

STATE OF NEW YORK
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

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In the Matter of a Violation of Article 27 of the New York
State Environmental Conservation Law and Title 6, Part 375
of the Official Compilation of Codes, Rules, and Regulations
of the State of New York,

by

9th Street LIC LLC
Respondent.

ORDER ON CONSENT

Index No. CO 2-20250805-153
Site No. 241028

-----X
WHEREAS:

JURISDICTION

1. The New York State Department of Environmental Conservation (the "Department") is responsible for the administration and enforcement of law and regulation related to the Inactive Hazardous Waste Disposal Site Program (commonly referred to as the State Superfund Program) pursuant to Article 27 Title 13 of the New York State Environmental Conservation Law ("ECL") and Part 375 of Title 6 of the Official Compilation of New York Codes, Rules and Regulations ("6 NYCRR") and may issue orders thereunder.
2. This Order on Consent ("Order") is issued in accordance with the Department's enforcement authority pursuant to ECL Articles 3 and 71.

PARTIES

3. Respondent 9th Street LIC LLC is the current owner of the property located at 38-31 9th Street (also referred to as 38-25/51 9th Street in the Queens County Tax Map, Hamlet of Long Island City, County of Queens, New York and currently identified on the Queens County Tax Map as Block 475, Lot 19 (the "Property"). The National Rubber Adhesives Site is an approximately 0.69-acre portion of the Property (the "Site"). The Site is listed in the Registry of Inactive Hazardous Waste Disposal Sites in New York State as Site Number 241208 with a Classification of 02 pursuant to ECL 27-1305. Respondent is remediating the Site pursuant to an Omnibus Order on Consent and Administrative Settlement, Index No. CO2-20181003-356 (the "Omnibus Order").

PROVISIONS OF LAW

4. The New York State Department of Environmental Conservation is responsible for remedial programs pursuant to Article 27, Title 13 of the ECL and 6 NYCRR Part 375 and may issue orders consistent with the authority granted to the Commissioner of the Department by such statute.
5. This Order is issued pursuant to the Department's authority under, inter alia, ECL Article 27, Title 13 and ECL §3-0301.

6. The Department enacted 6 NYCRR Part 375 to provide for the orderly and efficient administration of inactive hazardous waste disposal sites, including sites in the State Superfund and Brownfield Cleanup Programs. *See* 6 NYCRR 375-1.1(a).
7. The regulations state that all work undertaken as part of a remedial program for a site shall be detailed in a work plan approved by the Department. *See* 6 NYCRR 375-1.6 (a).
8. The regulations state that it is a violation to engage in any activity that will, or that is reasonably: (i) anticipated to prevent or interfere significantly with any proposed, ongoing, or completed remedial program at any site; or (ii) foreseeable to expose the public health or the environment to a significantly increased threat of harm or damage at any site. *See* NYCRR 375-1.11(b)(2).
9. Pursuant to ECL § 71-2705, any person who violates any of the provisions of, or who fails to perform any duty imposed by Article 27, Title 13 or any rule or regulation promulgated thereto, may be liable for penalties of up to \$37,500 per day per violation.

FACTS

10. The Omnibus Order required, among other things that the Respondent develop and implement work plan(s) under the Omnibus Order to address both on-Site and off-Site conditions.
11. Subparagraph III(C)(1) of the Omnibus Order (Appendix A - "Standard Clauses for All New York State, State Superfund Administrative Orders") reads: "In accordance with the schedule contained in a Work Plan, Respondent shall submit a final report as provided at 6 NYCRR 375-1.6(b) and a final engineering report as provided at 6 NYCRR 375-1.6(c)."
12. Subparagraph III(D)(1)(iii) of the Omnibus Order (Appendix A - "Standard Clauses for All New York State, State Superfund Administrative Orders") reads: "If the Department disapproves a submittal, it shall specify the reasons for its disapproval. Within fifteen (15) Days after the date of the Department's written notice that the Respondent's submittal has been disapproved, the Respondent shall notify the Department of its election in accordance with 6 NYCRR 375-1.6(d)(4). If the Respondent elects to modify the submittal, the Respondent shall make a revised submittal that addresses all of the Department's stated reasons for disapproving the first submittal in accordance with the time period set forth in 6 NYCRR 375-1.6(d)(4). In the event that the Respondent's revised submittal is disapproved, the Department shall set forth its reasons for such disapproval in writing and the Respondent shall be in violation of this [Omnibus] Order unless it invokes dispute resolution pursuant to Paragraph XV and its position prevails. Failure to make an election or failure to comply with the election is a violation of this [Omnibus] Order."
13. A Supplemental Remedial Investigation/Updated Feasibility Study (SRI/UFS) Work Plan was conditionally approved by the Department on July 2, 2021. The field work for the SRI/UFS Work Plan was implemented in or around December 2021.
14. The Department sent a Notice of Violation (NOV) to the Respondent on May 13, 2022 outlining how construction of parking racks over an on-Site source area was in violation of 6 NYCRR Part 375-1.11(d). This activity is considered an interference with the Site's Remedial Program.
15. Respondent submitted an SRI/UFS Report on October 31, 2022 and it was disapproved with comments on November 23, 2022.

16. The Department sent a Notice of Violation to the Respondent on May 9, 2024 outlining the Respondent's failure to provide an approvable SRI/UFS Report, and to address the conditions of the May 13, 2022 NOV.
17. Respondent failed to make a revised submittal that addresses all of the Department's stated reasons for disapproving the initial submittal. As detailed in Appendix "B" of this Order, as of May 2024, at least nine revised SRI/UFS Reports have been submitted over the past two years, all of which have failed to adequately address the Department's comments and requirements of the Omnibus Order and/or 6 NYCRR Part 375. Appendix "C" is a technical addendum outlining the deficiencies of a July 8, 2024 SRI/UFS Report.
18. Respondent failed to perform adequate QA/QC of the SRI/UFS Report resulting in inconsistent and conflicting information throughout the SRI/UFS Report, grammatically incorrect language, and technical inaccuracies.

