

STATE OF NEW YORK: DEPARTMENT OF ENVIRONMENTAL CONSERVATION

In the Matter of the Implementation
of a Remedial Investigation/Feasibility
Study for an Inactive Hazardous Waste
Disposal Site, Under Article 27,
Title 13, of the Environmental Conservation
Law of the State of New York
by:

ORDER
ON
CONSENT

OLIN CORPORATION

Respondent

Site I.D. #828018A
Index #B8-0343-90-08

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 entered into pursuant to the Department's authority under ECL Article 27, Title 13 and Article 71, Title 27.

2. OLIN CORPORATION ("Respondent") is a corporation organized and existing under the laws of the State of Virginia, and is the owner and operator at a chemical manufacturing facility located at 100 McKee Road, Rochester, Monroe County, New York (the "Site").

3. The Department alleges that the Site is an inactive hazardous waste disposal site, as that term is defined at ECL Section 27-1301(2) and the Site has been included in the Registry of Inactive Hazardous Waste Disposal Sites in New York State as Site Number 828018A. The Department classified the Site pursuant to ECL Section 27-1305(4)(b) under classification

"2" and alleges that the Site presents a "significant threat to the public health or environment - action required".

4. 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."

5. Respondent has developed a Remedial Investigation/Feasibility Study Work Plan for the Site which has been approved by the Department and which is attached to and incorporated into this Order as Appendix "A".

6. The Department and Respondent agree that the goal of this Consent Order is to establish the terms and conditions under which Respondent shall conduct a Remedial Investigation/Feasibility Study. The Remedial Investigation and Feasibility Study conducted pursuant to this Consent Order together with investigative work previously performed at the Site will constitute a Remedial Investigation/Feasibility Study ("RI/FS") which meets the requirements of the National Contingency Plan (NCP) (40 CFR Part 300) and the United States Environmental Protection Agency ("EPA") interim final guidance

document entitled "Guidance for Conducting Remedial Investigations and Feasibility Studies under CERCLA", dated October, 1988, and any revisions thereto made up to and including the effective date of this Consent Order.

7. Respondent, neither admitting nor denying any of the foregoing and having waived its right to a hearing herein as provided by law with respect to the implementation of this Order, and having consented to the issuance and entry of this Order, agrees to be bound by its terms.

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

I. Within 60 days of the effective date of this Order Respondent shall commence to perform the Remedial Investigation under the oversight of the Department in accordance with the approved Work Plan, which is attached as Appendix "A".

II. Respondent has retained and shall continue to retain duly licensed and qualified professional consultants, contractors and laboratories acceptable to the Department to perform the technical, engineering and analytical obligations required by this Order. Qualified employees of Respondent may also perform obligations required by this Order. The experience, capabilities and qualifications of the firms or individuals selected by Respondent shall be submitted to the Department for approval, which approval shall not be unreasonably withheld, prior to initiation of any activities

for which the Respondent and its consultants will be responsible.

III. Within 30 days after the effective date of this Order, Respondent shall submit to the Department all data currently within its possession or control regarding environmental conditions on-Site and off-Site pertaining to the subject of this Consent Order to the extent that such data have not previously been provided to the Department.

IV. In accordance with the time schedule contained in Appendix "A", Respondent shall perform the Remedial Investigation and shall submit to the Department a Remedial Investigation Report based on performance of the Work Plan as set forth in Appendix "A". During the Remedial Investigation, 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 by Respondent during the Remedial Investigation and all existing analytical data generated by Respondent in a format specified in Appendix "A" and shall provide assessments and evaluations set forth in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. 9601 et seq., as amended ("CERCLA"), the National Contingency Plan ("NCP") then in effect, the USEPA interim final guidance 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 including but not limited to those guidelines set forth in Appendix "B"; and shall identify any additional data that must be collected.

The Report shall include a certification by Respondent's Consultant that all activities that comprised the Remedial Investigation were performed in full accordance with the Work Plan as contained in Appendix "A".

