

STATE OF NEW YORK: DEPARTMENT OF ENVIRONMENTAL CONSERVATION

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In the Matter of a Field Investigation to Identify  
Any Threat to the Environment Caused by the Alleged  
Disposal of Industrial and Hazardous Wastes by:

ORDER  
ON  
CONSENT

VILLAGE OF WELLSVILLE  
156 North Main Street  
P.O. Box 591  
Wellsville, New York 14895

Index  
No.

File No.  
84-165

Respondent

9-1317

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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 Environmental Conservation Law of the State of New York (the "ECL") entitled "Inactive Hazardous Waste Disposal Sites."

2. The Village of Wellsville (the "Respondent") is a Village organized and existing under the laws of the State of New York.

3. Respondent owns property at the Wellsville/Andover Landfill (the "Site"). A map of the Site is attached hereto and is hereby incorporated into this Order as Appendix "A."

4. Beginning in 1964 and continuing through 1983, the Village of Wellsville, the Town of Wellsville, the Village of Andover, and the Town of Andover operated a municipal landfill at the Site on Snyder Road in the Towns of Andover and Wellsville.

5. The Department alleges that the Site is an inactive hazardous waste disposal site, as that term is defined in ECL Section 27-1301(2).

6. The Department alleges that hazardous and industrial wastes, hazardous waste constituents, and toxic degradation products thereof at the Site constitute a significant threat to the environment.

7. Pursuant to ECL Section 27-1313(3)(a), whenever the Commissioner of the Department 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."

8. The Department and Respondent acknowledge that the goals of this Order shall be that Respondent shall develop and implement a field investigation program to:

(i) determine the nature of the wastes and the areal extent and vertical distribution of the wastes disposed of at the Site;

(ii) attempt to identify any past, current and/or potential future releases or migration of hazardous waste, as

that term is defined in ECL Section 27-1301(1), and/or industrial waste, from the site to other on-Site and off-Site areas; and

(iii) evaluate the on-Site and off-Site impacts of any such migration upon the environment.

9. Respondent does not admit (a) that it or anyone else disposed of any hazardous substances or wastes at the Wellsville/ Andover Landfill Site, or (b) that it is a person responsible for cleanup of, or remedial efforts at, the Site or any damages related to the Site, and this Order shall not be construed as an admission.

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

I. All investigations, proposals, reports, plans, remedial programs and supplements and revisions thereto covered by this Order shall address both on-Site and off-Site (in the vicinity of the Site) contamination which may be caused by the alleged disposal of hazardous and industrial wastes at the Site, and shall be prepared, designed and executed in accordance with Requisite Technology. As used in this Order, Requisite Technology means engineering, scientific and construction principles and practices subject to the Department's approval, which (a) are technologically feasible, and (b) will most effectively identify any present or potential future threat to the environment posed by the alleged disposal of hazardous and industrial wastes at and in the vicinity of the Site.

Respondent will make a good faith effort to submit proposals, reports, field investigations, and any supplements or revisions thereof in accordance with Requisite Technology.

II. As used herein, "hazardous wastes" shall mean hazardous wastes, any hazardous constituents thereof, and any toxic degradation products of such wastes and of such constituents.

III. Respondent shall undertake a field investigation of the Site and of areas off-Site which may be affected by the alleged disposal of hazardous or industrial wastes (the "Field Investigation").

IV. On or before January 10 \_\_, 1986, the Respondent shall submit to the Department a proposed written scope of work (the "Proposal") outlining the nature and extent of the work to be undertaken in conducting the Field Investigation. At a minimum, the Proposal shall meet the requirements of the generic workplan attached hereto as Appendix "B" and include the names of the consulting firm(s), contractor(s) and laboratory to be performing the work.

V. Within 30 days after receipt of the Proposal, the Department shall provide written notification to Respondent of its acceptance of or reasonable objections to the Proposal. If the Department accepts the Proposal, Respondent shall perform the Remedial Investigation in accordance with the Proposal.

If the Department refuses to accept the Proposal, then within 30 days after receipt of the Department's reasonable objections to the Proposal, Respondent shall revise the Proposal

in accordance with the terms, provisions and conditions of this Order and shall submit to the Department a Proposal which has been revised in accordance with the Department's reasonable objections (the "Revised Proposal").

Within 15 days after receipt of the Revised Proposal, the Department shall provide written notification to Respondent of its acceptance of or reasonable objections to the Revised Proposal. If the Department accepts the Revised Proposal, Respondent shall perform the Field Investigation in accordance with the Revised Proposal.

If the Department refuses to accept the Revised Proposal, the parties shall meet within 30 days of notification by the Department to the Respondent of its refusal to accept and its reasonable objections, and shall attempt to resolve their differences and negotiate a Proposal acceptable to both parties.

