

**State of New York  
Department of Environmental Conservation**

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In the Matter of the Settlement of Claims Related to an  
Inactive Hazardous Waste Disposal Site under Article  
27, Title 13 of the Environmental Conservation Law

**Order on Consent**

-by-

Index No. R8-20190725-120

**Unither Manufacturing LLC**

Site No. V00126

("Respondent")  
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**Whereas:**

1. The New York State Department of Environmental Conservation (the "Department") is responsible for enforcement of the Environmental Conservation Law of the State of New York ("ECL") and such law provides the Department authority to enter into this Order on Consent ("Order").
2. The Department is responsible for carrying out the policy of the State of New York (the "State") to conserve, improve and protect its natural resources and environment and control water, land, and air pollution consistent with the authority granted to the Department and the Commissioner by Article 1, Title 3 of the ECL.
3. The Department also has the authority, *inter alia*, to provide for the prevention and abatement of all water, land, and air pollution. See, e.g., ECL 3-0301.1.i.
4. This Order is issued pursuant to the Department's authority under ECL Article 27, Title 13 and ECL 3-0301.
5. Unither Manufacturing LLC ("Respondent") is an international manufacturing company, which owns and operates property located at 755 Jefferson Road, Rochester, NY ("Site").
6. Hazardous wastes, as defined at ECL Article 27, Title 13 and 6 NYCRR Part 375, have been found at the Site, and the Department is requiring Respondent to conduct additional testing at and near monitoring well MW-D7, to repair or replace MW-D7 and to provide the Department with a Work Plan that will contain a detailed schedule for completing all activities and submitting a report, at the completion of the activities listed below, to the Department for its review and approval.
7. The Work Plan shall be submitted, for Department review and approval, within 60 days of the effective date of this Consent Order, and will include, at a minimum:
  - a plan for rehabilitation or replacement of the damaged well (MW-D7);
  - conducting soil borings in the vicinity of MW-D7; and

- installing a shallow monitoring well in the vicinity of former well MW-17.
8. Solely with regard to the matters set forth herein, Respondent hereby waives any right to a hearing as may be provided by law, consents to the issuance and entry of this Order, and 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, except as otherwise specifically provided in the Order.
  9. Respondent consents to the issuance of this Order without (i) an admission or finding of liability, fault, wrongdoing or violation of any law, regulation, permit, order, requirement or standard of care of any kind, (ii) an acknowledgement that there has been a release or threatened release of hazardous waste at or from the Site, (iii) an acknowledgement that a release or threatened release of hazardous waste at or from the Site constitutes a significant threat to public health or the environment.

**NOW, having considered this matter and being duly advised, it is ordered that:**

I. Property Specific Definitions

Unless otherwise expressly provided herein, terms used in this Order which are defined in ECL Article 27 or in regulations promulgated thereunder shall have the meaning assigned to them under said statute or regulations, or amendments thereto. The following terms shall have the following meaning:

- a. Property: The portion of the real property located at 755 Jefferson Avenue, Rochester, New York 14623 which is owned by Respondent.
- b. Existing Contamination: Any hazardous waste, as that term is defined in 6 NYCRR Section 375-1.2(w), present or existing at, nearby, or otherwise originating from MW-D7 as of the effective date of this Order.

II. Appropriate Care, Cooperation, and Responsibilities of Respondent Under this Order

- a. Respondent shall exercise appropriate care<sup>1</sup> at the Site with respect to the Existing Contamination and shall comply with all applicable local, State, and federal laws and regulations. Respondent and its successors shall affirmatively ensure that any development activities on the Site are in compliance with all applicable local, State, and federal laws and regulations, including but not limited to 6 NYCRR §§ 375-1.11(d) and 375-2.11(a), as well as any excavation or other applicable plans approved by the Department for the Site.
- b. Respondent shall complete all of the Site activities described in ¶¶6 & 7 above and submit one or more reports to the Department that fully document the activities

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<sup>1</sup> As the term is defined in 42 U.S.C. § 9601(40)(D).

conducted, provides the results of the activities, and any recommendations for further work at the Site.

