

STATE OF NEW YORK: DEPARTMENT OF ENVIRONMENTAL CONSERVATION

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In the Matter of the  
Development and Implementation of  
an Interim Remedial Measure  
at an Inactive Hazardous Waste  
Disposal Site  
by:

ORDER  
ON  
CONSENT

INDEX # A702659106

MILLER BREWING COMPANY,  
CONTAINER DIVISION,

Respondent.

Site No. 738029

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WHEREAS,

1. The New York State Department of Environmental Conservation (the "Department") is responsible for enforcement of Article 27, Title 13 of the Environmental Conservation Law of the State of New York ("ECL"), entitled "Inactive Hazardous Waste Disposal Sites."

2. Miller Brewing Company is a corporation organized and existing under the laws of the State of Wisconsin and is authorized to do business in the State of New York. Miller Brewing Company has a Container Division (the "Respondent"), which operates a canmaking facility in the Town of Volney, Oswego County (the "Site"). The Miller Container facility is located approximately 1200 feet southeast of the Fulton, New York municipal boundary, approximately 1000 feet northeast of the Oswego River and approximately 900 feet south of New York .



State Route 481. A City of Fulton ("the City") municipal drinking water wellfield is located hydrogeologically downgradient of the facility.

3. Respondent formerly had in use a spill containment tank installed near the northwest corner of its facility ("the Spill Area"), which was found at the time of its excavation in the Spring of 1986 to have been leaking.

4. A soil gas survey conducted during 1990 defined two potential areas of additional contamination: an area at the north corner of the facility and an area at the south corner of the facility, both of which were formerly used for drum storage. An investigation of these areas showed a moderate level of contamination at the south corner of the facility.

5. In April of 1991, a second spill area was identified within the facility during the excavation of a sump. Respondent is currently investigating this area.

6. Laboratory analyses of ground water samples from monitoring wells installed at the Site have detected the presence of methylene chloride, 1,1-dichloroethylene, 1,1-dichloroethane, 1,1,1-trichloroethane ("TCA"), tetrachloroethylene, and other contaminants.

7. A contaminant plume from the former spill containment tank was identified in the aquifer at the Site. TCA and other contaminants identified at the Site have been detected at the municipal water wellfield. Respondent has pumped two municipal drinking water wells, Kellar Well Number 2 ("K-2") and Municipal



Well Number 2 ("M-2"), to the Oswego River since April of 1990 when levels of contaminants in the two wells began to increase.

8. A third municipal drinking water well, Kellar Well Number 1 ("K-1"), provides the City with approximately one-third of its total water supply. Sampling at K-1 has shown sporadic contamination by volatile organics.

9. The Department alleges that Respondent is a responsible party with respect to contamination migrating toward and detected at K-1, K-2 and M-2.

10. Respondent and the Department executed Order on Consent # A701118704, effective January 22, 1988, pursuant to which Respondent implemented an interim remedial measures program intended to treat ground water at the Site to acceptable levels. The interim remedial program included the installation of three ground water recovery wells and the treatment of contaminated ground water by an air stripper. The program also required the periodic monitoring of the monitoring wells on the Site to assess the effectiveness of the interim remedial program.

11. Respondent and the Department executed an Amendment to Order on Consent # A701118704, effective March 29, 1990, pursuant to which Respondent is implementing an Interim Remedial Measures Program which includes the pumping of M-2 into the Oswego River.

12. Respondent and the Department executed Order on Consent # A7-0227-90-04, effective April 23, 1990, pursuant to which Respondent is conducting a Remedial Investigation/ Feasibility



Study ("RI/FS") at the Site.

13. The Site is an inactive hazardous waste disposal site, as that term is defined at ECL Section 27-1301(2) and has been listed in the Registry of Inactive Hazardous Waste Disposal Sites in New York State as Site Number 738029. The Department has classified the Site as a Classification "2" pursuant to ECL Section 27-1305(4)(b), having found that the Site presents a "significant threat to the public health or environment - action required."

