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New York State Department of Environmental Conservation

MEMORANDUM

TO: Commissioner Jorling
 FROM: David A. Engel, Acting Director, Division of Environmental Enforcement
 SUBJECT: Miller Container Division - Order on Consent
 DATE: November 20, 1987

Handwritten: JS, JBS, 2-277, [Signature], files

Attached for your review and signature are two duplicate originals of an Interim Order on Consent which has been executed by the Miller Container Division. The Order involves an inactive hazardous waste disposal site in the Town of Volney, Oswego County. The site has been listed in the Registry of Inactive Hazardous Waste Disposal Sites in New York State as site code #738029 and classified as a "2".

The Order requires Miller to implement an Interim Remedial Program at the site. A work plan has been approved by the Division of Hazardous Waste Remediation and is incorporated into the Order. The approved program consists of the installation of three groundwater recovery wells, treatment of the groundwater by means of an air stripper and disposal into the City of Fulton sanitary sewer system. Miller has entered into a separate agreement with the City for such disposal; a copy is attached for your information as Attachment 1. Miller has already installed the groundwater recovery wells and is currently constructing the air stripper. The company expects the system to be fully operational in mid-January. A public meeting has been scheduled for December 3 to explain the program to interested citizens and address any questions or concerns they may have.

The Department's right to seek further investigation and/or remediation at the site is specifically reserved.

The Order was negotiated by Deborah Christian, an associate attorney in this Division. The work plan was developed by Tom Suozzo and Jim Craft of Region 7 and John Swartwout of the Division of Hazardous Waste Remediation.

DE:lj
 Attachment

cc: L. Marsh
 J. Corr
 N. Sullivan
 R.W. Groneman
 R. Tramontano

R. Cross
 M. O'Toole
 W. Krichbaum
 J. Sevinsky

RECEIVED

JAN 28 1988

RECEIVED

JAN 27 1988

DIRECTOR'S OFFICE
 DIVISION OF HAZARDOUS
 WASTE REMEDIATION

STATE OF NEW YORK: DEPARTMENT OF ENVIRONMENTAL CONSERVATION

In the Matter of

MILLER BREWING COMPANY,
CONTAINER DIVISION

INTERIM
ORDER ON
CONSENT

Respondent.

CASE #A701118704

WHEREAS:

1. The New York State Department of Environmental Conservation (the "Department") is responsible for the enforcement of Article 27, Title 13 of the Environmental Conservation Law (the "ECL") of the State of New York.

2. Miller Brewing Company is a corporation organized and existing under the laws of the State of Wisconsin and authorized to do business in the State of New York. Miller Brewing Company has a Container Division (the "Respondent"), which operates a canmaking facility in the Town of Volney, Oswego County (the "Site"). The Miller Container facility is located approximately 1200 feet southeast of the Fulton, New York municipal boundary, approximately 1000 feet northeast of the Oswego River and approximately 900 feet south of New York State Route 481.

3. Respondent had in use a spill containment tank installed near the northwest corner of its facility, which was found at the time of its excavation in the spring of 1986 to have been leaking. Respondent then retained Calocerinos & Spina Consulting Engineers ("C&S") to ascertain the direction of movement of any contaminants and the extent of contamination.

4. Laboratory analyses of ground water samples collected by C&S detected the presence of methylene chloride, 1,1-dichloroethylene, 1,1-dichloroethane, 1,1,1-trichloroethane and 1,1,2,2-tetrachloroethylene ("volatile organics") in monitoring wells installed at the Site.

5. The consulting firm of Malcolm Pirnie, Inc. was retained to further define the extent of the contaminant plume and the direction and rate of travel of the plume. As a result of its investigation, Malcolm Pirnie, Inc. believes it has defined the extent of the plume and has proposed a ground water recovery program to stop the movement of the plume and treat the contaminated ground water within the plume.

6. The Department alleges that the volatile organics detected at the Site are hazardous wastes which constitute a significant threat to the environment, requiring remedial action. The Site has been classified in the Registry of Inactive Hazardous Waste Disposal Sites in New York State as a Class "2" site, Site Code #738029.

7. Pursuant to ECL § 27-1313(3)(a), "whenever 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". -

8. The objective of this Order shall be to implement an Interim Remedial Program ("Interim Program") as described in Paragraph I of this Order. The Department and the Respondent agree that the recovery system described at Paragraph I is an appropriate interim remedial response. If further remedial work is deemed necessary following completion of the Interim Program, either this Order shall be appropriately modified by written agreement signed by both parties or Respondent shall be given an opportunity for a hearing.

9. Respondent, having waived its right to a hearing herein, has consented to the issuance of this Order without any adjudication of fact or law. Respondent's consent to and compliance with this Order does not constitute, and shall not be construed as, an admission of liability of any kind or an admission by Respondent of law or fact or of the applicability of any law to conditions at the Site.

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

I. (a) No later than thirty (30) days after the effective date of this Order, Respondent shall install three (3) recovery wells at the locations identified in Exhibit A and commence the operation of the recovery system in a timely manner subject to the terms and conditions of this Order.

(b) Once the three (3) wells are installed and the pump tests are completed, the wells shall be equipped with submersible pumps capable of pumping the required ground water flows. The ground water shall then be treated by an air stripping system to the levels listed in Exhibit B at all times prior to discharge to the sanitary sewer system maintained by the City of Fulton. The system shall be "winterized" for protection during periods of below freezing temperatures.

(c) Sampling taps shall be provided for each of the three recovery wells at the well head. Sampling taps shall also be provided at the inlet and discharge sides of the treatment system.

(d) The procedure for installation, start-up and operation of the recovery system is set forth in the work plan attached as Exhibit C. The ground water sampling protocol and site safety plan to be followed for the Interim Program are attached as Exhibits D and E, respectively.

II. Prior to the operation of the recovery well system, Respondent shall obtain a permit to construct/certificate to operate an air contamination source. This shall be the only Department permit required for Respondent's operation of the recovery system described at Paragraph I of this Order.

III. Respondent shall obtain written permission from the City of Fulton to use its sanitary sewer system for the disposal of the treated ground water from the recovery

system. Respondent reserves the right to suspend the recovery system and secure an alternate disposal method for the treated ground water as long as such alternate disposal method is in accordance with applicable laws, rules and regulations. The Respondent shall timely notify the Department of its intent to suspend the recovery system and secure an alternate disposal method and obtain written approval for same.

IV. (a) If, at any time, Respondent believes that the interim remedial program has treated the ground water at the Site to acceptable levels, it shall notify the Department in writing and request the Department's consent to turn off the system. If the Department gives its written consent, the recovery system may be shut off. If the Department does not give its consent, or fails to respond within thirty (30) days after receipt of the Respondent's written notice to discontinue, Respondent reserves the right, upon twenty (20) days additional written notice to the Department, to terminate the recovery system.

(b) The Department reserves its right to proceed against the Respondent under applicable law in the event of termination of the recovery system without its consent. Furthermore, nothing contained in this Order shall be construed as barring, diminishing, adjudicating or in any way affecting the Department's right to enforce, at law or in equity, the terms and conditions of this Order against

Respondent, its successors and assigns in the event that Respondent fails to fulfill any provisions hereof.

(c) The Respondent and the Department shall confer periodically to determine what further efforts, if any, are required to address any remaining environmental concerns arising out of Respondent's use of the spill containment tank at the Site. Both the Respondent and the Department reserve their respective rights regarding any additional investigative and/or remedial work at the Site.

V. The Respondent shall retain a third-party professional consultant, contractor and/or laboratory to perform the required technical, engineering and analytical work required by this Order.

VI. The Department shall have the right to obtain for the purpose of comparative analysis "split samples" or "duplicate samples" of all substances and materials sampled by Respondent. The Department shall provide Respondent with the analytical results of any such sampling, after receipt of Respondent's results.

VII. Respondent shall provide notice to the Department of any excavating, drilling or sampling to be conducted pursuant to the terms of this Order at least five (5) working days in advance of such activities. Department representatives may be present on-site during these periods of activity provided they comply with all safety rules.

VIII. Respondent shall permit, upon reasonable notice, any duly designated officer, employee, consultant, contractor

or agent of the Department or the Department of Health to enter upon the Site or areas in the vicinity of the Site which may be under the control of Respondent, and any areas necessary to gain access thereto, for inspection purposes, for making or causing to be made such sampling and tests as deemed necessary, and for ascertaining Respondent's compliance with this Order.

IX. Respondent shall not suffer any penalty under this Order if it cannot comply with any provisions hereof because of an act of God, war, strike, riot, or other condition as to which negligence or willful misconduct on the part of Respondent was not a proximate cause; provided, however, that Respondent shall immediately notify the Department in writing when it obtains knowledge of any such condition and request an appropriate extension or modification of the provisions hereof.

X. 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 ("losses") of every name and description arising out of or resulting from the fulfillment or attempted fulfillment of this Order to the extent that negligent acts or omissions or willful misconduct of Respondent, its directors, officers, employees, servants, agents, successors or assigns are the proximate cause of the losses.

XI. The effective date of this Order shall be the date it is signed by the Commissioner.

XII. The terms of this Order shall not be construed to prohibit the Commissioner or his duly authorized representative from exercising any summary abatement powers, either at common law or as granted pursuant to statute or regulation.

XIII. The failure of Respondent to comply with any provision of this Order shall constitute a default and a failure to perform an obligation under this Order.

XIV. Nothing contained in this Order shall be construed as barring, diminishing, adjudicating or in any way affecting (1) any legal or equitable rights or claims, actions, suits, causes of action or demands whatsoever that the Department may have against anyone other than Respondent, its directors, officers, employees, servants, agents, successors and assigns; (2) the Department's right to enforce at law or in equity the terms and conditions of this Order against Respondent, its directors, officers, employees, servants, agents, successors and assigns in the event that Respondent shall fail to fulfill any of the provisions hereof; and (3) the Department's right to bring any action at law or in equity against Respondent, its directors, officers, employees, servants, agents, successors and assigns with respect to areas or resources that may have been affected or contaminated as a result of the release or migration of hazardous wastes from the Site or from areas in the vicinity of the Site. Nothing herein shall be construed as affecting the Department's right to commence any action or proceeding

to which it may be entitled in connection with, relating to, or arising out of Respondent's disposal of hazardous waste at the Site.

XV. Unless otherwise agreed in writing, all correspondence with respect to the subject matter of this Order between the signatories to it shall be as follows:

(a) Respondent:

1. One copy to: Bond, Schoeneck & King, One Lincoln Center, Syracuse, New York 13202, Attention: Barry R. Kogut, Esq.

2. One copy to: Miller Brewing Company Container Division, PO Box 400, Fulton, New York 13069, Attention: Larry Messina.

(b) Department:

1. Two copies to the Division of Hazardous Waste Remediation, Room 212, 50 Wolf Road, Albany, New York 12233, Attention: Michael O'Toole, P.E., Director.

2. One copy to the Division of Environmental Enforcement, Room 415, 50 Wolf Road, Albany, New York 12233, Attention: Deborah Christian.

3. Two copies to the New York State Department of Environmental Conservation, Region 7, 7481 Henry Clay Boulevard, Liverpool, New York 13088, Attention: Regional Director.

4. One copy to the New York State Department of Health, Bureau of Toxic Substance Assessment, Room 372,

Tower Building, Empire State Plaza, Albany, New York 12237,
Attention: Ronald Tramontano.

XVI. No informal advice or guidance by the Department's officers, employees or representatives upon any submittals shall relieve the Respondent of its obligation to obtain written approval of the same.

XVII. The provisions of this Order shall be deemed to bind Respondent, its successors and assigns.

XVIII. If for any reason Respondent desires that any provision of this Order be changed, Respondent shall make timely written application to the Commissioner, setting forth reasonable grounds for the relief sought. The Commissioner shall not unreasonably deny such requests.

XIX. The provisions hereof shall constitute the complete and entire Order between the 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.

DATED: Albany, New York
January 22, 1987

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

/s/

CONSENT BY RESPONDENT

Miller Brewing Company, Container Division, without any admission of law or fact, waives its right to a hearing herein as provided by law, and consents to the issuing and entering of the foregoing Order, and agrees to be bound by the provisions, terms and conditions hereof.

MILLER BREWING COMPANY, CONTAINER
DIVISION

By: 

DANIEL P. DOCKERY

Title: Assistant Secretary

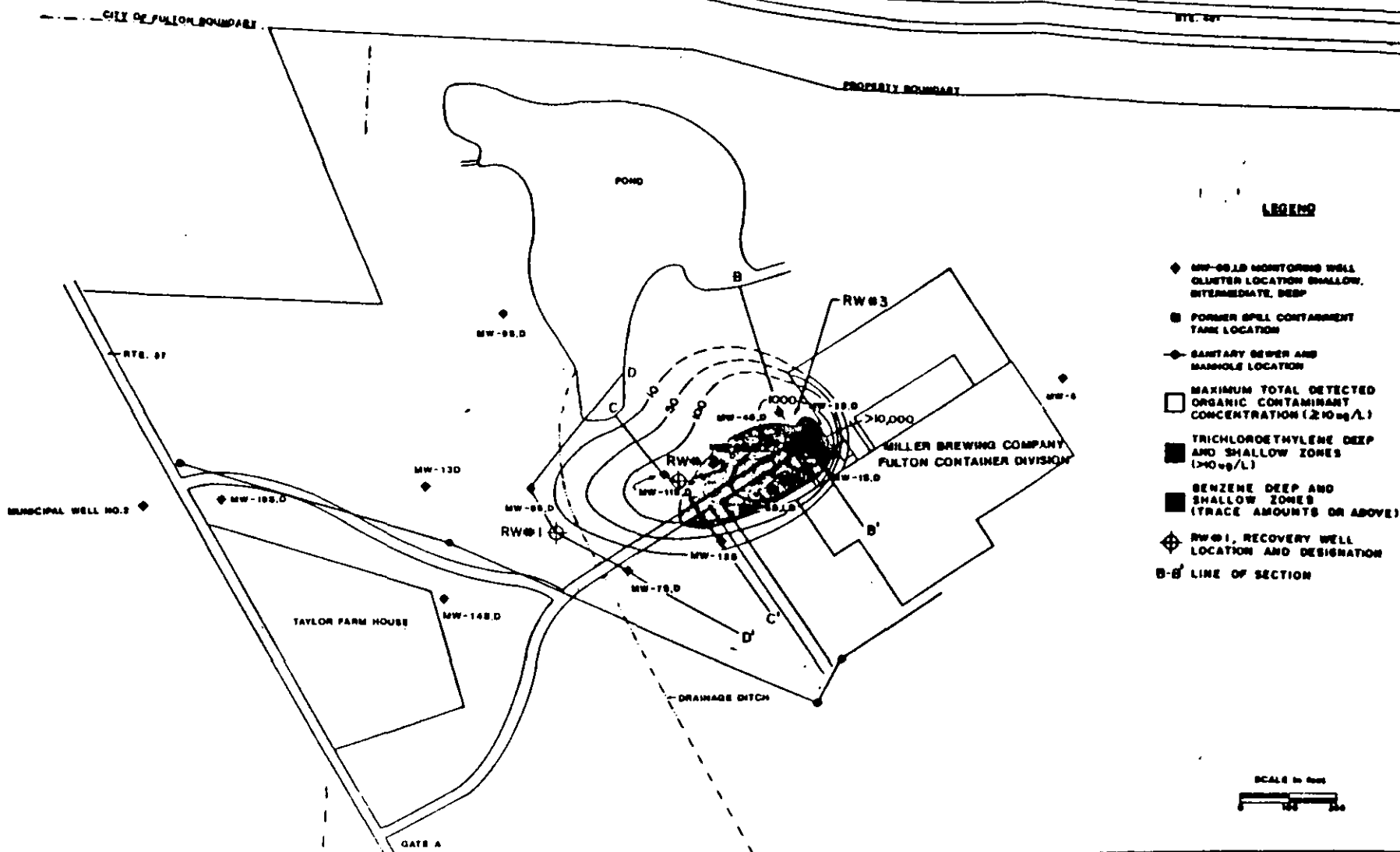
Date: November 16, 1987

STATE OF WISCONSIN)
) ss.:
COUNTY OF MILWAUKEE)

On this 16th day of November, 1987,
before me personally came Daniel P. Dockery, to
me known, who by me duly sworn, did depose and say: that he
resides at Milwaukee, Wisconsin; that he
is the Assistant Secretary of the corporation described
herein and that he signed this Order on Consent on behalf of
said Corporation.


Notary Public

Exhibit A



**MALCOLM
PIRNIE**

REVISIONS			
NO.	DATE	DESCRIPTION	BY
1			
2			
3			
4			
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MILLER BREWING COMPANY
CONTAINER DIVISION
FULTON, NEW YORK

HYDROGEOLOGIC INVESTIGATION
IN THE VICINITY
OF A SPILL CONTAINMENT TANK
EXTENT OF CONTAMINANT PLUMES

DATE: JANUARY 1987
SHEET: 1 OF 1
FIGURE 2-1

Exhibit B

EXHIBIT B

<u>PARAMETER</u>	<u>DAILY MAX.</u>
Methylene Chloride	50 ug/l
1,1,1-trichloroethane	20 ug/l
Trichloroethylene	40 ug/l
Toluene	50 ug/l
1,1-Dichloroethylene	30 ug/l
1,1-Dichloroethane	30 ug/l
Tetrachloroethylene	400 ug/l

Exhibit C

EXHIBIT C

WORK PLAN

I. INSTALLATION OF WELLS

1. DRILLING METHOD

The cable-tool percussion method will be utilized to drill the boreholes for installation of the recovery wells. This method carries out the drilling operation by lifting and dropping a heavy string of drilling tools in the borehole. When drilling in unconsolidated sediments, the drill bit loosens the material. The reciprocating action of the tools mixes the loosened sediments with formation water to form a slurry.

The resulting slurry will be removed from the borehole by means of a bailer. The bailer consists of a section of pipe with a check valve at the bottom. As the slurry is removed from the borehole, it will be contained in barrels. The barrels will be emptied into the plastic-lined, bermed soil-retention area located to the east of the container plant.

Six-inch inner diameter (I.D.) steel casing will be driven to prevent caving and keep the borehole open. The usual procedure is to drive the casing several feet, which results in a plug of approximately the same amount of material inside the casing. This material is then mixed with water by the drill bit

to form the slurry. The slurry is then bailed out and the casing driven again. This process is repeated until the casing is sunk to the desired depth, i.e. the top of the glacial lodgement till.

