

---

The electronic version of this file/report should have the file name:

consent.hw907018.1994-09-08.OrderonConsent.pdf

STATE OF NEW YORK: DEPARTMENT OF ENVIRONMENTAL CONSERVATION

---

In the Matter of the  
Development and Implementation  
of an Interim Remedial Measure Program  
for an Inactive Hazardous Waste Disposal  
Site, Under Article 27, Title 13,  
and Article 71, Title 27 of the  
Environmental Conservation Law  
of the State of New York  
by

DOWCRAFT CORPORATION  
Respondent.

ORDER  
ON  
CONSENT  
INDEX # B9-0429-93-04

Site Code #907018

---

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 ECL 3-0301.

2. Dowcraft Corporation is the owner of property located at 126 West Main Street, Falconer, New York, Chautauqua County, on which property the Ellison Bronze Co. Site is located (hereinafter referred to as "the Site").

3. The Department alleges that the Site is an inactive hazardous waste disposal site, as that term is defined at ECL 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 907018. The Department has classified the Site as a Classification "2" pursuant to ECL 27-1305.4.b.

4. A. Pursuant to ECL 27-1313.3.a, whenever the

Commissioner of Environmental Conservation (the "Commissioner") "finds that hazardous wastes at an inactive hazardous waste disposal site constitute a significant threat to the environment, he may order the owner of such site and/or any person responsible for the disposal of hazardous wastes at such site (i) to develop an inactive hazardous waste disposal site remedial program, subject to the approval of the Department, at such site, and (ii) to implement such program within reasonable time limits specified in the order."

B. Any person under order pursuant to ECL 27-1313.3.a has a duty imposed by ECL Article 27, Title 13 to carry out the remedial program committed to under order. ECL 71-2705 provides that any person who fails to perform any duty imposed by ECL Article 27, Title 13 shall be liable for civil, administrative and/or criminal sanctions.

C. The Department also has the power, inter alia, to provide for the prevention and abatement of all water, land, and air pollution. ECL 3-0301.1.i.

5. Attached to this Order as Appendix "A" is an Interim Remedial Measure Work Plan entitled "Work Plan for Soil Stabilization Dowcraft Corporation Ellison Bronze Site", prepared by MARCOR of New York, Inc. and reviewed by Conestoga Rovers & Associates Limited which has been reviewed and approved by the Department.

6. Attached to this Order as Appendix "B" is a Treatability Study Report entitled "Treatability Study Results Stabilization/Solidification for Foundry Waste" which has been reviewed and approved by the Department.

7. The Department and Respondent agree that the goals of this Order are for Respondent to (i) implement an Interim Remedial Measure Program ("IRM Program") for the Site in accordance with the Work Plan attached to this Order as Appendix "A" and the Treatability Study Report which is attached to this Order as Appendix "B"; and (ii) reimburse the State's administrative costs.

8. 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. Respondent consents to and agrees not to contest the authority or jurisdiction of the Department to issue or enforce this Order, and agrees not to contest the validity of this Order or its terms. 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 party other than the State of New York or Respondent and shall not be deemed to be admissions of any kind on the part of Respondent, its officers, directors, agents, servants, or employees.

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

I. Site Information

Within 30 days after the effective date of this Order, Respondent shall submit to the Department all data within Respondent's possession or control regarding environmental conditions on-Site, and, if related thereto, off-Site, that has not previously been provided to the

Department.

II. Performance and Reporting of IRM Program

A. Within 30 days after the effective date of this Consent Order, Respondent shall commence to perform the IRM Program in accordance with Appendix A and Appendix B.

B. During the performance of the IRM Program, Respondent must have on-Site a full-time representative who is qualified to supervise the work done.

C. Within the time frame set forth in Appendix A, Respondent must prepare an IRM report ("IRM Report") that includes all data generated and all other information obtained during the IRM Program and identifies any additional data that must be collected. The IRM Report shall be prepared by and have the signature and seal of a professional engineer who shall certify that the IRM Report was prepared in accordance with this Order.

III. Progress Reports

Beginning thirty (30) days after the effective date of this Order, Respondent shall submit to the parties identified in subparagraph XII.B in the numbers specified therein copies of written monthly progress reports that: (i) describe the actions which have been taken toward achieving compliance with this Order during the previous month; (ii) include all results of sampling and tests and all other data received or generated by Respondent or Respondent's contractors or agents in the previous month, including quality assurance/quality control information, whether conducted pursuant to this Order or conducted independently by

Respondent; (iii) identify all work plans, reports, and other deliverables required by this Order that were completed and submitted during the previous month; (iv) describe all actions, including, but not limited to, data collection and implementation of work plans, that are scheduled for the next month and provide other information relating to the progress at the Site; (v) include information regarding percentage of completion, unresolved delays encountered or anticipated that may affect the future schedule for implementation of the Respondent's obligations under the Order, and efforts made to mitigate those delays or anticipated delays; and (vi) include any modifications to any work plans that Respondent has proposed to the Department or that the Department has approved. Respondent shall submit these progress reports to the Department by the tenth day of every month following the effective date of this Order.

#### IV. Review of Submittals

A. (1) The Department shall review each of the submittals Respondent makes pursuant to this Order to determine whether it was prepared, and whether the work done to generate the data and other information in the submittal was done, in accordance with this Order and generally accepted technical and scientific principles. The Department shall use its best efforts to complete review of any submittal within thirty (30) days of the receipt of the submittal. The Department shall notify Respondent in writing of its approval or disapproval of the submittal. All Department-approved submittals shall be incorporated into and become an

enforceable part of this Order.

(2) (a) If the Department disapproves a submittal, it shall so notify Respondent in writing and shall specify the reasons for its disapproval. Within thirty (30) days after receiving written notice that Respondent's submittal has been disapproved, Respondent shall make a revised submittal to the Department that addresses and attempts to resolve all of the Department's stated reasons for disapproving the first submittal.

(b) After receipt of the revised submittal, the Department shall notify Respondent in writing of its approval or disapproval. If the Department disapproves the revised submittal, unless Respondent requests an opportunity to respond to the Department's objections pursuant to the Dispute Resolution Procedure in Paragraph VI of this Order within ten (10) days of receipt of written notice of disapproval, Respondent shall be in violation of this Order and the Department may take any action or pursue whatever rights it has pursuant to any provision of statutory or common law. If the Department approves the revised submittal, it shall be incorporated into and become an enforceable part of this Order.

B. The Department may seek to require Respondent to modify and/or amplify and expand a submittal if the Department determines, as a result of reviewing data generated by an activity required under this Order or as a result of reviewing any other data or facts, that further work is necessary.

V. Penalties

A. (1) Respondent's failure to comply with any term of this Order constitutes a violation of this Order and the ECL.

B. Respondent shall not suffer any penalty under this Order or be subject to any proceeding or action if it cannot comply with any requirement hereof because of war, riot, or because of any condition or event beyond the control of Respondent, or an unforeseeable disaster arising exclusively from natural causes which the exercise of ordinary human prudence could not have prevented. Respondent shall, within ten (10) days of when it obtains knowledge of any such condition, notify the Department in writing. Respondent shall include in such notice the measures taken and to be taken by Respondent to prevent or minimize any delays and shall request an appropriate extension or modification of this Order. Failure to give such notice within such ten (10)-day period constitutes a waiver of any claim that a delay is not subject to penalties. Respondent shall have the burden of proving that an event is a defense to compliance with this Order pursuant to Subparagraph V.B.

VI. Dispute Resolution

If the Department disapproves a revised submittal, Respondent shall be in violation of this Order unless, within ten (10) days of receipt of the Department's notice of disapproval, Respondent requests to meet with the Director of the Division of Hazardous Waste Remediation (the "Director") in order to discuss the Department's objections 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, and the Director shall have the authority to modify and/or withdraw such objections. After the Director makes his decision(s), Respondent shall further revise the submittal in accordance with the Department's specific comments, as may be modified by the Director (except for those comments which have been withdrawn by the Director), and shall submit a further revised submittal within such period of time specified by the Department in its notice of disapproval (or within such other time period as the Director may specify), however, Respondent shall have thirty days after receipt of written notice of the Director's decision(s), to contest that decision pursuant to Article Seventy-Eight of the Civil Practice Laws and Rules of the State of New York ("CPLR") (the Director's decision(s) shall be deemed to be final agency action for purposes of such a proceeding). If Respondent does not commence such proceeding within the 30 day period Respondent shall be deemed to have waived its right to contest the Director's decision.

After receipt of the further revised submittal, the Department shall notify Respondent in writing of its approval or disapproval of the further revised submittal.

Respondent shall be in violation of this Order and the ECL if (a) the further revised submittal fails to address the Department's specific comments, as modified, and the Department disapproves the further revised submittal for this reason, or; (b) Respondent fails to timely commence in

accordance with this paragraph a proceeding under Article Seventy-Eight of the CPLR and fails to submit a further revised submittal.

The invocation of the procedures stated in this paragraph shall stay Respondent's obligations under this Order with respect to activities which are dependent on any disputed items.

#### VII. Entry upon Site

Respondent hereby consents to the entry upon the Site or areas in the vicinity of the Site which may be under the control of the Respondent by any duly designated employee, consultant, contractor, or agent of the Department or any State agency for purposes of inspection, sampling, and testing and to ensure Respondent's compliance with this Order. The Department or other State agency shall make reasonable efforts to conduct such visits during normal business hours, to avoid disruption of normal business operations at the Site, and to provide notice to Respondent in advance of any such visit. The Department shall use reasonable efforts to provide notice at least twenty-four hours in advance of any such planned site visit. All persons entering the Site pursuant to this Paragraph will follow the Site Health & Safety Plan and all of Respondent's appropriate safety rules as specified by the Respondent. During any such visit Respondent shall provide the Department with suitable office space at the Site, including access to a telephone, and shall permit the Department full access to all records relating to matters addressed by this Order and job meetings.

VIII. Payment of State Costs

A. Within sixty (60) days after receipt of an itemized invoice from the Department, Respondent shall pay to the Department a sum of money which shall represent reimbursement for the State's expenses including, but not limited to, direct labor, fringe benefits, indirect costs, travel, analytical costs, and contractor costs incurred by the State of New York for work performed at the Site to date, as well as for negotiating this Order, reviewing and revising submittals made pursuant to this Order, overseeing activities conducted pursuant to this Order, collecting and analyzing samples, and administrative costs associated with this Order. Such payment shall be made by certified check payable to the Department of Environmental Conservation. Payment shall be sent to the Bureau of Program Management, Division of Hazardous Waste Remediation, N.Y.S.D.E.C., 50 Wolf Road, Albany, NY 12233-7010. Itemization of the costs shall include an accounting of personal services indicating the employee name, title, biweekly salary, and time spent (in hours) on the project during the billing period, as identified by an assigned time and activity code. This information shall be documented by quarterly reports of Direct Personal Service. Approved agency fringe benefit and indirect cost rates shall be applied. Non-personal service costs shall be summarized by category of expense (e.g., supplies, materials, travel, contractual) and shall be documented by the New York State Office of the State Comptroller's quarterly expenditure reports.

B. The aggregate amount which Respondent is obligated to pay under this Order pursuant to subparagraph VIII. A. will not exceed \$20,000.00. If in the Department's opinion the total sum of money paid pursuant to this Paragraph is insufficient to reimburse the State's costs, the Department may, at its option, in a separate proceeding, seek to recover additional reimbursement.

IX. Department Reservation of Rights

A. Nothing contained in this Order shall be construed as barring, diminishing, adjudicating, or in any way affecting any rights the Department may have including, but not limited to nor exemplified by, the following:

1. the Department's right to bring any action or proceeding against anyone other than Respondent and/or any of Respondent's directors, officers, employees, servants, agents, successors, and assigns;

2. the Department's right to enforce this Order against Respondent and/or any of Respondent's directors, officers, employees, servants, agents, successors, and assigns if Respondent fails to satisfy any of the terms of this Order;

3. the Department's right to bring any action or proceeding against Respondent and/or any of Respondent's 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;

4. the Department's right to bring any action

or proceeding against Respondent and/or any of Respondent's directors, officers, employees, servants, agents, successors, and assigns with respect to hazardous substances that are present at the Site or that have migrated from the Site;

5. the Department's right to bring any criminal action against the Respondent and/or any of Respondent's directors, officers, employees, servants, agents, successors, and assigns; and

6. the Department's right to gather information and enter and inspect property and premises.

B. Nothing contained in this Order shall be construed to prohibit the Commissioner or his duly authorized representative from exercising any summary abatement powers.

X. Indemnification

Respondent shall indemnify and hold the Department, the State of New York, and their representatives and employees harmless for all claims, suits, actions, damages, and costs of every name and description arising out of or resulting from the fulfillment or attempted fulfillment of this Order by Respondent and/or any of Respondent's directors, officers, employees, servants, agents, successors, and assigns, except that Respondent shall not indemnify or hold harmless the Department, the State of New York, or their representatives or employees for any unlawful, willful or malicious acts or omissions on the part of the State, State agencies, or their officers, employees or agents.

XI. Public Notice

A. Within 30 days after the effective date of this

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

B. If Respondent proposes to convey the whole or any part of Respondent's ownership interest in the Site, Respondent shall, not fewer than 60 days before the date of conveyance, notify the Department in writing of the identity of the transferee and of the nature and proposed date of the conveyance and shall notify the transferee in writing, with a copy to the Department, of the applicability of this Order.

#### XII. Communications

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

Communication from Respondent shall be sent to:

1. Director, Division of Hazardous Waste  
Remediation  
New York State Department of Environmental  
Conservation  
50 Wolf Road  
Albany, New York 12233-7010
2. Director, Bureau of Environmental Exposure  
Investigation  
New York State Department of Health  
2 University Place  
Albany, New York 12203
3. Regional Engineer, Region 9  
Division of Hazardous Waste Remediation  
New York State Department of Environmental  
Conservation  
270 Michigan Avenue  
Buffalo, NY 14203

4. Division of Environmental Enforcement  
New York State Department of Environmental  
Conservation  
270 Michigan Avenue  
Buffalo, NY 14203

B. Copies of work plans and reports shall be  
submitted as follows:

1. One copy to Division of Hazardous Waste  
Remediation.
2. Two copies to the Director, Bureau of  
Environmental Exposure Investigation.
3. Four copies (one unbound) to Region 9.
4. One copy to Division of Environmental  
Enforcement.

C. Within 30 days of the Department's approval of  
any report submitted pursuant to this Order, Respondent shall  
submit to the project manager for the site a computer readable  
magnetic media copy of the approved report in American  
Standard Code for Information Interchange (ASCII) format.

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

Alice J. Kryzan, Esq.  
Whiteman, Osterman & Hanna  
1700 Liberty Building  
Buffalo, New York 14202

Harry B. Nicholson, Jr.  
President  
Dowcraft  
65 South Dow Street  
Falconer, New York 14733

E. The Department and Respondent reserve the right  
to designate additional or different addressees for  
communication or written notice to the other.

XIII. Miscellaneous

A. All activities and submittals required by this

Order are set forth in Appendix A and Appendix B.

B. Respondent shall retain professional consultants, contractors, laboratories, quality assurance/quality control personnel, and data validators acceptable to the Department to perform the technical, engineering, and analytical obligations required by this Order. The experience, capabilities, and qualifications of the firms or individuals selected by Respondent have been submitted to the Department. The Department's approval of these firms or individuals shall be obtained in writing before the start of any activities for which the Respondent and such firms or individuals will be responsible. The responsibility for the performance of the professionals retained by Respondent shall rest solely with Respondent.

C. The Department shall have the right to obtain split samples, duplicate samples, or both, of all substances and materials sampled by Respondent, and the Department also shall have the right to take its own samples. Respondent shall make available to the Department the results of all sampling and/or tests or other data generated by Respondent with respect to implementation of this Order and shall submit these results in the progress reports required by this Order.

D. Respondent shall notify the Department at least 10 working days in advance of any field activities to be conducted pursuant to this Order.

E. Respondent shall use its best efforts to obtain all permits, easements, rights-of-way, rights-of-entry, approvals, or authorizations necessary to perform Respondent's



obligations under this Order. For purposes of this Paragraph "best efforts" includes the payment of reasonable sums of money in consideration. If any access required to perform this Order is not obtained despite best efforts within 45 days of the effective date of this Order, or within 45 days of the date the Department notifies Respondent in writing that additional access beyond that previously secured is necessary, Respondent shall promptly notify the Department, and shall include in that notification a summary of the steps Respondent has taken to attempt to obtain access. The Department may, as it deems appropriate, assist Respondent in obtaining access. Respondent shall reimburse the Department, in accordance with the procedures in Paragraph VIII. A. for all costs incurred by the Department in obtaining access, including, but not limited to, attorneys fees.

F. Respondent and Respondent's successors and assigns shall be bound by this Order. Any change in ownership or corporate status of Respondent including, but not limited to, any transfer of assets or real or personal property shall in no way alter Respondent's responsibilities under this Order. Respondent's officers, directors, employees, servants, and agents shall be obliged to comply with the relevant provisions of this Order in the performance of their designated duties on behalf of Respondent.

G. Respondent shall provide a copy of this Order to each contractor hired to perform work required by this Order and to each person representing Respondent with respect to the Site and shall condition all contracts entered into in

order to carry out the obligations identified in this Order upon performance in conformity with the terms of this Order. Respondent or Respondent's contractors shall provide written notice of this Order to all subcontractors hired to perform any portion of the work required by this Order. Respondent shall nonetheless be responsible for ensuring that Respondent's contractors and subcontractors perform the work in satisfaction of the requirements of this Order.

H. "Interim Remedial Measure" shall have the meaning set forth in 6 NYCRR Part 375.

I. All references to "professional engineer" in this Order are to an individual registered as a professional engineer in accordance with Article 145 of the New York State Education Law.

J. All references to "days" in this Order are to calendar days with the exception that designated State holidays will not be included in the calculations of any deadlines contained in this Order.

K. The section headings set forth in this Order are included for convenience of reference only and shall be disregarded in the construction and interpretation of any of the provisions of this Order.

L. (1) The terms of this Order shall constitute the complete and entire Order between Respondent and the Department concerning the Site. No term, condition, understanding, or agreement purporting to modify or vary any term of this Order shall be binding unless made in writing and subscribed by the party to be bound. No informal advice,

guidance, suggestion, or comment by the Department regarding any report, proposal, plan, specification, schedule, or any other submittal shall be construed as relieving Respondent of Respondent's obligation to obtain such formal approvals as may be required by this Order.

(2) If Respondent desires that any provision of this Order be changed, Respondent shall make timely written application, signed by the Respondent, to the Commissioner setting forth the grounds for the relief sought. Copies of such written application shall be delivered or mailed to the Project Manager for the Site and the Field Unit Attorney assigned to the Site.

M. The Department understands and agrees that an Army Corps of Engineers ("ACOE") permit is required by Respondent in order to undertake some of the work set forth in the IRM program, and that Respondent obtained the necessary permit from the ACOE on November 3, 1994. By its terms, the ACOE permit is effective for two years. In the event that the terms of the ACOE permit are modified, the ACOE permit is revoked or any action is taken by the ACOE or any Department or agency of the federal government to indicate that work pursuant to the ACOE permit cannot be undertaken, including the expiration of the permit according to its terms (collectively hereinafter, "termination of ACOE permit"), then Respondent's obligations under this Order to perform or complete that part of the IRM program to which the ACOE permit relates shall cease, and Respondent shall be under no obligation to the State of New York or the Department to

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

MICHAEL D. ZAGATA  
Commissioner  
New York State Department  
of Environmental Conservation

19

CONSENT BY RESPONDENT

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

DOWCRAFT CORPORATION

By: Harry B. Nicholson, Jr.  
Harry B. Nicholson, Jr.  
(Type Name of Signer)

Title: Pres

Date: 5-24-95

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

On this 24<sup>th</sup> day of May, 1995,  
before me personally came Harry B. Nicholson, Jr. to me  
known, who, being by me duly sworn, did depose and say that he  
resides in Barnes Point, NY; that he is the  
Chairman & CEO of the Dowcraft 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.

Rhea A. Melquist  
Notary Public

RHEA A. MELQUIST, No: 2656440  
Notary Public in the State of New York  
Qualified in Chautauque County  
My Commission Expires 12/31/95

DEED RESTRICTION



907018

6FP

Ellison Bronze

FOIL

Releasable

Non-Releasable

✓

September 8, 1994

Patricia E. Erickson, Esq.  
Whiteman, Osterman & Hanna  
1700 Liberty Building  
Buffalo, New York 14202

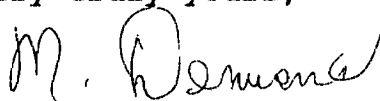
Re: Ellison-Bronze, New York State Inactive Hazardous Waste  
Disposal Site No. 907018

Dear Ms. Erickson:

Enclosed find a copy of the consent order for the above named site. It is my understanding that the terms of the order are agreed to but execution of the order will await DEC approval of the workplan and issuance of the Army Corps of Engineers permit.

At that time two original orders will be sent to you for execution by your client.

Very truly yours,



Maura C. Desmond  
Senior Attorney  
Division of Environmental  
Enforcement

MCD/lk  
Enc.

A:D346

cc: M. Doster  
C. O'Conner - NYSDOH

Appendix  
"A"

IRM

"B"

TREATABILITY STUDY

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

In the Matter of the  
Development and Implementation  
of an Interim Remedial Measure Program  
for an Inactive Hazardous Waste Disposal  
Site, Under Article 27, Title 13,  
and Article 71, Title 27 of the  
Environmental Conservation Law  
of the State of New York  
by

ORDER  
ON  
CONSENT  
INDEX # B9-0429-93-04

DOWCRAFT CORPORATION  
Respondent.

Site Code #907018  
-----

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 ECL 3-0301.

2. Dowcraft Corporation is the owner of property located at 126 West Main Street, Falconer, New York, Chautauqua County, on which property the Ellison Bronze Co. Site is located (hereinafter referred to as "the Site").

3. The Department alleges that the Site is an inactive hazardous waste disposal site, as that term is defined at ECL 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 907018. The Department has classified the Site as a Classification "2" pursuant to ECL



27-1305.4.b.

4. A. Pursuant to ECL 27-1313.3.a, whenever the Commissioner of Environmental Conservation (the "Commissioner") "finds that hazardous wastes at an inactive hazardous waste disposal site constitute a significant threat to the environment, he may order the owner of such site and/or any person responsible for the disposal of hazardous wastes at such site (i) to develop an inactive hazardous waste disposal site remedial program, subject to the approval of the Department, at such site, and (ii) to implement such program within reasonable time limits specified in the order."

B. Any person under order pursuant to ECL 27-1313.3.a has a duty imposed by ECL Article 27, Title 13 to carry out the remedial program committed to under order. ECL 71-2705 provides that any person who fails to perform any duty imposed by ECL Article 27, Title 13 shall be liable for civil, administrative and/or criminal sanctions.

C. The Department also has the power, inter alia, to provide for the prevention and abatement of all water, land, and air pollution. ECL 3-0301.1.i.

5. Attached to this Order as Appendix "A" is an Interim Remedial Measure Work Plan which has been reviewed and approved by the Department.

6. Attached to this Order as Appendix "B" is a Treatability Study Report which has been reviewed and approved by the Department.

7. The Department and Respondent agree that the goals of this Order are for Respondent to (i) ~~develop and implement~~ an Interim Remedial Measure Program ("IRM Program") for the Site in accordance with the Work Plan attached to this Order as Appendix "A" and the Treatability Study Report which is attached to this Order as Appendix "B"; and (ii) reimburse the State's administrative costs.

8. 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. Respondent consents to and agrees not to contest the authority or jurisdiction of the Department to issue or enforce this Order, and agrees not to contest the validity of this Order or its terms. 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 party other than the State of New York or Respondent and shall not be deemed to be admissions of any kind on the part of Respondent, its officers, directors, agents, servants, or employees.

