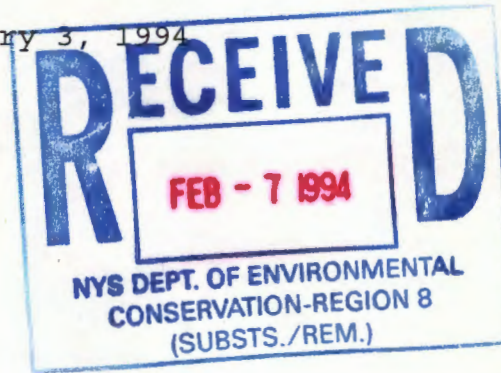


Division of Environmental Enforcement
270 Michigan Avenue, Buffalo, NY 14203-2999
Telephone: (716) 851-7050 FAX: (716) 851-7067

M. J. Gachy
Roll

February 3, 1994



Johanna F. Brennan, Esq.
4th Floor - Law Department
City Hall
30 Church Street
Rochester, New York 14614

RE: Speedy Cleaner, Inc. Site
IRM Order on Consent

Dear Ms. Brennan:

The enclosed draft Order incorporates most of the comments suggested in your January 31, 1994 fax transmittal. As you can see, this draft of the Order also includes recitation paragraphs not included in the standard IRM language previously sent to you. I note below those areas of the Order where your suggested changes were either not accepted, or were incorporated with some changes.

¶ II (4) (a) - You suggested changing the last sentence to require only the delineation of the data validation procedures to be used, rather than designation of the data validation expert and submittal of their credentials. I have added your suggested language to the existing provision. Your suggested deletion would be acceptable if you are willing to identify the data validation expert you will use, and the Department has no objection.

¶ II (5) and (6) - The IRM Work Plan must include a Health and Safety Plan ("HSP") and Contingency Plan ("CP") in order to be approveable. Because these plans will not be ready when the Work Plan is submitted, new subparagraph II.C. provides a deadline for their submission, and states that the IRM Work Plan will not be approveable until the HSP and CP have been submitted and approved.

¶ V - Added requirement that telephone notice be provided in addition to written notice. I also included the statement that notice by fax transmittal will be considered notice in writing and by telephone. Your name, address, telephone number, and fax number now appear at ¶ XII.D. of the

Order. Mark Gregor's address is also provided. Note that I included your proposed new subparagraph V.C., but marked the Department's twenty-one day response time from receipt of the full IRM Work Plan, including HSP and CP.

¶ VI - The stipulated penalties provided in subparagraph VI.A.(2) have been deleted. Subparagraph A.(1) (new subparagraph A.), indicating that a failure to comply with any term of the Order is a violation of the Order and the ECL, cannot be deleted. I have also not deleted subparagraph VI.B., which provides force majeure language intended to benefit the Respondent.

¶ VII. - Reference to "any State agency" has been deleted. However, the paragraph now includes reference to the New York State and Monroe County Departments of Health.

¶ IX. (new ¶ VIII.) - Subparagraph (4), regarding actions related to hazardous substances at the Site, has not been changed. The Department will not change its Reservation of Rights language in a way which could be interpreted as a waiver of its rights. Subparagraph (5), regarding criminal actions, has been deleted. This is not a waiver of any of the Department's rights insofar as the list of rights reserved is, by its own terms, not an all inclusive list.

¶ XII. (new ¶ XI.) - The addresses for submission of correspondence and reports have been changed to local contacts. The number of copies of work plans and reports to be submitted has been reduced by three.

¶ XIII.A. (new ¶ XII.A.) - Given the relatively limited information available regarding the scope of the "Site", it is not acceptable to delete reference to off-Site contamination.

¶ XIII.B. (new ¶ XII.B.) - The submission of information regarding your consultant can be deleted from the Order if the Department approves the consultant in advance. The Order currently provides ten days from the effective date of the Order for submission of the information.

¶ XIII.D. (new ¶ XII.D.) - Ten working days notice of field activities has been reduced to five.

Johanna F. Brennan, Esq.
February 3, 1994
Page 3

After you have had a chance to review the revised draft,
please contact me regarding any comments you may have.

Very truly yours,

James M. Hazel
Senior Attorney
Division of Environmental
Enforcement

JMH:H:jab
H020ROCH.2

bcc: Mary Jane Peachey (with enclosure)
David Napier (with enclosure)