14. Pursuant to ECL Section 27-1313(3)(a), whenever the Commissioner of Environmental Conservation (the "Commissioner") "finds that hazardous wastes at an inactive hazardous waste disposal site constitute a significant threat to the environment, he may order the owner of such site and/or any person responsible for the disposal of hazardous wastes at such site (i) to develop an inactive hazardous waste disposal site remedial program, subject to the approval of the Department, at such site, and (ii) to implement such program within reasonable time limits specified in the order."

15. The Department and Respondent agree that the goal of this Order is for Respondent to undertake interim remedial measures which include (1) the development and construction of a long-term treatment system for drinking water pumped from K-1, K-2 and M-2, (2) the temporary pumping of water from K-1, K-2 and M-2 into the Oswego River, and (3) the provision of water from the Onondaga County Water Authority ("OCWA") to the City



during the period when K-1, K-2 and M-2 are pumped into the Oswego River.

16. As a precondition to its entering into this Order, the Department has required Respondent to agree to transfer ownership of the long-term treatment system to the City.

17. Respondent, having waived its right to a hearing herein, has consented to the issuance of this Order without any adjudication of fact or law and agrees to be bound by its terms. Respondent's consent to and compliance with this Order does not constitute, and shall not be construed as, an admission of liability of any kind or an admission by Respondent of law or fact or of the applicability of any law to conditions at the Site.

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

I. Respondent has retained Malcolm Pirnie, Inc. to perform the technical and engineering obligations required by this Order and Syracuse Research Corporation ("SRC") and/or Galson Laboratories to perform the analytical obligations under this Order. The Department has approved Respondent's use of Malcolm Pirnie, Inc., SRC and Galson Laboratories. Any other consultants, contractors or laboratories retained by Respondent to perform technical, engineering or analytical obligations required by this Order must be acceptable to the Department.

II. A. All submittals made pursuant to paragraphs III



through VI of this Order shall be prepared in accordance with Section 5-1.22 of the New York Sanitary Code.

B. (1) The New York State Department of Health ("DOH") and the City shall review each of the submittals Respondent makes pursuant to paragraphs III through VI of 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. Within 30 days of receipt of the submittal, DOH shall notify Respondent in writing of DOH's and the City's approval or disapproval of the submittal. All approved submittals shall be incorporated into and become an enforceable part of this Order.

(2) If DOH and the City disapprove a submittal, DOH shall so notify Respondent in writing and shall specify the reasons for their disapproval. Within the time frame set by DOH in its notice of disapproval, Respondent shall make a revised submittal to DOH and the City that addresses and resolves all of DOH's and the City's stated reasons for disapproving the first submittal.

(3) Within 30 days after receipt of the revised submittal, DOH shall notify Respondent in writing of DOH's and the City's approval or disapproval. If DOH and the City disapprove the revised submittal, Respondent shall be in violation of this Order and the Department may take whatever action or pursue whatever rights it has pursuant to any

provision of statutory or common law. If DOH and the City approve the revised submittal, it shall be incorporated into and become an enforceable part of this Order.

Respondent, DOH and the City agree to attempt to use best efforts to work in parallel in order to facilitate the rapid completion of the long-term treatment system.

Long-Term Treatment

III. On or before August 2, 1991, Respondent shall submit to DOH and the City a Treatability Study that will support air stripper technology for use in a ground water treatment system ("the Treatment System") to be used for the long-term treatment of water pumped from K-1, K-2 and M-2 prior to the water's introduction into the City's drinking water supply.

IIIA. Within 14 days of DOH's and the City's approval of the Treatability Study, Respondent shall submit an Engineering Report for the Treatment System to DOH and the City.

IV. Within 30 days of DOH's and the City's approval of the Engineering Report, Respondent shall submit Plans and Specifications for the Treatment System to DOH and the City.