When the casing has reached the desired depth, 5 5/8-inch outer diameter (O.D.) low-carbon, wound-wire screen will be telescoped inside the casing to the total depth of the borehole. The size of the slots in the screen will be determined for each well based on grain-size distribution analysis. The length of the screened section will be dependent on the thickness of the sand and gravel unit which occurs overlying lodgement till. A lead packer is threaded or welded to the top of the well screen. When the well screen is in place, the casing will be pulled back to a depth corresponding to near, but below the top of the well screen. The lead collar will then be expanded by swedging to form a tight seal against the casing.

After the well installations are completed, fine-grained material present in the sand and gravel unit adjacent to the wells will be removed through development, thereby enabling ground water to enter the well more freely. Development water will be contained and later discharged through the treatment system. A figure of a typical recovery well is attached.

2. PUMP TESTS

The existing monitoring wells will be used in conjunction with the pumping wells to determine the shape and extent of the well-field cone of depression. After the Department has

inspected the installation of the recovery system, pump tests will be run on each of the three (3) recovery wells, utilizing temporary pumps. The water generated by the pump tests will be sent through the treatment system prior to discharge into the City of Fulton sanitary system. Notwithstanding any other provision of this Order, the ground water flows generated from the pumping test need not be treated to the levels set forth at Exhibit B to this Order.

3. WELL PUMPS AND ACCESSORIES

Once the pump tests are completed, the three wells will be equipped with submersible pumps capable of pumping the flows of ground water that are required to maintain the drawdown over the required area.

Flow meters and throttling valves will be installed at the discharge of each pump to accommodate the varying head conditions on each well as the drawdown develops, and the requirement to maintain continuous operation of the pumps. As each pump is started, the valve will initially be throttled in a near-closed position to limit the flow. Then, as the water column drops and the intake head on the pump is reduced, the valve would be gradually opened to maintain the desired flow rate at the increasing discharge head values.

The discharge piping from each well will be directed into an underground valve box which will contain the flow measurement and control equipment as well as the sampling taps.

II. START-UP PROCEDURES

The procedure for start-up will be to allow the system to discharge for one (1) hour at which time a sample will be obtained from each of the sampling taps described at paragraph I(c) of the Order. After the samples are obtained, the flow to the treatment system must stop. The samples taken must be analyzed using EPA method 601 and 602. A 24 to 48 hour turn-around time should be requested.

If the treatment system removes or reduces contaminants to the levels listed on Exhibit B to this Order ("approved levels"), the recovery operation may commence. If the recovery system fails to remove the contaminants to the approved levels, additional treatment will be required before commencement of the recovery operation.

A sample must be taken from each of the five (5) sampling taps and analyzed in accordance with the following schedule:

- 48 hours after start-up, 24 hour turn-around time.
- 14 days after start-up, 24 hour turn-around time.
- 1 month after start-up, 1 week turn-around time.
- 2 months after start-up, 1 week turn-around time.
- 3 months after start-up, 1 week turn around time.

The sampling frequency beyond the three month period shall be determined by the Department and the Respondent at a later date.

If the contaminants in the effluent from the recovery system exceed the approved levels at any time during the operation of the system, the Department and the City of Fulton shall

be contacted within two hours after the Respondent receives notice of exceedance. If the contaminants in the effluent from the treatment system exceed the approved levels, the exceedance must be corrected within eight (8) hours or the recovery system must be shut off upon notice from the Department. A sample must be obtained and analyzed within 24 hours after corrective measures are taken to confirm that the approved levels are no longer being exceeded.

An individual at the Respondent's facility must become familiar with both the principles and the mechanics of the recovery system. This person must inspect the recovery system twice a day and record his/her findings. If a problem is detected, action to correct it must be taken immediately and recorded.

The Department shall be advised of the name of the Respondent's representative and how this individual can be contacted at any time. In turn, the Respondent shall be advised by the Department of the name of the Department's representative who is to receive notice of any problems encountered with the recovery system and how that individual can be contacted at any time.

III. MONITORING OF THE EFFECTIVENESS OF THE SYSTEM

The recovery system has been designed to create a cone of depression, which will contain and capture all ground water within the contaminant plume. The contaminant plume is defined as follows:

(a) Areally

- regions where the maximum total detected organic contaminant concentration exceeds 10 ug/l
- areas where the concentration of trichloroethylene exceeds 10 ug/l
- areas which contain detectable concentrations of benzene

(b) Vertically

- the saturated ground water zone between the maximum high water table surface and the top of the glacial till in the areal regions described above.

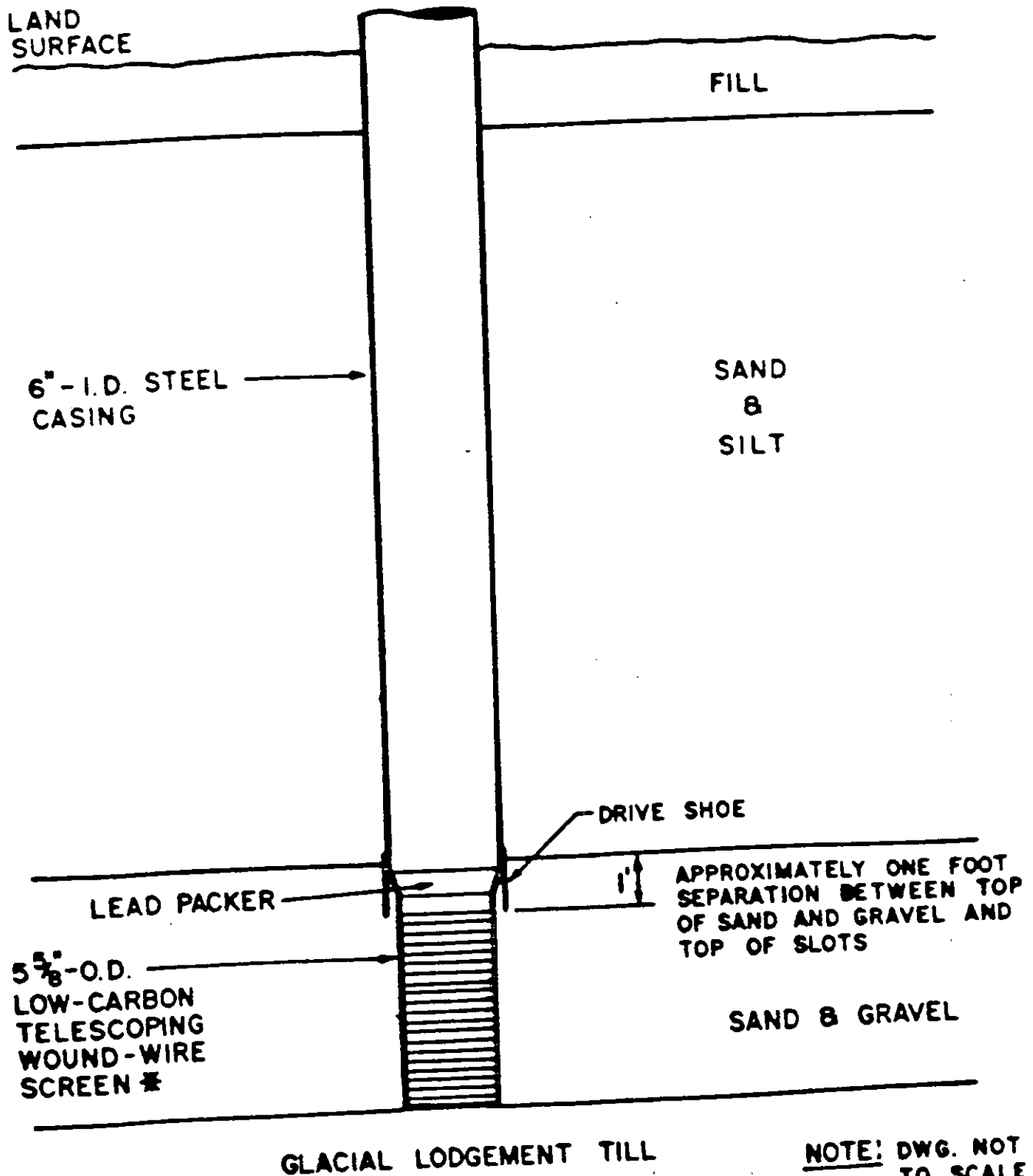
For the first six months after the commencement of the operation of the recovery system, ground water samples shall be obtained from each of the 26 monitoring wells at the Site on a quarterly basis and analyzed using EPA method 601 and 602. In addition, ground water samples shall be obtained and analyzed for the same EPA scans from the following monitoring wells on a monthly basis: 1S, 1D, 4D, 6S, 6D, 6I, 8D, 10S, 10D, 13D and 14D.

The sampling frequency beyond the six month period shall be determined by the Department and the Respondent at a later date.

Data from the selected monitoring wells will provide an "early-warning" if the recovery system is not operating properly. In the event the existing system fails to contain the

plume, the Respondent shall consult with the Department and make those necessary modifications to the remedial program to contain the plume.

**SCHEMATIC DIAGRAM
TYPICAL RECOVERY WELL
CONSTRUCTION**



✱ ACTUAL SLOT SIZE TO BE DETERMINED
BY GRAIN SIZE DISTRIBUTION ANALYSIS

NOTE: DWG. NOT
TO SCALE

Exhibit D

EXHIBIT D
GROUNDWATER SAMPLING PROTOCOL
MILLER CONTAINER DIVISION

INTRODUCTION

The observance of proper sampling protocol assures that samples collected are representative of their original environment and their integrity is maintained from the time of sampling through the time of analysis. This assurance is gained through the use of: (1) appropriate sampling methods; (2) clean, calibrated equipment; (3) containers, preservatives and holding times conforming to accepted standards; (4) proper work documentation; and (5) statistical precision and accuracy through the use of blank samples, duplicate samples and, in the laboratory, spike samples.

In order to assess the impact of the disposal of waste materials to the land on groundwater quality, the behavior of pollutants in the subsurface and the processes governing this behavior must be evaluated. The fundamental objective of monitoring land disposal or spill sites is to serve as a check on potential groundwater contamination. The subsurface environment, however, is an extremely complex system subject to extensive physical chemical and biological changes within small vertical and horizontal distances. Samples from a monitoring well represent a small part of an aquifer horizontally and in many cases, vertically. Special precautions must be taken to ensure that the sample taken from a given well is representative of the groundwater at that location and that the sample is neither altered nor contaminated by the sampling and handling procedure.

The following section details the basic procedures followed by Malcolm Pirnie field crews in monitoring groundwater. These procedures are based on United States Environmental Protection Agency and other groundwater monitoring manuals.

(NOTE: The procedure below involves the use of stainless steel bailers for bailing and sampling wells. Miller is currently considering the use of dedicated bailers and/or other equipment for performing those tasks. This procedure would be revised to reflect those changes.)

1. Fill in the preliminary information on the "Monitoring Well Sample Characterization and Chain-of-Custody Sheet" (log sheet).
2. Put on the necessary personal protective equipment and a new pair of disposable gloves.
3. Insure that all sampling and monitoring equipment has been properly decontaminated prior to use, utilizing a tap water rinse, acetone/hexane wipe/rinse, organic free water rinse and a second organic free water rinse.
4. Unlock the well and remove the inner protective cap. Place this in a location that will not contribute contamination to the well when it is replaced.
5. Using the pre-cleaned electric well depth probe, measure the depth to the water surface in the well (to the nearest 0.1 foot) from the top of the internal well casing. Record this information on the log sheet. Decontaminate the well probe.
6. Determine the volume of water in the well using the following formulas, and record it on the log sheet.
$$V = 0.16 \times (D - W) \quad (\text{For 2" ID well})$$

V = Volume in gallons
D = Well Depth (feet)
W = Depth to Water (feet)
7. Attach a new piece of rope to the bailer and lower the pre-cleaned bailer to just fill the bailer. Withdraw the bailer and note the pH and appearance of the water on the log sheet, along with the time.
8. Continue to bail the well until 3 complete well volumes are removed from the well. If the well is bailed to dryness, allow the well to recover prior to sampling. Record the volume bailed on the log sheet.

9. Prepare the sampling bottles, along with associated labels and preservatives. At Miller, only volatile organics are of concern, so 40-ml glass vials with Teflon-lined septum caps are utilized.
10. Remove a complete bailer full of water from the well and fill two vials, being careful to slowly fill the vial to avoid turbulence. Immediately cap the vial and invert to insure that no bubbles are trapped in the vial. If a bubble occurs, discard the vial and repeat this step. Label the sample, note the time of sampling and place the vial in a cooler with ice.
11. From the same or a subsequent bailer, check the water for pH, appearance and temperature. Record this information on the log sheet. Complete the remainder of the chain-of-custody sheet.
12. Decontaminate all sampling and monitoring equipment.
13. Replace the internal well cap and lock the well.
14. Transfer the sample and associated custody sheets to Upstate Laboratories, Inc. (Midler Park Drive). Analysis is for EPA Methods 601 and 602.

NOTE: As a general rule, the sequence of wells should proceed from cleanest to most contaminated. This may be altered slightly to accommodate slowly recovering wells.

Exhibit E

SITE SAFETY PLAN

A. HAZARD AND RISK ANALYSIS

1. Hazard Analysis for Each Project Task

The interim remedial program involves treatment of contaminated ground water at the Site. Based on the results of previous site investigations, the following potential hazards have been identified for each task in the work:

- | | |
|-----------------------------------|---|
| 1. Install recovery wells. | Exposure to contaminants; physical hazards. |
| 2. Install equipment. | Physical hazards. |
| 3. Conduct start-up & pump tests. | Exposure to contaminants; physical hazards. |
| 4. Sample recovery wells. | Exposure to contaminants. |
| 5. Review & interpret results. | None. |
| 6. Document work. | None. |
| 7. Perform periodic sampling. | Exposure to contaminants. |

2. Potential Exposure To Contaminants

2.1 Contaminants of Concern

Table 1 lists the contaminants found at the Site in the soil and ground water. The concentration level shown represents the maximum value found at any sampling location.

2.2 Contaminant Hazard Review

Table 2 lists toxicity and exposure data for each of the contaminants.

2.3 Contaminant Risk Assessment

The potential for exposure to contaminants at toxic or dangerous levels at the Site is generally low based on the information presented in Tables 1 and 2.

The exposure route of most concern is the inhalation route, since all the contaminants are volatile. However, background levels of organics at the site are in the 0.2 to 0.4 ppm range, as measured with an HNU photoionizer calibrated against benzene. Generally, the contaminants are dissolved in ground water and would not be released to the atmosphere. The only potential inhalation hazard of real concern would occur, if, during drilling or excavation activities, soil areas of relatively high concentrations were encountered.

The dermal and oral hazard ratings for the contaminants at the Site are generally moderate. Since the contaminants are actually "diluted" with soil and/or ground water, the real hazard is more on the level of extremely low.

3. Physical Hazards

Physical hazards at the Site are minimal. Potential safety hazards include injury or hearing loss from the use of heavy machinery (e.g. excavation equipment), shock or electrocution from electrical equipment, and injury from accidents caused by unstable surfaces (e.g. excavation site).

B. PERSONAL PROTECTION EQUIPMENT

Personal protection equipment has been designated for each project task where potential hazards from chemical exposures exist. The designated PPE is listed on Table 3. Protection from site physical hazards is best accomplished by a general attitude of safety-consciousness.

Contractors whose work will be performed on-site, or who otherwise could be exposed to health and safety hazards, will be advised of all such hazards through the distribution of this Site Safety Plan (SSP). All contractors are responsible for: (1) providing their own personal protection equipment; (2) training their employees; (3) providing medical surveillance for their employees; and, (4) insuring their employees are advised of and meet the requirements of this SSP.

C. AIR MONITORING

Air monitoring will be conducted on the site during each of the project tasks listed on Table 3, except periodic sampling of wells. The monitoring will be conducted using an HNU photoionization analyzer. Data will be recorded on the form shown in Appendix A. The HNU will be calibrated according to the manufacturers' instruction manual, prior to going on-site.

If, at any time, the HNU shows a concentration of organics which exceeds 5 ppm (the lowest TWA on Table 2), the Consultant's Project Manager must be immediately notified. If the organic

concentration exceeds 20 ppm (the lowest STEL on Table 2), workers must don their half face air-purifying respirators. If the concentration reaches 1000 ppm (the protection level of 3M respirator 8725), workers must immediately leave the area and notify the Consultant's Project Manager of the hazardous site conditions.

D. SITE CONTROL

The Site will require a minimal amount of site control, due to the low hazard level and general inaccessibility of contaminants at the Site.

Work tasks where contaminants may be encountered include the installation and sampling of wells. The site work zones where these tasks will be performed are shown on Figure 2. These zones consist of 6 circular areas of a 50 foot radius surrounding monitoring wells MW-12, MW-13 and MW-14, and recovery wells RW-1, RW-2 and RW-3. A larger work zone encompasses the former spill containment tank and the concrete dock area where heavy equipment (e.g. drilling rig) will be decontaminated. Contaminated materials or equipment will not be allowed outside the designated work zones.

The buddy system will be used for the work tasks designated in Table 3. For tasks such as drilling, the buddies may be a combination of the Consultant and subcontractor personnel. However, in no case, shall less than two people be on-site during the designated project tasks.

No special communications systems or standard operating procedures will be required for this project. However, the following safe work practices will apply while working in the site work zones shown on Figure 2.

1. Smoking, eating or drinking is forbidden.
2. Ignition of flammable liquids within or through improvised heating devices (e.g. barrels) is forbidden.
3. Contact with samples or excavated materials must be minimized.
4. Use of contact lenses is prohibited.
5. Any injury or unusual health effect must immediately be reported to the Project Manager. The location of medical assistance and other emergency procedures are outlined in Section F of the SSP.

E. DECONTAMINATION PROCEDURES

All decontamination will take place within the Site work zone shown on Figure 2. Decontamination of personnel will consist of rinsing the outer rubber boots with water, and disposing of protective clothing (Tyvek suits and gloves). If personnel do not contact contaminated materials, decontamination will not be required. Sampling equipment (e.g. well bailers) will be decontaminated by rinsing with hexane and acetone and then rinsing twice more with distilled water. Heavy equipment (e.g. the drilling rig) will be decontaminated by steam cleaning in the area shown on Figure 2.

F. EMERGENCY RESPONSE PLAN

The only type of emergency anticipated at the Site would be personal injury due to minor accidents (e.g. slips, falls) or injury from heavy machinery (e.g. drilling rig). Emergency medical treatment can be obtained in the Lee Memorial Hospital in Fulton.

