

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,
of the Environmental Conservation
Law of the State of New York
by

CITY OF UTICA,
Respondent.

ORDER
ON
CONSENT

INDEX # A6-0199-89-04
SITE # 633029

Bossert Site

Title 3 Project

Region 6

Oneida County

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".

2. City of Utica ("Respondent") is the owner of an abandoned metal stamping, sheet metal weldment and fabricating assembly facility at 1002 Oswego Street in Utica, New York (the "Site"). Respondent is an involuntary owner of the subject premises having involuntarily taken title to said premises by virtue of the real property tax foreclosure proceeding as is contained in the Utica City Charter and the New York State Second Class Cities Law.

3. Bossert Manufacturing Corporation, the former owner and operator of the Site, abandoned approximately 3500 cubic yards of PCB contaminated debris at the Site.

4. The Site is an inactive hazardous waste disposal site, as that term is defined at ECL Section 27-1301(2) and has been

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listed in the Registry of Inactive Hazardous Waste Disposal Sites in New York State as Site Number 633029. The Department has classified the Site as a Classification "2" inactive hazardous waste disposal site pursuant to ECL Section 27-1305(4)(b), having found that the Site presents a "significant threat to the public health or environment - action required."

5. Pursuant to ECL Section 27-1313(3)(a), whenever the Commissioner of Environmental Conservation (the "Commissioner") "finds that hazardous wastes at an inactive hazardous waste disposal site constitute a significant threat to the environment, he may order the owner of such site and/or any person responsible for the disposal of hazardous wastes at such site (i) to develop an inactive hazardous waste disposal site remedial program, subject to the approval of the department, at such site, and (ii) to implement such program within reasonable time limits specified in the order."

6. The Department and Respondent agree that the goals of this Order shall be the development and implementation of a remedial program for the Site by Respondent.

7. Respondent has entered into this Order as a precondition to submitting a grant for financial assistance pursuant to ECL Article 52, Title 3. Respondent has placed its insurer on notice of the Department's determination that the Site constitutes a significant threat to the environment and of the Department's claim, pursuant to ECL Article 27, Title 13,

against Respondent. Respondent has agreed to continue to exercise reasonable efforts to obtain indemnification or a commitment to indemnify from its insurance carriers. Further, Respondent has agreed to assist the Department to compel other responsible persons to bear a share of the total cost of the development and implementation of an inactive hazardous waste disposal site remedial program at the Site.

8. Respondent does not in any manner admit to liability for the alleged contamination or presence of hazardous waste on the subject location on the ground that Respondent at no time contributed to the contamination or hazardous material that is located on the Site. Notwithstanding that, Respondent hereby waives its right to a hearing in this matter in the manner provided by law, consents to the issuance and entry of this Order, and agrees to be bound by its terms.

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

I. All activities and submittals required by this Order shall address both on-Site and off-Site contamination and shall be in accordance with Requisite Technology. As used in this Order, Requisite Technology means engineering, scientific and construction principles and practices subject to the Department's approval, which (a) are technologically feasible, and (b) will identify, mitigate and eliminate, to the maximum extent practicable, any present or potential threat to the

public health or environment posed by the presence of hazardous waste at the Site and any release or threatened release of hazardous waste at or from the Site.

II. Within 30 days after the effective date of this Order, Respondent shall submit to the Department all data within its possession or control regarding environmental conditions on-Site and off-Site, and other information described below, to the extent that such data have not previously been provided to the Department. The data shall include:

A. A brief history and description of the Site, including the types, quantities, physical state, location and dates of disposal of hazardous waste as well as the names of "responsible parties" as defined in 6 NYCRR 375.2(p); and

B. A description of the results of all previous investigations of the Site and areas in the vicinity of the Site, including copies of all available topographic and property surveys, engineering studies and aerial photographs.

III. Within 210 days after the effective date of this Order, Respondent shall submit to the Department a Work Plan for a Remedial Program consisting of the removal of hazardous materials from the Site as well as an application for a State Assistance Contract pursuant to ECL Article 52, Title 3.

