is to resolve, subject to ¶¶ 5.3 and 5.4 hereof, all claims made or which could have been made in the aforementioned complaint against Defendant and any Affiliated Entity, as defined in ¶ 1.2, for Response Costs incurred or to be

incurred by the State in relation to the Site, and to provide for payment by Defendant in an amount which the parties to this Consent Decree agree represents a fair, reasonable and equitable contribution to the Response Costs incurred by the State in relation to the Site.

1.2 For purposes of this Consent Decree, "Affiliated Entity" shall mean any parent, subsidiary, predecessor, operating division, or other entity or person related to Defendant through common ownership or management, or otherwise, including Clara Fabbri.

1.3 Nothing in this Consent Decree shall constitute, or be construed as, any admission or adjudication of liability or any issue of law or fact.

II. JURISDICTION.

2.1 This Court has jurisdiction over the subject matter of this action pursuant to Sections 107(a) and 113(b) of CERCLA, 42 U.S.C. §§ 9607(a) and 9613(b), and 28 U.S.C. §§ 1331 and 2201, and has supplemental jurisdiction over the common law claims pursuant to 28 U.S.C. § 1367.

2.2 Defendant hereby waives all objections and defenses he may have to the jurisdiction of the Court or to venue in this District.

III. PARTIES BOUND.

3.1 This Consent Decree shall apply to and be binding upon the State and Defendant.

3.2 The signatories to this Consent Decree certify that they are authorized to execute and legally bind the parties they represent.

IV. PAYMENT OF COSTS.

4.1 Within ninety (90) days of the effective date of this Consent Decree, Defendant shall pay to the State the sum of twenty three thousand three hundred and thirty-three dollars and

thirty-four cents (\$23,333.34), and on the first and second anniversary of the effective date of this Consent Decree, Defendant shall pay to the State the sum of \$23,333.33, for total payments of \$70,000, to resolve all claims against Defendant for Response Costs incurred by the State in relation to the Site, subject to the provisions of §§ 5.3 and 5.4 hereof. The checks shall be made payable to the State of New York or its designee.

V. RELEASE, COVENANT NOT TO SUE AND RESERVATION OF RIGHTS

5.1 In consideration of the payments made by Defendant pursuant to the terms of this Consent Decree, and except as specifically provided in §§ 5.3 and 5.4 hereof, the State, including all agencies thereof, covenants not to sue or to take administrative action against Defendant and/or any Affiliated Entity for Covered Matters, as defined in § 5.2 hereof.

5.2 "Covered Matters" are any and all past, present and future liability in relation to the Site for Response Costs, and injunctive relief and penalties arising under common law or statutes administered or enforced by the State.

5.3 The release provisions and covenant not to sue provided in this Consent Decree shall be null and void upon the discovery of any release or threatened release of hazardous substances at or from the Site or any other condition related to the Site which was not known on or before the effective date of this Consent Decree, and which indicates that the remedial action required by the Record of Decision for the Site is not protective of human health or the environment.

5.4 The State expressly reserves its right to bring any action or proceeding against the Defendant or any Affiliated Entity with respect to claims for natural resource damages as a result of the release of hazardous substances at or from the Site.

5.5 Except as provided in ¶¶ 5.3 and 5.4, this Consent Decree shall constitute a full and complete release and discharge for claims made, or which could have been made, in the State's complaint for past or future Response Costs incurred in relation to the Site.

5.6 The release and covenant not to sue provided by this Consent Decree shall take effect upon receipt by the State of the first payment required by ¶ 4.1 hereof, but shall remain contingent upon receipt by the State of the total amount of payments required by ¶ 4.1 hereof.

VI. CONTRIBUTION PROTECTION.

6.1 Pursuant to Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), Defendant shall not be liable for claims for contribution regarding Covered Matters addressed in this Consent Decree.

VII. EFFECTIVE DATE.

7.1 This Consent Decree shall be effective upon the date that the Court approves this Consent Decree.

7.2 Upon approval and entry of this Consent Decree by the Court, any and all claims which have been made against Defendant by any party shall be dismissed with prejudice, subject only to ¶¶ 5.3 and 5.4 hereof.

VIII. MISCELLANEOUS PROVISIONS.

8.1 The Court shall retain jurisdiction over Defendant only to the extent necessary to enforce the terms and conditions of this Consent Decree.

8.2 This Consent Decree shall bind and enure to the benefit of the State, the Defendant, any Affiliated Entity and their respective successors and assigns.

8.3 Nothing in this Consent Decree shall enure to the benefit of any person or entity not a party to this Consent Decree.

8.4 This Consent Decree may not be modified except by express written agreement of all the parties to this Consent Decree and approval by the Court.

STATE OF NEW YORK

Eliot Spitzer

Attorney General of the State of New York

By: Carter H. Strickland, Jr.
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Dated: 1/14/00

ANGELO FABBRI

By: Peter John Sacripanti
Peter John Sacripanti (PJS 8968)
McDermott, Will & Emery
50 Rockefeller Plaza
New York, New York 10020

Dated: January 13, 2000

ORDERED, ADJUDGED AND DECREED
this 28 day of January, 2000.

This Court finds, pursuant to Fed. R. Civ. P. 54(b),
that there is no just cause for delay and final judgment
shall be entered as to the claims against Defendant.

Charles L. Bricant
Charles L. Bricant, U.S.D.J.