The accepted Proposal or the accepted Revised Proposal shall be attached hereto and shall be incorporated into this Order as Appendix "C". Such Proposal shall hereafter be referred to as the "Accepted Proposal".

The Department shall not unreasonably withhold acceptance of a proposal which satisfies the terms, conditions and provisions of this Order.

VI. On or before December 31, 1986, Respondent shall submit to the Department a Field Investigation Report (the "Report"), founded upon its performance of the Field Investigation in accordance with the Accepted Proposal. The Report shall include

a copy of the Accepted Proposal and all data generated, and all other information obtained, during the Field Investigation and completed site hazard ranking score sheets.

VII. Within sixty (60) days after its receipt of the Report, the Department shall provide written notification to Respondent of its acceptance of or reasonable objections to the Report.

Within 60 days after its receipt of notice of reasonable objections, Respondent shall revise the Report and/or reperform or supplement the Field Investigation in accordance with the terms, provisions and conditions of this Order and shall submit to the Department a Report which has been revised in accordance with the Department's reasonable objections (the "Revised Report").

Within fifteen (15) days after its receipt of the Revised Report, the Department shall provide written notification to Respondent of its acceptance of or reasonable objections to the Revised Report.

If the Department refuses to accept the Revised Report the parties shall meet within 30 days of notification by the Department to the Respondent of its refusal to accept and its reasonable objections, and shall attempt to resolve their differences and negotiate a Proposal acceptable to both parties.

VIII. The Department reserves the right to request a modification and/or an amplification and expansion of the Field Investigation and Report by Respondent within the time periods set forth above, to address specific off-Site areas if the Department reasonably determines that further off-Site investigation is

necessary, as a result of reviewing data generated by the Field Investigation or as a result of reviewing other data or facts. The Report shall be attached hereto and shall be incorporated into this Order as Appendix "D."

IX. The Department shall review the Report and shall use the Report as the basis of the development of the Site Hazard Ranking Score assigned to the Site for State and Federal Superfund Site ranking purposes.

X. The Department shall, upon reasonable notice to Respondent, have the right 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. As used herein: "split samples" shall mean whole samples divided into aliquots; "duplicate samples" shall mean multiple samples, collected at the same time from exactly the same location, using the same sampling apparatus, collected into identical containers prepared identically, filled to the same volume, and thereafter identically handled and preserved.

XI. 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. The Department shall designate a Project Engineer to whom such notice can be given in person or by telephone.

XII. 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 which may be under the control of Respondent, and any areas necessary to gain access thereto, for inspection purposes and for the purpose of making or causing to be made such sampling and tests as the Department deems necessary, and for ascertaining Respondent's compliance with the provisions of this Order. All such inspections, sampling and testing shall be done at the Department's expense, and Respondent shall not be responsible to reimburse the Department or any other person for such expenses, except where such inspections, sampling and testing are necessary due to Respondent's violation of this Order.

XIII. Respondent shall use reasonable efforts to obtain whatever permits, easements, right-of-way, rights-of-entry, approvals or authorizations which are necessary in order to perform the Field Investigation and all of Respondent's other obligations pursuant to this Order. However, it cannot be held responsible for gaining access to property outside of its control or jurisdiction.

XIV. Respondent shall retain a third-party professional consultant, contractor, and/or laboratory to perform the technical, engineering and analytical obligations covered by this Order. Said consultant, contractor, and/or laboratory shall have demonstrable experience, capabilities and qualifications in the type of work which they will be performing.



Or if a laboratory owned by Respondent is utilized, or professional scientists, engineers, or technicians in the employ of Respondent are utilized to fulfill the terms and conditions of this Order, said laboratory, laboratory staff, and professionals shall have demonstrable experience, capabilities and qualifications in the type of work which they will be performing.

XV. Respondent shall not suffer any penalty under any of the provisions, terms and conditions hereof, or be subject to any proceedings or actions for any remedy or relief, if it cannot comply with any requirements of the provisions hereof because of an act of God, war, riot, weather conditions, breach of contract by its third-party consultant, contractor, and/or laboratory, or other condition as to which negligence or willful misconduct on the part of Respondent was not a proximate cause, provided, however, the 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.

