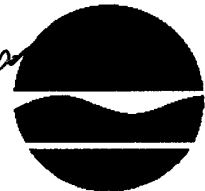


DMS PO → C 4840

F.I.C 4840

Abe Cooper

New York State Department of Environmental Conservation
Division of Environmental Enforcement
Albany Field Unit - Room 415
50 Wolf Road
Albany, New York 12233-5501



Thomas C. Jorling
Commissioner

Telephone (518) 457-3296

Fax (518) 457-1088

MEMORANDUM

January 8, 1993

TO: Steve Hammond

FROM: Frank V. Bifera *Frank V Bifera*

RE: Abe Cooper Surplus (623005)

Attached is a final copy of the Consent Decree regarding the above referenced site. Pursuant to Section XIII of the Consent Decree, the Department is obligated to notify Abe Cooper Surplus once remediation of the site is complete. Upon such notification, Abe Cooper Surplus will attempt to sell the site and in the event the site is sold, Abe Cooper Surplus has 30 days to pay the net proceeds of this sale to the State.

Please have the appropriate staff member from the Division of Hazardous Waste Remediation contact me to inform me of the current status of the remedial program for this facility. Please also inform that staff member that once remediation is completed we are required to give appropriate notice to Abe Cooper Surplus to ensure the sale process is initiated.

FVB:ljd

attachment

cc w/attachments:

Darrell Sweredoski *✓*

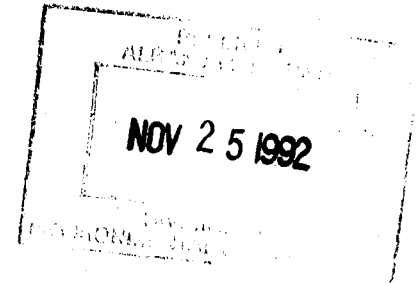


STATE OF NEW YORK
DEPARTMENT OF LAW
ALBANY, NY 12224

ROBERT ABRAMS
Attorney General

JAMES A. SEVINSKY
Assistant Attorney General in Charge
Environmental Protection Bureau

VAL E. WASHINGTON
Deputy Bureau Chief
Environmental Protection Bureau



November 23, 1992

Frank Bifera, Esq.
Division of Environmental Enforcement
New York State Department of
Environmental Conservation
50 Wolf Road
Albany, New York 12233

Re: State of New York v. Abe Cooper Watertown Corporation

Dear Frank:

Enclosed is a copy of the Abe Cooper Watertown Corporation ("ACWC") Consent Decree. Pursuant to Section XIII of the Consent Decree, DEC is obligated to notify ACWC once remediation of the site is complete. Upon such notification, ACWC will attempt to sell the site. Once the site is sold, ACWC has 30 days to pay the net proceeds of the sale to the State.

During DEC's negotiations with Abe Cooper, ACWC provided DEC with a list of its customers as far back as the 1940s. The customer list was computerized by ACWC's attorneys and transferred to disk. An index of customers is enclosed. ACWC bought scrap from a number of leading upstate industries, some of whom sent electrical transformers to the site. Should DEC wish to pursue additional PRPs for response costs not covered by the settlement, this list may be useful. Please note that ACWC has agreed to give the State access to all of its records.

Notification of completion of remedial activities of the site should be made to Abe Cooper's attorneys, Larry Zimmerman and Josh Heintz at Devorsetz, Stinziano, Gilberti and Smith, 500 Plum Street, Syracuse, New York 13204.

Very truly yours,

ALBERT M. BRONSON
Assistant Attorney General
Telephone (518) 474-8480

cc: Dean S. Sommer, Esq.

OFFICE COPY

COPY

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

U.S. DISTRICT COURT
N.D. OF N.Y.

FILED CERN

1992

STATE OF NEW YORK,

Plaintiff,

- against -

ABE COOPER WATERTOWN CORPORATION,

Defendant.

GEORGE A. RAY, CLERK

Civil Action
No. AT

O'CLOCK
GEORGE A. RAY, CLERK
SYRACUSE

92-CV-0564 NPM
RWS

NOTICE OF LODGING

PLEASE TAKE NOTICE that the attached Consent Decree is hereby being lodged with the Court in the above-captioned case. The State of New York will publish a Notice of Lodging of the Consent Decree in the New York State Environmental Notice Bulletin. The Notice will solicit public comment for a period of 30 days following publication of the notice. During the public comment period, no action is required by the Court.

After the close of the public comment period, the State of New York will evaluate and respond to any comments received and will move for entry of the Consent Decree unless the comments disclose facts or considerations which indicate that the proposed

RECEIVED

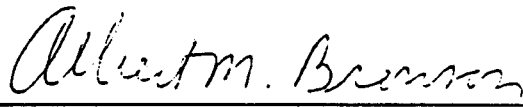
Consent Decree is inappropriate, improper or inadequate.

Dated: Albany, New York
May 1, 1992

Respectfully submitted,

ROBERT ABRAMS
Attorney General of the State
of New York
Attorney for Plaintiff
New York State Department
of Law
The Capitol
Albany, New York 12224

By:


ALBERT M. BRONSON
(Bar Roll No. 101224)
Assistant Attorney General
(518) 474-8480

CERTIFICATE OF SERVICE

I hereby certify that a copy of the State of New York's Notice of Lodging and Consent Decree have been mailed, postage prepaid, this 1st day of May, 1992 to:

Larry Zimmerman, Esq.
Devorsetz Stinziano Gilberti
& Smith
500 Plum Street
Syracuse, New York 13204

Albert M. Bronson
Albert M. Bronson

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

STATE OF NEW YORK,

Plaintiff,

- against -

ABE COOPER WATERTOWN CORPORATION,

Defendant.

CONSENT DECREE

Civil Action
No.

CONSENT DECREE

The undersigned, having agreed and stipulated that a Consent Decree can be entered in this action incorporating a settlement agreement containing the following terms and conditions, and this Court having reviewed such terms and conditions, and having determined that they are fair, reasonable, consistent with the Constitution and the mandate of Congress, adequate to protect the public interest, and adequate to resolve the issues covered by this Consent Decree, and this Court having jurisdiction over this matter,

THEREFORE, IT IS STIPULATED AND ORDERED AS FOLLOWS:

I. GOALS.

The goals of this Consent Decree are to protect the environment and human health in and around the Abe Cooper Watertown Corporation's ("ACWC's") Factory Square site (the "Site") in Watertown, New York by providing a source of funding consistent with ACWC's ability to pay for further investigation and remediation of actual and potential releases of hazardous

substances at the Site. Through the cash settlement and assignment of proceeds required pursuant to this Consent Decree, the State of New York (the "State") will be partially compensated for its past and future response costs incurred and which may be incurred at the Site, enabling the State to complete the response actions initiated by ACWC before the expenses of those response actions rendered ACWC insolvent.

II. DEFINITIONS

1. Unless otherwise expressly provided herein, terms used in this Consent Decree which are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. All Section headings in this Consent Decree are for convenience only and are not to be considered a part thereof for the purpose of construction or interpretation thereof or otherwise. The following terms will have the meanings set forth below for purposes of this Consent Judgment:

(1) The term "CERCLA" shall mean the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. § 9601, et seq.

