

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION
STATE SUPERFUND PROGRAM
ECL §27-1301 et seq.

In the Matter of a Remedial Program for

DEC Site Name: Jackson Steel
DEC Site No.: 130095
Site Address: 435 First Street
Mineola, NY 11501,
(the "Site")

**ORDER ON CONSENT AND
ADMINISTRATIVE
SETTLEMENT**

Index No. R1-20190502-109

by: Mineola 435, LLC,
("Respondent")

1. A. The New York State Department of Environmental Conservation ("Department") is responsible for inactive hazardous waste disposal site remedial programs pursuant to Article 27, Title 13 of the Environmental Conservation Law ("ECL") and Part 375 of Title 6 of the Official Compilation of Codes, Rules and Regulations ("6 NYCRR") and may issue orders consistent with the authority granted to the Commissioner by such statute.

B. The Department is responsible for carrying out the policy of the State of New York to conserve, improve and protect its natural resources and environment and control water, land, and air pollution consistent with the authority granted to the Department and the Commissioner by Article 1, Title 3 of the ECL.

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 SFL Section 97-b, and resolves Respondent's liability to the State as provided at 6 NYCRR §375-1.5(b)(5) and 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, to the extent set forth in Subparagraph XIII.E, 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.

D. The Commissioner of the New York State Department of Environmental Conservation is the designated Trustee for Natural Resources in accordance with applicable state 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. Mineola 435, LLC is the owner of the Site, having taken title on May 8, 2020 of that certain property located at 435 First Street, Village of Mineola, Town of North Hempstead, Nassau County and more specifically identified as Tax Map Section 9, Block 672, Lot 4 on the Nassau County Land & Tax Map.

3. The Site is currently listed in the *Registry of Inactive Hazardous Waste Disposal Sites in New York State*, as "Jackson Steel" Site Number 130095, with a Classification of 04 pursuant to ECL §27-1305, indicating that the Site is "properly closed – requires continued management".

4. Respondent is a domestic limited liability company with a mailing address at c/o AJM, 2 Jericho Plaza, Suite 101, Jericho, NY 11753. Respondent maintains that neither it, nor its members, officers, or directors have any relationship to other persons that have liability for the Site.

5. Pursuant to the legal authorities stated herein, the Department has, and anticipates the need to spend additional monies of the hazardous waste remedial fund for the implementation of a Remedial Program,¹ including 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 Respondent is 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 in accordance with applicable state and federal law.

7. Respondent denies any liability for the reimbursement of the Department's administrative response costs for the Site. Furthermore, Respondent, in entering into this Order, does not admit any liability or fault with respect to any matter arising out of or relating to the Site.

¹ As the term is defined in 6 NYCRR §375-1.2(ap).

8. The goals of this Order are for (i) Respondent to undertake the maintenance of engineering controls on the Site, as set forth below; (ii) Respondent to grant an Environmental Easement to the Department for the 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 Respondent (x) for the investigation and remediation of the Site and (y) for the reimbursement of Site related response costs incurred by the Department prior to the date of this Order; and (iv) the Department to provide Respondent 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.

9. Respondent consents to the issuance of this Order without (i) an admission or finding of liability, fault, wrongdoing, or violation of any law, regulation, permit, order, requirement, or standard of care of any kind whatsoever; (ii) an acknowledgment that there has been a release or threatened release of hazardous waste at or from the Site; and/or (iii) an acknowledgment that a release or threatened release of hazardous waste at or from the Site constitutes a significant threat to the public health or environment. The parties recognize that this Order is mutually acceptable, fair, reasonable, and in the public interest.

10. Solely with regard to the matters set forth below, Respondent hereby waives any right to a hearing as may be provided by law, consents to the issuance and entry of this Order, and agrees to be bound by its terms. Respondent consents to and agrees not to contest the authority or jurisdiction of the Department to issue or enforce this Order, and agrees not to contest the validity of this Order or its terms or the validity of data submitted to the Department by Respondent pursuant to this Order.

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

I. Real Property

The Site subject to this Order has been assigned number 130095, consists of approximately 1.39 acres, is as follows:

Subject Property Description (A Map of the Site is attached as Exhibit A)

Tax Map/Parcel No.: Section 9, Block 672, Lot 4
Street Address: 435 First Street, Mineola, New York
Owner: Mineola 435, LLC

II. Site Management Plan/Operation and Maintenance/Periodic Reporting

A. Respondent shall, within one hundred and twenty (120) days following the effective date of this Order, submit to the Department for review and approval

a Site Management Plan ("SMP") which outlines Respondent's operation and maintenance obligations, including operation and maintenance of a sub-slab depressurization system ("SSDS") at the Site. Respondent shall operate and maintain the SSDS and shall submit periodic review reports to the Department as required in the SMP.

