

STATE OF NEW YORK : DEPARTMENT OF ENVIRONMENTAL CONSERVATION  
-----X

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

ORDER  
ON  
CONSENT

XEROX CORPORATION

RESPONDENT

Site I.D. #828069  
Index #B8-0207-87-09

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WHEREAS:

1. The New York State Department of Environmental Conservation (the "Department") is responsible for the enforcement of Article 27, Title 13 of the ECL entitled "Inactive Hazardous Waste Disposal Sites".

2. Respondent, Xerox Corporation, a corporation organized and existing under the laws of the State of New York, operates an industrial facility at 1350 Jefferson Road, in the Town of Henrietta, Monroe County, New York, a map of which is attached hereto as Appendix "A" (the "Site").

3. The Site has been classified by the Department as an inactive hazardous waste disposal site, as that term is defined in ECL Section 27-1301(2) and has been listed in the Registry of Inactive Hazardous Waste Disposal Sites in New York as Site Number 828069 and has been classified by the Department as classification 2, the Department having found that the Site presents a "significant threat to the public

health or environment - action required". Respondent does not admit to that classification or that finding.

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 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 and submitted to the Department a detailed work plan for an Interim Remedial Measure ("IRM"). Such work plan, which has been approved by the Department, is attached hereto and incorporated into this Order as Appendix "B".

6. The Department and the Respondent agree that the goal of this Order shall be for Respondent to (a) implement the Interim Remedial Measure as contained in Appendix "B", (b) develop and implement a work plan for an environmental investigation that together with investigative work previously performed at the Site will constitute a Remedial Investigation which is consistent with 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 (c) prepare and submit a Remedial Investigation Report and Feasibility Study for the Site.

7. Respondent does not admit that the provisions of Section 27-1313(3)(a) are applicable to the Site.

Notwithstanding the foregoing, Respondent consents to the issuance and entry of this Order, waives the right to a hearing herein as provided by ECL Section 27-1313(4) and agrees to be bound by the provisions of this Order.

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

I. Respondent shall undertake and complete the IRM program for the Site as defined and described in Appendix "B", under the oversight of the Department in accordance with the schedule contained therein. Any material modifications or revisions which may be required due to unanticipated field conditions shall be subject to approval by the Department. Any such material modifications or revisions shall be attached to and incorporated into this Order as Appendix "C".

Appendix "B" includes a health and safety plan for the protection of persons at and in the vicinity of the Site during the performance of the IRM which was prepared in accordance with 29 C.F.R. Section 1910 by a certified health and safety professional. A Quality Assurance/Quality Control plan is also included.

II. The implementation of the Interim Remedial Measure work plan and all activities related thereto shall be conducted utilizing sound engineering and scientific principles and practices which would be applicable to the remediation of an inactive hazardous waste disposal site.

III. Within the time periods specified in Appendix "B", Respondent shall submit to the Department a report containing all monitoring and analytical results, manifests, records of waste disposal, or other documentation required by the approved Work Plan and all applicable statutes and regulations and including an initial evaluation of the effectiveness of the Interim Remedial Measure. Subsequently, Respondent shall continue to submit to the Department all monitoring and analytical results and all other related documents in accordance with the Work Plan.

IV. Within 30 days after the effective date of this Order, Respondent shall submit to the Department all data within its possession or control regarding environmental conditions on-Site and off-Site and other information described below, to the extent that such data have not previously been provided to the Department. The data and other information shall include:

a. A brief history and description of the Site, including the types, quantities, physical state, location and names of "responsible parties" and dates of disposal of hazardous waste at the Site; and

b. A description of the results of all previous

investigations of the Site and areas in the vicinity of the Site, including copies of all available topographic and property surveys, engineering studies and aerial photographs.

V. Within ninety (90) days after 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 be consistent with 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., as amended ("CERCLA"), the current National Contingency Plan ("NCP"), and the USEPA interim final guidance document entitled "Guidance For Conducting Remedial Investigations and Feasibility Studies Under CERCLA" dated October, 1988. The Work Plan shall include 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. A Quality Assurance/Quality Control Plan shall also be included. Both DEC and Respondent agree that the Remedial Investigation Work Plan shall be based upon a Remedial Investigation that summarizes the existing site data, identifies areas which need more study, and implements such a study.

VI. Within 60 days of its receipt of the RI/FS Work Plan, the Department shall notify Respondent in writing of

its approval or disapproval of the RI/FS Work Plan. If the Department approves the Work Plan, Respondent shall perform the Remedial Investigation/Feasibility Study in accordance with the approved Work Plan and schedules contained therein.