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

I. Site Information

Within 30 days after the effective date of this Order, Respondent shall submit to the Department all data and ~~other information~~ within Respondent's possession or control

regarding environmental conditions on-Site, and, if related thereto, off-Site, that has not previously been provided to the Department.

II. Performance and Reporting of IRM Program

A. Within 30 days after the effective date of this Consent Order, Respondent shall commence to perform the IRM Program in accordance with Appendix A and Appendix B.

B. During the performance of the IRM Program, Respondent must have on-Site a full-time representative who is qualified to supervise the work done.

C. Within the time frame set forth in Appendix A, Respondent must prepare an IRM report ("IRM Report") that includes all data generated and all other information obtained during the IRM Program and identifies any additional data that must be collected. The IRM Report shall be prepared by and have the signature and seal of a professional engineer who shall certify that the IRM Report was prepared in accordance with this Order.

III. Progress Reports

Beginning thirty (30) days after the effective date of this Order, Respondent shall submit to the parties identified in subparagraph XII.B in the numbers specified therein copies of written monthly progress reports that: (i) describe the actions which have been taken toward achieving compliance with this Order during the previous month; (ii) include all results of sampling and tests and all other data

received or generated by Respondent or Respondent's contractors or agents in the previous month, including quality assurance/quality control information, whether conducted pursuant to this Order or conducted independently by Respondent; (iii) identify all work plans, reports, and other deliverables required by this Order that were completed and submitted during the previous month; (iv) describe all actions, including, but not limited to, data collection and implementation of work plans, that are scheduled for the next month and provide other information relating to the progress at the Site; (v) include information regarding percentage of completion, unresolved delays encountered or anticipated that may affect the future schedule for implementation of the Respondent's obligations under the Order, and efforts made to mitigate those delays or anticipated delays; and (vi) include any modifications to any work plans that Respondent has proposed to the Department or that the Department has approved. Respondent shall submit these progress reports to the Department by the tenth day of every month following the effective date of this Order.

#### IV. Review of Submittals

A. (1) The Department shall review each of the submittals Respondent makes pursuant to this Order to determine whether it was prepared, and whether the work done to generate the data and other information in the submittal was done, in accordance with this Order and generally accepted

technical and scientific principles. The Department shall use its best efforts to complete review of any submittal within thirty (30) days of the receipt of the submittal. The Department shall notify Respondent in writing of its approval or disapproval of the submittal. All Department-approved submittals shall be incorporated into and become an enforceable part of this Order.

(2) (a) If the Department disapproves a submittal, it shall so notify Respondent in writing and shall specify the reasons for its disapproval. Within thirty (30) days after receiving written notice that Respondent's submittal has been disapproved, Respondent shall make a revised submittal to the Department that addresses and attempts to resolve all of the Department's stated reasons for disapproving the first submittal.

(b) After receipt of the revised submittal, the Department shall notify Respondent in writing of its approval or disapproval. If the Department disapproves the revised submittal, unless Respondent requests an opportunity to respond to the Department's objections pursuant to the Dispute Resolution Procedure in Paragraph VI of this Order within ten (10) days of receipt of written notice of disapproval, Respondent shall be in violation of this Order and the Department may take any action or pursue whatever rights it has pursuant to any provision of statutory or common law. If the Department approves the revised submittal, it

shall be incorporated into and become an enforceable part of this Order.

B. The Department may seek to require Respondent to modify and/or amplify and expand a submittal if the Department determines, as a result of reviewing data generated by an activity required under this Order or as a result of reviewing any other data or facts, that further work is necessary.

V. Penalties

A. (1) Respondent's failure to comply with any term of this Order constitutes a violation of this Order and the ECL.

B. Respondent shall not suffer any penalty under this Order or be subject to any proceeding or action if it cannot comply with any requirement hereof because of war, riot, or because of any condition or event beyond the control of Respondent, or an unforeseeable disaster arising exclusively from natural causes which the exercise of ordinary human prudence could not have prevented. Respondent shall, within ten (10) days of when it obtains knowledge of any such condition, notify the Department in writing. Respondent shall include in such notice the measures taken and to be taken by Respondent to prevent or minimize any delays and shall request an appropriate extension or modification of this Order. Failure to give such notice within such ten (10)-day period

constitutes a waiver of any claim that a delay is not subject to penalties. Respondent shall have the burden of proving that an event is a defense to compliance with this Order pursuant to Subparagraph V.B.

VI. Dispute Resolution

If the Department disapproves a revised submittal, Respondent shall be in violation of this Order unless, within ten (10) days of receipt of the Department's notice of disapproval, Respondent requests to meet with the Director of the Division of Hazardous Waste Remediation (the "Director") in order to discuss the Department's objections 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, and the Director shall have the authority to modify and/or withdraw such objections. After the Director makes his decision(s), Respondent shall further revise the submittal in accordance with the Department's specific comments, as may be modified by the Director (except for those comments which have been withdrawn by the Director), and shall submit a further revised submittal within such period of time specified by the Department in its notice of disapproval (or within such other time period as the Director may specify), however, Respondent shall have thirty days after receipt of written notice of the Director's decision(s), to contest that decision pursuant to Article Seventy-Eight of the Civil Practice Laws and Rules of

the State of New York ("CPLR") (the Director's decision(s) shall be deemed to be final agency action for purposes of such a proceeding). If Respondent does not commence such proceeding within the 30 day period Respondent shall be deemed to have waived its right to contest the Director's decision.

After receipt of the further revised submittal, the Department shall notify Respondent in writing of its approval or disapproval of the further revised submittal.

Respondent shall be in violation of this Order and the ECL if (a) the further revised submittal fails to address the Department's specific comments, as modified, and the Department disapproves the further revised submittal for this reason, or; (b) Respondent fails to timely commence in accordance with this paragraph a proceeding under Article Seventy-Eight of the CPLR and fails to submit a further revised submittal.

The invocation of the procedures stated in this paragraph shall stay Respondent's obligations under this Order with respect to activities which are dependent on any disputed items.

#### VII. Entry upon Site

Respondent hereby consents to the entry upon the Site or areas in the vicinity of the Site which may be under the control of the Respondent by any duly designated employee, consultant, contractor, or agent of the Department or any State agency for purposes of inspection, sampling, and testing



and to ensure Respondent's compliance with this Order. The Department or other State agency shall make reasonable efforts to conduct such visits during normal business hours, to avoid disruption of normal business operations at the Site, and to provide notice to Respondent in advance of any such visit. The Department shall use reasonable efforts to provide notice at least twenty-four hours in advance of any such planned site visit...All persons entering the Site pursuant to this Paragraph will follow the Site Health & Safety Plan and all of Respondent's appropriate safety rules as specified by the Respondent. During any such visit Respondent shall provide the Department with suitable office space at the Site, including access to a telephone, and shall permit the Department full access to all records relating to matters addressed by this Order and job meetings.

#### VIII. Payment of State Costs

A. Within sixty (60) days after receipt of an itemized invoice from the Department, Respondent shall pay to the Department a sum of money which shall represent reimbursement for the State's expenses including, but not limited to, direct labor, fringe benefits, indirect costs, travel, analytical costs, and contractor costs incurred by the State of New York for work performed at the Site to date, as well as for negotiating this Order, reviewing and revising submittals made pursuant to this Order, overseeing activities conducted pursuant to this Order, collecting and analyzing

samples, and administrative costs associated with this Order. Such payment shall be made by certified check payable to the Department of Environmental Conservation. Payment shall be sent to the Bureau of Program Management, Division of Hazardous Waste Remediation, N.Y.S.D.E.C., 50 Wolf Road, Albany, NY 12233-7010. Itemization of the costs shall include an accounting of personal services indicating the employee name, title, biweekly salary, and time spent (in hours) on the project during the billing period, as identified by an assigned time and activity code. This information shall be documented by quarterly reports of Direct Personal Service. Approved agency fringe benefit and indirect cost rates shall be applied. Non-personal service costs shall be summarized by category of expense (e.g., supplies, materials, travel, contractual) and shall be documented by the New York State Office of the State Comptroller's quarterly expenditure reports.

B. The aggregate amount which Respondent is obligated to pay under this Order pursuant to subparagraph VIII. A. will not exceed \$15,000.00. If in the Department's opinion the total sum of money paid pursuant to this Paragraph is insufficient to reimburse the State's costs, the Department may, at its option, in a separate proceeding, seek to recover additional reimbursement.

IX. Department Reservation of Rights

A. Nothing contained in this Order shall be

construed as barring, diminishing, adjudicating, or in any way affecting any rights the Department may have including, but not limited to nor exemplified by, the following:

1. the Department's right to bring any action or proceeding against anyone other than Respondent and/or any of Respondent's directors, officers, employees, servants, agents, successors, and assigns;

2. the Department's right to enforce this Order against Respondent and/or any of Respondent's directors, officers, employees, servants, agents, successors, and assigns if Respondent fails to satisfy any of the terms of this Order;

3. the Department's right to bring any action or proceeding against Respondent and/or any of Respondent's 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;

4. the Department's right to bring any action or proceeding against Respondent and/or any of Respondent's directors, officers, employees, servants, agents, successors, and assigns with respect to hazardous substances that are present at the Site or that have migrated from the Site;

5. the Department's right to bring any criminal action against the Respondent and/or any of

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

6. the Department's right to gather information and enter and inspect property and premises.

B. Nothing contained in this Order shall be construed to prohibit the Commissioner or his duly authorized representative from exercising any summary abatement powers.

X. Indemnification

Respondent shall indemnify and hold the Department, the State of New York, and their representatives and employees harmless for all claims, suits, actions, damages, and costs of every name and description arising out of or resulting from the fulfillment or attempted fulfillment of this Order by Respondent and/or any of Respondent's directors, officers, employees, servants, agents, successors, and assigns, except that Respondent shall not indemnify or hold harmless the Department, the State of New York, or their representatives or employees for any unlawful, willful or malicious acts or omissions on the part of the State, State agencies, or their officers, employees or agents.

XI. Public Notice

A. Within 30 days after the effective date of this Order, Respondent shall file a Declaration of Covenants and Restrictions with the Clerk of Chautauqua County to give all parties who may acquire any interest in the Site notice of this Order.

B. If Respondent proposes to convey the whole or any part of Respondent's ownership interest in the Site, Respondent shall, not fewer than 60 days before the date of conveyance, notify the Department in writing of the identity of the transferee and of the nature and proposed date of the conveyance and shall notify the transferee in writing, with a copy to the Department, of the applicability of this Order.

## XII. Communications

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

Communication from Respondent shall be sent to:

1. Director, Division of Hazardous Waste  
Remediation  
New York State Department of Environmental  
Conservation  
50 Wolf Road  
Albany, New York 12233-7010
2. Director, Bureau of Environmental Exposure  
Investigation  
New York State Department of Health  
2 University Place  
Albany, New York 12203
3. Regional Engineer, Region 9  
Division of Hazardous Waste Remediation  
New York State Department of Environmental  
Conservation  
270 Michigan Avenue  
Buffalo, NY 14203

4. Division of Environmental Enforcement  
New York State Department of Environmental  
Conservation  
270 Michigan Avenue  
Buffalo, NY 14203

B. Copies of work plans and reports shall be submitted as follows:

1. One copy to Division of Hazardous Waste  
Remediation.
2. Two copies to the Director, Bureau of  
Environmental Exposure Investigation.
3. Four copies (one unbound) to Region 9.
4. One copy to Division of Environmental  
Enforcement.

C. Within 30 days of the Department's approval of any report submitted pursuant to this Order, Respondent shall submit to the project manager for the site a computer readable magnetic media copy of the approved report in American Standard Code for Information Interchange (ASCII) format.

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

Patricia E. Erickson, Esq.  
Whiteman, Osterman & Hanna  
1700 Liberty Building  
Buffalo, New York 14202

Harry B. Nicholson, Jr.  
President  
Dowcraft  
65 South Dow Street  
Falconer, New York 14733

E. The Department and Respondent reserve the right to designate additional or different addressees for communication or written notice to the other.

XIII. Miscellaneous

A. All activities and submittals required by this Order are set forth in Appendix A and Appendix B.

B. Respondent shall retain professional consultants, contractors, laboratories, quality assurance/quality control personnel, and data validators acceptable to the Department to perform the technical, engineering, and analytical obligations required by this Order. The experience, capabilities, and qualifications of the firms or individuals selected by Respondent have been submitted to the Department. The Department's approval of these firms or individuals shall be obtained in writing before the start of any activities for which the Respondent and such firms or individuals will be responsible. The responsibility for the performance of the professionals retained by Respondent shall rest solely with Respondent.

C. The Department shall have the right to obtain split samples, duplicate samples, or both, of all substances and materials sampled by Respondent, and the Department also shall have the right to take its own samples. Respondent

shall make available to the Department the results of all sampling and/or tests or other data generated by Respondent with respect to implementation of this Order and shall submit these results in the progress reports required by this Order.

D. Respondent shall notify the Department at least 10 working days in advance of any field activities to be conducted pursuant to this Order.

E. Respondent shall use its best efforts to obtain all permits, easements, rights-of-way, rights-of-entry, approvals, or authorizations necessary to perform Respondent's obligations under this Order. For purposes of this Paragraph "best efforts" includes the payment of reasonable sums of money in consideration. If any access required to perform this Order is not obtained despite best efforts within 45 days of the effective date of this Order, or within 45 days of the date the Department notifies Respondent in writing that additional access beyond that previously secured is necessary, Respondent shall promptly notify the Department, and shall include in that notification a summary of the steps Respondent has taken to attempt to obtain access. The Department may, as it deems appropriate, assist Respondent in obtaining access. Respondent shall reimburse the Department, in accordance with the procedures in Paragraph VIII. A. for all costs incurred by the Department in obtaining access, including, but not limited to, attorneys fees.

F. Respondent and Respondent's successors and



assigns shall be bound by this Order. Any change in ownership or corporate status of Respondent including, but not limited to, any transfer of assets or real or personal property shall in no way alter Respondent's responsibilities under this Order. Respondent's officers, directors, employees, servants, and agents shall be obliged to comply with the relevant provisions of this Order in the performance of their designated duties on behalf of Respondent.

G. Respondent shall provide a copy of this Order to each contractor hired to perform work required by this Order and to each person representing Respondent with respect to the Site and shall condition all contracts entered into in order to carry out the obligations identified in this Order upon performance in conformity with the terms of this Order. Respondent or Respondent's contractors shall provide written notice of this Order to all subcontractors hired to perform any portion of the work required by this Order. Respondent shall nonetheless be responsible for ensuring that Respondent's contractors and subcontractors perform the work in satisfaction of the requirements of this Order.

H. "Interim Remedial Measure" shall have the meaning set forth in 6 NYCRR Part 375.

I. All references to "professional engineer" in this Order are to an individual registered as a professional engineer in accordance with Article 145 of the New York State Education Law.

J. All references to "days" in this Order are to calendar days with the exception that designated State holidays will not be included in the calculations of any deadlines contained in this Order.

K. The section headings set forth in this Order are included for convenience of reference only and shall be disregarded in the construction and interpretation of any of the provisions of this Order.

L. (1) The terms of this Order shall constitute the complete and entire Order between Respondent and the Department concerning the Site. No term, condition, understanding, or agreement purporting to modify or vary any term of this Order shall be binding unless made in writing and subscribed by the party to be bound. No informal advice, guidance, suggestion, or comment by the Department regarding any report, proposal, plan, specification, schedule, or any other submittal shall be construed as relieving Respondent of Respondent's obligation to obtain such formal approvals as may be required by this Order.

(2) If Respondent desires that any provision of this Order be changed, Respondent shall make timely written application, signed by the Respondent, to the Commissioner setting forth the grounds for the relief sought. Copies of such written application shall be delivered or mailed to the Project Manager for the Site and the Field Unit Attorney assigned to the Site.

D R A F T - 9/8/94

FILENAME: C:\WPDOCS\CONSENT\429IRM

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

DATED: , New York  
, 1994

LANGDON MARSH  
Acting 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 this Order, waives Respondent's right to a hearing herein as provided by law, and agrees to be bound by this Order.

## DOWCRAFT CORPORATION

By: \_\_\_\_\_

(Type Name of Signer)

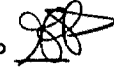
Title: \_\_\_\_\_

Date: \_\_\_\_\_

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

On this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_,  
before me personally came \_\_\_\_\_, to me  
known, who, being by me duly sworn, did depose and say that he  
resides in \_\_\_\_\_; that he is the  
\_\_\_\_\_ of the \_\_\_\_\_,  
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.

\_\_\_\_\_  
Notary Public

GFP 

FOIL

Releasable

Non-Releasable ✓

August 25, 1994

Patricia E. Erickson, Esq.  
Whiteman, Osterman & Hanna  
1700 Liberty Building  
Buffalo, New York 14202


Re: ~~Elison~~-Bronze, New York State Inactive Hazardous Waste  
Disposal Site No. 907018

Dear Ms. Erickson:

Enclosed find the revised draft consent order for the above named site. I believe that all the issues have been resolved with the exception of the amount to be paid under Paragraph VIII.

Please call me during the week of 8/29 to confirm that all consent order issues have been resolved and to discuss Paragraph VIII.

Very truly yours,



Maura C. Desmond  
Senior Attorney  
Division of Environmental  
Enforcement

MCD/lk

Enc.  
A:D335

cc: (w/enc.) J. Pietraszek  
C. O'Conner - NYSDOH

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

In the Matter of the  
Development and Implementation  
of an Interim Remedial Measure Program  
for an Inactive Hazardous Waste Disposal  
Site, Under Article 27, Title 13,  
and Article 71, Title 27 of the  
Environmental Conservation Law  
of the State of New York  
by

ORDER  
ON  
CONSENT  
INDEX # B9-0429-93-04

~~DOWCRAFT CORPORATION~~  
Respondent.

Site Code #907018  
-----

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 ECL 3-0301.

2. Dowcraft Corporation is the owner of property located at 126 West Main Street, Falconer, New York, Chautauqua County, on which property the Ellison Bronze Co. Site is located (hereinafter referred to as "the Site").

3. The Department alleges that the Site is an inactive hazardous waste disposal site, as that term is defined at ECL 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 907018. The Department has classified the Site as a Classification "2" pursuant to ECL

27-1305.4.b.

4. A. Pursuant to ECL 27-1313.3.a, whenever the Commissioner of Environmental Conservation (the "Commissioner") "finds that hazardous wastes at an inactive hazardous waste disposal site constitute a significant threat to the environment, he may order the owner of such site and/or any person responsible for the disposal of hazardous wastes at such site (i) to develop an inactive hazardous waste disposal site remedial program, subject to the approval of the Department, at such site, and (ii) to implement such program within reasonable time limits specified in the order."

B. Any person under order pursuant to ECL 27-1313.3.a has a duty imposed by ECL Article 27, Title 13 to carry out the remedial program committed to under order. ECL 71-2705 provides that any person who fails to perform any duty imposed by ECL Article 27, Title 13 shall be liable for civil, administrative and/or criminal sanctions.

C. The Department also has the power, inter alia, to provide for the prevention and abatement of all water, land, and air pollution. ECL 3-0301.1.i.

5. Attached to this Order as Appendix "A" is an Interim Remedial Measure Work Plan which has been reviewed and approved by the Department.

6. Attached to this Order as Appendix "B" is a Treatability Study Report which has been reviewed and approved by the Department.

7. The Department and Respondent agree that the goals of this Order are for Respondent to (i) ~~develop and implement~~ an Interim Remedial Measure Program ("IRM Program") for the Site in accordance with the Work Plan attached to this Order as Appendix "A" and the Treatability Study Report which is attached to this Order as Appendix "B"; and (ii) reimburse the State's administrative costs.

8. 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. Respondent consents to and agrees not to contest the authority or jurisdiction of the Department to issue or enforce this Order, and agrees not to contest the validity of this Order or its terms. 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 party other than the State of New York or Respondent and shall not be deemed to be admissions of any kind on the part of Respondent, its officers, directors, agents, servants, or employees.

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

I. Site Information

Within 30 days after the effective date of this Order, Respondent shall submit to the Department all data and ~~other information~~ within Respondent's possession or control



regarding environmental conditions on-Site, and, if related thereto, off-Site, that has not previously been provided to the Department.

II. Performance and Reporting of IRM Program

A. Within 30 days after the effective date of this Consent Order, Respondent shall commence to perform the IRM Program in accordance with Appendix A and Appendix B.

B. During the performance of the IRM Program, Respondent must have on-Site a full-time representative who is qualified to supervise the work done.

C. Within the time frame set forth in Appendix A, Respondent must prepare an IRM report ("IRM Report") that includes all data generated and all other information obtained during the IRM Program and identifies any additional data that must be collected. The IRM Report shall be prepared by and have the signature and seal of a professional engineer who shall certify that the IRM Report was prepared in accordance with this Order.

III. Progress Reports

Beginning thirty (30) days after the effective date of this Order, Respondent shall submit to the parties identified in subparagraph XII.B in the numbers specified therein copies of written monthly progress reports that: (i) describe the actions which have been taken toward achieving compliance with this Order during the previous month; (ii) include all results of sampling and tests and all other data

received or generated by Respondent or Respondent's contractors or agents in the previous month, including quality assurance/quality control information, whether conducted pursuant to this Order or conducted independently by Respondent; (iii) identify all work plans, reports, and other deliverables required by this Order that were completed and submitted during the previous month; (iv) describe all actions, including, but not limited to, data collection and implementation of work plans, that are scheduled for the next month and provide other information relating to the progress at the Site; (v) include information regarding percentage of completion, unresolved delays encountered or anticipated that may affect the future schedule for implementation of the Respondent's obligations under the Order, and efforts made to mitigate those delays or anticipated delays; and (vi) include any modifications to any work plans that Respondent has proposed to the Department or that the Department has approved. Respondent shall submit these progress reports to the Department by the tenth day of every month following the effective date of this Order.

#### IV. Review of Submittals

A. (1) The Department shall review each of the submittals Respondent makes pursuant to this Order to determine whether it was prepared, and whether the work done to generate the data and other information in the submittal was done, in accordance with this Order and generally accepted

technical and scientific principles. The Department shall use its best efforts to complete review of any submittal within thirty (30) days of the receipt of the submittal. The Department shall notify Respondent in writing of its approval or disapproval of the submittal. All Department-approved submittals shall be incorporated into and become an enforceable part of this Order.

(2) (a) If the Department disapproves a submittal, it shall so notify Respondent in writing and shall specify the reasons for its disapproval. Within thirty (30) days after receiving written notice that Respondent's submittal has been disapproved, Respondent shall make a revised submittal to the Department that addresses and attempts to resolve all of the Department's stated reasons for disapproving the first submittal.

(b) After receipt of the revised submittal, the Department shall notify Respondent in writing of its approval or disapproval. If the Department disapproves the revised submittal, unless Respondent requests an opportunity to respond to the Department's objections pursuant to the Dispute Resolution Procedure in Paragraph VI of this Order within ten (10) days of receipt of written notice of disapproval, Respondent shall be in violation of this Order and the Department may take any action or pursue whatever rights it has pursuant to any provision of statutory or common law. If the Department approves the revised submittal, it

shall be incorporated into and become an enforceable part of this Order.

B. The Department may seek to require Respondent to modify and/or amplify and expand a submittal if the Department determines, as a result of reviewing data generated by an activity required under this Order or as a result of reviewing any other data or facts, that further work is necessary.

V. Penalties

A. (1) Respondent's failure to comply with any term of this Order constitutes a violation of this Order and the ECL.

B. Respondent shall not suffer any penalty under this Order or be subject to any proceeding or action if it cannot comply with any requirement hereof because of war, riot, or because of any condition or event beyond the control of Respondent, or an unforeseeable disaster arising exclusively from natural causes which the exercise of ordinary human prudence could not have prevented. Respondent shall, within ten (10) days of when it obtains knowledge of any such condition, notify the Department in writing. Respondent shall include in such notice the measures taken and to be taken by Respondent to prevent or minimize any delays and shall request an appropriate extension or modification of this Order. Failure to give such notice within such ten (10)-day period

constitutes a waiver of any claim that a delay is not subject to penalties. Respondent shall have the burden of proving that an event is a defense to compliance with this Order pursuant to Subparagraph V.B.

