

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

In the Matter of a Settlement
Relating to the J & L Steel
Inactive Hazardous Waste Disposal Site,
by

ORDER ON CONSENT
and
ADMINISTRATIVE
SETTLEMENT

Settling Respondent.
St. Lawrence County

Index #W6-1172-05-13

Site # 645029

WHEREAS,

1. A. The New York State Department of Environmental Conservation ("Department") is responsible for inactive hazardous waste disposal site remedial programs pursuant to Article 27, Title 13 of the Environmental Conservation Law ("ECL") and may issue orders consistent with the authority granted to the Commissioner of the Department by such statute.

B. The Department is responsible for carrying out the policy of the State of New York to conserve, improve and protect its natural resources and environment and control water, land, and air pollution consistent with the authority granted to the Department and the Commissioner by Article 1, Title 3 of the ECL.

C. This Order on Consent and Administrative Settlement (hereinafter "Order") is issued pursuant to the Department's authority under, inter alia, ECL Article 27, Title 13, ECL 3-0301, and resolves the liability of the "Settling Respondent" as defined and described in recital paragraph 2 hereof, to the State under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. ' 9601 et seq, to the extent set forth herein. Accordingly, pursuant to CERCLA Section 113(f)(3)(B), 42 U.S.C. section 9613(f)(3)(B), the Settling Respondent may seek contribution from persons not parties to this Order to the extent set forth in Subparagraph V.F and/or to seek contribution to the extent authorized by 6 NYCRR section 375-1.5(b)(5).

2. The property which is the subject of this Order is an approximately 36 acre parcel, commonly known as a portion of the former J&L Steel facility, and is located at NYS Route 3 and County Route 60, Clifton, New York (the "Site"). Exhibit A is a map indicating the general location of the Site.

3. St. Lawrence County (the "County" or "Settling Respondent") is a municipality that previously took title to the Site through an In-Rem tax foreclosure proceeding June 15, 1989. Approximately 9 months later, in order to facilitate the return the Site to productive use and to the tax rolls, title was transferred by County to Dongrove Holdings Limited on July 12, 1990.

4. The Settling Respondent intends to take title to the Site, as well as an additional 18 acres of former J&L Facility, which is subject to an Environmental Restoration Program (hereinafter, "ERP Portion") between the County and DEC, through the In-Rem tax foreclosure process.

5. The approximately 18 acres ERP Portion has been fully investigated by the County under the Department's Environmental Restoration Program. A Record of Decision for the ERP Portion was issued by the Department on March 31, 2013.

6. The Site is currently considered by the Department to be a potential site for the Registry of Inactive Hazardous Waste Disposal Sites in New York, and has been assigned a Site Number of 645029 by the Department.

7. The releases of petroleum at the Site were designated by the Department as petroleum Spill Number 8706728, which has not yet been closed by the Department.

8. The Department is currently investigating the extent of the contamination on the Site to determine the scope of additional remediation which may be required by the Department.

9. The goals of this Order are:

a. For the Settling Respondent, upon taking ownership of the Site, provide the Department with unrestricted access to the Site in order to allow the Department to continue its investigation and remediation activities.

b. For the Settling Respondent, within 120 days of taking ownership of the Site, to place an Environmental Easement on the Site which limits any future use of the Site to Commercial/Industrial Activities, which grants the Department access, including access to conduct investigation and remediation activities and which will require the preparation of a site management plan setting forth certain requirements for, *inter alia*, the handling of contaminated materials at the Site.

c. For the Settling Respondent to agree to refrain from conducting any activities that could be in violation of 6 NYCRR Part 375-1.11 and impact the Department's investigation and remediation of the Site.

d. Upon completion of the Department's investigation and remediation of the Site, for the Settling Respondent to maintain the Site in compliance with any Site Management Plan ("SMP") prepared for the Site and submit periodic reports to the Department documenting on-going compliance with the SMP, as required by the Department. Upon Settling Respondents' sale of the property to a new owner, the new owner shall be required to comply with these provisions.

e. For the Department to release and furnish the Settling Respondent with a covenant not to sue with respect to the certain past and future costs incurred by the State, to the extent set forth herein below;

f. For the Department to provide the Settling Respondent with contribution protection as provided by CERCLA Section 113(f)(2), 42 U.S.C. section 9613(f)(2), and/or any other applicable federal or state law, for the matters addressed by this Order; and

g. For the Department to investigate and remediate the Site pursuant to applicable law and regulation to the extent the Department deems necessary and appropriate .