- B. Respondent shall submit an initial periodic report in accordance with the schedule in the SMP and thereafter in accordance with a schedule determined by the Department. Such periodic report shall be signed by a Professional Engineer or by such other qualified environmental professional as the Department may find acceptable and shall contain a certification as provided at 6 NYCRR 375-1.8(h)(3). Respondent may petition the Department for a determination that the institutional and/or engineering controls may be terminated. Such petition must be supported by a statement by a Professional Engineer that such controls are no longer necessary for the protection of public health and the environment. The Department shall not unreasonably withhold its approval of such petition.

III. Environmental Easement

- A. Respondent shall submit to the Department for approval an environmental easement 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). Upon acceptance of the environmental easement by the State, Respondent shall comply with the requirements of 6 NYCRR 375-1.8(h)(2).

IV. Payment of State Costs

Invoices shall be sent to Respondent at the following address(es):

Mineola 435, LLC
c/o AJM
2 Jericho Plaza, Suite 101
Jericho, NY 11753
Attn: Adam Mann
adam@ajmre.com

Respondent shall pay future state costs as set forth in Appendix A. Respondent shall have no responsibility for state costs incurred prior to the date of this Consent Order.

V. Communications

A. All written communications required by this Consent Order shall be transmitted by United States Postal Service, by private courier service, by hand delivery, or by electronic mail.

1. Communication from Respondent shall be sent to:

Kerry Maloney (1 unbound hard copy plus 1 electronic copy)
New York State Department of Environmental Conservation
Division of Environmental Remediation
625 Broadway
Albany, NY 12233 Kerry.Maloney@dec.ny.gov

Christine Voorhis (electronic copy only)
New York State Department of Health
Bureau of Environmental Exposure Investigation
Empire State Plaza
Coming Tower Room 1787
Albany, N.Y. 12237
christine.vooris@health.ny.gov

David S. Rubinton (correspondence only)
New York State Department of Environmental Conservation
Office of General Counsel
50 Circle Road
SUNY Stony Brook
Stony Brook, New York 11790
David.Rubinton@dec.ny.gov

2. Communication from the Department to Respondent shall be sent to:

Mineola 435, LLC
c/o AJM
2 Jericho Plaza, Suite 101
Jericho, NY 11753
Attn: Adam Mann
adam@ajmre.com

Christine Leas, Esq.
Sive, Paget & Riesel PC
560 Lexington Ave
New York, New York 10022
cleas@sprlaw.com

- B. The Department and Respondent each reserve the right to designate additional or different addressees for communication on written notice to the other. Additionally, the Department reserves the right to request that the Respondent provide more than one paper copy of any work plan or report.
- C. Each party shall notify the other within ninety (90) days after any change in the addresses listed in this paragraph or in Paragraph I.

VI. Miscellaneous

- A. Appendix A - "Standard Clauses for All New York State, State Superfund Orders" is attached to and the following provisions are hereby made a part of this Order as if set forth fully herein: Section II; Section III.B.4.; Section III.B.5.; Section III.D.; Section III.F.; Section IV; Section V; Section VI; Section VII; Section VIII.A.; Section VIII.B.; Section IX; Section X; Section XI; Section XVI; Section XV; and Section XVI.
- B. The following provisions of Appendix A are not made a part of this Order and shall have no relevance to this Order: Section I; Section III.A.; Section III.B.1.; Section III.B.2.; Section III.B.3.; Section III.C.; Section III.E.; and Section XIII.
- C. 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, Respondent and its 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 any release, as that term is defined in 6 NYCRR § 375-1.2(am), on or under the Site or that has or is emanating from the Site of hazardous waste, as that term is defined in 6 NYCRR § 375-1.2(w) which occurred prior to the effective date of this Order, and all response costs incurred or to be incurred by any person or party in connection with such release, including reimbursement or any other payment of state costs. 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, Respondent is entitled to seek contribution from any person except those who are entitled to contribution protection under CERCLA Section 113(f)(2). Respondent 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).

- D. Respondent's obligations under this Order represent payment for or reimbursement of removal or response costs, and shall not be deemed to constitute any type of fine or penalty
- E. In the event of a conflict between the main body of this Order (including any and all attachments thereto and amendments thereof) and the terms of Appendix A, the main body of this Order shall control.
- F. The effective date of this Order is the date on which the Commissioner or the Commissioner's designee signs this Order.

DATED: March 8, 2021

BASIL SEGGOS
COMMISSIONER
NEW YORK STATE DEPARTMENT OF
ENVIRONMENTAL CONSERVATION

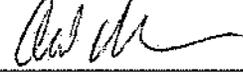
By: 

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

CONSENT BY RESPONDENT

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

Mineola 435, LLC

By: 

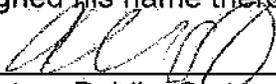
Name: Adam Mann

Title: Authorized Signatory

Date: 2/25/21

STATE OF NEW YORK)
) ss:
COUNTY OF NASSAU)

On the 25th day of February in the year 2021, before me, the undersigned, personally Adam Mann, personally known to me who, being duly sworn, did depose and say that he resides at 40 AJM, 2 Jorck Pl, Suite 101, Jorck, NY 11753 and that he is the Authorized Signatory of Mineola 435, LLC, the corporation described in and which executed the above instrument; and that he signed his name thereto by the authority of the board of directors of said corporation.