VI.. Dispute Resolution

If the Department disapproves a revised submittal, Respondent shall be in violation of this Order unless, within ten (10) days of receipt of the Department's notice of disapproval, Respondent requests to meet with the Director of the Division of Hazardous Waste Remediation (the "Director") in order to discuss the Department's objections 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, and the Director shall have the authority to modify and/or withdraw such objections. After the Director makes his decision(s), Respondent shall further revise the submittal in accordance with the Department's specific comments, as may be modified by the Director (except for those comments which have been withdrawn by the Director), and shall submit a further revised submittal within such period of time specified by the Department in its notice of disapproval (or within such other time period as the Director may specify), however, Respondent shall have thirty days after receipt of written notice of the Director's decision(s), to contest that decision pursuant to Article Seventy-Eight of the Civil Practice Laws and Rules of

the State of New York ("CPLR") (the Director's decision(s) shall be deemed to be final agency action for purposes of such a proceeding). If Respondent does not commence such proceeding within the 30 day period Respondent shall be deemed to have waived its right to contest the Director's decision.

After receipt of the further revised submittal, the Department shall notify Respondent in writing of its approval or disapproval of the further revised submittal.

Respondent shall be in violation of this Order and the ECL if (a) the further revised submittal fails to address the Department's specific comments, as modified, and the Department disapproves the further revised submittal for this reason, or; (b) Respondent fails to timely commence in accordance with this paragraph a proceeding under Article Seventy-Eight of the CPLR and fails to submit a further revised submittal.

The invocation of the procedures stated in this paragraph shall stay Respondent's obligations under this Order with respect to activities which are dependent on any disputed items.

#### VII. Entry upon Site

Respondent hereby consents to the entry upon the Site or areas in the vicinity of the Site which may be under the control of the Respondent by any duly designated employee, consultant, contractor, or agent of the Department or any State agency for purposes of inspection, sampling, and testing

and to ensure Respondent's compliance with this Order. The Department or other State agency shall make reasonable efforts to conduct such visits during normal business hours, to avoid disruption of normal business operations at the Site, and to provide notice to Respondent in advance of any such visit. The Department shall use reasonable efforts to provide notice at least twenty-four hours in advance of any such planned site visit...All persons entering the Site pursuant to this Paragraph will follow the Site Health & Safety Plan and all of Respondent's appropriate safety rules as specified by the Respondent. During any such visit Respondent shall provide the Department with suitable office space at the Site, including access to a telephone, and shall permit the Department full access to all records relating to matters addressed by this Order and job meetings.

VIII. Payment of State Costs

A. Within sixty (60) days after receipt of an itemized invoice from the Department, Respondent shall pay to the Department a sum of money which shall represent reimbursement for the State's expenses including, but not limited to, direct labor, fringe benefits, indirect costs, travel, analytical costs, and contractor costs incurred by the State of New York for work performed at the Site to date, as well as for negotiating this Order, reviewing and revising submittals made pursuant to this Order, overseeing activities conducted pursuant to this Order, collecting and analyzing

samples, and administrative costs associated with this Order. Such payment shall be made by certified check payable to the Department of Environmental Conservation. Payment shall be sent to the Bureau of Program Management, Division of Hazardous Waste Remediation, N.Y.S.D.E.C., 50 Wolf Road, Albany, NY 12233-7010. Itemization of the costs shall include an accounting of personal services indicating the employee name, title, biweekly salary, and time spent (in hours) on the project during the billing period, as identified by an assigned time and activity code. This information shall be documented by quarterly reports of Direct Personal Service. Approved agency fringe benefit and indirect cost rates shall be applied. Non-personal service costs shall be summarized by category of expense (e.g., supplies, materials, travel, contractual) and shall be documented by the New York State Office of the State Comptroller's quarterly expenditure reports.

B. The aggregate amount which Respondent is obligated to pay under this Order pursuant to subparagraph VIII. A. will not exceed \_\_\_\_\_. If in the Department's opinion the total sum of money paid pursuant to this Paragraph is insufficient to reimburse the State's costs, the Department may, at its option, in a separate proceeding, seek to recover additional reimbursement.

IX. Department Reservation of Rights

A. Nothing contained in this Order shall be



construed as barring, diminishing, adjudicating, or in any way affecting any rights the Department may have including, but not limited to nor exemplified by, the following:

1. the Department's right to bring any action or proceeding against anyone other than Respondent and/or any of Respondent's directors, officers, employees, servants, agents, successors, and assigns;

2. the Department's right to enforce this Order against Respondent and/or any of Respondent's directors, officers, employees, servants, agents, successors, and assigns if Respondent fails to satisfy any of the terms of this Order;

3. the Department's right to bring any action or proceeding against Respondent and/or any of Respondent's 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;

4. the Department's right to bring any action or proceeding against Respondent and/or any of Respondent's directors, officers, employees, servants, agents, successors, and assigns with respect to hazardous substances that are present at the Site or that have migrated from the Site;

5. the Department's right to bring any criminal action against the Respondent and/or any of

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

6. the Department's right to gather information and enter and inspect property and premises.

B. Nothing contained in this Order shall be construed to prohibit the Commissioner or his duly authorized representative from exercising any summary abatement powers.

X. Indemnification

Respondent shall indemnify and hold the Department, the State of New York, and their representatives and employees harmless for all claims, suits, actions, damages, and costs of every name and description arising out of or resulting from the fulfillment or attempted fulfillment of this Order by Respondent and/or any of Respondent's directors, officers, employees, servants, agents, successors, and assigns.

Respondent shall not indemnify or hold harmless the Department, the State of New York, or their representatives or employees for any unlawful, willful or malicious acts or omissions on the part of the State, State agencies, or their officers, employees or agents.

XI. Public Notice

A. Within 30 days after the effective date of this Order, Respondent shall file a Declaration of Covenants and Restrictions with the Clerk of Chautauqua County to give all parties who may acquire any interest in the Site notice of this Order.

B. If Respondent proposes to convey the whole or any part of Respondent's ownership interest in the Site, Respondent shall, not fewer than 60 days before the date of conveyance, notify the Department in writing of the identity of the transferee and of the nature and proposed date of the conveyance and shall notify the transferee in writing, with a copy to the Department, of the applicability of this Order.

XII. Communications

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

Communication from Respondent shall be sent to:

1. Director, Division of Hazardous Waste  
Remediation  
New York State Department of Environmental  
Conservation  
50 Wolf Road  
Albany, New York 12233-7010
2. Director, Bureau of Environmental Exposure  
Investigation  
New York State Department of Health  
2 University Place  
Albany, New York 12203
3. Regional Engineer, Region 9  
Division of Hazardous Waste Remediation  
New York State Department of Environmental  
Conservation  
270 Michigan Avenue  
Buffalo, NY 14203

4. Division of Environmental Enforcement  
New York State Department of Environmental  
Conservation  
270 Michigan Avenue  
Buffalo, NY 14203

B. Copies of work plans and reports shall be submitted as follows:

1. One copy to Division of Hazardous Waste  
Remediation.
2. Two copies to the Director, Bureau of  
Environmental Exposure Investigation.
3. Four copies (one unbound) to Region 9.
4. One copy to Division of Environmental  
Enforcement.

C. Within 30 days of the Department's approval of any report submitted pursuant to this Order, Respondent shall submit to the project manager for the site a computer readable magnetic media copy of the approved report in American Standard Code for Information Interchange (ASCII) format.

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

Patricia E. Erickson, Esq.  
Whiteman, Osterman & Hanna  
1700 Liberty Building  
Buffalo, New York 14202

Harry B. Nicholson, Jr.  
President  
Dowcraft  
65 South Dow Street  
Falconer, New York 14733

E. The Department and Respondent reserve the right to designate additional or different addressees for communication or written notice to the other.

XIII. Miscellaneous

A. All activities and submittals required by this Order are set forth in Appendix A and Appendix B.

B. Respondent shall retain professional consultants, contractors, laboratories, quality assurance/quality control personnel, and data validators acceptable to the Department to perform the technical, engineering, and analytical obligations required by this Order. The experience, capabilities, and qualifications of the firms or individuals selected by Respondent have been submitted to the Department. The Department's approval of these firms or individuals shall be obtained in writing before the start of any activities for which the Respondent and such firms or individuals will be responsible. The responsibility for the performance of the professionals retained by Respondent shall rest solely with Respondent.

C. The Department shall have the right to obtain split samples, duplicate samples, or both, of all substances and materials sampled by Respondent, and the Department also

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

D. Respondent shall notify the Department at least 10 working days in advance of any field activities to be conducted pursuant to this Order.

E. Respondent shall use its best efforts to obtain all permits, easements, rights-of-way, rights-of-entry, approvals, or authorizations necessary to perform Respondent's obligations under this Order. For purposes of this Paragraph "best efforts" includes the payment of reasonable sums of money in consideration. If any access required to perform this Order is not obtained despite best efforts within 45 days of the effective date of this Order, or within 45 days of the date the Department notifies Respondent in writing that additional access beyond that previously secured is necessary, Respondent shall promptly notify the Department, and shall include in that notification a summary of the steps Respondent has taken to attempt to obtain access. The Department may, as it deems appropriate, assist Respondent in obtaining access. Respondent shall reimburse the Department, in accordance with the procedures in Paragraph VIII. A. for all costs incurred by the Department in obtaining access, including, but not limited to, attorneys fees.

F. Respondent and Respondent's successors and assigns shall be bound by this Order. Any change in ownership or corporate status of Respondent including, but not limited to, any transfer of assets or real or personal property shall in no way alter Respondent's responsibilities under this Order. Respondent's officers, directors, employees, servants, and agents shall be obliged to comply with the relevant provisions of this Order in the performance of their designated duties on behalf of Respondent.

G. Respondent shall provide a copy of this Order to each contractor hired to perform work required by this Order and to each person representing Respondent with respect to the Site and shall condition all contracts entered into in order to carry out the obligations identified in this Order upon performance in conformity with the terms of this Order. Respondent or Respondent's contractors shall provide written notice of this Order to all subcontractors hired to perform any portion of the work required by this Order. Respondent shall nonetheless be responsible for ensuring that Respondent's contractors and subcontractors perform the work in satisfaction of the requirements of this Order.

H. "Interim Remedial Measure" shall have the meaning set forth in 6 NYCRR Part 375.

I. All references to "professional engineer" in this Order are to an individual registered as a professional engineer in accordance with Article 145 of the New York State

Education Law.

J. All references to "days" in this Order are to calendar days with the exception that designated State holidays will not be included in the calculations of any deadlines contained in this Order.

K. The section headings set forth in this Order are included for convenience of reference only and shall be disregarded in the construction and interpretation of any of the provisions of this Order.

L. (1) The terms of this Order shall constitute the complete and entire Order between Respondent and the Department concerning the Site. No term, condition, understanding, or agreement purporting to modify or vary any term of this Order shall be binding unless made in writing and subscribed by the party to be bound. No informal advice, guidance, suggestion, or comment by the Department regarding any report, proposal, plan, specification, schedule, or any other submittal shall be construed as relieving Respondent of Respondent's obligation to obtain such formal approvals as may be required by this Order.

(2) If Respondent desires that any provision of this Order be changed, Respondent shall make timely written application, signed by the Respondent, to the Commissioner setting forth the grounds for the relief sought. Copies of such written application shall be delivered or mailed to the Project Manager for the Site and the Field Unit Attorney



D R A F T - 7/19/94

FILENAME: C:\WPDOCS\CONSENT\429IRM

assigned to the Site.

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

DATED: , New York  
, 1994

LANGDON MARSH  
Acting 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 this Order, waives Respondent's right to a hearing herein as provided by law, and agrees to be bound by this Order.

## DOWCRAFT CORPORATION

By: \_\_\_\_\_

\_\_\_\_\_  
(Type Name of Signer)

Title: \_\_\_\_\_

Date: \_\_\_\_\_

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

On this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_,  
before me personally came \_\_\_\_\_, to me  
known, who, being by me duly sworn, did depose and say that he  
resides in \_\_\_\_\_; that he is the  
\_\_\_\_\_ of the \_\_\_\_\_,  
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.

\_\_\_\_\_  
Notary Public

~~DRAFT~~

8-12-94

8-22-94  
To be sent out  
after ACW permit  
rec'd & WP Approved.

Ann DeBarbieri,  
Jeffrey Lacey, Director, DEE - Albany  
Order on Consent - Dowcraft Corporation (Ellison Bronze  
Company Site No. 907018)

---

Attached for your review, approval, and signature are duplicate originals of an order on consent for the Ellison Bronze Company site. This order requires the Dowcraft Corporation to implement an interim remedial measure program at the site in accordance with the work plan and treatability study report which are attached as appendices to the order.

The Ellison Bronze Company site is a 2.6 acre site located at an active industrial facility in a mixed commercial/residential/industrial area in Falconer, Chautauqua County, New York. The site has been developed and used for industrial purposes since the 1880's primarily as a foundry and commercial door manufacturing facility.

Studies performed at the site by Ellison Bronze in 1991 have identified the presence of contaminated material from previous foundry operations. The main concern at the site is foundry sand fill under the employee parking lot and along the banks of the Chadakoin River and Moon Brook. The foundry sand ranges from two feet to five feet in depth. The sand contains a range of heavy metals including lead, copper, silver, and barium. Samples revealed TCLP lead values exceeding the EPA standards.

The IRM will address on-Site soils which contain elevated lead concentrations, and some sediment in the adjacent waterway where elevated copper concentrations have been identified. The materials will be solidified and stabilized on Site in accordance with the work plan and treatability study report. A treatability study was conducted by the company to demonstrate the effectiveness of the proposed remediation and the report was prepared which is attached to the order.

The site project manager is Gerald Pietraszek who can be reached at 716-851-7220.

## New York State Department of Environmental Conservation

## MEMORANDUM

TO: Gerald Pietraszek - DHWR, Region 9  
FROM: Maura Desmond Senior Attorney - DEE, Western Field Unit  
SUBJECT: Ellison Bronze Site Number 907018

DATE: 3/25/94

✓  
Please review the attached draft Consent Order.

Appendix 'A' - Interim R.M. WP  
'B' - Treatability Study

III Progress Reports

We have them coming now.  
Restate to continue reports w/ the  
additional info as you state in III

MD:jb  
D79ELSN

Attachment

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

In the Matter of the  
Development and Implementation  
of an Interim Remedial Measure Program  
for an Inactive Hazardous Waste Disposal  
Site, Under Article 27, Title 13,  
and Article 71, Title 27 of the  
Environmental Conservation Law  
of the State of New York  
by

ORDER  
ON  
CONSENT  
INDEX # B9-0429-93-04

DOWCRAFT CORPORATION  
Respondent.

Site Code #907018  
-----

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 ECL 3-0301.

2. Dowcraft Corporation is the owner of property located at 126 West Main Street, Falconer, New York, Chautauqua County, on which property the Ellison Bronze Co. Site is located (hereinafter referred to as "the Site").

3. The Department alleges that the Site is an inactive hazardous waste disposal site, as that term is defined at ECL 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 907018. The Department has classified the Site as a Classification "2" pursuant to ECL 27-1305.4.b.

4. A. Pursuant to ECL 27-1313.3.a, whenever the Commissioner of Environmental Conservation (the "Commissioner") "finds that hazardous wastes at an inactive hazardous waste disposal site constitute a significant threat to the environment, he may order the owner of such site and/or any person responsible for the disposal of hazardous wastes at such site (i) to develop an inactive hazardous waste disposal site remedial program, subject to the approval of the Department, at such site, and (ii) to implement such program within reasonable time limits specified in the order."

B. Any person under order pursuant to ECL 27-1313.3.a has a duty imposed by ECL Article 27, Title 13 to carry out the remedial program committed to under order. ECL 71-2705 provides that any person who fails to perform any duty imposed by ECL Article 27, Title 13 shall be liable for civil, administrative and/or criminal sanctions.

C. The Department also has the power, inter alia, to provide for the prevention and abatement of all water, land, and air pollution. ECL 3-0301.1.i.

5. Attached to this Order as Appendix "A" is an Interim Remedial Measure Work Plan which has been reviewed and

approved by the Department.

6. Attached to this Order as Appendix "B" is a Treatability Study Report which has been reviewed and approved by the Department.

7. The Department and Respondent agree that the goals of this Order are for Respondent to (i) develop and implement an Interim Remedial Measure Program ("IRM Program") for the Site in accordance with the Work Plan attached to this Order as Appendix "A" and the Treatability Study Report which is attached to this Order as Appendix "B"; and (ii) reimburse the State's administrative costs.

8. 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. Respondent consents to and agrees not to contest the authority or jurisdiction of the Department to issue or enforce this Order, and agrees not to contest the validity of this Order or its terms. 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 party and shall not be deemed to be admissions of any kind on the part of Respondent, its officers, directors, agents, servants, or employees.

NOW, having considered this matter and being duly

advised, IT IS ORDERED THAT:

I. Site Information

Within 30 days after the effective date of this Order, Respondent shall submit to the Department all data and other information within Respondent's possession or control regarding environmental conditions on-Site, and, if related thereto, off-Site, that has not previously been provided to the Department.

II. Performance and Reporting of IRM Program

A. Within 30 days after the effective date of this Consent Order, Respondent shall commence to perform the IRM Program in accordance with Appendix A and Appendix B.

B. During the performance of the IRM Program, Respondent must have on-Site a full-time representative who is qualified to supervise the work done.

C. Within the time frame set forth in Appendix A, Respondent must prepare an IRM report ("IRM Report") that includes all data generated and all other information obtained during the IRM Program and identifies any additional data that must be collected. The IRM Report shall be prepared by and have the signature and seal of a professional engineer who shall certify that the IRM Report prepared in accordance with this Order.

III. Progress Reports



~~If the IRM field work requires more than two months~~  
*beginning 30 days from the order*  
~~for completion,~~ Respondent shall submit to the parties identified in subparagraph XI.B in the numbers specified therein copies of written monthly progress reports that: (i) describe the actions which have been taken toward achieving compliance with this Order during the previous month; (ii) include all results of sampling and tests and all other data received or generated by Respondent or Respondent's contractors or agents in the previous month, including quality assurance/quality control information, whether conducted pursuant to this Order or conducted independently by Respondent; (iii) identify all work plans, reports, and other deliverables required by this Order that were completed and submitted during the previous month; (iv) describe all actions, including, but not limited to, data collection and implementation of work plans, that are scheduled for the next month and provide other information relating to the progress at the Site; (v) include information regarding percentage of completion, unresolved delays encountered or anticipated that may affect the future schedule for implementation of the Respondent's obligations under the Order, and efforts made to mitigate those delays or anticipated delays; and (vi) include any modifications to any work plans that Respondent has proposed to the Department or that the Department has

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

IV. Review of Submittals

A. (1) The Department shall review each of the submittals Respondent makes pursuant to this Order to determine whether it was prepared, and whether the work done to generate the data and other information in the submittal was done, in accordance with this Order and generally accepted technical and scientific principles. The Department shall use its best efforts to complete review of any submittal within thirty (30) days of the receipt of the submittal. The Department shall notify Respondent in writing of its approval or disapproval of the submittal. All Department-approved submittals shall be incorporated into and become an enforceable part of this Order.

(2) (a) If the Department disapproves a submittal, it shall so notify Respondent in writing and shall specify the reasons for its disapproval. Within thirty (30) days after receiving written notice that Respondent's submittal has been disapproved, Respondent shall make a revised submittal to the Department that addresses and resolves all of the Department's stated reasons for disapproving the first submittal.

(b) After receipt of the revised submittal, the Department shall notify Respondent in writing of its approval or disapproval. If the Department disapproves the revised submittal, unless Respondent requests an opportunity to respond to the Department's objections pursuant to the Dispute Resolution Procedure in Paragraph VI of this Order within ten (10) days of receipt of written notice of disapproval, Respondent shall be in violation of this Order and the Department may take any action or pursue whatever rights it has pursuant to any provision of statutory or common law. If the Department approves the revised submittal, it shall be incorporated into and become an enforceable part of this Order.

B. The Department may require Respondent to modify and/or amplify and expand a submittal if the Department determines, as a result of reviewing data generated by an activity required under this Order or as a result of reviewing any other data or facts, that further work is necessary consistent with the approved Work Plan attached to this Order as Appendix A.

V. Penalties

A. (1) Respondent's failure to comply with any term of this Order constitutes a violation of this Order and the ECL.

(2) Respondent shall be liable for payment to the Department of the sums set forth below as stipulated penalties for each day or part thereof that the Respondent is in violation of the terms of this Order. All penalties begin to accrue on the first day Respondent is in violation of the terms of this Order and continue to accrue through the final day of correction of any violation. Such sums shall be due and payable within 15 days after receipt of notification from the Department assessing the penalties. If such payment is not received within 15 days after Respondent receives such notification from the Department, interest shall be payable at the annual rate of nine per centum on the overdue amount from the day on which it was due through, and including, date of payment. Penalties shall be paid by certified check or money order, made payable to "New York State Department of Environmental Conservation" and shall be delivered personally or by certified mail, return receipt requested, to the Director, Division of Environmental Enforcement, N.Y.S.D.E.C., 50 Wolf Road, Albany, New York 12233-5500. Payment of the penalties shall not in any way alter Respondent's obligation to complete performance under the terms of this Order. Stipulated penalties shall be due and payable under subparagraph V.A.(2) pursuant to the following schedule:

Period of Non-Compliance

Penalty Per Day

First through 15th day	\$ 5,000
16th through 30th day	\$ 10,000
31st day and thereafter	\$ 15,000

B. Respondent shall not suffer any penalty under this Order or be subject to any proceeding or action if it cannot comply with any requirement hereof because of war, riot, or because of any condition or event beyond the control of Respondent, or an unforeseeable disaster arising exclusively from natural causes which the exercise of ordinary human prudence could not have prevented. Respondent shall, within ten (10) days of when it obtains knowledge of any such condition, notify the Department in writing. Respondent shall include in such notice the measures taken and to be taken by Respondent to prevent or minimize any delays and shall request an appropriate extension or modification of this Order. Failure to give such notice within such ten (10)-day period constitutes a waiver of any claim that a delay is not subject to penalties. Respondent shall have the burden of proving that an event is a defense to compliance with this Order pursuant to Subparagraph V.B.

#### VI. Dispute Resolution

If the Department disapproves a revised submittal, Respondent shall be in violation of this Order unless, within ten (10) days of receipt of the Department's notice of

disapproval, Respondent requests to meet with the Director of the Division of Hazardous Waste Remediation (the "Director") in order to discuss the Department's objections 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, and the Director shall have the authority to modify and/or withdraw such objections. After the Director makes his decision(s), Respondent shall either: (a) within thirty days of receipt of written notice of the Director's decision(s), commence a proceeding pursuant to Article Seventy-Eight of the Civil Practice Laws and Rules of the State of New York ("CPLR") (the Director's decision(s) shall be deemed to be final agency action for purposes of such a proceeding); or (b) notify the Department in writing that it intends to revise the submittal in accordance with the Department's specific comments, as may be modified by the Director except for those comments which have been withdrawn by the Director, and shall submit a revised submittal. The period of time within which the submittal must be revised as specified by the Department in its notice of disapproval shall control unless the Director revises the time frame during or after the meeting.

After receipt of the revised submittal, the Department shall notify Respondent in writing of its approval or

disapproval of the revised submittal.

Respondent shall be in violation of this Order and the ECL if (a) the revised submittal fails to address the Department's specific comments, as modified, and the Department disapproves the revised submittal for this reason, or; (b) Respondent fails to timely commence in accordance with this paragraph a proceeding under Article Seventy-Eight of the CPLR and fails to submit a revised submittal.

The invocation of the procedures stated in this paragraph shall stay Respondent's obligations under this Order with respect to activities which are dependent on any disputed items.