V. The Department reserves the right to require a modification and/or an amplification and expansion of the Remedial Investigation and Report by Respondent if the Department reasonably determines, as a result of reviewing data generated by the Remedial Investigation or as a result of reviewing any other data or facts, that further investigation is necessary. If such a determination is made by the Department, it shall do so in writing setting forth the reasons for requiring additional investigation. A reasonable period of time within which to perform the additional investigation shall be specified by the Department in its notice. Respondent shall either undertake the additional investigation or shall respond to the Department's determination through the dispute resolution procedure in Paragraph XVIII of this Order.

VI. 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 within a reasonable period of time. Department approval shall not be unreasonably withheld.

If the Department disapproves the Report, the Department shall notify Respondent in writing of the Department's objections. Respondent shall revise the Report and/or re-perform or supplement the Remedial Investigation in response to the Department's specific comments and shall submit a revised Report. A reasonable period of time within which the Report must be revised or the Remedial Investigation re-performed or supplemented shall be specified by the Department in its notice of disapproval.

After receipt of the revised Report, the Department shall notify the Respondent in writing of its approval or disapproval of the revised Report and such approval shall not be unreasonably withheld.

If Respondent fails to submit a revised Report, if the Department disapproves the revised Report, or if the Department disagrees with Respondent's objections to the Department's determination that additional investigation take place or that it be re-performed or supplemented, Respondent shall respond to the Department's objections or determinations through the dispute resolution procedure in Paragraph XVIII of this Order.

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

VII. Within the time frame specified in Appendix "A"

Respondent shall submit to the Department a Feasibility Study evaluating on-Site and off-Site remedial actions pertaining to the Site to eliminate to the maximum extent practicable, all health and environmental hazards and potential hazards attributable to the Site. The Feasibility Study shall be consistent with CERCLA, as amended, the NCP then in effect, and the EPA interim final guidance document for conducting Remedial Investigations and Feasibility Studies under CERCLA dated October 1988 and any revisions thereto, and appropriate technical and administrative guidelines.

The Feasibility Study shall be prepared and certified by an individual registered and licensed to practice engineering 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.

VIII. After receipt of the Feasibility Study, the Department shall determine if the Feasibility Study was prepared in accordance with the terms of 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 objections. Respondent shall either agree to revise the Feasibility Study in accordance with the Department's specific comments and within 30 days of any such

agreement to revise shall submit to the Department a revised Feasibility Study, or shall respond to the Department's determination through the dispute resolution procedure in Paragraph XVIII of this Order.

After receipt of the revised Feasibility Study, the Department shall provide written notification to Respondent of its approval or disapproval of the revised Feasibility Study.

If the Department disapproves the revised Feasibility Study Respondent shall respond to the Department's objections through the dispute resolution procedure in Paragraph XVIII of this Order.

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

IX. The Department shall have the right to obtain split samples, duplicate samples, or both, of all substances and materials sampled by Respondent and Respondent shall have the right to obtain the results of the Department's analysis of such samples. The Department shall also have the right to take its own samples and Respondent, if it so elects, shall have the right to obtain split samples, duplicate samples, or both, of all substances and material sampled by Department.

X. Respondent shall provide notice to the Department of any field activities to be conducted pursuant to the terms of this Order at least five (5) working days in advance of such activities.

XI. A. During the performance of the RI/FS, the

execution of this Consent Order by Respondent shall serve as the notice to the Department required by 6 NYCRR 375-1.6 and 6 NYCRR 375-1.2 of routine activities at the Olin Corporation Rochester Plant at the Site which may constitute a substantial change in use, provided that Respondent shall employ the following procedures for any such activity:

1. For any such activity which involves soil excavation Respondent shall follow the Soil Excavation Policy attached to this Order as Appendix E, and,

2. Respondent shall perform any such activity in accordance with the RI/FS Health & Safety Plan which is attached to this Order in Appendix A, and,

3. Respondent shall provide five days advance notice of any such activity to the project manager for the site. Respondent may request and the Department project manager may agree to a shorter notification period when appropriate.