- c. Respondent shall provide access to the Property as set forth below (see Paragraph III).

### III. Access

- a. Respondent and any entity taking any title or interest in the Site from or through Respondent hereby irrevocably consent, upon reasonable notice under the circumstances presented, to grant entry upon the Site (or areas in the vicinity of the Site which may be under the control of Respondent) by any duly designated officer or employee of the Department or any State agency having jurisdiction with respect to the hazardous wastes/substances at the Site; by any agent, consultant, contractor, or other person so authorized by the Commissioner, all of whom shall abide by the health and safety rules in effect for the Site, for statutorily or regulatorily authorized purposes, including: (i) inspecting, sampling, and testing; (ii) any activities necessary for the Department to effectuate and ensure Respondent's compliance with the Order; and (iii) any other activities necessary to the design and implementation of any construction or environmental treatment procedures necessary to effectuate interim remedial measures and/or remedies at the Site in accordance with applicable state and federal law.
- b. Respondent shall have the right to obtain split samples, duplicate samples, or both, of all substances and materials sampled at its sole cost and expense. The Department shall make the results of all sampling and scientific measurements taken under this Paragraph available to Respondent in the format which the Department receives it upon Respondent's request.
- c. Respondent shall use its best efforts to ensure that its successors in interest, lessees, and sublessees of the Site provide reasonable access.

### IV. Penalties

- a. Respondent's failure to comply with any term of this Order constitutes a violation of this Order, the ECL, and 6 NYCRR § 375-2.11(a)(4) and may subject Respondent to payable penalties imposed by the Department.
- b. Payment of any penalties shall not in any way alter Respondent's obligations under this Order.
- c. Respondent shall not suffer any penalty or be subject to any proceeding or action in the event it cannot comply with any requirement of this Order as a result of any Force Majeure Event as provided at 6 NYCRR § 375-1.5(b)(4), which definition of Force Majeure Event shall specifically include a work stoppage by Respondent or its contractors implementing the Work Plan caused by a Federal or State declared national or state emergency based on an epidemic or pandemic. Respondent must use best efforts to anticipate the potential Force Majeure event, best efforts to address any such event as it is occurring, and best efforts following the Force

Majeure event to minimize delay to the greatest extent possible. "Force Majeure" does not include Respondent's economic inability to comply with any obligation, the failure of Respondent to make complete and timely application for any required approval or permit, and non-attainment of the goals, standards, and requirements of this Order.

- d. Respondent shall notify the Department in writing within ten (10) days of the onset of any Force Majeure Event. 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 be deemed to know of any circumstance which it, any entity controlled by it, or its contractors knew or should have known.
- e. Respondent shall have the burden of proving by a preponderance of the evidence that (i) the delay or anticipated delay has been or will be caused by a Force Majeure event; (ii) the duration of the delay or the extension sought is warranted under the circumstances; (iii) best efforts were exercised to avoid and mitigate the effects of the delay; and (iv) Respondent complied with the requirements of Subparagraph IV.d regarding timely notification.
- f. If the Department agrees that the delay or anticipated delay is attributable to a Force Majeure Event, the time for performance of the obligations that are affected by the Force Majeure Event shall be extended for a period of time equivalent to the time lost because of the Force Majeure event, in accordance with 6 NYCRR § 375-1.5(b)(4).
- g. If the Department rejects Respondent's assertion that an event provides a defense to non-compliance with this Order pursuant to Subparagraphs IV.c and d, Respondent shall be in violation of this Order.

V. Indemnification

Respondent shall indemnify and hold the Department, the State of New York, and their representatives and employees harmless as provided by 6 NYCRR § 375-2.5(a)(3)(i).