(2) The term "CONSENT DECREE" shall mean this Decree and all appendices attached hereto. In the event of conflict between this Decree and any appendix, this Decree shall control.

(3) The term "DAY" shall mean a calendar day unless expressly stated to be a working day.

(4) The term "DEC" shall mean the New York State Department of Environmental Conservation and its Commissioner.

(5) The term "DOL" shall mean the New York State Department of Law and the Attorney General of the State of New York.

(6) The term "ECL" shall mean the New York State Environmental Conservation Law.

(7) The term "EPA" shall mean the United States Environmental Protection Agency and any successor departments or agencies of the United States.

(8) The term "FUTURE RESPONSE COSTS" shall mean all costs, including, but not limited to, direct and indirect response costs, that the State incurs in connection with the Site after the effective date of this Consent Decree.

(9) The term "HAZARDOUS SUBSTANCES" shall mean those substances referred to in Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), and those substances referred to as hazardous wastes in Section 27-1301 of ECL as of the date this Consent Decree is entered by this Court.

(10) The term "NATIONAL CONTINGENCY PLAN" or "NCP" shall mean the National Oil and Hazardous Substances Pollution Contingency Plan promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, codified at 40 CFR Part 300.

(11) The term "NON-SETTLING PERSONS" shall mean any entity or entities other than ACWC who or which may be legally responsible for either conditions at or migrating from the Site or remediation thereof.

(12) The term "PARAGRAPH" shall mean a portion of this Consent Decree identified by an arabic numeral.

(13) The term "PARTIES" shall mean the State and ACWC.

(14) The term "PAST RESPONSE COSTS" shall mean all costs, including, but not limited to, direct and indirect costs and interest, that ACWC or the State incurred and paid with regard to the Site prior to the date of entry of the Consent Decree.

(15) The term "SECTION" shall mean a portion of this Consent Decree identified by a Roman numeral.

(16) The term "SITE" shall mean the Abe Cooper Watertown Corporation site consisting of a scrap metal and recycling yard located at Factory Square in Watertown, New York listed as Site No. 623006, and depicted generally on the map attached as Appendix A.

(17) The term "STATE" shall mean the State of New York.

(18) The term "UNITED STATES" shall mean the United States of America.

(19) The term "WORKING DAY" shall mean a day other than a Saturday, Sunday, or Federal holiday. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday or Federal holiday, the period shall run until the close of business of the next working day.

III. BACKGROUND

A. The State has listed the Site on the Inactive Hazardous Waste Disposal Site Registry of the State of New York established

pursuant to Environmental Conservation Law ("ECL") Section 27-1305 as a "Class 2" site assigned Site No. 623006.

B. ACWC conducted preliminary site investigations and interim removal actions consisting of groundwater monitoring, soil sampling, and the inventory and disposal of over 800 drums and their contents at a substantial cost to itself. The State finds that these response actions were conducted in a manner consistent with the National Contingency Plan.

C. On September 6, 1988, ACWC entered into an administrative Consent Order pursuant to Article 27, Title 13, of the ECL with DEC providing for the conduct of a Remedial Investigation/Feasibility Study ("RI/FS") (State of New York Department of Environmental Conservation Consent Order No. R-6-0683-87-09). In January of 1990, ACWC notified the State that upon completion of development of an RI/FS work plan pursuant to the Consent Order and the voluntary drum inventory and disposal action, ACWC no longer had sufficient funds to complete the RI/FS or any additional removal or remedial actions. The response actions conducted by ACWC (initial monitoring and sampling, drum inventory and disposal, RI/FS work plan development and negotiations) resulted in approximately \$1,000,000.00 in response costs incurred by ACWC. As of the date of entry of this Consent Decree, the value of the assets of ACWC is exceeded by its liabilities.

D. The State has filed a Complaint in this matter pursuant to Section 107 of the Comprehensive Environmental Response,

Compensation and Liability Act ("CERCLA"), 42 U.S.C. § 9607, the New State Environmental Conservation Law and the common law of public nuisance.

E. The State of New York in its Complaint seeks, inter alia, past and future response costs and natural resources damages incurred by the State of New York pursuant to Sections 107(a)(1)(A) and (C) of CERCLA, 42 U.S.C. §§ 9607(a)(1)(A) and (C); injunctive relief to complete investigations and response actions pursuant to Title 13 of Article 27 and Title 27 of Article 71 of the ECL, including but not limited to those required under Consent Order No. R-6-0608-87; and the common law of public nuisance.

F. The Parties recognize, and the Court, by entering this Consent Decree, finds that this Consent Decree has been negotiated by the Parties in good faith and that implementation of this Consent Decree will expedite the cleanup of the Site and will avoid prolonged and complicated litigation between the Parties, and that this Consent Decree is fair, reasonable, consistent with the Constitution and the mandate of Congress, adequately protects the public interest, and is adequate to resolve the issues covered by this Consent Decree.

IV. JURISDICTION

2. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1345, and 42 U.S.C. §§ 9607 and 9613(b). This Court also has personal jurisdiction

over ACWC. Solely for the purposes of this Consent Decree, ACWC waives all objections and defenses that it may have to jurisdiction of the Court or to venue in this District.

V. PARTIES BOUND

3. This Consent Decree applies to and is binding upon the State and upon ACWC. Any change in ownership or corporate status of ACWC including, but not limited to, any transfer of assets or real or personal property shall in no way alter ACWC's responsibilities under this Consent Decree.

VI. CONSIDERATIONS FOR SETTLEMENT OF LITIGATION

4. As partial consideration for settlement of this action, the State acknowledges that ACWC has incurred past response costs of approximately \$1,000,000.00 including direct and indirect costs and attorneys fees for initial monitoring and sampling, drum inventory and disposal, RI/FS work plan development and negotiations.

5. As further consideration for settlement of this action, ACWC shall tender a check in the amount of \$100,000.00 to the State by certified mail postmarked not later than thirty (30) calendar days from the effective date of this Consent Decree in full satisfaction of all past, present, and future response costs, claims, injunctions, damages, fees, fines, taxes, penalties, natural resource damages, injuries, and any and all claims at law or equity under Federal or State statutory or

common law arising out of or relating to the past disposal and actual or threatened releases of hazardous substances and/or hazardous wastes, petroleum, solid waste, chemicals, or chemical wastes at the Site arising from said past disposal.

6. As further consideration for settlement of this action, ACWC shall use its best efforts to sell the Site and deliver the cash proceeds of the sale to the State as provided in Section XIII, SALE OF FACTORY SQUARE, once ACWC receives a notification from the State that final remedial action at the Site has been completed.

7. As further consideration for settlement of this action, and as more particularly provided in paragraph 38, below, ACWC shall pay to the State 50 per cent of any proceeds it may recover from its insurance carriers arising out of claims based on the hazardous waste and/or hazardous substance conditions at the Site.

8. As consideration for the settlement of this action, the State agrees to dismiss this action as against ACWC with prejudice and without cost, and to release ACWC from liability and to covenant not to sue to the extent set forth in Section XI, SEVERANCE, RELEASE OF LIABILITY, COVENANT NOT TO SUE, AND DISMISSAL OF ACWC.