Hospital Phone Number: (315) 592-2224

Directions to Hospital: Exit Miller Container turning right on Route 57. Proceed north towards Fulton. Bear right on Fourth Street. Hospital is approximately 3 blocks down the street on the left side.

G. RECORDS

Personal and Site Safety Logs will be maintained by personnel working on tasks designated on Table 3. These forms are included in Appendix A.

Tables

TABLE 1

MAXIMUM CONTAMINANT LEVELS MEASURED ON-SITE

CONTAMINANT	GROUNDWATER ug/l	SOIL ug/kg
Benzene	4	-
1,1-Dichloroethane	140	-
1,1-Dichloroethylene	2100	-
1,2-Dichloroethylene	6	-
1,3-Dichloropropane	2	-
Ethylbenzene	-	65
Tetrachloroethylene	2400	100
Toluene	15	210
1,1,1-Trichloroethane	8100	59
1,1,2-Trichloroethane	4	-
Trichloroethylene	130	55
Xylenes	2	350

*All these analytical results are on soil removed from a test pit dug in the spill containment tank excavation. They were reported in Malcolm Pirnie's December, 1986 Report entitled "Phase II Hydrogeologic Investigation in the Vicinity of a Spill Containment Tank."

TABLE 2
TOXICITY AND EXPOSURE DATA FOR CONTAMINANTS ON-SITE

	INHALATION HAZARD TWA ppm	HAZARD STEL ppm	DERMAL HAZARD	ORAL HAZARD LD ₅₀ RAT mg/kg	LD ₅₀ gms/ 155 lb ma
Benzene*	10	25	MOD	3,800	266
1,1-Dichloroethane	200	250	MOD	1,120	78
1,1-Dichloroethylene	5	20	na	200	14
1,2-Dichloroethylene	10	-	na	LOW	-
1,3-Dichloropropane	-	-	na	1,900	133
Ethylbenzene	100	125	MOD	3,500	245
Tetrachloroethylene	50	200	MOD	8,850	620
Toluene	100	150	MLD	5,000	350
1,1,1-Trichloroethane	350	450	MOD	10,300	721
1,1,2-Trichloroethane	10	-	MOD	1,140	80
Trichloroethylene	50	200	SEV	4,920	344
Xylenes	100	150	na	5,000	350

* Benzene is also a known carcinogen.

TWA = Time weighted average for a normal 8 hour day and 40 hour week, to which nearly all workers may be exposed day after day, repeatedly, without adverse effect.

STEL = A 15 minute time weighted average exposure which should not be exceeded at any time during a work day, even if the TWA is met.

MLD = Mild irritation effects.

MOD = Moderate irritation effects.

SEV = Severe irritation effects.

Note: Eye irritation may equal or exceed skin irritation.

LD₅₀ = Dose of a substance which is expected to be lethal to 50% of an entire defined population.

TABLE 3

PPE FOR EACH PROJECT TASK WITH IDENTIFIED EXPOSURE HAZARDS

<u>PROJECT TASK</u>	<u>PPE LEVEL</u>
<u>Groundwater Remediation</u>	
Install Monitoring Wells	E
Develop & Sample Wells	D
Install Recovery Wells	E
Conduct Start-Up & Pump Tests	D
Sample Recovery Wells	D
Periodic Sampling of Wells	D

PPE *

Level D.

- Half face air-purifying respirator, on hand
- Chemical protective clothing:
 - Overalls and long-sleeved jacket; disposable chemical resistant coveralls; coveralls; one or two piece chemical splash suit
- Gloves, inner (surgical type)
- Gloves, outer, chemical protective
- Boots, chemical protective
- Safety glasses, splash goggles or face shield.

Level E.

- Coveralls
- Boots/shoes, safety
- Safety glasses
- Hard hat
- Half face air-purifying respirator, on hand.

* PPE is slightly modified from standards in the Malcolm Pirnie HSP.

Figures

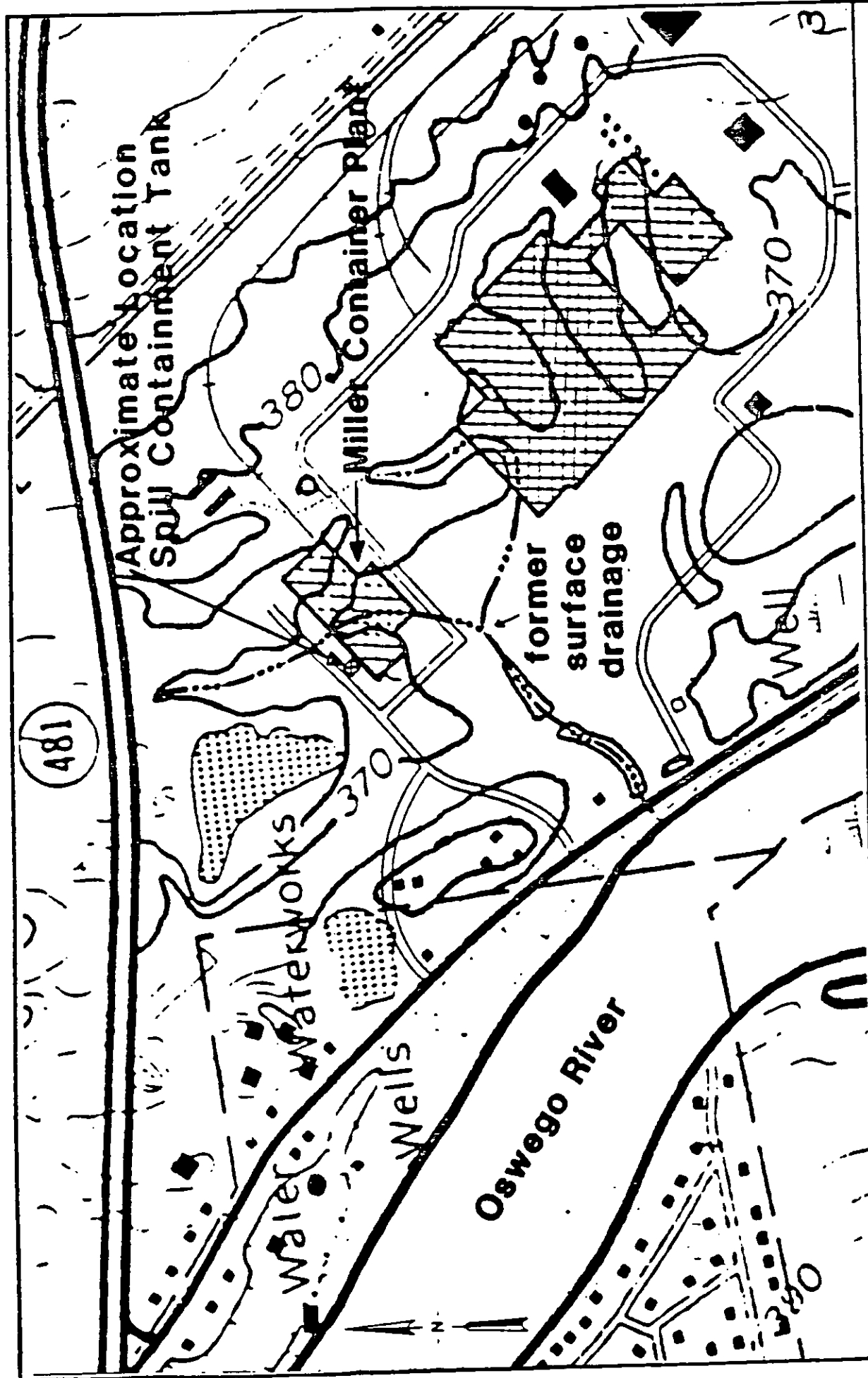


FIGURE 1 LOCATION OF MILLER BREWING COMPANY, FULTON CONTAINER PLANT

Appendix

HNU Air Monitoring Data

Site Name _____

Client Name _____

Project No. _____

Sampler's Name _____

Weather & Notes _____

[illegible]

MALCOLM PIRNIE

PERSONAL SAFETY LOG

Employee Name: _____ Site Name: _____

Client Name: _____ Project Number: _____

Work Performed: _____

Date							
Work Area							
Hours on Site							
Coveralls							
Tyvek							
Gloves, Inner							
Gloves, Outer							
Boots							
Hard Hat							
Face Shield							
Resp., Dust							
Resp., Half							
Resp., Full							
SCBA							
Resp., ESC							
Dosimeter							
Air Monitor							
Others							
Decontamination							
Complete							
Incomplete							

Comments: _____

MALCOLM
PIRNIE

SITE SAFETY LOG

Site Name: _____ Date: _____

Client Name: _____ Project No.: _____

Employees on Site: _____

Others on Site: _____

Work Area: _____

Weather Conditions: _____

Summary of Site Conditions (include air monitoring data): _____

State Any First Aid Administered: _____

Filled Out By: _____

**MALCOLM
PIRNIE**

PERSONAL HAZARDOUS WASTE EXPOSURE RECORD

Name: _____ Date: _____

Site Location: _____

Operation being Performed at Time of Exposure: _____

Hazardous Materials Present: _____

Type of Exposure: _____

Decontamination Measures Taken: _____

Observed Reactions or Health Effects: _____

Comments: _____

Employee's Signature: _____

ATTACHMENT # 1



MILLER BREWING COMPANY

November 9, 1987

RECEIVED
Division of
ENVIRONMENTAL ENFORCEMENT
PROPERTY FIELD UNIT

NOV 13 1987

Hon. Ronald L. Woodward, Sr.
Mayor, City of Fulton
Municipal Building
141 South First Street
Fulton, New York 13069-1785

Dear Mayor Woodward:

I want to thank you and the City Engineer, Sam Patane, for meeting with me this past Thursday, November 4, to review the sewer use permit which was forwarded for your signature under cover of Greg Sims' letter of October 14. The executed copy of the permit which you provided me at the meeting differed from that previously sent insofar as page 3, which contains a listing of all the conventional substances, was marked "Void". Our discussion clarified this marking of the page as follows.

Section 804 of the Fulton Wastewater Disposal Local Law provides for the issuance of sewer use permits for three (3) years. As to the groundwater pretreatment program, all agree that Miller Container has a three (3) year permit with the limits for flow stated on page 3 and the limits for the recovery system contaminants set forth on page 4.

However, we understand that the WWT operator marked page 3 "Void" because he wants the ability to modify the limits for the conventional parameters (other than flow) during the three (3) year term to reflect changes in the federal canmaking categorical pretreatment standards. As we agreed, given that this is the only permit limitation intended by the operator's marking, we have no objection to receiving the sewer use permit in its modified form.

As an accommodation to the City's accounting procedures, we also have no objection to being billed the \$100 annual permit fee in January of each year of the three (3) year permit term.

Your patience and courtesies in this matter are appreciated.

Sincerely,

Larry Messina
Larry Messina
Plant Controller
Miller Brewing Company
Fulton Container Division

cc. Al Grant
John Swartz

cc: Thomas Suozzo, P.E. (w/copy of sewer use permit)

~~Robert Christian, Esq. (w/copy of sewer use permit)~~
Susan Rodella, Esq. Sam Patane, P.E.



Department of Law
(315) 592-7108

City of Fulton

Municipal Building • 141 South First Street
Fulton, New York 13069-1705

Susan E. Rodems
Corporation Counsel

Sewer Enforcement Officer
Steven E. Eichmann

Permit No.:

City of Fulton
Department of Industrial Pretreatment Program
Wastewater Discharge Permit

Company Name:

Miller Brewing Company

Division Name: (If Applicable)

Container Division

Mailing Address:

P.O. Box 400

Street or P.O. Box

Fulton, New York 13069

City, State Zip Code

The above Industrial User is authorized to discharge industrial wastewater to the City of Fulton's sewer system in compliance with the City's Ordinance Number Article VIII of the Local Law regulating the use of public sewer, any applicable provisions of Federal or State law or regulation, and in accordance with discharge point(s), effluent limitations, monitoring requirements, and other conditions set forth herein.

This permit is granted in accordance with the application filed on August 4, 19 87 in the office of the Sewer Enforcement Officer, and in conformity with plans, specifications, and other data submitted to the City in support of the above application.

The annual fee for this permit will be \$100.00.

Effective Date: December 1, 1987

Expiration Date: December 1, 1990

send info & notifications
to:

Mr. Samuel A. Patane, P.E.
City Engineer
Fulton Public Lib
Director Mrs. Joyce Cook
160 S. First St.
Fulton, NY 13069
(315) 592-7404 or 592-9341
(315) 592-5159

AGREEMENT

In consideration of the granting of this permit, the undersigned agrees:

1. To furnish any additional information relating to the installation or use of the industrial sewer for which this permit is sought as may be requested by the Municipality.
2. To accept and abide by all provisions of the Sewer Use Law of the Municipality, and of all other pertinent laws/ordinances or regulations that may be adopted in the future.
3. To operate and maintain any waste pretreatment facilities, as may be required as a condition of the acceptance into the wastewater treatment system of the industrial wastes involved, in an efficient manner at all times and at no expense to the Municipality.
4. To cooperate at all times with the Sewer Enforcement Officer and the Plant Operator of the Wastewater Treatment Plant and their representatives in their inspecting, sampling and study of the industrial wastes and any facilities provided for pretreatment.
5. To notify the Municipality immediately in the event of any accident, or other occurrence that occasions contribution to the wastewater treatment system of any wastewater or substances prohibited or not covered by this permit.

ACCIDENTAL DISCHARGES

- A. The permittee shall notify the Plant Operator immediately after any accidental discharge, pretreatment or process upset, or batch discharge. The notification shall include location of discharge, type of waste, concentration and volume, and corrective actions.
- B. Written Notice. This notification shall be followed, within 15 days of the date of occurrence, by a detailed written statement describing the causes of the accidental discharge and the measures being taken to prevent further occurrence. Such notification will not relieve users of liability for any expense, loss or damage to the sewer system, treatment plant or treatment process, or for any fines imposed on the Municipality under applicable State and Federal regulations.

CHANGES IN WASTEWATER CONSTITUENTS

The permittee shall notify the Plant Operator 15 days prior to the introduction of any new wastewater contributions or any substantial changes in the volume or character of the wastewater constituents reported in the permit application.

3

DISCHARGE LIMITATIONS AND MONITORING REQUIREMENTS

1. Initial Limitations

Effective Date: (effective date of permit) December 1, 1987

Expiration Date: (last date in compliance schedule) December 1, 1990

A. Conventional Substances

Sample Location	Parameter	Units	Max. 30-day Average	Max. 24-hr Average	Max. Yearly Average	Monitoring Requirements Frequency
	Flow	G.P.D.		180,000	130,000	
	Total Phosphorus	MG/L				
	T.K.N.	MG/L				
	Oil & Grease	MG/L				
	Total Chromium	MG/L				
	Total Copper	MG/L				
	Total Manganese	MG/L				
	Total Zinc	MG/L				
	Fluoride	MG/L				

Part C

FLOW

Millers shall provide continuous flow measurement and recordings of all Industrial Wastewater contributed to the sewer system.

SAMPLING AND ANALYSIS

Each month an attached flow sheet will be completed and mailed back to the Sewage Treatment Plant. Total Phosphorus is now required to be sampled and analyzed on a monthly basis and results also mailed to the Pulton Sewage Treatment Plant, Route 48 North, Pulton, New York, 13069.

Discharge Limitations And Monitoring Requirements

Initial Limitations

Effective Date : (Effective Date of Permit) December 1, 1987

Expiration Date: (Last date in compliance schedule)December 1, 1990

Recovery System Contaminants

Sample Location	Parameters	Units	Daily Maximum	Monitoring Frequency
	Methylene Chloride	ug/l	50 ug/l	
	1,1,1- trichloroethane	ug/l	20 ug/l	
	Trichloroethylene	ug/l	40 ug/l	
	Toluene	ug/l	50 ug/l	
	1,1 - Dichloroethylene	ug/l	30 ug/l	
	1,1 - Dichloroethane	ug/l	30 ug/l	
	Tetrachloroethylene	ug/l	400 ug/l	

The monitoring point shall be at the flow meter of the groundwater treatment unit prior to introduction in to Miller Brewing Company Container Division's main process and sanitary wastewater stream.

If the contaminants in the effluent from the recovery system exceed the approved levels at any time during the operation of the system, the Department and the City of Fulton shall be contacted within two hours after the Respondent receives notice of exceedance. If the contaminants in the effluent from the treatment system exceed the approved levels, or any one parameter, the exceedance must be corrected within eight (8) hours or the recovery system must be shut off upon notice from the Department. A sample must be obtained and analyzed within 24 hours after corrective measures are taken to confirm that the approved levels are no longer being exceeded. There follows the parameters to be monitored as the EPA 601 and 602 scans referenced in paragraphs 2(a)-(c) of the sewer use permit conditions.

Sample Location	Parameters	Units	Daily Maximum	Monitoring Frequency
USEPA 601	1,1 Dichloroethene	ug/l		
	1,1,2,2,-Tetrachloroethane	ug/l		
	1,1,2-Trichloroethane	ug/l		
	1,2-Dichlorobenzene	ug/l		
	1,2-Dichloroethane	ug/l		
	1,2-Dichloropropane	ug/l		
	1,3-Dichlorobenzene	ug/l		
	1,4-Dichlorobenzene	ug/l		
	2-Chloroethylvinyl ether	ug/l		
	Bromodichloromethane	ug/l		
	Bromoform	ug/l		
	Bromomethane	ug/l		
	Carbon Tetrachloride	ug/l		
	Chlorobenzene	ug/l		
	Chloroethane	ug/l		
	Chloroform	ug/l		
	Chloromethane	ug/l		
	Dibromochloromethane	ug/l		
	Dichlorodifluoromethane	ug/l		

Sample Location	Parameters	Units	Daily Maximum	Monitoring Frequency
	Tetrachloroethene	ug/l		
	Trichloroethene	ug/l		
	Trichlorofluoromethane	ug/l		
	Vinyl Chloride	ug/l		
	cis-1,3-Dichloropropene	ug/l		
	trans-1,2-Dichloroethene	ug/l		
	trans-1,3-Dichloropropene	ug/l		
USEPA 602	Benzene	ug/l		
	Chlorobenzene	ug/l		
	1,2-Dichlorobenzene	ug/l		
	1,3-Dichlorobenzene	ug/l		
	1,4-Dichlorobenzene	ug/l		
	Ethylbenzene	ug/l		

Revision to Sewer Use Permit

RECITALS

R-1 Miller Container proposes to implement a groundwater remedial program in accordance with the terms of a New York State Department of Environmental Conservation ("DEC") Consent Order and seeks the City's permission under the City of Fulton Wastewater Disposal Local Law to dispose of the pretreated groundwater into the City's sanitary sewer system.

