

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

In the Matter of the Settlement
For the Reimbursement of Administrative
Costs for Inactive Hazardous Waste Disposal Sites,
Under Article 27, Title 13, and
Article 71, Title 27 of the
Environmental Conservation Law
by
Spectrum Origination, LLC and Reckson Glen Cove Mezz Lender,
LLC,

Respondents.

ORDER ON CONSENT
and
ADMINISTRATIVE
SETTLEMENT

Index # W1-1143-09-08

Site # 1-30-009

and

Site # 1-30-053A

WHEREAS,

1. A. 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 the New York State Finance Law ("SFL") and such laws provide the Department authority to enter into this Order on Consent and Settlement.

B. The Department also asserts that it 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.

C. This Order is issued pursuant to the Department's authority under, *inter alia*, ECL Article 27, Title 13, ECL Article 71, Title 27, and ECL 3-0301 and Section 97-b of the SFL, and resolves Respondents' liability to the State under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended ("CERCLA") 42 U.S.C. § 9601 *et seq.*, to the extent set forth herein. Accordingly, pursuant to CERCLA § 113(f)(3)(B), 42 U.S.C. § 9613(f)(3)(B), Respondent may seek contribution from persons who are not parties to this Order to the extent set forth in Subparagraph XIV.E.

D. The Commissioner of the New York State Department of Environmental Conservation is the designated Trustee for Natural Resources in accordance with applicable state and federal law.

E. 6 NYCRR 375-2.11(c)(1)(ii) authorizes the Department to expend money of the hazardous waste remedial fund provided for at SFL section 97-b to pay for the cleanup or restoration to its original state of any area where contaminants were disposed of or possessed

unlawfully contrary to ECL 27-0914. 6 NYCRR 375-2.11(c)(1)(iii) authorizes the Department to expend moneys of the hazardous waste remedial fund provided for as SFL section 97-b to pay for site identification, classification, and investigation activities including, but not limited to testing, analyses, and record searches and the Department's related administrative activities.

2. A. Pursuant to the legal authorities stated herein, the Department has classified as a Class "2" in the *Registry of Inactive Hazardous Waste Disposal Sites in New York State* certain real properties being within the City of Glen Cove, Nassau County and identified as: the Photocircuits Corporation located at 31 Sea Cliff Avenue, Site No. 1-30-009, listed February of 1995 (the "Photocircuits Site"); and Pass & Seymour located at 45 Sea Cliff Avenue, Site No. 1-30-53A, listed May 1996 (the "P&S Site"). The Photocircuits Site and the P&S Site are herein collectively referred to as the "Site". A Class "2" classification indicates that the site poses a "significant threat to public health or environment."

B. Photocircuits Site

(1) Thru out its operational history the Photocircuits Site was utilized for the manufacture of printed circuit boards. The Photocircuits Site was operated by Photocircuits, Division of Kollmorgen from October 1955 to approximately mid-1986 with Kollmorgen Corporation in ownership from 1971-1986. Photocircuits Corporation (not affiliated with Kollmorgen) owned and operated the Photocircuits Site from 1986 until approximately October 14, 2005. On that date, the PC Liquidation Corp. f/k/a Photocircuits Corporation filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code with the United States Bankruptcy Court, Eastern District of New York (the "Court") which resulted in a liquidation sale. On February 23, 2006, the Court entered an order approving PC Liquidation Corp.'s sale of substantially all of its business, including its operating assets and the land underlying the Pass and Seymour Site and the Photocircuits Site to American Pacific Financial Corporation ("AMPAC"). Prior to the closing of Court approved sale, AMPAC, upon information and belief, assigned its rights and obligations to GCP, LLC, a Nevada limited liability company under the control of a principal of AMPAC. The Photocircuits Corporation, a Nevada corporation conducting business in New York under the Fictitious name Photocircuits of New York ("Nevada Photocircuits"), operated the Photocircuits Site from approximately March 2006 until approximately early 2008. After ceasing operations, Nevada Photocircuits shut down, sold off machinery and other assets at the Site, and abandoned a large quantity of chemicals at the facility in drums, pipes, and other vessels and containers ("Abandoned Hazardous Wastes/Substances").