WASHINGTON SQUARE URBAN RENEWAL PROJECT

Environmental Remediation

City - DEC Meeting - March 1, 1994

PROPOSED AGENDA

1. Project Overview
2. Project Timetable
3. City Environmental
Remediation Plans
4. City - DEC Cooperation

Bausch and Lomb/Court Street Garage Site
Summary Chronology

- April 1992 LaBella Associates completes investigation of soil and groundwater conditions in the public right-of-way bounded by Stone St., Court St., Broad St., and Clinton Avenue. Only xylene and petroleum hydrocarbons detected in greater than trace concentrations in ground water.
- September 1992 LaBella Associates completes Phase II investigation of public right-of-way in the area bounded by South Ave., Court Street, and Stone Street. Ground water results indicate petroleum hydrocarbons and gasoline constituents in the vicinity of former gas station locations.
- February 1993 Monroe Monitoring and Analysis, Inc. completes Phase II audit - soil gas survey for M. Williams (Speedys) to determine if fuel and solvent contamination might be present. The report on the survey results indicated "that portions of the foundation and possibly the soil below may need to be removed and disposed of as contaminated material prior to any new construction."
- May 1993 City is granted court order under eminent domain proceedings for Speedy Cleaners property. Speedys retains possession until January 1, 1994.
- August 1993 Monroe Monitoring and Analysis, Inc. completes additional soil sampling for Speedys from within the building. Significant levels of petroleum type compounds were detected in the basement and the area of the dry cleaning units. A trace of perchloroethylene was detected beneath the floor slab.
- October 1993 LaBella Associates completes a series of supplemental investigations of the B&L /Garage Site including a boring in Climax Alley and, for the first time LaBella (City) collects samples beneath the basement and 1st floor slab inside the Speedys building. Soils below the basement slab exhibited heavy petroleum/stoddard solvent contamination.
- Oct/Nov 1993 Speedys refuses City entry to the property without knowing all City plans. On November 12, the City presents court order with police escort for access in order to develop a workplan for additional investigation needed to prepare a soils management plan.
- Nov/Dec 1993 Seeler Associates conducts additional investigations

Speedys is granted an extension to February 15th for possession

LeChase encounters small areas of soil contamination in footer excavations for the B&L tower and wintergarden.

January 1994

For the first time, Dan Speedy indicates that a dry cleaning unit using pure perc was in use on the property 25 to 30 years ago.

LeChase disposes of about 150 cubic yards of nonhazardous stoddard contaminated soil.

February 1994

Seeler Associates completes investigation report and soil removal plan for garage site. Extensive stoddard/petroleum contamination is found. Perc is detected in only in location where trace was previously found. The report and plan is submitted to Region 8, MC-DOH, and NYS-DEC.

Speedys is granted an additional extension to March 20

Seeler Associates completes feasibility study for areas of soil excavation outside the footprint of the garage and recommends removal action.

