

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

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In the Matter of the Reimbursement of  
Response Costs for an Inactive Hazardous  
Waste Disposal Site, Under Article 27,  
Title 13, and Article 71, Title 27 of the  
Environmental Conservation Law of the  
State of New York

**ORDER ON CONSENT AND  
ADMINISTRATIVE SETTLEMENT  
Index No. CO 3-20210805-37**

**DEC Site Name:**     **Gabriel Manufacturing Co. Inc. Site**  
DEC Site No.:         344041  
Site Address:         125 South Liberty Drive, Stony Point, New York

Hereinafter referred to as "Site"

by:     125 South Liberty, LLC  
          822 West Shore Drive  
          Kinnelon, New Jersey 07405

Hereinafter referred to as "Respondent"

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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"), Part 375 of Title 6 of the Official Compilation of Codes, Rules and Regulations ("6 NYCRR") and the New York State Finance Law ("SFL"), and pursuant to such laws the Department is authorized to enter into this Order on Consent and Administrative Settlement (the "Order").

       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, 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).

       D.     6 NYCRR § 375-2.11(c)(1)(ii) authorizes the Department to expend money from 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 to pay for site identification, classification and investigation activities, including, but not limited to, testing, analyses, record searches and the Department's related administrative activities.

2. The Respondent is an active New York business limited liability company with a mailing address of 822 West Shore Drive, Kinnelon, NJ 07405 and is the current owner of the Site, which is further defined herein.

3. The Site is currently listed in the Registry of Inactive Hazardous Waste Disposal Sites in New York State (the "Registry") as Site Number 334041, with a Classification of "2" pursuant to ECL 27-1305.

4. The Respondent acquired the Site on or about March 13, 2015 and is the current owner. Respondent has represented to the Department that it never directed, managed, influenced or controlled the manufacturing process earlier conducted by the prior owner of the Site.

5. The building at the Site was constructed in the 1960s as a manufacturing facility for producing metal and plastic parts for office furniture. The manufacturing process include repackaging silicon-based lubricants into smaller containers with the addition of chlorofluorocarbons (CFCs) as a propellant. This "mold release" product was used to help separate plastic and metal parts while manufacturing accessories for office furniture.

6. The CFCs were delivered as a 50/50 mixture of trichlorofluoromethane (CFC 11) and dichlorodifluoromethane (CFC 12) to the facility by truck, and then pumped under pressure to two above ground storage tanks located northwest the Site building.

7. The Department performed a Preliminary Site Assessment in 1999. Groundwater samples collected from overburden and bedrock monitoring wells contained concentrations of CFC 11, CFC 12, 1,1,1-trichloroethane (1,1,1-TCA), 1,1-dichloroethene (1,1-DCE), and 1,1-dichloroethane (1,1-DCA) above NYS groundwater standards.

8. The Department added the Site to the New York State Registry of Inactive Hazardous Waste Disposal Sites as Class 2 (i.e., poses a significant threat to public health and/or the environment) in March 2001 based on the results of the Preliminary Site Assessment.

9. Respondent represented to the Department that it is selling the Site to a bona fide purchaser. Respondent also represented to the Department that it is unable to pay the total past and future response costs incurred by the Department in investigating and

remediating the Site because of the past release of hazardous substances into the environment.

11. Pursuant to the legal authorities cited herein, the Department has incurred costs, and anticipates the need to incur additional costs, paid from the hazardous waste remedial fund for the implementation of a Remedial Program, 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.

12. Respondent and the Department agree that the objectives and conditions of this Order are for: (i) Respondent to pay a portion of the Department's past and future response costs at the Site from proceeds of a future sale of the Site; (ii) the Department to release and covenant not to sue the Respondent, its members, successors, and assigns for the investigation and remediation of the Site and for the reimbursement of Site-related response costs; (iii) 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 since Respondent has demonstrated to the Department's satisfaction that it will not have the ability to pay for the investigation and cleanup of the Site except by the proceeds of a sale of the Site.

13. 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 that occurred prior to Respondent's ownership or operation of the Site; and/or (iii) an acknowledgment that such release or threatened release of hazardous waste at or from the Site constitutes a significant threat to the public health or environment.