(2) Hazardous wastes and/or substances discovered on or near the Photocircuits Site include but are not limited to the following volatile organic compounds ("VOCs") in soils and groundwater: 1,1,1-trichloroethane ("1,1,1-TCA"), methylene chloride, 1,1,1-TCA and tetrachloroethene (also known as PCE).

(3) The soil and groundwater contamination has resulted in a significant threat to human health associated with contravention of groundwater standards in a sole source aquifer and a significant environmental threat associated with current impacts of contaminants to a sole source aquifer.

(4) The Department and Photocircuits Corporation entered into a Focused Remedial Investigation/Focused Feasibility Study Order on Consent, Index No. W1-0713-94-12, on March 31, 1997.

(5) The Department issued a Record of Decision ("ROD") for the Photocircuits Site, Operable Unit 1 ("OU 1") on March 8, 2008 which sets forth the selected remedial alternative. Operable Unit 1 consists of on-site soil and groundwater to a depth of approximately 100 feet below ground surface. To date the ROD has not been implemented.

(6) The investigation of Operable Unit 2 (groundwater deeper than OU1) of the Photocircuits Site is ongoing and a ROD for OU2 has not been issued.

C. Pass & Seymour Site

(1) The P&S Site was operated by Slater Electric from 1959 until 1988. Slater Electric was acquired by Pass & Seymour and it continued operation on the P&S Site. Pass & Seymour manufactured electronic components using an injection molding process which utilized PCE as a degreasing solvent. Subsequently, the P&S Site was acquired by Photocircuits Corporation and was sold as part of the chapter 11 bankruptcy liquidation. *See subparagraph 2.B.(1) above.* Nevada Photocircuits operated the P&S Site from approximately March 2006 until approximately early 2008. After ceasing operations, the Nevada Photocircuits shut down, sold off machinery and other assets at the Site, and abandoned a large quantity of chemicals at the facility in drums, pipes, and other vessels and containers ("Abandoned Hazardous Wastes/Substances").

(2) Hazardous wastes and/or substances discovered on or near the P&S Site include but are not limited to the following VOCs in soils and groundwater: PCE and trichloroethene (also known as TCE).

(3) The soil and groundwater contamination has resulted in a significant threat to human health associated with exposure to contaminated groundwater and a significant threat to the environment associated with current impacts of contaminants to a sole source aquifer.

(4) The Department and Photocircuits Corporation entered into a Remedial Investigation/Feasibility Study ("RI/FS") Order on Consent, Index No. W1-073-94-12, on March 31, 1997. During the RI/FS, an Interim Remedial Measure ("IRM") consisting of the installation and operation of an Air Sparging /Soil Vapor Extraction ("AS/SVE") system was implemented.

(5) The Department issued the ROD for the P&S Site on March 31, 2008. The ROD selected No Further Action with the continued operation of the AS/SVE IRM. Currently, the AS/SVE IRM is not operating despite the ROD requirement that the IRM continue to operate until the remedial objectives have been achieved (as determined by the Department) or until the Department determines that continued operation is technically impracticable or not feasible.

3. Respondents, Spectrum Origination, LLC, and Reckson Glen Cove Mezz Lender, LLC currently hold the security interest in the Site and have initiated a foreclosure action against the

current owner of the Site, GCP, LLC. Spectrum Origination, LLC, and Reckson Glen Cove Mezz Lender, LLC maintain that neither they, nor their members, officers, or directors have any other relationship to other persons that has liability for the Site.

4. Previous attempts to negotiate an Order on Consent between the Department and the current owner of the Site were unsuccessful.

5. To date, the Department has incurred costs and will continue to incur response costs, for the investigation and remediation of hazardous wastes and/or substances identified on or in proximity to the Site. These expenditures are authorized by and in conformance with relevant and applicable state and federal law.

