

STATE OF NEW YORK: DEPARTMENT OF ENVIRONMENTAL CONSERVATION  
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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

DOLLINGER CORPORATION

Respondent

Site I.D. #828078  
Index #B8-0295-89-08

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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. Dollinger Corporation ("Respondent"), a subsidiary of American Filtrona Corporation, is a corporation organized and existing under the laws of the State of North Carolina and has previously done business in the State of New York in that Respondent owned and operated an industrial facility at 1 Town Line Circle in the Town of Brighton, County of Monroe, State of New York (the "Site").

3. The Department has determined that 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 828078. The Department has classified the Site as a Classification "2" pursuant to ECL Section 27-1305(4)(b).

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 Order shall be the implementation of the Remedial Investigation/Feasibility Study Work Plan in accordance with Appendix "A".

7. Respondent, having waived its right to a hearing herein as provided by law, and having consented to the issuance and entry of this Order, agrees to be bound by its terms. The findings, provisions, terms and conditions of this Order shall

not give rise to any presumption of law or finding of fact which shall inure to the benefit of any third person and shall not be deemed to be admissions of any kind on the part of Respondent.

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 begin to implement the Remedial Investigation as defined and described in Appendix "A", 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.

Appendix "A" includes a health and safety plan for the protection of persons at and in the vicinity of the Site during the implementation of the Remedial Investigation. The health and safety plan 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 performance of the Remedial Investigation as specified in Appendix "A", and all activities related thereto shall be conducted utilizing sound engineering and scientific principles and practices, subject to the Department's approval, which are intended to identify any present or potential threat to the public health or environment posed by the presence of hazardous waste at the Site and any release or threatened release of hazardous waste at or from the Site.

III. 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. The experience, capabilities and qualifications of the firms or individuals selected by Respondent shall be submitted to the Department for approval prior to initiation of any activities for which the Respondent and their consultants will be responsible.

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 shall include:

a. a brief history and description of the Site, including the types, quantities, physical state, location and dates of disposal of hazardous waste at the Site, and names of other potentially responsible parties, if known; 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 available topographic and property surveys, engineering studies and aerial photographs which have not been generally published.

V. In accordance with the time schedule contained in the Work Plan, Respondent shall implement the Remedial Investigation

and shall submit to the Department a Remedial Investigation Report based on implementation of the Work Plan as set forth in Appendix "A". During the field work associated with the Remedial Investigation, 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 shall provide assessments and evaluations 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 National Contingency Plan then in effect ("NCP"), 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, 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 "A".

VI. 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 or as a result of reviewing any other data or facts, that further investigation is necessary.

VII. 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 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.

After 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 Respondent shall be deemed to be in violation of this Order unless it has invoked the dispute resolution mechanism set forth in paragraph XXVI.

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

VIII. After receipt of the Department's approval of the Report, and 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 to eliminate

all identified 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 U.S.E.P.A. 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 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.

IX. 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. Within the time specified in the Department's 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.

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, the Respondent shall be deemed to be in violation of this Order unless it has invoked the dispute resolution mechanism set forth in paragraph XXVI.

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

X. 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.

XI. Respondent shall provide notice to the Department of the scheduled start of field activities to be conducted pursuant to the terms of this Order at least ten (10) working days in advance of such activities.

XII. Respondent shall permit any duly designated employee, consultant, contractor or agent of the Department or any State agency 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 ascertain Respondent's compliance with this Order.

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 this Order because of an act of

God, war, or riot. As used in this Order, an act of God is an unforeseeable disaster arising exclusively from natural causes which the exercise of ordinary human prudence could not have prevented. Respondent shall within five (5) days notify the Department in writing when it obtains knowledge of any such condition, and 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 in a timely manner shall constitute 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 provision.

XIV. Respondent shall obtain whatever permits, easements, rights-of-way, rights-of-entry, approvals or authorizations are 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 permits or other authorizations on a timely basis. If Respondent cannot, despite its best efforts, obtain such permits or other 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. After using its best efforts, should Respondent not be able to obtain the necessary permits or authorizations, Respondent shall not be penalized by

the Department in any proceeding brought by the Department to enforce this Order.

XV. 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, the following:

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 resources damages as a result of the release or threatened release of hazardous substances 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 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.