VIOLATIONS

Respondent is alleged to have violated 6 NYCRR 375-1.11(b)(2) by "engaging in an activity that will or is reasonably anticipated to, prevent or interfere significantly with any proposed, ongoing, or completed remedial program at any site; or foreseeable to, expose the public health or the environment to a significantly increased threat of harm or damage at any site."

Respondent is alleged to have violated 6 NYCRR 375-1.11-(b)(2)(i) by engaging in activities that were reasonably anticipated to interfere significantly with any proposed, ongoing, or completed remedial program at the site by installing parking racks over identified source areas.

Respondent is alleged to have failed to implement the Omnibus Order in failing to submit a revised SRI/UFS Report that addresses all of the Department's stated reasons for disapproving the initial and subsequent submittals.

In settlement of Respondent's liability for the aforesaid violations, Respondent admits the violations set forth herein, waives its right to a hearing as provided by law, and consents to the issuing and entering of this Order pursuant to the provisions of ECL Articles 27 and 71, and agrees to be bound by the provisions, terms, and conditions herein. 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.

NOW, having considered this matter and being duly advised, it is **ORDERED** that:

I. PENALTY

- A. Respondent shall be liable for a total civil penalty in the amount of \$160,000.00 for the violations stated in this Order to be paid as follows:
 1. **Payable Penalty:** Respondent will pay \$30,000 of the penalty upon the execution of this Order. Payment shall be paid within 30 days of the Department's execution of this Order by electronic payment at <http://www.dec.ny.gov/about/61016.html#On-Line> or by check made payable to the order of the "New York State Department of Environmental Conservation," with the enclosed invoice and Index Number CO 2-20250805-153 (Site # 241028)" written in the memo section of the check, which shall be sent to the Department of Environmental Conservation, Division of

Management and Budget Services, 625 Broadway, 10th Floor, Albany,
NY 12233-4900.

2. **Suspended Penalty:** Notwithstanding the Payable Penalty above, \$130,000 of the assessed civil penalty against Respondent has been suspended, provided Respondent complies with all the terms of this Order and applicable provisions of law. In the event that Respondent fails to make the submissions or complete the activities described below in Section II or fails to comply with applicable provisions of law, the entire suspended portion of the penalty shall become due and payable upon written notice to Respondent without prejudicing the Department from seeking further appropriate penalties for the violations by Respondent.

B. This Order along with any applicable submissions, shall be sent to:

Department of Environmental Conservation
Office of General Counsel
Attention: Alali Tamuno
220 White Plains Road, Suite 110
Tarrytown, NY 10591

II. CORRECTIVE ACTION

A SRI/UFS report that addresses all of the Department's stated and subsequent reasons for disapproving the initial submittal. Respondent provided a revised SRI/UFS report (11th revision) on May 19, 2025. The Department provided an initial comment disapproving specific language within the revised SRI/UFS Report on May 28, 2025. The May 28, 2025 comment and additional comments sent on July 1, 2025 were addressed by the Respondent in a revised SRI/UFS provided on July 3, 2025 (12th revision). Additional comments were provided on July 28, 2025 and New York State Department of Health (DOH) Comments on the 12th revision of the SRI/UFS were provided on August 19, 2025. Respondent provided a revised SRI/UFS report (13th revision) dated September 19, 2025. The SRI/UFS report has not been approved by the Department.

III. ENTIRETY OF ORDER

The provisions of this Order constitute the complete and entire Order issued to the Respondent, concerning resolution of the violations identified in this Order. Terms, conditions, understandings or agreements purporting to modify or vary any term hereof shall not be binding unless made in writing and subscribed by the party to be bound, pursuant to the modification provisions of this Order. No informal oral or written advice, guidance, suggestion or comment by the Department regarding any report, proposal, plan, specification, schedule, comment or statement made or submitted by the Respondent shall be construed as relieving the Respondent of their obligations to obtain such formal approvals as may be required by this Order.

IV. RELEASE

This Order shall be in full settlement of all claims for civil and administrative penalties that have been or could be asserted by the Department against Respondent, their trustees, officers, employees, successors and assigns only for the above-referenced violations. This Order shall not be construed as being in settlement of events regarding which the Department lacks knowledge, or which occur after the effective date of this Order.

V. RESERVATION OF RIGHTS

The Department reserves the right to require that the Respondent undertake any additional measures required to protect human health or the environment and shall reserve the Department's rights to exercise its authorities under law to protect human health and the environment or to otherwise require compliance with the law. This Order does not bar, diminish, adjudicate, or in any way affect the Department's rights or authorities, except as set forth in this Order, including but not limited to, exercising summary abatement powers.

VI. BINDING EFFECT

The provisions, terms and conditions of this Order shall be deemed to bind Respondent and the Respondent's heirs, legal representatives, receivers, trustees in bankruptcy, successors, and assigns, employees, and all persons, firms, and business entities acting under or for them.

VII. FAILURE, DEFAULT, AND VIOLATION OF ORDER

Respondent's failure to comply fully and in timely fashion with any provision, term, or condition of this Order shall constitute a default and a failure to perform an obligation under this Order and under the ECL and shall constitute sufficient grounds for revocation of any permit, license, certification, or approval issued to the Respondent by the Department.