If the Department disapproves the Work Plan, the Department shall notify Respondent in writing of the Department's objections. Within 30 days after receipt of notice of disapproval, Respondent shall revise the Work Plan in accordance with the Department's specific comments and submit a revised Work Plan subject to the provisions of paragraph XXVI.

Within 60 days of its receipt of the revised RI/FS 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 Remedial Investigation/Feasibility Study in accordance with the Work Plan.

If the Department disapproves the revised Work Plan, the Department shall notify Respondent in writing of the Department's objections. The Department will be agreeable to meet with Respondent at Respondent's request to attempt in good faith to resolve any issues concerning such objections. Any such request by Respondent shall be made within 20 days of receipt of Department's written notice of objections. Unless the Department and the Respondent otherwise agree, the Respondent shall be in violation of this Order unless it has invoked within 20 days of receipt of the Department's written

notice of objections, or within 20 days after such meeting, whichever is later, the dispute resolution mechanism set forth in paragraph XXVI of this Order.

The approved RI/FS Work Plan shall be attached as Appendix "D" and incorporated into this Order.

VII. In accordance with the time schedule contained in the Work Plans, 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 "D" and an Interim Remedial Measure Report based on performance of the Interim Remedial Measure as set forth in Appendix "B" evaluating the effectiveness of the Interim Remedial Measure. During the Remedial Investigation, whenever drilling or other acts of construction are taking place, Respondent shall have on-Site a 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 the Interim Remedial Measure and shall provide assessments and evaluations consistent with guidance set forth in CERCLA, the then current NCP, and the USEPA interim final guidance on conducting Remedial Investigations and Feasibility Studies under CERCLA and 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 "D".

VIII. 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 determines as a result of reviewing data generated by the Remedial Investigation, the Interim Remedial Measure, or as a result of reviewing any other data or facts, that further investigation is necessary. If Respondent disagrees with the Department's determination that further investigation is necessary, Respondent may invoke the dispute resolution mechanism set forth in paragraph XXVI of this Order.

IX. Within 60 days of its 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 revise the Report and/or re-perform or supplement the Remedial Investigation in accordance with the Department's specific comments and shall submit a revised Report. The 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 but shall not be less than thirty days.



Within 60 days of its receipt of the revised Report, the Department shall notify the Respondent in writing of its approval or disapproval of the revised Report. If the Department disapproves the revised Report the Department shall notify Respondent in writing of the Department's objections. The Department will be agreeable to meet with Respondent at Respondent's request to attempt in good faith to resolve any issues concerning such objections. Any such request by Respondent shall be made within 20 days of receipt of Department's written notice of objections. Unless the Department and the Respondent otherwise agree, the Respondent shall be in violation of this Order unless it has invoked within 20 days of receipt of the Department's written notice of objections, or within 20 days after such meeting, whichever is later, the dispute resolution mechanism set forth in paragraph XXVI of this Order.

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

X. After receipt of the Department's approval of the Report, and within the time frame specified in Appendix "D" Respondent shall submit to the Department a Feasibility Study evaluating on-Site and off-Site remedial actions to mitigate or eliminate all health and environmental hazards and potential hazards attributable to the release of hazardous waste or hazardous waste constituents at the Site by Respondent. The Feasibility Study shall be consistent with CERCLA, as amended, the then current NCP and the then

current U.S.E.P.A. interim final guidance document for conducting Remedial Investigations and Feasibility Studies under CERCLA.

The Feasibility Study 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.

XI. Within 60 days of its 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. Subject to the provisions of paragraph XXVI, within 45 days after receipt of notice of disapproval, Respondent shall revise the Feasibility Study in accordance with the Department's specific comments and shall submit to the Department a revised Feasibility Study.

Within 60 days of its 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, the Department shall notify Respondent in

writing of its objections. The Department will be agreeable to meet with Respondent at Respondent's request to attempt in good faith to resolve any issues concerning such objections. Any such request by Respondent shall be made within 20 days of Department's written notice of objections. Unless the Department and the Respondent otherwise agree, the Respondent shall be in violation of this Order unless it has invoked within 20 days of receipt of the Department's written notice of objections, or within 20 days after such meeting, whichever is later, the dispute resolution mechanism set forth in paragraph XXVI of this Order.

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

XII. The Department shall have the right, when possible, to obtain for the purpose of comparative analysis "split samples" or "duplicate samples", at the Department's option, of all substances and materials sampled by Respondent pursuant to this Order.