VII. SITE ACCESS

9. The State shall give ACWC reasonable notice of all activities to be conducted by or on behalf of the State on or adjacent to the Site.

10. Commencing upon the effective date of this Consent Decree, the State shall have access to the Site and any other property to which ACWC has access to carry out the investigation and remediation of hazardous substance and/or hazardous waste conditions at and around the Site. Activities which may be carried out by the State or its contractor include, but are not limited to:

- a. Monitoring;
- b. Verifying any data or information submitted to the State;
- c. Conducting investigations relating to contamination at or near the Site;
- d. Obtaining samples;
- e. Assessing the need for planning additional response actions at or near the Site;
- f. Inspecting and copying records, operating logs, contracts, or other documents maintained or generated by ACWC or its agents;
- g. Implementation of any response actions determined to be necessary by the State.

11. Notwithstanding any provision of this Consent Decree, the State retains all of its access authorities and access

rights, including all enforcement authorities related thereto under any applicable statutes or regulations.

VIII. EXCHANGE OF INFORMATION

12. ACWC shall provide to the State upon written request the opportunity to inspect and copy all documents and information within its possession or control or within the possession or control of its contractors or agents relating to activities at the Site or relating to the implementation of this Consent Decree, including, but not limited to, customer and operational records, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information related to the Site and activities conducted at the Site.

13. ACWC may assert that certain documents, records and other information are privileged under the attorney-client privilege or any other privileged recognized by federal or State law. If ACWC asserts such a privilege in lieu of providing documents, it shall, at the time of response to the State's document request, provide the State with (1) the title of the document, record or information; (2) the date of the document, record or information; (3) the name and title of the author of the document, record or information; (4) the name and title of each addressee and recipient; (5) a description of the contents of the document, record or information to the extent such description will not disclose the privileged information; and (6)

the privilege assert by ACWC; provided, however, that ACWC shall not claim any privilege as to customer and operational records or any documents relating to contamination of the Site. The State may challenge the assertion of a privilege claim by ACWC pursuant to the standards and procedures set forth in Rules 26 and 37 of the Federal Rules of Civil Procedure.

14. No claim of confidentiality shall be made by ACWC with respect to any data, including, but not limited to, all sampling, analytical, and monitoring data.

15. The State shall provide ACWC with copies of all documents available to the public under the laws of the State of New York, including sampling and analytical reports, Quality Assurance/Quality Control Plans, Health and Safety Plans, Sampling Plans, Remedial Investigations/Feasibility Study Reports, Remedial Action Plans and similar technical reports generated by the State or its representatives in conjunction with investigation and remediation of conditions at the Site. The State's agreement to provide ACWC with the documents described in this paragraph shall not be deemed to be a waiver of any privilege that could be asserted as to the draft of any document described in this paragraph or as to any document not covered by this paragraph.

16. ACWC shall be provided with written notice and the opportunity to obtain split samples or, at its option, duplicate samples of all materials sampled by the State or its

representatives in the course of its investigations and remediation of conditions at the Site.

IX. FORCE MAJEURE

17. ACWC shall not be in default of compliance with this Consent Decree or suffer any penalty under this Consent Decree or be subject to any proceeding or action if it cannot comply with any requirement of this Consent Decree because of the action of a governmental body, court, or an act of God, denial of access to property under the control of a third party by such third party where such access is required, or other condition beyond ACWC's reasonable control; provided, however, ACWC shall notify the State in writing within five working days after it obtains knowledge of any such condition and request an appropriate modification of the pertinent requirement or other appropriate relief. Such notification shall include a written statement of (1) the reason(s) for the delay and the anticipated duration of the delay; (2) any measure taken by ACWC to minimize or prevent the delay; and (3) a schedule for implementation of any such measure. Failure to comply with the notification requirement of this subsection shall constitute a waiver of any claim of force majeure.

X. INDEMNIFICATION

18. ACWC shall indemnify and hold harmless the State, its officers, employees and representatives, from claims, suits,

actions, damages and costs of every name and description brought against the State arising out of or resulting from the negligent performance or negligent attempted performance by ACWC of its obligations hereunder.

XI. SEVERANCE, RELEASE OF LIABILITY, COVENANT NOT TO SUE, AND DISMISSAL OF ACWC.

19. Nothing in this Consent Decree shall be deemed to have released ACWC from liability for failure to comply with this Consent Decree.

20. This Consent Decree shall constitute full discharge and release of ACWC, its officers, directors, shareholders and employees by the State from liability for, and a final adjudication of all past and future response costs, claims, injunctions, natural resource damages, penalties, and any and all claims at law or equity under CERCLA, ECL Article 27, Title 13 or the common law of public nuisance or restitution arising out of or relating to the past disposal and actual or threatened releases of hazardous substances and/or hazardous wastes at the Site arising from said past disposal. The State's Complaint against ACWC is hereby dismissed with prejudice.

21. In consideration of ACWC's compliance with the provisions of this Consent Decree, the State hereby covenants not to sue, execute judgment, or take any civil, judicial, or administrative action under CERCLA, ECL Article 27, Title 13 or the common law of public nuisance or restitution, against ACWC, its officers, directors, shareholders or employees arising out of

or relating to any past disposal or the presence or actual or threatened releases of hazardous substances and/or hazardous wastes at the Site arising from said past disposal.

22. Except as provided in Section XII, nothing in this release shall in any way constitute or be construed as a release of claims by any person not a party to this Consent Decree.

XII. PROTECTION OF DEFENDANT FROM FURTHER CONTRIBUTION

23. The purpose of this Section is to protect ACWC and its officers, directors, shareholders, and employees against any claim for contribution or cost recovery which might arise out of or relate to the matters, transactions or occurrences upon which the Complaint is based or arise out of or relate to any past disposal and actual or threatened releases of hazardous substances and/or hazardous wastes at the Site; or arise as a result of any litigation concerning the Site brought under CERCLA, ECL Article 27, Title 13 or the common law of public nuisance or restitution arising out of any past disposal and actual or threatened release of hazardous substances and/or hazardous wastes at the Site by or on behalf of the State or any other person including but not limited to non-settling persons. This Consent Decree and compliance by ACWC with such obligations as it may have hereunder shall relieve ACWC and its officers, directors, shareholders and employees from any, and resolves all, liability for contribution and cost recovery under Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, as provided under

Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), now or in the future, to any and all persons while, at the same time, preserving ACWC's right and claims under Federal and State statutory and common law to seek contribution and cost recovery against any and all non-settling persons. In addition, this Consent Decree and compliance by ACWC with such obligations as it may have hereunder shall constitute a release from and shall relieve ACWC and its officers, directors, shareholders and employees from any liability for contribution under the statutory and common law of the State of New York.

24. To this end, if as a direct or indirect result of any action brought by the State which arises out of or relates to any past disposal and actual or threatened release of hazardous substances and/or hazardous wastes at the Site, any court of competent jurisdiction enters a final judgment requiring ACWC or its officers, directors, shareholders or employees to pay an amount with regard to the Site to the State or any other person in addition to ACWC's obligations under this Consent Decree, then the State shall take any necessary steps to adjust the amount of the judgment so that ACWC or its officers, directors, shareholders or employees shall not be required to pay all or any part of said additional amount.