VIII. DEFAULT OF PAYMENT

The penalty assessed in this Order constitutes a debt owed to the State of New York. Failure to pay the assessed penalty, or any part thereof, in accordance with the terms of this Order, may result in referral to the New York State Attorney General for collection of the entire amount owed (including the assessment of interest, and a charge to cover the cost of collecting the debt), or referral to the New York State Department of Taxation and Finance, which may offset any tax refund or other monies that may be owed to you by the State of New York by the penalty amount. Any suspended and/or stipulated penalty provided for in this Order will constitute a debt owed to the State of New York when and if such penalty becomes due.

IX. MODIFICATION

No change in this Order shall be made or become effective except as specifically set forth by written order of the Commissioner, being made either upon written application of the Respondent, or upon the Commissioner's own findings after notice and opportunity to be heard have been given to the Respondent. The Respondent shall have the burden of proving entitlement to any modification requested.

X. INDEMNIFICATION

The 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 resulting from the acts and/or omissions of the Respondent, intentional, negligent, or otherwise, of every nature and description, arising out of or resulting from the compliance or attempted compliance with the provisions of this Order by the Respondent or its employees, servants, agents, successors, or assigns.

XI. NOT A PERMIT

This Order is not a permit, or a modification of a permit, under any federal, State, or local laws or regulations. Unless otherwise allowed by statute or regulation, Respondent is responsible for achieving and maintaining complete compliance with all applicable federal, State, and local laws, regulations, and permits. Respondent's compliance with this Order on Consent shall be no defense to any action commenced pursuant to any laws, regulations, or permits, except as set forth herein. The Department does not warrant or aver that the Respondent's compliance with this Order will result in compliance with any laws, regulations or permits.

XII. FORCE MAJEURE

If Respondent cannot comply with a deadline or requirement of this Order, because of natural disaster, pandemic, war, terrorist attack, strike, riot, judicial injunction, or other, similar unforeseeable event which was not caused by the negligence or willful misconduct of Respondent and which could not have been avoided by Respondent through the exercise of due care, Respondent shall apply in writing to the Department within a reasonable time after obtaining knowledge of such fact and request an extension or modification of the deadline or requirement. Respondent shall include in such application the measures taken by Respondent to prevent and/or minimize any delays. Failure to give such notice 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 a claim of non-compliance with this Order pursuant to this Article.

XIII. EFFECTIVE DATE AND TERMINATION

This Order shall take effect when it is signed by the Commissioner of the Department of Environmental Conservation or the Commissioner's designee. This Order shall terminate when all requirements imposed by this Order are completed to the Department's satisfaction.

DATED: Albany, New York
November 14, 2025

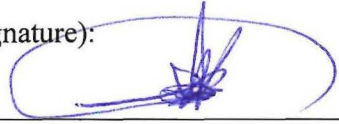
AMANDA LEFTON
Commissioner, NYSDEC

By: Janet E. Brown
Janet Brown, Assistant Division Director
Division of Environmental Remediation

CONSENT BY RESPONDENT

Respondent 9th Street LIC LLC hereby consents to the issuing and entering of this Order without further notice, waives its right to a hearing herein, and agrees to be bound by the terms, conditions and provisions contained in this Order.

By (Signature):



Print Name: Sam Chang

Title: Manager

Date: 10/20/25

ACKNOWLEDGMENT

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

On this 20th day of October, 2025, before me personally came Sam Chang, who being properly identified and who being by me duly sworn did depose and say that s/he is Manager of 9th Street LIC LLC and did execute this Order on Consent on behalf of and as authorized by 9th Street LIC LLC.


Notary Public

LLOYD TING
Notary Public, State of New York
Reg. No. 02TI0040699
Qualified in Queens County
Commission Expires 08/19/2029

Appendix “A”

Standard Clauses for All New York State, State Superfund Administrative Orders

APPENDIX A

STANDARD CLAUSES FOR ALL NEW YORK STATE SUPERFUND ADMINISTRATIVE ORDERS

The parties to the State Superfund Order (hereinafter "Order") agree to be bound by the following clauses which are hereby made a part of the Order. The word "Respondent" herein refers to any party to the Order, other than the New York State Department of Environmental Conservation (hereinafter "Department").

I. Citizen Participation Plan

Within twenty (20) days after the effective date of this Order, Respondent shall submit for review and approval a written citizen participation plan prepared in accordance with the requirements of ECL §27-1417 and 6 NYCRR sections 375-1.10 and 375-3.10. Upon approval, the Citizen Participation Plan shall be deemed to be incorporated into and made a part of this Order.

II. Initial Submittal

Within thirty (30) days after the effective date of this Order, Respondent shall submit to the Department a Records Search Report prepared in accordance with Exhibit "B" attached to the Order. The Records Search Report can be limited if the Department notifies Respondent that prior submissions satisfy specific items required for the Records Search Report.

III. Development, Performance, and Reporting of Work Plans

A. Work Plan Requirements

All activities at the Site that comprise any element of an Inactive Hazardous Waste Disposal Site Remedial Program shall be conducted pursuant to one or more Department-approved work plans ("Work Plan" or "Work Plans") and this Order and all activities shall be consistent with the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), 40 C.F.R. Part 300, as required under CERCLA, 42 U.S.C. § 9600 *et seq.* The Work Plan(s) under this Order shall address both on-Site and off-Site conditions and shall be developed and implemented in accordance with 6 NYCRR § 375-1.6(a), 375-3.6, and 375-6. All Department-approved Work Plans shall be incorporated into and become enforceable parts of this Order. Upon approval of a

Work Plan by the Department, Respondent shall implement such Work Plan in accordance with the schedule contained therein. Nothing in this Subparagraph shall mandate that any particular Work Plan be submitted.