6. The Department alleges for purposes of this Order only that Respondents, upon foreclosure, are liable for the reimbursement of the Department's administrative response costs (including any legally accrued interest) for the investigation and remediation of hazardous wastes and/or substances existing on the Site referenced herein in accordance with applicable state and federal law.

7. The Respondents deny any liability for the reimbursement of the Department's administrative response costs (including any legally accrued interest) for the investigation and remediation of hazardous wastes and/or substances existing at, or associated with, the Site. The Respondents represent that: a) they have instituted foreclosure proceedings to obtain indicia of ownership primarily to protect their security interest in the Site property, and have not participated in the management of the facility; and b) thus they qualify for the exclusion from liability under New York's Lender Exemption, ECL § 27-1323(1), and CERCLA's Lender Liability Rule set forth at § 101(20)(E) of CERCLA, 42 U.S.C. § 9601(20)(E). The Respondents agree that they will continue to comply with §101(20)(E) during the period in which they hold a security interest in the Site property. In view, however, of the Work¹ to be performed at the Site, Respondents, for themselves and their successors or assigns through acquisition of title to the Site, and to persons who develop or otherwise occupy the Site (collectively, the "Successors"²), desire to settle any potential liability under the ECL and CERCLA for the Existing Contamination.³

8. The goals of this Order are for (i) Respondents to pay the settlement amount as determined by and in accordance with the terms and conditions set forth below; (ii) Respondents to grant Environmental Easements to the Department for the Photocircuits Site and the Pass & Seymour Site as provided for in ECL Article 71, Title 36, as set forth below; (iii) the Department to release and covenant not to sue the Respondents and the Successors for the investigation and remediation of the Site and for the reimbursement of Site related response costs upon the

¹ As defined in subparagraph II.B.

² The term "Successors" as used in this Order on Consent and Administrative Settlement includes only those persons with "no affiliation" to the Site as defined at 42 U.S.C. § 9601(40)(H).

³ As defined in subparagraph II.C.

execution of this Order and subsequent satisfaction of the terms and conditions set forth herein; and (iv) the Department to provide Respondents with contribution protection provided by CERCLA Section 113(f)(2), 42 U.S.C. § 9613(f)(2), and/or any other applicable federal or state law for matters addressed by this Order.

10. The Respondent consents to the Department's issuance of this Order without an admission or finding of liability of any kind. The parties recognize that the implementation of this Order will expedite the cleanup of the Site, and that this Order is mutually acceptable, fair, reasonable, and in the public interest.

11. Solely with regard to the matters set forth herein, the Respondents hereby waive their rights to a hearing herein as provided by law, consent to the issuance and entry of this Order, and agree to be bound by its terms. Respondents consent to and agree not to contest the authority or jurisdiction of the Department to issue or enforce this Order. The Respondents and the Department agree 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. Incorporation of Recitals

The foregoing Recitals are substantive and are incorporated in this Order as though fully set forth herein.

II. Site Specific Definitions

A. The Site: Those real properties designated by the Department as New York State Inactive Hazardous Waste Site Number 1-30-009, approximately five acres in size, known as the Photocircuits Corporation located at 31 Sea Cliff Avenue, in the City of Glen Cove, Nassau County, and New York State Inactive Hazardous Waste Site Number 1-30-53A, approximately 7.5 acres in size, known as Pass & Seymour located at 45 Sea Cliff Avenue, in the City of Glen Cove, Nassau County.

B. Existing Contamination: Any hazardous waste, as that term is defined in 6 NYCRR Section 375-1.2(w), present or existing on or under the Site as of the effective date of this Order.

C. The Work: The response⁴ activities that the Department deems necessary to remediate the Photocircuits Site to allow commercial use as defined in Title 6 of the Codes Rules and Regulations of the State of New York ("6 NYCRR") Section 375-1.8(g)(2)(iii), and necessary to remediate the P&S Site to allow industrial use as defined in 6 NYCRR Section 375-1.8(g)(2)(iv), including but not limited to: 1) removal of Abandoned Hazardous Wastes/Substances at the Site; 2) the implementation of the remedies selected in the ROD for the P&S

⁴ As that term is defined in 42 U.S.C. § 9601(25).