25. Nothing herein shall prevent the State or ACWC from seeking contribution from any person not a party to this action for any claims brought against the State or ACWC arising out of

the disposal of hazardous wastes and/or hazardous substances at the Site.

26. The provisions of this Section shall not apply to any action which is brought by the State pursuant to Section XVII, ENFORCEMENT OF CONSENT DECREE.

XIII. SALE OF FACTORY SQUARE

27. Within 30 days of receipt of notification from the State that remediation of the Site has been completed, ACWC shall list the site for sale. ACWC shall use its best efforts to obtain a buyer for the site for fair market value. Within 30 days of closing on the sale of the Site, ACWC shall pay to the State the net proceeds of the sale of the Site. For purposes of this Section, the net proceeds of the sale of the Site shall be the gross amount of the sale of the Factory Square property less customary seller's expenses which may include brokers' commissions, attorneys' fees and disbursements, transfer taxes, adjustments for real estate taxes, income tax liabilities arising from the sale or transfer estimated at maximum marginal rates, deed stamps, recording fees, abstract and survey expenses, or environmental audits required by the buyer.

28. By entering into this Consent Decree, ACWC represents that as of the effective date of this Decree, ACWC has no knowledge of any liens on the Factory Square property and that the State is entitled to the full amount of the net proceeds from the sale of the property as provided in the preceding paragraph.

ACWC agrees that this Consent Decree shall constitute a lien on the Factory Square property in favor of the State for the amount of the net proceeds of the sale of the property, and that a copy of this Decree, as approved by the Court, shall be filed against the Factory Square property by the State with the Jefferson County Clerk.

XIV. MODIFICATION BY AGREEMENT

29. This Consent Decree may be modified only upon the written consent of the Parties. All modifications shall become effective as of the date of approval by this Court.

XV. NOTICE REQUIREMENTS

30. The original copy of any communication required by this Consent Decree between or among any of the Parties shall be sent to the following designated representatives of the Parties:

ABE COOPER WATERTOWN CORPORATION

Joshua H. Heintz, Esq.
Devorsetz Stinziano Gilberti & Smith, P.C.
Bridgewater Place, 500 Plum Street
Syracuse, NY 13204-1428
(315) 442-0100

STATE OF NEW YORK

Frank Bifera, Esq.
Division of Environmental Enforcement
Department of Environmental Conservation
50 Wolf Road
Albany, New York 12233

Steve Hammond, P.E.
Division of Hazardous Waste Remediation
Department of Environmental Conservation
50 Wolf Road
Albany, New York 12233

Albert M. Bronson, Esq.
Assistant Attorney General
New York State Department of Law
The Capitol
Albany, New York 12224
(518) 474-8480

XVI. PRESERVATION OF CLAIMS

31. ACWC reserves all rights that it may have to assert any claim against its insurers or any third party for matters arising from this action, including, without limitation, claims for breach of contract, contribution, cost recovery, tortious conduct and indemnity.

32. ACWC and its officers, directors, shareholders and employees expressly reserve any and all defenses that they may have in any proceeding including a proceeding to enforce this order except as otherwise provided herein.

33. Neither this Consent Decree nor any part hereof shall constitute an admission of law or fact or evidence of same, except between the Parties for the purpose of enforcing the terms of this Judgment, nor of any violation of any law or regulations. The Parties hereto may rely upon this Consent Decree only in this action or in another action or proceeding concerning the Site.

XVII. ENFORCEMENT OF CONSENT ORDER

34. If either Party to this Consent Decree considers that the other Party has failed to comply with any term or condition of this Consent Decree, the Party alleging non-compliance may seek appropriate relief from this Court.

XVIII. MISCELLANEOUS

35. None of ACWC's obligations under this Consent Decree shall be deemed to constitute any type of fine or penalty.

36. Except as otherwise provided in this Consent Decree, the Parties agree that they will bear their respective costs and disbursements.

37. ACWC, in entering into this Consent Decree, does not admit or acknowledge any liability or fault by it or its officers, shareholders or employees arising out of or relating to any past disposal and actual or threatened release of hazardous substances and/or hazardous wastes at the Site or admit any of the allegations in the Complaint.

38. ACWC, in entering into this Consent Decree, represents that it has not, as of the effective date of this Decree, made any claims against its insurance carriers relating to the hazardous waste and/or hazardous substance conditions at the Site. After the Effective Date of this Decree, ACWC shall notify the State within 30 days of filing any claims or litigation against its insurance carriers to recover costs and damages incurred prior to the Effective Date of this Consent Decree

arising from hazardous waste and/or hazardous substances conditions at the Site. In the event ACWC recovers any proceeds from any of its insurance carriers to cover costs and damages incurred prior to the effective date of this Consent Decree arising from claims or litigation related to hazardous waste and/or hazardous substance conditions at the Site, it shall, within 30 days of receiving the proceeds of such claims or litigation, pay to the State 50 per cent of any sums recovered after deducting reasonable attorney's fees and litigation costs arising from such insurance claim or litigation from the gross proceeds of any such recovery. ACWC's entry into this Decree shall not be deemed to require ACWC to pursue any claim or cause of action arising from the hazardous waste and/or hazardous substance conditions at the Site against any insurance carrier.

XIX. EFFECTIVE DATE

39. The effective date of this Consent Decree shall be the date upon which this Consent Decree is entered by the Court, except as otherwise provided herein.

XX. RETENTION OF JURISDICTION

40. This Court retains jurisdiction over both the subject matter of this Consent Decree and ACWC for the duration of the performance of the terms and provisions of this Consent Decree for the purpose of enabling any of the Parties to apply to the Court at any time for such further order, direction, and relief

as may be necessary or appropriate for the construction of this Consent Decree, or to effectuate or enforce compliance with its terms.

XXI. SIGNATORIES

41. Each undersigned representative of a Party to this Consent Decree certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Decree and to execute and legally bind such Party to this document.

So ordered this 18th day of June, 1992.

Reed B. McCann
United States District Court
Judge

The authorized representatives of the State and ACWC having reviewed the terms and conditions of this Consent Decree hereby consent to its terms and conditions.

FOR THE STATE OF NEW YORK

Robert Abrams
Attorney General of the
State of New York
The Capitol
Albany, New York 12224
(518) 474-8480

Date: April 24, 1992

By:

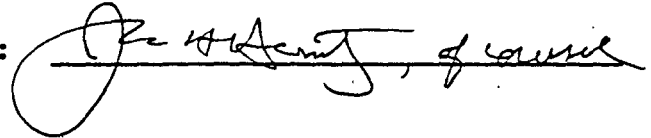
Albert M. Bronson
ALBERT M. BRONSON
Assistant Attorney General
(Bar Roll No. 101224)

FOR ABE COOPER WATERTOWN
CORPORATION

Devorsetz Stinziano Gilberti
& Smith
500 Plum Street
Syracuse, New York 13204
(315) 442-0100

Date: 4/22/92

By:

A handwritten signature, likely "J. H. Smith", is written over a horizontal line.