The Plans and Specifications shall provide for a Treatment System which, at a minimum:

(i) Treats a range of flow from 549,000 gallons per day ("GPD") to 1,000,000 GPD of water from K-1, K-2 and M-2;

(ii) Treats the water pumped from K-1, K-2 and M-2 so that the following contaminants will be



"non-detectable" in the water prior to the water's return to the municipal water system:

Benzene  
1,2-Dichloroethane  
Ethylbenzene  
Toluene  
1,1,1-Trichloroethane  
Trichloroethylene  
Chloroform  
1,1-Dichloroethane  
Tetrachloroethylene  
1,1-Dichloroethylene  
Xylenes, Total  
Methylene Chloride  
1,2-Dichloroethylene (cis- and trans-)

For purposes of this Order, "non-detectable" shall mean a concentration below 0.5 micrograms per liter;

(iii) Returns treated groundwater to the City's municipal water system;

(iv) Includes carbon filtration for the Treatment System's exhaust gases; and

(v) Meets all State, federal and local permitting requirements, including the requirements of the Department's Division of Air.

The Department's Division of Air shall make any submittal for review made pursuant to this Order the top priority for review for Region 7. The Division of Air shall notify Respondent of its approval or disapproval within 60 days of the Division of Air's receipt of the submittal.

V. Upon DOH's and the City's approval of the Engineering Report and Plans and Specifications, Respondent shall commence construction of the Treatment System in accordance with the



approved Plans and Specifications.

Upon the substantial completion of construction ("Substantial Completion"), Respondent shall undertake a pre-entry testing program in accordance with instructions from DOH. Respondent shall notify the City of Substantial Completion, in writing, within one business day of Substantial Completion. Within one business day of such notification, the City shall submit to DOH an application for a certificate of "Approval of Completed Works."

Respondent shall complete the pre-entry testing program and fully prepare the Treatment System to be put into long-term operation treating municipal drinking water on or before June 30, 1992.

Within 30 days of Substantial Completion, Respondent shall submit to DOH and the City "as-built" drawings and a final engineering report.

VI. Within 45 days of approval of the Engineering Report and Plans and Specifications, Respondent shall submit to DOH and the City an Operation, Maintenance and Monitoring Plan for the Treatment System and an Emergency/Contingency Plan detailing steps which Respondent shall take if 1,2-Dichloropropane, 1,1,2-Trichloroethane, 1,3-Dichlorobenzene or Bromochloromethane is identified as being present at or in the vicinity of K-1, K-2 or M-2 and to increase, change or modify the system and its operation to respond to changes in groundwater quality and/or data from the Remedial Investigation/ Feasibility Study or other

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monitoring, including increases in contaminant levels or the identification of new contaminants in the aquifer.

VIA. In the event modifications to the Treatment System are required which are documented to exceed \$200,000.00 in costs, Respondent reserves the right to provide, upon written notice to the Department, DOH and the City, water from alternate source(s), the quantity of which is equal to the daily pumping values for K-1, K-2 and M-2 set forth in Paragraph XIII and the quality of which meets the drinking water standards of this Order, provided that Respondent obtains, independent of this Order, all permits required in connection with the provision of alternate water and the termination or reduction of pumping of K-1, K-2 and/or M-2, including a permit to pump any municipal wells into the Oswego River. If Respondent provides water from alternate source(s), Respondent shall continue to provide such water until Respondent's obligations under this Order terminate in accordance with paragraph XVII.

VII. Following Substantial Completion and the completion of the pre-entry testing program, but in no event later than June 30, 1992, Respondent shall transfer ownership of the Treatment System to the City and the City shall commence and continue to be responsible for the operation, maintenance and monitoring of the Treatment System in accordance with the approved Operation, Maintenance and Monitoring Plan. DOH reserves the right to modify the monitoring plan as it deems appropriate and the City shall monitor in accordance with all

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DOH requirements. The City shall report immediately to the Department, DOH and Respondent in the event of any operating problems with the Treatment System and Respondent shall, upon notice, provide the City with the technical assistance required to operate the Treatment System and resolve any problems encountered in the operation.