10. The Settling Respondent consents to the issuance of this Order without (i) an admission or finding of liability, fault, wrongdoing, or violation of any law, regulation, permit, order, requirement, or standard of care of any kind whatsoever; (ii) an acknowledgment or admission that there has been a release or threatened release of hazardous waste at or from the Site; or (iii) an acknowledgment or admission that a release or threatened release of hazardous waste at or from the Site may constitute a significant threat to the public health or environment. The existence of this Order shall not give rise to any presumption of law or finding of fact, or create any rights, or grant any cause of action, which shall inure to the benefit of any third party.

11. The Settling Respondent, with a desire to further the public interest solely with regard to matters set forth below, hereby waives any right to a hearing as may be provided by law only with respect to the acts they agree to undertake pursuant to this Order, consents to the issuance and entry of this Order, and agrees to be bound by its terms. The Settling Respondent consents to, and agrees not to contest the authority or jurisdiction of the Department to issue or enforce this Order, agrees not to contest the validity of this Order or its terms, and agrees not to challenge any future remedy determination of the Department for the Site.

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

I. Settling Respondent's Obligations

A. In full satisfaction of the Department's past, present and future claims, if any, for the recovery and reimbursement of the costs incurred by the Department with respect to the Site, including the cost to implement any remedy for the Existing Contamination, as defined herein below, as of the effective date of this Order ("State Costs"), the Settling Respondent shall upon taking legal title to the Site:

1. Sign an access agreement with the Department granting the Department unrestricted access to the Site to conduct investigation and remediation activities and deliver such signed access agreement to:

Robert Schick, P.E.
Director
Division of Environmental Remediation
New York State Department of Environmental Conservation
625 Broadway
Albany, New York 12233-7011

B. Settling Respondent shall grant to the Department an Environmental Easement, which provides for, among other things, access to the Site for the purpose of completing the remedial program for the Site, including the further investigation, design, construction, and maintenance and monitoring of the remedy selected, restriction of groundwater use without appropriate treatment, and the restriction of the future use of the Site to Commercial/Industrial usage. The Environmental Easement must be recorded before the Settling Respondent transfers title and control of the Site to another private or public entity. If Settling Respondent does not cause such Environmental Easement to be recorded, Settling Respondent cannot obtain a release and covenant not to sue pursuant to Subparagraph II of this Order.

C. Settling Respondent may petition the Department to modify or extinguish the Environmental Easement filed pursuant to Subparagraph I.C at such time as it can certify that the Site is protective of human health and the environment without reliance upon the restrictions set forth in such instrument. Such certification shall be made by a Professional Engineer or other expert approved by the Department. The Department will not unreasonably withhold its consent.

D. Settling Respondent agrees to maintain the site in compliance with any SMP prepared for this Site and submit periodic reports documented the ongoing compliance with the SMP as required by the Department. Upon Settling Respondent's sale or lease of the Site or any portions thereof to a new owner or lessee, the new owner or lessee shall be required to comply with these provisions.

E. Failure to comply with the requirements set forth in Subparagraph I.A – D in the manner prescribed shall constitute a default hereunder. If the Settling Respondent so defaults under this Order, the release and Covenant Not to Sue and the contribution protection granted pursuant to this Order to the Settling Respondent may be nullified.

II. Release and Covenant Not to Sue

A. Subject to the Reservation of Rights in Paragraph III of this Order, and upon granting of access as set forth in Paragraph I.A of this Order, and the Department's approval of the terms of the Environmental Easement, as required pursuant to Subparagraph I.B, the Department hereby releases the Settling Respondent and covenants not to sue the Settling Respondent for each and every claim, demand, remedy, or action whatsoever against the Settling Respondent and the Settling Respondent's employees, agents, servants, , successors and assigns (except successors and assigns who were responsible under law for the Existing Contamination at the Site), and their respective secured creditors, which the Department had, has or may have pursuant to Article 27, Title 13 of the ECL or pursuant to any other provision of State or Federal statutory or common law, including but not limited to section 9607(a) of CERCLA, 42 U.S.C. section 9607(a), involving or relating to the disposal of hazardous wastes at the Site, including but not limited to the Department's claim for the recovery and reimbursement of costs related to the implementation of any selected remedial alternative for the Site.

B. For purposes of this Order only, "Existing Contamination" means environmental conditions and/or contamination, known or unknown, present at or migrating from the Site, as of the effective date of this Order.

C. The Department specifically reserves all of its rights concerning, and any such release and covenant not to sue shall not extend to, any contamination or environmental conditions which are not Existing Contamination. The Department shall notify the Settling Respondent in writing of new environmental conditions and/or contamination which the Department determines is not Existing Contamination, and the basis for such determination.

D. This release and covenant not to sue shall be null and void, ab initio, in the event of fraud relating to the execution or implementation of this Order or in the event of the Settling Respondent's failure to materially comply with any provision of this Order subsequent to issuance of a release and covenant not to sue.