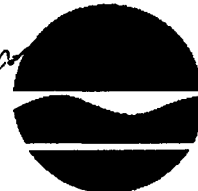
DM'S JG → 4840

F. 1c 4840

Abe Cooper

New York State Department of Environmental Conservation
Division of Environmental Enforcement
Albany Field Unit - Room 415
50 Wolf Road
Albany, New York 12233-5501

Telephone (518) 457-3296
Fax (518) 457-1088



Thomas C. Jorling
Commissioner

MEMORANDUM

January 8, 1993

TO: Steve Hammond
FROM: Frank V. Bifera *Frank V Bifera*
RE: Abe Cooper Surplus (623005)

Attached is a final copy of the Consent Decree regarding the above referenced site. Pursuant to Section XIII of the Consent Decree, the Department is obligated to notify Abe Cooper Surplus once remediation of the site is complete. Upon such notification, Abe Cooper Surplus will attempt to sell the site and in the event the site is sold, Abe Cooper Surplus has 30 days to pay the net proceeds of this sale to the State.

Please have the appropriate staff member from the Division of Hazardous Waste Remediation contact me to inform me of the current status of the remedial program for this facility. Please also inform that staff member that once remediation is completed we are required to give appropriate notice to Abe Cooper Surplus to ensure the sale process is initiated.

FVB:ljd

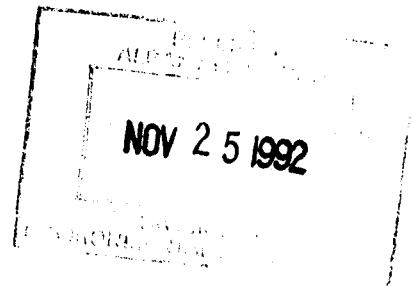
attachment

cc w/attachments:

Darrell Sweredoski *✓*



STATE OF NEW YORK
DEPARTMENT OF LAW
ALBANY, NY 12224



ROBERT ABRAMS
Attorney General

JAMES A. SEVINSKY
Assistant Attorney General in Charge
Environmental Protection Bureau

VAL E. WASHINGTON
Deputy Bureau Chief
Environmental Protection Bureau

November 23, 1992

Frank Bifera, Esq.
Division of Environmental Enforcement
New York State Department of
Environmental Conservation
50 Wolf Road
Albany, New York 12233

Re: State of New York v. Abe Cooper Watertown Corporation

Dear Frank:

Enclosed is a copy of the Abe Cooper Watertown Corporation ("ACWC") Consent Decree. Pursuant to Section XIII of the Consent Decree, DEC is obligated to notify ACWC once remediation of the site is complete. Upon such notification, ACWC will attempt to sell the site. Once the site is sold, ACWC has 30 days to pay the net proceeds of the sale to the State.

During DEC's negotiations with Abe Cooper, ACWC provided DEC with a list of its customers as far back as the 1940s. The customer list was computerized by ACWC's attorneys and transferred to disk. An index of customers is enclosed. ACWC bought scrap from a number of leading upstate industries, some of whom sent electrical transformers to the site. Should DEC wish to pursue additional PRPs for response costs not covered by the settlement, this list may be useful. Please note that ACWC has agreed to give the State access to all of its records.

Notification of completion of remedial activities of the site should be made to Abe Cooper's attorneys, Larry Zimmerman and Josh Heintz at Devorsetz, Stinziano, Gilberti and Smith, 500 Plum Street, Syracuse, New York 13204.

Very truly yours,

ALBERT M. BRONSON
Assistant Attorney General
Telephone (518) 474-8480

cc: Dean S. Sommer, Esq.

OFFICE COPY

COPY

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

U.S. DISTRICT COURT
N.D. OF N.Y.

FILED CEM

1992

STATE OF NEW YORK,

Plaintiff,

- against -

ABE COOPER WATERTOWN CORPORATION,

Defendant.

GEORGE A. RAY, Clerk

Civil Action
No. AT

U.S. DISTRICT COURT
N.D. OF N.Y.
FILED

1992

O'CLOCK
GEORGE A. RAY, CLERK
SYRACUSE

92-CV-0564 NPM
RWS

NOTICE OF LODGING

PLEASE TAKE NOTICE that the attached Consent Decree is hereby being lodged with the Court in the above-captioned case. The State of New York will publish a Notice of Lodging of the Consent Decree in the New York State Environmental Notice Bulletin. The Notice will solicit public comment for a period of 30 days following publication of the notice. During the public comment period, no action is required by the Court.

After the close of the public comment period, the State of New York will evaluate and respond to any comments received and will move for entry of the Consent Decree unless the comments disclose facts or considerations which indicate that the proposed

ENCLOSED

Consent Decree is inappropriate, improper or inadequate.

Dated: Albany, New York
May 1, 1992

Respectfully submitted,

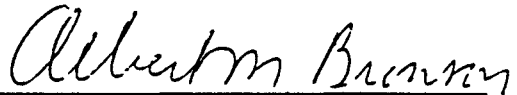
ROBERT ABRAMS
Attorney General of the State
of New York
Attorney for Plaintiff
New York State Department
of Law
The Capitol
Albany, New York 12224

By: Albert M. Bronson
ALBERT M. BRONSON
(Bar Roll No. 101224)
Assistant Attorney General
(518) 474-8480

CERTIFICATE OF SERVICE

I hereby certify that a copy of the State of New York's Notice of Lodging and Consent Decree have been mailed, postage prepaid, this 1st day of May, 1992 to:

Larry Zimmerman, Esq.
Devorsetz Stinziano Gilberti
& Smith
500 Plum Street
Syracuse, New York 13204


Albert M. Bronson

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

STATE OF NEW YORK,

Plaintiff,

- against -

ABE COOPER WATERTOWN CORPORATION,

Defendant.

CONSENT DECREE

Civil Action
No.

CONSENT DECREE

The undersigned, having agreed and stipulated that a Consent Decree can be entered in this action incorporating a settlement agreement containing the following terms and conditions, and this Court having reviewed such terms and conditions, and having determined that they are fair, reasonable, consistent with the Constitution and the mandate of Congress, adequate to protect the public interest, and adequate to resolve the issues covered by this Consent Decree, and this Court having jurisdiction over this matter,

THEREFORE, IT IS STIPULATED AND ORDERED AS FOLLOWS:

I. GOALS.

The goals of this Consent Decree are to protect the environment and human health in and around the Abe Cooper Watertown Corporation's ("ACWC's") Factory Square site (the "Site") in Watertown, New York by providing a source of funding consistent with ACWC's ability to pay for further investigation and remediation of actual and potential releases of hazardous

substances at the Site. Through the cash settlement and assignment of proceeds required pursuant to this Consent Decree, the State of New York (the "State") will be partially compensated for its past and future response costs incurred and which may be incurred at the Site, enabling the State to complete the response actions initiated by ACWC before the expenses of those response actions rendered ACWC insolvent.

II. DEFINITIONS

1. Unless otherwise expressly provided herein, terms used in this Consent Decree which are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. All Section headings in this Consent Decree are for convenience only and are not to be considered a part thereof for the purpose of construction or interpretation thereof or otherwise. The following terms will have the meanings set forth below for purposes of this Consent Judgment:

(1) The term "CERCLA" shall mean the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. § 9601, et seq.