VIII. Respondent shall be responsible for the additional costs required for the City's operation and maintenance of the Treatment System. For purposes of this paragraph, "additional costs" is defined to be the following costs:

A. Disposal and replacement of carbon filters. The City shall notify Respondent when the carbon filters need to be replaced in accordance with the approved Operation and Maintenance manual for the Treatment System;

B. Electrical power to operate the Treatment System, which shall be determined by a separate meter affixed to the Treatment System, and beginning June, 1991, the electrical power to operate the proposed temporary treatment systems and the three municipal wells prior to the Date of Commencement of the Treatment System. The City shall be responsible for the cost of operating the three municipal wells using the Treatment System after the Date of Commencement. For purposes of this Order, the Date of Commencement shall be the date when the Treatment System begins to provide treated water to the City's municipal water system;

C. Monitoring required as part of the DOH's approval



of the Treatment System. Respondent shall retain its own DOH certified laboratory to perform the DOH required monitoring and provide a copy of the analytical results to the City;

D. A third-party vendor to perform repairs to the Treatment System which cannot be performed by the City's existing staff. This category of expense shall also include reimbursement for the cost of parts in excess of \$100.00, but shall not include the cost of a third-party engineering firm. In the event of operating problems with the Treatment System, the City shall notify the Respondent, who shall retain Malcolm Pirnie, the firm designing the Treatment System or some other duly qualified engineering firm, to provide the necessary, engineering services. Respondent shall reimburse the City for the costs covered in this subparagraph on a monthly basis upon invoices furnished by the City which shall be payable thirty (30) days after Respondent's receipt;

E. Modifications to the Treatment System which are required as a result of the implementation of the Emergency/Contingency Plan referenced in Paragraph VI of this Order or, if the Respondent chooses to provide water from an alternate source(s) in accordance with Paragraph VIA of this Order, the cost to provide the water;

F. Out-of-pocket expenses for third-party legal or engineering services, which are necessarily incurred by the City solely as a result of the City's operation of the Treatment System in accordance with the approved Operation and Maintenance



manual; and

G. Notwithstanding the foregoing, the Respondent shall not be responsible for reimbursement of costs arising as a result of any modification made by the City to the Treatment System which is unrelated to Respondent's obligations under this Order. In any event, no modifications to the Treatment System shall be made by the City without prior written approval by the Department and the DOH and without at least 10 days prior written notice to the Respondent.

Temporary Pumping of K-2 and M-2

IX. Commencing upon the effective date of this Order, Respondent shall pump K-2 and M-2 into the Oswego River in accordance with the "Effluent Limitations and Monitoring Requirements," the "Action Level Requirements" and the "General Conditions" set forth in Appendix "A" which is attached hereto and incorporated into this Order. Prior to discharge, the effluent from K-2 and M-2 shall be treated by the temporary granular activated carbon treatment system approved by the Department by letter from Joseph Kelleher to Michael Barone dated May 20, 1991. If the Treatment System will not be put in service until after the arrival of freezing weather, the system serving K-2 and M-2 shall be winterized, as necessary.

The Department's authorization for Respondent to pump K-2 and M-2 into the Oswego River, which is set forth in



Appendix "A," shall terminate on June 30, 1992.

The Department reserves the right to terminate the authorization to pump K-2 and M-2 into the Oswego River in the event Respondent fails to pump K-2 and M-2 in accordance with Appendix "A."

Temporary Pumping of K-1

X. Commencing upon the effective date of this Order, the City shall discontinue the pumping of K-1 into the City's municipal water system and Respondent may pump up to 600,000 gallons per day into the Oswego River. Notwithstanding the foregoing, the Respondent and the City shall work together to reduce the pumping of K-1 to the point where they mutually determine that pumping must be maintained to prevent the flooding of the municipal waterworks. During the period when K-1 is pumped into the Oswego River, the City shall not increase or decrease the pumping of K-1 without prior notice to the Department and Respondent. All water pumped from K-1 into the Oswego River shall be pumped in accordance with the "Effluent Limitations and Monitoring Requirements," the "Action Level Requirements" and the "General Conditions" set forth in Appendix "B" which is attached hereto and incorporated into this Order.

The Department's authorization for Respondent to pump K-1 into the Oswego River, which is set forth as Appendix "B," shall terminate on June 30, 1992.