#### VII. Entry upon Site

Respondent hereby consents to the entry upon the Site or areas in the vicinity of the Site which may be under the control of the Respondent by any duly designated employee, consultant, contractor, or agent of the Department or any State agency for purposes of inspection, sampling, and testing and to ensure Respondent's compliance with this Order. The Department or other State agency shall make reasonable efforts to conduct such visits during normal business hours, to avoid disruption of normal business operations at the Site, and to provide notice to Respondent in advance of any such visit. All persons entering the Site pursuant to this Paragraph will

follow the Site Health & Safety Plan and all of Respondent's appropriate safety rules as specified by the Respondent. During any such visit Respondent shall provide the Department with suitable office space at the Site, including access to a telephone, and shall permit the Department full access to all records relating to matters addressed by this Order and job meetings.

VII. Payment of State Costs

A. Within sixty (60) days after receipt of an itemized invoice from the Department, Respondent shall pay to the Department a sum of money which shall represent reimbursement for the State's expenses including, but not limited to, direct labor, fringe benefits, indirect costs, travel, analytical costs, and contractor costs incurred by the State of New York for work performed at the Site to date, as well as for negotiating this Order, reviewing and revising submittals made pursuant to this Order, overseeing activities conducted pursuant to this Order, collecting and analyzing samples, and administrative costs associated with this Order. Such payment shall be made by certified check payable to the Department of Environmental Conservation. Payment shall be sent to the Bureau of Program Management, Division of Hazardous Waste Remediation, N.Y.S.D.E.C., 50 Wolf Road, Albany, NY 12233-7010. Itemization of the costs shall include



an accounting of personal services indicating the employee name, title, biweekly salary, and time spent (in hours) on the project during the billing period, as identified by an assigned time and activity code. This information shall be documented by quarterly reports of Direct Personal Service. Approved agency fringe benefit and indirect cost rates shall be applied. Non-personal service costs shall be summarized by category of expense (e.g., supplies, materials, travel, contractual) and shall be documented by the New York State Office of the State Comptroller's quarterly expenditure reports.

B. The aggregate amount which Respondent is obligated to pay under this Order pursuant to subparagraph VII. A. will not exceed \_\_\_\_\_. If in the Department's opinion the total sum of money paid pursuant to this Paragraph is insufficient to reimburse the State's costs, the Department may, at its option, in a separate proceeding, seek to recover additional reimbursement.

VIII. Department Reservation of Rights

A. Nothing contained in this Order shall be construed as barring, diminishing, adjudicating, or in any way affecting any of the Department's rights including, but not limited to nor exemplified by, the following:

1. the Department's right to bring any action

or proceeding against anyone other than Respondent and/or any of Respondent's directors, officers, employees, servants, agents, successors, and assigns;

2. the Department's right to enforce this Order against Respondent and/or any of Respondent's directors, officers, employees, servants, agents, successors, and assigns if Respondent fails to satisfy any of the terms of this Order;

3. the Department's right to bring any action or proceeding against Respondent and/or any of Respondent's 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;

4. the Department's right to bring any action or proceeding against Respondent and/or any of Respondent's directors, officers, employees, servants, agents, successors, and assigns with respect to hazardous substances that are present at the Site or that have migrated from the Site;

5. the Department's right to bring any criminal action against the Respondent and/or any of Respondent's directors, officers, employees, servants, agents, successors, and assigns; and

6. the Department's right to gather information and enter and inspect property and premises.

B. Nothing contained in this Order shall be construed as an admission by Respondent concerning the existence of any of the rights set forth in subparagraph A.

C. Nothing contained in this Order shall be construed to prohibit the Commissioner or his duly authorized representative from exercising any summary abatement powers.

IX. Indemnification

Respondent shall indemnify and hold the Department, the State of New York, and their representatives and employees harmless for all claims, suits, actions, damages, and costs of every name and description arising out of or resulting from the fulfillment or attempted fulfillment of this Order by Respondent and/or any of Respondent's directors, officers, employees, servants, agents, successors, and assigns.

Respondent shall not indemnify or hold harmless the Department, the State of New York, or their representatives or employees for any unlawful, willful or malicious acts or omissions on the part of the State, State agencies, or their officers, employees or agents.

X. Public Notice

A. Within 30 days after the effective date of this Order, Respondent shall file a Declaration of Covenants and

Restrictions with the Clerk of Chautauqua County to give all parties who may acquire any interest in the Site notice of this Order.

B. If Respondent proposes to convey the whole or any part of Respondent's ownership interest in the Site, Respondent shall, not fewer than 60 days before the date of conveyance, notify the Department in writing of the identity of the transferee and of the nature and proposed date of the conveyance and shall notify the transferee in writing, with a copy to the Department, of the applicability of this Order.

XI. Communications

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

Communication from Respondent shall be sent to:

1. Director, Division of Hazardous Waste  
Remediation  
New York State Department of Environmental  
Conservation  
50 Wolf Road  
Albany, New York 12233-7010
2. Director, Bureau of Environmental Exposure  
Investigation  
New York State Department of Health  
2 University Place  
Albany, New York 12203

3. Regional Engineer, Region 9  
Division of Hazardous Waste Remediation  
New York State Department of Environmental  
Conservation  
270 Michigan Avenue  
Buffalo, NY 14203
4. Division of Environmental Enforcement  
New York State Department of Environmental  
Conservation  
270 Michigan Avenue  
Buffalo, NY 14203

B. Copies of work plans and reports shall be submitted as follows:

1. One copy to Division of Hazardous Waste Remediation.
2. Two copies to the Director, Bureau of Environmental Exposure Investigation.
3. Four copies (one unbound) to Region 9.
4. One copy to Division of Environmental Enforcement.

C. Within 30 days of the Department's approval of any report submitted pursuant to this Order, Respondent shall submit to the project manager for the site a computer readable magnetic media copy of the approved report in American Standard Code for Information Interchange (ASCII) format.

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

Patricia E. Erickson, Esq.  
Whiteman, Osterman & Hanna  
1700 Liberty Building  
Buffalo, New York 14202

Harry B. Nicholson, Jr.  
President  
Dowcraft  
65 South Dow Street  
Falconer, New York 14733

E. The Department and Respondent reserve the right to designate additional or different addressees for communication or written notice to the other.

XII. Miscellaneous

A. All activities and submittals required by this Order are set forth in Appendix A and Appendix B.

B. Respondent shall retain professional consultants, contractors, laboratories, quality assurance/quality control personnel, and data validators acceptable to the Department to perform the technical, engineering, and analytical obligations required by this Order. The experience, capabilities, and qualifications of the firms or individuals selected by Respondent have been submitted to the Department. The Department's approval of these firms or individuals shall be obtained in writing before the start of any activities for which the Respondent and such firms or individuals will be responsible. The responsibility for the performance of the professionals retained by

Respondent shall rest solely with Respondent.

C. The Department shall have the right to obtain split samples, duplicate samples, or both, of all substances and materials sampled by Respondent, and the Department also shall have the right to take its own samples. Respondent shall make available to the Department the results of all sampling and/or tests or other data generated by Respondent with respect to implementation of this Order and shall submit these results in the progress reports required by this Order.

D. Respondent shall notify the Department at least 10 working days in advance of any field activities to be conducted pursuant to this Order.

E. Respondent shall use its best efforts to obtain all permits, easements, rights-of-way, rights-of-entry, approvals, or authorizations necessary to perform Respondent's obligations under this Order. For purposes of this Paragraph "best efforts" includes the payment of reasonable sums of money in consideration. If any access required to perform this Order is not obtained despite best efforts within 45 days of the effective date of this Order, or within 45 days of the date the Department notifies Respondent in writing that additional access beyond that previously secured is necessary, Respondent shall promptly notify the Department, and shall include in that notification a summary of the steps Respondent

has taken to attempt to obtain access. The Department may, as it deems appropriate, assist Respondent in obtaining access. Respondent shall reimburse the Department, in accordance with the procedures in Paragraph VII. A. for all costs incurred by the Department in obtaining access, including, but not limited to, attorneys fees.

F. Respondent and Respondent's successors and assigns shall be bound by this Order. Any change in ownership or corporate status of Respondent including, but not limited to, any transfer of assets or real or personal property shall in no way alter Respondent's responsibilities under this Order. Respondent's officers, directors, employees, servants, and agents shall be obliged to comply with the relevant provisions of this Order in the performance of their designated duties on behalf of Respondent.

G. Respondent shall provide a copy of this Order to each contractor hired to perform work required by this Order and to each person representing Respondent with respect to the Site and shall condition all contracts entered into in order to carry out the obligations identified in this Order upon performance in conformity with the terms of this Order. Respondent or Respondent's contractors shall provide written notice of this Order to all subcontractors hired to perform any portion of the work required by this Order. Respondent



shall nonetheless be responsible for ensuring that Respondent's contractors and subcontractors perform the work in satisfaction of the requirements of this Order.

H. "Interim Remedial Measure" shall have the meaning set forth in 6 NYCRR Part 375.

I. All references to "professional engineer" in this Order are to an individual registered as a professional engineer in accordance with Article 145 of the New York State Education Law.

J. All references to "days" in this Order are to calendar days with the exception that designated State holidays will not be included in the calculations of any deadlines contained in this Order.

K. The section headings set forth in this Order are included for convenience of reference only and shall be disregarded in the construction and interpretation of any of the provisions of this Order.

L. (1) The terms of this Order shall constitute the complete and entire Order between Respondent and the Department concerning the Site. No term, condition, understanding, or agreement purporting to modify or vary any term of this Order shall be binding unless made in writing and subscribed by the party to be bound. No informal advice, guidance, suggestion, or comment by the Department regarding

any report, proposal, plan, specification, schedule, or any other submittal shall be construed as relieving Respondent of Respondent's obligation to obtain such formal approvals as may be required by this Order.

(2) If Respondent desires that any provision of this Order be changed, Respondent shall make timely written application, signed by the Respondent, to the Commissioner setting forth the grounds for the relief sought. Such request shall not be unreasonably denied. Copies of such written application shall be delivered or mailed to the Project Manager for the Site and the Field Unit Attorney assigned to the Site.

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

DATED: , New York  
, 1994

LANGDON MARSH  
Acting 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 this Order, waives Respondent's right to a hearing herein as provided by law, and agrees to be bound by this Order.

DOWCRAFT CORPORATION

By: \_\_\_\_\_

\_\_\_\_\_  
(Type Name of Signer)

Title: \_\_\_\_\_

Date: \_\_\_\_\_

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

On this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_,  
before me personally came \_\_\_\_\_, to me  
known, who, being by me duly sworn, did depose and say that he  
resides in \_\_\_\_\_; that he is the  
\_\_\_\_\_ of the \_\_\_\_\_,  
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.

\_\_\_\_\_  
Notary Public

## New York State Department of Environmental Conservation

## MEMORANDUM

TO: M. Doster, G. Pietraszek - Region 9  
FROM: M. Desmond - DEE Buffalo  
SUBJECT: Dowcraft Corporation Consent Order

FOIL

Releasable ☐Non-Releasable ☒

DATE: November 29, 1993

1. Please see Paragraphs 5 and 6.
2. Please note Paragraph II. If we proceed in this manner we will need to have an approved work plan to attach to the Order.

We can instead attach an approved scope of work to the Order, committing them to develop a work plan within a certain period, or we can put a brief description of the proposed IRM with a schedule right in the Order.

It is my feeling that the clearest way to proceed would be with an approved work plan or scope of work so that Dowcraft understands what they are agreeing to.

Please let me know what you think by 12/3/93.

MCD/mf  
A:D140dow

FILENAME: IRM429 disk #4  
D R A F T - 11/29/93

**DRAFT**

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

In the Matter of the  
Development and Implementation  
of an Interim Remedial Measure Program  
for an Inactive Hazardous Waste Disposal  
Site, Under Article 27, Title 13,  
and Article 71, Title 27 of the  
Environmental Conservation Law  
of the State of New York  
by

ORDER  
ON  
CONSENT  
INDEX # B9-0429-93-04

DOWCRAFT CORPORATION  
Respondent.

Site Code #907018  
-----

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 ECL 3-0301.

2. Dowcraft Corporation is the owner of property located at 126 West Main Street, Falconer, New York, Chautauqua County, known as the Ellison Bronze Co. Site (hereinafter referred to as "the Site").

3. The Site is an inactive hazardous waste disposal site, as that term is defined at ECL 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 907018.

FILENAME: IRM429 disk #4  
D R A F T - 11/29/93

The Department has classified the Site as a Classification "2" pursuant to ECL 27-1305.4.b.

4. A. Pursuant to ECL 27-1313.3.a, whenever the Commissioner of Environmental Conservation (the "Commissioner") "finds that hazardous wastes at an inactive hazardous waste disposal site constitute a significant threat to the environment, he may order the owner of such site and/or any person responsible for the disposal of hazardous wastes at such site (i) to develop an inactive hazardous waste disposal site remedial program, subject to the approval of the department, at such site, and (ii) to implement such program within reasonable time limits specified in the order."

B. Any person under order pursuant to ECL 27-1313.3.a has a duty imposed by ECL Article 27, Title 13 to carry out the remedial program committed to under order. ECL 71-2705 provides that any person who fails to perform any duty imposed by ECL Article 27, Title 13 shall be liable for civil, administrative and/or criminal sanctions.

C. The Department also has the power, inter alia, to provide for the prevention and abatement of all water, land, and air pollution. ECL 3-0301.1.i.

5. The Department and Respondent agree that the goals of this Order are for Respondent to (i) develop and implement an Interim Remedial Measure Program ("IRM Program") for the

FILENAME: IRM429 disk #4

D R A F T - 11/29/93

Site which will stabilize and solidify the foundry waste material at the Site; ~~in accordance with the Work Plan attached to this Order as Appendix "A"~~; and (ii) reimburse the State's administrative costs.

6. Attached to this Order as Appendix "A" is a Treatability Study Report which has been reviewed and approved by the Department.

7.6. 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. Respondent consents to and agrees not to contest the authority or jurisdiction of the Department to issue or enforce this Order, and agrees not to contest the validity of this Order or its terms.

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

I. Site Information

Within 30 days after the effective date of this Order, Respondent shall submit to the Department:

A. A brief history and description of the Site, including the types, quantities, physical state, location, and dates of disposal of hazardous waste including methods of disposal and spillage of such wastes;

B. A concise summary of information held by

FILENAME: IRM429 disk #4

D R A F T - 11/29/93

Respondent and its attorneys and consultants with respect to all persons responsible for such disposal of hazardous wastes, including but not limited to names, addresses, dates of disposal, and any proof linking each such person responsible with hazardous wastes identified pursuant to subparagraph I.A; and

C. A comprehensive list and copies of all existing relevant reports with titles, authors, and subject matter, as well as 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.

II. Performance and Reporting of IRM Program

A. Within 30 days after the effective date of this Consent Order, Respondent shall commence to perform the IRM Program in accordance with \_\_\_\_\_ and the Treatability Study Report. ~~Appendix A and the schedule set forth therein.~~

B. During the performance of the IRM Program, Respondent must have on-Site a full-time representative who is qualified to supervise the work done.

C. Within the time frame set forth in \_\_\_\_\_, Respondent must prepare an IRM report ("IRM Report") that includes all data generated and all other information obtained during the IRM Program and identifies any additional data that



FILENAME: IRM429 disk #4  
D R A F T - 11/29/93

must be collected. The IRM Report shall be prepared by and have the signature and seal of a professional engineer who shall certify that the IRM Report prepared in accordance with this Order.

### III. Progress Reports

If the IRM field work requires more than two months for completion, Respondent shall submit to the parties identified in subparagraph XI.B in the numbers specified therein copies of written monthly progress reports that: (i) describe the actions which have been taken toward achieving compliance with this Order during the previous month; (ii) include all results of sampling and tests and all other data received or generated by Respondent or Respondent's contractors or agents in the previous month, including quality assurance/quality control information, whether conducted pursuant to this Order or conducted independently by Respondent; (iii) identify all work plans, reports, and other deliverables required by this Order that were completed and submitted during the previous month; (iv) describe all actions, including, but not limited to, data collection and implementation of work plans, that are scheduled for the next month and provide other information relating to the progress at the Site; (v) include information regarding percentage of completion, unresolved delays encountered or anticipated that

FILENAME: IRM429 disk #4  
D R A F T - 11/29/93

may affect the future schedule for implementation of the Respondent's obligations under the Order, and efforts made to mitigate those delays or anticipated delays; and (vi) include any modifications to any work plans that Respondent has proposed to the Department or that the Department has approved. Respondent shall submit these progress reports to the Department by the tenth day of every month following the effective date of this Order.

#### IV. Review of Submittals

A. (1) The Department shall review each of the submittals Respondent makes pursuant to this Order to determine whether it was prepared, and whether the work done to generate the data and other information in the submittal was done, in accordance with this Order and generally accepted technical and scientific principles. The Department shall notify Respondent in writing of its approval or disapproval of the submittal. All Department-approved submittals shall be incorporated into and become an enforceable part of this Order.

(2) (a) If the Department disapproves a submittal, it shall so notify Respondent in writing and shall specify the reasons for its disapproval. Within \_\_ days after receiving written notice that Respondent's submittal has been disapproved, Respondent shall make a revised submittal to the

FILENAME: IRM429 disk #4  
D R A F T - 11/29/93

Department that addresses and resolves all of the Department's stated reasons for disapproving the first submittal.

(b). After receipt of the revised submittal, the Department shall notify Respondent in writing of its approval or disapproval. If the Department disapproves the revised submittal, Respondent shall be in violation of this Order and the Department may take any action or pursue whatever rights it has pursuant to any provision of statutory or common law. If the Department approves the revised submittal, it shall be incorporated into and become an enforceable part of this Order.

B. The Department may require Respondent to modify and/or amplify and expand a submittal if the Department determines, as a result of reviewing data generated by an activity required under this Order or as a result of reviewing any other data or facts, that further work is necessary.

V. Penalties

A. (1) Respondent's failure to comply with any term of this Order constitutes a violation of this Order and the ECL.

(2) Respondent shall be liable for payment to the Department of the sums set forth below as stipulated penalties for each day or part thereof that the Respondent is in violation of the terms of this Order. All penalties begin

FILENAME: IRM429 disk #4  
D R A F T - 11/29/93

to accrue on the first day Respondent is in violation of the terms of this Order and continue to accrue through the final day of correction of any violation. Such sums shall be due and payable within 15 days after receipt of notification from the Department assessing the penalties. If such payment is not received within 15 days after Respondent receives such notification from the Department, interest shall be payable at the annual rate of nine per centum on the overdue amount from the day on which it was due through, and including, date of payment. Penalties shall be paid by certified check or money order, made payable to "New York State Department of Environmental Conservation" and shall be delivered personally or by certified mail, return receipt requested, to the Director, Division of Environmental Enforcement, N.Y.S.D.E.C., 50 Wolf Road, Albany, New York 12233-5500. Payment of the penalties shall not in any way alter Respondent's obligation to complete performance under the terms of this Order. Stipulated penalties shall be due and payable under subparagraph V.A.(2) pursuant to the following schedule:

<u>Period of Non-Compliance</u>	<u>Penalty Per Day</u>
First through 15th day	\$ 5,000
16th through 30th day	\$ 10,000
31st day and thereafter	\$ 15,000

B. Respondent shall not suffer any penalty under

FILENAME: IRM429 disk #4  
D R A F T - 11/29/93

this Order or be subject to any proceeding or action if it cannot comply with any requirement hereof because of war, riot, or an unforeseeable disaster arising exclusively from natural causes which the exercise of ordinary human prudence could not have prevented. Respondent shall, within five days of when it obtains knowledge of any such condition, notify the Department in writing. Respondent shall include in such notice the measures taken and to be taken by Respondent to prevent or minimize any delays and shall request an appropriate extension or modification of this Order. Failure to give such notice within such five-day period constitutes a waiver of any claim that a delay is not subject to penalties. Respondent shall have the burden of proving that an event is a defense to compliance with this Order pursuant to Subparagraph V.B.

VI. Entry upon Site

Respondent hereby consents to the entry upon the Site or areas in the vicinity of the Site which may be under the control of the Respondent by any duly designated employee, consultant, contractor, or agent of the Department or any State agency for purposes of inspection, sampling, and testing and to ensure Respondent's compliance with this Order. Respondent shall provide the Department with suitable office space at the Site, including access to a telephone, and shall

FILENAME: IRM429 disk #4  
D R A F T - 11/29/93

permit the Department full access to all records relating to matters addressed by this Order and job meetings.

VII. Payment of State Costs

Within \_\_\_ days after receipt of an itemized invoice from the Department, Respondent shall pay to the Department a sum of money which shall represent reimbursement for the State's expenses including, but not limited to, direct labor, fringe benefits, indirect costs, travel, analytical costs, and contractor costs incurred by the State of New York for work performed at the Site to date, as well as for negotiating this Order, reviewing and revising submittals made pursuant to this Order, overseeing activities conducted pursuant to this Order, collecting and analyzing samples, and administrative costs associated with this Order. Such payment shall be made by certified check payable to the Department of Environmental Conservation. Payment shall be sent to the Bureau of Program Management, Division of Hazardous Waste Remediation, N.Y.S.D.E.C., 50 Wolf Road, Albany, NY 12233-7010.

Itemization of the costs shall include an accounting of personal services indicating the employee name, title, biweekly salary, and time spent (in hours) on the project during the billing period, as identified by an assigned time and activity code. This information shall be documented by quarterly reports of Direct Personal Service. Approved agency

FILENAME: IRM429 disk #4  
D R A F T - 11/29/93

fringe benefit and indirect cost rates shall be applied. Non-personal service costs shall be summarized by category of expense (e.g., supplies, materials, travel, contractual) and shall be documented by the New York State Office of the State Comptroller's quarterly expenditure reports.

VIII. Department Reservation of Rights

A. Nothing contained in this Order shall be construed as barring, diminishing, adjudicating, or in any way affecting any of the Department's rights including, but not limited to nor exemplified by, the following:

1. the Department's right to bring any action or proceeding against anyone other than Respondent and/or any of Respondent's directors, officers, employees, servants, agents, successors, and assigns;

2. the Department's right to enforce this Order against Respondent and/or any of Respondent's directors, officers, employees, servants, agents, successors, and assigns if Respondent fails to satisfy any of the terms of this Order;

3. the Department's right to bring any action or proceeding against Respondent and/or any of Respondent's 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

FILENAME: IRM429 disk #4  
D R A F T - 11/29/93

hazardous substances or constituents at or from the Site or areas in the vicinity of the Site;

4. the Department's right to bring any action or proceeding against Respondent and/or any of Respondent's directors, officers, employees, servants, agents, successors, and assigns with respect to hazardous substances that are present at the Site or that have migrated from the Site;

5. the Department's right to bring any criminal action against the Respondent and/or any of Respondent's directors, officers, employees, servants, agents, successors, and assigns; and

6. the Department's right to gather information and enter and inspect property and premises.

B. Nothing contained in this Order shall be construed to prohibit the Commissioner or his duly authorized representative from exercising any summary abatement powers.

IX. Indemnification

Respondent shall indemnify and hold the Department, the State of New York, and their representatives and employees harmless for all claims, suits, actions, damages, and costs of every name and description arising out of or resulting from the fulfillment or attempted fulfillment of this Order by Respondent and/or any of Respondent's directors, officers, employees, servants, agents, successors, and assigns.



FILENAME: IRM429 disk #4  
D R A F T - 11/29/93

X. Public Notice

A. Within 30 days after the effective date of this Order, Respondent shall file a Declaration of Covenants and Restrictions with the Clerk of Chautauqua County to give all parties who may acquire any interest in the Site notice of this Order.

B. If Respondent proposes to convey the whole or any part of Respondent's ownership interest in the Site, Respondent shall, not fewer than 60 days before the date of conveyance, notify the Department in writing of the identity of the transferee and of the nature and proposed date of the conveyance and shall notify the transferee in writing, with a copy to the Department, of the applicability of this Order.