B. Routine activities are those activities identified in Appendix "F". Respondent may propose to the Department project manager, and the Department project manager may agree to, additions to Appendix F of activities which subsequent to the effective date of this Order are determined by the Department project manager to be routine activities.

1. Respondent may propose any such addition to the Department project manager orally or by letter signed by Respondent. The Department project manager may provide oral or

written approval of the addition. Any oral request shall be followed by the submission to the project manager of a written request for such addition signed by the Respondent, and the Department shall respond with a written statement of any approval. Any such Department approved request shall become incorporated into Appendix F.

2. Any such approved addition to Appendix F shall employ the procedures described in subparagraphs A.1, 2 and 3.

C. For those activities of the Olin Corporation Rochester Plant at the Site which may constitute a substantial change in use and that are not listed in Appendix F, as may be revised, Respondent shall provide notice as required by 6 NYCRR Part 375 and with such notice shall provide for review by the project manager for the Site a scope of work outlining the proposed activity, and shall provide such other information as is requested by the project manager.

XII. Respondent shall permit any duly designated employee, consultant, contractor or agent of the Department or any State agency or the Monroe County Health Department 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. The Department or other State agency shall make reasonable efforts to conduct such visits during normal business hours and to provide notice to

Respondent in advance of any such visit. All duly designated employees, consultants, contractors or agents of the Department or any State agency or the Monroe County Health Department shall provide a valid identification as a condition of entry to the Site. All consultants, contractors or agents of the Department or any State Agency shall provide at the time of entry or in advance of the time of entry to the Site a letter from the Department or State Agency specifying that he/she is a consultant, contractor, or agent of the Department or a State Agency assigned to this matter. All persons entering the Site for the purposes of observing field activities and/or obtaining samples will follow the Site Health & Safety Plan and all of Respondent's appropriate safety rules as specified by the Respondent.

XIII. Respondent shall not suffer any penalty under this Order, or be subject to any proceeding or action, if it cannot comply with any requirements of the provisions hereof because of an act of God, war, riot or because of any condition or event beyond the control of Respondent or its agent or agents carrying out Respondent's obligations under this Order.

Respondent shall immediately notify the Department in writing when it obtains knowledge of any such condition and request an appropriate extension or modification of this Order.

"Force Majeure" shall not include increased costs or expenses of any work to be performed under this Order, the financial inability of the Respondent to perform such work, or

the failure of Respondent to make complete and timely application for any required approval or permit.

XIV. Respondent shall use its best efforts to obtain whatever permits, easements, rights-of-way, rights-of-entry, approvals or authorizations are necessary to perform Respondent's obligations under this Order. In the event Respondent is unable to obtain the necessary authorizations, the Department shall, consistent with its legal authority, assist in obtaining all such authorizations Respondent is unable to obtain and shall grant appropriate extensions of time for the fulfillment of the terms of this Order.

XV. So long as the Department determines that Respondent is fulfilling its obligations under this Order to conduct a Remedial Investigation/Feasibility Study, from the effective date of this Order until completion of the work agreed to herein, the Department agrees not to bring any judicial or administrative action against Respondent, its directors, officers, employees, servants, agents, successors and assigns which seeks relief which is inconsistent with or duplicative of the relief provided for in this Order, except that the Department reserves its rights to enforce the terms and conditions of this Order, and the Department further reserves its right to bring an action or issue an order should any condition or activity at the Site present an imminent danger to the health and welfare of the people of the State or result in or be likely to result in imminent irreversible or irreparable

damage to natural resources.