The Work Plans shall be captioned as follows:

1. Site Characterization ("SC") Work Plan: a Work Plan which provides for the identification of the presence of any hazardous waste disposal at the Site;
2. Remedial Investigation/Feasibility Study ("RI/FS") Work Plan: a Work Plan which provides for the investigation of the nature and extent of contamination within the boundaries of the Site and emanating from such Site and a study of remedial alternatives to address such on-site and off-site contamination;
3. Remedial Design/Remedial Action ("RD/RA") Work Plan: a Work Plan which provides for the development and implementation of final plans and specifications for implementing the remedial alternative set forth in the ROD;
4. "IRM Work Plan" if the Work Plan provides for an interim remedial measure;
5. "Site Management Plan" if the Work Plan provides for the identification and implementation of institutional and/or engineering controls as well as any necessary monitoring and/or operation and maintenance of the remedy; or
6. "Supplemental" if additional work plans other than those set forth in II.A.1-5 are required to be prepared and implemented.

B. Submission/Implementation of Work Plans

1. Respondent may opt to propose one or more additional or supplemental Work Plans (including one or more IRM Work Plans) at any time, which the Department shall review for appropriateness and technical sufficiency.
2. Any proposed Work Plan shall be submitted for the Department's review and approval

and shall include, at a minimum, a chronological description of the anticipated activities, a schedule for performance of those activities, and sufficient detail to allow the Department to evaluate that Work Plan.

i. The Department shall notify Respondent in writing if the Department determines that any element of a Department-approved Work Plan needs to be modified in order to achieve the objectives of the Work Plan as set forth in Subparagraph III.A or to ensure that the Remedial Program otherwise protects human health and the environment. Upon receipt of such notification, Respondent shall, subject to dispute resolution pursuant to Paragraph XV, modify the Work Plan.

ii. The Department may request, subject to dispute resolution pursuant to Paragraph XV, that Respondent submit additional or supplemental Work Plans for the Site to complete the current remedial phase within thirty (30) Days after the Department's written request.

3. A Site Management Plan, if necessary, shall be submitted in accordance with the schedule set forth in the IRM Work Plan or Remedial Work Plan.

4. During all field activities conducted under a Department-approved Work Plan, Respondent shall have on-Site a representative who is qualified to supervise the activities undertaken in accordance with the provisions of 6 NYCRR 375-1.6(a)(3).

5. A Professional Engineer must stamp and sign all Work Plans other than SC or RI/FS Work Plans.

C. Submission of Final Reports and Periodic Reports

1. In accordance with the schedule contained in a Work Plan, Respondent shall submit a final report as provided at 6 NYCRR 375-1.6(b) and a final engineering report as provided at 6 NYCRR 375-1.6(c).

2. Any final report or final engineering report that includes construction activities shall include "as built" drawings showing any changes made to the remedial design or the IRM.

3. In the event that the final engineering report for the Site requires Site management,

Respondent shall submit an initial periodic report by in accordance with the schedule in the Site Management Plan 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.

4. Within sixty (60) days of the Department's approval of a Final Report, Respondent shall submit such additional Work Plans as is required by the Department in its approval letter of such Final Report. Failure to submit any additional Work Plans within such period shall be a violation of this Order.

D. Review of Submittals

1. The Department shall make a good faith effort to review and respond in writing to each submittal Respondent makes pursuant to this Order within sixty (60) Days. The Department's response shall include, in accordance with 6 NYCRR 375-1.6(d), an approval, modification request, or disapproval of the submittal, in whole or in part.

i. Upon the Department's written approval of a Work Plan, such Department-approved Work Plan shall be deemed to be incorporated into and made a part of this Order and shall be implemented in accordance with the schedule contained therein.

ii. If the Department modifies or requests modifications to a submittal, it shall specify the reasons for such modification(s). Within fifteen (15) Days after the date of the Department's written notice that Respondent's submittal has been disapproved, Respondent shall notify the Department of its election in accordance with 6 NYCRR 375-1.6(d)(3). If Respondent elects to modify or accept the Department's modifications to the submittal, Respondent shall make a revised submittal that incorporates all of the Department's modifications to the first submittal in accordance with the time period set forth in 6 NYCRR 375-1.6(d)(3). In the event that Respondent's revised submittal is disapproved,

the Department shall set forth its reasons for such disapproval in writing and Respondent shall be in violation of this Order unless it invokes dispute resolution pursuant to Paragraph XV and its position prevails. Failure to make an election or failure to comply with the election is a violation of this Order.

iii. If the Department disapproves a submittal, it shall specify the reasons for its disapproval. Within fifteen (15) Days after the date of the Department's written notice that Respondent's submittal has been disapproved, Respondent shall notify the Department of its election in accordance with 6 NYCRR 375-1.6(d)(4). If Respondent elects to modify the submittal, Respondent shall make a revised submittal that addresses all of the Department's stated reasons for disapproving the first submittal in accordance with the time period set forth in 6 NYCRR 375-1.6(d)(4). In the event that Respondent's revised submittal is disapproved, the Department shall set forth its reasons for such disapproval in writing and Respondent shall be in violation of this Order unless it invokes dispute resolution pursuant to Paragraph XV and its position prevails. Failure to make an election or failure to comply with the election is a violation of this Order.

2. Within thirty (30) Days after the Department's approval of a final report, Respondent shall submit such final report, as well as all data gathered and drawings and submittals made pursuant to such Work Plan, in an electronic format acceptable to the Department. If any document cannot be converted into electronic format, Respondent shall submit such document in an alternative format acceptable to the Department.