Site, and the ROD for the Photocircuits Site, OU 1; and 3) the investigation and remediation of Photocircuits Site, OU2.

III. Removal Cost Payments

A. Initial Payment: Within ten (10) days of the execution of this Order by the Department, the Respondents shall place in an escrow account in a financial institution governed under the laws of New York State ("Escrow Agent") the sum of One-Hundred and Fifty Thousand Dollars (\$150,000.00) ("Escrow Amount"). The Respondents shall enter into an agreement with the Escrow Agent that requires the Escrow Agent to release one-half of the Escrow Amount to the Department for payment into the hazardous waste remedial fund upon the Department's presentation to the Escrow Agent of a letter or other document demonstrating that the Department has begun the removal of Abandoned Hazardous Wastes/Substances at the Site. The remaining one-half of the Escrow Amount shall be paid to the Department upon receipt of the Department's written confirmation that the removal of Abandoned Hazardous Waste/Substances is complete.

B. Final Payment Upon Sale and Transfer: The Respondents shall make an additional payment upon the closing of sale and transfer of the Respondents' ownership interest in the Site. Such sale and transfer shall be to a person with "no affiliation"⁵ and shall be an arm's length transaction for fair market value. The Respondent shall notify the Department of the date, time and place of the Closing. At the Closing, the Respondents shall obtain a check payable to the Department, with the amount to be calculated as follows:

<i>Sale Price</i>	<i>Percentage of Sale Price payable to the Department</i>
greater than \$ 40 million	2.5%
greater than \$ 30 million and less than or equal to \$ 40 million	2%
greater than \$ 20 million and less than or equal to \$ 30 million	1.5%
less than or equal to \$ 20 million	1%

C. The Respondents' payments hereunder will be in U.S. Dollars, non-interest bearing and will be made by certified check, attorney escrow check or money order payable to the "Department of Environmental Conservation" and will be sent to:

Donna Weigel
Bureau of Program Management
Division of Environmental Remediation
New York Department of Environmental Conservation

⁵ As defined in 42 U.S.C. § 9601(40)(H).

625 Broadway
Albany, New York 12233

IV. Appropriate Care/Cooperation

A. Respondents and Successors shall exercise appropriate care at the Site with respect to the Existing Contamination and shall comply with all applicable local, State, and federal laws and regulations. Respondents and the Successors shall cooperate fully with the Department in the implementation of the Work at the Site and not to interfere with such Work. Respondents and 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).

B. The Respondents recognize that the implementation of response⁶ actions at the Site may interfere with Respondents' or Successors' use of the Site.

V. Certification

A. By entering into this Order on Consent and Administrative Settlement, each Respondent certifies that it has not caused or contributed to the release or threatened release of a hazardous waste from or onto the Site, nor generated, transported, or disposed of, arranged for, or caused the generation, transportation, or disposal of hazardous waste from or onto the Site.

B. The Respondents shall continue to comply with CERCLA §101(20)(E) and ECL § 27-1323.1 during the period in which they hold a security interest in the Site property.

C. Each individual or entity claiming status as a "Successor" must certify in writing to the Department that it has not caused or contributed to the release or threatened release of a hazardous waste from or onto the Site, nor generated, transported, or disposed of, arranged for, or caused the generation, transportation, or disposal of hazardous waste from or onto the Site and must consent in writing to be bound by the terms of Paragraph IV (Appropriate Care/Cooperation) and Paragraph VII (Access).

VI. Environmental Easement

A. The Respondents, after foreclosure on the Site and prior to the transfer of any ownership interest in the Site, shall submit to the Department for approval an Environmental Easement ("EE") to run with the land in favor of the State which complies with the requirements of ECL Article 71, Title 36, and 6 NYCRR § 375-1.8(h)(2) for the Photocircuits Site and an EE to run with the land in favor of the State which complies with the requirements of ECL Article 71, Title 36, and 6 NYCRR § 375-1.8(h)(2) for the P&S Site.