The Department reserves the right to terminate the



authorization to pump K-1 into the Oswego River in the event Respondent fails to pump K-1 in accordance with Appendix "B."

XI. Within two business days of the effective date of this Order, Respondent shall submit to the Department approvable plans for a temporary treatment system which shall be available to treat K-1's effluent prior to discharge into the Oswego River ("Temporary Plans"). The temporary treatment system shall use the same engineering and design principles as those used for the temporary granular activated carbon treatment system approved by the Department by letter from Joseph Kelleher to Michael Barone dated May 20, 1991.

The Department shall notify Respondent, in writing, of its approval or disapproval of the Temporary Plans within fifteen business days of their submittal.

If the Department disapproves the Temporary Plans, the Department shall notify Respondent, in writing, of the Department's specific objections. Respondent shall, within five days after receiving the notice of disapproval, submit Temporary Plans which have been revised to reflect all of the Department's stated reasons for disapproving the first submittal.

The Department shall notify Respondent, in writing, of its approval or disapproval of the revised Temporary Plans. If the Department disapproves the revised Temporary Plans, Respondent shall be in violation of this Order and Respondent's authorization to pump K-1 into the Oswego River shall terminate.

If the Department approves the Temporary Plans or the



revised Temporary Plans, they shall be incorporated into and become an enforceable part of this Order.

Respondent shall install the temporary treatment system, in accordance with the requirements of the Department-approved Temporary Plans or revised Temporary Plans, within 56 days of the effective date of this Order.

If the permanent Treatment System will not be put in service until after the arrival of freezing weather, the system serving K-1 must be winterized, as necessary.

XII. Within 24 hours of Respondent's receipt of two consecutive test results indicating that the effluent of K-1 is within 80 percent of exceeding the Discharge Limitations or Action Requirements contained in Appendix "B" (e.g., eight micrograms per liter if the discharge level were ten micrograms per liter), Respondent shall commence the treatment of the effluent of K-1 by the temporary treatment system prior to discharge into the Oswego River. If a single sample exceeds the foregoing threshold, Respondent shall, within 24 hours, take a second sample, submit it immediately to a laboratory, and require analysis within 24 hours. Respondent shall submit the second sample's analytical results to the Department within 24 hours of Respondent's receipt of the results.

The treatment of K-1 shall continue for the remainder of the time K-1 is pumped into the Oswego River under the terms of this Order.



#### Replacement Water from OCWA

XIII. In accordance with existing arrangements, the City has been purchasing water from OCWA to replace water formerly provided by M-2, K-2 and K-1 and Respondent has paid the cost charged by OCWA to the City for the replacement water. Respondent shall continue to pay for the cost of replacement water until the Date of Commencement of the Treatment System. Payment of the cost for the replacement water shall be made monthly, within 30 days after Respondent's receipt of an invoice from the City. For purposes of this paragraph, the following definitions shall apply:

A. "Cost" - the invoice amount charged to the City by OCWA for the replacement water, including any additional "External Customer Charge" imposed by the Metropolitan Water Board.

B. "Replacement Water" - the amount of water provided by M-2, K-2 and K-1 prior to their removal from service. The value of 55,756 GPD shall be used for M-2, 65,066 GPD for K-2, and 656,521 GPD for K-1.

#### Aquifer Study

XIV. Respondent shall undertake, as part of the RI/FS, the following activities to further define the aquifer servicing K-1, K-2 and M-2:

(a) determine the location, depths, yields and pumping regimens for all wells located on the grounds of the Fulton

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Municipal Water Works which are currently or were formerly used as drinking water wells;

(b) locate and determine the depths of all test wells and piezometers, including United States Geological Survey wells, located on the grounds of the City of Fulton's Water Works; and

(c) using the information generated by the activities set forth in subparagraphs "a" and "b," above, evaluate the potential for currently identified contamination to migrate to K-1.

XV. If, for any reason, water from K-1 is used as public drinking water prior to DOH's and the City's approval of Respondent's Operation, Maintenance and Monitoring Plan for the Treatment System, Respondent shall monitor K-1 in accordance with the requirements of paragraph VII of the terminated March 29, 1990 Amendment to Order on Consent # A701118704 until the commencement of the Treatment System.

