

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

IN THE MATTER OF THE
FORMER AMERICAN CLEANERS
SITE, CITY OF BINGHAMTON,
BROOME COUNTY, NEW YORK
BY;

ADMINISTRATIVE ORDER
ON CONSENT

INDEX NO. A7-0408-0001

THE ESTATE OF HENRIETTA HARDIE
and ROLLIN TWINING, ESQ., as Executor

Respondents.

ORDER ON CONSENT

WHEREAS, the New York State Department of Environmental Conservation ("the Department") is seeking to recover remedial and administrative costs in connection with the release or threatened release of hazardous substances at the former American Cleaners site located at 48-50 Walnut Street, Binghamton, Broome County, New York (the "Site"). The Site, a .01 acre parcel, is listed on the New York State Registry of Inactive Hazardous Waste Disposal Sites (Site #7-04-030) as a "class 2" site as the result of the spilling of an unknown quantity of tetrachloroethylene ("PCE") during the years of operation of the site as a dry cleaners.

WHEREAS, the Department is responsible for the enforcement of Article 27, Title 13 of New York's Environmental Conservation Law ("ECL"), entitled "Inactive Hazardous Waste Disposal Sites". This Order is entered into pursuant to the Department's authority under ECL Article 27, Title 13 and Article 71, Title 27. The Department's statutory authority to bring an action to recover its costs is Section 107 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. §9607, as amended ("CERCLA") and §97-b of the State Finance Law. PCE is a hazardous waste under CERCLA and under the ECL.

WHEREAS, the Department alleges that Henrietta Hardie may have been an owner of the Site during the period of disposal and may have been a party responsible for the contamination at the Site.

WHEREAS, the Department has already incurred approximately \$70,000.00 in response costs at the Site to date and is about to undertake a remedial investigation/feasibility

study to fully characterize the environmental conditions at the site. Upon completion of this work, the Department will then implement a remedial action plan.

WHEREAS, Respondent Estate of Henrietta Hardie (hereinafter referred to as "Estate") agrees to reimburse the Department for a portion of the above referenced costs pursuant to the amount set forth in Paragraph I below in exchange for a conditional release from the Department.

WHEREAS, this Consent Order was negotiated and executed by the Department and Respondents to avoid the expense of litigation and without the admission or adjudication of any issues of fact or law. Respondents further consent to and will not contest the Department's jurisdiction to issue this Consent Order or to implement or enforce its terms.

WHEREAS, the Department and Respondents agree that this Consent Order is entered into without any admission of liability for any purpose as to any matter arising out of the transactions or occurrences alleged in this Consent Order.

WHEREAS, the Department and Respondents agree that the goal of this Order is to establish the terms and conditions under which Respondent Estate will reimburse the Department for a portion of the response costs associated with the Site and incurred by the Department.

WHEREAS, Respondents waive their right to a hearing herein as provided by law, consent to the issuance and entry of this Order, and agree to be bound by its terms.

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

I. A. Respondents shall enter into this Order and make payment to the Department in the amount of five thousand (\$5,000) dollars. Said payment shall be received by the Department within sixty (60) days of the effective date of this Order. This Order shall become null and void should Respondents fail to carry out their obligations set forth in this paragraph.

B. Payment shall be made by certified check payable to the "New York State Department of Environmental Conservation". Payment shall be sent to:

Donna Weigel, Director
Bureau of Program Management
N.Y.S.D.E.C.
50 Wolf Road - Room 260A
Albany, NY 12233-7010

Respondents shall send a copy of the check simultaneously with the payment to Anthony Quartararo, Esq., Division of Environmental Enforcement, 50 Wolf Road, Room 627, Albany, NY 12233-5550 of the .

II. This Order shall apply to and be binding upon the Department and Respondents, and their successors and assigns. Each signatory to this Order represents that he or she is fully and legally authorized to enter into the terms and conditions of this Order and to bind the party represented by him or her.