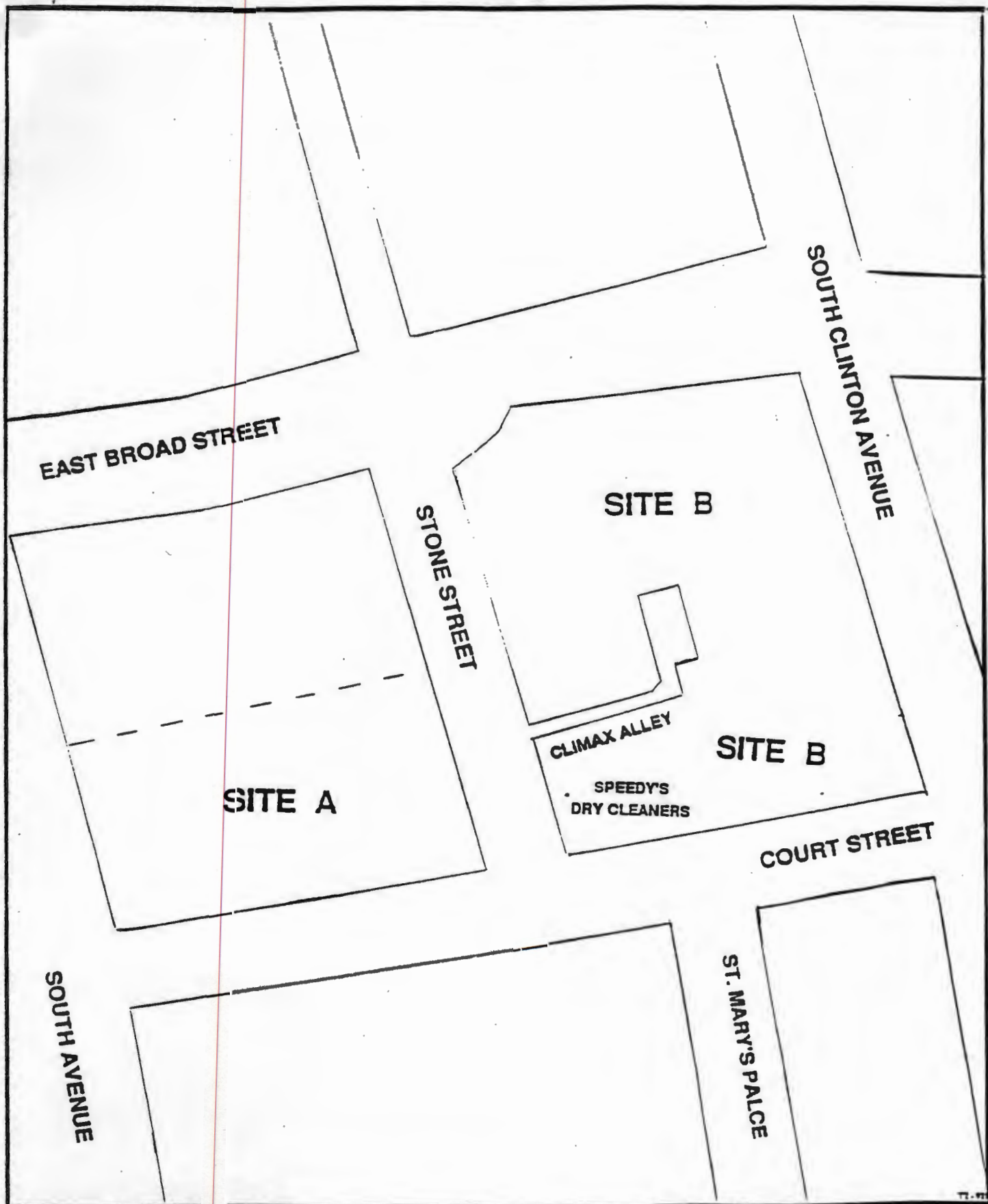


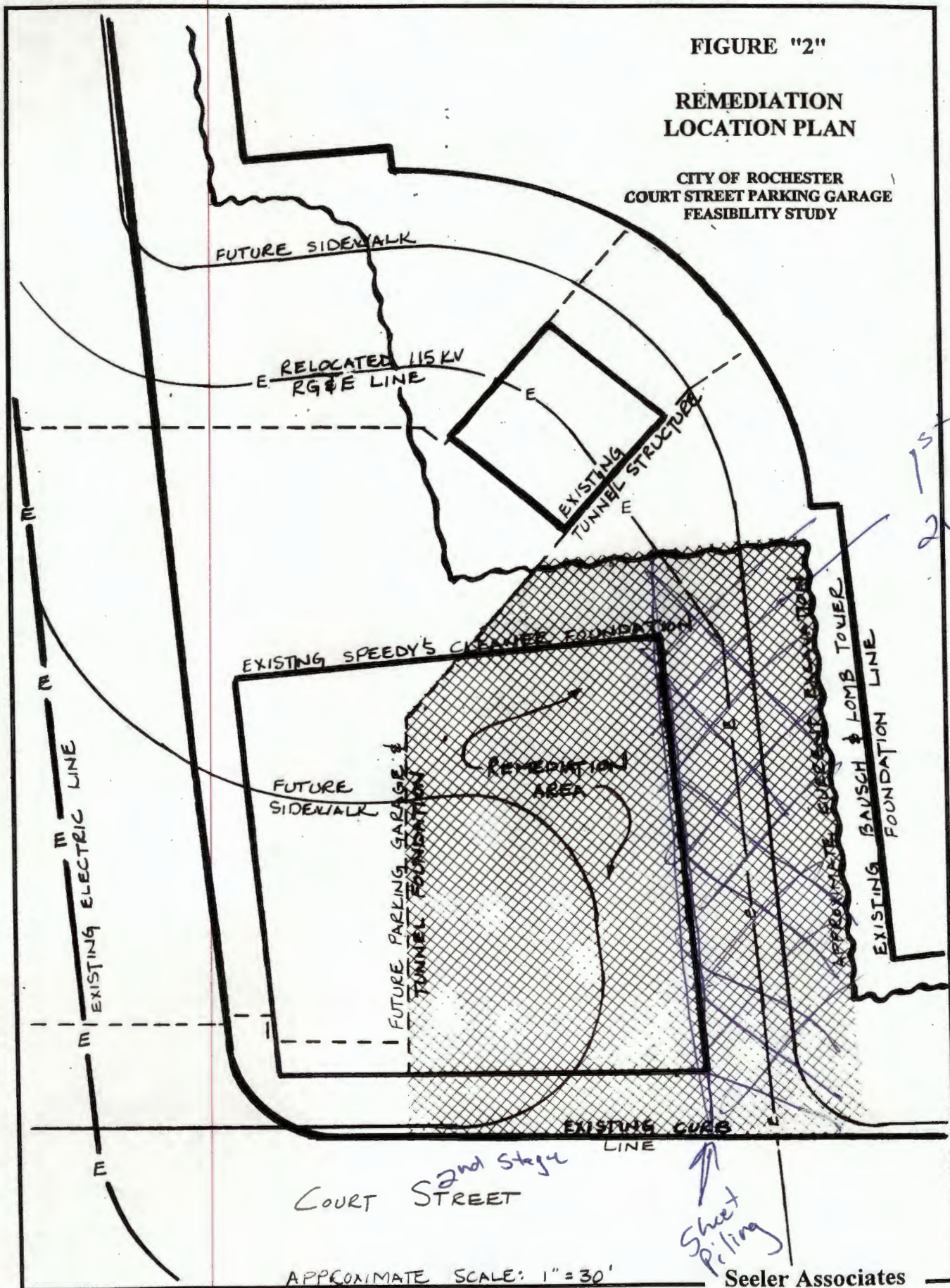
FIGURE 2
SITE SKETCH

LaBella Associates, P.C.
300 State Street
Rochester, New York 14614
716-454-6110

Project No.:	92189
Scale:	1"=100'
Drawn By:	DP
Date:	9/10/92

FIGURE "2"
REMEDIATION
LOCATION PLAN

CITY OF ROCHESTER
COURT STREET PARKING GARAGE
FEASIBILITY STUDY



COURT STREET 2nd Stage

1st Stage
in
2 weeks

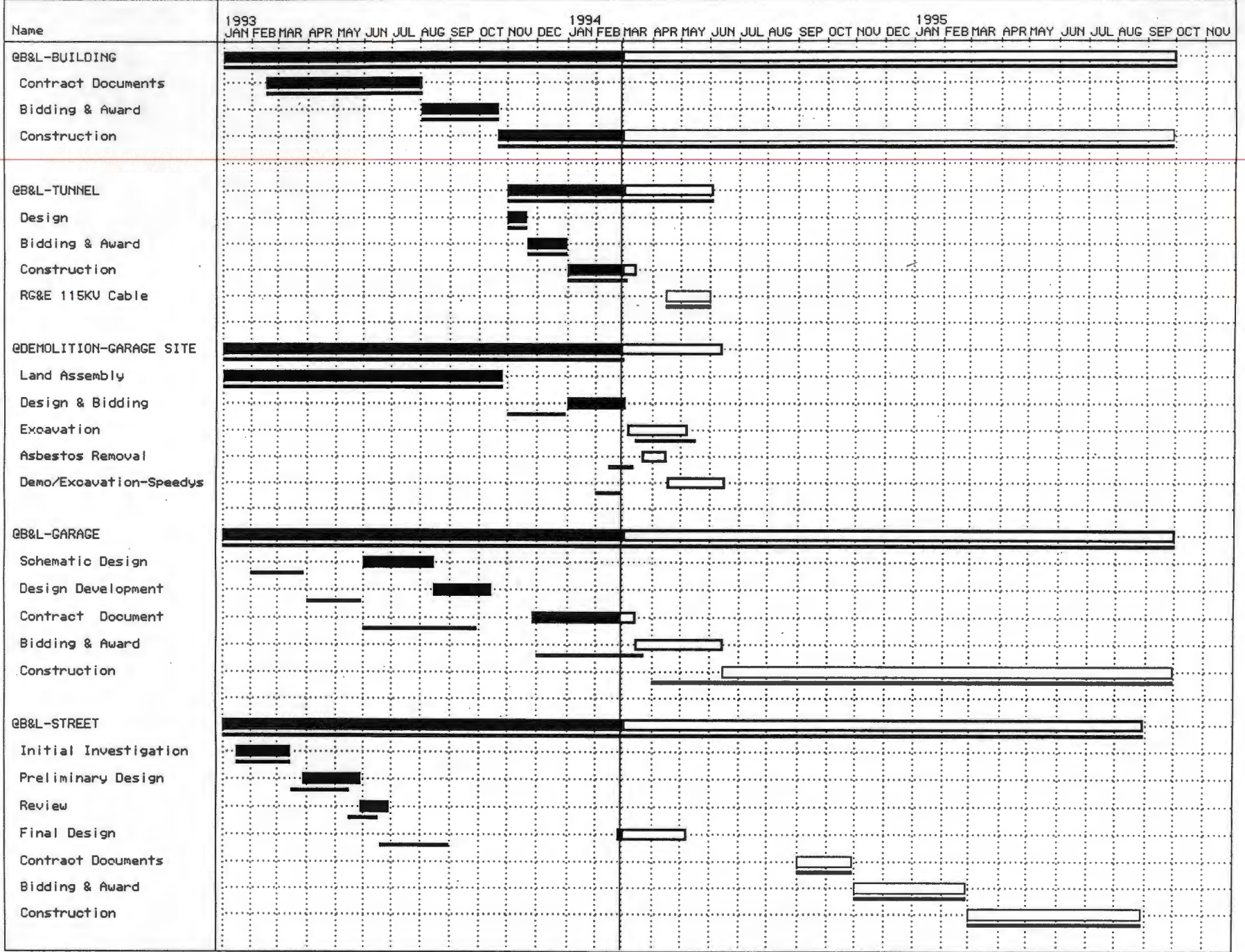
Sheet
Piling

APPROXIMATE SCALE: 1" = 30'

Seeler Associates
ENVIRONMENTAL CONSULTANTS

PROJECT: B&L-ALL
 CURRENT DATE: 02/28/94

Wash. Sq. U.R.D.





City of Rochester

FAX (716) 428-6010
TDD/Voice 232-3260

Department of
Environmental Services

Office of the Commissioner
City Hall, Room 300-B
30 Church Street
Rochester, New York 14614-1290

March 29, 1994

James M. Hazel, Senior Attorney
Division of Environmental Enforcement
New York State Department of Environmental Conservation
270 Michigan Avenue
Buffalo, New York 14203-2999

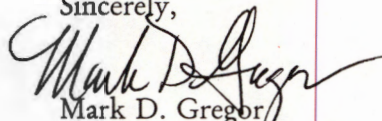
Re: Court Street Parking Garage Site
IRM Order on Consent

Dear Mr. Hazel:

Enclosed are two signed originals of the IRM Consent Order for execution by the New York State Department of Environmental Conservation. Please return one executed original to this office for our records.

Thank you for your cooperation, and if you have any questions please let me know.

Sincerely,


Mark D. Gregor
Environmental Specialist

enc.

xc: ~~Mary Jane Peachey, NYS-DEC w/enc~~
Todd Caffoe, NYS-DEC
Dave Napier, NYS-DOH
Rick Elliott, MC-DOH
Ed Doherty, DES w/enc
Lou Kash, Law Department w/enc
Johanna Brennan, Law Department w/enc
David Harradine, Law Department
Anne Klumpp, DES w/enc
Tim Seeler, Seeler Associates w/enc



EEO Employer/Handicapped



STATE OF NEW YORK: DEPARTMENT OF ENVIRONMENTAL CONSERVATION

In the Matter of the Implementation of
an Interim Remedial Measure Program
to Control and Abate a Potential Significant
Threat to the Environment by

ORDER
ON
CONSENT

CITY OF ROCHESTER

Respondent.

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."