XVI. The City hereby grants Respondent, its representatives and contractors access to enter onto the City's property for purposes of sampling K-1, K-2 and M-2 and construction, placement and startup operation of the treatment systems described in paragraphs III through XII of this Order. During periods of construction of the referenced treatment systems, Respondent shall insure the City from liability claims and will issue the City documentation acknowledging this obligation in a form appropriate for Respondent's status as a self-insurer.

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XVII. Respondent's obligations under this Order, which remain after June 30, 1992, except paragraph XXVIII, shall terminate if Respondent demonstrates to the satisfaction of the Department, DOH and the City that:

A. Neither K-1, K-2 nor M-2 has been impacted by contamination for which Respondent is a source, generator or responsible party; or

B. Remedial measures cause the aquifer to be remediated to the point where treatment is no longer necessary.

Upon receipt of a written request by Respondent to terminate its obligations, the Department, DOH and the City shall notify Respondent, in writing, whether the Department, DOH and the City are satisfied with Respondent's showing.

If Respondent's approved Feasibility Study, undertaken as part of the RI/FS, identifies criteria for determining when the aquifer is remediated to the point where treatment is no longer necessary or may be suspended, the Department, DOH and the City shall use that criteria in determining whether they are satisfied with Respondent's showing.

XXVIII. Within 360 days of the effective date of this Order, or 30 days after receipt of an invoice from the Department, whichever is later, Respondent shall pay to the Department a sum of money which shall represent reimbursement for the Department's expenses including, but not limited to, direct



labor, overhead, travel, analytical costs and contractor costs incurred by the State of New York for negotiating this Order, reviewing and revising submittals made pursuant to this Order, overseeing activities conducted by the Respondent pursuant to this Order, and collecting and analyzing samples taken pursuant to this Order. Subsequent payments shall be made on an annual basis, within 30 days after receipt of an invoice from the Department, during the period in which Respondent performs any activities under this Order. Such payment shall be by check payable to the Department of Environmental Conservation. Payment shall be sent to the Bureau of Program Management, Division of Hazardous Waste Remediation, NYSDEC, 50 Wolf Road, Albany, New York 12233. The Department shall itemize costs incurred. Itemization of 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 the Department's quarterly reports of Direct Personal Service. The Department's approved fringe benefit and indirect cost rates shall be applied. Non-personal service costs shall be summarized by category of expense (supplies and materials, travel, contractual) and shall be documented by the New York State Office of the State Comptroller's quarterly expenditure reports. Respondent shall not be obligated to pay any portion of costs which it demonstrates to the Department's satisfaction were



incurred inconsistent with this Order or which are the result of clerical errors.

XIX. Within 30 days of receipt of an invoice from the City, Respondent shall pay to the City, a sum of money which shall represent a not-to-exceed cost of \$10,000 for the City to retain a third-party engineering firm to review the submittals for the Treatment System in accordance with Paragraphs II through VI of this Order.

XX. The Department shall have the right to obtain split samples, duplicate samples, or both, of all substances and materials sampled by Respondent and the Department shall also have the right to take its own samples. The Department shall provide Respondent with the analytical results of any such samples, after the Department's receipt of Respondent's results.

XXI. Respondent shall provide notice to the Department at least 5 working days in advance of any field activities to be conducted pursuant to this Order.

XXII. Except as already provided for in paragraph XVI, Respondent shall obtain whatever permits, easements, rights-of-way, rights-of-entry, approvals or authorizations are necessary in order to perform its obligations pursuant to this Order. If the Respondent's good faith efforts are unsuccessful in obtaining any required authorizations, the Department may exercise its authority under the ECL in an effort to assist the Respondent in obtaining the necessary authorizations.

XXIII. Respondent shall permit any duly designated employee,



consultant, contractor or agent of the Department or the Department of Health to enter upon the Site or areas in the vicinity of the Site which may be under the control of Respondent for purposes of inspection, sampling and testing and to assure Respondent's compliance with this Order.