The Work Plan shall address all elements of the "Revised Work Plan for Facility Decontamination of the Bossert Manufacturing Facility," dated January 11, 1989, which is attached hereto as Appendix "A." The Work Plan shall include

a health and safety plan for the protection of persons at and in the vicinity of the Site during the implementation of the Remedial Program which shall be prepared in accordance with 29 C.F.R. Section 1910 by a certified health and safety professional. A Quality Assurance/Quality Control Plan shall also be included.

IV. The Department shall notify Respondent in writing of its approval or disapproval of the Work Plan.

If the Department disapproves the Work Plan, the Department shall notify Respondent in writing of the Department's objections. Within 45 days after receipt of notice of disapproval, Respondent shall revise the Work Plan in accordance with the Department's specific comments and submit a revised Work Plan. The Department shall notify Respondent in writing of its approval or disapproval of the revised Work Plan.

If the Department disapproves the revised Work Plan, the Department may modify the Work Plan to include such plans, specifications, procedures, protocols or other items as it deems necessary; the Work Plan as modified by the Department shall be deemed the approved Work Plan.

The approved Work Plan shall be attached as Appendix "B" and incorporated into this Order.

V. Within 60 days after the Department's approval of the Work Plan, the Department and Respondent shall solicit public comment on the recommended remedial program in accordance with

CERCLA, the NCP, and any relevant Department regulations, and/or policy and guidance documents in effect at the time the public comment period is to be initiated. After the close of the public comment period, the Department shall determine upon a final Work Plan for the Site.

VI. Respondent shall implement the Remedial Program in accordance with the Work Plan. Respondent must obtain prior written approval from the Department prior to deviating from the approved Remedial Program in any way. During implementation of the Remedial Program, Respondent shall have on-Site a full time representative who is qualified to inspect the work.

Within 60 days after completion of the Remedial Program, Respondent shall submit a final engineering report and a certification that the Remedial Program was completed in accordance with the Work Plan, all by an engineer licensed to practice by the State of New York.

VII. After receipt of the final engineering report and certification, the Department shall notify Respondent in writing whether it is satisfied with the quality and completeness of the Remedial Program as being protective of human health and the environment.

If the Department is not satisfied with the quality and completeness of the Remedial Program, the Department may take any action or pursue whatever rights it has pursuant to any provision of statutory or common law.

VIII. If appropriate, Respondent shall develop and implement

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a health and safety plan for the protection of persons at the Site for a period of 30 years after completion of the Remedial Program.

IX. Within 90 days after the effective date of this Order, and every six months thereafter (unless the Department informs Respondent that such results are no longer needed), Respondent shall provide a written report to the Department of the efforts that it has made to obtain indemnification from its insurers and to assist the Department in compelling other responsible parties to bear the costs associated with the development and implementation of an inactive hazardous waste disposal site remedial program at the Site.

X. The Department shall have the right to obtain split samples, duplicate samples, or both, of all substances and materials sampled by Respondent.

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

XII. Respondent shall obtain whatever permits, easements, rights-of-way, rights-of-entry, approvals or authorizations are necessary to perform Respondent's obligations under this Order.

XIII. Respondent shall permit any duly designated employee, consultant, contractor or agent of the Department or any State agency to enter upon the Site or areas in the vicinity of the Site which may be under the control of Respondent for purposes of inspection, sampling and testing and to assure Respondent's

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compliance with this Order. During implementation of the Remedial Program, 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 and job meetings.

XIV. Respondent shall retain professional consultants, contractors and laboratories acceptable to the Department 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 for approval prior to initiation of any activities for which they will be responsible.

XV. Respondent shall not suffer any penalty under this Order, or be subject to any proceeding or action, if it cannot comply with any requirements hereof because of an act of God, war or riot. Respondent shall immediately notify the Department in writing when it obtains knowledge of any such condition and request an appropriate extension or modification of this Order.

