

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 # B8-0112-84-10

KADDIS MANUFACTURING CORP.

Respondent

Site Code # 8-26-011

---

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 of the State of New York ("ECL"), entitled "Inactive Hazardous Waste Disposal Sites." This Order is issued pursuant to the Department's authority under ECL Article 27, Title 13 and under ECL 3-0301.

2. Enarc-o Machine Products, Inc., a division of Kaddis Manufacturing Corp., ("Respondent") operates a manufacturing facility at 1175 Bragg Street in the community of North Bloomfield, Town of Lima, Livingston County, New York (the "Site"). Enarc-o Machine Products, Inc., then a subsidiary corporation of Respondent, entered into Order on Consent Index # B8-0112-91-04, effective March 22, 1994, with the Department to conduct a remedial investigation and feasibility study at the Site (the "RI/FS Order"). Having completed the remedial investigation, Respondent now proposes to implement the remedial measure to facilitate the long-term remediation at the Site.

3. The Site is an inactive hazardous waste disposal site, as that term is defined at ECL Section 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 8-26-011. The Department has classified the Site as a Classification "2" pursuant to ECL Section 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. 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"). The ROD is attached to this Order as

Appendix "A" and is incorporated herein.

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.

7. Without admitting any facts or any of the Department's determinations, assertions or conclusions of law, and while reserving all other rights available to it, Respondent waives its right to a hearing herein as provided by law, and consents to the issuance and entry of this Order, 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.

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

I. Remedial Design Contents

Within 30 days after the effective date of this Order, Respondent shall commence implementation of remedial construction for the Remedial Design/Remedial Action Plan (the "RDRAP") prepared by H & A of New York, LLP, as revised and submitted on February 11, 1999 and approved by the Department on February 23, 1999 for incorporation into this Order. The remedial construction shall be completed within the period of time designated in the RDRAP.

II. Remedial Design Construction and Reporting

A. Respondent shall implement the RDRAP in accordance with the Department-approved RDRAP and implementation schedule.

B. During implementation of all construction activities identified in the RDRAP, Respondent shall have on-Site a full-time representative who is qualified to supervise the work done.

C. Within 45 days after completion of the construction activities identified in the RDRAP, 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 by a professional engineer that the RDRAP was implemented and all construction activities were completed in accordance with the Department-approved RDRAP. The O&M Plan, "as built" drawings, final engineering report, and certification must be prepared, signed, and sealed by a professional engineer.

D. 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.

E. After receipt of the "as-built" drawings, final engineering report, and certification, the Department shall notify Respondent in writing whether the Department is satisfied that all construction activities have been completed in compliance with the approved RDRAP.

F. If the Department concludes that any element of the Remedial Program

fails to achieve its objectives or otherwise fails to protect human health or the environment, Respondent shall take whatever action the Department determines necessary to achieve those objectives or to ensure that the Remedial Program otherwise protects human health and the environment, unless objections are raised in accordance with Paragraph IV.C below.

III. Progress Reports

A. 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 achieving compliance with this Order 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 at the Site;
5. include information regarding percentage of completion, unresolved delays encountered or anticipated that may affect the future schedule for implementation of the Respondent's obligations under the Order, and efforts made to mitigate

those delays or anticipated delays;

6. include any modifications to any work plans that Respondent has proposed to the Department or that the Department has approved; and

7. describe all activities undertaken in support of the Citizen Participation Plan during the previous month and those to be undertaken in the next month.

B. Respondent shall submit these progress reports to the Department by the tenth day of every month following the effective date of this Order.

C. Respondent also shall allow the Department to attend, and shall provide the Department at least seven days advance notice of, any of the following activities which are conducted in relation to the Remedial Design: prebid meetings, job progress meetings, substantial completion meeting and inspection, and final inspection and meeting.

#### 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 Paragraph 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

after receiving written notice that Respondent's submittal has been disapproved, Respondent shall make a revised submittal to the Department that addresses and resolves 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 and 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. 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, that further work is necessary.