(2) The term "CONSENT DECREE" shall mean this Decree and all appendices attached hereto. In the event of conflict between this Decree and any appendix, this Decree shall control.

(3) The term "DAY" shall mean a calendar day unless expressly stated to be a working day.

(4) The term "DEC" shall mean the New York State Department of Environmental Conservation and its Commissioner.

(5) The term "DOL" shall mean the New York State Department of Law and the Attorney General of the State of New York.

(6) The term "ECL" shall mean the New York State Environmental Conservation Law.

(7) The term "EPA" shall mean the United States Environmental Protection Agency and any successor departments or agencies of the United States.

(8) The term "FUTURE RESPONSE COSTS" shall mean all costs, including, but not limited to, direct and indirect response costs, that the State incurs in connection with the Site after the effective date of this Consent Decree.

(9) The term "HAZARDOUS SUBSTANCES" shall mean those substances referred to in Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), and those substances referred to as hazardous wastes in Section 27-1301 of ECL as of the date this Consent Decree is entered by this Court.

(10) The term "NATIONAL CONTINGENCY PLAN" or "NCP" shall mean the National Oil and Hazardous Substances Pollution Contingency Plan promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, codified at 40 CFR Part 300.

(11) The term "NON-SETTLING PERSONS" shall mean any entity or entities other than ACWC who or which may be legally responsible for either conditions at or migrating from the Site or remediation thereof.

(12) The term "PARAGRAPH" shall mean a portion of this Consent Decree identified by an arabic numeral.

(13) The term "PARTIES" shall mean the State and ACWC.

(14) The term "PAST RESPONSE COSTS" shall mean all costs, including, but not limited to, direct and indirect costs and interest, that ACWC or the State incurred and paid with regard to the Site prior to the date of entry of the Consent Decree.

(15) The term "SECTION" shall mean a portion of this Consent Decree identified by a Roman numeral.

(16) The term "SITE" shall mean the Abe Cooper Watertown Corporation site consisting of a scrap metal and recycling yard located at Factory Square in Watertown, New York listed as Site No. 623006, and depicted generally on the map attached as Appendix A.

(17) The term "STATE" shall mean the State of New York.

(18) The term "UNITED STATES" shall mean the United States of America.

(19) The term "WORKING DAY" shall mean a day other than a Saturday, Sunday, or Federal holiday. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday or Federal holiday, the period shall run until the close of business of the next working day.

III. BACKGROUND

A. The State has listed the Site on the Inactive Hazardous Waste Disposal Site Registry of the State of New York established

pursuant to Environmental Conservation Law ("ECL") Section 27-1305 as a "Class 2" site assigned Site No. 623006.

B. ACWC conducted preliminary site investigations and interim removal actions consisting of groundwater monitoring, soil sampling, and the inventory and disposal of over 800 drums and their contents at a substantial cost to itself. The State finds that these response actions were conducted in a manner consistent with the National Contingency Plan.

C. On September 6, 1988, ACWC entered into an administrative Consent Order pursuant to Article 27, Title 13, of the ECL with DEC providing for the conduct of a Remedial Investigation/Feasibility Study ("RI/FS") (State of New York Department of Environmental Conservation Consent Order No. R-6-0683-87-09). In January of 1990, ACWC notified the State that upon completion of development of an RI/FS work plan pursuant to the Consent Order and the voluntary drum inventory and disposal action, ACWC no longer had sufficient funds to complete the RI/FS or any additional removal or remedial actions. The response actions conducted by ACWC (initial monitoring and sampling, drum inventory and disposal, RI/FS work plan development and negotiations) resulted in approximately \$1,000,000.00 in response costs incurred by ACWC. As of the date of entry of this Consent Decree, the value of the assets of ACWC is exceeded by its liabilities.

D. The State has filed a Complaint in this matter pursuant to Section 107 of the Comprehensive Environmental Response,

Compensation and Liability Act ("CERCLA"), 42 U.S.C. § 9607, the New State Environmental Conservation Law and the common law of public nuisance.

E. The State of New York in its Complaint seeks, inter alia, past and future response costs and natural resources damages incurred by the State of New York pursuant to Sections 107(a)(1)(A) and (C) of CERCLA, 42 U.S.C. §§ 9607(a)(1)(A) and (C); injunctive relief to complete investigations and response actions pursuant to Title 13 of Article 27 and Title 27 of Article 71 of the ECL, including but not limited to those required under Consent Order No. R-6-0608-87; and the common law of public nuisance.

F. The Parties recognize, and the Court, by entering this Consent Decree, finds that this Consent Decree has been negotiated by the Parties in good faith and that implementation of this Consent Decree will expedite the cleanup of the Site and will avoid prolonged and complicated litigation between the Parties, and that this Consent Decree is fair, reasonable, consistent with the Constitution and the mandate of Congress, adequately protects the public interest, and is adequate to resolve the issues covered by this Consent Decree.

IV. JURISDICTION

2. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1345, and 42 U.S.C. §§ 9607 and 9613(b). This Court also has personal jurisdiction

over ACWC. Solely for the purposes of this Consent Decree, ACWC waives all objections and defenses that it may have to jurisdiction of the Court or to venue in this District.

V. PARTIES BOUND

3. This Consent Decree applies to and is binding upon the State and upon ACWC. Any change in ownership or corporate status of ACWC including, but not limited to, any transfer of assets or real or personal property shall in no way alter ACWC's responsibilities under this Consent Decree.

VI. CONSIDERATIONS FOR SETTLEMENT OF LITIGATION

4. As partial consideration for settlement of this action, the State acknowledges that ACWC has incurred past response costs of approximately \$1,000,000.00 including direct and indirect costs and attorneys fees for initial monitoring and sampling, drum inventory and disposal, RI/FS work plan development and negotiations.

5. As further consideration for settlement of this action, ACWC shall tender a check in the amount of \$100,000.00 to the State by certified mail postmarked not later than thirty (30) calendar days from the effective date of this Consent Decree in full satisfaction of all past, present, and future response costs, claims, injunctions, damages, fees, fines, taxes, penalties, natural resource damages, injuries, and any and all claims at law or equity under Federal or State statutory or

common law arising out of or relating to the past disposal and actual or threatened releases of hazardous substances and/or hazardous wastes, petroleum, solid waste, chemicals, or chemical wastes at the Site arising from said past disposal.

6. As further consideration for settlement of this action, ACWC shall use its best efforts to sell the Site and deliver the cash proceeds of the sale to the State as provided in Section XIII, SALE OF FACTORY SQUARE, once ACWC receives a notification from the State that final remedial action at the Site has been completed.

7. As further consideration for settlement of this action, and as more particularly provided in paragraph 38, below, ACWC shall pay to the State 50 per cent of any proceeds it may recover from its insurance carriers arising out of claims based on the hazardous waste and/or hazardous substance conditions at the Site.

8. As consideration for the settlement of this action, the State agrees to dismiss this action as against ACWC with prejudice and without cost, and to release ACWC from liability and to covenant not to sue to the extent set forth in Section XI, SEVERANCE, RELEASE OF LIABILITY, COVENANT NOT TO SUE, AND DISMISSAL OF ACWC.