XVI. The failure of the Respondent to comply with any term of this Order shall be a violation of this Order and the ECL.

XVII. Nothing contained in this Order shall be construed as barring, diminishing, adjudicating or in any way affecting:

A. the Department's right to bring any action or proceeding against anyone other than Respondent, its directors, officers, employees, servants, agents, successors and assigns;

B. the Department's right to enforce this Order against Respondent, its directors, officers, employees, servants, agents, successors and assigns in the event that Respondent shall fail to satisfy any of the terms hereof;

C. the Department's right to bring any action or proceeding against Respondent, its directors, officers, employees, servants, agents, successors and assigns with respect to claims for natural resources damages; and

D. the Department's right to bring any action or proceeding against Respondent, its directors, officers, employees, servants, agents, successors and assigns with respect to conditions at the site that were unknown to the Department prior to the effective date of this Order, or information received after the effective date of this Order which indicates that the Remedial Program is not protective of human health and the environment.

XVIII. This Order shall not be construed to prohibit the Commissioner or his duly authorized representative from exercising any summary abatement powers.

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

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

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

XXII. Within 30 days after the effective date of this Order, Respondent shall file a Declaration of Covenants and Restrictions with the Oneida County's Clerk [or Register] to give all parties who may acquire any interest in the Site notice of this Order.

XXIII. In the event Respondent proposes to convey the whole or any part of its ownership interest in the Site, Respondent shall, not fewer than 60 days prior to the proposed conveyance, notify the Department in writing of the identity of the transferee and of the nature and date of the proposed conveyance and shall notify the transferee in writing, with a copy to the Department, of the applicability of this Order.

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

A. Communication from Respondent shall be made as follows:

1. Director, Division of Environmental
Enforcement New York State Department of
Environmental Conservation
50 Wolf Road - Room 422
Albany, New York 12233

2. Director, Division of Hazardous Waste Remediation
New York State Department of Environmental Conservation
50 Wolf Road - Room 212
Albany, New York 12233
3. Director, Bureau of Environmental Exposure Investigation
New York State Department of Health
2 University Place
Albany, New York 12203
4. Paul Van Cott, Esq.
New York State Department of Environmental Conservation
Division of Environmental Enforcement
50 Wolf Road - Room 415
Albany, New York 12233

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

John Orilio, Esq.
Department of Law
City of Utica
One Kennedy Plaza
Utica, New York 13502

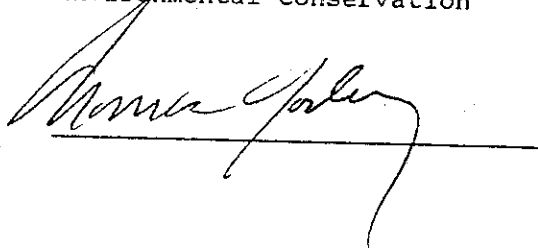
XXV. Respondent, its officers, directors, agents, servants, employees, successors and assigns shall be bound by this Order. Nothing herein shall be construed to bind any other entity.

XXVI. The terms hereof shall constitute the complete and entire Order between Respondent and the Department concerning the Site. No terms, conditions, understandings or agreements purporting to modify or vary the terms hereof shall be binding unless made in writing and subscribed by the party to be bound. No informal advice, guidance, suggestions or comments by the Department regarding reports, proposals, plans, specifications,

schedules or any other submittals shall be construed as relieving Respondent of its obligations to obtain such formal approvals as may be required by this Order.

DATED: *Albany* ; New York
Dec 27, ; 1989

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

A handwritten signature in dark ink, appearing to read "Thomas Jorling", is written over a horizontal line.

CONSENT BY RESPONDENT

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

CITY OF UTICA

By: *John D. LaFolla*Title: MAYORDate: 23 OCTOBER 1989

STATE OF NEW YORK)

COUNTY OF Oneida) S.S.:

On this 23rd day of OCTOBER, 1989, before me personally came LOUIS D. LAFOLLA, to me known, who being duly sworn, did depose and say that he resides in UTICA NY; that he is the MAYOR of the MUNICIPAL corporation described in and which executed the foregoing instrument; that he knew the seal of said corporation; that the seal affixed to said instrument was such corporate seal; that it was so affixed by the order of the Board of Directors of said corporation, and that he signed his name thereto by like order.

John F. Onilio

Notary Public

JOHN F. ONILIO

Notary Public in and for the State of New York
 My commission expires on 1-31-1990