E. Nothing herein shall be construed as barring, diminishing, adjudicating, or in any way affecting any legal or equitable rights or claims, actions, suits, causes of action, or demands whatsoever that (i) the Settling Respondent may have against anyone other than the Department, including but not limited to rights of contribution under section 113(f)(3)(B) of CERCLA, 42 U.S.C. section 9613(f)(3)(B), and (ii) the Department may have against anyone other than the Settling Respondent, and the Settling Respondent's employees, agents, and servants, and those successors and assigns of the Settling Respondent that were not responsible under law for the development and implementation of a Remedial Program for the Site prior to the effective date of this Order, and their respective secured creditors.

III. Reservation of Rights

A. Except as provided in Paragraph II, nothing contained in this Order shall be construed as barring, diminishing, adjudicating, or in any way affecting any of the Department's rights or authorities, including, but not limited to, the right to require performance of further investigations and/or response action(s), to recover natural resource damages, and/or to exercise any summary abatement powers with respect to any person, including the Settling Respondent.

B. Except as otherwise provided in this Order, the Settling Respondent specifically reserves all of its rights respecting the enforcement of this Order, including the rights to notice, to be heard, to appeal, and to any other due process. Except as specifically provided in this Order, the existence of this Order or the Settling Respondent's compliance with it shall not be construed as an admission of liability, fault, wrongdoing, or breach of standard of care by the Settling Respondent, and shall not give rise to any presumption of law or finding of fact, or create any rights, or grant any cause of action, which shall inure to the benefit of anyone who is not a party to this Order. Further, the Settling Respondent specifically reserves such rights as it may have to seek and obtain contribution, indemnification, and/or any other form of recovery from its insurers and from other potentially responsible parties or their insurers for past or future response and/or cleanup costs or such other costs or damages arising from the contamination at

the Site as may be provided by law, including but not limited to rights of contribution under section 113(f)(3)(B) of CERCLA, 42 U.S.C. section 9613(f)(3)(B).

IV. Communications

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

1. Communication from Settling Respondent shall be sent to:

James Candiloro - 1 hard copy and 1 electronic copy

George Heitzman – 1 electronic copy

NYSDOH – 1 electronic copy.

Benjamin Conlon, Esq. – 1 electronic copy

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

Chari, County Board of Legislators
St. Lawrence County
48 Court Street
Canton, NY 13617-1169

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

V. Miscellaneous

A. Settling Respondent and Settling Respondent's successors and assigns shall be bound by this Order. **Any change in ownership or corporate status of Settling Respondent shall in no way alter Settling Respondent's responsibilities under this Order.**

B. The terms of this Order constitute the entire agreement between the Department and the Settling Respondent concerning implementation of the activities required by this Order. No term, condition, understanding, or agreement purporting to modify or vary any term of this Order shall be binding unless made in writing and subscribed by the party to be bound.

C. The paragraph headings set forth in this Order are included for convenience of reference only and shall be disregarded in the construction and interpretation of any provisions of this Order. The terms of this Order constitute the entire agreement between the Department and Settling Respondent concerning implementation of the activities required by this Order.

D. Settling Respondent will be entitled to receive contribution protection and/or to seek contribution to the extent authorized by 6 NYCRR section 375-1.5(b)(5).

E. Unless otherwise expressly provided herein, terms used in this Order which are defined in ECL Article 27, Title 13, ECL Article 71, Title 36, or in regulations promulgated under such statute shall have the meaning assigned to them under said statute or regulations.

F. The Settling Respondent's obligations under this Order represent payment for or reimbursement of response costs, and shall not be deemed to constitute any type of fine or penalty.

G. This Order may be executed for the convenience of the parties hereto, individually or in combination, in one or more counterparts, each of which for all purposes shall be deemed to have the status of an executed original and all of which shall together constitute one and the same.

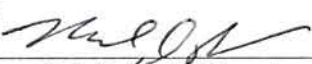
H. The effective date of this Order is the date that the Settling Respondent takes title to the Site pursuant to foreclosure of the Site, which Settling Respondent will endeavor to do with all due diligence after this Order is fully executed by the parties hereto. This Order shall be null and void if the Settling Respondent doesn't take title to the Site within a reasonable practicable time frame, but in no event greater than one year from the date this Order is fully executed by the parties hereto.