XI. Communications

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

Communication from Respondent shall be sent to:

1. Director, Division of Hazardous Waste  
Remediation  
New York State Department of Environmental  
Conservation  
50 Wolf Road  
Albany, New York 12233-7010
2. Director, Bureau of Environmental Exposure  
Investigation  
New York State Department of Health  
2 University Place  
Albany, New York 12203

FILENAME: IRM429 disk #4  
D R A F T - 11/29/93

3. Regional Engineer, Region 9  
Division of Hazardous Waste Remediation  
New York State Department of Environmental  
Conservation  
270 Michigan Avenue  
Buffalo, NY 14203
4. Division of Environmental Enforcement  
New York State Department of Environmental  
Conservation  
270 Michigan Avenue  
Buffalo, NY 14203

B. Copies of work plans and reports shall be  
submitted as follows:

1. One copy to Division of Hazardous Waste  
Remediation.
2. Two copies to the Director, Bureau of  
Environmental Exposure Investigation.
3. Four copies (one unbound) to Region 9.
4. One copy to Division of Environmental  
Enforcement.

C. Within 30 days of the Department's approval of  
any report submitted pursuant to this Order, Respondent shall  
submit to the project manager for the site a computer readable  
magnetic media copy of the approved report in American  
Standard Code for Information Interchange (ASCII) format.

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

---

---

FILENAME: IRM429 disk #4  
D R A F T - 11/29/93

E. The Department and Respondent reserve the right to designate additional or different addressees for communication or written notice to the other.

XII. Miscellaneous

A. All activities and submittals required by this Order shall address both on-Site and off-Site contamination resulting from the disposal of hazardous waste at the Site.

B. Respondent shall retain professional consultants, contractors, laboratories, quality assurance/quality control personnel, and data validators acceptable to the Department to perform the technical, engineering, and analytical obligations required by this Order. The experience, capabilities, and qualifications of the firms or individuals selected by Respondent shall be submitted to the Department within \_\_ days after the effective date of this Order. The Department's approval of these firms or individuals shall be obtained before the start of any activities for which the Respondent and such firms or individuals will be responsible. The responsibility for the performance of the professionals retained by Respondent shall rest solely with Respondent.

C. The Department shall have the right to obtain split samples, duplicate samples, or both, of all substances and materials sampled by Respondent, and the Department also

FILENAME: IRM429 disk #4  
D R A F T - 11/29/93

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

D. Respondent shall notify the Department at least 10 working days in advance of any field activities to be conducted pursuant to this Order.

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

F. Respondent and Respondent's officers, directors, agents, servants, employees, successors, and assigns shall be bound by this Order. Any change in ownership or corporate status of Respondent including, but not limited to, any transfer of assets or real or personal property shall in no way alter Respondent's responsibilities under this Order. Respondent's officers, directors, employees, servants, and agents shall be obliged to comply with the relevant provisions of this Order in the performance of their designated duties on behalf of Respondent.

G. Respondent shall provide a copy of this Order to each contractor hired to perform work required by this

FILENAME: IRM429 disk #4  
D R A F T - 11/29/93

Order and to each person representing Respondent with respect to the Site and shall condition all contracts entered into in order to carry out the obligations identified in this Order upon performance in conformity with the terms of this Order. Respondent or Respondent's contractors shall provide written notice of this Order to all subcontractors hired to perform any portion of the work required by this Order. Respondent shall nonetheless be responsible for ensuring that Respondent's contractors and subcontractors perform the work in satisfaction of the requirements of this Order.

H. "Interim Remedial Measure" shall have the meaning set forth in 6 NYCRR Part 375.

I. All references to "professional engineer" in this Order are to an individual registered as a professional engineer in accordance with Article 145 of the New York State Education Law.

J. All references to "days" in this Order are to calendar days unless otherwise specified.

K. The section headings set forth in this Order are included for convenience of reference only and shall be disregarded in the construction and interpretation of any of the provisions of this Order.

L. (1) The terms of this Order shall constitute the complete and entire Order between Respondent and the

FILENAME: IRM429 disk #4  
D R A F T - 11/29/93

Department concerning the Site. No term, condition, understanding, or agreement purporting to modify or vary any term of this Order shall be binding unless made in writing and subscribed by the party to be bound. No informal advice, guidance, suggestion, or comment by the Department regarding any report, proposal, plan, specification, schedule, or any other submittal shall be construed as relieving Respondent of Respondent's obligation to obtain such formal approvals as may be required by this Order.

(2) If Respondent desires that any provision of this Order be changed, Respondent shall make timely written application, signed by the Respondent, to the Commissioner setting forth reasonable grounds for the relief sought. Copies of such written application shall be delivered or mailed to the Project Manager for the Site and the Field Unit Attorney assigned to the Site.

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

DATED: , New York  
, 1993

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

By:

FILENAME: IRM429 disk #4  
D R A F T - 11/29/93

---

Ann Hill DeBarbieri  
Deputy Commissioner

FILENAME: IRM429 disk #4  
D R A F T - 11/29/93

CONSENT BY RESPONDENT

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

DOWCRAFT CORPORATION

By: \_\_\_\_\_

\_\_\_\_\_  
(Type Name of Signer)

Title: \_\_\_\_\_

Date: \_\_\_\_\_

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

On this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_,  
before me personally came \_\_\_\_\_, to me  
known, who, being by me duly sworn, did depose and say that he  
resides in \_\_\_\_\_; that he is the  
\_\_\_\_\_ of the \_\_\_\_\_,  
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.

\_\_\_\_\_  
Notary Public



GFP *JP*

270 Michigan Avenue, Buffalo, NY 14203-2999  
Telephone: 716-851-7050 FAX: 716-851-7067

FOIL

Releasable   ✓  

Non-Releasable   ✓  

December 2, 1993

Patricia E. Erickson, Esq.  
Whiteman, Osterman & Hanna  
1700 Liberty Bank Building  
Buffalo, New York 14202

Re: Ellison Bronze Company, 125 West Main Street, Falconer,  
Chautauqua County, New York State Inactive Hazardous Waste  
Disposal Site No. 907018

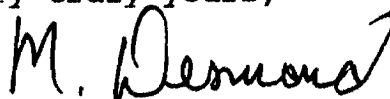
Dear Ms. Erickson:

Enclosed find the revised draft consent order for the above described site. Please review the order and forward any comments to this office by January 3, 1994.

The Department would like construction of this Interim Remedial Measure (IRM) to commence in late spring of 1994 assuming the Treatability Study Report and the Work Plan are approved by the Department. It will, therefore, be necessary to commence to develop the IRM Work Plan while the Treatability Study is progressing. The Department requests that the Treatability Study Report and the draft Work Plan be submitted for Department review by February 1, 1993.

I can be reached at 716-851-7050 if you have any questions.

Very truly yours,



Maura C. Desmond  
Senior Attorney  
Division of Environmental  
Enforcement

MCD/D/mf  
A:D144elis

Enclosure

cc: M. Doster (w/encl.)

**DRAFT**

FILENAME: IRM429 disk #4  
D R A F T - 12/2/93(PM)

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

In the Matter of the  
Development and Implementation  
of an Interim Remedial Measure Program  
for an Inactive Hazardous Waste Disposal  
Site, Under Article 27, Title 13,  
and Article 71, Title 27 of the  
Environmental Conservation Law  
of the State of New York  
by

ORDER  
ON  
CONSENT  
INDEX # B9-0429-93-04

DOWCRAFT CORPORATION  
Respondent.

Site Code #907018  
-----

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 ECL 3-0301.

2. Dowcraft Corporation is the owner of property located at 126 West Main Street, Falconer, New York, Chautauqua County, known as the Ellison Bronze Co. Site (hereinafter referred to as "the Site").

3. The Site is an inactive hazardous waste disposal site, as that term is defined at ECL 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 907018.

FILENAME: IRM429 disk #4  
D R A F T - 12/2/93 (PM)

The Department has classified the Site as a Classification "2" pursuant to ECL 27-1305.4.b.

4. A. Pursuant to ECL 27-1313.3.a, whenever the Commissioner of Environmental Conservation (the "Commissioner") "finds that hazardous wastes at an inactive hazardous waste disposal site constitute a significant threat to the environment, he may order the owner of such site and/or any person responsible for the disposal of hazardous wastes at such site (i) to develop an inactive hazardous waste disposal site remedial program, subject to the approval of the department, at such site, and (ii) to implement such program within reasonable time limits specified in the order."

B. Any person under order pursuant to ECL 27-1313.3.a has a duty imposed by ECL Article 27, Title 13 to carry out the remedial program committed to under order. ECL 71-2705 provides that any person who fails to perform any duty imposed by ECL Article 27, Title 13 shall be liable for civil, administrative and/or criminal sanctions.

C. The Department also has the power, inter alia, to provide for the prevention and abatement of all water, land, and air pollution. ECL 3-0301.1.i.

5. Attached to this Order as Appendix "A" is an Interim Remedial Measure Work Plan which has been reviewed and approved by the Department.

FILENAME: IRM429 disk #4  
D R A F T - 12/2/93 (PM)

6. Attached to this Order as Appendix "B" is a Treatability Study Report which has been reviewed and approved by the Department.

7.5- The Department and Respondent agree that the goals of this Order are for Respondent to (i) develop and implement an Interim Remedial Measure Program ("IRM Program") for the Site in accordance with the Work Plan attached to this Order as Appendix "A" and the Treatability Study Report which is attached to this Order as Appendix "B"; and (ii) reimburse the State's administrative costs.

8.6- 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. Respondent consents to and agrees not to contest the authority or jurisdiction of the Department to issue or enforce this Order, and agrees not to contest the validity of this Order or its terms.

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

I. Site Information

Within 30 days after the effective date of this Order, Respondent shall submit to the Department:

A. A brief history and description of the Site, including the types, quantities, physical state, location, and

FILENAME: IRM429 disk #4  
D R A F T - 12/2/93 (PM)

dates of disposal of hazardous waste including methods of disposal and spillage of such wastes;

B. A concise summary of information held by Respondent and its attorneys and consultants with respect to all persons responsible for such disposal of hazardous wastes, including but not limited to names, addresses, dates of disposal, and any proof linking each such person responsible with hazardous wastes identified pursuant to subparagraph I.A; and

C. A comprehensive list and copies of all existing relevant reports with titles, authors, and subject matter, as well as 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.

## II. Performance and Reporting of IRM Program

A. Within 30 days after the effective date of this Consent Order, Respondent shall commence to perform the IRM Program in accordance with Appendix A and ~~Appendix B. the schedule set forth therein.~~

B. During the performance of the IRM Program, Respondent must have on-Site a full-time representative who is qualified to supervise the work done.

C. Within the time frame set forth in ~~Appendix A,~~

FILENAME: IRM429 disk #4  
D R A F T - 12/2/93 (PM)

Respondent must prepare an IRM report ("IRM Report") that includes all data generated and all other information obtained during the IRM Program and identifies any additional data that must be collected. The IRM Report shall be prepared by and have the signature and seal of a professional engineer who shall certify that the IRM Report prepared in accordance with this Order.

### III. Progress Reports

If the IRM field work requires more than two months for completion, Respondent shall submit to the parties identified in subparagraph XI.B in the numbers specified therein copies of written monthly progress reports that: (i) describe the actions which have been taken toward achieving compliance with this Order during the previous month; (ii) include all results of sampling and tests and all other data received or generated by Respondent or Respondent's contractors or agents in the previous month, including quality assurance/quality control information, whether conducted pursuant to this Order or conducted independently by Respondent; (iii) identify all work plans, reports, and other deliverables required by this Order that were completed and submitted during the previous month; (iv) describe all actions, including, but not limited to, data collection and implementation of work plans, that are scheduled for the next

FILENAME: IRM429 disk #4  
D R A F T - 12/2/93 (PM)

month and provide other information relating to the progress at the Site; (v) include information regarding percentage of completion, unresolved delays encountered or anticipated that may affect the future schedule for implementation of the Respondent's obligations under the Order, and efforts made to mitigate those delays or anticipated delays; and (vi) include any modifications to any work plans that Respondent has proposed to the Department or that the Department has approved. Respondent shall submit these progress reports to the Department by the tenth day of every month following the effective date of this Order.

#### IV. Review of Submittals

A. (1) The Department shall review each of the submittals Respondent makes pursuant to this Order to determine whether it was prepared, and whether the work done to generate the data and other information in the submittal was done, in accordance with this Order and generally accepted technical and scientific principles. The Department shall notify Respondent in writing of its approval or disapproval of the submittal. All Department-approved submittals shall be incorporated into and become an enforceable part of this Order.

(2) (a) If the Department disapproves a submittal, it shall so notify Respondent in writing and shall

FILENAME: IRM429 disk #4  
D R A F T - 12/2/93 (PM)

specify the reasons for its disapproval. Within \_\_ days after receiving written notice that Respondent's submittal has been disapproved, Respondent shall make a revised submittal to the Department that addresses and resolves all of the Department's stated reasons for disapproving the first submittal.

(b) After receipt of the revised submittal, the Department shall notify Respondent in writing of its approval or disapproval. If the Department disapproves the revised submittal, Respondent shall be in violation of this Order and the Department may take any action or pursue whatever rights it has pursuant to any provision of statutory or common law. If the Department approves the revised submittal, it shall be incorporated into and become an enforceable part of this Order.

B. The Department may require Respondent to modify and/or amplify and expand a submittal if the Department determines, as a result of reviewing data generated by an activity required under this Order or as a result of reviewing any other data or facts, that further work is necessary.

V. Penalties

A. (1) Respondent's failure to comply with any term of this Order constitutes a violation of this Order and the ECL.

(2) Respondent shall be liable for payment to



FILENAME: IRM429 disk #4  
D R A F T - 12/2/93 (PM)

the Department of the sums set forth below as stipulated penalties for each day or part thereof that the Respondent is in violation of the terms of this Order. All penalties begin to accrue on the first day Respondent is in violation of the terms of this Order and continue to accrue through the final day of correction of any violation. Such sums shall be due and payable within 15 days after receipt of notification from the Department assessing the penalties. If such payment is not received within 15 days after Respondent receives such notification from the Department, interest shall be payable at the annual rate of nine per centum on the overdue amount from the day on which it was due through, and including, date of payment. Penalties shall be paid by certified check or money order, made payable to "New York State Department of Environmental Conservation" and shall be delivered personally or by certified mail, return receipt requested, to the Director, Division of Environmental Enforcement, N.Y.S.D.E.C., 50 Wolf Road, Albany, New York 12233-5500. Payment of the penalties shall not in any way alter Respondent's obligation to complete performance under the terms of this Order. Stipulated penalties shall be due and payable under subparagraph V.A.(2) pursuant to the following schedule:

<u>Period of Non-Compliance</u>	<u>Penalty Per Day</u>
First through 15th day	\$ 5,000

FILENAME: IRM429 disk #4  
D R A F T - 12/2/93 (PM)

16th through 30th day \$ 10,000

31st day and thereafter \$ 15,000

B. Respondent shall not suffer any penalty under this Order or be subject to any proceeding or action if it cannot comply with any requirement hereof because of war, riot, or an unforeseeable disaster arising exclusively from natural causes which the exercise of ordinary human prudence could not have prevented. Respondent shall, within five days of when it obtains knowledge of any such condition, notify the Department in writing. Respondent shall include in such notice the measures taken and to be taken by Respondent to prevent or minimize any delays and shall request an appropriate extension or modification of this Order. Failure to give such notice within such five-day period constitutes a waiver of any claim that a delay is not subject to penalties. Respondent shall have the burden of proving that an event is a defense to compliance with this Order pursuant to Subparagraph V.B.

VI. Entry upon Site

Respondent hereby consents to the entry upon the Site or areas in the vicinity of the Site which may be under the control of the Respondent by any duly designated employee, consultant, contractor, or agent of the Department or any State agency for purposes of inspection, sampling, and testing

FILENAME: IRM429 disk #4  
D R A F T - 12/2/93 (PM)

and to ensure Respondent's compliance with this Order. Respondent shall provide the Department with suitable office space at the Site, including access to a telephone, and shall permit the Department full access to all records relating to matters addressed by this Order and job meetings.

VII. Payment of State Costs

Within \_\_ days after receipt of an itemized invoice from the Department, Respondent shall pay to the Department a sum of money which shall represent reimbursement for the State's expenses including, but not limited to, direct labor, fringe benefits, indirect costs, travel, analytical costs, and contractor costs incurred by the State of New York for work performed at the Site to date, as well as for negotiating this Order, reviewing and revising submittals made pursuant to this Order, overseeing activities conducted pursuant to this Order, collecting and analyzing samples, and administrative costs associated with this Order. Such payment shall be made by certified check payable to the Department of Environmental Conservation. Payment shall be sent to the Bureau of Program Management, Division of Hazardous Waste Remediation, N.Y.S.D.E.C., 50 Wolf Road, Albany, NY 12233-7010.

Itemization of the costs shall include an accounting of personal services indicating the employee name, title, biweekly salary, and time spent (in hours) on the project

FILENAME: IRM429 disk #4  
D R A F T - 12/2/93 (PM)

during the billing period, as identified by an assigned time and activity code. This information shall be documented by quarterly reports of Direct Personal Service. Approved agency fringe benefit and indirect cost rates shall be applied. Non-personal service costs shall be summarized by category of expense (e.g., supplies, materials, travel, contractual) and shall be documented by the New York State Office of the State Comptroller's quarterly expenditure reports.

VIII. Department Reservation of Rights

A. Nothing contained in this Order shall be construed as barring, diminishing, adjudicating, or in any way affecting any of the Department's rights including, but not limited to nor exemplified by, the following:

1. the Department's right to bring any action or proceeding against anyone other than Respondent and/or any of Respondent's directors, officers, employees, servants, agents, successors, and assigns;

2. the Department's right to enforce this Order against Respondent and/or any of Respondent's directors, officers, employees, servants, agents, successors, and assigns if Respondent fails to satisfy any of the terms of this Order;

3. the Department's right to bring any action or proceeding against Respondent and/or any of Respondent's

FILENAME: IRM429 disk #4  
D R A F T - 12/2/93 (PM)

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;

4. the Department's right to bring any action or proceeding against Respondent and/or any of Respondent's directors, officers, employees, servants, agents, successors, and assigns with respect to hazardous substances that are present at the Site or that have migrated from the Site;

5. the Department's right to bring any criminal action against the Respondent and/or any of Respondent's directors, officers, employees, servants, agents, successors, and assigns; and

6. the Department's right to gather information and enter and inspect property and premises.

B. Nothing contained in this Order shall be construed to prohibit the Commissioner or his duly authorized representative from exercising any summary abatement powers.

#### IX. Indemnification

Respondent shall indemnify and hold the Department, the State of New York, and their representatives and employees harmless for all claims, suits, actions, damages, and costs of every name and description arising out of or resulting from

FILENAME: IRM429 disk #4  
D R A F T - 12/2/93 (PM)

the fulfillment or attempted fulfillment of this Order by Respondent and/or any of Respondent's directors, officers, employees, servants, agents, successors, and assigns.

X. Public Notice

A. Within 30 days after the effective date of this Order, Respondent shall file a Declaration of Covenants and Restrictions with the Clerk of Chautauqua County to give all parties who may acquire any interest in the Site notice of this Order.

B. If Respondent proposes to convey the whole or any part of Respondent's ownership interest in the Site, Respondent shall, not fewer than 60 days before the date of conveyance, notify the Department in writing of the identity of the transferee and of the nature and proposed date of the conveyance and shall notify the transferee in writing, with a copy to the Department, of the applicability of this Order.

XI. Communications

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

Communication from Respondent shall be sent to:

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

FILENAME: IRM429 disk #4  
D R A F T - 12/2/93 (PM)

2. Director, Bureau of Environmental Exposure Investigation  
New York State Department of Health  
2 University Place  
Albany, New York 12203
3. Regional Engineer, Region 9  
Division of Hazardous Waste Remediation  
New York State Department of Environmental Conservation  
270 Michigan Avenue  
Buffalo, NY 14203
4. Division of Environmental Enforcement  
New York State Department of Environmental Conservation  
270 Michigan Avenue  
Buffalo, NY 14203

B. Copies of work plans and reports shall be submitted as follows:

1. One copy to Division of Hazardous Waste Remediation.
2. Two copies to the Director, Bureau of Environmental Exposure Investigation.
3. Four copies (one unbound) to Region 9.
4. One copy to Division of Environmental Enforcement.

C. Within 30 days of the Department's approval of any report submitted pursuant to this Order, Respondent shall submit to the project manager for the site a computer readable magnetic media copy of the approved report in American Standard Code for Information Interchange (ASCII) format.

D. Communication to be made from the Department

FILENAME: IRM429 disk #4  
D R A F T - 12/2/93 (PM)

to the Respondent shall be sent to:

\_\_\_\_\_  
\_\_\_\_\_

E. The Department and Respondent reserve the right to designate additional or different addressees for communication or written notice to the other.

XII. Miscellaneous

A. All activities and submittals required by this Order shall address both on-Site and off-Site contamination resulting from the disposal of hazardous waste at the Site.

B. Respondent shall retain professional consultants, contractors, laboratories, quality assurance/quality control personnel, and data validators acceptable to the Department to perform the technical, engineering, and analytical obligations required by this Order. The experience, capabilities, and qualifications of the firms or individuals selected by Respondent shall be submitted to the Department within \_\_ days after the effective date of this Order. The Department's approval of these firms or individuals shall be obtained before the start of any activities for which the Respondent and such firms or individuals will be responsible. The responsibility for the performance of the professionals retained by Respondent shall rest solely with Respondent.



FILENAME: IRM429 disk #4  
D R A F T - 12/2/93 (PM)

C. The Department shall have the right to obtain split samples, duplicate samples, or both, of all substances and materials sampled by Respondent, and the Department also shall have the right to take its own samples. Respondent shall make available to the Department the results of all sampling and/or tests or other data generated by Respondent with respect to implementation of this Order and shall submit these results in the progress reports required by this Order.

D. Respondent shall notify the Department at least 10 working days in advance of any field activities to be conducted pursuant to this Order.

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

F. Respondent and Respondent's officers, directors, agents, servants, employees, successors, and assigns shall be bound by this Order. Any change in ownership or corporate status of Respondent including, but not limited to, any transfer of assets or real or personal property shall in no way alter Respondent's responsibilities under this Order. Respondent's officers, directors, employees, servants, and agents shall be obliged to comply with the relevant provisions of this Order in the performance of their

FILENAME: IRM429 disk #4  
D R A F T - 12/2/93 (PM)

designated duties on behalf of Respondent.

G. Respondent shall provide a copy of this Order to each contractor hired to perform work required by this Order and to each person representing Respondent with respect to the Site and shall condition all contracts entered into in order to carry out the obligations identified in this Order upon performance in conformity with the terms of this Order. Respondent or Respondent's contractors shall provide written notice of this Order to all subcontractors hired to perform any portion of the work required by this Order. Respondent shall nonetheless be responsible for ensuring that Respondent's contractors and subcontractors perform the work in satisfaction of the requirements of this Order.

H. "Interim Remedial Measure" shall have the meaning set forth in 6 NYCRR Part 375.

I. All references to "professional engineer" in this Order are to an individual registered as a professional engineer in accordance with Article 145 of the New York State Education Law.

J. All references to "days" in this Order are to calendar days unless otherwise specified.

K. The section headings set forth in this Order are included for convenience of reference only and shall be disregarded in the construction and interpretation of any of

FILENAME: IRM429 disk #4  
D R A F T - 12/2/93 (PM)

the provisions of this Order.

L. (1) The terms of this Order shall constitute the complete and entire Order between Respondent and the Department concerning the Site. No term, condition, understanding, or agreement purporting to modify or vary any term of this Order shall be binding unless made in writing and subscribed by the party to be bound. No informal advice, guidance, suggestion, or comment by the Department regarding any report, proposal, plan, specification, schedule, or any other submittal shall be construed as relieving Respondent of Respondent's obligation to obtain such formal approvals as may be required by this Order.