⁶ As that term is defined in 42 U.S.C. § 9601(25).

B. The EE for the P&S Site must, *inter alia*, limit the use and development of the property to industrial use as defined in 6 NYCRR § 375-1.8(g)(2)(iv); require compliance with the Department-approved Site Management Plan; restrict the use of groundwater as a source of potable or process water, without necessary water quality treatment as determined by New York State Department of Health; and require the property owner to complete and submit to the Department a periodic certification of the institutional and engineering controls.

C. The EE for the Photocircuits Site must, *inter alia*, limit the use and development of the property to commercial use as defined in 6 NYCRR § 375-1.8(g)(2)(iii); require compliance with the Department-approved Site Management Plan; restrict the use of groundwater as a source of potable or process water, without necessary water quality treatment as determined by New York State Department of Health; and require the property owner to complete and submit to the Department a periodic certification of the institutional and engineering controls.

VII. Access

A. Respondents and their assigns 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 on the Site; by any agent, consultant, contractor, or other person so authorized by the Commissioner; and by any Responsible Party pursuant to an Order on Consent, all of whom shall abide by the health and safety rules in effect for the Site, for (i) inspecting, sampling, and testing; and (ii) any other activities necessary to the design and the implementation of any construction or environmental treatment procedures necessary to effectuate interim remedial measures and/or Site remedies in accordance with applicable state and federal law.

B. Respondents shall have the right to obtain split samples, duplicate samples, or both, of all substances and materials sampled. The Department shall make the results of all sampling and scientific measurements taken under this Subparagraph available to Respondents.

C. Respondents shall ensure that successors in interest, lessees, and sublessees of the Site provide the same access.

D. The Department agrees that in the performance of the Work, it will use its best efforts to avoid interfering with the Respondents' use of the Site, including but not limited to, Respondents' redevelopment activities.

E. The Department's right of access pursuant to this Order shall terminate when all of the following have occurred: (i) the removal of Abandoned Hazardous Wastes/ Substances at the Site is completed, (ii) the Photocircuits Site OU1 remedy is implemented, (iii) the Photocircuits Site OU2 investigation is completed, (iv) the Photocircuits OU2 remedy is implemented, (v) the P&S remedy is implemented, (vi) the EEs required by Paragraph IV above have been recorded, (vii) the Department has approved Site Management Plans for the Photocircuits OU1/OU2 and the P&S Sites, and (viii) the Site is in long-term maintenance and monitoring with institutional controls in place and engineering controls operational.

Notwithstanding any provision of this Order, the Department retains all of its authorities and rights, including enforcement authorities related thereto, under CERCLA, ECL Article 27 Title 13, or pursuant to any other provision of State or Federal statutory or common law. Further, this Subparagraph has no effect on the EEs.

VIII. Release and Covenant Not to Sue

The Department and the Trustee of New York State's natural resources ("Trustee"), hereby release and covenant not to sue, and shall forbear from bringing any action, proceeding, or suit pursuant to the Environmental Conservation Law, or the State Finance Law, and from referring to the Attorney General any claim for recovery of costs incurred by the Department, against the Respondents, the Successors, and their respective secured creditors and insurers, for the further investigation and remediation of the Site, including but not limited to an action pursuant to Section 9607(a) of CERCLA, 42 U.S.C. § 9607(a), and for natural resource damages, based upon the release or threatened release of Existing Contamination, provided that: (a) timely payments of the amounts specified in accordance with Paragraph III of this Order continue to be or have been made to the Department; (b) the Department's acceptance of Environmental Easements and recording of same as required in Paragraph VI; (c) Respondents and Successors continue to exercise appropriate care and cooperation as required in Paragraph IV; and (d) Respondents and Successors continue to allow access as required by Paragraph VII. Nonetheless, the Department and the Trustee hereby reserve all of their respective rights concerning, and such release and covenant not to sue shall not extend to any further investigation or remedial action the Department deems necessary:

- due to off-Site migration of petroleum;⁷
- due to environmental conditions or information related to the Site which was unknown at the time this Release and Covenant Not to Sue was issued and which indicate that this Order cannot be implemented with sufficient protection of human health and the environment;
- due to Respondent's failure to implement the Order to the Department's satisfaction; or
- due to fraud committed by Respondent in entering into or implementing the Order.

