

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

FILED
IN CLERK'S OFFICE
US DISTRICT COURT E.D.N.Y.

★ **SEP 20 2012** ★

**STATE OF NEW YORK, THE NEW YORK
STATE DEPARTMENT OF ENVIRONMENTAL
CONSERVATION, and JOSEPH MARTENS, as
Commissioner of the New York State
Department of Environmental Conservation,**

BROOKLYN OFFICE

**11-CV-1732
(RRM /VVP)**

Plaintiffs,

-against-

CONSENT DECREE

**DAVID GOLDMAN, JANICE GOLDMAN,
HERCULES DRY CLEANING EQUIPMENT, INC.,
SONNY GITLIN, and LUSON CLEANERS INC., d/b/a
RAILROAD DRIVE-IN CLEANERS INC.,**

Defendants.
_____X

Plaintiffs State of New York, the New York State Department of Environmental Conservation ("DEC") and Joseph Martens, as Commissioner of the DEC (collectively the "State"), and defendants Sonny Gitlin ("Gitlin") and Luson Cleaners Inc., d/b/a Railroad Drive-In Cleaners Inc. ("Luson") (Gitlin and Luson together, "Defendants") hereby agree as follows:

RECITATIONS

1. The State filed a Complaint in this matter pursuant to the Comprehensive Environmental Response, Compensation and Liability Act, as amended, 42 U.S.C. § 9601 et seq. ("CERCLA"), breach of contract, and the New York common law of nuisance and restitution alleging environmental harm arising out of the disposal of hazardous substances at facilities

known as the Railroad Drive-In Cleaners Site located at 3180 Lawson Boulevard in Oceanside, New York (the "Railroad Site" or "Site") and the facilities known as the Hercules Machine Sales Company Site located at 3188 Lawson Boulevard in Oceanside, New York (the "Hercules Site") (together, the "Sites") (the "Litigation"). The State also alleged harm from the migration and threat of migration of hazardous substances from the Sites.

2. The Complaint seeks a judgment requiring Defendants to reimburse the State for all past and future costs incurred in assessing, abating and remediating the pollution at and emanating from the foregoing Sites.

3. The State alleges that Sonny Gitlin owned the Railroad Site with her husband from 1982-1994, and has owned it solely since 1994.

4. The State alleges that Luson Cleaners Inc. does business as Railroad Drive-In Cleaners Inc., and has operated a dry cleaning business on the Railroad Site since 1966.

5. The Railroad Site is an inactive hazardous waste disposal site, as that term is defined at New York State Environmental Conservation Law ("ECL") § 27-1301(2). In 1992 the Railroad Site was listed in New York's Registry of Inactive Hazardous Waste Disposal Sites as Site No. 130066. The Railroad Site was assigned a "Class 2" listing, meaning it poses a significant threat to public health or the environment pursuant to ECL § 27-1305(4)(b)(2), and that remedial action is required.

6. In February 2003, Gitlin, who is also known as Sophie or Sunny, entered into a Consent Order with the DEC requiring Gitlin to clean up the Railroad Site and to reimburse the State for its remedial and oversight costs incurred at the Railroad Site. Defendant Gitlin did not

complete the remedial work required under the Order, and did not reimburse the State for the full costs the State has incurred at the Railroad Site.

7. DEC has implemented remedial work that Gitlin failed to perform, and completed a Remedial Investigation and Feasibility Study ("RI/FS"). DEC also issued the Record of Decision ("ROD") for the Railroad Site which sets out the selected long-term remedy including, but not limited to, a remedial design program, soil vapor extraction, groundwater extraction and treatment, and air monitoring.

8. The ROD estimates that the remedy will cost approximately \$4.9 million in 2008 dollars, including ongoing monitoring costs, which will be incurred over the span of approximately 30 years.

9. The State has taken, and will continue to take, response actions at the Site within the meaning of CERCLA § 101(25), 42 U.S.C. § 9601(25), to remedy the release and/or threatened release of hazardous substances into the environment, including an RI/FS and other investigative, planning and enforcement actions related thereto.

10. The State has incurred approximately \$515,159.23 in response costs not inconsistent with the National Contingency Plan (40 C.F.R. Part 300) through July 2010 and continues to incur costs for, inter alia, the remedial design program, and the construction, operation, maintenance and monitoring of the remedial program to be implemented on the Railroad Site.

11. The State has determined that prompt settlement of this case is practicable and in the public interest.

12. In the interest of avoiding prolonged and complicated litigation, and in consideration of Defendants' demonstrated financial hardship, the parties to this Consent Decree desire to resolve all claims asserted by the State against Defendants.