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

a. any right to bring any action or proceeding against anyone other than Respondent, its directors, officers, employees, servants, agents, successors and assigns;

b. any right consistent with Paragraph XXVIII of this Order 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. any right consistent with Paragraphs XV and XXVIII of this Order to bring any action or proceeding 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 threatened release of hazardous wastes or constituents at or from the Site, including but not limited to claims for natural resource damages;

d. any right to bring any action or proceeding against any responsible party including Respondent to compel implementation of an inactive hazardous waste disposal site remedial program for the Site, and to obtain recovery of its costs in connection with the Site.

XVII. 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.

XVIII. In accordance with Paragraphs V, VI, and VIII of this Order, Respondent shall be in violation of this Order unless, within 10 days of receipt of the Department's notice of disapproval or determination, Respondent requests to meet with the Director of the Division of Hazardous Waste Remediation ("the Director") in order to discuss the Department's objections or determinations and Respondent is available to meet immediately thereafter. At this meeting, Respondent shall be given an opportunity to present its responses to the Department's objections or determinations, and the Director shall have the authority to modify and/or withdraw such objections or determinations. Respondent shall revise the submittal or undertake the additional work in accordance with the Department's specific comments, as modified, except for those which have been withdrawn by the Director, and shall present the revised submittal to the Department. The period of time within which the submittal must be revised or work performed as specified by the Department in its notice of disapproval shall control unless the Director revises the time frame during the meeting referenced above.

After receipt of the revised submittal or completion of the additional work, the Department shall notify the Respondent

in writing of its approval or disapproval of the revised submittal or the additional work.

If the revised submittal or additional work fails to address the Department's specific comments, as modified, and is disapproved by the Department, the Department shall deem the Respondent to be in violation of this Order and the ECL.

The invocation of formal dispute resolution procedures under this Section shall not of itself extend, postpone or affect in any way any obligation of the Respondent under this Order, except that Respondent's obligations under the Order shall be stayed with respect to activities which the Department determines are dependent on any disputed items pending the Director's decision.

Respondent retains any right to challenge the final determination of the Director as may be provided in Article 78 of the Civil Practice Laws and Rules of New York and other applicable statute, law or rule.

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

XX. If Respondent desires that any provision of this Order be changed, Respondent shall make timely written application to the Commissioner signed by the Respondent, setting forth reasonable grounds for the relief sought, and such approval shall not be unreasonably withheld. A copy of such application shall be sent to the Department project

manager for the Site.

XXI. Respondent shall indemnify and hold the Department, the State of New York, and its servants, agents, 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 the provisions of this Order by Respondent, its directors, officers, employees, servants, agents, successors or assigns. Nothing in this Paragraph shall be read to require Respondent to indemnify the Department for the unlawful, willful or malicious acts or omissions of the Department or its representatives and employees.

XXII. The effective date of this Order shall be the date a fully executed copy of the Order is received by the Respondent.

XXIII. Within 60 days after Respondent receives an itemization of Department costs from the Department, Respondent shall pay to the Department a sum of money which shall represent reimbursement for the State's legally justifiable expenses including, but not limited to, direct labor, overhead, travel, analytical costs and contractor costs incurred by the State of New York for addressing this Site, including but not limited to reviewing and revising submittals made pursuant to this Order, overseeing activities conducted pursuant to this Order, and collecting and analyzing samples, negotiation, review and oversight of the Remedial Investigation/Feasibility

Study. The total response costs related to this Order subsequent to the execution of the Consent Order are not anticipated to exceed \$75,000.00. The Department has incurred approximately \$63,000.00 in response costs prior to September 1992.

The Department shall provide an itemization of the costs which 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, materials, travel, contractual) and shall be documented by the New York State Office of the State Comptroller's quarterly expenditure reports.

Such payment shall be made by certified check payable to the New York State Department of Environmental Conservation. Payment shall be sent to Jack McKeon, Director, Bureau of Program Management, Division of Hazardous Waste Remediation, N.Y.S.D.E.C., 50 Wolf Road, Room 208, Albany, New York 12233-7010.