DATED:

AUG 07 2013

JOE MARTENS
COMMISSIONER
NEW YORK STATE DEPARTMENT OF
ENVIRONMENTAL CONSERVATION

By:



Robert W. Schick, Director
Division of Environmental Remediation

CONSENT BY RESPONDENT

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

By: Jonathan S. Putney
Title: Chairman - St. Lawrence County Board of Legislators
Date: 8-5-13

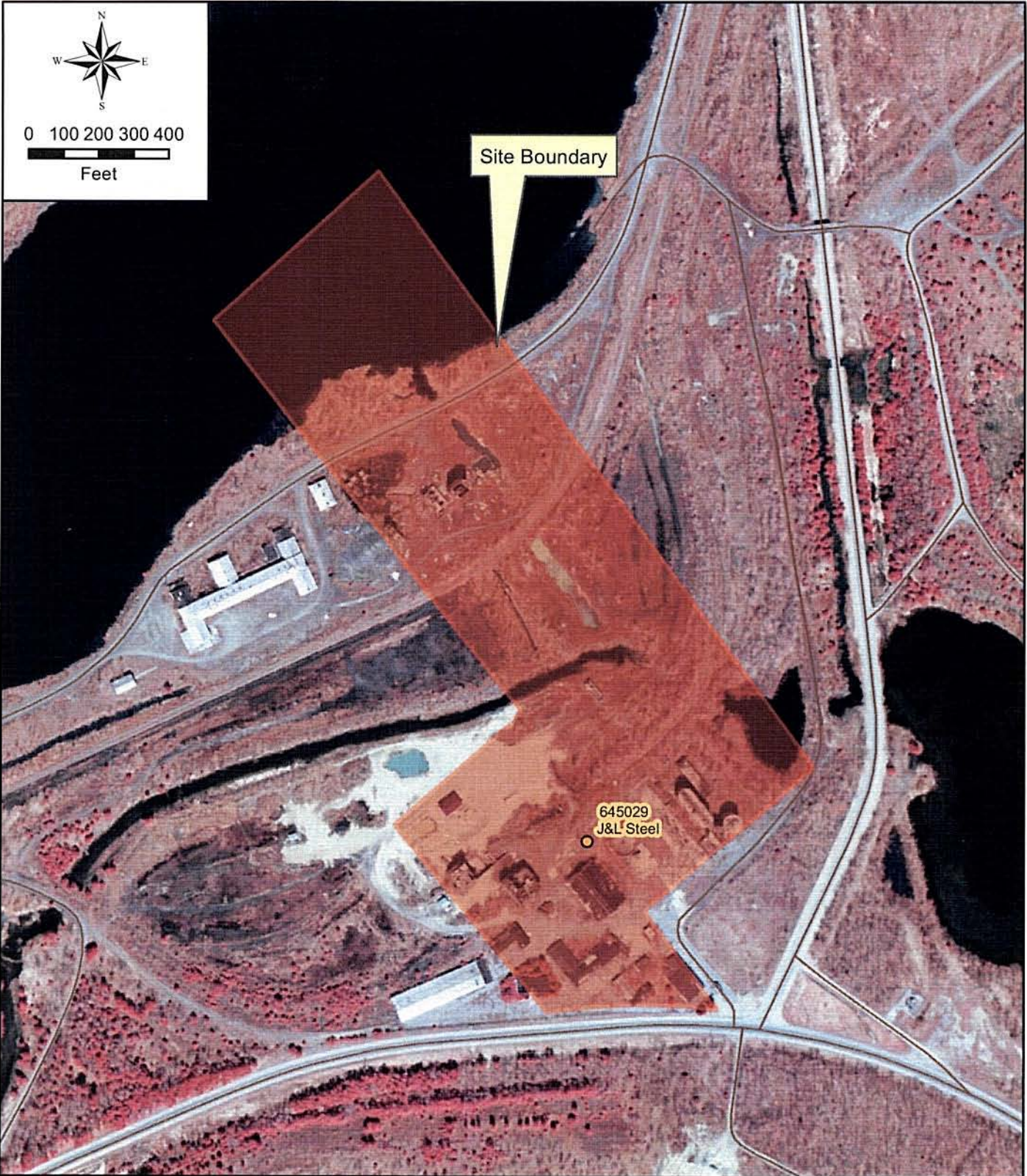
STATE OF NEW YORK)
) s.s.:
COUNTY OF)

On the 5TH day of AUGUST, in the year 2013, before me, the undersigned, personally appeared JONATHAN S. PUTNEY personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Michael C. Crowe
Signature and Office of individual
taking acknowledgment

MICHAEL C. CROWE
Notary Public, State Of New York
No. 4502554
Qualified In St. Lawrence Co.
My Commission Expires October 31, 2013

EXHIBIT A
Map of the Site



Site Boundary Map
J&L Steel
Site No. 645029
Town of Clifton, St. Lawrence County

July 8, 2013