R-2 The groundwater remedial program is based on the assumption that the three recovery wells will generate a combined quantity of 10 gallons of water a minute or 14,400 gallons a day (10 x 60 x 24). Prior to the implementation of the recovery system, pump tests will be performed which will determine the actual yield of the wells.

R-3 The City is willing to permit the use of its sanitary system for the disposal of the pretreated groundwater in accordance with the following terms and conditions.

CONDITIONS

1. The discharge of the pretreated groundwater shall be in accordance with the terms and conditions of the DEC order on consent signed by Miller Container.

2. Miller Container shall perform the following sampling and analysis so long as it uses the sanitary sewer system for disposal of the pretreated groundwater:

(a) At the Fulton Wastewater Treatment Plant, the influent, effluent and sludge shall be sampled and analyzed using EPA 601 and 602 scans at the following frequency: immediately prior to start-up of the remedial program, 24 hours after start-up, one (1) month after commencement of the remedial program and semi-annually after the first month.

(b) A split sample of the effluent from the groundwater treatment facility at Miller Container shall be taken and analyzed using EPA 601 and 602 scans at the start-up of the remedial program, 24 hours after start-up, one (1) month after commencement of the remedial program and semi-annually after the first month.

(c) At Fulton Municipal Well #2, a sample shall be taken and analyzed for the EPA 601 and 602 scans immediately prior to the start-up of the remedial program and monthly thereafter.

(d) The written analytical results shall be forwarded to the City upon receipt by Miller Container.

(e) It is understood and agreed that Miller Container's performance of the sampling and analytical work does not constitute and shall not be construed as an admission of liability of any kind or an admission by Miller Container of any fact or conclusion of law or of the applicability or inapplicability of any law.

3. (a) The City shall be advised of the name of the individual(s) at Miller Container responsible for the operation of the remedial program and how the person can be contacted at any time. In turn, Miller Container shall be advised of the name of the City representative who is to receive notice of any problems encountered with the system and how that individual can be contacted at any time.

(b) The groundwater treatment unit shall have a flow meter for use in determining the amount of pretreated groundwater flow into the sanitary sewer system.

4. The City's acceptance of the treated groundwater under the terms of this permit is with a reservation of any rights it may have against Miller Container for claims, losses or damages arising out of the use of the sanitary sewer system for the disposal of the pretreated groundwater.

(L.S.) Ronald L. Woodward, Jr.
City of Fulton, New York

(L.S.) B. F. [Signature]
Miller Brewing Company, Container Division

Activity		1987 NOV					DEC			JAN				FEB				MAR		
Number	Description	02	09	16	23	30	07	14	21	28	04	11	18	25	01	08	15	22	29	07
0000	GENERAL CONSTRUCTION	.	.	.	.	.	.	.	.	.	.	.	.	.	.	.	.	.	.	.
0100	FOUNDATION & FLOOR	.....	.	.	.	.	.	.	.	.	.	.	.	.	.	.	.	.	.	.
0200	BUILDING DELIVERY	.	.	.	.	.	.	.	.	.	.	.	.	.	.	.	.	.	.	.
0300	BUILDING ERECTION	.	.	.	.	.	.	.	.	.	.	.	.	.	.	.	.	.	.	.
1000	PIPING	.	.	.	.	.	.	.	.	.	.	.	.	.	.	.	.	.	.	.
2010	DEL WALL PIPE & PUMPS	.....	.	.	.	.	.	.	.	.	.	.	.	.	.	.	.	.	.	.
2020	BLDG EQUIP & PIPING	.	.	.	.	.	.	.	.	.	.	.	.	.	.	.	.	.	.	.
3000	ELECTRICAL	.	.	.	.	.	.	.	.	.	.	.	.	.	.	.	.	.	.	.
3010	CONTROLS DELIVERY	.	.	.	.	.	.	.	.	.	.	.	.	.	.	.	.	.	.	.
3020	BUILD PANEL	.	.	.	.	.	.	.	.	.	.	.	.	.	.	.	.	.	.	.
3030	FIELD INSTALLATION	.	.	.	.	.	.	.	.	.	.	.	.	.	.	.	.	.	.	.
4000	START UP	.	.	.	.	.	.	.	.	.	.	.	.	.	.	.	.	.	.	.

SCHEDULE FOR SPILL REMEDIATION

BUILDING & ELECTRICAL DELIVERIES
 ARE THE HOLD UP.

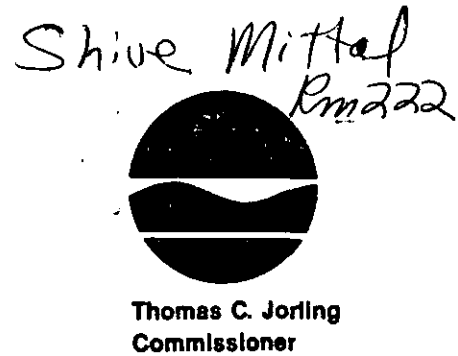
WMS 11/3/87

CC: SIMS

JEPSON

MESSINA

New York State Department of Environmental Conservation
50 Wolf Road, Albany, New York 12233



March 13, 1990

via Telex
Barry R. Kogut, Esq.
Bond, Schoeneck and King
One Lincoln Center
Syracuse, New York 13202-1355

RE: Miller Container Site
Registry No. 738029

Dear Barry:

The contamination at Fulton's Municipal Well Number 2 continues to be a matter of great concern to the Departments of Environmental Conservation and Health.

Health Department officials from the State and Oswego County resampled Municipal Well Number 2 on March 12, 1990. We expect results of that sampling round by Friday, March 16, 1990. If the results find TCA at a level near or above the State Maximum Contaminant Level of 5 ppb, Fulton will be obligated to shut the well down.

For this reason, it is imperative that Miller immediately sign the Amendment to Order on Consent # A701118704 obligating Miller to (1) replace the well's water and (2) pump the well to waste. The Department hereby sets a deadline of Friday, March 16, 1990 for Miller to sign the Amendment. If Miller does not sign the Amendment by the 16th, the Department will resolve the matter of provision of water for the city through a mechanism other than voluntary negotiations. Among the options under consideration are commencement of an action for injunctive relief by the Attorney General, referral of the Site to the State Superfund Program, and issuance of a Summary Abatement Order.

Attached is a revised draft of the Amendment which contains two paragraphs requested by Miller. The first, Paragraph 16, contains language clarifying that the Department will not require Miller to do work if it is not a responsible party. The second, Paragraph V, is a modification of language requested by Miller in its draft Amendment.

The Order also includes language committing Miller to assume responsibility for pumping Municipal Well Number 2 into the Oswego River. As we have discussed since commencement of

negotiations regarding the provision of water, the Department believes that shutting down Municipal Well Number 2 will endanger nearby Kellar Well Number 1 and Kellar Well Number 2 by allowing TCA contamination to migrate to them more quickly. For this reason, it is imperative that Municipal Well Number 2 be pumped to waste.

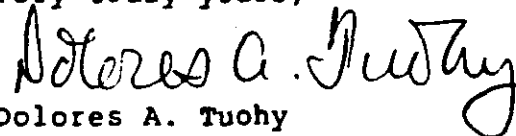
The language added to the Amendment contemplates that Miller will immediately submit to the Department an application for "Emergency Authorization to Discharge Wastewater" (copy attached). The Department can respond to this application within several days. If Miller has not had a response from the Department prior to its execution of the Amendment, the Amendment can be appropriately modified to reflect this.

This Amendment does not require Miller to replace drinking water from Kellar Number 2. Although the Department is concerned about recent contamination detected at the well, we do not wish to have this issue hold up replacement of Municipal Well Number 2's water. Replacement water for Kellar 2 will be discussed in the future.

The Department has not, as yet, received language from Miller with respect to its requested changes regarding the State's indemnification provision and Article 78 review. Please forward the language to me if these matters are still at issue.

Please get back to me regarding any outstanding issues Miller wishes to discuss. The Department's goal is to provide appropriate relief to the City of Fulton as quickly as possible.

Very truly yours,



Dolores A. Tuohy
Senior Attorney
Division of Environmental
Enforcement
(518) 457-3296

cc: Garrett Reich, Esq. - via telex

bcc: Muriel Allerton
Ron Heerkens
Bill McCarthy
Dick Brazell
Shive Mittal
Al Grant

STATE OF NEW YORK: DEPARTMENT OF ENVIRONMENTAL CONSERVATION

In the Matter of the
Implementation of an Interim
Remedial Measure at an Inactive
Hazardous Waste Disposal Site
by:

Amendment to
Order on Consent
Index # A701118704
Site # 738029

MILLER BREWING COMPANY,
CONTAINER DIVISION,

Respondent.

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. Miller Brewing Company is a corporation organized and existing under the laws of the State of Wisconsin and is authorized to do business in the State of New York. Miller Brewing Company has a Container Division (the "Respondent"), which operates a canmaking facility in the Town of Volney, Oswego County (the "Site"). Respondent's facility is located approximately 1200 feet southeast of the Fulton, New York municipal boundary, approximately 1000 feet northeast of the Oswego River and approximately 900 feet south of New York State Route 481. A map of the Site is attached to this Order as Appendix "A."

3. Respondent formerly had in use a spill containment tank

installed near the northwest corner of its facility ("the Spill Area"), which was found at the time of its excavation in the Spring of 1986 to have been leaking.

4. Laboratory analyses of ground water samples taken from monitoring wells at the Site detected the presence of 1,1,1-trichloroethane ("TCA") and other volatile organics (including methylene chloride, 1,1-dichloroethylene, 1,1-dichloroethane, and 1,1,2,2-tetrachlorethylene).

5. Respondent and the Department executed Order on Consent # A701118704, effective January 22, 1988 (the "Order"), pursuant to which Respondent implemented an interim remedial program intended to treat ground water at the Site to acceptable levels. The interim remedial program included the installation of three ground water recovery wells and the treatment of contaminated ground water by an air stripper. Operation of the ground water remedial system formally began on June 27, 1988.

6. Effective December 1, 1987, the City of Fulton (the "City") issued to the Respondent a wastewater discharge permit (the "permit") pursuant to which the Respondent was allowed to discharge water from the air stripper operation into the City's publicly owned treatment works. The current permit expires on December 1, 1990.

7. The City's Municipal Well Number 2 ("Well Number 2") is located 1400 feet downgradient of the Spill Area. In 1989, this well provided an average of 55,756 gallons per day to the municipal water system.

8. The City required Respondent, as one of the conditions of the permit, to sample Well Number 2, using EPA analytical methods 601 and 602, immediately prior to the startup of the interim remedial program and monthly thereafter. Beginning in March 1988, TCA began to be detected in Well Number 2. The level of TCA thereafter detected in the well under the Respondent's monthly sampling program follows:

<u>Date</u>	<u>1,1,1-Trichloroethane ("TCA") (in micrograms/liter or ug/l)</u>
03/88	3
04/88	*BDL1
05/88	2
06/88	BDL1
07/88	2
08/88	3
09/88	2
10/88	1
11/88	BDL1
12/88	BDL1
01/89	BDL1
02/89	BDL1
03/89	BDL1
04/89	BDL1
05/89	BDL1
06/89	BDL1
07/89	BDL1
08/89	2
09/89	2
10/89	2
11/89	3
12/89	5 (resampled-4)
01/90	5 (resampled-4)

* BDL1 - Below Detection Limit of 1 ug/l

9. The Department alleges, based upon sampling data provided by Respondent, that the Site is the source of TCA contamination at Well Number 2.

10. The Department further alleges that two additional municipal wells, Kellar Well Number 1 ("Kellar 1") and Kellar Well Number 2 ("Kellar 2"), may potentially be impacted by contaminants determined to be emanating from the Site.

11. The City has agreed to cease the use of Well Number 2 as a source of drinking water and to commence the purchase of drinking water to replace that currently supplied by the well.

12. The Site is an inactive hazardous waste disposal site, as that term is defined at ECL Section 27-1301(2) and has been listed in the Registry of Inactive Hazardous Waste Disposal Sites in New York State as Site Number 738029. The Department has classified the Site as a Classification "2" 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."

13. 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."

14. The Department and Respondent agree that the goal of this Amendment shall be the implementation by Respondent of an Interim Remedial Program.

15. Respondent, having waived its right to a hearing herein, has consented to the issuance of this Amendment to the Order and agrees to be bound by its terms. Respondent's consent to and compliance with this Amendment does not constitute, and shall not be construed as, an admission of liability of any kind or an admission by Respondent of law or fact or of the applicability of any law to conditions at the Site.

16. It is further understood and agreed that the Department will not require Respondent to undertake remedial activity attributable to contamination with respect to which Respondent is not a responsible party.

17. The City is a signatory to this Amendment solely for the purpose of effecting the arrangements involving the City municipal water system.

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

I. Except to the extent that this Amendment imposes additional requirements on Respondent in relation to the Site, the terms and conditions of Order on Consent # A701118704 shall remain unchanged and in full force and effect.

II. Respondent shall retain professional consultants, contractors and laboratories acceptable to the Department to perform the technical, engineering and analytical obligations required by this Amendment. The experience, capabilities and qualifications of the firms or individuals selected by Respondent shall be submitted within 30 days after the effective date of this Amendment.

III. Upon the effective date of this Amendment, Respondent shall be responsible to the City for the additional costs incurred by the City in purchasing water from the Onondaga County Water Authority ("OCWA") to replace water currently provided by Well Number 2. ("Additional costs" shall mean the cost to the City of purchasing the water, including any additional "External Customer Charge" imposed by the Metropolitan Water Board, less the current cost to the City of providing water from Well Number 2). Payment of such additional costs shall be made quarterly, within 30 days after Respondent's receipt of an invoice from the City.

IV. Upon termination of use of Well Number 2 for drinking water purposes, Respondent shall continuously pump Well Number 2 into the Oswego River. Respondent shall discharge the waste water in accordance with all Departmental requirements.

Temporary authorization for such discharge is attached hereto as Appendix A.

Within 30 days of the effective date of this Order,

Respondent shall apply to the Department for long-term authorization to discharge such waste water. Respondent's application shall include all information required to apply for a State Pollutant Discharge Elimination System Permit. Upon Respondent's notification of the Department's long-term authorization of such discharge, Respondent shall discharge such waste water in accordance with terms and conditions of the long-term authorization. The terms and conditions of the long-term authorization shall be appended to and incorporated into this Order.

V. It is understood and agreed that Respondent's agreement to provide an alternate water supply under the terms of this Amendment is a temporary solution to the concern over the TCA detected in Well Number 2. The ultimate goal of the parties is to see Well Number 2 put back in service once the aquifer is decontaminated. Respondent reserves the right to provide, upon written notice of the Department, the New York State Department of Health and the City, another alternate water supply, the quality of which meets applicable regulatory standards for public drinking water supplies.

VI. In accordance with a separate Order on Consent with the Department, Respondent shall perform a Remedial Investigation/Feasibility Study at the Site. If, at any time, Respondent believes that it is not a responsible party with respect to contamination detected in Well Number 2, Respondent may request consent from the City and the Department to cease

making the payments referenced in Paragraph III and the discharge referenced in Paragraph IV. If Respondent demonstrates that it is not a responsible party with respect to the contamination, the City and the Department shall give their written consent allowing Respondent to terminate its obligations under this Amendment.

VII. Respondent shall monitor the quality of the water obtained at Kellar 1 and Kellar 2 and the City shall permit Respondent access to perform the monitoring described herein. During the three month period following the effective date of this Order, Respondent shall sample and analyze water from each well on a weekly basis utilizing EPA 502.1 and 503.1 analytical protocols, using a detection level of 1 part per billion or less. After the three month period, Respondent shall monitor the wells on a schedule set forth by the Department. All sampling data shall be submitted to the Department, the City of Fulton and the Oswego County Health Department within 48 hours of receipt by Respondent.

VIII. Respondent shall undertake the following activities to further define the aquifer servicing Well Number 2, Kellar 1 and Kellar 2:

(a) determine the location, depths, yields and pumping regimens for all wells located on the grounds of the Fulton Municipal Water Works which were currently or formerly used as drinking water wells;

(b) locate and determine the depths of all test wells

and piezometers, including United States Geological Survey wells, located on the grounds of the City of Fulton's Water Works;

(c) undertake a pump test on Kellar 1 and monitor all relevant data points; and

(d) using the information generated by the activities set forth in Paragraph VI(a) through VI(c), evaluate the potential for currently identified contamination to migrate to Kellar 1.

IX. The Department shall have the right to obtain split samples, duplicate samples, or both, of all substances and materials sampled by Respondent and the Department shall also have the right to take its own samples. The Department shall provide Respondent with the analytical results of any such samples, after receipt of Respondent's results.

X. Respondent shall provide notice to the Department at least 5 working days in advance of any field activities to be conducted pursuant to this Amendment.

XI. The failure of the Respondent to comply with any term of this Amendment shall constitute a violation of this Amendment, Order on Consent #A701118704 and the ECL.

XII. Nothing contained in this Amendment shall be construed as barring, diminishing, adjudicating or in any way affecting, any of the Department's rights, including, but not limited to:

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 Amendment 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 resource damages as a result of the release or threatened release of hazardous wastes or constituents at or from the Site or areas in the vicinity of the Site; 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 hazardous wastes that are present at the Site or that have migrated from the Site and present a significant threat to human health or the environment.

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

XIV. 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 Amendment by

Respondent, its directors, officers, employees, servants, agents, successors or assigns, provided, however, the Respondent does not assume any liability arising from the negligent or intentionally tortious acts or omissions of the Department, the State of New York, and their representatives and employees during the course of any activities conducted pursuant to this Amendment.

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

XVI. All written communications required by this Order shall be transmitted as follows:

A. Department

1. Division of Environmental Enforcement, New York State Department of Environmental Conservation, 50 Wolf Road, Albany, New York 12233, Attention: David Markell, Esq., Director.

2. Division of Hazardous Waste Remediation, New York State Department of Environmental Conservation, 50 Wolf Road, Albany, New York 12233, Attention: Michael J. O'Toole, Jr., P.E., Director.