XIII. 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, unless otherwise mutually agreed.

XIV. During normal business hours Respondent shall permit any duly designated officer, employee, consultant, contractor or agent of the Department to enter upon the Site or areas in the vicinity of the

Site under the control of Respondent, for inspection purposes, sampling and testing and to ascertain Respondent's compliance with this Order.

Such Department representative shall identify himself to Respondent's security or reception personnel by presentation of proper credentials, shall be accompanied at all times by a Xerox employee or by a designated representative of Xerox while on-Site, shall comply with Respondent's established security and safety procedures for all plant visitors, and shall comply with the Department's established safety procedures for any such inspections. In the event that Respondent conducts any acts of investigation or construction outside of normal business hours, representatives of the Department shall have access to the Site, and any areas in the vicinity of the Site, as described above, during all times when such investigation or construction shall occur.

XV. Respondent shall retain only technically qualified professional consultants, contractors and laboratories to perform the technical, engineering and analytical obligations required by this Order.

XVI. Respondent shall not suffer any penalty under this Order, or be subject to any proceedings or actions, if it cannot comply with any requirements of the provisions 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. 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.

XVII. Respondent shall use its best efforts to obtain whatever permits, easements, rights-of-way, rights-of-entry, approvals or authorizations are necessary to perform the 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 permits or authorizations required to perform the Interim Remedial Measure or the Remedial Investigation, the Department shall, consistent with its legal authority, assist in obtaining all such permits or other authorizations Respondent was unable to obtain or which Respondent could not obtain without terms or conditions which would effectively prevent implementation of the Interim Remedial Measure or Remedial Investigation/Feasibility Study. 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. If Respondent cannot obtain such authorization, this Order may be appropriately modified.

XVIII. Nothing contained in this Order shall be construed as barring, diminishing, adjudicating or in any way affecting any right the Department may have:

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

b. 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. 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 or areas in the vicinity of the Site, including but not limited to claims for natural resources damages; and

d. to bring any action or proceeding against any responsible party 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, provided, however, that the Department shall not take any action against Respondent that is inconsistent with this Order as long as Respondent is in compliance with its obligations hereunder.

XIX. 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.

XX. If, for any reason, Respondent desires that any provision of this Order be changed, Respondent shall make timely written application therefor to the Commissioner setting forth reasonable grounds for the relief sought. Such application shall be sent to the Department project manager for the Site. The Commissioner shall make a prompt written response to any such request.

XXI. The terms of this Order shall not constitute an admission of law or fact or evidence of the same, nor of any violation of any law or regulation. Nothing contained herein shall either create or affect the rights of persons or entities who are not parties or bound by this Order.

XXII. 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 solely from Respondent's fulfillment or attempted fulfillment of the provisions of this Consent Order by Respondent, its directors, officers, employees, servants, agents, successors or assigns. Respondent shall not be obligated to indemnify the Department for any action or claim or cause of action arising solely out of the exercise by the Department of its governmental powers, for the purpose of assisting Respondent in obtaining such permits, easements, rights-of-way, rights-of-entry, approvals or authorizations, as are described herein.

Respondent shall not be liable for any damage, injury or claim arising from the actions of third parties.

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

XXIV. Within 30 days after the later of

(a) Respondent's receipt of the Department's written approval of the Feasibility Study, or

(b) Respondent's receipt of appropriately detailed, itemized invoices from the Department containing a full accounting for all expenses and showing title, biweekly salary and hours spent on the project during the billing period by the Department's employees (which shall be broken down on at least a quarterly basis), Respondent shall pay to the Department a sum of money not to exceed \$30,000 which shall represent reimbursement for the Department's expenses including, but not limited to, 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 pursuant to this Order and collecting and analyzing samples.

Such payment shall be by certified check payable to the New York State Department of Environmental Conservation for payment into the Hazardous Waste Remedial Fund established under Section 97-b of the State Finance Law. Payment shall be sent to Director, Division of Environmental Enforcement,



N.Y.S.D.E.C., 50 Wolf Road, Albany, New York 12233.

XXV. In the event that Respondent proposes to convey during the performance period of this Order the whole or any part of its ownership interest in the Site, Respondent shall, not less than 30 days prior to the consummation of such proposed conveyance, notify the Department in writing of the identity of the transferee and of the nature and date of the proposed conveyance. In advance of such proposed conveyance, Respondent shall notify the transferee in writing, with a copy to the Department, of the existence of this Order.