E. Department's Issuance of a ROD

1. Respondent shall cooperate with the Department and provide reasonable assistance, consistent with the Citizen Participation Plan, in soliciting public comment on the proposed remedial action plan ("PRAP"), if any. After the close of the public comment period, the Department shall select a final remedial alternative for the Site in a ROD. Nothing in this Order shall be construed to abridge any rights of Respondent, as provided by law, to judicially challenge the Department's ROD.

2. Respondent shall have 60 days from the date of the Department's issuance of the ROD to notify the Department in writing whether it will implement the remedial activities required by such ROD. If the Respondent elects not to implement the required remedial activities, then this order shall

terminate in accordance with Paragraph XIV.A. Failure to make an election or failure to comply with the election is a violation of this Order.

F. Institutional/Engineering Control Certification

In the event that the remedy for the Site, if any, or any Work Plan for the Site, requires institutional or engineering controls, Respondent shall submit a written certification in accordance with 6 NYCRR 375-1.8(h)(3) and 375-3.8(h)(2).

IV. Penalties

A. 1. Respondent's failure to comply with any term of this Order constitutes a violation of this Order, the ECL, and 6 NYCRR 375-2.11(a)(4). Nothing herein abridges Respondent's right to contest any allegation that it has failed to comply with this Order.

2. Payment of any penalties shall not in any way alter Respondent's obligations under this Order.

B. 1. Respondent shall 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 Force Majeure Event as provided at 6 NYCRR 375-1.5(b)(4). Respondent must use best efforts to anticipate the potential Force Majeure Event, best efforts to address any such event as it is occurring, and best efforts following the Force Majeure Event to minimize delay 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 five (5) Days of the onset of any Force Majeure Event. Failure to give such notice within such five (5) 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 is 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 IV.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 that are affected by the Force Majeure Event shall be extended for a period of time equivalent to the time lost because of the Force majeure event, in accordance with 375-1.5(4).

5. If the Department rejects Respondent's assertion that an event provides a defense to non-compliance with this Order pursuant to Subparagraph IV.B, Respondent shall be in violation of this Order unless it invokes dispute resolution pursuant to Paragraph XV and Respondent's position prevails.

V. Entry upon Site

A. Respondent hereby consents, upon reasonable notice under the circumstances presented, to 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 matters addressed pursuant to this Order, and by any agent, consultant, contractor, or other person so authorized by the Commissioner, all of whom shall abide by the health and safety rules in effect for the Site, for inspecting, sampling, copying records related to the contamination at the Site, testing, and any other activities necessary to ensure Respondent's compliance with this Order. Upon request, Respondent shall (i) provide the Department with suitable work space at the Site, including access to a telephone, to the extent available, and (ii) permit the Department full access to all non-privileged records relating to matters addressed by this Order. Raw data is not considered privileged and that portion of any privileged document containing raw data must be provided to the Department. In the event Respondent is unable to obtain any authorization from third-party property owners necessary to perform its obligations under this Order, the Department may, consistent with its legal authority, assist in obtaining such authorizations.

B. The Department shall have the right to take its own samples and scientific measurements and the Department and Respondent shall each have the right to obtain split samples, duplicate samples, or both, of all substances and materials sampled. The Department shall make the results of any such

sampling and scientific measurements available to Respondent.

VI. Payment of State Costs

A. Within forty-five (45) 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 State Costs as provided by 6 NYCRR 375-1.5 (b)(3)(i). Failure to timely pay any invoice will be subject to late payment charge and interest at a rate of 9% from the date the payment is due until the date the payment is made.

B. Costs shall be documented as provided by 6 NYCRR 375-1.5(b)(3). The Department shall not be required to provide any other documentation of costs, provided however, that the Department's records shall be available consistent with, and in accordance with, Article 6 of the Public Officers Law.

C. Each such payment shall be made payable to the New York State Department of Environmental Conservation and shall be sent to:

Director, Bureau of Program Management
Division of Environmental Remediation
New York State Department of Environmental
Conservation
625 Broadway
Albany, New York 12233-7012

D. The Department shall provide written notification to the Respondent of any change in the foregoing addresses.

E. If Respondent objects to any invoiced costs under this Order, the provisions of 6 NYCRR 375-1.5 (b)(3)(v) and (vi) shall apply. Objections shall be sent to the Department as provided under subparagraph VI.C above.

F. In the event of non-payment of any invoice within the 45 days provided herein, the Department may seek enforcement of this provision pursuant to Paragraph IV or the Department may commence an enforcement action for non-compliance with ECL '27-1423 and ECL 71-4003.

VII. Release and Covenant Not to Sue

Upon the Department's issuance of a Certificate of Completion as provided at 6 NYCRR 375-1.9 and 375-2.9, Respondent shall obtain the benefits

conferred by such provisions, subject to the terms and conditions described therein.

VIII. Reservation of Rights

A. Except as provided at 6 NYCRR 375-1.9 and 375-2.9, nothing contained in this Order shall be construed as barring, diminishing, adjudicating, or in any way affecting any of the Department's rights or authorities, including, but not limited to, the right to require performance of further investigations and/or response action(s), to recover natural resource damages, and/or to exercise any summary abatement powers with respect to any person, including Respondent.

B. Except as otherwise provided in this Order, Respondent specifically reserves all rights and defenses under applicable law respecting any Departmental assertion of remedial liability and/or natural resource damages against Respondent, and further reserves all rights respecting the enforcement of this Order, including the rights to notice, to be heard, to appeal, and to any other due process. The existence of this Order or Respondent's compliance with it shall not be construed as an admission of liability, fault, wrongdoing, or breach of standard of care by Respondent, and shall not give rise to any presumption of law or finding of fact, or create any rights, or grant any cause of action, which shall inure to the benefit of any third party. Further, Respondent reserves such rights as it may have to seek and obtain contribution, indemnification, and/or any other form of recovery from its insurers and from other potentially responsible parties or their insurers for past or future response and/or cleanup costs or such other costs or damages arising from the contamination at the Site as may be provided by law, including but not limited to rights of contribution under section 113(f)(3)(B) of CERCLA, 42 U.S.C. § 9613(f)(3)(B).