(2) If Respondent desires that any provision of this Order be changed, Respondent shall make timely written application, signed by the Respondent, to the Commissioner setting forth reasonable grounds for the relief sought. Copies of such written application shall be delivered or mailed to the Project Manager for the Site and the Field Unit Attorney assigned to the Site.

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

DATED: , New York  
, 1993

FILENAME: IRM429 disk #4  
D R A F T - 12/2/93 (PM)

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

By:

---

Ann Hill DeBarbieri  
Deputy Commissioner

FILENAME: IRM429 disk #4  
D R A F T - 12/2/93 (PM)

CONSENT BY RESPONDENT

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

DOWCRAFT CORPORATION

By: \_\_\_\_\_

\_\_\_\_\_  
(Type Name of Signer)

Title: \_\_\_\_\_

Date: \_\_\_\_\_

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

On this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_,  
before me personally came \_\_\_\_\_, to me  
known, who, being by me duly sworn, did depose and say that he  
resides in \_\_\_\_\_; that he is the  
\_\_\_\_\_ of the \_\_\_\_\_,  
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.

\_\_\_\_\_  
Notary Public

## New York State Department of Environmental Conservation

## MEMORANDUM

TO: M. Doster, G. Pietraszek - Region 9  
FROM: M. Desmond - DEE Buffalo *MD*  
SUBJECT: Dowcraft Corporation Consent Order

FOIL

Releasable

Non-Releaseable ☒*Ellison Bronze, 902018*

DATE: November 29, 1993

1. Please see Paragraphs 5 and 6.
2. Please note Paragraph II. If we proceed in this manner we will need to have an approved work plan to attach to the Order.

We can instead attach an approved scope of work to the Order, committing them to develop a work plan within a certain period, or we can put a brief description of the proposed IRM with a schedule right in the Order.

*OK* → It is my feeling that the clearest way to proceed would be with an approved work plan or scope of work so that Dowcraft understands what they are agreeing to.

Please let me know what you think by 12/3/93.

*Z*

MCD/mf  
A:D140dow

FILENAME: IRM429 disk #4  
D R A F T - 11/29/93

**DRAFT**

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

In the Matter of the  
Development and Implementation  
of an Interim Remedial Measure Program  
for an Inactive Hazardous Waste Disposal  
Site, Under Article 27, Title 13,  
and Article 71, Title 27 of the  
Environmental Conservation Law  
of the State of New York  
by

DOWCRAFT CORPORATION  
Respondent.

ORDER  
ON  
CONSENT  
INDEX # B9-0429-93-04

Site Code #907018  
-----

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 ECL 3-0301.

2. Dowcraft Corporation is the owner of property located at 126 West Main Street, Falconer, New York, Chautauqua County, known as the Ellison Bronze Co. Site (hereinafter referred to as "the Site").

3. The Site is an inactive hazardous waste disposal site, as that term is defined at ECL 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 907018.

FILENAME: IRM429 disk #4  
D R A F T - 11/29/93

The Department has classified the Site as a Classification "2" pursuant to ECL 27-1305.4.b.

4. A. Pursuant to ECL 27-1313.3.a, whenever the Commissioner of Environmental Conservation (the "Commissioner") "finds that hazardous wastes at an inactive hazardous waste disposal site constitute a significant threat to the environment, he may order the owner of such site and/or any person responsible for the disposal of hazardous wastes at such site (i) to develop an inactive hazardous waste disposal site remedial program, subject to the approval of the department, at such site, and (ii) to implement such program within reasonable time limits specified in the order."

B. Any person under order pursuant to ECL 27-1313.3.a has a duty imposed by ECL Article 27, Title 13 to carry out the remedial program committed to under order. ECL 71-2705 provides that any person who fails to perform any duty imposed by ECL Article 27, Title 13 shall be liable for civil, administrative and/or criminal sanctions.

C. The Department also has the power, inter alia, to provide for the prevention and abatement of all water, land, and air pollution. ECL 3-0301.1.i.

5. The Department and Respondent agree that the goals of this Order are for Respondent to (i) develop and implement an Interim Remedial Measure Program ("IRM Program") for the



FILENAME: IRM429 disk #4  
D R A F T - 11/29/93

Site which will stabilize and solidify the foundry waste material at the Site; ~~in accordance with the Work Plan~~.

*Keep Work Plan to be developed Prior to Order signing.*  
*1/22/97* ~~attached to this Order as Appendix "A";~~ and (ii) reimburse the State's administrative costs. "B"

6. Attached to this Order as Appendix "A" is a Treatability Study Report which has been reviewed and approved by the Department.

7.6- 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. Respondent consents to and agrees not to contest the authority or jurisdiction of the Department to issue or enforce this Order, and agrees not to contest the validity of this Order or its terms.

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

I. Site Information

Within 30 days after the effective date of this Order, Respondent shall submit to the Department:

A. A brief history and description of the Site, including the types, quantities, physical state, location, and dates of disposal of hazardous waste including methods of disposal and spillage of such wastes;

B. A concise summary of information held by

FILENAME: IRM429 disk #4  
D R A F T - 11/29/93

Respondent and its attorneys and consultants with respect to all persons responsible for such disposal of hazardous wastes, including but not limited to names, addresses, dates of disposal, and any proof linking each such person responsible with hazardous wastes identified pursuant to subparagraph I.A; and

C. A comprehensive list and copies of all existing relevant reports with titles, authors, and subject matter, as well as 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.

## II. Performance and Reporting of IRM Program

A. Within 30 days after the effective date of this Consent Order, Respondent shall commence to perform the IRM Program in accordance with App "A" and the Treatability Study Report. ~~Appendix A and the schedule set forth therein.~~

B. During the performance of the IRM Program, Respondent must have on-Site a full-time representative who is qualified to supervise the work done.

C. Within the time frame set forth in App "A", Respondent must prepare an IRM report ("IRM Report") that includes all data generated and all other information obtained during the IRM Program and identifies any additional data that

FILENAME: IRM429 disk #4  
D R A F T - 11/29/93

must be collected. The IRM Report shall be prepared by and have the signature and seal of a professional engineer who shall certify that the IRM Report prepared in accordance with this Order.

### III. Progress Reports

If the IRM field work requires more than two months for completion, Respondent shall submit to the parties identified in subparagraph XI.B in the numbers specified therein copies of written monthly progress reports that: (i) describe the actions which have been taken toward achieving compliance with this Order during the previous month; (ii) include all results of sampling and tests and all other data received or generated by Respondent or Respondent's contractors or agents in the previous month, including quality assurance/quality control information, whether conducted pursuant to this Order or conducted independently by Respondent; (iii) identify all work plans, reports, and other deliverables required by this Order that were completed and submitted during the previous month; (iv) describe all actions, including, but not limited to, data collection and implementation of work plans, that are scheduled for the next month and provide other information relating to the progress at the Site; (v) include information regarding percentage of completion, unresolved delays encountered or anticipated that

FILENAME: IRM429 disk #4  
D R A F T - 11/29/93

may affect the future schedule for implementation of the Respondent's obligations under the Order, and efforts made to mitigate those delays or anticipated delays; and (vi) include any modifications to any work plans that Respondent has proposed to the Department or that the Department has approved. Respondent shall submit these progress reports to the Department by the tenth day of every month following the effective date of this Order.

#### IV. Review of Submittals

A. (1) The Department shall review each of the submittals Respondent makes pursuant to this Order to determine whether it was prepared, and whether the work done to generate the data and other information in the submittal was done, in accordance with this Order and generally accepted technical and scientific principles. The Department shall notify Respondent in writing of its approval or disapproval of the submittal. All Department-approved submittals shall be incorporated into and become an enforceable part of this Order.

(2) (a) If the Department disapproves a submittal, it shall so notify Respondent in writing and shall specify the reasons for its disapproval. Within 30 days after receiving written notice that Respondent's submittal has been disapproved, Respondent shall make a revised submittal to the

FILENAME: IRM429 disk #4  
D R A F T - 11/29/93

Department that addresses and resolves all of the Department's stated reasons for disapproving the first submittal.

(b) After receipt of the revised submittal, the Department shall notify Respondent in writing of its approval or disapproval. If the Department disapproves the revised submittal, Respondent shall be in violation of this Order and the Department may take any action or pursue whatever rights it has pursuant to any provision of statutory or common law. If the Department approves the revised submittal, it shall be incorporated into and become an enforceable part of this Order.

B. The Department may require Respondent to modify and/or amplify and expand a submittal if the Department determines, as a result of reviewing data generated by an activity required under this Order or as a result of reviewing any other data or facts, that further work is necessary.

V. Penalties

A. (1) Respondent's failure to comply with any term of this Order constitutes a violation of this Order and the ECL.

(2) Respondent shall be liable for payment to the Department of the sums set forth below as stipulated penalties for each day or part thereof that the Respondent is in violation of the terms of this Order. All penalties begin

FILENAME: IRM429 disk #4  
D R A F T - 11/29/93

to accrue on the first day Respondent is in violation of the terms of this Order and continue to accrue through the final day of correction of any violation. Such sums shall be due and payable within 15 days after receipt of notification from the Department assessing the penalties. If such payment is not received within 15 days after Respondent receives such notification from the Department, interest shall be payable at the annual rate of nine per centum on the overdue amount from the day on which it was due through, and including, date of payment. Penalties shall be paid by certified check or money order, made payable to "New York State Department of Environmental Conservation" and shall be delivered personally or by certified mail, return receipt requested, to the Director, Division of Environmental Enforcement, N.Y.S.D.E.C., 50 Wolf Road, Albany, New York 12233-5500. Payment of the penalties shall not in any way alter Respondent's obligation to complete performance under the terms of this Order.

Stipulated penalties shall be due and payable under subparagraph V.A.(2) pursuant to the following schedule:

<u>Period of Non-Compliance</u>	<u>Penalty Per Day</u>
First through 15th day	\$ 5,000
16th through 30th day	\$ 10,000
31st day and thereafter	\$ 15,000

B. Respondent shall not suffer any penalty under

FILENAME: IRM429 disk #4  
D R A F T - 11/29/93

this Order or be subject to any proceeding or action if it cannot comply with any requirement hereof because of war, riot, or an unforeseeable disaster arising exclusively from natural causes which the exercise of ordinary human prudence could not have prevented. Respondent shall, within five days of when it obtains knowledge of any such condition, notify the Department in writing. Respondent shall include in such notice the measures taken and to be taken by Respondent to prevent or minimize any delays and shall request an appropriate extension or modification of this Order. Failure to give such notice within such five-day period constitutes a waiver of any claim that a delay is not subject to penalties. Respondent shall have the burden of proving that an event is a defense to compliance with this Order pursuant to Subparagraph V.B.

VI. Entry upon Site

Respondent hereby consents to the entry upon the Site or areas in the vicinity of the Site which may be under the control of the Respondent by any duly designated employee, consultant, contractor, or agent of the Department or any State agency for purposes of inspection, sampling, and testing and to ensure Respondent's compliance with this Order. Respondent shall provide the Department with suitable office space at the Site, including access to a telephone, and shall

FILENAME: IRM429 disk #4  
D R A F T - 11/29/93

permit the Department full access to all records relating to matters addressed by this Order and job meetings.

VII. Payment of State Costs

Within \_\_ days after receipt of an itemized invoice from the Department, Respondent shall pay to the Department a sum of money which shall represent reimbursement for the State's expenses including, but not limited to, direct labor, fringe benefits, indirect costs, travel, analytical costs, and contractor costs incurred by the State of New York for work performed at the Site to date, as well as for negotiating this Order, reviewing and revising submittals made pursuant to this Order, overseeing activities conducted pursuant to this Order, collecting and analyzing samples, and administrative costs associated with this Order. Such payment shall be made by certified check payable to the Department of Environmental Conservation. Payment shall be sent to the Bureau of Program Management, Division of Hazardous Waste Remediation, N.Y.S.D.E.C., 50 Wolf Road, Albany, NY 12233-7010.

Itemization of the costs shall include an accounting of personal services indicating the employee name, title, biweekly salary, and time spent (in hours) on the project during the billing period, as identified by an assigned time and activity code. This information shall be documented by quarterly reports of Direct Personal Service. Approved agency



fringe benefit and indirect cost rates shall be applied. Non-personal service costs shall be summarized by category of expense (e.g., supplies, materials, travel, contractual) and shall be documented by the New York State Office of the State Comptroller's quarterly expenditure reports.

VIII. Department Reservation of Rights

A. Nothing contained in this Order shall be construed as barring, diminishing, adjudicating, or in any way affecting any of the Department's rights including, but not limited to nor exemplified by, the following:

1. the Department's right to bring any action or proceeding against anyone other than Respondent and/or any of Respondent's directors, officers, employees, servants, agents, successors, and assigns;

2. the Department's right to enforce this Order against Respondent and/or any of Respondent's directors, officers, employees, servants, agents, successors, and assigns if Respondent fails to satisfy any of the terms of this Order;

3. the Department's right to bring any action or proceeding against Respondent and/or any of Respondent's 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

FILENAME: IRM429 disk #4  
D R A F T - 11/29/93

hazardous substances or constituents at or from the Site or areas in the vicinity of the Site;

4. the Department's right to bring any action or proceeding against Respondent and/or any of Respondent's directors, officers, employees, servants, agents, successors, and assigns with respect to hazardous substances that are present at the Site or that have migrated from the Site;

5. the Department's right to bring any criminal action against the Respondent and/or any of Respondent's directors, officers, employees, servants, agents, successors, and assigns; and

6. the Department's right to gather information and enter and inspect property and premises.

B. Nothing contained in this Order shall be construed to prohibit the Commissioner or his duly authorized representative from exercising any summary abatement powers.

IX. Indemnification

Respondent shall indemnify and hold the Department, the State of New York, and their representatives and employees harmless for all claims, suits, actions, damages, and costs of every name and description arising out of or resulting from the fulfillment or attempted fulfillment of this Order by Respondent and/or any of Respondent's directors, officers, employees, servants, agents, successors, and assigns.

FILENAME: IRM429 disk #4  
D R A F T - 11/29/93

X. Public Notice

A. Within 30 days after the effective date of this Order, Respondent shall file a Declaration of Covenants and Restrictions with the Clerk of Chautauqua County to give all parties who may acquire any interest in the Site notice of this Order.

B. If Respondent proposes to convey the whole or any part of Respondent's ownership interest in the Site, Respondent shall, not fewer than 60 days before the date of conveyance, notify the Department in writing of the identity of the transferee and of the nature and proposed date of the conveyance and shall notify the transferee in writing, with a copy to the Department, of the applicability of this Order.

XI. Communications

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

Communication from Respondent shall be sent to:

1. Director, Division of Hazardous Waste  
Remediation  
New York State Department of Environmental  
Conservation  
50 Wolf Road  
Albany, New York 12233-7010
2. Director, Bureau of Environmental Exposure  
Investigation  
New York State Department of Health  
2 University Place  
Albany, New York 12203

FILENAME: IRM429 disk #4  
D R A F T - 11/29/93

3. Regional Engineer, Region 9  
Division of Hazardous Waste Remediation  
New York State Department of Environmental  
Conservation  
270 Michigan Avenue  
Buffalo, NY 14203
4. Division of Environmental Enforcement  
New York State Department of Environmental  
Conservation  
270 Michigan Avenue  
Buffalo, NY 14203

B. Copies of work plans and reports shall be  
submitted as follows:

1. One copy to Division of Hazardous Waste  
Remediation.
2. Two copies to the Director, Bureau of  
Environmental Exposure Investigation.
3. Four copies (one unbound) to Region 9.
4. One copy to Division of Environmental  
Enforcement.

C. Within 30 days of the Department's approval of  
any report submitted pursuant to this Order, Respondent shall  
submit to the project manager for the site a computer readable  
magnetic media copy of the approved report in American  
Standard Code for Information Interchange (ASCII) format.

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

---

---

FILENAME: IRM429 disk #4  
D R A F T - 11/29/93

E. The Department and Respondent reserve the right to designate additional or different addressees for communication or written notice to the other.

XII. Miscellaneous

A. All activities and submittals required by this Order shall address both on-Site and off-Site contamination resulting from the disposal of hazardous waste at the Site.

B. Respondent shall retain professional consultants, contractors, laboratories, quality assurance/quality control personnel, and data validators acceptable to the Department to perform the technical, engineering, and analytical obligations required by this Order. The experience, capabilities, and qualifications of the firms or individuals selected by Respondent shall be submitted to the Department within \_\_ days after the effective date of this Order. The Department's approval of these firms or individuals shall be obtained before the start of any activities for which the Respondent and such firms or individuals will be responsible. The responsibility for the performance of the professionals retained by Respondent shall rest solely with Respondent.

C. The Department shall have the right to obtain split samples, duplicate samples, or both, of all substances and materials sampled by Respondent, and the Department also

FILENAME: IRM429 disk #4  
D R A F T - 11/29/93

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

D. Respondent shall notify the Department at least 10 working days in advance of any field activities to be conducted pursuant to this Order.

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

F. Respondent and Respondent's officers, directors, agents, servants, employees, successors, and assigns shall be bound by this Order. Any change in ownership or corporate status of Respondent including, but not limited to, any transfer of assets or real or personal property shall in no way alter Respondent's responsibilities under this Order. Respondent's officers, directors, employees, servants, and agents shall be obliged to comply with the relevant provisions of this Order in the performance of their designated duties on behalf of Respondent.

G. Respondent shall provide a copy of this Order to each contractor hired to perform work required by this

FILENAME: IRM429 disk #4  
D R A F T - 11/29/93

Order and to each person representing Respondent with respect to the Site and shall condition all contracts entered into in order to carry out the obligations identified in this Order upon performance in conformity with the terms of this Order. Respondent or Respondent's contractors shall provide written notice of this Order to all subcontractors hired to perform any portion of the work required by this Order. Respondent shall nonetheless be responsible for ensuring that Respondent's contractors and subcontractors perform the work in satisfaction of the requirements of this Order.

H. "Interim Remedial Measure" shall have the meaning set forth in 6 NYCRR Part 375.

I. All references to "professional engineer" in this Order are to an individual registered as a professional engineer in accordance with Article 145 of the New York State Education Law.

J. All references to "days" in this Order are to calendar days unless otherwise specified.

K. The section headings set forth in this Order are included for convenience of reference only and shall be disregarded in the construction and interpretation of any of the provisions of this Order.

L. (1) The terms of this Order shall constitute the complete and entire Order between Respondent and the

FILENAME: IRM429 disk #4  
D R A F T - 11/29/93

Department concerning the Site. No term, condition, understanding, or agreement purporting to modify or vary any term of this Order shall be binding unless made in writing and subscribed by the party to be bound. No informal advice, guidance, suggestion, or comment by the Department regarding any report, proposal, plan, specification, schedule, or any other submittal shall be construed as relieving Respondent of Respondent's obligation to obtain such formal approvals as may be required by this Order.

(2) If Respondent desires that any provision of this Order be changed, Respondent shall make timely written application, signed by the Respondent, to the Commissioner setting forth reasonable grounds for the relief sought. Copies of such written application shall be delivered or mailed to the Project Manager for the Site and the Field Unit Attorney assigned to the Site.

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

DATED: , New York  
, 1993

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

By:



FILENAME: IRM429 disk #4  
D R A F T - 11/29/93

---

Ann Hill DeBarbieri  
Deputy Commissioner

FILENAME: IRM429 disk #4  
D R A F T - 11/29/93

CONSENT BY RESPONDENT

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

DOWCRAFT CORPORATION

By: \_\_\_\_\_

\_\_\_\_\_  
(Type Name of Signer)

Title: \_\_\_\_\_

Date: \_\_\_\_\_

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

On this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_,  
before me personally came \_\_\_\_\_, to me  
known, who, being by me duly sworn, did depose and say that he  
resides in \_\_\_\_\_; that he is the  
\_\_\_\_\_ of the \_\_\_\_\_,  
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.

\_\_\_\_\_  
Notary Public

270 Michigan Avenue, Buffalo, New York 14203-2999

July 1, 1993

FOIL

Releasable

Non-Releasable ☒

Dowcraft Corporation  
65 South Dow Street  
Falconer, New York 14733

Attention: Harry B. Nicholson  
President & CEO

Re: ~~Ellison~~ Ellison Bronze Co., New York State Inactive Hazardous Waste  
Disposal Site No. 907018

Dear Mr. Nicholson:

Enclosed find a draft Consent Order for the Interim Remedial  
Measure to be undertaken at the Ellison Bronze Co. Site.  
Enclosed also find a formal notice letter for the site.

Please review the Order and call me at 716-851-7050 with any  
comments or questions.

Very truly yours,



Maura C. Desmond  
Senior Attorney  
Division of Environmental  
Enforcement

MCD/mf  
A:D148dow.4

Enclosure

cc: G. Pietraszek - Region 9

Alice J. Kryzan, Esq.  
Whiteman, Osterman & Hanna  
1700 Liberty Building  
Buffalo, NY 14202

G. Anders Carlson - NYSDOH Albany

270 Michigan Avenue, Buffalo, New York 14203-2999

July 1, 1993

**NOTICE LETTER**

**URGENT LEGAL MATTER - PROMPT REPLY NECESSARY**

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

Dowcraft Corporation  
65 South Dow Street  
Falconer, NY 14733

Re: Ellison Bronze Company, 125 West Main Street, Falconer,  
Chautauqua County, New York State Inactive Hazardous Waste  
Disposal Site No. 907018

Dear Sir:

New York State, through the efforts of the Department of Environmental Conservation ("DEC"), has documented a release and/or threatened release of "hazardous substances" as defined by the Comprehensive Environmental Response, Compensation and Liability Act, 42 USC § 9601 et seq. ("CERCLA") and/or the presence of "hazardous wastes" as defined in Environmental Conservation Law (ECL) § 27-1301(1) at property known as the Ellison Bronze Company, New York State Inactive Hazardous Waste Site, 125 West Main Street, Falconer, Chautauqua County. This site is listed in the New York State Registry of Inactive Hazardous Waste Sites as No. 907018. It is a Class "2" site. In response to these releases and the threat of future such releases, DEC has spent public funds and anticipates spending additional public funds. These actions have been and will be taken by DEC pursuant to ECL Article 27, Title 13 and State Finance Law § 97-b.

Under ECL Article 27, Title 13 and CERCLA, responsible parties may be held liable for monies expended by the State in taking response actions at and around sites where hazardous substances have been released, including investigative, planning, removal, and remedial actions. You have been determined to be a responsible party as the owner of the Site.


The purpose of this Notice Letter is to inform you of your potential liability as a responsible party, and to determine whether you are willing to conduct or finance a remedial program for this site. Any agreement by you to finance or undertake such activities must be memorialized in an administrative consent order.

Mr. C's Dry Cleaners  
Page 2

If you do not conduct or finance the remedial program, the Department, at its sole discretion, may perform the necessary work at the site using the Hazardous Waste Remedial Fund. If the Fund is used to investigate or to remediate the site, the Department is required to seek recovery from you as a responsible party for any expenses it incurs in conducting such activities.

If you have any questions or wish to discuss any matters addressed in this letter please contact the undersigned at 716-851-7050.

Very truly yours,



Maura C. Desmond  
Senior Attorney  
Division of Environmental  
Enforcement

MCD/mf  
C:\A201ells

cc: G. Pietraszek - Region 9

Alice J. Kryzan, Esq.  
Whiteman, Osterman & Hanna  
1700 Liberty Building  
Buffalo, NY 14202

G. Anders Carlson - NYSDOH Albany

FILENAME: IRM429 disk #4  
D R A F T - 7/1/93

*JP*  
**DRAFT**

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

In the Matter of the  
Development and Implementation  
of an Interim Remedial Measure Program  
for an Inactive Hazardous Waste Disposal  
Site, Under Article 27, Title 13,  
and Article 71, Title 27 of the  
Environmental Conservation Law  
of the State of New York  
by

DOWCRAFT CORPORATION  
Respondent.

ORDER  
ON  
CONSENT  
INDEX # B9-0429-93-04  
"A" IRM WID

Site Code #907018  
-----

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 ECL 3-0301.