XXIV. Respondent shall not suffer any penalty under this Order, or be subject to any proceeding or actions for any remedy or relief, if it cannot comply with any requirements hereof because of an act of God, war, riot, or other condition as to which negligence or willful misconduct on the part of Respondent was not a proximate cause, provided however that Respondent shall notify the Department, in writing, within five days of when it obtains knowledge of any such condition and request an appropriate extension or modification of the terms of this Order.

XXV. The failure of the Respondent to comply with any term of this Order shall constitute a violation of this Order and the ECL.

XXVI. 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:

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



servants, agents, successors and assigns in the event that Respondent shall fail to satisfy any of the terms hereof;

3. the Department's right to bring any action or proceeding against Respondent, its directors, officers, employees, servants, agents, successors and assigns with respect to claims for natural resource damages as a result of the release or threatened release of hazardous wastes or constituents at or from the Site or areas in the vicinity of the Site; and

4. the Department's right to bring any action or proceeding against Respondent, its directors, officers, employees, servants, agents, successors and assigns with respect to hazardous wastes that are present at the Site or that have migrated from the Site and present a significant threat to human health or the environment.

Other than subparagraph 2 of paragraph XXVI, nothing contained in paragraph XXVI represents a concession on the part of Respondent that the Department has the authority to take any of the actions cited.

B. Except as otherwise provided in this Order, the Respondent and the City reserve their respective rights under applicable law regarding claims with respect to any release of hazardous wastes and/or substances into the environment and claims arising as a result of responding to the environmental conditions at the Site and in the municipal drinking water wellfield which is the subject of this Order.



XXVII. This Order shall not be construed to prohibit the Commissioner or his duly authorized representative from exercising any summary abatement powers.

XXVIII. 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 to the extent that Respondent, its contractors or agents are liable under applicable law.

XXIX. The effective date of this Order shall be the date it is signed by the Commissioner or his designee. Upon the effective date of this Order, all terms and conditions of the March 29, 1990 Amendment to Order on Consent # A701118704, except paragraph XIV (the provision requiring Respondent to indemnify the Department and hold it harmless), shall terminate.

XXX. If Respondent desires that any provision of this Order be changed, it shall make timely written application to the Commissioner, setting forth reasonable grounds for the relief sought. A copy of such written application shall be delivered or mailed to:

Michael DiPietro of the Department (at the address set forth in paragraph XXVI.A)

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



A. State and Oswego County/ Non-SPDES:

1. Division of Hazardous Waste Remediation, New York State Department of Environmental Conservation, 50 Wolf Road, Albany, New York 12233, Attention: Michael DiPietro.

2. New York State Department of Environmental Conservation, Region 7 Headquarters, 615 Erie Boulevard West, Syracuse, New York 13204, Attention: Charles Branagh, P.E.

3. Bureau of Environmental Exposure Investigation, New York State Department of Health, 2 University Place Albany, New York 12203, Attention: Ronald Tramontano, Director.

4. Division of Environmental Enforcement, Albany Field Unit, Room 415, New York State Department of Environmental Conservation, 50 Wolf Road, Albany, New York 12233, Attention: Dolores A. Tuohy, Esq.

5. New York State Department of Health, 677 South Salina Street, Syracuse, New York 13202, Attention: Ronald Heerkens.

6. Bureau of Public Water Supply, New York State Department of Health, 2 University Place, Albany, New York 12203, Attention: Michael Burke, Director.

7. Oswego County Health Department, 70 Bunner Street, P.O.Box 3080, Oswego, New York 13126-3080, Attention: Bruce Stillman/ Evan Walsh.

B. All communication regarding SPDES-related matters must be addressed to:



1. Division of Water, New York State Department of Environmental Conservation, Region 7 Headquarters, 615 Erie Boulevard West, Syracuse, New York 13204, Attention: Leland Flocke, Regional Water Engineer.

2. Division of Water, New York State Department of Environmental Conservation, 50 Wolf Road, Room 318, Albany, New York 12233, Attention: Joseph Kelleher.

