

STATE OF NEW YORK: DEPARTMENT OF ENVIRONMENTAL CONSERVATION

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

ORDER
ON
CONSENT
INDEX #B8-0295-93-01

DOLLINGER CORPORATION
Respondent.

Site Code #8-25-078

WHEREAS,

1. The New York State Department of Environmental Conservation (the "Department") is responsible for enforcement of Article 27, Title 13 of the Environmental Conservation Law of the State of New York ("ECL"), entitled "Inactive Hazardous Waste Disposal Sites." This Order is entered into pursuant to the Department's authority under ECL Article 27, Title 13 and ECL Section 3-0301.

2. Dollinger Corporation ("Respondent") is a subsidiary of American Filtrona Corporation and is the prior owner and past operator of a facility located at 1 Town Line Circle in the Town of Brighton, Monroe County, New York (the "Site"). Respondent has conducted a remedial investigation and feasibility study at the Site pursuant to an Order on Consent with the Department. The Department has approved Respondent's remedial investigation and feasibility study.

3. Following a period of public comment, the Department selected a final remedial alternative for the Site in a Record of Decision ("ROD"). The ROD is attached to this Order as Appendix "A."

4. The Site has been identified by the Department as an inactive hazardous waste disposal Site, as that term is defined at ECL Section 27-1301.2, and the Department has found that the Site presents a significant threat to the public health or environment. The Site has been listed in the Registry of Inactive Hazardous Waste Disposal Sites in New York State as Site Number 8-28-078. The Department has classified the Site as a Classification "2" pursuant to ECL Section 27-1305.4.b. Respondent denies that the Site presents a "significant threat to public health or environment" and Respondent does not agree that the Site should be classified as a Classification "2". Nevertheless, Respondent enters into and agrees to abide by the terms of this Order.

5. A. 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."

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

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

6. The Department and Respondent agree that the goal of this Order is for Respondent to develop and implement, in accordance with the ROD, an inactive hazardous waste disposal site remedial program ("Remedial Program") for the Site that shall include design and implementation, and operation, maintenance and monitoring of the selected remedial alternative.

7. Respondent, while neither admitting nor denying the Department's allegations or the validity of its determinations, having waived Respondent's 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, except that Respondent reserves the right to defend itself in any proceeding

involving the enforcement of this Order.

8. By entering into and agreeing to abide by the terms of this Order, Respondent does not admit any liability or fact regarding any matter arising out of or relating to the Site or this Order.

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

I. Remedial Design Contents

A. Within 120 days after the effective date of this Order, Respondent shall submit to the Department a remedial design to implement the remedial alternative for the Site selected by the Department in the ROD (the "Remedial Design"). The Remedial Design shall be prepared by and have the signature and seal of a professional engineer who shall certify that the Remedial Design was prepared in accordance with this Order.

B. The Remedial Design shall include the following:

1. A detailed description of the remedial objectives and the means by which each essential element of the selected remedial alternative will be implemented to achieve those objectives, including, but not limited to:

a. the construction and operation of any structures;

b. the collection, destruction, treatment, and/or disposal of hazardous wastes and substances and their

constituents and degradation products, and of any soil or other materials contaminated thereby;

c. the collection, destruction, treatment, and/or disposal of contaminated groundwater, leachate, and air;

d. physical security and posting of the Site;

e. the protection of persons living and/or working at or in the vicinity of the Site;

f. quality control and quality assurance procedures and protocols to be applied during implementation of the Remedial Design; and

g. monitoring which integrates needs which are present on-Site and off-Site during implementation of the Department-selected remedial alternative.