Notary Public, State of New York

ALEX SANDS
Notary Public, State of New York
Reg. No. 01SA6395069
Qualified in Nassau County
Commission Expires September 23, 2023

EXHIBIT A

Map

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ECL §27-1301 et seq.

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

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9. Respondent consents to the issuance of this Order without (i) an admission or finding of liability, fault, wrongdoing, or violation of any law, regulation, permit, order, requirement, or standard of care of any kind whatsoever; (ii) an acknowledgment that there has been a release or threatened release of hazardous waste at or from the Site; and/or (iii) an acknowledgment that a release or threatened release of hazardous waste at or from the Site constitutes a significant threat to the public health or environment. The parties recognize that this Order is mutually acceptable, fair, reasonable, and in the public interest.

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

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Kerry Maloney (1 unbound hard copy plus 1 electronic copy)
New York State Department of Environmental Conservation
Division of Environmental Remediation
625 Broadway
Albany, NY 12233 Kerry.Maloney@dec.ny.gov

Christine Voorhis (electronic copy only)
New York State Department of Health
Bureau of Environmental Exposure Investigation
Empire State Plaza
Corning Tower Room 1787
Albany, N.Y. 12237
christine.vooris@health.ny.gov

David S. Rubinton (correspondence only)
New York State Department of Environmental Conservation
Office of General Counsel
50 Circle Road
SUNY Stony Brook
Stony Brook, New York 11790
David.Rubinton@dec.ny.gov

2. Communication from the Department to Respondent shall be sent to:

Mineola 435, LLC
c/o AJM
2 Jericho Plaza, Suite 101
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Attn: Adam Mann
adam@ajmre.com

Christine Leas, Esq.
Sive, Paget & Riesel PC
560 Lexington Ave
New York, New York 10022
cleas@sprlaw.com

- B. The Department and Respondent each reserve the right to designate additional or different addressees for communication on written notice to the other. Additionally, the Department reserves the right to request that the Respondent provide more than one paper copy of any work plan or report.
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VI. Miscellaneous

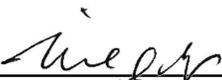
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- C. To the extent authorized under Section 113 of CERCLA (42 U.S.C. § 9613), New York General Obligations Law § 15-108, and any other applicable law, Respondent and its successors shall be deemed to have resolved their liability, if any, to the State 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 any release, as that term is defined in 6 NYCRR § 375-1.2(am), on or under the Site or that has or is emanating from the Site of hazardous waste, as that term is defined in 6 NYCRR § 375-1.2(w) which occurred prior to the effective date of this Order, and all response costs incurred or to be incurred by any person or party in connection with such release, including reimbursement or any other payment of state costs. 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, Respondent is entitled to seek contribution from any person except those who are entitled to contribution protection under CERCLA Section 113(f)(2). Respondent 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).

- D. Respondent's obligations under this Order represent payment for or reimbursement of removal or response costs, and shall not be deemed to constitute any type of fine or penalty
- E. In the event of a conflict between the main body of this Order (including any and all attachments thereto and amendments thereof) and the terms of Appendix A, the main body of this Order shall control.
- F. The effective date of this Order is the date on which the Commissioner or the Commissioner's designee signs this Order.

DATED: March 8, 2021

BASIL SEGGOS
COMMISSIONER
NEW YORK STATE DEPARTMENT OF
ENVIRONMENTAL CONSERVATION

By: 

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

CONSENT BY RESPONDENT

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

Mineola 435, LLC

By: 

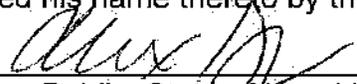
Name: Adam Mann

Title: Authorized Signatory

Date: 2/25/21

STATE OF NEW YORK)
) ss:
COUNTY OF NASSAU)

On the 25th day of February in the year 2021, before me, the undersigned, personally Adam Mann, personally known to me who, being duly sworn, did depose and say that he resides at c/o AJM, 2 Jericho Plz, Suite 101, Jericho NY 11753 and that he is the Authorized Signatory of Mineola 435, LLC, the corporation described in and which executed the above instrument; and that he signed his name thereto by the authority of the board of directors of said corporation.


Notary Public, State of New York

ALEX SANDS
Notary Public, State of New York
Reg. No. 01SA6398069
Qualified in Nassau County
Commission Expires September 23, 2023

EXHIBIT A

Map