VI. Transfer of Ownership Interest/Change in Use

- a. If Respondent proposes to convey the whole or any part of its ownership interest in the Property, or become aware of such conveyance, Respondent shall, not fewer than sixty (60) days before the date of conveyance, or within thirty (30) days after becoming aware of such conveyance, notify the Department in writing of the identity of the transferee and of the nature and proposed or actual date of the conveyance, and shall notify the transferee in writing, with a copy to the Department, of the applicability of this Order. However, such obligation shall not extend to a conveyance by means of a corporate reorganization or merger or the granting of any rights under any mortgage, deed, trust, assignment, judgment, lien, pledge, security agreement, lease, or any other right accruing to a person not affiliated with Respondent to secure the repayment of money or the performance of a duty or obligation.

- b. In the event of an assignment or transfer of either of the Property or an assignment or transfer of an interest in the Property, the assignor or transferor shall continue to be bound by all of the terms and conditions, and subject to all the benefits, of this Order except as the Department and the assignor or transferor agree otherwise and modify this Order, in writing. Moreover, prior to or simultaneous with any assignment or transfer of Property, the assignee or transferee must consent in writing to be bound by the terms of this Order.
- c. Respondent shall notify the Department at least sixty (60) days in advance of any change of use, as defined in 6 NYCRR 375-2.2(a), which is proposed for the Property, in accordance with the provisions of 6 NYCRR 375-1.11(d). In the event the Department determines that the proposed change of use is prohibited, the Department shall notify Respondent of such determination within forty-five (45) days of receipt of such notice.

VII. 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 or authorities, including, but not limited to, the right to recover natural resource damages, the right to take any investigatory or remedial action deemed necessary, and the right to exercise summary abatement powers with respect to any person, including Respondent.

VIII. 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, with a copy by email:

- i. Communications from the Respondent shall be sent to:

Adam T. Morgan  
Environmental Engineer  
Division of Environmental Remediation  
New York State Department of Environmental Conservation  
6274 East Avon – Lima Road  
Avon, NY 14414  
adam.morgan@dec.ny.gov

Dudley Loew  
Acting Regional Attorney  
New York State Department of Environmental Conservation  
6274 East Avon-Lima Road  
Avon, New York 14414  
dudley.loew@dec.ny.gov

- ii. Communications from the Department to the Respondent shall be sent to:

Mr. Robert Tyson  
Bond, Schoeneck & King, PLLC  
One Lincoln Center  
Syracuse, New York 13202  
rtyson@bsk.com

IX. Termination of Order

- a. This Order shall terminate upon the Department's written determination that: (i) its terms and conditions have been satisfied or (ii) the Department elects to terminate based on Respondent's violation of the Order's terms, following written notice of the intended termination to Respondent, giving Respondent thirty (30) days to correct the violation (the "thirty-day notice"). The termination shall be effective ten (10) days after the thirty-day notice period has run unless the violation has been corrected to the Department's satisfaction (the "Termination Date").
- b. Notwithstanding the foregoing, the provisions contained in Paragraphs II, III, IV, V, and VII shall survive the termination of this Order and any violation of such surviving Paragraphs shall be a violation of this Order, the ECL, and 6 NYCRR § 375-2.11(a)(4), subjecting Respondent to penalties as provided under Paragraph IV so long as such obligations accrued on or prior to the Termination Date.

X. Payment of State Costs

- a. Respondent shall be responsible for the payment of all future state costs as set forth in ¶VI of Appendix "A", within forty-five (45) days after the effective date of this Consent Order.