3. New York State Department of Environmental Conservation, Region 7 Headquarters, 615 Erie Boulevard West, Syracuse, New York 13204, Attention: Richard Brazell, P.E.

4. Bureau of Environmental Exposure Investigation, New York State Department of Health, 2 University Place, Albany, New York 12203, Attention: Ronald Tramontano, Director.

5. Division of Environmental Enforcement, Albany Field Unit, Room 415, New York State Department of Environmental Conservation, 50 Wolf Road, Albany, New York 12233, Attention: Dolores A. Tuohy, Esq.

6. New York State Department of Health, 677 south Salina Street, Syracuse, New York 13202, Attention: Ronald Heerkens, Regional Toxics Coordinator.

7. Oswego County Health Department, 70 Bunner Street, P.O. Box 3080, Oswego, New York 13126-3080, Attention: Rupert J. Collins, Commissioner.

B. Respondent

1. Miller Brewing Company, Legal Department, 3939 West Highland Boulevard, Milwaukee, Wisconsin 53208, Attention: Garrett W. Reich, Esq.

2. Miller Brewing Company, Corporate Engineering, 3939 West Highland Boulevard, Milwaukee, Wisconsin 53208, Attention: Thomas N. Swett, P.E.

3. Miller Brewing Company, Container Division, P.O. Box 400, Fulton, New York 13069, Attention: Larry Messina.

4. Bond, Schoeneck and King, One Lincoln Center, Syracuse, New York 13202, Attention: Barry R. Kogut, Esq.

C. City of Fulton

1. City of Fulton, Office of the Mayor, Municipal Building, Fulton, New York 13069, Attention: Hon. Muriel Allerton.

XVII. If Respondent desires that any provision of this

Amendment be changed, it shall make timely written application to the Commissioner, setting forth reasonable grounds for the relief sought. A copy of such written application shall be delivered or mailed to:

Richard Brazell, P.E., New York State Department of Environmental Conservation, Region 7 Headquarters, 615 Erie Boulevard West, Syracuse , New York 13204.

XVIII. The terms of this Amendment shall be deemed to bind the signatories thereto and their respective officers, directors, agents, servants, employees, successors and assigns. Nothing herein shall be construed to bind any other entity.

XIX. 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 Amendment.

DATED: , New York
 , 1990

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

BY:

Edward O. Sullivan
Deputy Commissioner

CONSENT BY RESPONDENT

Respondent, without any admission of law or fact, hereby consents to the issuing and entering of this Amendment to Order on Consent #A701118704, waives its right to a hearing herein as provided by law, and agrees to be bound by this Amendment.

MILLER BREWING COMPANY,
CONTAINER DIVISION

By: _____
(TYPE NAME OF SIGNER)
Title: _____
Date: March, 1990

STATE OF WISCONSIN)
) s.s.:
COUNTY OF MILWAUKEE)

On this _____ day of _____, 1990,
before me personally came _____, to me
known, who being duly sworn, did depose and say that he is the
_____ of the _____
corporation described herein and which executed the foregoing
instrument; that he knew the seal of said coproration; 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
coproration, and that he signed his name thereto by like order.

Notary Public

CITY OF FULTON

By: _____
(TYPE NAME OF SIGNER)

Title: _____

Date: _____

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

On this _____ day of _____, 1990,
before me personally came _____, to me
known, and being duly sworn, did dipose and say: that she
resides at _____, that she is the Mayor
of the City of Fulton, the municipality described herein, that
she was authorized by resolution of the Common Council of the
City of Fulton to execute the foregoing instrument, and that
she signed her name to said instrument by like authorization.

Notary Public

(DAT)
(C.O. #1 disk)



**Application and
Emergency Authorization to Discharge Wastewater**

Regional Authorization No.

Page 1 of

This application form with attachments, when signed by an authorized issuing agent, constitutes an Emergency Authorization to Discharge Wastewater in conformance with Article 70 of the Environmental Conservation Law of New York State.

(The Person Making Application Should Complete the Shaded Areas)

1. Person Making Application:	Name: _____ Address: _____ City: _____	Phone: () _____ State: _____	Zip Code: _____
2. Representing: (Government, Firm, Self)	Name: _____ Address: _____ City: _____	State: _____	Zip Code: _____
3. Facility or Project Site:	Name: _____ Street: _____ City, Town or Village: _____ County: _____ Name of Water Body Receiving Discharge: _____		
4. Give Explicit Directions to Project and/or Discharge Site and Attach a Map Describing the Project Area(s):			
5. Describe Exact Nature of Emergency:			
5a. Describe How Emergency Came to Exist:			
5b. Pollutants Potentially Released in the Discharge (Toxics, Petroleum Products, Sewage, others):			
5c. Adverse Impact if Treated Discharge is not Authorized (Life, Health, Property, Natural Resources, etc.):			
5d. Is Area of Pollution Expanding in the Environment or is the Pollution Now Contained?			

This Emergency Authorization to Discharge Wastewater shall expire at midnight on the 30th day following issuance. This 30 Day Authorization can be extended only once for a 30 day period upon submission of a SPDES Discharge Permit Application in full compliance with Sections 17-0803 and 17-0804 of the Environmental Conservation Law and Parts 621 and 752 of the Department's Rules and Regulations. The Discharge cannot continue after 60 days following the issuance of the initial Emergency Authorization unless the Department has, as a minimum, issued a Notice of Complete Application for the SPDES permit associated with the discharge.

I hereby affirm under penalty of perjury that the information provided on this form and any attached supplemental information is true to the best of my knowledge and belief. False statements are punishable as a Class A misdemeanor pursuant to Section 210.45 of the Penal Law.

Signature of Person Making Application:	Date:	Printed Name:	Title:

DISTRIBUTION:

I certify that this Authorization is immediately necessary to respond to an emergency and is issued in conformance with Section 70-0116 of the Environmental Conservation Law.	
Signature of Issuing Agent (address & phone # is on an attached page):	Effective Date:
Date	
Attachments:	Expiration Date:

EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

During the period of this authorization the discharge from the permitted facility shall be limited and monitored as specified below:

Outfall Number & Effluent parameters	Discharge Limitations		Units	Minimum Monitoring Requirements	
	Daily Ave.	Daily Max.		Measurement Frequency	Sample Type

DEFINITIONS OF DAILY AVERAGE AND DAILY MAXIMUM

The daily average discharge is the total discharge by weight or in other appropriate units as specified herein, during a calendar month divided by the number of days in the month that the facility was operating. Where less than daily sampling is required, the daily average discharge shall be determined by the summation of all the measured daily discharges in appropriate units as specified herein divided by the number of days during the calendar month when measurements were made.

The daily maximum discharge means the total discharge by weight or in other appropriate units as specified herein, during any calendar day.

MONITORING LOCATIONS

Samples and measurements, to comply with monitoring requirements specified in this authorization, shall be taken at the location(s) indicated below: (Show sampling locations and outfalls with sketch or flow diagram as appropriate)

RECORDING, REPORTING AND SPECIAL CONDITIONS

- a) The monitoring information required by this authorization shall be summarized, signed and retained for a period of three years from the date of the sampling for subsequent inspection by the Department or its designated agent. **Also;** a copy of all data shall be sent to:

Department of Environmental Conservation
Regional Water Engineer

- b) **Noncompliance** with the provisions of this authorization shall be reported to the Regional Water Engineer as soon as the noncompliance is identified.
- c) Monitoring must be conducted according to test procedures approved under 40 CFR Part 136, unless other test procedures have been specified in this authorization.
- d) If the permittee monitors any pollutant more frequently than required, using test procedures approved under 40 CFR Part 136 or as specified in this authorization, the results of this monitoring shall be included in the calculations, recording and reporting of the data.
- e) Calculations for all limitations which require averaging of measurements shall utilize an arithmetic mean unless otherwise specified in this authorization.
- f) Unless otherwise specified, all information recorded and reported shall be based upon measurements and sampling carried out during the most recently completed reporting period.
- g) Any laboratory test or sample analysis required by this authorization for which the State Commissioner of Health issues certificates of approval pursuant to section five hundred two of the Public Health Law shall be conducted by a laboratory which has been issued a certificate of approval. Inquiries regarding laboratory certification should be sent to the Environmental Laboratory Accreditation Program, New York Health Department Center for Laboratories and Research, Division of Environmental Sciences, The Nelson A. Rockefeller State Plaza, Albany, New York 12201.
- h) This authorization, or a true copy, shall be kept readily available for reference at the facility.
- i) The discharge of any pollutant, not identified or authorized, or the discharge of any pollutant more frequently than, or at a level in excess of, that identified and authorized shall constitute a violation of the terms and conditions of this authorization.
- j) The permittee must comply with all terms and conditions of this authorization.
- k) The applicant shall furnish to the Department, within a reasonable time, any information which the Department may request to determine whether cause exists for modifying, suspending or revoking this authorization, or to determine compliance with this authorization. The permittee shall furnish to the Department, upon request, copies of records required to be kept by this permit.
- l) The applicant shall allow the Commissioner, or an authorized representative to enter the premises where the authorized activity is located to inspect any facilities, equipment, practices, operations and or records regulated or required by this authorization and to sample or monitor at reasonable times for the purposes of assuring compliance with this authorization.

Ron Pollock

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New York State Department of Environmental Conservation

MEMORANDUM

Michael D. Zagata
Commissioner



TO: Charles E. Sullivan, Jr.
FROM: Rosalie K. Rusinko *RKR*
SUBJECT: Miller Brewing Company, Site # 7-38-029
Order on Consent
DATE: December 5, 1995

*** CONFIDENTIAL *** ATTORNEY WORK PRODUCT***

Attached for your review and proper channeling is a cover memo to Michael J. O'Toole, Jr. and two original counterparts of the Order on Consent.

The Order provides for the development and implementation of a Remedial Program ("RD/RA") on the inactive hazardous waste Site # 7-38-029. The Order is signed by Garrett W. Reich, Associate General Counsel of Miller Brewing Company ("Miller").

See the attached cover memo for background information.

The standard RD/RA format has been used with changes noted below.

- o Paragraph 3. The following language was added:
"Department alleges that."
(approved 6/23/95 by CES)
- o Paragraph 7. The language was changed to add no admission language and read as follows:

7. Respondent, having waived its right to a hearing herein as provided by law, has consented to the issuance and entry of this Order without any adjudication of fact or law and agrees to be bound by its terms. Respondent consents to and agrees not to contest the authority or jurisdiction of the Department to issue or enforce this Order, and agrees not to contest the validity of this Order or its terms. Respondent's consent to and compliance with this Order does not constitute, and shall not be construed as, an admission of liability of any kind or an admission by Respondent of law or fact or of the applicability of any law to conditions at the Site.

(approved 6/23/95 by CES)

- o Subparagraph IV.A.(2)a. adds "or such longer period of time as may be agreed to in writing by the Department" and deletes "and resolves" from the boilerplate.
(Approved by CES 6/23/95)
- o Subparagraph IV.A.(2)b. adds language needed when dispute resolution is included in the Order.
(Approved by CES 6/23/95)
- o Subparagraph IV.B. adds dispute resolution.
(Approved by CES 6/23/95)
- o Subparagraph IV.C. adds "to attain the remedial objectives identified in the ROD" (approved by CES 6/23/95) and makes the following change "received after the date of the ROD" (approved by CES 7/20/95).
- o Paragraph V. stipulated penalties are deleted (approved by CES 6/23/95) and the phrase from boilerplate language "nonattainment of goals, standards and requirements of this Order" is also deleted (approved by CES 7/20/95).
- o Subparagraph V.B. Changes and addition of second paragraph approved by CES 6/23/95.
- o Paragraph VI. Changes reflect fact that Miller no longer owns the Site. (Approved by CES 6/23/95)
- o Paragraph VII. All changes to subparagraphs B and C approved by CES 6/23/95. Note: Donna Wiegel approved the appointment language. The addition of subparagraph D language acceptable to DiPietro and approved by CES 6/23/95.
- o Paragraph VIII. adds release language.
(Approved by CES 6/23/95)
- o Paragraph IX. Respondent does not indemnify the Department for "gross negligence or willful misconduct."
(Approved by CES 6/23/95)
- o Subparagraph XII.B The following phrases were added: "or within 10 days after the effective date of this Order" and "unless otherwise provided by the Department."
(Approved by CES 11/21/95)
- o Subparagraph XII.C. is modified to allow Respondent to obtain splits of Department samples and results from Department samples.
(Approved by CES 6/23/95 and 7/20/95)

- o Subparagraph XII.E. All changes approved by CES 6/23/95 and 11/21/95.
Note: Any costs incurred by the Department to obtain access to the Site or off-Site areas is not included within the cap.
- o Subparagraph XII.F. The language is identical to language in other Orders between Miller and the Department.
(Approved by CES via telephone.)
- o Subparagraph XII.K.(1) Because there are two additional Orders between Miller and the Department that are still in effect with respect to the Site (the 1988 IRM Order and the 1991 IRM Order) the following sentence was deleted: "The terms of this Order shall constitute the complete and entire Order between Respondent and the Department concerning the Site."
(Approved by CES 11/21/95)
- o Subparagraph XII.K.(2) Changes approved by CES 6/23/95 and 7/20/95.

New York State Department of Environmental Conservation

MEMORANDUM



Michael D. Zagata
Commissioner

TO: Michael J. O'Toole, Jr.
FROM: Charles E. Sullivan, Jr.
SUBJECT: Miller Brewing Company, Site # 7-38-029
Order on Consent
DATE: December 8, 1995

*** CONFIDENTIAL *** ATTORNEY WORK PRODUCT***

Attached for your signature are two original counterparts of an Order on Consent for the development and implementation of a Remedial Program ("RD/RA") between the Department and Miller Brewing Company ("Miller"). This Region 7 site is currently owned by Reynolds Metals Company. The Site is located in the Town of Volney, County of Oswego.

The Container Division of Miller Brewing Company formerly operated a can making facility on the Site. In the Spring of 1986, during the removal of a concrete spill containment tank on the north side of the facility, the tank was found to have been leaking. It is not known how long this leakage occurred. The tank was originally installed in 1976. A number of organic solvents (chloromethanes, chloroethanes and chloroethenes) were released. Contaminants were also detected on the north and south sides of the building at former drum storage areas. Additionally, solvent contaminated oil was found beneath the south corner of the building.

The Site is approximately 1300 to 1400 feet upgradient of the City of Fulton's municipal drinking water wells. Keller Well Nos. 1 and 2, and Municipal Well No. 2 have been impacted. Pursuant to a 1991 Interim Remedial Measure Order on Consent between Miller and the Department, Miller installed an air stripper system to treat the water from these wells. Pursuant to a 1988 Interim Remedial Measure Order on Consent between Miller and the Department, Miller installed recovery wells and an air stripper on the Site in an attempt to impede migration of the contaminant plume. Portions of the estimated 800 foot-long plume are bypassing the recovery system. A ROD for the Site was issued in March 1995.

This Order was negotiated by Rosalie K. Rusinko of the Eastern Field Unit. Ms. Rusinko will continue to act as case attorney for post execution case management. Michael DiPietro, Albany Division of Hazardous Waste Remediation will continue to act as the technical lead for the Site.

cc: J. Cahill, General Counsel
D. Palm, Director Region 7
S. Swanston
G. Caito
R. Rusinko
E. Armater

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,
and Article 71, Title 27 of the
Environmental Conservation Law
of the State of New York by

ORDER
ON
CONSENT

INDEX #A7-0322-9411
SITE # 7-38-029

MILLER BREWING COMPANY,
Respondent.

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." This Order is issued pursuant to the Department's authority under, inter alia, ECL Article 27, Title 13 and ECL 3-0301.

2. A. Miller Brewing Company (the "Respondent") is a corporation organized and existing under the laws of the State of Wisconsin and is authorized to do business in the State of New York. The Container Division of Miller Brewing Company formerly operated a can making facility in the Town of Volney, Oswego County (the "Site"). The Site was sold to the Reynolds Metals Company, effective November 1, 1993. The Site is located approximately 1200 feet southeast of the Fulton, New York municipal boundary, approximately 1000 feet northeast of the Oswego River and approximately 900 feet south of New York State Route 481. A City of Fulton ("the City") municipal drinking water wellfield is located hydrogeologically downgradient of the facility.

B. Respondent formerly had in use a spill containment tank installed near the northwest corner of the facility ("the Spill Area"), which was found at the time of its excavation in the Spring of 1986 to have been leaking.

C. A soil gas survey conducted during 1990 defined two potential areas of additional contamination: an area at the north corner of the facility and an area at the south corner of the facility, both of which were formerly used for drum storage. An investigation of these areas showed a moderate level of contamination at the south corner of the facility located on the Site.

D. In April of 1991, a second spill area was identified within the facility during the excavation of a sump. Respondent investigated this area as part of the Remedial Investigation ("RI").

E. Laboratory analyses of ground water samples from monitoring wells installed at the Site have detected the presence of methylene chloride, 1,1-dichloroethylene, 1,1-dichloroethane, 1,1,1-trichloroethane ("TCA"), tetrachloroethylene and other contaminants.

F. A contaminant plume from the former spill containment tank was identified in the aquifer at the Site. TCA and other contaminants identified at the Site have been detected at the municipal water well field. Respondent pumped two municipal drinking water wells, Kellar Well Number 2 ("K-2") and Municipal Well Number 2 ("M-2"), to the Oswego River from April of 1990 until June of 1992 when levels of contaminants in the two wells began to increase. In June 1992, the water then went into the municipal water treatment system.

G. A third municipal drinking well, Kellar Well Number 1 ("K-1"), provides the City with approximately one-third of its total water supply. Sampling at K-1 has shown sporadic contamination by volatile organics.

H. The Department alleges that Respondent is a responsible party with respect to contamination migrating toward and detected at K-1, K-2 and M-2.

I. Respondent and the Department executed Order on Consent #A701118704, effective January 22, 1988, (the "1988 IRM Order"), pursuant to which Respondent implemented an interim remedial measures program intended to treat ground water at the Site to acceptable levels. The interim remedial program included the installation of three ground water recovery wells and treatment of the contaminated ground water by an air stripper. The program also required the periodic monitoring of the monitoring wells on the Site to assess the effectiveness of the interim remedial program.

J. Respondent and the Department executed an Amendment to Order on Consent #A701118704, effective March 29, 1990, (the "Amendment"), pursuant to which Respondent implemented an Interim Remedial Measures Program which included the pumping of M-2 into the Oswego River.