14. Solely regarding 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. Site Specific Definitions

Unless otherwise expressly provided herein, terms used in this Order which are defined in ECL Article 27 and/or regulations promulgated thereunder shall have the meaning assigned to them under said statute or regulations, or amendments thereto. The following items shall have the following meanings:

A. The Site: The real property designated by the Department as Registry Site Number 344041 known as the Gabriel Manufacturing Co. Inc. Site located at 125 South Liberty Drive, Stony Point, Rockland County, New York, and more specifically identified as Rockland County tax lots Section 20.11, Block 2, Lot 30. Exhibit "A" is a map of the Site showing its general location, including the narrow strip of land to Filors Lane as noted in Exhibit A.

B. Effective Date: The Effective Date of this Order is the date that it is signed by the Commissioner or his designee.

C. Respondent: Respondent means 125 South Liberty, LLC. For only the purposes of the Release and Covenant Not to Sue in Section VI.A and Contribution Protection in Section VI.D, Respondent shall also mean all principals, members, shareholders, officers, and directors of Respondent.

## II. Payment, Property Transfer and Other Actions

Commencing on the Effective Date of this Order, the Respondent, its principals, agents, members, executors, employees, attorneys, successors and assigns shall refrain from using the Site in any manner that would interfere with or adversely affect the implementation, integrity and/or effectiveness of the investigation and/or remedial measures to be implemented on the Site.

The Department understands that Respondent has agreed to sell the Site to a bona fide purchaser. The Respondent agrees to provide the contract of sale for this pending transaction to the Department prior to or upon execution of this Order. In the event that this pending transaction is not finalized, the Respondent shall make a good faith effort to sell the Site to another bona fide purchaser as soon as possible after the Effective Date of this Order.

Within twenty (20) business days of the closing of the sale of the Site, Respondent shall pay the sum of FOUR HUNDRED FIFTY THOUSAND DOLLARS (\$450,000) to the Department via the procedures provided in Paragraph V below.

### III. Appropriate Care/Cooperation

While still in ownership of the Site, Respondent shall exercise appropriate care with respect to the contamination at and emanating from the Site; shall cooperate fully with the Department in its implementation of any response actions necessary to address contamination at and emanating from the Site and shall not interfere with such response actions; and Respondent, any parent company, successors and assigns, shall ensure that any development activities on the Site are in compliance with applicable local, State and federal laws and regulations, including but not limited to 6 NYCRR §§ 375-1.11 and 375-2.11.

### IV. Access

A. Commencing on the Effective Date of this Order, Respondent shall provide the Department and its agents, employees, contractors and subcontractors (collectively its "Representatives") with access to the Site at all reasonable times for the purposes of performing site investigation, sampling and remedial activities. The Department and/or its Representatives shall make good faith efforts to notify Respondent or Respondent's authorized representative prior to entering the Site and, to the extent possible and reasonable, avoid interfering with business activities at the Site.

B. Subject to IV.A above, the Department and its Representatives will enter the Site for the performance of work thereon for one or more of the purposes set forth in Environmental Conservation Law ("ECL") Sections 27-1309(3)-(4) and 27-1313(8), and particularly for the purpose of conducting remedial activities at the Property. This is not a notice that the Department intends to acquire the property nor is it an offer to acquire it.

C. Subject to IV.A above, Respondent will permit entry on and use of the Property by the Department and its Representatives to:

- (i) Operate work areas;
- (ii) Remove therefrom any material generated from the Department's remedial activities;
- (iii) Carry on any activity necessary for the investigation and remediation of the Property, including site management (as necessary), together with the rights at all times during the duration of this Order of ingress, egress and regress by the Department and its Representatives;
- (iv) Collection of soil, groundwater and/or soil vapor and indoor air samples; and
- (v) Perform site restoration activities, including but not limited to, placement and grading of clean backfill, replacement in kind of

disturbed driveway and parking lot areas, replacement in kind of disturbed concrete sidewalks and walkways, replacement in kind of Property fencing, reseeding of disturbed areas and replacement in kind of disturbed vegetation. All areas of the Property disturbed by the Department's remedial activities will be restored to pre-existing conditions.

D. While still in ownership of the Site, Respondent shall take reasonable steps to ensure that any lessees and sublessees of the Site provide the Department and its Representatives with Site access.