Additionally, the Department and the Trustee hereby reserve all of their respective rights concerning, and any such release and covenant to sue shall not extend to any Respondent nor to any Successor who causes or allows a release or a threat of release at the Site of any hazardous waste (as that term is defined at 6 NYCRR § 375-1.2(w)) or petroleum (as that term is defined in Navigation Law § 172[15]), other than Existing Contamination; nor to any Respondent or Successor who is otherwise responsible under law for the remediation of the Existing Contamination independent of any obligation that party may have respecting same resulting solely from the execution of this Order on Consent and Administrative Settlement.

⁷ As that term is defined in Navigation Law § 172[15].

Notwithstanding the above, however, with respect to any claim or cause of action asserted by the Department or the Trustee, the one seeking the benefit of this release and covenant not to sue shall bear the burden of proving that the claim or cause of action, or any part thereof, is attributable solely to the Existing Contamination.

Notwithstanding any other provision in this release, covenant not to sue, and forbearance,

- if with respect to the Site there exists or may exist a claim of any kind or nature on the part of the New York State Environmental Protection and Spill Compensation Fund against any party, nothing in this order shall be construed or deemed to preclude the State of New York from recovering such claim.
- except as provided in this Order, nothing contained in this Order shall be construed as barring, diminishing, adjudicating, or in any way affecting any of the Department's or Trustee's rights (including, but not limited to, the right to recover natural resources damages) with respect to any party, including Respondent.
- nothing contained in this Order shall prejudice any rights of the Department or Trustee to take any investigatory or remedial action it deems necessary if Respondent fail to comply with the Order or if contamination other than Existing Contamination is encountered at the Site.
- nothing contained in this Order shall be construed to prohibit the Commissioner or his duly authorized representative from exercising any summary abatement powers.
- nothing contained in this Order shall be construed to affect the Department's right to terminate the Order and this "Release and Covenant Not to Sue" under the terms of the Order at any time during its implementation if Respondents fail to comply substantially with the Order's terms and conditions.

This release and covenant not to sue shall be null and void, *ab initio*, in the event of fraud relating to the execution or implementation of this Order or in the event of the Respondents' failure to materially comply with any provision of this Order.

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: (i) Respondents may have against anyone other than the Department, including but not limited to rights of contribution under § 113(f)(B)(3) of CERCLA, 42 U.S.C. § 9613(f)(B)(3); and (ii) the Department may have against anyone other than the Respondents, the Successors, and their respective directors, officers, employees, agents, and servants that were not responsible under law for the development and implementation of a Remedial Program at the Site prior to the effective date of this Order, and their respective secured creditors.

IX. Penalties and Force Majeure

A. Respondents' failure to comply with any term of this Order constitutes a violation of this Order, and the ECL. Nothing herein abridges Respondent's right to contest, defend against, dispute, or disprove any such claim, assertion, or allegation that it has violated this Order.

B. 1. Respondent will 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 event arising from causes beyond the reasonable control of Respondent, of any entity controlled by Respondent, and of Respondent's contractors, that delays or prevents the performance of any obligation under this Order despite Respondent's best efforts to fulfill the obligation ("Force Majeure Event"). The requirement that Respondent exercise best efforts to fulfill the obligation include using best efforts to anticipate the potential Force Majeure Event, best efforts to address the effects of any such event as it is occurring, and best efforts following the Force Majeure Event, such that the delay is minimized 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.