2. "Biddable Quality" documents for the Remedial Design including, but not limited to, documents and specifications prepared, signed, and sealed by a professional engineer. These plans shall satisfy all applicable local, state and federal laws, rules and regulations;

3. A time schedule to implement the Remedial Design;

4. The parameters, conditions, procedures, and protocols to determine the effectiveness of the Remedial Design, including a schedule for periodic sampling of groundwater monitoring wells;

5. A description of operation, maintenance, and monitoring activities to be undertaken after the Department has approved construction of the Remedial Design;

6. A contingency plan to be implemented if any element of the Remedial Design fails to achieve any of its objectives or otherwise fails to protect human health or the environment (indicating the scope and nature of those contingent tasks rather than details applicable to the design and implementation for purposes of the submission);

7. A health and safety plan for the protection of persons at and in the vicinity of the Site during construction and after completion of construction. This plan shall be prepared in accordance with 29 C.F.R. 1910 by a certified health and safety professional.

C. Respondent shall assist the Department in preparing a citizen participation plan that is, at a minimum, consistent with the Department's publication, "New York State Inactive Hazardous Waste Site Citizen Participation Plan," dated August 30, 1988, and any subsequent revisions thereto, and 6 NYCRR Part 375.

II. Remedial Design Construction and Reporting

A. Within 30 days of the Department's approval of the Remedial Design or any longer period that may be approved by the Department, Respondent shall commence construction of the Remedial Design.

B. Respondent shall implement the Remedial Design in accordance with the Department-approved Remedial Design.

C. During implementation of all construction activities identified in the Remedial Design, Respondent shall have on-Site a full-time representative who is qualified to supervise the work done.

D. Within 90 days after completion of the construction activities identified in the Remedial Design, Respondent shall submit to the Department a detailed post-remedial operation and maintenance plan ("O & M Plan"); "as-built" drawings and a final engineering report (each including all changes made to the Remedial Design during construction); and a certification by a professional engineer that the Remedial Design was implemented and all construction activities were completed in accordance with the Department-approved Remedial Design. The O & M Plan, "as built" drawings, final engineering report, and certification must be prepared, signed, and sealed by a professional engineer.

E. Upon the Department's approval of the O & M Plan, Respondent shall implement the O & M Plan in accordance with the requirements of the Department-approved O & M Plan.

F. After receipt of the "as-built" drawings, final engineering report, and certification, the Department shall notify Respondent in writing whether the Department is satisfied that the Remedial Design was implemented and that all construction activities have been completed in compliance with

the approved Remedial Design.

G. If the Department concludes that any element of the Remedial Program fails to achieve its objectives which are designed to protect human health and the environment, it shall notify Respondent in writing of the specific failures and identify the actions Respondent shall take to rectify such failures.

III. Progress Reports

Respondent shall submit to the parties identified in paragraph XII.A. a copy of written quarterly progress reports that: (i) describe the actions which have been taken toward achieving compliance with this Order during the previous quarter; (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 quarter which may be relevant to activities associated with this Order, 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 quarter; (iv) describe all actions, including, but not limited to, data collection and implementation of work plans, that are scheduled for the next quarter 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; (vi) include any modifications to any work plans that Respondent has proposed to the Department or that the Department has approved; and (vii) describe all activities undertaken in support of the Citizen Participation Plan during the previous quarter and those to be undertaken in the next quarter. Respondent shall submit these progress reports to the Department by the tenth day of every fourth month following the effective date of this Order.

IV. Review of Submittals

A. 1. The Department shall review each of the submittals Respondent makes pursuant to this Order to determine whether it was prepared, and whether the work done to generate the data and other information in the submittal was done, in accordance with this Order and generally accepted technical and scientific principles. The Department shall notify Respondent in writing of its approval or disapproval of each submittal, except for the submittal discussed in subparagraph I. B. 7. If the Department approves a submittal, the Department's approval shall constitute acknowledgement that unless the Department provides subsequent notice pursuant to subparagraph IV.B., infra, the submittal fulfills the conditions and requirements for the development of that submittal that are contained in this Order. All Department-approved submittals shall be incorporated into and become an enforceable part of this Order.