V. Payment

In full satisfaction and resolution of any and all claims by the Department related to the existing contamination at the Site, Respondent shall pay the sum of FOUR HUNDRED FIFTY THOUSAND DOLLARS (\$450,000.00) to the Department either by (1) Electronic Fund Transfer ("EFT") to the New York State Department of Environmental Conservation account in accordance with the Department's current EFT procedures, or (2) by certified or bank check, payable to "New York State Department of Environmental Conservation" mailed to:

Michael C. Murphy, Esq.  
New York State Department of Environmental Conservation  
Office of General Counsel  
625 Broadway – 14<sup>th</sup> Floor  
Albany, NY 12233-1500

VI. Release and Covenant Not to Sue

A. Upon the Department's receipt of Respondent's payment pursuant to Section II of this Order, Respondent shall not be liable to the Department upon any statutory or common law cause of action arising out of the presence of any contaminants in, on, to or emanating from the Site at any time before the effective date of this Order, provided that: (1) Respondent continues to exercise appropriate care and cooperation as required in Section III; and (b) Respondent continues to allow access as required in Section IV.

B. The terms of this release are consistent with those governing the issuance of a Certificate of Completion, including limitations, reopener provisions and extension to successors and assigns, found in 6 NYCRR § 375-2.9.

C. The liability protections set forth in this section shall extend to successors or assigns through acquisition of title to the Site and to a person who develops or otherwise occupies the Site; provided that such persons act with due care and in good

faith to adhere to the requirements of relevant institutional controls, including but not limited to a Site Management Plan and an Environmental Easement; and provided that such successor in title, lessee, or lender did not generate, arrange for, transport, or dispose, and did not cause the generation, arrangement for, transportation, or disposal of any contamination located at the Site, and did not previously own the Site.

D. 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), and as provided in the provisions set forth in 42 U.S.C. Section 9613 (f). The matters addressed pursuant to and in accordance with this Order and agreement, as that term is used in ECL § 27-1421(6) and 6 NYCRR § 375-1.5(b)(5), include any and all past or future claims for response costs of removal or remedial action incurred not inconsistent with the National Contingency Plan within the meaning of CERCLA § 107(a)(4)(A), 42 U.S.C. § 9607(a)(4)(A), that the Department has incurred or may incur in responding to the release and/or threatened release of hazardous wastes at the Site, as well as any and all past, present, or future federal, state or common law claims, including prejudgment interest accrued thereon, that were, or could now or hereafter be, asserted by the State against Respondent arising out of or in connection with the disposal, release or threat of release of hazardous wastes at, from, or from the Site, including but not limited to any claims regarding off-site contamination that may be emanating from the Site, may have emanated from the Site or may emanate in the future from the Site, whether incurred or to be incurred by the State.

E. The Department hereby reserves all of its respective rights concerning, and such release and covenant not to sue shall not extend to, any further investigation and/or remedial action the Department deems necessary due to:

- Respondent's failure to implement this Order to the Department's reasonable satisfaction; or
- Fraud committed by Respondent in entering into or implementing this Order.

F. Additionally, the Department reserves all of its rights, and any such release and covenant not to sue shall not extend to Respondent, if Respondent causes or allows a release or a threat of release of any hazardous waste (as that term is defined at 6 NYCRR § 375-1.2[w]) or petroleum (as that term is defined in Navigation Law § 172[15]), other than the contamination existing at or from the Site upon the effective date of this Order (the "Present Contamination").

G. Notwithstanding any other provision in this release and covenant not to sue:

- If, with respect to the Site, there exists or may exist a claim of any kind or nature on the part of the New York State Environmental Protection and Spill Compensation Fund against any party, nothing in this Order shall be

construed or deemed to preclude the State of New York from recovering such claim against any liable party;

- Except as provided in this Order, nothing contained in this Order shall be construed as barring, diminishing, adjudicating, or in any way affecting any of the Department's rights (including, but not limited to, the right to recover natural resource damages) with respect to any part, including the Respondent.
- Nothing contained in this Order shall prejudice any of the Department's rights to take any investigatory or remedial action it deems necessary if Respondent fails to comply with this Order or if contamination other than the Present Contamination is encountered at the Site.
- Nothing contained in this Order shall be construed to prohibit the Commissioner or his duly authorized representative from exercising any summary abatement powers.
- Nothing contained in this Order shall be construed to affect the Department's right to terminate the Order and this "Release and Covenant Not to Sue" under the terms of the Order at any time during its implementation if it is determined, after a due process proceeding, that Respondent failed to comply with the Order's terms and conditions.

H. Nothing herein shall be construed as barring, diminishing, adjudicating, or in any way affecting any legal or equitable rights or claims, actions, suits, causes of action or demands whatsoever that: (1) Respondent may have against anyone other than the Department, including but not limited to rights of contribution under Section 113(f)(B)(3) of CERCLA, 42 U.S.C. § 9613(f)(B)(3); and (2) the Department may have against anyone other than the Respondent.

