

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

In the Matter a Remedial Program for

**ORDER ON CONSENT AND
ADMINISTRATIVE
SETTLEMENT**

DEC Site Name:

Little Tor Shopping Center

DEC Site No.: 344084 (Formerly V00310)

Site Address: 265 South Little Tor Road
New City, New York 10956

Index No. CO 3-20210517-27

Hereinafter referred to as "Site"

by: **Tor Valley, Inc.**

Hereinafter referred to as "Respondent"

1. Authority

- 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 on Consent and Administrative Settlement ("Order") is issued pursuant to the Department's authority under, *inter alia*, ECL Article 27, Title 13 and ECL 3-0301, and resolves Respondent's alleged liability to the State as provided at 6 NYCRR 375-1.5(b)(5).

- 2. The Site (further defined in Section I, below) is not currently listed in the Registry of Inactive Hazardous Waste Disposal Sites in New York State and is, instead, identified as a "P" or potential site with a Site Number of 334084.
- 3. Upon information and belief, Respondent owned the property starting in 1964 and subsequently sold the property to Three Boys Management, Corp. on January 25, 2010.

4. Upon information and belief, the Site is not owned by Respondent. A dry cleaner business not owned or operated by Respondent, operated at the Site and its operation likely resulted in contamination of subsurface soil and groundwater.
5. The primary contaminants of concern were tetrachloroethylene ("PCE") and its associated breakdown products.
6. The Department and Respondent entered into a Voluntary Cleanup Agreement ("VCA") #W3-0857-99-10, executed on April 24, 2001, under the Department's Voluntary Cleanup Program ("VCP"). The VCA required the Respondent to implement a full remedial program for the Site, as approved by the Department.
7. Under the terms of the VCA, Respondent implemented a remedy at the Site which included, upon information and belief, 1) excavations of contaminated soil between November 2000 and May 2002; 2) two (2) rounds of Hydrogen Release Compound injections in May 2006 and July 2010 to address groundwater contamination; 3) installation of a Subslab Depressurization System ("SSDS") in the area of the former dry cleaner in December 2013; and 4) installation of a new, more powerful fan for the SSDS in 2015 in order to address elevated concentrations in the indoor air at the Site.
8. Respondent produced a Remedial Investigation Report in or about November 2015 which was not sufficient to document the implementation of the IRMs. Respondent, however, believes that the IRMs which were implemented at the Site were successful in addressing the soil and groundwater impacts at the Site at that time.
9. On March 31, 2018, the Department sent the Respondent a letter stating that the VCP was being terminated by the Department and offering Respondent the option either to transition to the Brownfield Cleanup Program ("BCP") or to a Consent Order under the State's Inactive Hazardous Waste Remedial Program. The Department did not receive a response from Respondent.
10. The VCA #W3-0857-99-10 was terminated March 31, 2018.
11. Due to the Respondent's belief that the IRMs implemented at the Site, as described hereinabove, were sufficient to protect the public health and the environment and in order obtain a statement from the Department declaring that all remedial efforts at the Site were sufficiently completed and that no further action was needed, Respondent produced and submitted a new Remedial Investigation Report to the Department in May of 2020 ("2020 RIR") which summarized all of the investigative and remedial work carried out by Respondent

at the Site. The RIR was a required component of the remedial program for the Site.

12. In response to Respondent's submission of the 2020 RIR, the Department informed Respondent that additional sampling was needed to confirm that the IRMs previously implemented by Respondent at the Site remain effective in protecting human health and the environment, including, but not limited to, confirming the Site use and conditions.
13. This Order is entered into between Respondent and the Department to allow Respondent the opportunity to complete work necessary to receive a no further action/satisfactory completion letter and a Release and Covenants Not to Sue issued by the Department.
14. The Department has determined that it is in the public interest to enter into this Order as a means for Respondent to address contamination which may still exist at the Site, if any, while ensuring the protection of human health and the environment.
15. 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 and (ii) an acknowledgement that there has been a release or threatened release of hazardous waste at or from the Site. Further, given that the Department has identified the Site as a P-Site which is not listed on the Registry of Inactive Hazardous Waste Disposal Sites in New York State, Respondent expressly does not acknowledge that any release or threatened release of hazardous waste at or from the Site constitutes a significant threat to the public health or environment.
16. Solely with regard to 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 344084, consists of approximately 3.73 acres, and is described as follows:

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

Tax Map/Parcel No.: Section 128 Block 25 Lot 8081
265 South Little Tor Road
New City, New York 1095
County of Rockland
Owner: Three Boys Management Corp.