K. Respondent and the Department executed Order on Consent #A702659106, effective August 12, 1991 (the "1991 IRM Order"), pursuant to which Respondent implemented an Interim Remedial Program in which Respondent obtained the necessary

design and construction approvals from both the City of Fulton and the New York State Department of Health to construct a long term ground water treatment system making use of air stripper technology to treat water pumped from the wells K-1, K-2 and M-2 before such water is introduced into the City's drinking water supply. Upon substantial completion, ownership of this facility was transferred to the City of Fulton and under paragraph VIII of the 1991 IRM Order, the Respondent agreed to be responsible for the "additional costs" (as defined in paragraph VIII) required for the City's operation and maintenance of the Treatment System until the obligation is terminated in accordance with Paragraph XVII of the 1991 IRM Order. All terms of the 1991 IRM Order remain in full force and effect.

L. Pursuant to paragraph XXIX of the 1991 IRM Order, upon the effective date of said Order, all terms and conditions of the Amendment, except paragraph XIV (the provision requiring Respondent to indemnify the Department and hold it harmless), terminated.

M. Respondent and the Department executed a Remedial Investigation/Feasibility Study ("RI/FS") Order on Consent #A7-0227-90-04 (the "RI/FS Order"), effective April 23, 1990, pursuant to which, Respondent performed an RI/FS for the Site.

N. The Respondent has submitted and the Department has approved a RI Report date July 1993, a RI Report Addendum dated July 1994, and a FS dated July 1994.

O. The Department affirms that Respondent has fulfilled its obligations under and imposed by the RI/FS Consent Order with the exception of any obligation to reimburse the Department for expenses pursuant to Paragraph XI of the RI/FS Order.

3. The Department alleges that the Site is an inactive hazardous waste disposal site, as that term is defined at ECL 27-1301.2, and presents a significant threat to the public health or environment. The Site has been listed in the Registry of Inactive Hazardous Waste Disposal Sites in New York State as Site Number 7-38-029. The Department has classified the Site as a Classification "2" pursuant to ECL 27-1305.4.b.

4. A. Pursuant to ECL 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."

B. Any person under order pursuant to ECL 27-1313.3.a has a duty imposed by ECL Article 27, Title 13 to carry out the remedial program committed to under order. ECL 71-2705 provides that any person who fails to perform any duty imposed by ECL Article 27, Title 13 shall be liable for civil, administrative and/or criminal sanctions.

C. The Department also has the power, inter alia, to provide for the prevention and abatement of all water, land, and air pollution. See, e.g., ECL 3-0301.1.i.

5. Following a period of public comment, the Department selected a final remedial alternative for the Site in a Record of Decision ("ROD") issued on March 20, 1995. The ROD, attached to this Order as Appendix "A," is incorporated as an enforceable part of this Order.

6. The Department and Respondent agree that the goals of this Order are for Respondent to (i) develop and implement, in accordance with the ROD, an inactive hazardous waste disposal site remedial program ("Remedial Program") for the Site that shall include design and implementation, and operation, maintenance and monitoring of the selected remedial alternative; and (ii) reimburse the State's administrative costs to the extent set forth in this Order.

7. Respondent, having waived its right to a hearing herein as provided by law, has consented to the issuance and entry of this Order without any adjudication of fact or law and agrees to be bound by its terms. Respondent consents to and agrees not to contest the authority or jurisdiction of the Department to issue or enforce this Order, and agrees not to contest the validity of this Order or its terms. Respondent's consent to and compliance with this Order does not constitute, and shall not be construed as, an admission of liability of any kind or an admission by Respondent of law or fact or of the applicability of any law to conditions at the Site.

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

I. Remedial Design Contents

A. Within 120 days after the effective date of this Order, Respondent shall submit to the Department a remedial design to implement the remedial alternative for the Site selected by the Department in the ROD (the "Remedial

Design"). The Remedial Design shall be prepared by and have the signature and seal of a professional engineer who shall certify that the Remedial Design was prepared in accordance with this Order.

B. The Remedial Design shall include the following:

(1) A detailed description of the remedial objectives and the means by which each element of the selected remedial alternative will be implemented to achieve those objectives, including, but not limited to:

a. the construction and operation of any structures;

b. the collection, destruction, treatment, and/or disposal of hazardous wastes and substances and their constituents and degradation products, and of any soil or other materials contaminated thereby;

c. the collection, destruction, treatment, and/or disposal of contaminated ground water, leachate, and air;

d. physical security and posting of the Site;

e. quality control and quality assurance procedures and protocols to be applied during implementation of the Remedial Construction; and

f. monitoring which integrates needs which are present on-Site and off-Site during implementation of the Department-selected remedial alternative;

(2) "Biddable Quality" documents for the Remedial Design including, but not limited to, documents and specifications prepared, signed, and sealed by a professional engineer. These plans shall satisfy all applicable local, state and federal laws, rules and regulations;

(3) A time schedule to implement the Remedial Design;

(4) The parameters, conditions, procedures, and protocols to determine the effectiveness of the Remedial Design, including a schedule for periodic sampling of ground water monitoring wells on-Site and off-Site;

(5) A description of operation, maintenance, and monitoring activities to be undertaken after the

Department has approved construction of the Remedial Design, including the number of years during which such activities will be performed (where appropriate) and a specific description of the criteria to be used to decide when an operation of the remedy may be discontinued;

(6) A contingency plan to be implemented if any element of the Remedial Design fails to achieve any of the objectives set forth in Section 6.0: REMEDICATION GOALS of the ROD;

(7) A health and safety plan for the protection of persons at and in the vicinity of the Site during construction and after completion of construction. This plan shall be prepared in accordance with 29 CFR 1910 by a certified health and safety professional; and

(8) A citizen participation plan which incorporates appropriate activities outlined in the Department's publication, "New York State Inactive Hazardous Waste Citizen Participation Plan," dated August 30, 1988, and any subsequent revisions thereto, and 6 NYCRR Part 375.

II. Remedial Construction

A. Respondent shall commence construction of the Department-approved Remedial Design in accordance with the schedule set forth within the Department-approved Remedial Design.

B. Respondent shall implement the Remedial Design in accordance with the Department-approved Remedial Design.

C. (1) During the implementation of all construction activities identified in the Remedial Design, Respondent shall have on-Site a full-time representative who is qualified to supervise the work done.

(2) The on-Site air stripper system, which is required to be operated under the terms of the 1988 IRM Order, shall continue in operation during the installation of the new ground water collection system and treatment facility. The contractor performing the Remedial Construction shall, at a pre determined point in the construction process established in its construction schedule, discontinue the use of the existing air stripper system to enable the contractor to complete the remedial construction. Upon the discontinuance of use of the air stripper system, all terms and conditions of the IRM Order, except paragraph X (the provision requiring Respondent to indemnify the Department and hold it harmless), shall terminate.

D. Within 90 days after completion of the construction activities identified in the Department-approved Remedial Design, Respondent shall submit to the Department a detailed post-remedial operation and maintenance plan ("O&M Plan"), "as-built" drawings and a final engineering report (each including all changes made to the Remedial Design during construction), and a certification that the Remedial Design was implemented and that all construction activities were completed in accordance with the Department-approved Remedial Design and were personally witnessed by him or her or by a person under his or her direct supervision. The O&M Plan, "as-built" drawings, final engineering report, and certification must be prepared, signed, and sealed by a professional engineer.

E. Upon the Department's approval of the O&M Plan, Respondent shall implement the O&M Plan in accordance with the requirements of the Department-approved O&M Plan.

F. After receipt of the "as-built" drawings, final engineering report, and certification that all construction activities have been completed in compliance with the Department-approved Remedial Design, the Department shall notify Respondent in writing of its acceptance and approval of such drawings, report, and certification.

G. Prior to its acceptance and approval of the engineer's certification that construction was completed in accordance with the approved Remedial Design, the Department may require the Respondent to modify the Remedial Design and Construction if the Department determines that such modification is necessary due to:

(1) environmental conditions on-Site or off-Site which are related to the presence of hazardous wastes at the Site and were unknown to the Department at the time of its approval of the Remedial Investigation Report Addendum, or

(2) information received, in whole or in part, after the Department's approval of the Remedial Investigation Report Addendum, where such unknown environmental conditions or such information indicates that the Remedial Program is not protective of human health or the environment.

H. In the event the Department determines that a modification under subparagraph II.G is required, it shall advise the Respondent in writing and set forth (i) the basis for its determination made under subparagraph II.G and (ii) the scope of the modification which the Department wants to be implemented. The Respondent may challenge the Department's

determination under the dispute resolution provisions of this Order in subparagraph IV.B. within 30 days after its receipt of the Department's written determination by service of a statement, setting forth the basis of its disagreement.

I. In the event Respondent is required to modify the Remedial Design and Construction in accordance with the terms of this Order, it shall perform the work in accordance with a reasonable time schedule which the Department, after consultation with Respondent, shall prescribe. The Department's review of the Respondent's submittals shall be subject to the provisions of subparagraphs IV A and B.

III. Progress Reports

A. Remedial Construction.

During the period of Remedial Construction, Respondent shall submit to the parties identified in Subparagraph XI.B in the numbers specified therein copies of written monthly progress reports that:

(1) describe the actions which have been taken toward implementation of the remedial alternative selected in the ROD during the previous month;

(2) include all results of sampling and tests and all other data received or generated by Respondent or Respondent's contractors or agents in the previous month, including quality assurance/quality control information, whether conducted pursuant to this Order or conducted independently by Respondent;

(3) identify all work plans, reports, and other deliverables required by this Order that were completed and submitted during the previous month;

(4) describe all actions, including, but not limited to, data collection and implementation of work plans, that are scheduled for the next month and provide other information relating to the progress of the Remedial Construction at the Site;

(5) include information regarding percentage of completion, unresolved delays encountered or anticipated that may affect the future schedule for the Remedial Construction, and efforts made to mitigate those delays or anticipated delays; and

(6) include modifications to the Remedial Design that Respondent has proposed to the Department or that the Department has approved.

Respondent shall submit these progress reports to the Department by the tenth day of every month beginning with the first full month after Remedial Construction has begun

following the effective date of this Order until the Department approves the engineer's certification.

Respondent also shall allow the Department to attend, and shall provide the Department at least seven days advance notice of, any of the following: job progress meetings, the substantial completion meeting and inspection and the final completion meeting and inspection.

B. Groundwater Monitoring

Following the termination of the 1988 IRM Order under subparagraph II.C.(2), the Respondent shall continue to perform the groundwater sampling and analysis program required under the 1988 IRM Order during the remainder of the period of Remedial Construction. The period of Remedial Construction shall end on the date of the Respondent's receipt of the Department's written acceptance and approval of the "as-built" drawings, the final engineering report, and certification that the Remedial Construction was completed in accordance with the Department-approved Remedial Design. Respondent shall submit the results of the analyses on a monthly basis to Michael DiPietro, the Department's Project Manager, at the address set forth in Paragraph XI of this Order.

C. Operation and Maintenance

In accordance with the O&M plan, Respondent shall submit such reports as required, including, all results of sampling and tests and all other data received or generated by Respondent or Respondent's contractors or agents since the previous report, including quality assurance/quality control information, whether conducted pursuant to this Order or conducted independently by Respondent.

IV. Review of Submittals

A. (1) The Department shall review each of the submittals Respondent makes pursuant to this Order to determine whether it was prepared, and whether the work done to generate the data and other information in the submittal was done, in accordance with this Order and generally accepted technical and scientific principles. The Department shall notify Respondent in writing of its approval or disapproval of the submittal, except for the submittal discussed in Subparagraph I.B.7. All Department-approved submittals shall be incorporated into and become an enforceable part of this Order.

(2) a. If the Department disapproves a submittal, it shall so notify Respondent in writing and shall

specify the reasons for its disapproval. Within 30 days, or such longer period of time as may be agreed to in writing by the Department, after receiving written notice that Respondent's submittal has been disapproved, Respondent shall make a revised submittal to the Department that addresses all of the Department's stated reasons for disapproving the first submittal.

b. After receipt of the revised submittal, the Department shall notify Respondent in writing of its approval or disapproval. If the Department disapproves the revised submittal, Respondent shall be in violation of this Order unless Respondent invokes the dispute resolution procedures set forth in subparagraph IV.B of this Order. If Respondent does not invoke dispute resolution procedures, the Department may take any action or pursue whatever rights it has pursuant to any provision of statutory or common law. If the Department approves the revised submittal, it shall be incorporated into and become an enforceable part of this Order.

B. (1) If the Department disapproves a revised submittal pursuant to subparagraph IV.A.(2), or if Respondent fails to challenge a Department determination under subparagraphs II.H. or IV.C.(1), or if Respondent fails to reimburse the State's expenses pursuant to paragraph VII, Respondent shall be in violation of this Order unless, within 30 days of receipt of the Department's notice of disapproval, demand for modification, or invoice, Respondent serves on the Department's Director of Hazardous Waste Remediation ("the Director") a written statement of the issues in dispute, the relevant facts upon which the dispute is based, and factual data, analysis or opinion supporting its position, and all supporting documentation on which Respondent relies (hereinafter called the "Statement of Position"). The Department shall serve its Statement of Position, including supporting documentation no later than ten business (10) days after receipt of Respondent's Statement of Position. These time periods for exchange of Statements of Position may be shortened upon mutual agreement of the parties.

(2) Respondent shall be available to meet with the Director and the Department within ten business (10) days of Respondent's receipt of the Department's Statement of Position (the "meeting").

(3) An administrative record of any dispute under this paragraph shall be maintained by the Department. The record shall include the Statement of Position of each party and any relevant information, including any relevant documentation submitted by either party up to and including the time of the meeting pursuant to subparagraph IV.B.(2).

The record shall be available for review of all parties and the public.

(4) In review by the Director of any dispute pursued under this paragraph, Respondents shall have the burden of establishing by a preponderance of the evidence that there is no rational basis for the Department's position based upon the entire administrative record.

(5) Upon review of the administrative record as developed pursuant to subparagraph IV.B.(3), the Director shall issue a final decision and order resolving the dispute. Respondent shall comply with such final decision and order, unless within 30 days of receipt of such final decision and order, Respondent commences an action under Article 78 of the Civil Practice Law and Rules of New York (CPLR) challenging such final decision and order. The period of time within which Respondent must comply with the Director's final decision and order, shall be specified by the Director in his final decision and order.

(6) If Respondent commences an action under Article 78 of the CPLR, Respondent shall revise the submittal, undertake the required modification, or reimburse the State's expenses in accordance with the court's decision in this matter.

(7) a. After receipt of the revised submittal or work plan to implement the Department-demanded modification, the Department shall notify the Respondent in writing of its approval or disapproval. If the revised submittal or work plan to implement the Department-demanded modification fails to comply with the Director's final decision and order (or, if applicable, the court's decision) and the Department disapproves the revised submittal or the work plan to implement the Department-demanded modification for that reason, the Respondent shall be in violation of this Order and the ECL.

b. If Respondent fails to comply with a final decision and order of the Director (or, if applicable the court's decision) requiring Respondent to reimburse the State's expenses, Respondent shall be in violation of this Order and the ECL.

(8) a. The invocation of formal dispute resolution procedures under paragraph IV.B. shall suspend and toll only those obligations under this Order which are in dispute or necessarily dependent on resolution of the matter(s) in dispute. Respondent's filing of a petition for review under Article 78 of the CPLR shall not stay or excuse performance of work or timely transmission of submittals with

respect to the disputed issues, except by agreement of the Department or by order of the court upon Respondent's application. Respondent shall have the burden of establishing before the court the necessity or appropriateness of such stay or excuse by a preponderance of the evidence that Respondent's position should prevail.

b. The invocation of the procedures stated in this paragraph shall constitute an election of remedies by the Respondent, and such election of this remedy shall constitute a waiver of any and all other remedies which may otherwise be available to Respondent regarding the issue in dispute.

(9) Nothing in this Order shall be construed to allow any dispute by Respondent regarding the validity of the ROD's provisions.

C. (1) Prior to the Department's final approval of the as-built plans, Respondent shall modify and/or amplify and expand a submittal upon the Department's direction to do so if the Department determines, as a result of reviewing data generated by an activity required under this Order or as a result of reviewing any other data or facts received after the date of the ROD, that further work is necessary to attain the remedial objectives identified in the ROD. The Respondent may challenge the Department's determination that further work is necessary by service of the required written statement in accordance with subparagraph IV.B of this Order within 30 days after its receipt of the Department's written determination.

(2) In the event the Respondent is required to modify and/or amplify and expand a submittal under subparagraph IV.C.(1), the Department's review of the submittal shall be subject to the provisions of subparagraphs IV.A & B of this Order.

V. Compliance

A. Respondent's failure to comply with any term of this Order constitutes a violation of this Order and the ECL.

B. Respondent shall not suffer any penalty under this Order or be subject to any proceeding or action if it cannot comply with any requirement hereof because of war, riot, or other condition as to which negligence or willful misconduct on the part of Respondent was not a proximate cause. Respondent shall, within five business days of when it obtains knowledge of any such condition, notify the Department in writing. Respondent shall include in such notice the measures taken and to be taken by Respondent to prevent or minimize any delays and shall request an appropriate extension

or modification of this Order. Failure to give such notice within such five business day period constitutes a waiver of any claim that a delay is not subject to penalties. Respondent shall have the burden of proving that an event is a defense to compliance with this Order.

Increased costs or expenses of any work to be performed under this Order, the financial inability of Respondent to perform such work and the failure of Respondent to make complete and timely application for any required approval or permit do not constitute conditions or events warranting the relief set forth in subparagraph V.B.

VI. Entry upon Site

Respondent hereby consents to the entry upon the Site or areas in the vicinity of the Site which may be under the control of Respondent by any duly designated employee, consultant, contractor, or agent of the Department or any State agency for purposes of inspection, sampling, and testing and to ensure Respondent's compliance with this Order. The Department recognizes that at the time this Order is issued, Respondent does not own or operate the Site. Respondent agrees that it will not prevent the Department from entering, for the purposes described in this Paragraph, those areas of the Site or the adjacent properties to which Respondent has been granted access.

VII. Payment of State Costs

A. Respondent shall pay to the Department a sum of money which shall represent reimbursement for the State's expenses including, but not limited to, direct labor, fringe benefits, indirect costs, travel, analytical costs, and contractor costs incurred by the State of New York for work related to the Site from March 9, 1995, as well as for reviewing and revising submittals made pursuant to this Order, overseeing activities conducted pursuant to this Order, collecting and analyzing samples, and administrative costs associated with this Order.