DEFINITIONS

13. Unless otherwise expressly provided herein, terms used in this Consent Decree which are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Consent Decree, the following definitions shall apply:

a. "Environmental Easement" shall mean, as defined in 6 N.Y.C.R.R. §375-1.2(q), an interest in real property, created under and subject to the provisions of ECL Article 71, Title 36 which contains a use restriction and/or a prohibition on the use of land in a manner inconsistent with engineering controls, provided that no such easement shall be acquired or held by the state which is subject to the provisions of article fourteen of the Constitution of the State of New York.

b. "Environmental Easement Package" shall collectively mean (i) the Railroad Site Environmental Easement, (ii) Environmental Easement Checklist and Certification, (iii) Title Requirements, (iv) Notice of Environmental Easement, and (v) Survey Requirements, as those terms are defined below.

c. "Railroad Site Environmental Easement" ("Railroad Site EE") shall mean the Environmental Easement providing access to the Railroad Site for construction, operation,

maintenance and monitoring of the remedy selected in the ROD, and restricting the future use of the Site, which is attached as Exhibit A.

d. "Environmental Easement Checklist and Certification" shall mean the Environmental Easement Checklist and Certification attached as Exhibit B.

e. "Title Requirements" shall mean the requirements set forth in Exhibit C, including, but not limited to, an updated title report (current within 6 months) along with copies of any encumbrances (e.g., mortgages, judgments, easements, leases, liens, etc.); any Schedule "B" exception supporting documents; a copy of the current deed; and a commitment letter and a proposed final policy from the title company stating that it will issue the proposed title insurance policy upon the recording of the Environmental Easement.

f. "Notice of Environmental Easement" shall mean the Notice of Environmental Easement form attached as Exhibit D which is required to be sent to Schedule "B" exceptions noted in the title report.

g. "Survey Requirements" shall mean the requirements set forth in Exhibit E, including, but not limited to, the survey covering the property as described in the current deed along with a metes and bounds of the same; and an ALTA survey or a survey that meets the Department's requirements of the area(s) to be addressed by the Environmental Easement, with corresponding metes and bounds description. The survey should include the information, as addressed by Exhibit E.

h. "Affected Local Government" shall mean, as defined in ECL § 71-3603, every municipality in which land subject to an environmental easement is located.

i. "Notice to Municipality" shall mean the Notice to Municipality attached as Exhibit F.

NOW, THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED:

I. PURPOSE OF CONSENT DECREE

14. This Consent Decree resolves all claims against and between the State of New York and Defendants in this action. This Decree provides for the payment of moneys and the submission of a complete Environmental Easement Package to the Department together with the executed Railroad Site EE, recording of the Railroad Site EE, mailing of required Notice of Environmental Easement and Notice to Municipality, and delivery of the final title insurance policy, which together represent fair, reasonable and equitable contributions by the Defendants, in light of their ability to pay, to the response costs incurred by the State at the Site.

II. DISCLAIMER OF ADMISSIONS

15. Nothing in this Consent Decree shall constitute, or be construed as, any evidence or admission of liability or responsibility. Defendants agree not to take any action to make or to permit to be made any public statement denying, directly or indirectly, any finding in this Consent Decree or creating the impression that this Decree is without factual basis. Nothing in this paragraph affects Defendants' (a) testimonial obligations or (b) right to take legal or factual positions in defense of litigation or other legal proceedings to which the Attorney General is not a party.

III. PARTIES BOUND

16. This Consent Decree shall apply to and be binding upon the State and upon Defendants, each of whom agree not to contest its validity in any subsequent proceeding to implement or enforce its terms. Each signatory represents that he or she is fully and legally authorized to enter into the terms and conditions of this Consent Decree and to bind the party represented by him or her.

IV. DEFENDANTS' OBLIGATIONS

17. Defendants shall: (1) pay the State \$90,000.00 within 30 days of the Effective Date of this Decree; (2) submit to DEC, within 30 days of the Effective Date of this Decree, a complete Environmental Easement Package including the Environmental Easement Checklist and Certification with boxes checked and appropriate signatures, all Title Requirements, a Railroad Site survey meeting the Survey Requirements, a draft Notice of Environmental Easement and a list of names/addresses of Schedule "B" exceptions, and the executed Railroad Site Environmental Easement; (3) timely correct any deficiencies that the Department notes in the submitted Environmental Easement Package; (4) record the Railroad Site EE within 30 days of the State's acceptance of the Railroad Site EE; (5) provide proof of recording of the Railroad Site EE complete with book and page number or instrument number; (6) provide the final title insurance policy insuring the State; (7) mail the Notice of Environmental Easement to each identified party and provide proof of same to the Department; and (8) mail Notice to Municipality with copy of the recorded Railroad Site EE to each Affected Local Government and provide a copy of each letter to the Department.

18. Payments required by this Consent Decree shall be made by certified check, payable to "The State of New York" and sent to Janice A. Dean, Assistant Attorney General, New York State Department of Law, Environmental Protection Bureau, 120 Broadway, 26th Floor, New York, New York, 10271.

19. Submission of documents to DEC, other than payments, required by this Consent Decree shall be sent to Rosalie K. Rusinko, Senior Attorney, New York State Department of Environmental Conservation, 100 Hillside Avenue, Suite 1W, White Plains, New York 10603.