VII. SITE ACCESS

9. The State shall give ACWC reasonable notice of all activities to be conducted by or on behalf of the State on or adjacent to the Site.

10. Commencing upon the effective date of this Consent Decree, the State shall have access to the Site and any other property to which ACWC has access to carry out the investigation and remediation of hazardous substance and/or hazardous waste conditions at and around the Site. Activities which may be carried out by the State or its contractor include, but are not limited to:

- a. Monitoring;
- b. Verifying any data or information submitted to the State;
- c. Conducting investigations relating to contamination at or near the Site;
- d. Obtaining samples;
- e. Assessing the need for planning additional response actions at or near the Site;
- f. Inspecting and copying records, operating logs, contracts, or other documents maintained or generated by ACWC or its agents;
- g. Implementation of any response actions determined to be necessary by the State.

11. Notwithstanding any provision of this Consent Decree, the State retains all of its access authorities and access

rights, including all enforcement authorities related thereto under any applicable statutes or regulations.

VIII. EXCHANGE OF INFORMATION

12. ACWC shall provide to the State upon written request the opportunity to inspect and copy all documents and information within its possession or control or within the possession or control of its contractors or agents relating to activities at the Site or relating to the implementation of this Consent Decree, including, but not limited to, customer and operational records, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information related to the Site and activities conducted at the Site.

13. ACWC may assert that certain documents, records and other information are privileged under the attorney-client privilege or any other privileged recognized by federal or State law. If ACWC asserts such a privilege in lieu of providing documents, it shall, at the time of response to the State's document request, provide the State with (1) the title of the document, record or information; (2) the date of the document, record or information; (3) the name and title of the author of the document, record or information; (4) the name and title of each addressee and recipient; (5) a description of the contents of the document, record or information to the extent such description will not disclose the privileged information; and (6)

the privilege assert by ACWC; provided, however, that ACWC shall not claim any privilege as to customer and operational records or any documents relating to contamination of the Site. The State may challenge the assertion of a privilege claim by ACWC pursuant to the standards and procedures set forth in Rules 26 and 37 of the Federal Rules of Civil Procedure.

14. No claim of confidentiality shall be made by ACWC with respect to any data, including, but not limited to, all sampling, analytical, and monitoring data.

15. The State shall provide ACWC with copies of all documents available to the public under the laws of the State of New York, including sampling and analytical reports, Quality Assurance/Quality Control Plans, Health and Safety Plans, Sampling Plans, Remedial Investigations/Feasibility Study Reports, Remedial Action Plans and similar technical reports generated by the State or its representatives in conjunction with investigation and remediation of conditions at the Site. The State's agreement to provide ACWC with the documents described in this paragraph shall not be deemed to be a waiver of any privilege that could be asserted as to the draft of any document described in this paragraph or as to any document not covered by this paragraph.

16. ACWC shall be provided with written notice and the opportunity to obtain split samples or, at its option, duplicate samples of all materials sampled by the State or its

representatives in the course of its investigations and remediation of conditions at the Site.

IX. FORCE MAJEURE

17. ACWC shall not be in default of compliance with this Consent Decree or suffer any penalty under this Consent Decree or be subject to any proceeding or action if it cannot comply with any requirement of this Consent Decree because of the action of a governmental body, court, or an act of God, denial of access to property under the control of a third party by such third party where such access is required, or other condition beyond ACWC's reasonable control; provided, however, ACWC shall notify the State in writing within five working days after it obtains knowledge of any such condition and request an appropriate modification of the pertinent requirement or other appropriate relief. Such notification shall include a written statement of (1) the reason(s) for the delay and the anticipated duration of the delay; (2) any measure taken by ACWC to minimize or prevent the delay; and (3) a schedule for implementation of any such measure. Failure to comply with the notification requirement of this subsection shall constitute a waiver of any claim of force majeure.

X. INDEMNIFICATION

18. ACWC shall indemnify and hold harmless the State, its officers, employees and representatives, from claims, suits,

actions, damages and costs of every name and description brought against the State arising out of or resulting from the negligent performance or negligent attempted performance by ACWC of its obligations hereunder.

XI. SEVERANCE, RELEASE OF LIABILITY, COVENANT NOT TO SUE, AND DISMISSAL OF ACWC.

19. Nothing in this Consent Decree shall be deemed to have released ACWC from liability for failure to comply with this Consent Decree.

20. This Consent Decree shall constitute full discharge and release of ACWC, its officers, directors, shareholders and employees by the State from liability for, and a final adjudication of all past and future response costs, claims, injunctions, natural resource damages, penalties, and any and all claims at law or equity under CERCLA, ECL Article 27, Title 13 or the common law of public nuisance or restitution arising out of or relating to the past disposal and actual or threatened releases of hazardous substances and/or hazardous wastes at the Site arising from said past disposal. The State's Complaint against ACWC is hereby dismissed with prejudice.

21. In consideration of ACWC's compliance with the provisions of this Consent Decree, the State hereby covenants not to sue, execute judgment, or take any civil, judicial, or administrative action under CERCLA, ECL Article 27, Title 13 or the common law of public nuisance or restitution, against ACWC, its officers, directors, shareholders or employees arising out of

or relating to any past disposal or the presence or actual or threatened releases of hazardous substances and/or hazardous wastes at the Site arising from said past disposal.

22. Except as provided in Section XII, nothing in this release shall in any way constitute or be construed as a release of claims by any person not a party to this Consent Decree.

XII. PROTECTION OF DEFENDANT FROM FURTHER CONTRIBUTION

23. The purpose of this Section is to protect ACWC and its officers, directors, shareholders, and employees against any claim for contribution or cost recovery which might arise out of or relate to the matters, transactions or occurrences upon which the Complaint is based or arise out of or relate to any past disposal and actual or threatened releases of hazardous substances and/or hazardous wastes at the Site; or arise as a result of any litigation concerning the Site brought under CERCLA, ECL Article 27, Title 13 or the common law of public nuisance or restitution arising out of any past disposal and actual or threatened release of hazardous substances and/or hazardous wastes at the Site by or on behalf of the State or any other person including but not limited to non-settling persons. This Consent Decree and compliance by ACWC with such obligations as it may have hereunder shall relieve ACWC and its officers, directors, shareholders and employees from any, and resolves all, liability for contribution and cost recovery under Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, as provided under

Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), now or in the future, to any and all persons while, at the same time, preserving ACWC's right and claims under Federal and State statutory and common law to seek contribution and cost recovery against any and all non-settling persons. In addition, this Consent Decree and compliance by ACWC with such obligations as it may have hereunder shall constitute a release from and shall relieve ACWC and its officers, directors, shareholders and employees from any liability for contribution under the statutory and common law of the State of New York.

24. To this end, if as a direct or indirect result of any action brought by the State which arises out of or relates to any past disposal and actual or threatened release of hazardous substances and/or hazardous wastes at the Site, any court of competent jurisdiction enters a final judgment requiring ACWC or its officers, directors, shareholders or employees to pay an amount with regard to the Site to the State or any other person in addition to ACWC's obligations under this Consent Decree, then the State shall take any necessary steps to adjust the amount of the judgment so that ACWC or its officers, directors, shareholders or employees shall not be required to pay all or any part of said additional amount.