B. Such payment shall be made by check payable to the Department of Environmental Conservation within 30 days of receipt of an itemized invoice from the Department. Payment shall be sent to the Bureau of Program Management, Division of Hazardous Waste Remediation, N.Y.S.D.E.C., 50 Wolf Road, Albany, NY 12233-7010.

C. Itemization of the costs shall include an accounting of personal services indicating the employee name, title, biweekly salary, and time spent (in hours) on the project

during the billing period, as identified by an assigned time and activity code. This information shall be documented by quarterly reports of Direct Personal Service. The Department's approved fringe benefit and indirect cost rates shall be applied. Non-personal service costs shall be summarized by category of expense (e.g., supplies, materials, travel, contractual) and shall be documented by expenditure reports. Respondent may request an appointment to review supporting documentation within 30 days of receipt of an itemized invoice from the Department. Payment of such invoice shall be made within 30 days of the review of supporting documentation.

D. Respondent can object to any portion of the costs as being inconsistent with this Order or the NCP or the result of clerical errors and any such disagreement shall be subject to the dispute resolution procedures set forth in Paragraph IV (B) of this Order. Respondent's obligation under this Paragraph shall be limited as follows: (i) a maximum of \$100,000.00 for the first 24 months of the design and construction phase which began on March 9, 1995 (T&A Code B550), and (ii) \$5,000.00 per year for the O&M phase. (If the design and construction phase exceeds 24 months, there will be no limitation on additional costs for that phase.) Notwithstanding anything in this Order to the contrary, in the event the Respondent exercises its right to review the supporting documentation for an invoice, its right to seek dispute resolution shall be extended until 20 days after the date of review.

VIII. Department Reservation of Rights

A. Nothing contained in this Order shall be construed as barring, diminishing, adjudicating, or in any way affecting any of the Department's civil, criminal, or administrative rights or authorities.

B. If, after review, the Department accepts and approves the engineer's certification that construction of the Remedial Program was completed in accordance with the approved Remedial Design, such acceptance and approval shall constitute a full and complete satisfaction and release of each and every claim, demand, remedy or action whatsoever against Respondent, its successors and assigns, which the Department has or may have pursuant to Article 27, Title 13 of the ECL relative to or arising from the disposal of hazardous wastes at the Site. Such release and satisfaction, however, does not extend to, nor include the following: the implementation of a contingency plan required pursuant to Paragraph I.B.6; Respondent's indemnification obligations under the provisions of paragraph IX of this Order; Respondent's obligations for the future Operation and Maintenance of the Site under subparagraph II.E.

of this Order; the Respondent's obligation for reimbursement of State expenditures at the Site under paragraph VII of this Order; and any Natural Resource Damage claims that may arise. The Department specifically reserves all of its rights concerning, and any such release and satisfaction shall not extend to, any investigation or remediation the Department deems necessary due to:

(1) environmental conditions on-Site or off-Site which are related to the disposal of hazardous waste at the Site and were unknown to the Department at the time of its approval of the Remedial Investigation Report Addendum; or

(2) information received, in whole or in part, after the Department's approval of the Remedial Investigation Report Addendum, which indicates that the Remedial Program is not protective of human health or the environment. The Department shall notify the Respondent in writing of its receipt of such information and its basis for determining that the Remedial Program is not protective of human health and the environment.

This release shall inure only to the benefit of the Respondent, its successors and assigns, with respect to the aforesaid matter.

Nothing herein shall be construed as affecting in any way, legal or equitable rights, claims or any causes of action that the Department may have against anyone other than Respondent, its successors and assigns.

C. Nothing contained in this Order shall be construed to prohibit the Commissioner or his duly authorized representative from exercising any summary abatement powers.

IX. Indemnification

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 and/or any of Respondent's directors, officers, employees, servants, agents, successors, and assigns. Respondent shall not indemnify the Department or the State of New York for gross negligence or willful misconduct on the part of the State of New York, the Department or their representatives and employees.

X. Public Notice

Within 30 days after the effective date of this Order, Respondent shall file a Declaration of Covenants and Restrictions with the Clerk of the County wherein the Site is located to give all parties who may acquire any interest in the Site notice of this Order.

XI. 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:

Communication from Respondent shall be sent to:

Michael DiPietro, Project Manager
Division of Hazardous Waste Remediation
New York State Department of
Environmental Conservation
50 Wolf Road
Albany, New York 12233-7010

with copies to:

- (1) Director, Bureau of Environmental
Exposure Investigation
New York State Department of Health
2 University Place
Albany, New York 12203
- (2) Daniel J. Palm, Ph.D., Regional Director
Region 7 Headquarters
New York State Department of
Environmental Conservation
615 Erie Boulevard West
Syracuse, New York 13204-2400
- (3) Ronald Heerkens, Regional Toxics
Coordinator
New York State Department of Health
217 South Salina Street
Syracuse, New York 13202-3592
- (4) Rosalie K. Rusinko, Esq.
Eastern Field Unit
Division of Environmental Enforcement
New York State Department of
Environmental Conservation
200 White Plains Road, 5th Floor
Tarrytown, N.Y. 10591

B. Copies of work plans and reports shall be submitted as follows:

- (1) Four copies (one unbound) to Michael DiPietro, Project Manager, Division of Hazardous Waste Remediation.
- (2) Two copies to the Director, Bureau of Environmental Exposure Investigation.
- (3) One copy to , Regional Director, Region 7.
- (4) One copy to Rosalie K. Rusinko, Field Unit Case Attorney.

C. Within 30 days after its approval of the drawings and submittals described in subparagraph II. D of this Order, Respondent shall submit one microfilm copy (16 millimeter roll film M type cartridge) of such Department-approved drawings and submittals, as well as all other Department-approved submittals. Such submissions shall be made to Michael DiPietro.

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

- (1) Daniel A. Barthold
Director, Environmental and Energy
Miller Brewing Company
3939 West Highland Boulevard
Milwaukee, Wisconsin 53208
- (2) Barry R. Kogut, Esq.
Bond, Schoeneck and King, LLP
One Lincoln Center
Syracuse, N.Y. 13202

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

XII. Miscellaneous

A. All activities and submittals required by this Order shall address both on-Site and off-Site contamination resulting from the disposal of hazardous wastes at the Site.

B. Respondent shall retain professional consultants, contractors, laboratories, quality assurance/quality control personnel, and third party data validators 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 10 days prior to their performance of any work required under this Order or within 10 days after the effective date of this Order. The Department's approval of these firms or individuals shall be obtained before the start of any activities for which Respondent and such firms or individuals will be responsible unless otherwise provided by the Department. The responsibility for the performance of the professionals retained by Respondent shall rest solely with Respondent.

C. The Department shall have the right to obtain split samples, duplicate samples, or both, of all substances and materials sampled by Respondent. The Department also shall have the right to take its own samples and the Respondent shall have the right to obtain split samples or duplicate samples of all substances and materials sampled by the Department. Respondent and the Department shall make available to each other the results of all sampling and/or tests or other data generated by Respondent or the Department with respect to implementation of this Order. Respondent shall submit these results in accordance with paragraph III of this Order and the Department shall submit its results to Respondent.

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

E. (1) Respondent shall use its best efforts to obtain all permits, easements, rights-of-way, rights-of-entry, approvals, or authorizations necessary to perform Respondent's obligations under this Order. Respondent shall promptly notify the Department in the event of Respondent's inability to obtain such authorizations on a timely basis. In the event Respondent is unable to obtain the necessary authorizations required to perform its obligations under this Order, the Department may, consistent with its legal authority, assist in obtaining all such authorizations Respondent was unable to obtain despite its best efforts, or which Respondent could not obtain without unreasonable terms or conditions. Respondent shall reimburse the Department, in accordance with the procedures in paragraph VII, for all costs incurred by the Department in obtaining access, including, but not limited to, attorneys fees; however, these costs will not subject to the limitation set forth in subparagraph VII.D. If Respondent cannot obtain such authorizations on a timely basis, the time for performance of any obligation dependent upon such authorization shall be appropriately extended and the Order appropriately modified.

(2) Notwithstanding anything in this subparagraph XII.E to the contrary, Respondent shall not be required to obtain State or local permits for certain work conducted under this Order consistent with the criteria set forth in 6 NYCRR 375-1.7 and the Department's "Division Technical and Administrative Guidance Memorandum: Permitting Jurisdiction Over Inactive Hazardous Waste Site Remediation - O & D Memo 94-04 [Supersedes TAGM 4040]," dated March 21, 1994. Under the foregoing authority, the Respondent shall be required to meet the substantive requirements for air and wastewater discharge permits; however, the Respondent shall not be required to obtain such permits in connection with the Remedial Program to be undertaken in accordance with the terms and conditions of this Order.

F. The terms of this Order shall be deemed to bind the signatories hereto and their respective successors and assigns. Nothing herein shall be constituted to bind any other entity. Any change in ownership or corporate status of Respondent including, but not limited to, any transfer of assets or real or personal property shall in no way alter Respondent's responsibilities under this Order. Respondent's officers, directors, employees, servants, and agents shall be obliged to comply with the relevant provisions of this Order in the performance of their designated duties on behalf of Respondent.

G. Respondent shall provide a copy of this Order to each contractor hired to perform work required by this Order and to each person representing Respondent with respect to the Site and shall condition all contracts entered into in order to carry out the obligations identified in this Order upon performance in conformity with the terms of this Order. Respondent or Respondent's contractors shall provide written notice of this Order to all subcontractors hired to perform any portion of the work required by this Order. Respondent shall nonetheless be responsible for ensuring that Respondent's contractors and subcontractors perform the work in satisfaction of the requirements of this Order.

H. All references to "professional engineer" in this Order are to an individual registered as a professional engineer in accordance with Article 145 of the New York State Education Law. If such individual is a member of a firm, that firm must be authorized to offer professional engineering services in the State of New York in accordance with Article 145 of the New York State Education Law.

I. All references to "days" in this Order are to calendar days unless otherwise specified.

J. The section headings set forth in this Order are included for convenience of reference only and shall be disregarded in the construction and interpretation of any of the provisions of this Order.

K. (1) 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. No informal advice, guidance, suggestion, or comment by the Department regarding any report, proposal, plan, specification, schedule, or any other submittal shall be construed as relieving Respondent of Respondent's obligation to obtain such formal approvals as may be required by this Order.

(2) If Respondent desires that any provision of this Order be changed, Respondent shall make timely written application, signed by Respondent, to the Commissioner, setting forth reasonable grounds for the relief sought. Copies of such written application shall be delivered or mailed to Rosalie K. Rusinko, Esq. and to Michael DiPietro, P.E.. The Department shall not arbitrarily withhold consent to the requested change and shall promptly respond to the request. Notwithstanding the foregoing, change orders in the field can be approved by the Department's project manager.

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

DATED: 12/11 , New York
, 1995

Michael D. Zagata
Commissioner
New York State Department
of Environmental Conservation

By:


Michael J. O'Toole, Jr.

MILLER BREWING COMPANY

By: Gautam K. Singh

Date: 11/27/95

On this 27th day of November 1995, before me personally came Harold W. Rial, to me known, who being duly sworn, did depose and say that he resides in that he is the Associate General Counsel of Miller Brewing Company the 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.

Shirley J. Lovett
Notary Public

My Commission expires 12/17/95

C. Allen
SAIVE

STATE OF NEW YORK: DEPARTMENT OF ENVIRONMENTAL CONSERVATION

In the Matter of the
Development and Implementation of a
Remedial Investigation/Feasibility
Study pursuant to Article 27, Title 13,
of the Environmental Conservation Law
(the "ECL") of the State of New York
by

ORDER
ON
CONSENT

RI/FS

INDEX # A7-0227-90-04
Site # 738029

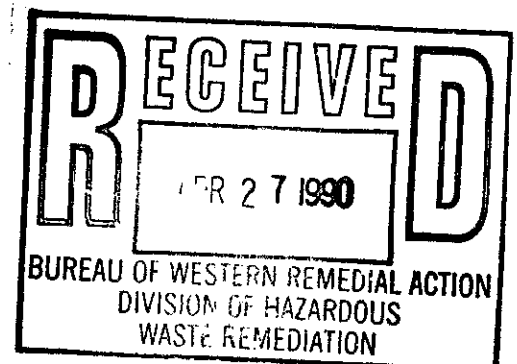
MILLER BREWING COMPANY,
CONTAINER DIVISION,

Respondent.

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. Miller Brewing Company is a corporation organized and existing under the laws of the State of Wisconsin and is authorized to do business in the State of New York. Miller Brewing Company has a Container Division (the "Respondent"), which operates a canmaking facility in the Town of Volney, Oswego County (the "Site"). The Miller Container facility is located approximately 1200 feet southeast of the Fulton,



New York municipal boundary, approximately 1000 feet northeast of the Oswego River and approximately 900 feet south of New York State Route 481.

3. Respondent formerly had in use a spill containment tank installed near the northwest corner of its facility ("the Spill Area"), which was found at the time of its excavation in the Spring of 1986 to have been leaking.

4. Laboratory analyses of ground water samples from monitoring wells installed at the Site detected the presence of methylene chloride, 1,1-dichloroethylene, 1,1-dichloroethane, 1,1,1-trichloroethane ("TCA"), 1,1,2,2-tetrachloroethylene, and other contaminants. A contaminant plume from the former spill containment tank was identified in the aquifer at the Site.

5. Respondent and the Department executed Order on Consent # A701118704 effective January 22, 1988, pursuant to which Respondent implemented an interim remedial program intended to treat ground water at the Site to acceptable levels. The interim remedial program included the installation of three ground water recovery wells and the treatment of contaminated ground water by an air stripper. The program also required the periodic monitoring of the monitoring wells on the Site to assess the effectiveness of the interim remedial program. A map of the Site with monitoring wells included is attached as Appendix "A."

6. Effective December 1, 1987, the City of Fulton (the "City") issued to the Respondent a wastewater discharge permit

(the "permit") pursuant to which the Respondent was allowed to discharge water from the air stripper operation into the City's publicly owned treatment works. The City required the Respondent, as one of the conditions of the permit, to sample Fulton Municipal Well Number 2 ("Municipal Well Number 2") immediately prior to the start-up of the remedial program and monthly thereafter.

7. Operation of the ground water recovery system formally began on June 27, 1988.

8. The following occurrences provide additional information about the contaminated aquifer:

(1) Spill Containment Tank Plume. In October 1988, ground water monitoring well number 8D began showing TCA contamination. Monitoring well number 13D began showing consistent TCA contamination in March of 1989. This raised the concern that the tank contaminant plume ("Plume 1") was not being contained by the ground water remedial system.

(2) Monitoring Well 14D. Contaminant levels at monitoring well 14D began to increase in March of 1988. The contaminant level increased more sharply in the Fall of 1989. This suggested the existence of a second contaminant plume ("Plume 2").

(3) Municipal Well Number 2. During the period from March 1988 to October 1988, TCA was detected in the municipal well in 6 of the 8 monthly samples with 3 ug/l being the highest

level of TCA detected. TCA was thereafter not detected until August 1989. Since August 1989, TCA has been detected in the well on a consistent basis.

9. TCA contamination has been consistently found at Municipal Well Number 2 since August of 1989. The Department alleges that the Site is the source of TCA contamination at Municipal Well Number 2.

10. The Site is an inactive hazardous waste disposal site, as that term is defined at ECL Section 27-1301(2) and has been listed in the Registry of Inactive Hazardous Waste Disposal Sites in New York State as Site Number 738029. The Department has classified the Site as a Classification "2" 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."

11. 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."

12. The Department and Respondent agree that the goal of this Order is the development and implementation by Respondent of a Remedial Investigation/Feasibility Study for the Site which will include investigation of Plume 1 and Plume 2. A remedial program, if determined necessary, will be addressed in a subsequent Order.

13. Respondent, having waived its right to a hearing herein, has consented to the issuance of this Order without any adjudication of fact or law and agrees to be bound by its terms. Respondent's consent to and compliance with this Order does not constitute, and shall not be construed as, an admission of liability of any kind or an admission by Respondent of law or fact or of the applicability of any law to conditions at the Site.

14. It is further understood and agreed that the Department will not require Respondent to undertake remedial activity attributable to contamination with respect to which Respondent is not a responsible party.

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

I. 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 within 30 days after the effective date of this Order.

II. Within 30 days of the effective date of this Order, Respondent shall submit to the Department a Work Plan for a Remedial Investigation/Feasibility Study ("RI/FS").

The Work Plan shall address all elements of a Remedial Investigation/Feasibility Study as set forth in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. Sections 9601 et seq. ("CERCLA"), as amended, the National Contingency Plan ("NCP") then in effect and the USEPA guidance document entitled "Guidance for Conducting Remedial Investigations and Feasibility Studies under CERCLA," dated October 1988, and any subsequent revisions thereto and appropriate technical and administrative guidelines. In addition, the Work Plan shall include:

A. A chronological description of the anticipated RI/FS activities together with an anticipated schedule for the performance of these activities.

B. A Sampling and Analysis Plan which shall include:

1. A quality assurance project plan that describes the quality assurance and quality control protocols necessary to achieve the initial data quality objectives.

2. A field sampling plan that defines the

sampling and data gathering methods in a manner consistent with the "Compendium of Superfund Field Operations Method" (EPA/540/P-87/001, OSWER Directive 9355.0-14, December 1987) as supplemented by the Department.

C. A health and safety plan for the protection of persons at and in the vicinity of the Site during the performance of the Remedial Investigation which shall be prepared in accordance with 29 C.F.R. Section 1910 by a certified health and safety professional.

D. A citizen participation plan which is prepared in a manner consistent with the Department's publication "New York State Inactive Hazardous Waste Site Citizen Participation Plan."

In preparing the RI/FS work plan, the Respondent may vary the requirements set forth in Paragraph II of the Order to reflect the work performed at the Site to date, provided there exists a technical basis for the variance consistent with CERCLA, the NCP, and appropriate technical and administrative guidelines.

III. The Department shall notify Respondent in writing of its approval or disapproval of the Work Plan. If the Department approves the Work Plan, Respondent shall perform the RI/FS in accordance with it.

If the Department disapproves the Work Plan, the Department shall notify Respondent in writing of the

Department's specific objections. Within 45 days after receipt of notice of disapproval, Respondent shall address 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 approves the revised Work Plan, Respondent shall perform the RI/FS in accordance with the Work Plan.

If the Department disapproves the Revised Work Plan, Respondent shall be in violation of this of this Order unless it has invoked, within 15 days of receipt of the disapproval, the dispute resolution mechanism set forth in Paragraph X.