2. In connection with a downtown development project, the City of Rochester ("Respondent") purchased, through condemnation proceedings, property at which Speedy Cleaners, Inc. operated for many years. Respondent intends to excavate on and around the property in order to construct a parking garage, as well as a tunnel for vehicle and pedestrian use, and a traffic circle.

3. Respondent conducted a preliminary investigation into the nature of chemical contaminants present in the soil at the property. Respondent's investigation revealed the presence of chemical contaminants commonly associated with dry cleaning operations. The area which contains contaminated soils, including the areas to be excavated for construction of the parking garage, tunnel, and traffic circle, are referred to in this Order as the "Site".

4. Contamination was discovered at the Site prior to Respondent taking possession. Respondent is not believed to have caused any of the contamination found at the Site. Respondent contacted the Department regarding the presence of chemical contaminants at and near the Site.

5. The Department and Respondent agree that the goal of this Order is for Respondent to implement a Department-approved Interim Remedial Measure Program ("IRM Program") for the removal and proper handling of contaminated soil at the Site in accordance with the Department-approved IRM Work Plans which are Appendix "A" to this Order.

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

Respondent has submitted information regarding the Site to the Department. Within 14 days after receipt of a written request by the Department, Respondent shall submit additional information, if any, to the Department, including:

A. A brief history and description of the Site,

including available information regarding 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 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 Order, Respondent shall commence the IRM Program.

B. Respondent shall perform the IRM Program in accordance with the Department-approved IRM Work Plans which are attached to this Order as Appendix "A" and are an enforceable part of this Order.

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

D. Within the time frame set forth in the IRM Work

Plan, 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 X.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 starting 60 days after the effective date of this Order.

Respondent also shall allow the Department to attend, and shall provide the Department at least four days advance notice of, any of the following: prebid meetings, job progress meetings, substantial completion meeting and inspection, and final inspection and meeting.

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 by telephone and shall specify the reasons for its disapproval. Notification by

fax transmittal will be considered notice in writing and by telephone. Within 14 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 and by telephone of its approval or disapproval. Notification by fax transmittal will be considered notice in writing and by telephone. 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. Respondent shall modify and/or amplify and expand a submittal upon the Department's direction to do so 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.

C. The Department shall notify Respondent in writing and by telephone, with written reasons for disapproval, within fourteen (14) days after the Department's receipt of each of the submittals Respondent makes pursuant to this Order.

Notification by fax transmittal will be considered notice in writing and by telephone.

V. Penalties

A. 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 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 the New York State Department of Health or Monroe County Department of

Health, for purposes of inspection, sampling, and testing and to ensure Respondent's compliance with this Order. Respondent shall provide the Department with 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. 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 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.

VIII. 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.

IX. 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 the County wherein the Site is located 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.

X. 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. Mary Jane Peachey, P.E.
Division of Hazardous Waste Remediation
New York State Department of Environmental
Conservation
6274 East Avon-Lima Road
Avon, New York 14414
2. David Napier
New York State Department of Health
42 South Washington Street
Rochester, New York 14608
3. Richard Elliott
Monroe County Department of Health
111 Westfall Road
Rochester, New York 14692
4. James Hazel, Esq.
New York State Department of Environmental
Conservation
Division of Environmental Enforcement
270 Michigan Avenue
Buffalo, New York 14203-2999

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

1. Two copies (one unbound) to
Mary Jane Peachey, P.E.
Division of Hazardous Waste Remediation

2. One copy to David Napier
New York State Department of Health
3. One copy to Richard Elliott
Monroe County Department of Health
4. One copy to James Hazel, Esq.
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 Mary Jane Peachey, P.E., 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:

Johanna F. Brennan, Esq.
City Hall - 4th Floor - Law Department
30 Church Street
Rochester, New York 14614
Phone: (716) 428-6754
Fax: (716) 428-6950

with a copy to .

Mark D. Gregor
Office of the Commissioner of
Environmental Services
City Hall, Room 300B
30 Church Street
Rochester, New York 14614-1290

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

XI. Miscellaneous

A. In accordance with the Department-approved IRM Work Plans, 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 10 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 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 three (3) 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" or "IRM" means a discrete set of activities to address both emergency and non-emergency site conditions, which can be undertaken without extensive investigation and evaluation, to prevent, mitigate, or remedy environmental damage or the consequences of environmental damage attributable to a site, including but not limited to the following activities: removals of wastes and contaminated materials including environmental media; construction of diversion ditches, collection systems, or leachate collection systems; construction of fences or other barriers; installation of water filters or provision otherwise of alternative water supplies.

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 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:

James Hazel, Esq. and Mary Jane Peachey, P. E.

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

DATED:

, New York
, 1994

J. 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.

CITY OF ROCHESTER

By: *Louis N. Kash*

LOUIS N. KASH

(TYPE NAME OF SIGNER)

Title: CORPORATION COUNSEL

Date: MARCH 18, 1994

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

On this 18th day of MARCH, 1994, before me personally came LOUIS N. KASH, to me known, who being duly sworn, did depose and say that he resides in ROCHESTER, NEW YORK; that he is the CORPORATION COUNSEL of the City of Rochester; that he is authorized to execute the above instrument on behalf of the City of Rochester, and that he signed his name thereto by virtue of such authority.