I. Except as otherwise provided in this Order, Respondent specifically reserves all rights and defenses under applicable law respecting any assertion by the Department or other party 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, hearing, appeal and to any other due process. The existence of this Order or Respondent's compliance thereto shall not be construed as an admission of any 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.

## VII. 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:

Mark Domaracki, DEC Project Manager  
New York State Department of Environmental Conservation  
Division of Environmental Remediation  
625 Broadway  
Albany, N.Y. 12233  
[mark.domaracki@dec.ny.gov](mailto:mark.domaracki@dec.ny.gov)

Michael C. Murphy, Esq. (correspondence only)  
New York State Department of Environmental Conservation  
Office of General Counsel  
625 Broadway, 14<sup>th</sup> Floor  
Albany, N.Y. 12233  
[michael.murphy1@dec.ny.gov](mailto:michael.murphy1@dec.ny.gov)

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

Richard Gabriel  
400 Valley Road, Suite 201  
Mount Arlington N.J. 07856  
[Richard@Jarrequities.com](mailto:Richard@Jarrequities.com)

With a copy to

Dean S. Sommer  
Young Sommer LLC  
Executive Woods, Five Palisades Drive, Albany, NY 12205  
[dsommer@youngsommer.com](mailto:dsommer@youngsommer.com)

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

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.

#### VIII. Termination

Should the release and covenant not to sue in Section VI.A herein become null and void, *ab initio*, due to fraud in the execution or implementation of this Order or because the Department, after a due process proceeding, establishes that Respondent fails to materially comply with any provision of this Order, then neither this Order nor its termination shall affect any liability of Respondent to pay costs incurred by the State, except for any State costs paid through the date of the breach, including costs to

implement removal and remedial actions, interest, enforcement, and any and all other response costs, as defined in CERCLA.

IX. Miscellaneous

A. The terms of this Order, including the release from liability, shall inure to the benefit of Respondent and its members, successors and assigns. Any change of ownership or corporate status of Respondent, including, but limited to, any transfer of assets or real or personal property, shall in no way alter Respondent's responsibilities under this Order.

B. The Section headings set forth in this Order are included for convenience of reference only and shall be disregarded in the construction and interpretation of any provisions of this Order.

C. The terms of this Order shall constitute the complete and entire agreement between the Department and the Respondent concerning the actions required by this Order. No term, condition, understanding or agreement purporting to modify or vary any term of this Order shall be binding unless made in writing and subscribed by the party to be bound. No informal advice, guidance, suggestion or comment by the Department shall be construed as relieving Respondent of its obligation to obtain formal approvals as required by this Order.

D. Unless otherwise expressly provided herein, terms used in this Order which are defined in ECL Article 27, Title 13 or in regulations promulgated thereunder shall have the meaning assigned to them under such statute or regulations.

E. Respondent's obligations under this Order represent payment for or reimbursement of removal or response costs and shall not be deemed to constitute a fine or penalty.

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

D. The effective date of this Order is the date it is signed by the Commissioner or the Commissioner's designee.

DATED: September 14, 2021

BASIL SEGGOS  
COMMISSIONER  
NEW YORK STATE DEPARTMENT OF  
ENVIRONMENTAL CONSERVATION

By:

A handwritten signature in black ink, appearing to read "Michael J. Ryan", is written over a horizontal line.

Michael J. Ryan, P.E., Assistant 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.

125 SOUTH LIBERTY, LLC

By: [Signature]

Title: President

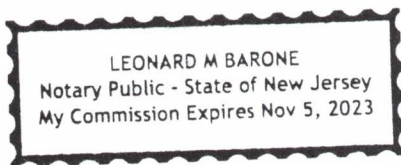
Date: 8-10-21

STATE OF New Jersey )  
 ) ss:  
COUNTY OF Bergen )

On the 10<sup>th</sup> day of August in the year 2021, before me, the undersigned, personally appeared Richard Gabriel (full name) personally known to me who, being duly sworn, did depose and say that he/she/they reside at 822 W. Shore Dr. Kinnelon NJ 07405 (full mailing address) and that he/she/they is (are) the

President (president or other officer or director or attorney in fact duly appointed) of the

125 South Liberty, LLC  
(full legal name of corporation), the corporation described in and which executed the above instrument; and that he/she/they signed his/her/their name(s) thereto by the authority of the board of directors of said corporation.



[Signature]  
Notary Public, State of ~~New York~~  
New Jersey

## **EXHIBIT "A"**

Map

**GABRIEL MANUFACTURING CO., INC. SITE  
SITE MAP**