XXVI. If there is a dispute between the Department and Respondent as to any submission by Respondent pursuant to paragraphs III, IV, V, VI, VIII, IX, X or XI hereof, and if the parties are not able to resolve the dispute through negotiations and settlement, the Respondent shall have the right to an adjudication by implementing the following procedures:

(a) Within thirty (30) days of the inability to resolve the dispute through negotiation and settlement, Respondent may request the Commissioner to appoint an Administrative Law Judge (ALJ) to convene and preside over an adjudicatory proceeding.

(b) After receipt of such request, the Commissioner shall appoint the ALJ and in all proceedings hereunder:

1. The parties shall be Respondent and the Department;

2. In addition to those powers conferred by Article 3 of the State Administrative Procedure Act, the ALJ shall have the power to:
  - a. Set the date, time and place of the proceedings;
  - b. Hear arguments;
  - c. Permit cross-examination; and
  - d. Question parties and receive exhibits.
3. All proceedings conducted pursuant to this paragraph shall be stenographically recorded. The ALJ shall arrange for a stenographic transcript to be made as soon as possible after conclusion of the proceeding and for the original and two copies of the transcript to be delivered to the ALJ at the expense of Respondent.
4. The ALJ shall prepare, within thirty days' after receipt of the transcript of the proceeding, or as soon as practicable thereafter, a written summary of the documentation and testimony received during the proceeding, and a recommended decision. The summary and recommendation shall be hand delivered, or mailed, certified with return receipt requested, to the Department's representative and to Respondent.

5. The ALJ's recommended decision shall become the final determination of the Commissioner unless, within five (5) working days from receipt of the recommended decision, either party objects in writing. Any objection shall be submitted in writing to the ALJ, with a copy to the other party. In the event of any such objection, the ALJ shall refer the matter to the Commissioner for final determination.
6. The final determination of the Commissioner shall be made as soon as practicable after receipt of a party's objection to the ALJ's recommended decision, and shall be delivered in writing to Respondent.
7. Respondent may, within thirty (30) days of receipt of the final determination of the Commissioner, initiate judicial review of such determination pursuant to Article 78 of the Civil Practice Law and Rules of the State of New York ("CPLR").

XXVII. Respondent shall implement a citizen participation program in coordination with and subject to the approval of the Department. The citizen participation program shall be consistent with the Department's publication entitled "New York State Inactive Hazardous Waste Site Citizen Participation Plan".

XXVIII. A. All communication required hereby to be

made between the Department and Respondent shall be made in writing and transmitted by United States Postal Service return receipt requested, or hand delivered to the address listed below. All reports and submissions herein required shall be submitted to the following address:

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

With copies to:

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

New York State Department of Environmental  
Conservation  
Division of Hazardous Waste Remediation  
50 Wolf Road  
Albany, New York 12233-0001

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 Respondent shall be made as follows:

Ronald E. Hess  
Xerox Corporation  
Program Manager for Environmental Engineering  
Building 304-13S  
800 Phillips Road  
Webster, New York 14580

With copy to:

Office of General Counsel  
Attention: Environmental Health & Safety  
Xerox Square - 020  
100 S. Clinton Avenue  
Rochester, New York 14644

XXIX. The provisions of this Order shall be deemed to bind Respondent, its officers, directors, agents, servants, employees, successors and assigns.

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

XXXI. Whenever this Order requires that an action be taken in a specified number of days, such time period shall be construed as business days, excluding weekends, national holidays and holidays recognized by Respondent. Respondent shall annually provide the Department with a list of its recognized holidays.

XXXII. The provisions hereof shall constitute the complete and entire Order between Respondent and the Department concerning the implementation of the Interim Remedial Measure and development and implementation of the Remedial Investigation/Feasibility Study at 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. No informal advice, guidance, suggestions or comments by the Department regarding reports, proposals, plans, specifications, schedules or any other writing submitted by

Respondent 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

March 16, 1990

EDWARD O. SULLIVAN  
Deputy Commissioner  
New York State Department of  
Environmental Conservation

A handwritten signature in dark ink, appearing to read 'E. O. Sullivan', is written over a horizontal line. The signature is stylized and cursive.

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.

XEROX CORPORATION

BY: *[Signature]*  
TITLE: *Sen VP*  
DATE: *2/28/90*

State of <sup>CONNECTICUT</sup> ~~NEW YORK~~ )  
County of FAIRFIELD ) S.S.:

On this 28<sup>th</sup> day of FEBRUARY, 1990,  
before me personally came D.M. REID  
to me known, who, being by me duly sworn, did depose  
and say that he resides in FAIRFIELD, CT; that he  
is the SENIOR VICE PRESIDENT of XEROX CORPORATION, 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.