Barbara L. Giannavola
Notary Public

BARBARA L. GIANNAVOLA
NOTARY PUBLIC, State of N. Y., Monroe Co.
Commission Expires DEC 31, 1995



City of Rochester

FAX (716) 428-6010
TDD/Voice 232-3260

Department of
Environmental Services

Office of the Commissioner
City Hall, Room 300-B
30 Church Street
Rochester, New York 14614-1290

March 29, 1994

James M. Hazel, Senior Attorney
Division of Environmental Enforcement
New York State Department of Environmental Conservation
270 Michigan Avenue
Buffalo, New York 14203-2999

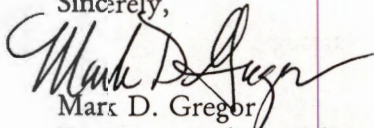
Re: Court Street Parking Garage Site
IRM Order on Consent

Dear Mr. Hazel:

Enclosed are two signed originals of the IRM Consent Order for execution by the New York State Department of Environmental Conservation. Please return one executed original to this office for our records.

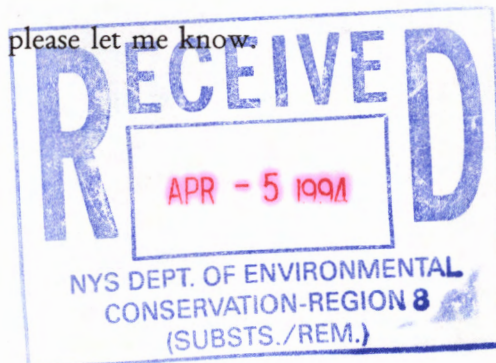
Thank you for your cooperation, and if you have any questions please let me know.

Sincerely,


Marc D. Gregor
Environmental Specialist

enc.

xc: Mary Jane Peachey, NYS-DEC w/enc
~~Todd Caffoe, NYS-DEC~~
Dave Napier, NYS-DOH
Rick Elliott, MC-DOH
Ed Doherty, DES w/enc
Lou Kash, Law Department w/enc
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David Harradine, Law Department
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Tim Seeler, Seeler Associates w/enc



EEO Employer/Handicapped

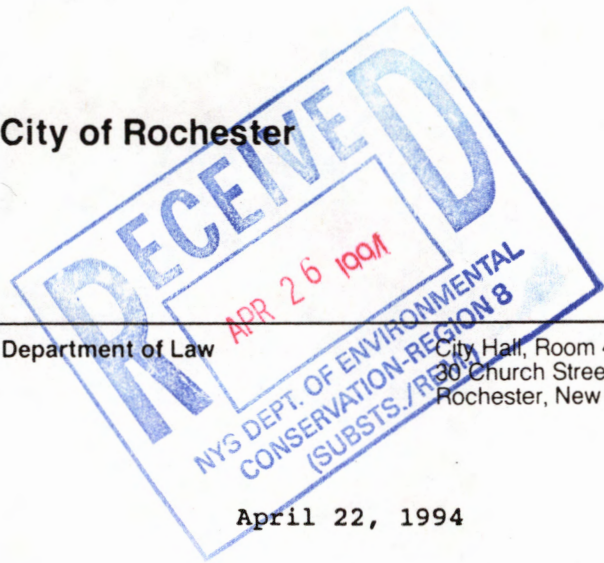




City of Rochester

TDD/Voice 232-3260
(716) 428-6754

Department of Law



City Hall, Room 400-A
30 Church Street
Rochester, New York 14614-1295

April 22, 1994

Mitchell T. Williams, Esq.
900 First Federal Plaza
Rochester, Ny 14614

Re: Matter of City of Rochester v. Speedy

Dear Mr. Williams:

I have reviewed the proposed order in the above referenced matter which you forwarded to David Harradine. As was stated by Mr. Harradine in oral arguments, the City has two main concerns about your clients' plan to take soil samples from the Speedy's site: that all activities by your client and his consultant on the site be in full compliance with the Work Plan and Health and Safety Plan ("Approved Plans") approved by the Department of Environmental Conservation ("DEC") and the Consent Order which was drafted by DEC, which is currently awaiting the Commissioner's signature, and that your client's activities not delay our testing work and the construction of the garage.

After receiving the proposed Order, we contacted DEC to advise them of the Order and to seek direction as to how to proceed. They advised us that your client will have to submit a Health and Safety Plan and Work Plan ("Plans") which will be reviewed by Mark Gregor of the City Environmental Services Department for consistency with the City's Approved Plans. If the Plans are satisfactory, Speedy's access to the site may proceed. If the Plans are not in compliance with the Approved Plans, DEC would review the Plans, and if the issues could not be satisfactorily resolved, would require Speedy's to enter into a Consent Order. As you will note, I have added language to this effect, to the Proposed Order and would request your concurrence with this addition.

As it is to everyone's benefit to avoid a lengthy process, we would request that you prepare and submit the Plans as soon as possible so that Mark Gregor can review and hopefully approve them. Although I believe your consultants may already know Mark, he is the Environmental Specialist in the Department of Environmental Services and can be reached at 428-5978.

Our second major concern is that the garage construction project not be delayed. The time frames for the remedial work at the Speedy's site are very tight and any delays in the work could delay commencement of construction. Although we are fully prepared to cooperate with your Consultants as they log

EEO Employer/Handicapped

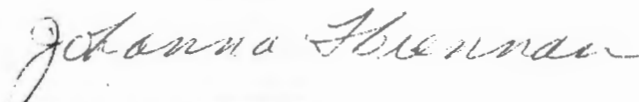


Mitchell T. Williams, Esq.
Page Two
April 22, 1994

the excavation progress, take photographs, take soil samples or conduct tests, we cannot permit their work to interfere with or delay our work. Cooperation on both sides should avoid any problems and lead to successful results for both parties.