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

IV. In accordance with the time schedule contained in the approved Work Plan, Respondent shall perform the Remedial Investigation and submit the status reports and other deliverables (as defined in the Work Plan) and a Remedial Investigation Report ("the Report"). During the performance of the Remedial Investigation work on-site, Respondent shall have on-site a full-time representative who is qualified to inspect the work. The Report shall include all data generated and all other information obtained during the Remedial Investigation and shall provide all of the assessments and evaluations set forth in CERCLA, the NCP then in effect, and in the guidance documents

referenced herein, and identify any additional data that must be collected. The Report shall be prepared and certified by an engineer licensed to practice by the State of New York, who may be an employee of Respondent, or an individual or member of a firm which is authorized to offer engineering services in accordance with Article 145 of the New York State Education Law who shall certify that all activities that comprised the Remedial Investigation were performed in full accordance with the approved Work Plan.

V. After receipt of the Report, the Department shall determine if the Remedial Investigation was conducted and the Report prepared in accordance with the Work Plan and this Order, and shall notify Respondent in writing of its approval or disapproval of the Report.

If the Department disapproves the Report, the Department shall notify Respondent in writing of the Department's objections. Respondent shall address the Department's specific comments and submit a revised Report and/or reperform or supplement the Remedial Investigation and submit a revised Report. The period of time within which the Report must be revised or the Remedial Investigation reperformed or supplemented shall be specified by the Department in its notice of disapproval and such period shall provide Respondent adequate time to perform the additional tasks in accordance with customary practices and procedures.

The Department shall notify the Respondent in writing of its approval or disapproval of the revised Report and any reperformed or supplemental work.

If the Department disapproves the Revised Report, Respondent shall be in violation of this Order unless it has invoked, within 15 days of receipt of the disapproval, the dispute resolution mechanism set forth in Paragraph X.

The approved Report shall be attached as Appendix "C" and incorporated into this Order.

VI. The Department reserves the right to require a modification and/or an amplification and expansion of the Remedial Investigation and Report by Respondent (the "additional work") if the Department determines, as a result of reviewing the data generated by the Remedial Investigation or as a result of reviewing any other data or facts, that, in accordance with generally accepted scientific principles and practices, further work is necessary in order to satisfy the goals of this Order.

Upon written receipt of the Department's demand for the additional work, the Respondent shall proceed with the additional work in accordance with a mutually agreed schedule unless, within 15 days after receipt of the demand, it objects to the Department in writing and invokes the dispute resolution procedures set forth in Paragraph X.

VII. If at any time Respondent believes, on the basis of

information obtained in the course of the Remedial Investigation or any other information developed subsequent to the effective date of this Order, that Respondent is not a responsible party with respect to contamination, it shall notify the Department and request a modification to the scope of its obligations under this Order in accordance with Paragraph XXII of this Order.

VIII. Within 90 days after receipt of the Department's approval of the Report, Respondent shall submit a Feasibility Study evaluating on-Site and off-Site remedial actions to eliminate, to the maximum extent practicable, all health and environmental hazards and potential hazards attributable to the Site. The Feasibility Study shall be prepared and certified by an engineer licensed to practice by the State of New York, and approved by the Department, who may be an employee of Respondent, or an individual or member of a firm which is authorized to offer engineering services in accordance with Article 145 of the New York State Education Law.

The Feasibility Study shall be performed in a manner that is consistent with CERCLA, the NCP then in effect, the USEPA draft guidance document entitled "Guidance for Conducting Remedial Investigations and Feasibility Studies under CERCLA," dated October 1988, and any subsequent revisions thereto, and appropriate technical and administrative guidelines.

IX. After receipt of the Feasibility Study, the Department

shall determine if the Feasibility Study was prepared in accordance with this Order, and shall provide written notification of its approval or disapproval.

If the Department disapproves the Feasibility Study, the Department shall notify Respondent in writing of the Department's specific objections. Within 45 days after receipt of notice of disapproval, Respondent shall address the Department's specific comments and submit a revised Feasibility Study.

After receipt of the revised Feasibility Study, the Department shall notify Respondent in writing of its approval or disapproval of the revised Feasibility Study.

If the Department disapproves the Revised Feasibility Study, Respondent shall be in violation of this Order unless it has invoked, within 15 days of receipt of the disapproval, the dispute resolution mechanism set forth in Paragraph X.

The approved Feasibility Study shall be attached as Appendix "D" and incorporated into this Order.

X. At the request of Respondent, a dispute concerning the terms of a revised submittal, the appropriateness of additional work (Paragraph VI) or the reimbursement of administrative costs (Paragraph XI) shall be referred to the Commissioner for resolution. The Commissioner shall, within 30 days, notify Respondent of his decision or appoint an

Administrative Law Judge ("ALJ") to conduct an evidentiary hearing to resolve the dispute as set forth herein. The taking of evidence shall be concluded as soon as practicable after the ALJ's appointment.

In all proceedings hereunder:

(1) The parties shall be the Department and the Respondent.

(2) Notice shall be provided to the other party by the party requesting resolution of the dispute.

(3) The burden of going forward to prove that the revised submittal satisfies the requirements of this Order, additional work is not required, or the Department's administrative costs are inconsistent with the NCP shall be on the Respondent.

(4) The ALJ shall have all powers conferred by 6 NYCRR 622.12.

(5) All proceedings conducted hereunder shall be stenographically recorded. The Respondent shall arrange, at the Respondent's expense, for an expedited stenographic transcript to be made as soon as practicable, but in no event later than 30 working days, after the conclusion of the proceeding, and for the original and two copies of the transcript to be delivered to the ALJ.

(6) The ALJ shall prepare, within 45 working days after receipt of the transcript of the proceeding, a written

summary of the documentation and testimony received during the proceeding, and a recommended decision. The summary and recommended decision shall be hand carried to the Department's representative and sent by certified mail, return receipt requested, and another copy by express mail to Respondent.

(7) The ALJ's recommended decision shall become the final determination of the Commissioner unless, within 10 working days from receipt of the recommended decision, either the Respondent or the Department objects in writing. Any objections shall be submitted in writing to the ALJ with a copy sent by express mail, telecopier, or hand-delivery to the other party, which shall serve and file in the same manner its response, if any, within 10 working days of receipt of the objections. Upon receipt of the objections and any response, the ALJ shall refer the matter to the Commissioner for final determination.

(8) The final determination of the Commissioner shall be made as soon as practicable after receipt by him of the recommended decision by the ALJ.

(9) The Respondent may, within 30 days of the final determination of the Commissioner, seek judicial review of such determination. If the Respondent fails to seek judicial review within the time period set forth herein, it shall comply with the final determination of the Commissioner, failing which

it shall be in violation of this Order.

(10) During the pendency of the dispute resolution process, Respondent shall continue to perform the work required under the terms of the Order except for those specific items which are the subject of the dispute resolution procedures.

XI. Within 360 days of the effective date of this Order, or 30 days after receipt of an invoice from the Department, whichever is later, Respondent shall pay to the Department, for the period beginning January 1, 1990, a sum of money which shall represent reimbursement for the Department's expenses including, but not limited to, direct labor, overhead, travel, analytical costs and contractor costs incurred by the State of New York for negotiating this Order, reviewing and revising submittals made pursuant to this Order, overseeing activities conducted by the Respondent pursuant to this Order, and collecting and analyzing samples taken pursuant to this Order. Subsequent payments shall be made on an annual basis, within 30 days after receipt of an invoice from the Department, during the period in which Respondent performs any activities under this Order. Such payment shall be by certified check payable to the Department of Environmental Conservation. Payment shall be sent to the Director of Environmental Enforcement, NYSDEC, 50 Wolf Road, Albany, New York 12233. The Department shall itemize costs incurred. Itemization of costs

shall include an accounting of personal services indicating the employee name, title, biweekly salary and time spent (in hours) on the project during the billing period, as identified by an assigned time and activity code. This information shall be documented by the Department's quarterly reports of Direct Personal Service. The Department's approved fringe benefit and indirect cost rates shall be applied. Non-personal service costs shall be summarized by category of expense (supplies and materials, travel, contractual) and shall be documented by the New York State Office of the State Comptroller's quarterly expenditure reports. Respondent can object to any portion of the costs as being inconsistent with this Order or the NCP and any such disagreement shall be subject to the dispute resolution procedures set forth in Paragraph X. Respondent's obligation, under this Paragraph, for the initial payment and each of the subsequent annual payments shall be limited to a maximum of \$50,000 for each payment.

XII. The Department shall have the right to obtain split samples, duplicate samples, or both, of all substances and materials sampled by Respondent and the Department shall also have the right to take its own samples. The Department shall provide Respondent with the analytical results of any such samples, after the Department's receipt of Respondent's results.

XIII. Respondent shall provide notice to the Department at

least 5 working days in advance of any field activities to be conducted pursuant to this Order.

XIV. Respondent shall obtain whatever permits, easements, rights-of-way, rights-of-entry, approvals or authorizations are necessary in order to perform its obligations pursuant to this Order. If the Respondent's good faith efforts are unsuccessful in obtaining any required authorizations, the Department may exercise its authority under the ECL in an effort to assist the Respondent in obtaining the necessary authorizations.

XV. Respondent shall permit any duly designated employee, consultant, contractor or agent of the Department or the Department of Health 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 compliance with this Order.

XVI. Respondent shall not suffer any penalty under this Order, or be subject to any proceeding or actions for any remedy or relief, if it cannot comply with any requirements hereof because of an act of God, war, riot, or other condition as to which negligence or willful misconduct on the part of Respondent was not a proximate cause, provided however that Respondent shall immediately notify the Department in writing when it obtains knowledge of any such condition and request an appropriate extension or modification of the terms of this Order.

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

XVIII. Nothing contained in this Order shall be construed as barring, diminishing, adjudicating or in any way affecting, any of the Department's rights, including, but not limited to:

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 resource damages as a result of the release or threatened release of hazardous wastes or constituents at or from the Site or areas in the vicinity of the Site;

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 hazardous wastes that are present at the Site or that have

migrated from the Site and present a significant threat to human health or the environment; and

E. the Department's right to bring any action or proceeding against Respondent for the purpose of recovering any unreimbursed costs incurred after January 1, 1990 by the State of New York in negotiating this Order, reviewing and revising submittals made pursuant to this Order, overseeing activities conducted by the Respondent pursuant to this Order, and collecting and analyzing samples taken pursuant to this Order.

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

XX. 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 to the extent that Respondent, its contractors or agents are liable under applicable law.

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

XXII. 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. A copy of such written application shall be delivered or mailed to:

Richard Brazell, P.E., New York State Department of Environmental Conservation, Region 7 Headquarters, 615 Erie Boulevard West, Syracuse , New York 13204.

If the Commissioner has not responded to Respondent's written application within 60 days of the Department's receipt of such application, the Department shall, on or before the 65th day, notify Respondent in writing of the reason for the Commissioner's delay and inform Respondent of the approximate date by which the Commissioner is expected to respond.

XXIII. Within 30 days after the effective date of this Order, Respondent shall file a Declaration of Covenants and Restrictions with the Oswego County Clerk to give all parties who may acquire any interest in the Site notice of this Order.

XXIV. 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.

XXV. 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. Division of Environmental Enforcement New York State Department of Environmental Conservation 50 Wolf Road Albany, New York 12233, Attention: David Markell, Esq., Director.

2. Division of Hazardous Waste Remediation New York State Department of Environmental Conservation 50 Wolf Road Albany, New York 12233, Attention: Michael J. O'Toole, Jr., P.E., Director.

3. New York State Department of Environmental Conservation, Region 7 Headquarters, 615 Erie Boulevard West, Syracuse, New York 13204, Attention: Richard Brazell, P.E.

4. Bureau of Environmental Exposure Investigation, New York State Department of Health, 2 University Place Albany, New York 12203, Attention: Ronald Tramontano, Director.

5. Division of Environmental Enforcement, Albany Field Unit, Room 415, New York State Department of Environmental Conservation, 50 Wolf Road, Albany, New York 12233, Attention: Dolores A. Tuohy, Esq.

6. New York State Department of Health, 677 South Salina Street, Syracuse, New York 13202, Attention: Ronald Heerkens.

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

1. Miller Brewing Company, Legal Department, 3939 West Highland Boulevard, Milwaukee, Wisconsin, 53208, Attention: Garrett W. Reich, Esq.

2. Miller Brewing Company, Corporate Engineering, 3939 West Highland Boulevard, Milwaukee, Wisconsin, 53208, Attention: Thomas N. Swett, P.E.

3. Miller Brewing Company Container Division, P.O. Box 400, Fulton, New York 13069, Attention: Larry Messina.

4. Bond, Schoeneck and King, One Lincoln Center, Syracuse, New York 13202, Attention: Barry R. Kogut, Esq.

C. Copies of work plans and reports shall be submitted as follows:

1. One copy to the Director, Division of Environmental Enforcement.

2. One copy to the Director, Division of Hazardous Waste Remediation.

3. Two copies to the Director, Bureau of Environmental Exposure Investigation.

4. One copy to Albany Field Unit.

5. Five copies to Region 7 office.

XXVI. The terms of this Order shall be deemed to bind the signatories thereto and their respective officers, directors,

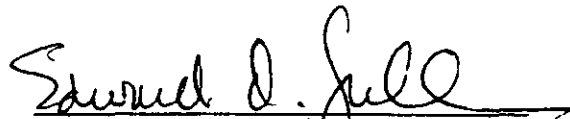
agents, servants, employees, successors and assigns. Nothing herein shall be construed to bind any other entity.

XXVII. 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
April 23, 1990

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

BY:


Edward O. Sullivan
Deputy Commissioner

CONSENT BY RESPONDENT

Respondent hereby, without any admission of law or fact, 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.



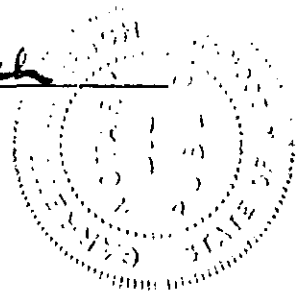
By: Daniel P. Dockery
(TYPE NAME OF SIGNER)

Title: Assistant Secretary

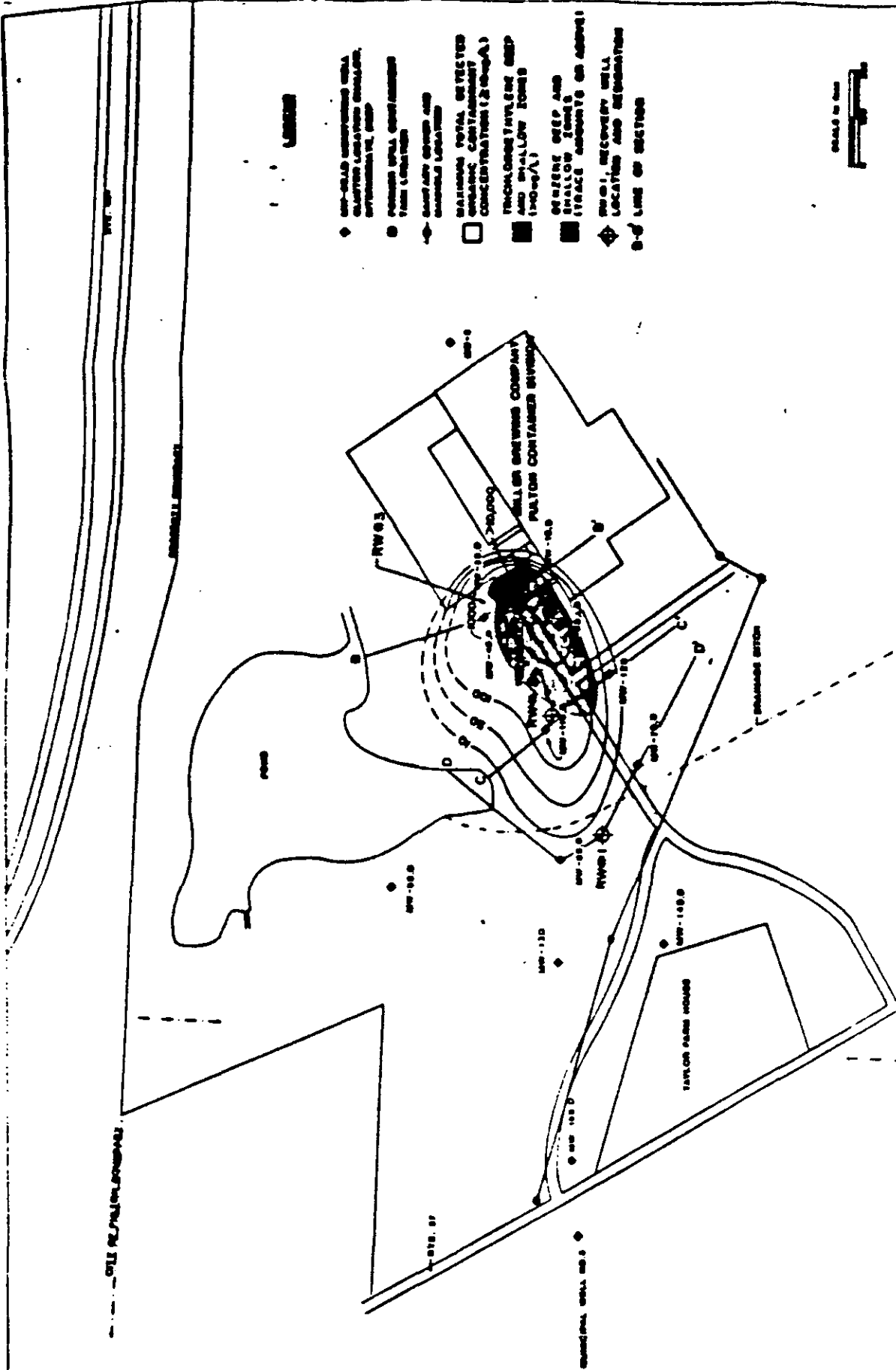
Date: April 12, 1990

STATE OF WISCONSIN)
) s.s.:
COUNTY OF MILWAUKEE)

On this 12th day of April,
1990, before me personally came Daniel P. Dockery, to
me known, who being duly sworn, did depose and say that he
resides in Brookfield, Wisconsin; that he is the
Assistant Secretary of the Miller Brewing Company
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.


Notary Public

(co#1\miller\dat)



APPENDIX "A"

END

OF

DOCUMENT