2. Respondent shall notify the Department in writing within thirty (30) days after it obtains knowledge of any Force Majeure Event. Respondent shall include in such notice the measures taken and to be taken to prevent or minimize any delays and shall request an appropriate extension or modification of this Order. Failure to give such notice within such thirty (30) 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.

3. 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 was or will be 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 IX.B.2 regarding timely notification.

4. If the Department agrees that the delay or anticipated delay is attributable to a Force Majeure Event, the time for performance of the obligations under this Order that are affected by the Force Majeure Event shall be extended by the Department for such time as is reasonably necessary to complete those obligations.

5. If Respondent asserts that an event provides a defense to non-compliance with this Order pursuant to Subparagraph IX.B and the Department rejects such assertion, Respondent shall be in violation of this Order and shall retain all rights under applicable state and federal law to contest the Department's determination.

X. Dispute Resolution

If Respondent disagrees with the Department's notice under (i) Subparagraph VIII finding that Respondent materially failed to comply with the Order; (ii) Subparagraph IX.B rejecting Respondent's assertion of a Force Majeure Event; or (iii) Subparagraph XV.C.2.iii requesting modification of a time frame, Respondent may, within thirty (30) Days of its receipt of such notice, make a written request for informal negotiations with the Department in an effort to resolve the dispute. A copy of such request shall be sent by Respondent to the appropriate Remedial Bureau Chief in the Department's Central Office. The Department and Respondent shall consult together in good faith and exercise best efforts to resolve any differences or disputes. The period for informal negotiations shall not exceed thirty (30) Days from the date of the Department's initial response to the Respondent's request for informal negotiations. If the parties cannot resolve a dispute by informal negotiations during this period, the Department's position shall be considered binding and the Respondent shall retain all rights under applicable state and federal law to contest the Department's determination.

XI. Indemnification

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

XII. Notice of Intent to Transfer

If the Respondents propose to convey the whole or any part of their ownership interest in the Site, or become aware of such conveyance, the Respondents shall, not fewer than forty-five (45) days before the date of conveyance, or within forty-five (45) 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 the Respondents to secure the repayment of money or the performance of a duty or obligation.

XIII. 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:

1. Communications from the Respondents shall be sent to:

Guy Bobersky, P.E.
Division of Environmental Remediation, Bureau A, Section A
New York State Department of Environmental Conservation
625 Broadway
Albany, New York 12233
gtbobers@gw.dec.state.ny.us

Rosalie K. Rusinko, Esq.
Office of General Counsel
New York State Department of Environmental Conservation
100 Hillside Avenue, Suite 1W
White Plains, New York 10603-2860
rkrusink@gw.dec.state.ny.us
Correspondence only

2. Communications from the Department to the Respondents shall be sent to:

Russell B. Selman, Esq.
Foley & Lardner LLP
321 North Clark Street, Suite 2800
Chicago, IL 60654-5313
rselman@foley.com

XIV. Termination

A. This Order will terminate upon the Department's written determination that Respondents and Successors have completed all obligations incurred pursuant to this Order, in which event the termination shall be effective on the 5th day after the Department issues said written determination.

B. Notwithstanding the foregoing, the provisions contained in Paragraphs VIII (Release and Covenant Not to Sue), VII (Access), XVI (Indemnification) and VI (Environmental Easement) 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 Part 375-2.11(a)(4).

C. Notwithstanding the foregoing, should the release and covenant not to sue set forth in Paragraph VIII herein become null and void, *ab initio*, in the event of fraud in the execution or implementation of this Order or in the event of Respondents' failure to materially comply with any provision of this Order then neither this Order nor its termination shall affect any liability of Respondents for payment of State Costs, including implementation of removal and remedial actions, interest, enforcement, and any and all other response costs as defined in CERCLA.

XV. Miscellaneous

A. The Respondents' successor and assigns shall be bound by this Order and the terms of this Order shall inure to the benefit of the Respondents and the Successors. Any change in ownership or corporate status of any Respondent 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.