2. a. If the Department disapproves a submittal, it shall so notify Respondent in writing and shall specify the reasons for its disapproval in sufficient detail to allow Respondent to respond to the Department's objections. Within 30 days after receiving written notice that Respondent's submittal has been disapproved or any longer period that may be approved by the Department, Respondent shall make a revised submittal to the Department that addresses and resolves all of the Department's stated reasons for disapproving the first submittal.

b. After receipt of the revised submittal, the Department shall notify Respondent in writing of its approval or disapproval. If the Department disapproves the revised submittal, it shall so notify Respondent in writing and shall specify the reasons for its disapproval. In the case of such disapproval, Respondent may be considered 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. Any allegation or action taken by the Department based on its disapproval of a revised submittal shall be without prejudice to Respondent's right to contest such allegation or action. If the Department approves the revised submittal, it shall so notify Respondent in writing. The Department's approval shall constitute acknowledgement that the submittal fulfills the conditions and requirements for the development of that submittal that are contained in this Order. The approved,

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

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

V. Penalties

A. 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 an act of war, riot, strikes, an unforeseeable disaster arising from natural causes which the exercise of ordinary human prudence could not have prevented, or any other condition or event as to which negligence or willful misconduct on the part of Respondent is not the proximate cause. 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 this subparagraph.

VI. Entry upon Site

Respondent hereby consents to the entry upon the Site or areas in the vicinity of the Site which may be under the control of the Respondent by any duly designated employee, consultant, contractor, or agent of the Department or any State agency for purposes of inspection, sampling, and testing and to ensure Respondent's compliance with this Order. Respondent shall permit the Department full access to all records in Respondent's possession relating to matters addressed by this Order and to 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 rights which the Department may have, including, but not limited to nor exemplified by, the following:

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

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

3. the Department's right to bring any action or

proceeding against Respondent and/or any of Respondent's directors, officers, employees, servants, agents, successors, and assigns with respect to claims for natural resources damages as a result of the release or threatened release of hazardous substances or constituents at or from the Site or areas in the vicinity of the Site;

4. the Department's right to bring any action or proceeding against Respondent and/or any of Respondent's directors, officers, employees, servants, agents, successors, and assigns with respect to hazardous substances that are present at the Site or that have migrated from the Site and are not addressed by this Order;

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

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

7. the Department's right to recover reasonable costs and expenses attributed to any activities of the Department or its agents and employees and those of any other Department of the State related to the development and implementation of an inactive hazardous waste disposal site remedial program for this Site.

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. Payment of State Costs

Within 90 days after receipt of an itemized invoice from the Department, Respondent shall pay to the Department a sum of money which shall represent reimbursement for the State's reasonable expenses including, but not limited to, direct labor, fringe benefits, indirect costs, travel, analytical costs, and contractor costs incurred by the State of New York for work performed at the Site as of the date of this Order, reviewing and revising submittals made pursuant to this Order, overseeing activities conducted pursuant to this Order, collecting and analyzing samples, and administrative costs associated with this Order. Such payment shall be made by certified check payable to the Department of Environmental Conservation. Payment shall be sent to the Bureau of Program Management, Division of Hazardous Waste Remediation, N.Y.S.D.E.C., 50 Wolf Road, Albany, NY 12233-7010. Itemization of the costs shall include an accounting of personal services indicating the employee name, title, biweekly salary, and time spent (in hours) on the project during the billing period, as identified by an assigned time and activity code. This information shall be documented by quarterly reports of Direct Personal Service. Approved agency fringe benefit and indirect cost rates shall be applied. Non-personal service costs shall be summarized by category of expense e.g., supplies, materials, travel, contractual) and shall be documented by the New York State Office of the State

Comptroller's quarterly expenditure reports.