25. Nothing herein shall prevent the State or ACWC from seeking contribution from any person not a party to this action for any claims brought against the State or ACWC arising out of

the disposal of hazardous wastes and/or hazardous substances at the Site.

26. The provisions of this Section shall not apply to any action which is brought by the State pursuant to Section XVII, ENFORCEMENT OF CONSENT DECREE.

XIII. SALE OF FACTORY SQUARE

27. Within 30 days of receipt of notification from the State that remediation of the Site has been completed, ACWC shall list the site for sale. ACWC shall use its best efforts to obtain a buyer for the site for fair market value. Within 30 days of closing on the sale of the Site, ACWC shall pay to the State the net proceeds of the sale of the Site. For purposes of this Section, the net proceeds of the sale of the Site shall be the gross amount of the sale of the Factory Square property less customary seller's expenses which may include brokers' commissions, attorneys' fees and disbursements, transfer taxes, adjustments for real estate taxes, income tax liabilities arising from the sale or transfer estimated at maximum marginal rates, deed stamps, recording fees, abstract and survey expenses, or environmental audits required by the buyer.

28. By entering into this Consent Decree, ACWC represents that as of the effective date of this Decree, ACWC has no knowledge of any liens on the Factory Square property and that the State is entitled to the full amount of the net proceeds from the sale of the property as provided in the preceding paragraph.

ACWC agrees that this Consent Decree shall constitute a lien on the Factory Square property in favor of the State for the amount of the net proceeds of the sale of the property, and that a copy of this Decree, as approved by the Court, shall be filed against the Factory Square property by the State with the Jefferson County Clerk.

XIV. MODIFICATION BY AGREEMENT

29. This Consent Decree may be modified only upon the written consent of the Parties. All modifications shall become effective as of the date of approval by this Court.

XV. NOTICE REQUIREMENTS

30. The original copy of any communication required by this Consent Decree between or among any of the Parties shall be sent to the following designated representatives of the Parties:

ABE COOPER WATERTOWN CORPORATION

Joshua H. Heintz, Esq.
Devorsetz Stinziano Gilberti & Smith, P.C.
Bridgewater Place, 500 Plum Street
Syracuse, NY 13204-1428
(315) 442-0100

STATE OF NEW YORK

Frank Bifera, Esq.
Division of Environmental Enforcement
Department of Environmental Conservation
50 Wolf Road
Albany, New York 12233

Steve Hammond, P.E.
Division of Hazardous Waste Remediation
Department of Environmental Conservation
50 Wolf Road
Albany, New York 12233

Albert M. Bronson, Esq.
Assistant Attorney General
New York State Department of Law
The Capitol
Albany, New York 12224
(518) 474-8480

XVI. PRESERVATION OF CLAIMS

31. ACWC reserves all rights that it may have to assert any claim against its insurers or any third party for matters arising from this action, including, without limitation, claims for breach of contract, contribution, cost recovery, tortious conduct and indemnity.

32. ACWC and its officers, directors, shareholders and employees expressly reserve any and all defenses that they may have in any proceeding including a proceeding to enforce this order except as otherwise provided herein.

33. Neither this Consent Decree nor any part hereof shall constitute an admission of law or fact or evidence of same, except between the Parties for the purpose of enforcing the terms of this Judgment, nor of any violation of any law or regulations. The Parties hereto may rely upon this Consent Decree only in this action or in another action or proceeding concerning the Site.

XVII. ENFORCEMENT OF CONSENT ORDER

34. If either Party to this Consent Decree considers that the other Party has failed to comply with any term or condition of this Consent Decree, the Party alleging non-compliance may seek appropriate relief from this Court.

XVIII. MISCELLANEOUS

35. None of ACWC's obligations under this Consent Decree shall be deemed to constitute any type of fine or penalty.

36. Except as otherwise provided in this Consent Decree, the Parties agree that they will bear their respective costs and disbursements.

37. ACWC, in entering into this Consent Decree, does not admit or acknowledge any liability or fault by it or its officers, shareholders or employees arising out of or relating to any past disposal and actual or threatened release of hazardous substances and/or hazardous wastes at the Site or admit any of the allegations in the Complaint.

38. ACWC, in entering into this Consent Decree, represents that it has not, as of the effective date of this Decree, made any claims against its insurance carriers relating to the hazardous waste and/or hazardous substance conditions at the Site. After the Effective Date of this Decree, ACWC shall notify the State within 30 days of filing any claims or litigation against its insurance carriers to recover costs and damages incurred prior to the Effective Date of this Consent Decree

arising from hazardous waste and/or hazardous substances conditions at the Site. In the event ACWC recovers any proceeds from any of its insurance carriers to cover costs and damages incurred prior to the effective date of this Consent Decree arising from claims or litigation related to hazardous waste and/or hazardous substance conditions at the Site, it shall, within 30 days of receiving the proceeds of such claims or litigation, pay to the State 50 per cent of any sums recovered after deducting reasonable attorney's fees and litigation costs arising from such insurance claim or litigation from the gross proceeds of any such recovery. ACWC's entry into this Decree shall not be deemed to require ACWC to pursue any claim or cause of action arising from the hazardous waste and/or hazardous substance conditions at the Site against any insurance carrier.

XIX. EFFECTIVE DATE

39. The effective date of this Consent Decree shall be the date upon which this Consent Decree is entered by the Court, except as otherwise provided herein.

XX. RETENTION OF JURISDICTION

40. This Court retains jurisdiction over both the subject matter of this Consent Decree and ACWC for the duration of the performance of the terms and provisions of this Consent Decree for the purpose of enabling any of the Parties to apply to the Court at any time for such further order, direction, and relief

as may be necessary or appropriate for the construction of this Consent Decree, or to effectuate or enforce compliance with its terms.

XXI. SIGNATORIES

41. Each undersigned representative of a Party to this Consent Decree certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Decree and to execute and legally bind such Party to this document.

So ordered this 18th day of June, 1992.

Reed B. McCann
United States District Court
Judge

The authorized representatives of the State and ACWC having reviewed the terms and conditions of this Consent Decree hereby consent to its terms and conditions.

FOR THE STATE OF NEW YORK

Robert Abrams
Attorney General of the
State of New York
The Capitol
Albany, New York 12224
(518) 474-8480

Date: April 24, 1992

By:

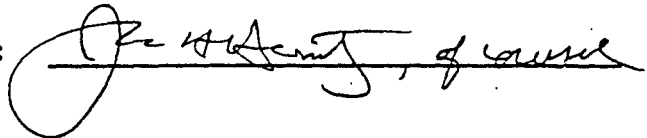
Albert M. Bronson
ALBERT M. BRONSON
Assistant Attorney General
(Bar Roll No. 101224)

FOR ABE COOPER WATERTOWN
CORPORATION

Devorsetz Stinziano Gilberti
& Smith
500 Plum Street
Syracuse, New York 13204
(315) 442-0100

Date: 4/22/92

By:

 J. H. Smith, of course