I look forward to resolving this matter with you and request that you submit any comments or suggestions to me at your earliest convenience.

Very truly yours,



JOHANNA F. BRENNAN
Municipal Attorney

JFB:blg
Enc.

cc: Hon. L. Paul Kehoe
M. Gregor
Todd Caffoe, NYS-DEC, Avon ✓
James Hazel, Esq., Division of Environmental
Enforcement, NYDEC

also been informed that the demolition of the building on the Speedy site was commenced on April 16, 1994.

The Petitioner-Condempnor filed an affirmation of David A. Harradine (Municipal Attorney) dated April 20, 1994, together with the exhibits attached thereto in opposition to the Respondents-Condemnees' aforesaid application.

Now, upon reading the aforesaid Notice of Motion and Affirmation in support of said application and upon reading the aforesaid Affirmation of David A. Harradine in opposition thereto and upon the prior pleadings herein and the Respondents-Condemnees having appeared by Mitchell T. Williams in support of said motion and the Petitioner-Condempnor having appeared by David A. Harradine in opposition thereto and after due deliberation, it is hereby

ORDERED that the Respondents-Condemnees and their agents be permitted to enter upon the Speedy site on a daily basis so that they may log the excavation progress conducted by the Petitioner, photograph the excavation, take soil samples beneath the building on the Speedy site and conduct any other tests necessary by the Respondents' Engineers in order to determine if there are any contaminants present in the soil beneath the building on the Speedy site, and it is further

ORDERED that prior to any such entry on the site Respondents-Condemnees shall submit a Work Plan and a Health and Safety Plan ("Plans") to Petitioner for its review and determination that the Plans are consistent with the Work Plan, Health and Safety Plan ("Approved Plans") and Consent Order approved by the Department of Environmental Conservation ("DEC"). In the event that it is determined that

Respondents-Condemnees' Plans are not consistent with the Approved Plans and Consent Order, a determination shall be requested of DEC whose decision concerning the requirements for the Plans shall be binding on Respondents-Condemnees.

ENTER:

DATED: April _____, 1994

Hon. L. Paul Kehoe

Todd
file

April 25, 1994

Johanna F. Brennan, Esq.
4th Floor - Law Department
City Hall
30 Church Street
Rochester, New York 14614

RE: Speedy Cleaner, Inc. Site
IRM Order on Consent

Dear Ms. Brennan:

Enclosed is a duplicate original IRM Order on Consent which
was signed by Acting Commissioner Marsh on April 19, 1994.

If you have any questions, please contact me.

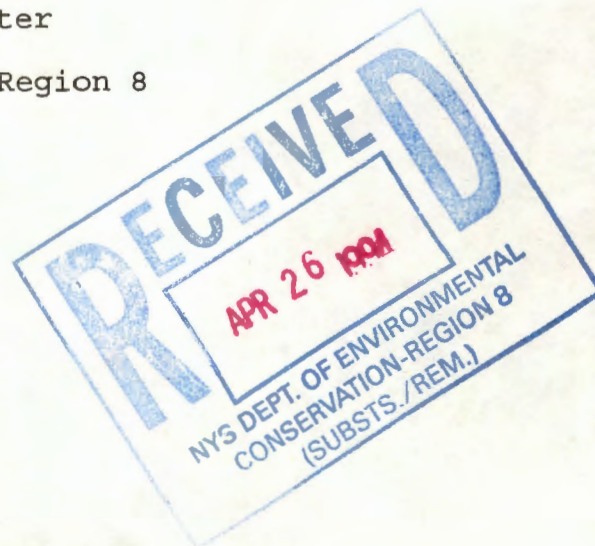
Very truly yours,

James M. Hazel
Senior Attorney
Division of Environmental
Enforcement

JMH:H:jab

Enclosure

cc: (with copy of enclosure)
Richard Elliot - MCDOH
Mark Gregor - City of Rochester
David Napier - NYSDOH
Mary Jane Peachey - NYSDEC, Region 8



STATE OF NEW YORK: DEPARTMENT OF ENVIRONMENTAL CONSERVATION

In the Matter of the Implementation of
an Interim Remedial Measure Program
to Control and Abate a Potential Significant
Threat to the Environment by

ORDER
ON
CONSENT

CITY OF ROCHESTER

Respondent.

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."

2. In connection with a downtown development project, the City of Rochester ("Respondent") purchased, through condemnation proceedings, property at which Speedy Cleaners, Inc. operated for many years. Respondent intends to excavate on and around the property in order to construct a parking garage, as well as a tunnel for vehicle and pedestrian use, and a traffic circle.

3. Respondent conducted a preliminary investigation into the nature of chemical contaminants present in the soil at the property. Respondent's investigation revealed the presence of chemical contaminants commonly associated with dry cleaning operations. The area which contains contaminated soils, including the areas to be excavated for construction of the parking garage, tunnel, and traffic circle, are referred to in this Order as the "Site".

4. Contamination was discovered at the Site prior to Respondent taking possession. Respondent is not believed to have caused any of the contamination found at the Site. Respondent contacted the Department regarding the presence of chemical contaminants at and near the Site.