III. Respondents hereby consent to the entry upon the Site by any duly designated employee, consultant, contractor, or agent of the Department or other State agency for purposes of inspection, sampling, testing or other activity necessary for the implementation of the remedial program for the Site. Respondents further agree to notify all potential successors in title to the Site property of the Department's ongoing remedial activities at the Site and of the Department's authority to do so under ECL Article 27, Title 13.

IV. For the purposes of this Order, all terms, other than those terms expressly and particularly defined herein, shall be defined in accordance with CERCLA, the ECL, the New York State Finance Law, and the regulations promulgated pursuant to these laws; or, in the absence of a statutory or regulatory definition, such terms will be construed in accordance with their commonly attributed meaning.

V. The failure of Respondents to comply with any provision of this Order shall be a violation of this Order and the ECL.

VI. In consideration for Respondents' payment to the Department, and except as specifically provided in Paragraphs VII and VIII *infra*, the Department releases and covenants not to sue or take administrative action against Respondents pursuant to Section 107(a) of CERCLA, and Article 27, Title 13 of the ECL, or under any other statutory, regulatory or common law claim, for the costs incurred by the Department with respect to the Site. This release and covenant not to sue remains in effect as long as Respondents remains in compliance with this Order.

VII. Nothing contained in this Order shall be construed as barring, diminishing, adjudicating, or in any way affecting any of the Department's rights which include, but are not limited to the following: to perform further response actions at the Site or cause potentially responsible parties to perform such actions; to seek natural resource damages resulting from any release or threat of release of hazardous substances or the disposal of hazardous wastes at the Site from any potentially responsible party, including Respondents; to seek recovery of costs from any persons that do not execute this Order; and to prosecute any criminal liability associated with the Site.

VIII. Nothing herein shall be construed as an assumption on the part of Respondents, of joint and several liability with respect to the liabilities of any third-party for response costs, natural resource damages or any other civil or criminal liability with respect to the Site.

IX. Nothing herein shall be construed to create any rights in, or grant any cause of action to, any person not a party to this Consent Order. Each of the parties expressly reserves any and all rights (including, but not limited to, any right of contribution), defenses, claims, and causes of action which each party may have with respect to any matter, transaction or occurrence relating in any way to the Site against any person not a party hereto.

X. With respect to the claims that the Department has covenanted not to pursue against Respondents, as set forth in paragraph V above, Respondents are entitled to such protection from contribution actions or claims as is provided by CERCLA §113(f)(2), 42 U.S.C. §9613(f)(2).

XI. This Order and its Appendix constitute the entire agreement of the parties herein and shall only be modified upon the written Consent of all parties.

XII. This Order shall not be construed to prohibit the Commissioner or his duly authorized representative from exercising any summary abatement powers, whether at common law or granted pursuant to statute or regulation.

XIII. Nothing herein shall be deemed to diminish or restrict any right of Respondents to seek indemnification from any third-party as may be deemed appropriate.

XIV. The effective date of this Consent Order shall be the day it is signed by the Commissioner or his duly appointed designee, or the Respondents, whichever is later..

DATED: Albany, New York
February 11, 2000

JOHN P. CAHILL
Commissioner
New York State Department
of Environmental Conservation

BY:



Michael J. O'Toole, Jr., Director
Division of Environmental Remediation

CONSENT BY RESPONDENT

For purposes of this Order only, Respondent Estate agrees to pay to the Department the amount of five thousand dollars (\$5,000) and 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: Julie S. Manning
Title: Executor

Date: March 3, 2000

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

On the 3rd day of March, in the year 2000, before me, the undersigned, personally appeared Rollin L. Twining, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Elizabeth T. Decker
Signature and Office of individual
taking acknowledgment

ELIZABETH F. DECKER
Notary Public, State of New
No. 01DE5854585
Qualified in Tioga County
Commission Expires Nov. 30, 20 02

For purposes of this Order only, Respondent Rollin Twining, as Executor of the Estate of Henrietta Hardie, 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.

Date: March 3, 2000

On the 2nd day of March, in the year 2000, before me, the undersigned, personally appeared ROLLIN TWINING, Esq., personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

ELIZABETH F. DECKER
Notary Public, State of New York
No. 01DE5954585
Qualified in Tioga County
Commission Expires Nov. 30, 2020