IX. 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).

X. Public Notice

A. Within thirty (30) Days after the effective date of this Order, Respondent shall provide notice as required by 6 NYCRR 375-1.5(a). Within sixty (60) Days of such filing, Respondent shall provide the

Department with a copy of such instrument certified by the recording officer to be a true and faithful copy.

B. If Respondent proposes to transfer by sale or lease the whole or any part of Respondent's interest in the Site, or becomes aware of such transfer, Respondent shall, not fewer than forty-five (45) Days before the date of transfer, 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 Respondent to secure the repayment of money or the performance of a duty or obligation.

XI. Change of Use

Applicant shall notify the Department at least sixty (60) days in advance of any change of use, as defined in 6 NYCRR 375-2.2(a), which is proposed for the Site, in accordance with the provisions of 6 NYCRR 375-1.11(d). In the event the Department determines that the proposed change of use is prohibited, the Department shall notify Applicant of such determination within forty-five (45) days of receipt of such notice.

XII. Environmental Easement

A. If a Record of Decision for the Site relies upon one or more institutional and/or engineering controls, Respondent (or the owner of the Site) 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).

B. If the ROD provides for no action other than implementation of one or more institutional controls, Respondent shall cause an environmental easement to be recorded under the provisions of Subparagraph XII.A.

C. If Respondent does not cause such environmental easement to be recorded in accordance

with 6 NYCRR 375-1.8(h)(2), Respondent will not be entitled to the benefits conferred by 6 NYCRR 375-1.9 and 375-2.9 and the Department may file an Environmental Notice on the site.

XIII. Progress Reports

Respondent shall submit a written progress report of its actions under this Order to the parties identified in Subparagraph IV.A.1 of the Order by the 10th day of each month commencing with the month subsequent to the approval of the first Work Plan and ending with the Termination date as set forth in Paragraph XIV, unless a different frequency is set forth in a Work Plan. Such reports shall, at a minimum, include: all actions relative to the Site during the previous reporting period and those anticipated for the next reporting period; all approved activity modifications (changes of work scope and/or schedule); all results of sampling and tests and all other data received or generated by or on behalf of Respondent in connection with this Site, whether under this Order or otherwise, in the previous reporting period, including quality assurance/quality control information; information regarding percentage of completion; unresolved delays encountered or anticipated that may affect the future schedule and efforts made to mitigate such delays; and information regarding activities undertaken in support of the Citizen Participation Plan during the previous reporting period and those anticipated for the next reporting period.

XIV. Termination of Order

A. This Order will terminate upon the earlier of the following events:

1. Respondent's election in accordance with Paragraph III.E.2 not to implement the remedial activities required pursuant to the ROD. In the event of termination in accordance with this Subparagraph, this Order shall terminate effective the 5th Day after the Department's receipt of the written notification, provided, however, that if there are one or more Work Plan(s) for which a final report has not been approved at the time of Respondent's notification of its election not to implement the remedial activities in accordance with the ROD, Respondent shall complete the activities required by such previously approved Work Plan(s) consistent with the schedules contained therein. Thereafter, this Order shall terminate effective the 5th Day after the Department's approval of the final report for all previously approved Work Plans; or

2. The Department's written determination that Respondent has completed all phases of the Remedial Program (including Site Management), in which event the termination shall be effective on the 5th Day after the date of the Department's letter stating that all phases of the remedial program have been completed.

B. Notwithstanding the foregoing, the provisions contained in Paragraphs VI and IX 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 375-2.11(a)(4), subjecting Respondent to penalties as provided under Paragraph IV so long as such obligations accrued on or prior to the Termination Date.

C. If the Order is terminated pursuant to Subparagraph XIV.A.1, neither this Order nor its termination shall affect any liability of Respondent for remediation of the Site and/or for payment of State Costs, including implementation of removal and remedial actions, interest, enforcement, and any and all other response costs as defined under CERCLA, nor shall it affect any defenses to such liability that may be asserted by Respondent. Respondent shall also ensure that it does not leave the Site in a condition, from the perspective of human health and environmental protection, worse than that which existed before any activities under this Order were commenced. Further, the Department's efforts in obtaining and overseeing compliance with this Order shall constitute reasonable efforts under law to obtain a voluntary commitment from Respondent for any further activities to be undertaken as part of a Remedial Program for the Site.

XV. Dispute Resolution

A. In the event disputes arise under this Order, Respondent may, within fifteen (15) Days after Respondent knew or should have known of the facts which are the basis of the dispute, initiate dispute resolution in accordance with the provisions of 6 NYCRR 375-1.5(b)(2).

B. All cost incurred by the Department associated with dispute resolution are State costs subject to reimbursement pursuant to this Order.

C. Nothing contained in this Order shall be construed to authorize Respondent to invoke dispute resolution with respect to the remedy selected by the Department in the ROD or any element of such remedy, nor to impair any right of Respondent to

seek judicial review of the Department's selection of any remedy.

XVI. Miscellaneous

A. Respondent agrees to comply with and be bound by the provisions of 6 NYCRR Subparts 375-1 and 375-2; the provisions of such Subparts that are referenced herein are referenced for clarity and convenience only and the failure of this Order to specifically reference any particular regulatory provision is not intended to imply that such provision is not applicable to activities performed under this Order.