XVI. Nothing contained in this Order shall be construed as barring, diminishing, adjudicating or in any way affecting (1) any legal or equitable rights or claims, actions, suits, causes of action or demands whatsoever that the Department or Respondent may have against anyone other than Respondent, its directors, officers, employees, servants, agents, successors and assigns; (2) the Department's right to enforce, at law or in equity, the terms and conditions of this Order against Respon-

dent, its directors, officers, employees, servants, agents, successors and assigns in the event that Respondent shall fail to fulfill any of the provisions hereof; and (3) the Department's right to bring any action, at law or in equity against Respondent, its directors, officers, employees, servants, agents, successors and assigns with respect to areas or resources that may have been affected or contaminated as a result of the alleged release or migration of hazardous or industrial wastes from the Site or from areas in the vicinity of the Site; or (4) Respondent's rights to enforce this order against the Department. Nothing herein shall be construed as affecting the Department's or the Respondent's rights to commence any action or proceeding to which either may be entitled in connection with, relating to, or arising out of the alleged disposal of hazardous or industrial wastes at 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. Neither the State of New York nor any agency thereof shall be held out as a party to any contract entered into by Respondent in carrying out activities pursuant to this Order, nor shall the State of New York or any agency thereof be liable for any injuries or damages to persons or property resulting from acts or omissions of the respondent its officers, directors, employees, agents, servants, receivers, trustees, successors,

assignees, or any other persons, including, but not limited to firms, corporations, subsidiaries, contractors or consultants, in carrying out activities pursuant to this Order.

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

XX. If, for any reason, Respondent desires that any provision of this Order be changed, Respondent shall make timely written application therefore to the Regional Director of Region 9 of the Department, setting forth reasonable grounds for the relief sought.

XXI. Within 30 days after receiving an executed copy of this Order, Respondent shall file a Declaration of Covenants and Restrictions with the real property records of the Allegany-County Clerk's Office, for the purpose of providing notice of this Order to all potential future purchasers of any portion of the Site. Said Declaration must indicate that any successor in title to any portion of the Site may be responsible for implementing the provisions of this Order.

XXII. In the event that Respondent proposes to convey 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 applicability of this Order.

XXIII. Notwithstanding the foregoing, to the extent required by Environmental Conservation Law §27-1313(g), as added by Chapter 38 of the Laws of 1985, the State of New York shall provide, from the state hazardous waste remedial fund, within the limitations of appropriations therefor, seventy-five percent of the eligible design and construction costs for any remedial program which Respondent is liable solely because of its ownership of the Site and which are not recovered from or reimbursed or paid by another responsible party or the federal government.

XXIV. A. All communication required hereby to be made between the Department and Respondent in writing shall be transmitted by United States Postal Service or hand delivered to the addresses in paragraphs A and B hereunder.

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

1. 1 copy to the Regional Director, Region IX, 600 Delaware Avenue, Buffalo, New York 14202.

2. 1 copy to the Division of Solid and Hazardous Waste, Room 209, 50 Wolf Road, Albany, New York 12233.

3. 1 copy to the Director, Division of Environmental Enforcement, Room 618, 50 Wolf Road, Albany, New York 12233.

1. 1 copy to Village of Wellsville, 156 N. Main Street, P.O. Box 591, Wellsville, New York 14895.

2. 1 copy to Mr. Alan J. Knauf, Harris, Beach, Wilcox, Rubin & Levey, Two State Street, Rochester, New York 14614.

3. 1 copy to Mr. John W. Clarke, Harris, Beach, Wilcox, Rubin & Levey, Two State Street, Rochester, New York 14614.

D. The Department and Respondent respectively reserve the right to designate different addresses on notice to the other.

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

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

XXVII. The provisions hereof shall constitute the complete and entire Order between Respondent and the Department concerning the Site. No terms, conditions, understandings or agreements purporting to modify or vary the terms hereof shall be binding unless made in writing and subscribed by the party to be bound. 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 to its obligations to obtain such formal approvals as may be required by this Order.

DATED: OCT 24 1985 , 1985

, New York

HENRY G. WILLIAMS  
Commissioner  
New York State Department of  
Environmental Conservation



Respondent hereby waives its right to a hearing for purposes of determination of the terms and conditions of the foregoing order, and waives any objection to the terms and conditions of the foregoing order

Respondent - Village of Wellsville  
By Robert G. Gardner  
Title - Mayor, Village of Wellsville  
Date - August 26, 1985

(Seal)

Corporate

State of New York )  
County of Allegany ) ss.:

On this 27<sup>th</sup> day of August ~~26~~, 1985 before me personally came Robert G. Gardner, to me known, who being by me duly sworn did depose and say that he resides at 355 North Main St. Wellsville, N.Y. that he is the Mayor of the Village of Wellsville, the Municipal corporation described in and which executed the foregoing instrument; and that he signed his name as authorized by said Village Board

Doritha M. Watson

NOTARY PUBLIC

**DORITHA M. WATSON**  
Notary Public No 796

State of New York  
Qualified in Allegany County  
My Commission Expires March 30, 1986