XI. Miscellaneous

- a. The Standard Clauses for all New York State Superfund Orders are provided at Appendix "A" of this Order and are fully incorporated as enforceable provisions of this Consent Order. The language of ¶¶ I through XI herein shall supersede any conflicting language found in the Standard Clauses.
- b. Respondent's successors and assigns shall be bound by this Order and the terms of this Order shall inure to the benefit of the Respondent and its successors. Any change in ownership or corporate status, including but not limited to, any transfer of assets or real or personal property, shall in no way alter such Respondent's responsibilities under this Order.
- c. The paragraph headings set forth in this Order are included for convenience of reference only and shall be disregarded in the construction and interpretation of any provisions of this Order.
- d. The terms of this Order shall constitute the complete and entire agreement between the Department and Respondent concerning the actions required by this Order. 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 shall be construed as relieving Respondent of its obligation to obtain such formal approvals as required by this Order. Except as set forth herein, if the Respondent desires that any provision of this Order be changed, they shall make timely written application to the Commissioner with copies to the parties listed in Paragraph VIII herein. The Commissioner or the Commissioner's designee shall endeavor to respond in 60 days.

- e. If Respondent is a partnership, the obligations of all general partners, including limited partners who act as general partners, to finance and perform obligations under this Order and pay amounts owed to the Department under this Order are joint and several. In the event of the insolvency of or the failure of any of the general partners to implement the requirements of this Order, the remaining general partners shall complete all such requirements.
- f. All activities undertaken by the Respondent pursuant to this Order shall be performed in accordance with the requirements of all applicable Federal and State laws, regulations and guidance documents
- g. Unless otherwise expressly provided herein, terms used in this Order which are defined in ECL Article 27, Title 13 or in regulations promulgated under such statutes shall have the meaning assigned to them under such statutes or regulations.
- h. Respondent's obligations under this Order represent payment for or reimbursement of removal or response costs and shall not be deemed to constitute any type of fine or penalty.
- i. This Order shall be filed in the Office of the Monroe County Clerk at the expense of the Respondent within five (5) days of receipt of an original signed document. Proof of recording shall be provided to the Department within thirty (30) days of the actual filing.
- j. This Order may be executed for the convenience of the parties thereto, individually or in combination, in one or more counterparts, each of which for all purposes shall be deemed to have the status of an executed original and all of which shall together constitute one and the same.
- k. The undersigned representative of each party certifies that he or she is fully authorized to enter into this Order and to execute and bind the party to its terms. The effective date of this order is the date the Commissioner or the Commissioner's representative signs this Order.

Dated:

June 30, 2020

**BASIL B. SEGGOS**  
COMMISSIONER  
NEW YORK STATE DEPARTMENT OF  
ENVIRONMENTAL CONSERVATION

By:



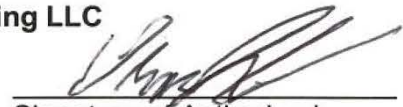
Michael J. Ryan, P.E., Director  
Division of Environmental Remediation

### CONSENT BY RESPONDENT

Respondent Unither Manufacturing LLC hereby consents to the issuing and entering of this Order without further notice, waives its right to a hearing herein, and agrees to be bound by the terms, conditions and provisions contained in this Order. The undersigned further hereby declares that they have been given the authority to bind the Respondent to the requirements of this Order.

#### Unither Manufacturing LLC

By

  
Signature of Authorized  
Representative

Print Name:

Kevin Colangelo

Title:

Director – North America

Date:

06/12/2020

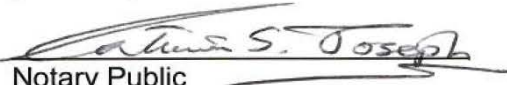
ACKNOWLEDGMENT  
STATE OF NEW YORK )

) ss:

COUNTY OF MONROE)



On the 22ND day of JUNE, in the year 2020, before me, the undersigned, personally appeared KEVIN COLANGELO personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

  
Notary Public

If you are unable to secure notarization, you must sign the statement below.



In signing this document, I acknowledge under penalty of perjury that I understand the contents and purpose of this document; the signature above is my own and I signed willingly. I have also submitted state-issued identification verifying my identity. I am aware that any false statement made herein is punishable as a class A misdemeanor pursuant to section 210.45 of the Penal Law of the State of New York.

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Signature

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Printed name