B. The Department may exempt Respondent from the requirement to obtain any state or local permit or other authorization for any activity conducted pursuant to this Order in accordance with 6 NYCRR 375-1.12(b), (c), and (d).

C. 1. Respondent shall use best efforts to obtain all Site access, permits, easements, approvals, institutional controls, and/or authorizations necessary to perform Respondent's obligations under this Order, including all Department-approved Work Plans and the schedules contained therein. If, despite Respondent's best efforts, any access, permits, easements, approvals, institutional controls, or authorizations cannot be obtained, Respondent shall promptly notify the Department and include a summary of the steps taken. The Department may, as it deems appropriate and within its authority, assist Respondent in obtaining same.

2. If an interest in property is needed to implement an institutional control required by a Work Plan and such interest cannot be obtained, the Department may require Respondent to modify the Work Plan pursuant to 6 NYCRR 375-1.6(d)(3) to reflect changes necessitated by Respondent's inability to obtain such interest.

D. 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.

E. 1. The terms of this Order shall constitute the complete and entire agreement between the Department and Respondent concerning the implementation of the activities 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 Respondent of Respondent's obligation to obtain such formal approvals as may be required by this Order. In the event of a conflict between the terms of this Order and any Work Plan submitted pursuant to this Order, the terms of this Order shall control over the terms of the Work Plan(s). Respondent consents to and agrees not to contest the authority and jurisdiction of the Department to enter into or enforce this Order.

2. i. Except as set forth herein, if Respondent desires that any provision of this Order be changed, Respondent shall make timely written application to the Commissioner with copies to the parties listed in Subparagraph IV.A.1.

ii. If Respondent seeks to modify an approved Work Plan, a written request shall be made to the Department's project manager, with copies to the parties listed in Subparagraph IV.A.1.

iii. Requests for a change to a time frame set forth in this Order shall be made in writing to the Department's project attorney and project manager; such requests shall not be unreasonably denied and a written response to such requests shall be sent to Respondent promptly.

F. 1. If there are multiple parties signing this Order, the term "Respondent" shall be read in the plural, the obligations of each such party 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) under this Order.

2. If Respondent is a partnership, the obligations of all general partners (including limited partners who act as general partners) under this Order are joint and several and the insolvency or failure of any general partner to implement any obligations under this Order shall not affect the obligations of the remaining partner(s) under this Order.

3. Notwithstanding the foregoing Subparagraphs XVI.F.1 and 2, if multiple parties sign this Order as Respondents but not all of the signing parties elect to implement a Work Plan, all Respondents are jointly and severally liable for each and every obligation under this Order through the completion of activities in such Work Plan that all such parties consented to; thereafter, only those Respondents electing to perform additional work

shall be jointly and severally liable under this Order for the obligations and activities under such additional Work Plan(s). The parties electing not to implement the additional Work Plan(s) shall have no obligations under this Order relative to the activities set forth in such Work Plan(s). Further, only those Respondents electing to implement such additional Work Plan(s) shall be eligible to receive the release and covenant not to sue referenced in Paragraph VII.

G. Respondent shall be entitled to receive contribution protection and/or to seek contribution to the extent authorized by ECL 27-1421(6) and 6 NYCRR 375-1.5(b)(5).

H. Unless otherwise expressly provided herein, terms used in this Order which are defined in ECL Article 27 or in regulations promulgated thereunder shall have the meaning assigned to them under said statute or regulations.

I. Respondent's obligations under this Order represent payment for or reimbursement of response costs, and shall not be deemed to constitute any type of fine or penalty.

J. Respondent and Respondent's successors and assigns shall be bound by this Order. Any change in ownership or corporate status of Respondent shall in no way alter Respondent's responsibilities under this Order.

K. This Order may be executed for the convenience of the parties hereto, individually or in combination, in one or more counterparts, each of which shall be deemed to have the status of an executed original and all of which shall together constitute one and the same.

Appendix “B”

Timeline of Respondent’s submitted versions of the SRI/UFS Report and the Department’s responses/disapprovals through May 2024

- The Respondent submitted a 2nd Revised SRI/UFS Report on March 6, 2023 that did not address all of the Department’s November 23, 2022 comments. and the department disapproved it with comments on April 21, 2023;
- The Respondent submitted a 3rd Revised SRI/UFS Report on June 23, 2023 that did not address all of the Department’s April 21, 2023 comments. Clarifications were sent by the Department via email on July 13, 2023 and a subsequent conference call was held on July 17, 2023;
- The Respondent submitted a 4th Revised SRI/UFS Report on July 28, 2023 that again did not address all of the Department’s April 21, 2023 and July 13, 2023 comments. The Department provided substantial comments on August 28, 2023 re- iterating many of the same items that were not addressed in the 4th Revised SRI/UFS Report;
- The Respondent submitted a 5th Revised SRI/UFS Report on September 29, 2023. Previous Department comments were not addressed. The Department again outlined deficiencies in an email sent to the Respondent’s Consultant on October 25, 2023, along with a marked-up version of the Consultant’s September 29, 2023 SRI/UFS Report transmitted via email on October 26, 2023;
- The Respondent submitted a 6th Revised SRI/UFS Report on November 21, 2023. Previous Department comments were still not addressed as noted in an email Department staff sent to the Consultant on December 11, 2023;
- The Respondent submitted a 7th Revised SRI/UFS Report on December 28, 2023 that did not address all of the Department’s December 11, 2023 comments. Department staff sent remaining comments via email on January 19, 2024;
- The Respondent submitted an 8th Revised SRI/UFS Report on January 19, 2024 and following an internal review of the Remedial Alternatives presented in the document, the 8th Revised SRI/UFS Report was disapproved with comments on April 5, 2024; and
- The Department sent a Notice of Violation to the Respondent on May 9, 2024 outlining the Respondent’s failure to provide an approvable SRI/UFS Report, and to address the conditions of the May 13, 2022 NOV.