XVI. Nothing contained in this Order shall be construed as barring, diminishing, adjudicating, or in any way affecting any rights of Respondent to bring any action or proceeding to which it may be entitled, and nothing in this Order shall affect or create any rights of any party not signing this Order.

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

XIX. If Respondent desires that any provision of this Order be changed, Respondent shall make timely written application to the Department, setting forth reasonable grounds for the relief sought. A copy of such application shall be sent to the Department project manager for the Site:

David A. Crosby  
Bureau of Western Remedial Action  
Division of Hazardous Waste Remediation  
New York State Department of  
Environmental Conservation  
50 Wolf Road  
Albany, New York 12233

XX. Respondent shall indemnify and hold the Department, the State of New York, and its 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. Respondent does not assume liability for the unlawful, willful or malicious acts of the Department, the State of New York, or their representatives and employees.

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

XXII. Within 30 days after the Department's written approval of the Feasibility Study, or 30 days after receipt of an itemization of costs from the Department, whichever is later, Respondent shall pay to the Department a sum of money which shall represent reimbursement for the Department's reasonable 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.

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 designated 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. Other costs shall be summarized by category

of expense (such as "supplies", "materials", "travel", "contractual", or the like) 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 for payment into the Hazardous Waste Remedial Fund established under Section 97-b of the State Finance Law. Payment shall be sent to the Director, Bureau of Program Management, N.Y.S.D.E.C., 50 Wolf Road, Albany, New York 12233.

XXIII. Respondent shall assist the Department in implementing a citizen participation program. The citizen participation program shall be consistent with the Department's publication entitled "New York State Inactive Hazardous Waste Site Citizen Participation Plan".

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

A. All submittals and Reports from Respondent shall be made to each of the following:

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:

Steven Koorse, Esq.  
Hunton & Williams  
River Front Plaza - East Tower  
951 East Byrd Street  
Richmond, VA 23219-4074

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

XXVI. The Department and Respondent shall attempt to resolve expeditiously and informally any disagreements concerning implementation of this Order or any work required under this Order. In the event any dispute arising under paragraphs VI, VII, IX or XXII of this Order is not resolved expeditiously through informal means, then either party desiring a dispute resolution pursuant to this paragraph shall give prompt written notice to the other party.

Within ten (10) days of the service of a notice of dispute pursuant to this paragraph, the party which gave the notice shall serve on the other party 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 such party relies (hereafter called the "Statement of Position"). The other party shall serve its Statement of Position, including supporting documentation, no later than ten (10) days after receipt of the complaining party's Statement of Position. In the event that these 10-day time periods for exchange of Statements of Position may cause a delay in the work being performed under this Order, the time periods may be shortened upon and in accordance with notice by the Department.

An administrative record of any dispute under this paragraph shall be maintained by the Department. The record shall include the written notification of such dispute, the Statement of Position of each party served pursuant to the preceding subparagraph, and any other relevant information. The record shall be available for review by all parties and the public.

Upon review of the administrative record as developed pursuant to this paragraph, the Commissioner or his designee shall issue a final decision and order resolving the dispute. With respect to the final determination of the Commissioner or his designee, Respondent shall have those rights granted pursuant to Article 78 of the Civil Practice Law and Rules of the State of New York (CPLR), provided that a Petition is filed

within ten (10) days of receipt of the final decision and order issued by the Commissioner or his designee.

In review of any dispute pursued under this paragraph, either by the Commissioner or a court pursuant to Article 78 of the CPLR, the Respondent shall have the burden of proving that there is no rational basis for the Department's position.

The invocation of the procedures stated in this paragraph shall not extend, postpone or modify Respondent's obligations under this Order with respect to any undisputed items, unless and until the Department or a court determines otherwise. The invocation of the procedures stated in this paragraph 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 be available to that party regarding the issue in dispute.

XXVII. The provisions hereof shall constitute the complete and entire Order between Respondent and the Department concerning the implementation of the Remedial Investigation and 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 submittals shall be construed as relieving Respondent of



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.

DOLLINGER CORPORATION

By: Anthony M. Vincent

Anthony M. Vincent  
(Type Name of Signer)

Title: President

Date: 5/13/91

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

On this 13th day of May, 1991, before me personally came Anthony M. Vincent, to me known, who being duly sworn, did depose and say that he resides in Oilville, Virginia; that he is the President of Dollinger 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.

Patricia L. Gross  
Notary Public