2. Dowcraft Corporation is the owner of property located at 126 West Main Street, Falconer, New York, Chautauqua County, known as the Ellison Bronze Co. Site (hereinafter referred to as "the Site").

3. The Site is an inactive hazardous waste disposal site, as that term is defined at ECL 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 907018.

FILENAME: IRM429 disk #4  
D R A F T - 7/1/93

The Department has classified the Site as a Classification "2" pursuant to ECL 27-1305.4.b.

4. A. Pursuant to ECL 27-1313.3.a, whenever the Commissioner of Environmental Conservation (the "Commissioner") "finds that hazardous wastes at an inactive hazardous waste disposal site constitute a significant threat to the environment, he may order the owner of such site and/or any person responsible for the disposal of hazardous wastes at such site (i) to develop an inactive hazardous waste disposal site remedial program, subject to the approval of the department, at such site, and (ii) to implement such program within reasonable time limits specified in the order."

B. Any person under order pursuant to ECL 27-1313.3.a has a duty imposed by ECL Article 27, Title 13 to carry out the remedial program committed to under order. ECL 71-2705 provides that any person who fails to perform any duty imposed by ECL Article 27, Title 13 shall be liable for civil, administrative and/or criminal sanctions.

C. The Department also has the power, inter alia, to provide for the prevention and abatement of all water, land, and air pollution. ECL 3-0301.1.i.

5. The Department and Respondent agree that the goals of this Order are for Respondent to (i) develop and implement an Interim Remedial Measure Program ("IRM Program") for the

FILENAME: IRM429 disk #4  
D R A F T - 7/1/93

Site in accordance with the Work Plan attached to this Order as Appendix "A"; and (ii) reimburse the State's administrative costs.

6. 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. Respondent consents to and agrees not to contest the authority or jurisdiction of the Department to issue or enforce this Order, and agrees not to contest the validity of this Order or its terms.

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

I. Site Information

Within 30 days after the effective date of this Order, Respondent shall submit to the Department:

A. A brief history and description of the Site, including the types, quantities, physical state, location, and dates of disposal of hazardous waste including methods of disposal and spillage of such wastes;

B. A concise summary of information held by Respondent and its attorneys and consultants with respect to all persons responsible for such disposal of hazardous wastes, including but not limited to names, addresses, dates of disposal, and any proof linking each such person responsible



FILENAME: IRM429 disk #4

D R A F T - 7/1/93

with hazardous wastes identified pursuant to subparagraph I.A;  
and

C. A comprehensive list and copies of all existing relevant reports with titles, authors, and subject matter, as well as 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.

II. Performance and Reporting of IRM Program

A. Within 30 days after the effective date of this Consent Order, Respondent shall commence to perform the IRM Program in accordance with Appendix A and the schedule set forth therein.

B. During the performance of the IRM Program, Respondent must have on-Site a full-time representative who is qualified to supervise the work done.

C. Within the time frame set forth in Appendix A, Respondent must prepare an IRM report ("IRM Report") that includes all data generated and all other information obtained during the IRM Program and identifies any additional data that must be collected. The IRM Report shall be prepared by and have the signature and seal of a professional engineer who shall certify that the IRM Report prepared in accordance with this Order.

FILENAME: IRM429 disk #4  
D R A F T - 7/1/93

### III. Progress Reports

If the IRM field work requires more than two months for completion, Respondent shall submit to the parties identified in subparagraph XI.B in the numbers specified therein copies of written monthly progress reports that: (i) describe the actions which have been taken toward achieving compliance with this Order during the previous month; (ii) include all results of sampling and tests and all other data received or generated by Respondent or Respondent's contractors or agents in the previous month, including quality assurance/quality control information, whether conducted pursuant to this Order or conducted independently by Respondent; (iii) identify all work plans, reports, and other deliverables required by this Order that were completed and submitted during the previous month; (iv) describe all actions, including, but not limited to, data collection and implementation of work plans, that are scheduled for the next month and provide other information relating to the progress at the Site; (v) include information regarding percentage of completion, unresolved delays encountered or anticipated that may affect the future schedule for implementation of the Respondent's obligations under the Order, and efforts made to mitigate those delays or anticipated delays; and (vi) include any modifications to any work plans that Respondent has

proposed to the Department or that the Department has approved. Respondent shall submit these progress reports to the Department by the tenth day of every month following the effective date of this Order.

IV. Review of Submittals

A. (1) The Department shall review each of the submittals Respondent makes pursuant to this Order to determine whether it was prepared, and whether the work done to generate the data and other information in the submittal was done, in accordance with this Order and generally accepted technical and scientific principles. The Department shall notify Respondent in writing of its approval or disapproval of the submittal. All Department-approved submittals shall be incorporated into and become an enforceable part of this Order.

(2) (a) If the Department disapproves a submittal, it shall so notify Respondent in writing and shall specify the reasons for its disapproval. Within \_\_ days after receiving written notice that Respondent's submittal has been disapproved, Respondent shall make a revised submittal to the Department that addresses and resolves all of the Department's stated reasons for disapproving the first submittal.

(b) After receipt of the revised submittal, the Department shall notify Respondent in writing

of its approval or disapproval. If the Department disapproves the revised submittal, Respondent shall be in violation of this Order and the Department may take any action or pursue whatever rights it has pursuant to any provision of statutory or common law. If the Department approves the revised submittal, it shall be incorporated into and become an enforceable part of this Order.

B. The Department may require Respondent to modify and/or amplify and expand a submittal if the Department determines, as a result of reviewing data generated by an activity required under this Order or as a result of reviewing any other data or facts, that further work is necessary.

V. Penalties

A. (1) Respondent's failure to comply with any term of this Order constitutes a violation of this Order and the ECL.

(2) Respondent shall be liable for payment to the Department of the sums set forth below as stipulated penalties for each day or part thereof that the Respondent is in violation of the terms of this Order. All penalties begin to accrue on the first day Respondent is in violation of the terms of this Order and continue to accrue through the final day of correction of any violation. Such sums shall be due and payable within 15 days after receipt of notification from

FILENAME: IRM429 disk #4  
D R A F T - 7/1/93

the Department assessing the penalties. If such payment is not received within 15 days after Respondent receives such notification from the Department, interest shall be payable at the annual rate of nine per centum on the overdue amount from the day on which it was due through, and including, date of payment. Penalties shall be paid by certified check or money order, made payable to "New York State Department of Environmental Conservation" and shall be delivered personally or by certified mail, return receipt requested, to the Director, Division of Environmental Enforcement, N.Y.S.D.E.C., 50 Wolf Road, Albany, New York 12233-5500. Payment of the penalties shall not in any way alter Respondent's obligation to complete performance under the terms of this Order. Stipulated penalties shall be due and payable under subparagraph V.A.(2) pursuant to the following schedule:

<u>Period of Non-Compliance</u>	<u>Penalty Per Day</u>
First through 15th day	\$ 5,000
16th through 30th day	\$ 10,000
31st day and thereafter	\$ 15,000

B. Respondent shall not suffer any penalty under this Order or be subject to any proceeding or action if it cannot comply with any requirement hereof because of war, riot, or an unforeseeable disaster arising exclusively from natural causes which the exercise of ordinary human prudence

FILENAME: IRM429 disk #4

D R A F T - 7/1/93

could not have prevented. Respondent shall, within five days of when it obtains knowledge of any such condition, notify the Department in writing. Respondent shall include in such notice the measures taken and to be taken by Respondent to prevent or minimize any delays and shall request an appropriate extension or modification of this Order. Failure to give such notice within such five-day period constitutes a waiver of any claim that a delay is not subject to penalties. Respondent shall have the burden of proving that an event is a defense to compliance with this Order pursuant to Subparagraph V.B.

VI. Entry upon Site

Respondent hereby consents to the entry upon the Site or areas in the vicinity of the Site which may be under the control of the Respondent by any duly designated employee, consultant, contractor, or agent of the Department or any State agency for purposes of inspection, sampling, and testing and to ensure Respondent's compliance with this Order. Respondent shall provide the Department with suitable office space at the Site, including access to a telephone, and shall permit the Department full access to all records relating to matters addressed by this Order and job meetings.

VII. Payment of State Costs

Within \_\_ days after receipt of an itemized invoice

FILENAME: IRM429 disk #4

D R A F T - 7/1/93

from the Department, Respondent shall pay to the Department a sum of money which shall represent reimbursement for the State's expenses including, but not limited to, direct labor, fringe benefits, indirect costs, travel, analytical costs, and contractor costs incurred by the State of New York for work performed at the Site to date, as well as for negotiating this Order, reviewing and revising submittals made pursuant to this Order, overseeing activities conducted pursuant to this Order, collecting and analyzing samples, and administrative costs associated with this Order. Such payment shall be made by certified check payable to the Department of Environmental Conservation. Payment shall be sent to the Bureau of Program Management, Division of Hazardous Waste Remediation, N.Y.S.D.E.C., 50 Wolf Road, Albany, NY 12233-7010.

Itemization of the costs shall include an accounting of personal services indicating the employee name, title, biweekly salary, and time spent (in hours) on the project during the billing period, as identified by an assigned time and activity code. This information shall be documented by quarterly reports of Direct Personal Service. Approved agency fringe benefit and indirect cost rates shall be applied. Non-personal service costs shall be summarized by category of expense (e.g., supplies, materials, travel, contractual) and shall be documented by the New York State Office of the State

FILENAME: IRM429 disk #4  
D R A F T - 7/1/93

Comptroller's quarterly expenditure reports.

VIII. Department Reservation of Rights

A. Nothing contained in this Order shall be construed as barring, diminishing, adjudicating, or in any way affecting any of the Department's rights including, but not limited to nor exemplified by, the following:

1. the Department's right to bring any action or proceeding against anyone other than Respondent and/or any of Respondent's directors, officers, employees, servants, agents, successors, and assigns;

2. the Department's right to enforce this Order against Respondent and/or any of Respondent's directors, officers, employees, servants, agents, successors, and assigns if Respondent fails to satisfy any of the terms of this Order;

3. the Department's right to bring any action or proceeding against Respondent and/or any of Respondent's 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;

4. the Department's right to bring any action or proceeding against Respondent and/or any of Respondent's



FILENAME: IRM429 disk #4  
D R A F T - 7/1/93

directors, officers, employees, servants, agents, successors, and assigns with respect to hazardous substances that are present at the Site or that have migrated from the Site;

5. the Department's right to bring any criminal action against the Respondent and/or any of Respondent's directors, officers, employees, servants, agents, successors, and assigns; and

6. the Department's right to gather information and enter and inspect property and premises.

B. Nothing contained in this Order shall be construed to prohibit the Commissioner or his duly authorized representative from exercising any summary abatement powers.

IX. Indemnification

Respondent shall indemnify and hold the Department, the State of New York, and their representatives and employees harmless for all claims, suits, actions, damages, and costs of every name and description arising out of or resulting from the fulfillment or attempted fulfillment of this Order by Respondent and/or any of Respondent's directors, officers, employees, servants, agents, successors, and assigns.

X. Public Notice

A. Within 30 days after the effective date of this Order, Respondent shall file a Declaration of Covenants and Restrictions with the Clerk of Chautauqua County to give all

FILENAME: IRM429 disk #4  
D R A F T - 7/1/93

parties who may acquire any interest in the Site notice of this Order.

B. If Respondent proposes to convey the whole or any part of Respondent's ownership interest in the Site, Respondent shall, not fewer than 60 days before the date of conveyance, notify the Department in writing of the identity of the transferee and of the nature and proposed date of the conveyance and shall notify the transferee in writing, with a copy to the Department, of the applicability of this Order.

XI. Communications

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

Communication from Respondent shall be sent to:

1. Director, Division of Hazardous Waste  
Remediation  
New York State Department of Environmental  
Conservation  
50 Wolf Road  
Albany, New York 12233-7010
2. Director, Bureau of Environmental Exposure  
Investigation  
New York State Department of Health  
2 University Place  
Albany, New York 12203
3. Regional Engineer, Region 9  
Division of Hazardous Waste Remediation  
New York State Department of Environmental  
Conservation  
270 Michigan Avenue  
Buffalo, NY 14203

FILENAME: IRM429 disk #4  
D R A F T - 7/1/93

4. Division of Environmental Enforcement  
New York State Department of Environmental  
Conservation  
270 Michigan Avenue  
Buffalo, NY 14203

B. Copies of work plans and reports shall be  
submitted as follows:

- 3 copies* {
1. One copy to Division of Hazardous Waste  
Remediation.
  2. Two copies to the Director, Bureau of  
Environmental Exposure Investigation.
  3. Four copies (one unbound) to Region 9.
  4. One copy to Division of Environmental  
Enforcement.

C. Within 30 days of the Department's approval of  
any report submitted pursuant to this Order, Respondent shall  
submit to the project manager for the site a computer readable  
magnetic media copy of the approved report in American  
Standard Code for Information Interchange (ASCII) format.

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

\_\_\_\_\_

\_\_\_\_\_

E. The Department and Respondent reserve the right  
to designate additional or different addressees for  
communication or written notice to the other.

XII. Miscellaneous

A. All activities and submittals required by this Order shall address both on-Site and off-Site contamination resulting from the disposal of hazardous waste at the Site.

B. Respondent shall retain professional consultants, contractors, laboratories, quality assurance/quality control personnel, and data validators acceptable to the Department to perform the technical, engineering, and analytical obligations required by this Order. The experience, capabilities, and qualifications of the firms or individuals selected by Respondent shall be submitted to the Department within \_\_ days after the effective date of this Order. The Department's approval of these firms or individuals shall be obtained before the start of any activities for which the Respondent and such firms or individuals will be responsible. The responsibility for the performance of the professionals retained by Respondent shall rest solely with Respondent.

C. The Department shall have the right to obtain split samples, duplicate samples, or both, of all substances and materials sampled by Respondent, and the Department also shall have the right to take its own samples. Respondent shall make available to the Department the results of all sampling and/or tests or other data generated by Respondent

FILENAME: IRM429 disk #4

D R A F T - 7/1/93

with respect to implementation of this Order and shall submit these results in the progress reports required by this Order.

D. Respondent shall notify the Department at least 10 working days in advance of any field activities to be conducted pursuant to this Order.

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

F. Respondent and Respondent's officers, directors, agents, servants, employees, successors, and assigns shall be bound by this Order. Any change in ownership or corporate status of Respondent including, but not limited to, any transfer of assets or real or personal property shall in no way alter Respondent's responsibilities under this Order. Respondent's officers, directors, employees, servants, and agents shall be obliged to comply with the relevant provisions of this Order in the performance of their designated duties on behalf of Respondent. ;

G. Respondent shall provide a copy of this Order to each contractor hired to perform work required by this Order and to each person representing Respondent with respect to the Site and shall condition all contracts entered into in order to carry out the obligations identified in this Order

upon performance in conformity with the terms of this Order. Respondent or Respondent's contractors shall provide written notice of this Order to all subcontractors hired to perform any portion of the work required by this Order. Respondent shall nonetheless be responsible for ensuring that Respondent's contractors and subcontractors perform the work in satisfaction of the requirements of this Order.

H. "Interim Remedial Measure" shall have the meaning set forth in 6 NYCRR Part 375.

I. All references to "professional engineer" in this Order are to an individual registered as a professional engineer in accordance with Article 145 of the New York State Education Law.

J. All references to "days" in this Order are to calendar days unless otherwise specified.

K. The section headings set forth in this Order are included for convenience of reference only and shall be disregarded in the construction and interpretation of any of the provisions of this Order.

L. (1) The terms of this Order shall constitute the complete and entire Order between Respondent and the Department concerning the Site. No term, condition, understanding, or agreement purporting to modify or vary any term of this Order shall be binding unless made in writing and

FILENAME: IRM429 disk #4  
D R A F T - 7/1/93

subscribed by the party to be bound. No informal advice, guidance, suggestion, or comment by the Department regarding any report, proposal, plan, specification, schedule, or any other submittal shall be construed as relieving Respondent of Respondent's obligation to obtain such formal approvals as may be required by this Order.

(2) If Respondent desires that any provision of this Order be changed, Respondent shall make timely written application, signed by the Respondent, to the Commissioner setting forth reasonable grounds for the relief sought. Copies of such written application shall be delivered or mailed to the Project Manager for the Site and the Field Unit Attorney assigned to the Site.

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

DATED: , New York  
, 1993

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

By:

---

Ann Hill DeBarbieri  
Deputy Commissioner

FILENAME: IRM429 disk #4  
D R A F T - 7/1/93

CONSENT BY RESPONDENT

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

DOWCRAFT CORPORATION

By: \_\_\_\_\_

\_\_\_\_\_  
(Type Name of Signer)

Title: \_\_\_\_\_

Date: \_\_\_\_\_

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

On this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_,  
before me personally came \_\_\_\_\_, to me  
known, who, being by me duly sworn, did depose and say that he  
resides in \_\_\_\_\_; that he is the  
\_\_\_\_\_ of the \_\_\_\_\_,  
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.

\_\_\_\_\_  
Notary Public





## New York State Department of Environmental Conservation

## MEMORANDUM

TO: Gerald Pietraszek  
FROM: Maura Desmond *MD*  
SUBJECT: Ellison Bronze Co. Site No. 907018  
DATE: April 29, 1993

Attached find draft IRM Consent Order and forwarding letter. Please look them over and give me any comments or suggestions before I sent it out.

MCD/mf  
A:D147dow

Attachment

RECEIVED  
APR 29 1993  
N.Y.S. DEPT. OF  
ENVIRONMENTAL CONSERVATION  
REGION 9

2

**D R A F T**

270 Michigan Avenue, Buffalo, New York 14203-2999

**DRAFT**

April 29, 1993

Dowcraft Corporation  
65 South Dow Street  
Falconer, New York 14733

Attention: Harry B. Nicholson  
President & CEO

Re: Ellison Bronze Co., New York State Inactive Hazardous Waste  
Disposal Site No. 907018

Dear Mr. Nicholson:

Enclosed find a draft Consent Order for the Interim Remedial  
Measure to be undertaken at the Ellison Bronze Co. Site.

Please review the Order and call me at 716-851-7050 with any  
comments or questions.

Very truly yours,

Maura C. Desmond  
Senior Attorney  
Division of Environmental  
Enforcement

MCD/mf  
A:D148dow

Enclosure

**RECEIVED**

**APR 29 1993**

N.Y.S. DEPT. OF  
ENVIRONMENTAL CONSERVATION  
REGION 9

**REMEDIAL INVESTIGATION SUMMARY REPORT  
AND INTERIM REMEDIAL MEASURE  
(IRM) WORK PLAN FOR THE  
ELLISON BRONZE COMPANY SITE**

**Prepared For:**

**Dowcraft Corporation  
65 South Dow Street  
Falconer, New York 14733**

**Prepared By:**

**Huntingdon - Empire Soils Investigations, Inc.  
S-5167 South Park Avenue  
Hamburg, New York 14075  
(716)649-8110**

**BTA-90-179D**

**June 26, 1992**

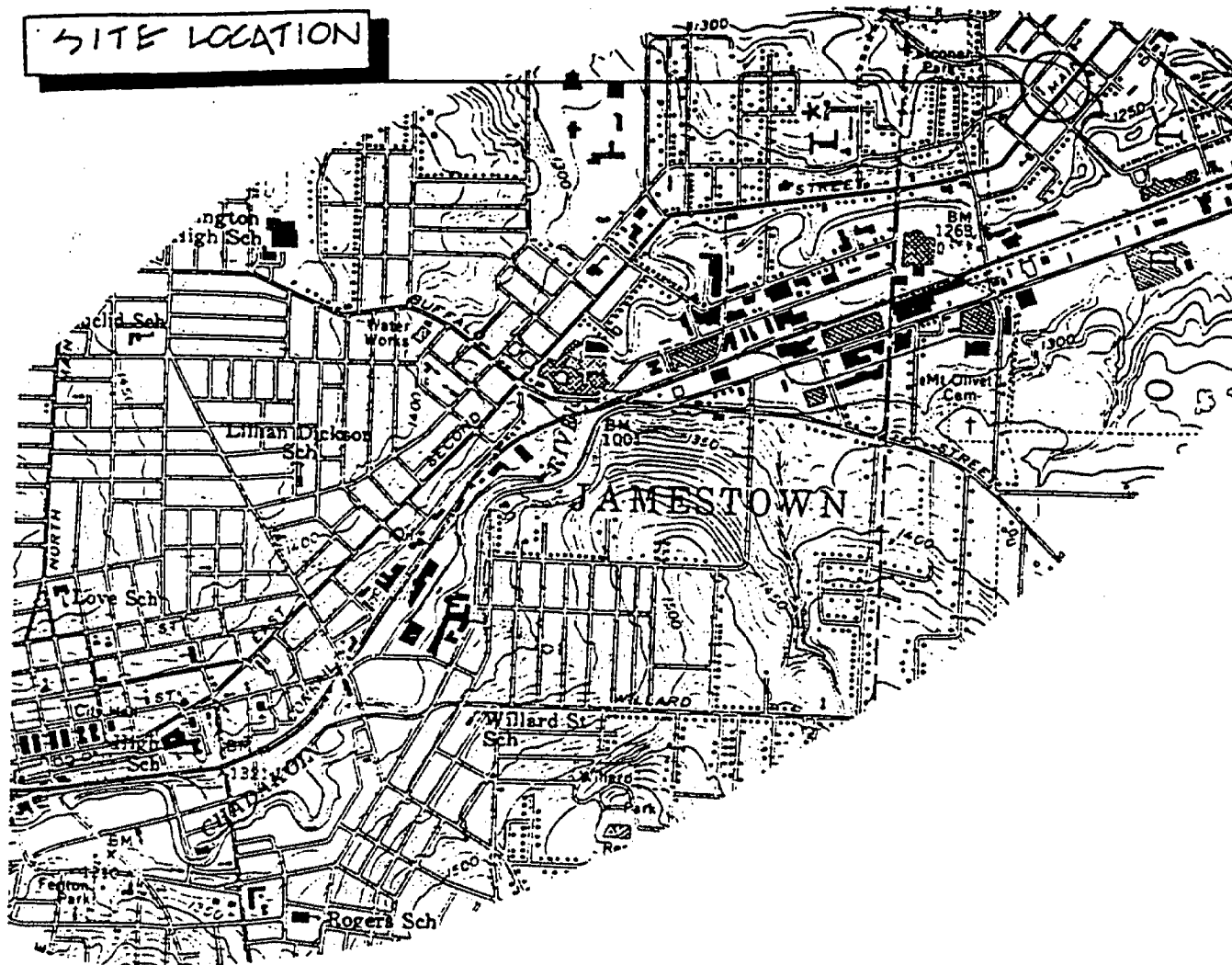
**6-14-93**

Post-It™ brand fax transmittal memo 7671

# of pages ▶ 14

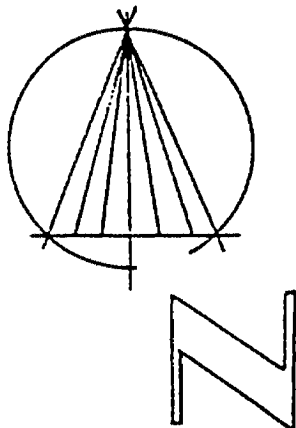
To <b>Rich KOEPPICUS</b>	From <b>GERRY PIETRASZAK</b>
Co.	Co. <b>DEC-BFO</b>
Dept. <b>F+W</b>	Phone # <b>716 851 7220</b>
Fax # <b>518 458 8424</b> <b>485</b>	Fax #


# SITE LOCATION

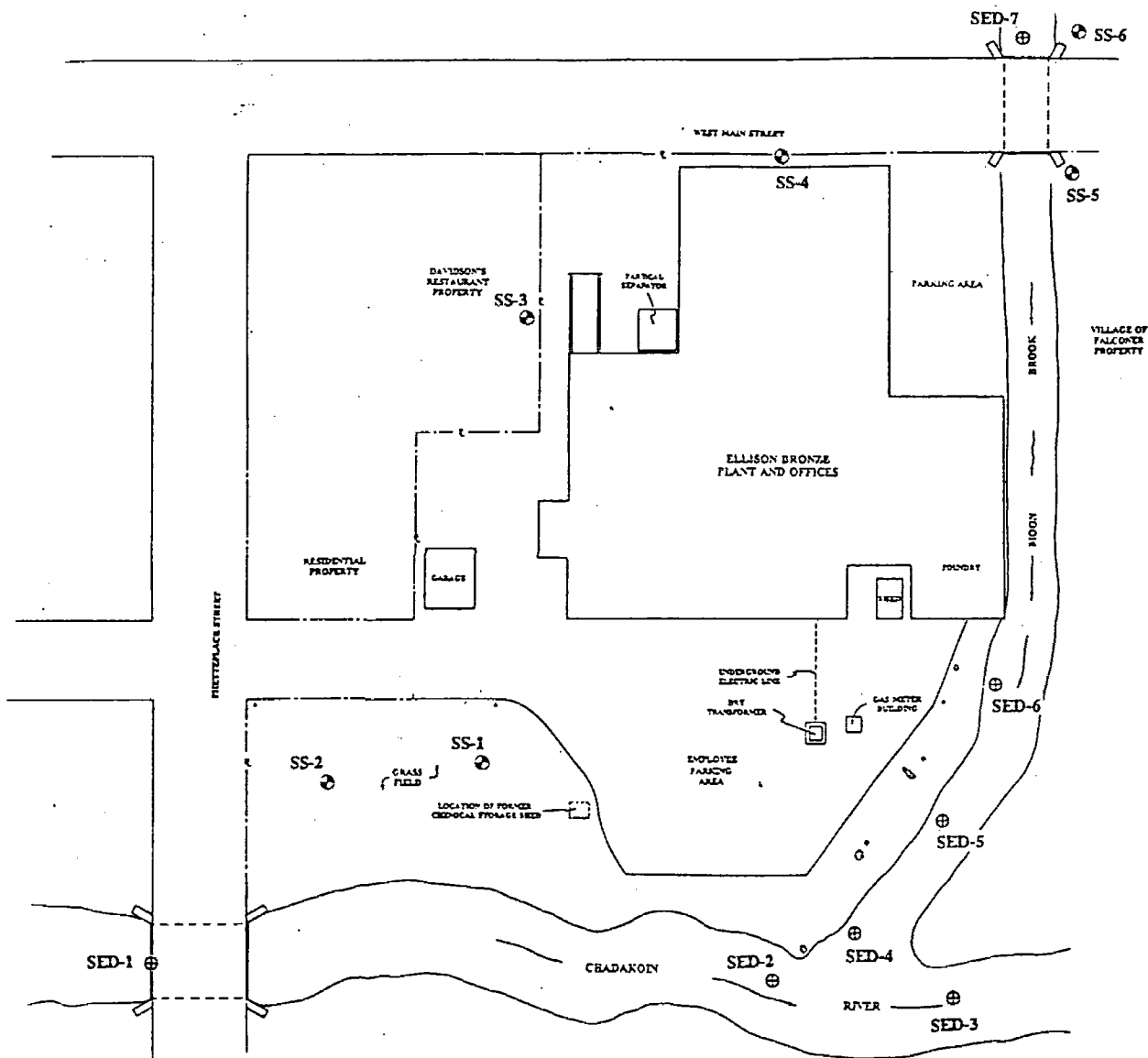


## Notes

- THIS DRAWING IS FOR ILLUSTRATIVE PURPOSES ONLY.
- THIS PLAN WAS ADAPTED FROM A USGS JAMESTOWN NEW YORK MAP DATED 1965.