5. The Department and Respondent agree that the goal of this Order is for Respondent to implement a Department-approved Interim Remedial Measure Program ("IRM Program") for the removal and proper handling of contaminated soil at the Site in accordance with the Department-approved IRM Work Plans which are Appendix "A" to this Order.

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

Respondent has submitted information regarding the Site to the Department. Within 14 days after receipt of a written request by the Department, Respondent shall submit additional information, if any, to the Department, including:

A. A brief history and description of the Site,

including available information regarding 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 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 Order, Respondent shall commence the IRM Program.

B. Respondent shall perform the IRM Program in accordance with the Department-approved IRM Work Plans which are attached to this Order as Appendix "A" and are an enforceable part of this Order.

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

D. Within the time frame set forth in the IRM Work

Plan, 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 X.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 starting 60 days after the effective date of this Order.

Respondent also shall allow the Department to attend, and shall provide the Department at least four days advance notice of, any of the following: prebid meetings, job progress meetings, substantial completion meeting and inspection, and final inspection and meeting.

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 by telephone and shall specify the reasons for its disapproval. Notification by

fax transmittal will be considered notice in writing and by telephone. Within 14 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 and by telephone of its approval or disapproval. Notification by fax transmittal will be considered notice in writing and by telephone. 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. Respondent shall modify and/or amplify and expand a submittal upon the Department's direction to do so 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.

C. The Department shall notify Respondent in writing and by telephone, with written reasons for disapproval, within fourteen (14) days after the Department's receipt of each of the submittals Respondent makes pursuant to this Order.

Notification by fax transmittal will be considered notice in writing and by telephone.

V. Penalties

A. 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 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 the New York State Department of Health or Monroe County Department of

Health, for purposes of inspection, sampling, and testing and to ensure Respondent's compliance with this Order. Respondent shall provide the Department with 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. 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 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.

VIII. 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.

IX. 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 the County wherein the Site is located 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.

X. 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. Mary Jane Peachey, P.E.
Division of Hazardous Waste Remediation
New York State Department of Environmental
Conservation
6274 East Avon-Lima Road
Avon, New York 14414
2. David Napier
New York State Department of Health
42 South Washington Street
Rochester, New York 14608
3. Richard Elliott
Monroe County Department of Health
111 Westfall Road
Rochester, New York 14692
4. James Hazel, Esq.
New York State Department of Environmental
Conservation
Division of Environmental Enforcement
270 Michigan Avenue
Buffalo, New York 14203-2999

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

1. Two copies (one unbound) to
Mary Jane Peachey, P.E.
Division of Hazardous Waste Remediation

2. One copy to David Napier
New York State Department of Health
3. One copy to Richard Elliott
Monroe County Department of Health
4. One copy to James Hazel, Esq.
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 Mary Jane Peachey, P.E., 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:

Johanna F. Brennan, Esq.
City Hall - 4th Floor - Law Department
30 Church Street
Rochester, New York 14614
Phone: (716) 428-6754
Fax: (716) 428-6950

with a copy to

Mark D. Gregor
Office of the Commissioner of
Environmental Services
City Hall, Room 300B
30 Church Street
Rochester, New York 14614-1290

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

XI. Miscellaneous

A. In accordance with the Department-approved IRM Work Plans, 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 10 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 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 three (3) 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" or "IRM" means a discrete set of activities to address both emergency and non-emergency site conditions, which can be undertaken without extensive investigation and evaluation, to prevent, mitigate, or remedy environmental damage or the consequences of environmental damage attributable to a site, including but not limited to the following activities: removals of wastes and contaminated materials including environmental media; construction of diversion ditches, collection systems, or leachate collection systems; construction of fences or other barriers; installation of water filters or provision otherwise of alternative water supplies.

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 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.

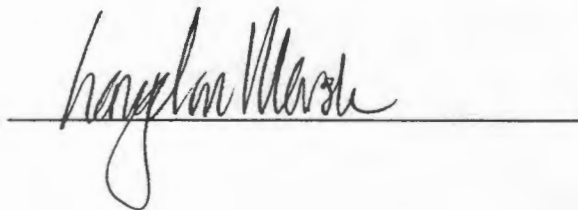
(2) If Respondent desires that any provision of this Order be changed, Respondent shall make timely written application, signed by the Respondent, to the Commissioner setting forth reasonable grounds for the relief sought. Copies of such written application shall be delivered or mailed to:

James Hazel, Esq. and Mary Jane Peachey, P. E.

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

DATED: *April 19*, New York
, 1994

J. Langdon Marsh
Acting Commissioner
New York State Department of
Environmental Conservation



A handwritten signature in cursive script, reading "Langdon Marsh", is written over a horizontal line.

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.

CITY OF ROCHESTER
By: [Signature]
LOUIS N. KASH
(TYPE NAME OF SIGNER)

Title: CORPORATION COUNSEL
Date: MARCH 18, 1994

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

On this 18th day of MARCH, 1994, before me personally came LOUIS N. KASH, to me known, who being duly sworn, did depose and say that he resides in ROCHESTER, NEW YORK; that he is the CORPORATION COUNSEL of the City of Rochester; that he is authorized to execute the above instrument on behalf of the City of Rochester, and that he signed his name thereto by virtue of such authority.

[Signature]
Notary Public

BARBARA L. GIANNAVOLA
Notary Public, State of N. Y., Monroe Co.
My Commission Expires OCT 15, 1995