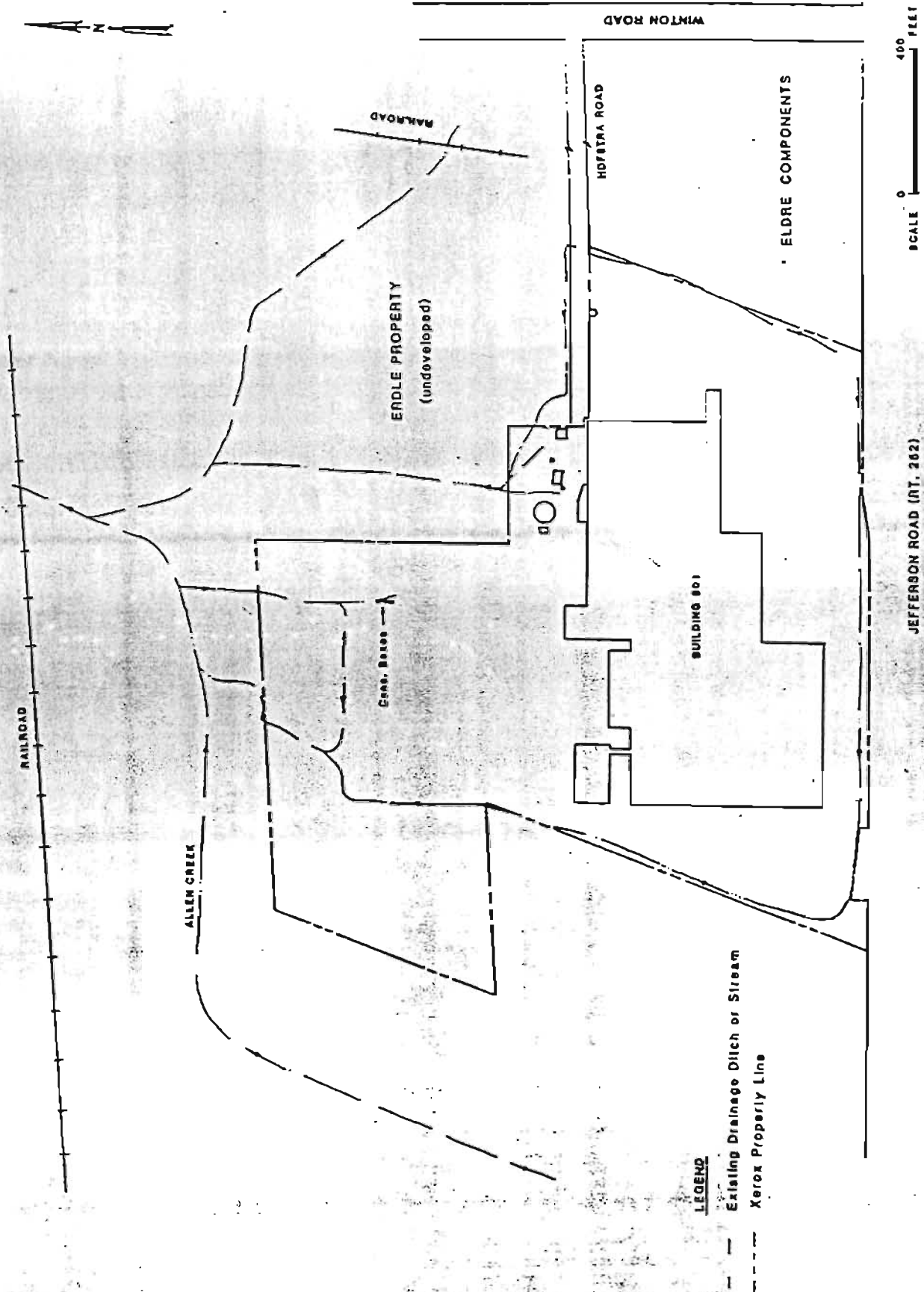
*Barbara Ann Kenney*  
NOTARY PUBLIC

MY COMMISSION EXPIRES: MARCH 31, 1992

FIGURE 1.1

# BUILDING 801 SITE PLAN

XEROX - Henrietta, N.Y.



## LEGEND

- Existing Drainage Ditch or Stream
- Xerox Property Line