

STATE OF NEW YORK:
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

In the Matter of Alleged Violations :
of the Environmental Conservation Law :
Article 17 and Agreement and : ORDER ON CONSENT
Determination (Index No. A7-0163-88-12) :
by : INDEX #A7-2228-90-04
CONKLIN, LTD., :
Respondent. :

WHEREAS:

1. The New York State Department of Environmental Conservation ("Department") is responsible for the enforcement of Article 17 of the Environmental Conservation Law of the State of New York ("ECL"), entitled "State Pollutant Discharge Elimination System" ("SPDES"), which provides for the regulation of discharges into the waters of the State.

2. The Department is also responsible for the enforcement of Article 27, Title 13 of the Environmental Conservation Law of the State of New York, entitled "Inactive Hazardous Waste Disposal Sites."

3. Conklin, Ltd. ("Conklin") is a corporation duly organized and existing under the laws of the State of New York, with offices for the transaction of business at The Castle at 10 Thurlow Terrace, Albany, New York 12203. A shopping center is currently being constructed on property generally located south of Onondaga

Lake and north of Hiawatha Boulevard West between the New York State Barge Canal and Interstate 81 in the City of Syracuse. Part of that property is presently owned by Conklin and is known as the Clark property. A portion of the Clark property has been listed in the New York State Registry of Inactive Hazardous Waste Disposal Sites as Site No. 734048 ("Clark Site").

4. On June 27, 1989 the Department and Conklin entered into an Agreement and Determination (Index No. A7-0163-88-12) (the "Agreement and Determination") which provided, inter alia, for the development and implementation of certain activities in connection with the remedial investigation of environmental conditions which existed at the Clark Site, and also authorized the implementation of a pilot study -- Vacuum Extraction System, which extracted volatile organic contaminants from soil and groundwater. On or about September 25, 1989 operation of the pilot study -- Vacuum Extraction System commenced. Pursuant to the Agreement and Determination, the services of professional environmental consultants approved by the Department were obtained by Conklin to act as agent for "overall responsibility, oversight, and operation" of the pilot study, including the design, construction, and operation of a modified water treatment system and its components to treat groundwater.

5. On or about November 9, 1989, Conklin, through its consultant, Dunn Geoscience Corporation, submitted to the Department a proposal for construction and operation of a modified water treatment system as part of its pilot study -- Vacuum Extraction System at the Clark Site (the proposal is hereinafter referred to as the "Work Plan"). The Work Plan provided for the installation of three activated carbon filtration units as part of a proposed modified water treatment system.

6. Thereafter, the Department authorized the commencement of operation of the proposed modified water treatment system in accordance with the Work Plan.

7. The modified water treatment system at the Clark Site was constructed with only two activated carbon filtration units.

8. During all or portions of the period of time from September 25, 1989, and continuing to and including February 22, 1990, the date upon which the Department ordered the cessation of operation of the modified water treatment system, the discharge pipe used as part of such system did not provide for a discharge of effluent directly into the New York State Barge Canal as shown in the Work Plan.

9. During all or portions of the time between January 16, 1990 and February 22, 1990, the date that operation of the modified water treatment system closed, effluent from the modified water treatment system exceeded various effluent limitations provided therefor in or pursuant to the Agreement and Determination.

10. The foregoing constitutes violations of Article 17 of the Environmental Conservation Law and the Agreement and Determination.

11. The Department recognizes that Conklin has "volunteered" to clean-up environmental contaminants at the Clark Site and would not have otherwise had any obligation whatsoever to remediate any environmental condition at that Site. Moreover, the Department is satisfied with Conklin's implementation of studies and plans for the remediation of the Clark Site.

12. Conklin affirmatively waives its right to notice and a hearing in this matter, as provided by law, and consents to this Order and agrees to be bound by the terms thereof.

NOW, THEREFORE, having considered this matter, and being duly advised,

IT IS HEREBY ORDERED THAT:

I. A civil penalty shall be paid to the Department on account of the facts asserted herein, including violations of Article 17 of the Environmental Conservation Law and the Agreement and Determination asserted herein, up to and including the effective date of this Consent Order, in the amount of \$55,000. This civil penalty shall be paid to the Department, by certified check payable to the New York State Department of Environmental Conservation, upon delivery of Conklin's counsel of an executed copy of this Consent Order. Such civil penalty shall be deposited into the Department's Environmental Enforcement Account.

II. Payment of the amount provided in Paragraph I shall constitute and shall be in complete satisfaction of all civil and criminal liability to the Department or under the ECL which may exist on account of the facts asserted herein, including the violations of Environmental Conservation Law Article 17 and of the Agreement and Determination asserted herein, up to and including the date of this Consent Order.

III. Respondent shall make payment to the Department for an on-site monitor who shall have the duty of monitoring environmental remediation work at the Clark Site. In order to fund this environmental

monitor position, an account will be established with the Department as follows:

(a) A sum established by the Department as sufficient to cover the quarter-annual costs of the environmental monitor.

(b) Costs to be covered by this sum include:

(1) Direct personal service costs and fringe benefits, including the cost of replacement personnel for the regularly assigned monitor.

(2) Direct non-personal service costs, including purchase or lease of a vehicle if necessary, and its full operating costs.

(3) Inflation increases and negotiated salary increases.

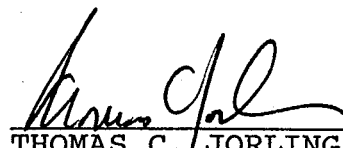
(4) Overhead or support costs at the approved Federal Indirect Cost Rate.

IV. This Consent Order shall bind and inure to the benefit of the Department and Conklin and Conklin's officers, directors, employees, agents, contractors, successors and assigns.

V. This Consent Order shall not be admissible in any action or proceeding, except an action brought by the Department to enforce the terms of this Consent Order.

VI. The terms of this Consent Order shall constitute a complete and entire Order between Conklin and the Department. No terms, conditions, understandings or agreements purporting to modify or vary the terms hereof shall be binding unless made in writing and subscribed to by the party to be bound.

Dated: Albany, New York
June 26, 1990

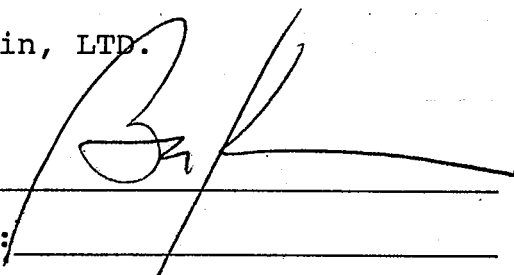


THOMAS C. JORLING
NEW YORK STATE COMMISSIONER OF
ENVIRONMENTAL CONSERVATION

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 the provisions, terms and conditions contained in this Order.

Conklin, LTD.

By:  _____

Title: _____

Date: _____

STATE OF NEW YORK)
 : ss.:
COUNTY OF Onondaga)

On this 15th day of June, 1990 before me personally came Bruce A. Kenan, to me known, who being duly sworn, did depose and say that he resides at Shanaweltus, NY; that he is the Vice President / Secretary of Conklin, Ltd., the Corporation described in and which executed the foregoing instrument; and that is executed thereof is pursuant to authorization of the Board of Directors of said Corporation, and that he signed his name thereto by like authorization.

Ruth Ann Rothbaler

NOTARY PUBLIC

RUTH ANN ROTHBALER
Notary Public in the State of New York
Qualified in Onondaga County No. 4826365
My Commission Expires 8-31-90