B. 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.

C. 1. The terms of this Order shall constitute the complete and entire agreement between the Department and the Respondents 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 Respondents of their obligation to obtain such formal approvals as required by this Order.

2. i. Except as set forth herein, if the Respondents desire 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 timely respond.

ii. Changes to a time frame set forth in this Order shall be accomplished by a written request to the Department's project attorney and project manager, which request shall be timely responded to in writing.

D. 1. If there are multiple parties signing this Order, the term "Respondent" shall be read in the plural where required to give meaning to this Order. Further, the obligations of Respondents under this Order are joint and several and the insolvency of or failure by any Respondent to implement any obligations under this Order shall not affect the obligations of the remaining Respondent(s) to carry out the obligations under this Order.

2. 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.

E. To the extent authorized under Section 113 of CERCLA (42 U.S.C. § 9613), New York General Obligations Law § 15-108, and any other applicable law, Respondents and Successors shall be deemed to have resolved their liability, if any, to the State for purposes of contribution protection provided by CERCLA Section 113(f)(2), for "matters addressed" pursuant to and in accordance with this Order. "Matters addressed" in this Order shall mean all response actions taken by Respondent to implement this Order for the Site, including but not limited to payments required under this Order, and all response costs incurred or to be incurred by any person or party in connection with the work performed under this Order, which costs have been paid by the Respondents, including reimbursement or any other payment of State Costs pursuant to this Order. Furthermore, to the extent authorized under CERCLA Section 113(f)(3)(B), by entering into this administrative settlement of liability, if any, for some or all of the removal and/or response action and/or for some or all of the costs of such action, Respondents are entitled to seek contribution from any person except those who are entitled to contribution protection under CERCLA Section 113(f)(2). Respondents shall include the named individuals and partnerships, their officers, directors, agents, employees, successors, parents and

assigns, all of whom are entitled to the full extent of protection from contribution claims or actions as provided by CERCLA Section 113(f)(2) including but not limited to rights of contribution under section 113(f)(3)(B) of CERCLA, 42 U.S.C. § 9613(f)(3)(B).

F. All activities undertaken by the Respondents 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. The Respondents' 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 Nassau County Clerk at the expense of the Respondents 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.

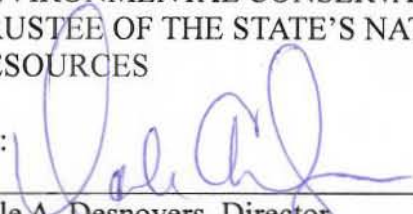
K. The effective date of this order is the tenth day after the date the Commissioner or the Commissioner's designee signs this Order.

Dated:

APR 09 2010

ALEXANDER B. GRANNIS
COMMISSIONER
NEW YORK STATE DEPARTMENT OF
ENVIRONMENTAL CONSERVATION AND
TRUSTEE OF THE STATE'S NATURAL
RESOURCES

By:


Dale A. Desnoyers, Director
Division of Environmental Remediation
New York State Department of
Environmental Conservation

CONSENT BY RESPONDENT

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

Reckson Glen Cove Mezz Lender, LLC

By: Andrew Levine

Title: EVP

Date: 3/31/2010

STATE OF NEW YORK)

) ss:

COUNTY OF *New York*)

On the 31st day of March, in the year 2010, before me, the undersigned, personally appeared Andrew Levine, 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.

JJ Mc
Signature and Office of individual
taking acknowledgment

JENNIFER McLERNON
Notary Public, State of New York
No. 01MC6197648
Qualified in New York County
Commission Expires December 8, 2012

CONSENT BY RESPONDENT

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

Spectrum Origination, LLC

By: [Signature]

Title: MANAGING MEMBER

Date: 3/31/10

STATE OF NEW YORK)

) ss:

COUNTY OF NEW YORK

On the 31st day of MARCH, in the year 2010, before me, the undersigned, personally appeared JEFFREY SCHUMBER, 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.

[Signature]
Signature and Office of individual taking acknowledgment