IX. Release

A. If, after review, the Department accepts and approves the engineer's certification that construction of the Remedial Program was completed in accordance with the approved Remedial Design, then, unless a supplementary remedial program is required pursuant to paragraph II. G., and except for the provisions of paragraphs II. E., VII, VIII, X, and XI. B. hereof, and except for any natural resources damages claims that may arise, such acceptance shall constitute a release for each and every claim, demand, remedy or action whatsoever against Respondent, its directors, officers, employees, agents, successors and assigns, which the Department has or may have pursuant to Article 27, Title 13 of the ECL relative to, or arising from the disposal of hazardous wastes at the Site; provided, however, that the Department specifically reserves all of its rights concerning, and any such release and satisfaction shall not extend to any investigation or remediation the Department deems necessary due to:

1. environmental conditions on-site or off-site which are related to the disposal of hazardous wastes at the Site and were unknown to the Department at the time of its issuance of the Record of Decision for this Site; or
2. information received, in whole or in part, after the Department's issuance of the ROD and such unknown

environmental conditions or information indicates that the Remedial Program is not protective of human health or the environment.

B. Nothing herein shall be construed as barring, diminishing, adjudicating or in any way affecting any legal or equitable rights or claims, actions, suits, causes of action or demands whatsoever that the Department may have against anyone other than Respondent, its directors, officers, employees, agents, successors and assigns.

X. Indemnification

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

XI. Public Notice

A. Within 120 days after the effective date of this

Order, Respondent shall use its best efforts to require Wilray of Rochester, Inc., the Site owner, to file a Declaration of Covenants and Restrictions with the Clerk of Monroe County to give all parties who may acquire any interest in the Site notice of this Order.

B. During the period for which the terms of this Order shall apply, in the event that Respondent learns that the owner proposes to convey the whole or any part of its ownership interest in the Site, Respondent shall, promptly upon obtaining such knowledge, notify the Department in writing of the identity of the transferee and of the nature and proposed date of the conveyance.

XII. Communications

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

Communication from Respondent shall be sent to:

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

3. Mary Jane Peachey, P.E.
New York State Department of Environmental
Conservation
6274 East Avon-Lima Road
Avon, New York 14414
4. Glen Bailey, Esq.
New York State Department of Environmental
Conservation
Division of Environmental Enforcement
270 Michigan Avenue
Buffalo, New York 14202-2999

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

1. Four copies (one unbound) to George Harris,
Division of Hazardous Waste Remediation.
2. Two copies to the Director, Bureau of
Environmental Exposure Investigation.
3. One copy to Mary Jane Peachey, P.E.
4. One copy to Glen Bailey, Esq.

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

Steven J. Koorse, Esq.
Hunton & Williams
Riverfront Plaza
951 East Byrd Street
Richmond, Virginia 23219-4074

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

XIII. Miscellaneous

A. All activities and submittals required by this Order shall address, as appropriate, 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. The Department's approval of these firms or individuals shall have been obtained before the start of any activities for which the Respondent and such firms or individuals are to be responsible. The responsibility for the performance of the professionals retained by Respondent with respect to activities pursuant to this Order 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 pursuant to this Order, 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. In obtaining its own samples, the Department shall make available to Respondent the opportunity to take split samples, and shall provide Respondent with the results of any analyses

made of such samples.

D. Respondent shall notify the Department at least 10 working days in advance of the start of any significant events scheduled to be conducted at the Site pursuant to this Order.

E. Respondent shall be responsible for obtaining 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 material work required by this Order and to each person representing Respondent with respect to the Site and shall condition all contracts entered into 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 material

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. 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.

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

J. 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.

K. 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 written 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:

David Crosby and Glen Bailey

L. The effective date of this Order shall be the date a fully executed copy of this Order is received by Respondent.

DATED: Albany, New York
July 19, 1993

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

by: *Alan Hill DeBe*
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.

DOLLINGER CORPORATION

By: Anthony M. Vincent
ANTHONY M. VINCENT
(TYPE NAME OF SIGNER)

Title: PRESIDENT

Date: July 1, 1993

STATE OF VIRGINIA)
) s.s.:
COUNTY OF HENRICO)

On this 1st day of July, 1993, before me personally came Anthony M. Vincent, to me known, who being duly sworn, did depose and say that he resides in Oilville, Virginia;
that he is the President of the Dollinger 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.

Sandra J. Basham S. Basham
NOTARY PUBLIC