Respondent reserves its right to seek contribution or other relief from any persons or entities for recoverable costs and/or response costs in accordance with State or federal law

including any recoverable costs and/or response costs incurred in performing the tasks required and otherwise incurred in complying with this Order.

XXIV. Within 60 days after the effective date of this Order, Respondent shall file a Declaration of Covenants and Restrictions with the Monroe County Clerk to give all parties who may acquire any interest in the Site notice of this Order.

XXV. In the event Respondent proposes to convey the whole or any part of its ownership interest in the Site, Respondent shall, not less 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.

XXVI. Respondent shall assist the Department in developing and implementing a citizen participation program. The citizen participation program shall be consistent with 6 NYCRR Part 375 and the Department's publication entitled "New York State Inactive Hazardous Waste Site Citizen Participation Plan".

XXVII. All written communications required by this Order shall be transmitted by United States Postal Service, by telecopy, private courier service, or hand delivered.

A. Communication from Respondent shall be made as follows:

New York State Department of
Environmental Conservation
Division of Environmental Enforcement
600 Delaware Avenue
Buffalo, New York 14202-1073

New York State Department of
Environmental Conservation
Division of Hazardous Waste Remediation
6274 E. Avon-Lima Road
Avon, New York 14414

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

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

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

Michael J. Bellotti
Olin Corporation
Lower River Road
P.O. Box 248
Charleston, Tennessee 37310

John Kranjc
Plant Manager
Olin Corporation
100 McKee Road
P.O. Box 205
Rochester, NY 14610

XXVIII. The provisions of this Order shall bind Respondent
and its successors and assigns. Respondent's officers,
directors, employees, servants and agents shall be obliged to
comply with the relevant terms of this Order in the performance
of their designated duties on behalf of Respondent.

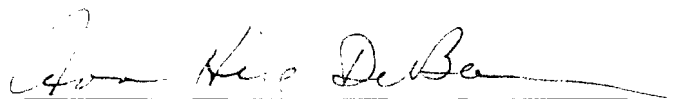
Nothing herein shall be construed to bind any entity not specifically bound by the terms of this Consent Order.

XXIX. The provisions hereof shall constitute the complete and entire Consent Order between Respondent and the Department concerning the implementation of the Remedial Investigation/ Feasibility Study at the Site. No term, condition, understanding or agreement purporting to modify or vary any term hereof shall be binding unless made in writing and subscribed by the party to be bound. No oral advice, guidance, suggestion or comment by the Department regarding any report, proposal, plan, specification, schedule or other submittal shall be construed as relieving Respondent of its obligation to obtain such written approval as may be required by this Order.

DATED: *Albany*, New York
Aug 23 1993

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

By:


Ann Hill DeBarbieri
Deputy Commissioner

CONSENT BY RESPONDENT

Respondent hereby consents to the issuing and entering of the foregoing Order, waives its right to a hearing herein as provided by law, and agrees to be bound by the provisions, terms and conditions contained herein.

OLIN CORPORATION

By: Charles W. Newton III

Charles W. Newton, III
(Type Name of Signer)

Title: VP Envr Health & Toxicol

Date: 8/3/93

Connecticut
STATE OF ~~NEW YORK~~
COUNTY OF Meriden

s.s.: Meriden

On this 3rd day of August, 1993, before me personally came Charles W. Newton III, to me known, who being duly sworn, did depose and say that he/she resides in the State of Connecticut; that he/she is the VP Envr Health & Toxicol of Olin Corporation the corporation described in and which executed the foregoing instrument; that he/she knew the seal of said corporation; that the seal affixed to this instrument was such corporate seal; that it was so affixed by the order of the Board of Directors of said corporation, and that he/she signed his/her name thereto by the use of

Notary Public

SUSAN RONSON
NOTARY PUBLIC
MY COMMISSION EXPIRES DATE 12/31/93