C. In the event of a dispute between the Department and Respondent regarding the disapproval of a submittal or the need for modification or amplification of a submittal pursuant to this Paragraph, the parties shall first attempt to resolve the dispute informally between them. If, within thirty (30) days of Respondent's receipt of the notice of the Department's disapproval of a submittal, informal discussions and negotiations do not appear to be resolving the dispute, Respondent shall be entitled to invoke this Subparagraph to resolve the issues in dispute.

1. Within 30 days of the date on which the Department issues a

notification to Respondent of its disapproval, Respondent shall be entitled to serve upon the Department a request for the appointment of an Administrative Law Judge ("ALJ") to resolve the dispute, along with a written statement of the issues in dispute and the relevant facts upon which the dispute is based and the factual data, analyses or opinions supporting Respondent's position, and all other supporting documentation on which Respondent relies ("Statement of Position"), with copies also delivered to Michael J. Ryan and to Glen Bailey in accordance with Paragraph XI.A, below.

2. The Department staff shall deliver its Statement of Position to the ALJ and to Respondent no later than fifteen (15) business days after receipt of Respondent's Statement of Position. If desired by the ALJ, a personal appearance before the ALJ to express each party's position may then be scheduled. Personal appearances before the ALJ shall be discretionary with the ALJ, and shall not be required to resolve matters pursuant to this process.

3. The Department shall compile an administrative record of any dispute pursuant to this subparagraph. The record shall include the Statement of Position of each party and any other identified relevant information. The record shall be available for review to all parties and to the public.

4. Upon review of the administrative record, the ALJ shall issue a final decision and order resolving the dispute. Respondent shall have the burden of proving that there is no rational basis for the Department's position giving rise to the dispute.

Respondent shall have those rights available pursuant to Article 78 of the Civil Practice Laws and Rules of the State of New York ("CPLR"), provided that a petition under Article 78 is filed



within thirty (30) days of receipt of the decision and order issued by the ALJ.

5. The invocation of the procedures stated in this subparagraph shall not extend, postpone, or modify Respondent's obligations under this Order with respect to any undisputed items. Respondent shall not be in violation of this Order for failure to perform tasks or obligations which are directly related to the issues in dispute or which may be altered or revised in the resolution of the issues in dispute. The invocation of the procedures provided in this subparagraph shall constitute an election of remedies by the party initiating the proceedings, and such election of this remedy shall constitute a waiver of any and all other remedies which may otherwise have been available to the party regarding the issue in dispute.

V. Penalties

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 an unforeseeable disaster arising exclusively from natural causes which the exercise of ordinary human prudence could not have prevented. Respondent shall, within ten 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 ten-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 pursuant to this 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 the 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. Respondent shall provide the Department with suitable office space at the Site, including access to a telephone, and shall permit the Department full access to all records relating to matters addressed by this Order and job meetings.

VII. Payment of State Costs

Within 120 days after receipt of an itemized invoice from the Department, Respondent shall pay to the Department a sum of money, not to exceed \$35,000.00 for costs associated with this Order, which shall represent reimbursement for the State's expenses incurred since the date of the ROD, 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 performed at the Site, as well as for negotiating this Order, 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. Such payment shall be made by certified check payable to the Department of Environmental Conservation. Payment shall be sent to the Bureau of Program Management, Division of Environmental Remediation, N.Y.S.D.E.C., 50 Wolf Road, Albany, NY 12233-7010.

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 reports of Direct Personal Service. Approved agency 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. Costs incurred prior to the date of the ROD have been resolved pursuant to the terms of the RI/FS Order on Consent with Respondent.

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, administrative, or equitable rights or authorities.

B. 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 Respondent's directors, officers, employees, servants, agents, successors, and assigns.

X. Public Notice

A. Respondent has filed, and shall maintain, a Declaration of Covenants and Restrictions with the Clerk of Livingston County to give all parties who may acquire any interest in the Site notice of this Order.