	SITE LOCATION PLAN	
ELLISON BRONZE COMPANY 125 WEST MAIN STREET FALCONER, NEW YORK		
DRAWN BY: DWL	SCALE: 1" = 2000'	PROJECT: BTA-90-179D
CHECKED BY: KJS	DATE: JUNE 1992	DRAWING NO: 1



#### NOTES:

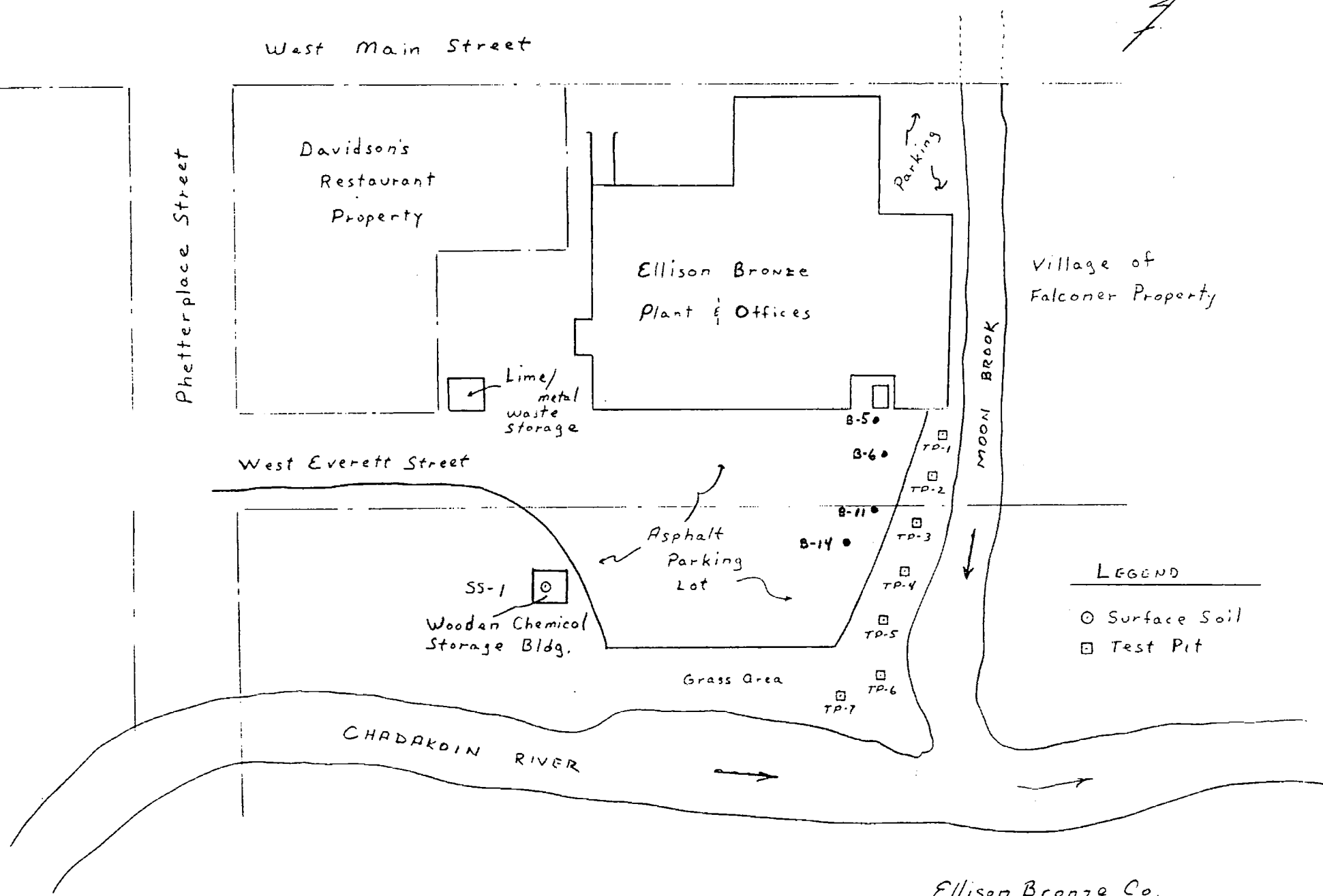
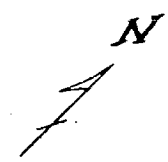
THIS DRAWING IS FOR ILLUSTRATIVE PURPOSES ONLY.

ALL SAMPLING LOCATIONS ARE APPROXIMATE.

#### LEGEND:

- ⊕ SURFACE SOIL SAMPLE LOCATION (S - - - - -)
- ⊗ SEDIMENT SAMPLE LOCATION

<b>EMPIRE</b> SOIL INVESTIGATIONS, INC. <hr/>	SURFACE SOIL AND SEDIMENT SAMPLING PLAN	
ELLISON BRONZE COMPANY 125 WEST MAIN STREET FALCONER, NEW YORK		
DRAWN BY: DAW	SCALE: 1" = 60'	PROJECT: BTA-90-179D
CHECKED BY: EJS	DATE: JUNE 1992	DRAWING NO: 5



- LEGEND
- Surface Soil
  - Test Pit

Ellison Bronze Co.  
Falconer N.Y.  
Not To Scale  
GFD 12/91

## REMEDIAL INVESTIGATION SUMMARY REPORT AND INTERIM REMEDIAL MEASURE (IRM) WORK PLAN FOR THE ELLISON BRONZE COMPANY SITE

### 1.0 INTRODUCTION

#### 1.1 Background

The Ellison Bronze Company Site is located at 125 West Main Street, in Falconer, Chautauqua County, New York. A Site Location Plan is presented as Drawing No. 1 in Appendix A. The site has been developed and used for industrial purposes since the 1880's. The Ellison Bronze Company has been in business at the site since 1912.

Initially, the Ellison Bronze Company operated as a foundry, however, in 1932 the company changed their focus to commercial door manufacturing, which continues today. As part of the door manufacturing operations at the Ellison Bronze Company facility, a small foundry has been used continually since 1932.

The Ellison Bronze Site has been characterized by the New York State Department of Environmental Conservation (NYSDEC) as posing a potential threat to public health and the environment. The NYSDEC has made this determination based on contaminated material from previous foundry operations that have been found on the site. As a result, the NYSDEC has required that a focused Remedial Investigation (RI) be completed to determine the nature and extent of suspect contamination.

Empire Soils Investigations, Inc. (ESI) completed the remedial investigation field work during February and March 1992. The results of the Remedial Investigation will be used to identify potential remedial alternatives associated with environmental contamination found on-site. Selection of the most appropriate remedial alternative will be based on information gathered during the Remedial Investigation phase of the study. Subsequent remediation and post remediation monitoring will be completed as specified in the Interim Remedial Measure (IRM) scope of work (Section 6) and the Final Engineering Report (Section 9), respectively.



## 2.0 SITE CONDITIONS

### 2.1 Physical Setting

The subject property is located at 125 West Main Street in Falconer, New York. Based on the Chataqua County tax maps, the site covers approximately 2.6 acres. The Ellison Bronze Company property is bound on the northwest by West Main Street and on the southeast by the Chadakoin River. Moon Brook is directly northeast of the site and Davidson's Restaurant is located immediately to the southwest. The specific features of the subject site are shown on Drawing No. 2 in Appendix A.

Approximately two thirds of the property has been developed into a commercial door manufacturing plant and parking areas. The Ellison Bronze plant and offices cover approximately 45,000 square feet on the north central part of the site. An asphalt covered parking area is located on the north end of the site measuring approximate 60 by 120 feet. On the southeast side of the Ellison Bronze plant, an asphalt covered employee parking area was constructed in the early 1980's. The employee parking area is irregular in shape and covers approximately 24,000 square feet. An asphalt covered driveway and loading dock area (approximately 16,500 square feet) is located on the west side of the Ellison Bronze plant.

The topography along the southeast and northeast property lines slopes downward towards the Chadakoin River and Moon Brook. Based on the information gathered during the Remedial Investigation completed at the site, the ground water gradient beneath the site is generally in an east/northeast direction towards Moon Brook/Chadakoin River.

A grass covered area is located on the south end of the subject site. The grassy area is bound by the employee parking area (northeast), West Everett Street (northwest), Phetteplace Street (southwest) and the Chadakoin River (southeast). The approximate areal extent of the grass covered portion of the site is 15,000 square feet. A strip of land oriented between the employee parking area and the Chadakoin River and Moon Brook occupies approximately 13,000 square feet.

Foundry wastes have historically been dumped outside the plant in the vicinity of the foundry which is on the north/northeast side of the plant. During the construction of the employee parking area, the banks of Moon Brook were covered with fill material used as part of the pavement structure. The depth of this cover material is generally between 0 and 2-feet.

Currently, foundry wastes are separated into two separate wastes consisting of grinding dust and foundry sand. The foundry sands are placed into a roll-off bin located on the employee parking area for off-site disposal. The grinding dust is collected and recycled.

A wooden chemical storage shed (approximately 10-feet by 10-feet) was located on the northeast end of the grass covered area. Various chemicals were stored in this shed which were used as part of the manufacturing and maintenance operations at the plant. The chemicals known to have been stored within the shed include naphtha, lacquer thinner and acetone.

Two utility related features were identified on the northeast end of the employee parking area. A dry transformer is located approximately 50-feet southeast of the Ellison Bronze plant. An underground electric line extends from the dry transformer to the plant. A natural gas meter and regulator is housed in a concrete block building adjacent to the dry transformer. A sanitary sewer is buried approximately 20-feet from the southeast side of the Ellison Bronze plant and is oriented parallel to the plant. An above ground petroleum (fuel oil) storage tank was formerly located on the exterior of the east end of the plant. The tank was abandoned some time ago (undetermined date) and removed from the site.

A maintenance garage is located on the southwest end of the site along the driveway access to the rear of the plant. Two particle separator systems were also observed on-site. One particle separator was noted on the west end of the site adjacent to the loading dock. A second particle separator system was observed on the exterior of the south end of the plant.

## 2.2 Site History

Information on site history was obtained from the Chautauqua County Department of Planning and Development, Chautauqua County Clerks Office, Town of Ellicott Historian, aerial photographs and inspection of available historical maps. The discussion below is based solely on information obtained from these sources.

The Town of Ellicott Historian, City of Jamestown Assessor and the Chautauqua County Department of Planning and Development informed ESI that the subject property has been developed since the 1880's. According to Chris Lyon, the Town of Ellicott Historian, the property was vacant prior to 1881 when residential construction was first reported there. During the 1880's, a blacksmith shop was in business directly adjacent to Moon Brook. Between 1890 and 1912, a towel factory was in operation before the Ellison Bronze Company took over the factory in 1912. The Ellison Bronze Company was a foundry initially, however, in 1932 the company changed their focus to commercial door manufacturing which continues today.

A summary of property ownership since 1921 is shown in Table 2.1. The Ellison Bronze Company became a subsidiary of the Dowcraft Corporation in 1969. In 1986, Ellison Bronze secured a loan from the Chautauqua County Industrial Development Agency (CCIDA). As a result of the property lien the Chautauqua County Industrial Development Agency retains, the assessors office lists the CCIDA as the current owner of the property.

The main environmental concerns identified from the historical research include the potential impact of foundry wastes on the property and the presence of a former chemical storage shed outside the plant.

The copper concentration in the leachate was also tested and ranged from 69.1 to 526 mg/L. No hazardous waste criteria has been established for copper in soils.

TABLE 3.2						
TCLP ANALYTICAL TEST RESULTS FOR SUBSURFACE SOIL SAMPLES						
Parameter	Sample Location and Concentration (mg/L)					EPA Standard for Hazardous Waste Designation (mg/L)
	TP-1	TP-2	TP-3	TP-4	TP-5	
Arsenic	<0.35	<0.35	<0.18	<0.35	<0.35	5.0
Barium	3.09	2.25	2.25	2.08	1.72	100
Cadmium	0.10	<0.05	<0.025	<0.05	<0.005	1.0
Chromium	<0.10	<0.10	<0.05	<0.10	<0.03	5.0
Copper	293	526	78.2	209	69.1	NS
Lead	99.1	32.1	3.79	8.5	3.72	5.0
Mercury	<0.004	<0.004	<0.004	<0.002	<0.002	0.2
Selenium	<0.60	<0.60	<0.30	<0.60	<0.60	1.0
Silver	0.16	0.18	0.05	<0.10	0.03	5.0

NS -- No Standard.

### 3.4 Supplemental Soil Sampling

Two additional soil samples were collected and analyzed to further characterize the soil contamination found on-site. One soil sample was collected from the foundry waste disposal area and one from the soil beneath the former chemical storage shed on December 14, 1990. The soil sample taken from the foundry waste disposal area was taken from approximately 1.5-feet below the ground surface in the area where test pit TP-2 was located. The soil sample collected from beneath the chemical storage shed was excavated from 0 to 6-inches below the ground surface. Each soil sample was analyzed for TCLP volatiles, TCLP semivolatiles, TCLP metals (including zinc and copper), total

the Village of Falconer property on the northeast side of Moon Brook (BS-5) and the front of the Ellison Bronze Plant along West Main Street (BS-4).

The background soil samples were collected by excavating soil between 0 and 6-inches below the ground surface with a precleaned stainless steel trowel. ESI used commercially precleaned I-Chem bottles for sample collection. All sampling tools were decontaminated between sampling locations. A Chain-of-Custody record was established and maintained on all samples. The soil samples were immediately shipped to Huntingdon Analytical Services, Inc. (HAS) in Middleport, New York for analytical testing. Huntingdon Analytical Services is a New York State Department of Health certified laboratory and a division of ESI.

Each soil sample was analyzed for lead and copper using USEPA Methods 7421 and 6010, respectively. The analytical test results of the background soil samples are presented in Table 4.1.

TABLE 4.1		
ANALYTICAL TEST RESULTS FOR BACKGROUND SOIL SAMPLES		
Sample Identification	Concentration (mg/Kg)	
	Copper	Lead
BS-1	118	103
BS-2	42.2	223
BS-3	358	126
BS-4	36.9	27.7
BS-5	91.4	144
BS-6	111	75.2
Average	126.3	116.5

*NOTE*

*These samples noted as SS-1 thru SS-6 on Dwg. 5*

SAMPLE FROM BORING B-31, 3-4' deep

TABLE 4.3	
ANALYTICAL RESULTS FOR THE FOUNDRY WASTE SAMPLE	
Parameter	Concentration (mg/Kg)
Copper	12,900
Lead <sup>1</sup>	2,980
Total Phenolics	0.30

- 1 -- A cleanup guideline range of 500-1,000 mg/Kg was selected during a meeting between NYSDEC, NYSDOH, Ellison Bronze and ESI on January 29, 1992.

Concentrations of lead were reported in the foundry waste sample well above the NYSDEC cleanup guideline of 500-1000 mg/Kg. The Table 4.3 results confirms the Phase II Environmental Site Assessment Sampling completed in 1990.

#### Natural Soil Samples Collected from below the Foundry Waste (Area A)

ESI collected subsurface soil samples for analytical testing during the test boring program completed in Area A. Three soil samples (TB-1, TB-2 and TB-3) were taken from test borings B-12, B-13 and B-16. Each of these soil samples were collected from apparent natural soils beneath a seam of foundry waste identified in the field. The purpose of this sampling was to determine whether contamination from the foundry waste had leached into the natural soils. Each soil sample was analyzed for lead, copper and total phenolics. The analytical results for the three natural soil samples are presented in Table 4.4. A copy of the analytical test results for the natural soil samples can be found in Appendix D.

TABLE 4.4			
ANALYTICAL TEST RESULTS FOR NATURAL SOIL SAMPLES COLLECTED FROM BELOW FOUNDRY WASTE			
Sample Identification	TB-1	TB-2	TB-3
Sample Location	Test Boring B-12	Test Boring B-13	Test Boring B-16
Sample Depth	3.5-feet	3-feet	6-feet
Lead (mg/Kg)	35	102	285
Copper (mg/Kg)	142	765	4,920
Total Phenolics (mg/Kg)	0.44	0.39	0.42

The thickness of the foundry waste encountered in test borings B-12 (1 to 3-feet), B-13 (2 to 2.5-feet) and B-16 (5.5 to 5.75-feet) were 2, 0.5 and 0.25-feet, respectively (refer to the test boring logs presented in Appendix C). The soil samples were collected from 3.5, 3 and 6-feet below the ground surface, respectively.

The concentration of lead in the soil samples was 35 mg/Kg (TB-1), 102 mg/Kg (TB-2) and 285 mg/Kg (TB-3). Copper was present in the soil samples at concentrations of 142 mg/Kg (TB-1), 765 mg/Kg (TB-2) and 4,920 mg/Kg (TB-3). Based on the reported lead concentrations in the soil samples, it does not appear that the natural soils are significantly contaminated due to the buried foundry wastes. However, sample TB-3 (test boring B-16) was found to contain a level of copper above the average background concentration reported to be 126.3 mg/Kg. Currently there are no NYSDEC or USEPA soil standards or guidelines established for copper in soils.

Total phenolics were present in the soil samples at concentrations of 0.44 mg/Kg (TB-1), 0.39 mg/Kg (TB-2) and 0.42 mg/Kg (TB-3). In ESI's opinion, the soils at or below the depths where samples TB-1, TB-2 and TB-3 were collected are not considered contaminated to levels which would require remediation.

FROM Composite of BORINGS B-5 B-6 B-11 & B-14

LOCATIONS  
Noted on  
DWG. ,  
GFP 12/91

TABLE 4.5			
ANALYTICAL TEST RESULTS FOR THE FOUNDRY WASTE SAMPLE COLLECTED FROM BENEATH THE EMPLOYEE PARKING AREA			
Parameter	Concentration (mg/Kg)	NYSDEC Cleanup Guidelines	New York State Background Soil Concentrations (mg/Kg)
Aluminum	6,980	NG	1,000-25,000
Antimony	<113	30	ND
Arsenic	13.2	80	3-12
Barium	125	4,000	15-600
Beryllium	<11.3	0.16	0-1.75
Cadmium	<11.3	80	ND
Calcium	15,000	NG	130-35,000
Chromium	107	NG	1.5-40
Cobalt	<22.7	NG	2.5-60
Copper	7,820	NG	<1-15
Iron	18,900	NG	17,500-25,000
Lead	2,550	500-1000 <sup>1</sup>	1-12.5
Magnesium	3,270	NG	2,500-6,000
Manganese	397	2,000	50-5,000
Mercury	<2.27	20	0.042-0.060
Nickel	132	2,000	0.5-25
Potassium	<6,800	NG	8,500-43,000
Selenium	<1.12	NG	<0.1-0.125
Silver	<22.7	200	ND
Sodium	179	NG	6,000-8,000
Thallium	<2.25	6	ND
Vanadium	<45.4	600	25-60
Zinc	3,240	2,000	37-60
Total Phenolics	0.35	NG	ND

1 -- Based on discussions between NYSDEC, NYSDOH, Ellison Bronze and ESI at a meeting held on January 29, 1992.

NG -- No guidance value presented.

ND -- No data reported.



TABLE 4.8			
ANALYTICAL TEST RESULTS FOR SEDIMENT SAMPLES			
Sample Identification	Concentration(mg/Kg)		
	Copper <sup>1</sup>	Lead <sup>2</sup>	Total Phenolics <sup>3</sup>
SED-1	64.3	44.3	<0.25
SED-2	140	68.5	<0.25
SED-3	68.3	40.6	<0.25
SED-4	236	21.4	<0.25
SED-5	23.7	10.9	0.28
SED-6	17.5	11.0	0.39
SED-7	14.9	13.0	<0.25

- 1 -- The NYSDEC criteria for copper in sediments is 19 mg/Kg. Ontario Ministry of the Environment (1988) pre-industrialized background copper concentrations for the Great Lakes sediments was 65 mg/Kg. Copper concentration which would be detrimental to the majority of species, potentially eliminating most (Persaud, 1989) was 114 mg/Kg.
- 2 -- The NYSDEC criteria for lead in sediments is 27 mg/Kg. Ontario Ministry of the Environment (1988) pre-industrialized background lead concentrations for the upper Great Lakes sediments was 55 mg/Kg. Lead concentration which would be detrimental to the majority of species, potentially eliminating most (Persaud, 1989) was 250 mg/Kg.
- 3 -- The NYSDEC criteria for total phenol is 0.6 ug/gram organic carbon or 6 mg/Kg assuming 1% organic carbon sediments.