20. Gitlin acknowledges and agrees that this Consent Decree shall be binding upon her estate, should she pre-decease the performance of her obligations as required under this Decree.

V. RELEASE AND COVENANT NOT TO SUE

21. In consideration of Defendants' obligations hereunder, the State releases any and all claims against Defendants asserted in the Complaint, including any and all claims of whatever description for any and all civil liability under federal or State statutory or common law for (1) past or future response costs arising out of or relating to the actual or alleged releases or threats of releases of hazardous substances at or from the Railroad Site or (2) past or future expenditures of any kind or nature associated with or arising from any of the claims asserted or which could have been asserted in the Complaint with respect to the Railroad Site. This release and covenant not to sue shall extend to successors or assigns through acquisition of title to the Railroad Site, and to any "person" as the term is defined at 6 NYCRR 375-1.2(ag) who develops or otherwise occupies the Railroad Site, provided that such successors, assigns or other persons

(i) act with due care and in good faith to adhere to the requirements of the site work plans and the site management plan, (ii) are not a "responsible party" as the term is defined at 6 NYCRR 375-2.2(i)(2)-(6), and (iii) comply with this Consent Decree. This release and covenant not to sue shall take effect with respect to Defendants upon Defendants' full performance of their obligations required under this Consent Decree.

22. In consideration of the release provided by the State, Defendants covenant not to sue and agree not to assert any claims or causes of action whatsoever which may exist now or in the future against the State or its agencies relating to the Site.

23. Notwithstanding any other provision of this Consent Decree and any release, discharge or covenant not to sue that Defendants may receive from the State, the State reserves, and this Consent Decree is without prejudice to, the right of the State to institute proceedings seeking to compel any or all Defendant(s): (a) to perform further response actions relating to the Site; or (b) to reimburse the State for additional costs of response, in either case only if there is a discovery of on-site contamination at the Site previously unknown to the State which could not reasonably have been known or discovered prior to the Effective Date and such contamination is related to the discharges that are the subject of the Litigation and poses a threat to human health or the environment. For purposes of this Paragraph, previously known information includes all conditions, data and information known to the State as of the Effective Date including, but not limited to, all conditions identified and information contained or submitted for inclusion in the Administrative Record, attached as Exhibit A to the Record of Decision for the Site, or in the files and records of the NYSDEC.

VI. DISMISSAL OF CLAIMS

24. The State dismisses with prejudice all claims in its Complaint against Defendants.

VII. CONTRIBUTION PROTECTION

25. Defendants are entitled, as of the effective date of this Consent Decree, to full and complete protection from contribution actions or claims as provided by Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), for matters addressed in this Consent Decree. The matters addressed in this Consent Decree include any and all claims of whatever description for any and all civil liability under federal or State statutory or common law for (1) past or future response costs arising out of or relating to the actual or alleged releases or threats of releases of hazardous substances at or from the Sites (2) past or future expenditures of any kind or nature associated with or arising from any of the claims asserted or which could have been asserted in the Complaint with respect to the Sites.

VIII. EFFECT ON LIABILITY OF OTHER PARTIES

26. Nothing in this Consent Decree is intended as a release of, or covenant not to sue with respect to, any entity or person other than those Defendants named above, and the State expressly reserves its right to sue for any claim or cause of action, administrative or judicial, civil or criminal, past or future, in law or in equity, which the State may have against any other person, firm, corporation, or other entity. Nothing in this Consent Decree shall be construed to create any rights in, or grant any cause of action to, any person.

IX. PAYMENT NOT PENALTY

27. The payment of Defendants' obligation, set out in Section IV above, is intended to represent payment of or reimbursement of State response costs, and shall not be deemed to constitute any type of fine or penalty.

X. COMPLETE AGREEMENT

28. The terms of this Consent Decree shall constitute the complete and entire agreement between the State and Defendants. No term, condition, understanding or agreement purporting to modify or vary the terms hereof shall be binding unless made in writing and subscribed by the parties to be bound and approved by the Court.


XI. EFFECTIVE DATE

29. This Consent Decree shall become effective when it is entered by the Clerk of the Court.


Date: 14 September 2012
New York, NY

By:


Eric T. Schneiderman
Attorney General of the State of New York
Attorney for Plaintiff


JANICE A. DEAN
Assistant Attorney General
New York State Department of Law
Environmental Protection Bureau
120 Broadway, 26th Floor
New York, New York 10271
(212) 416-8459

Date: 9/8/12
CITY, STATE


SOPHIE "SONNY" GITLIN
91 90 Morley Circle
28 Melville, New York 11747

Date: 9/8/12
CITY, STATE


LUSON CLEANERS INC. d/b/a
RAILROAD DRIVE-IN CLEANERS INC.
3180 Lawson Boulevard
Oceanside, New York 11572

SO ORDERED:

s/Roslynn R. Mauskopf

Dated: 9/20/2012