Copies should be sent to the parties set forth in A, above.

C. All communications regarding Air authorizations must be addressed to:

1. Division of Air, New York State Department of Environmental Conservation, Region 7 Headquarters, 615 Erie Boulevard West, Syracuse, New York 13204, Attention: Norman Boyce, Regional Air Engineer.

2. Division of Air, New York State Department of Environmental Conservation, PO Box 5170 Fisher Avenue, Cortland, New York 13045, Attention: Randall Young.

Copies should be sent to the parties set forth in A, above.

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

1. Miller Brewing Company, Legal Department, 3939 West Highland Boulevard, Milwaukee, Wisconsin, 53208, Attention: Garrett W. Reich, Esq.



2. Miller Brewing Company, Corporate Engineering, 3939 West Highland Boulevard, Milwaukee, Wisconsin, 53208, Attention: Thomas N. Swett, P.E.

3. Miller Brewing Company Container Division, P.O. Box 400, Fulton, New York 13069, Attention: Michael Barone.

4. Bond, Schoeneck and King, One Lincoln Center, Syracuse, New York 13202, Attention: Barry R. Kogut, Esq.

E. City of Fulton:

1. City of Fulton, Office of the Mayor, Municipal Building, Fulton, New York 13069, Attention: Hon. Muriel Allerton.

2. Chief Water Treatment Plant Operator, City of Fulton, Water Works, 960 South First Street, Fulton, New York, 13069.

3. Water and Sanitation Commissioner, City of Fulton, 141 South First Street, Fulton, New York 13069.

XXXII. The terms of this Order shall be deemed to bind the signatories thereto and their respective officers, directors, agents, servants, employees, successors and assigns. Nothing herein shall be construed to bind any other entity.

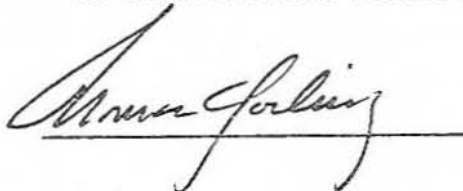
XXXIII. No terms, conditions, understandings or agreements purporting to modify or vary the terms hereof shall be binding unless made in writing and subscribed by the party to be bound. No informal advice, guidance, suggestions or comments by the Department regarding reports, proposals, plans, specifications, schedules or any other submittals shall be construed as



relieving Respondent of its obligations to obtain such formal approvals as may be required by this Order.

DATED: *Albany* New York  
*August 12* 1991

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

A handwritten signature in cursive script, reading "Thomas Jorling", written over a horizontal line.



CONSENT BY RESPONDENT

Respondent hereby, without any admission of law or fact, consents to the issuing and entering of this Order, waives its right to a hearing herein as provided by law, and agrees to be bound by this Order.

William G. Schryer

Wm. G. Schryer

By:

(TYPE NAME OF SIGNER)

Title:

Assistant Secretary

Date:

August 1, 1972

STATE OF WISCONSIN )

) S.S.:

COUNTY OF MILWAUKEE )

On this 1<sup>st</sup> day of August, 1972, before me personally came William G. Schryer, to me known, who being duly sworn, did depose and say that he resides in Deerpark, Wisconsin; that he is the Assistant Secretary of the Wisconsin 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.

Smith & Son  
Notary Public



CITY OF FULTON

By: Muriel L. Allerton  
(TYPE NAME OF SIGNER)  
Title: Muriel L. Allerton  
Mayor  
Date: August 8, 1991

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

On this eighth day of August, 1991,  
before me personally came Muriel L. Allerton, to me  
known, and being duly sworn, did depose and say: that she  
resides at 827 Forest Ave., Fulton, NY, that she is the Mayor  
of the City of Fulton, the municipality described herein, that  
she was authorized by resolution of the Common Council of the  
City of Fulton to execute the foregoing instrument, and that she  
signed her name to said instrument by like authorization.

[Signature]  
Notary Public

JEROME A. MIRABITO  
Notary Public, State of New York  
No. 02M14710622  
Qualified in Oswego County  
Commission Expires December 31, 1991