B. If Respondent proposes to convey the whole or any part of Respondent's ownership interest in the Site, Respondent shall, not fewer than 60 days before the date of conveyance, notify the Department in writing of the identity of the transferee and of the nature and proposed date of the conveyance and shall notify the transferee in writing, with a copy to the Department, of the applicability 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 J. Ryan, P.E.  
Division of Environmental Remediation  
New York State Department of Environmental Conservation  
50 Wolf Road  
Albany, New York 12233-7010

with copies thereof sent to:

1. Director, Bureau of Environmental Exposure Investigation  
New York State Department of Health  
2 University Place  
Albany, New York 12203

and to:

2. New York State Department of Environmental  
Conservation  
Division of Environmental Remediation  
6271 East Avon-Lima Road  
Avon, New York 14414-0057
3. David Napier  
NYS Department of Health  
42 S. Washington Street  
Rochester, New York 14608
4. Glen R. Bailey, Esq.  
New York State Department of Environmental  
Conservation  
Division of Environmental Enforcement  
270 Michigan Avenue  
Buffalo, New York 14203-2999

B. Copies of work plans and reports shall be submitted

as follows:

1. Four copies (one unbound) to Michael J. Ryan, Division of  
Environmental Remediation.
2. One copy to the Director, Bureau of  
Environmental Exposure Investigation.
3. One copy to the Division of Environmental Remediation,  
Region 8, Avon
4. One copy to David Napier, Department of Health, Rochester
5. One copy to Glen Bailey, Division of Environmental  
Enforcement, Buffalo

C. Within 30 days of the Department's approval of any report submitted

pursuant to this Order, Respondent shall submit to Michael A. Ryan a computer readable magnetic media copy of the approved report in American Standard Code for Information Interchange (ASCII) format.

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

Ronald Iannucci, President  
Kaddis Manufacturing Corp.  
P. O. Box 92985  
Rochester, New York 14992-9085

and to: Vincent B. Dick  
Haley & Aldrich of New York  
189 North Water Street  
Rochester, New York 14604-1151

and to: William H. Helferich, III, Esq.  
Harter, Secrest & Emery, LLP  
700 Midtown Tower  
Rochester, New York 14604-2070

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 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 within 5 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. 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, and the Department also shall have the right to take its own samples. Respondent shall make available to the Department the results of all sampling and/or tests or other data generated by Respondent with respect to implementation of this Order and shall submit these results in the progress reports required by this Order.

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

F. Respondent and Respondent's officers, directors, agents, servants, employees, successors, and assigns shall be bound by this Order. 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 paragraph headings set forth in this Order are included for convenience of reference only and shall be disregarded in the construction and interpretation of any of the provisions of this Order.

K. 1. The terms of this Order shall constitute the complete and entire



Order between Respondent and the Department concerning the Site. 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 Michael J. Ryan and to Glen R. Bailey.

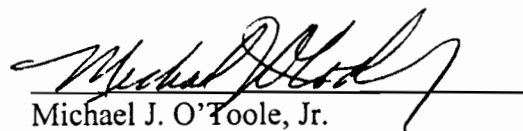
L. The effective date of this Order shall be the date a copy of this Order signed by the Commissioner or his designee is received by Respondent.

DATED: Albany, New York

6/24/99

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

By:

  
Michael J. O'Toole, Jr.

CONSENT BY RESPONDENT

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

KADDIS MANUFACTURING Corp.  
~~ENARC-O MACHINE PRODUCTS, INC.~~

By: Ronald Iannucci

Ronald Iannucci  
(TYPE NAME OF SIGNER)

Title: President

Date: June 7, 1999

STATE OF )  
 ) s.s.:  
COUNTY OF )

On this 7<sup>th</sup> day of JUNE, 1999, before me personally came Ronald Iannucci, to me known, who being duly sworn, did depose and say that he resides in Monroe County; that he is the President of Kaddis Manufacturing Corp. 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.

Michael A. Tedeschi  
Notary Public

MICHAEL A. TEDESCHI  
Notary Public, State of New York  
Monroe County  
Commission Expires 6/15/01