Appendix “C”

Technical addendum outlining the deficiencies of a July 8, 2024 SRI/UFS Report.

1. The parking stackers/racks are still referenced throughout the document as a basis for evaluating the feasibility of remedial alternatives. As previously stated in DEC’s May 9, 2024 NOV, these racks were installed in violation of the Site’s remedial program and should not be cited as a basis for evaluating the feasibility of remedial alternatives.
2. “Horizontal” should not be included in the SVE System description, as noted in prior comment letters. The use of “horizontal” is premature; a pilot test will inform the design and layout of the system Section 4.4.2, Section 4.4.3, and Section 4.4.5 requires revisions accordingly.
3. Alternative 4: All long-term monitoring language should not be included in Alternative 4; ICs/ECs are not allowed for an unrestricted use cleanup per Part 375. DEC has made this comment in previous letters, yet this language remains. Specific examples include:
 - a. Section 4.4.4, Cleanup to Pre-disposal conditions, Compliance with SCGs: The following sentence is not appropriate for this Alternative: “The soil excavation may not prevent soil vapor from entering the structures off-Site if VOCs are present in soil west of the 9th Street excavation footprint.” If the site is remediated to pre-disposal conditions, there would be no further impacts.
 - b. Section 4.4.4, Reduction of toxicity, mobility, volume: Rather than noting this alternative will “significantly decrease” the toxicity, mobility, and volume of contamination, it should note that it will be “removed”. This is consistent with later sections which state that no contamination would remain or need to be monitored.
4. Alternative 5 should be called: “*Excavation, SVE System, Groundwater Treatment, and long-term operation, maintenance, and monitoring.*” The report narrative mislabeled Alternative 5 the same as Alternative 4 (*Restoration to pre-disposal conditions*). Since Alternative 5 proposes less material removal than Alternative 4, it would achieve a lesser degree of cleanup and not restore the site to pre-disposal conditions.
5. Alternative 5 Figure: This figure needs to show the lateral extent of the tank grave beneath former building 1 relative to existing site features. The impacted tank grave should be targeted for excavation in a revised figure. The previously provided documents prepared by CORE need to be referenced to provide an accurate figure.
6. Alternative 5: A technical basis for the four distinct excavations proposed in front of the on-site hotel and means and methods of excavation (i.e. support of excavation (SOE)) is needed. It is unclear why one larger, continuous excavation was not proposed based on the extent of contamination, specifically grossly impacted material, identified in this area and the practicality of SOE for four smaller excavation areas versus one larger area. It is DEC’s understanding that the hotel would not require shoring as its foundation was

constructed on top of bedrock.

7. The estimated amounts of generated hazardous waste should report volumes rather than percentages for both Alternative 4 and 5.
8. Section 4.3.1, Alternative 2, 2nd paragraph: SVE can only address unsaturated soils. Language noting that the SVE system would not achieve PGWSCO in saturated soils “due to high toluene concentrations” is inaccurate; SVE does not address saturated soils. This language should also be removed from Section 4.3.1, Alternative 3.
9. Section 4.4.2, Detailed Analysis of Alternatives, Compliance with SCGs: Language should be added noting that soil contamination in saturated soils would not be addressed by this alternative. Language should be removed noting that ISCO would address groundwater “and PGWSCO in saturated soil”. ISCO is not considered an effective soil remedial technology when compared to excavation.
10. Section 4.5, Comparative Analysis, Long-term effectiveness: Alternatives 4 and 5, **which include** source removal, should be revised to note that they satisfy this criterion better than Alternatives 2 and 3, **which do not include** source removal. Stating that all Alternatives can be considered effective for soil is not an adequate comparison.
11. Section 4.5, Comparative Analysis, Long-term effectiveness: The final sentence under this criterion should be revised in consideration of the above comment (#10) and so the final paragraph of this Section compares/ranks how each alternative would satisfy the criterion. Statements should be removed which state “these alternatives would be evaluated over time in the field.” I.e., Alternative 4 would have the greatest degree of long-term effectiveness, followed by Alternative 5, etc.
12. Section 4.5, Comparative Analysis, Reduction of toxicity, mobility, or volume: The 2nd and final paragraph of this section should be revised to note the varying degrees that Alternatives 2, 3, 4 and 5 would address this criterion. Blanket statements noting that all alternatives would “significantly reduce” the toxicity, mobility, and volume of contamination should be removed. To be consistent with subsequent paragraphs, additional language is needed to explain how the 2 alternatives which include source material excavation would address this criterion to a greater degree than the Alternatives which do not propose source material removal.
13. Section 4.5, Comparative Analysis, Reduction of toxicity, mobility, or volume: Alternatives 4 and 5 should be revised to explain the differing degrees which they would reduce the toxicity, mobility, or volume of contamination, and it should be noted which alternative would accomplish this the best. Language suggesting that the toxicity, mobility, and volume of contamination would be “eliminated” by both Alternative 4 and 5 needs more detail, since they would address this criterion by varying degrees.
14. Figure 8: The labels of KS-MW-3 and HRP-MW-5 appear to have been reversed and need revision.

15. Alternative 1: Alternative 1 should be called “No Further Action” throughout the document as previously requested. The Land Use Section on Page 54 still refers to Alternative 1 as “No Action.”
16. The boring logs for B1 – B6, B7 (data collected 9/2018 and 6/17/2020), B8 (collected 9/18/2018), B9 (collected 8/18, 9/18), and B10 still need to be included as previously requested.