II. Development, Performance, and Reporting of Work Plans and Reports

A. As of the date of this Order, the following Department-approved documents are required to complete the remedial program for the Site:

- Remedial Investigation Report
- Final Engineering Report
- Environmental Easement (recorded), unless the Department specifically states in writing that an Environmental Easement is not needed; and
- Site Management Plan, unless the Department specifically states in writing that a Site Management Plan is not needed.

B. The Department may request, subject to dispute resolution pursuant to Paragraph XV of Appendix A, that Respondent submit additional or supplemental Work Plans for the Site in order to complete the remediation of the Site.

C. Respondent shall make reasonable efforts to obtain an agreement between Respondent, the current property owner(s), and the Department, allowing Respondent and the Department access to the Site for purposes of implementing Respondent's obligations under this Order. Respondent shall provide a copy of said agreement to the Department within sixty (60) days of execution of any such agreement. Respondent shall obtain the same for any future property owners within sixty days of transfer of ownership. Respondent shall be required to use reasonable efforts to obtain access required by the Department to the Site as required by the remedial program for the Site and/or to protect public health and the environment. If, despite Respondent's reasonable efforts, access cannot be obtained, Respondent shall promptly notify the Department and include a summary of steps taken. Respondent shall not be deemed in violation of this Order or applicable law based solely on its inability to obtain access to the Site despite Respondent making reasonable efforts, and the Department may, as it deems appropriate and within its authority, assist Respondent. In such event, the Department reserves all of its rights to take additional action outside the terms of the Order.

III. Payment of State Costs

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

Tor Valley, Inc.
Scott Milich
9 Link Court
New City, NY 10956
914-282-3703
Swmilich@yahoo.com

In addition to the requirement to pay future state costs as set forth in Appendix "A", within forty-five (45) Days after the effective date of this Consent Order, Respondent shall pay to the Department the sum set forth on Exhibit "B", which shall represent reimbursement for past State Costs incurred prior to the effective date of this Consent Order.

IV. 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:

Michael Squire, Project Manager (1 hard copy (unbound for work plans) & 1 electronic copy)
New York State Department of Environmental Conservation
Division of Environmental Remediation
625 Broadway
Albany, N.Y. 12233
Michael.squire@dec.ny.gov

Jacquelyn Nealon (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
Jacquelin.nealon@health.ny.gov

Leia Schmidt, Esq. (correspondence only)
New York State Department of Environmental Conservation
Office of General Counsel

625 Broadway
Albany, N.Y. 12233-1500
leia.schmidt@dec.ny.gov

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

Tor Valley, Inc.
Scott Milich
9 Link Court
New City, NY 10956
914-282-3703
Swmilich@yahoo.com

Gary S. Bowitch, Esq.
13 Willow Street
Castleton, New York 12033
518-527-2232
gbowitch@bowitchlaw.com

B. The Department and Respondent 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 required under this Order.

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.

V. No Further Action/Satisfactory Completion Letter and Release and Covenant Not to Sue

A. If, after the completion of any required investigations and/or interim remedial actions, the Department determines that the Site will not be listed in the *Registry of Inactive Hazardous Waste Disposal Sites in New York State*, the Department will not issue a Certificate of Completion but will issue a No Further Action/Satisfactory Completion Letter to Respondent reflecting the Department's determination that, other than recording of an Environmental Easement and implementation of a Site Management Plan if required, no further remedial action at the Site is presently necessary. The Letter's form and substance shall be materially similar to the attached Exhibit C.

B. Upon the Department's determination that i) the Department is satisfied with Respondent's implementation of the Order; ii) no remedial activities other than those

conducted at the Site pursuant to this Order, if any, are necessary for the protection of human health and the environment; and iii) Respondent has complied with Paragraph VII.A.1 (Environmental Easement), unless the Department states in writing that an Environmental Easement is not required, the Department shall provide Respondent with a Release and Covenant Not to Sue which is substantially similar to the one attached hereto as Exhibit "D", subject to the terms and conditions stated therein.

VI. Miscellaneous

A. Attached hereto and incorporated herein as Exhibit "E" is Respondent's approved Work Plan.

B. Appendix A - "Standard Clauses for All New York State, State Superfund Orders" is attached to and hereby made a part of this Order as if set forth fully herein.

1. Respondent shall be required to use reasonable efforts to obtain all easements (including without limitation any environmental easements), and/or institutional controls required by the Department to be placed on this Site as required by the remedial program for the Site and/or to protect public health and the environment. If, despite Respondent's reasonable efforts, easements, and/or institutional controls cannot be obtained, Respondent shall promptly notify the Department and include a summary of steps taken. Respondent shall not be deemed in violation of this Order or applicable law based solely on its inability to obtain easements and/or institutional controls for the Site despite Respondent making reasonable efforts, and the Department may, as it deems appropriate and within its authority, assist Respondent. In such event, the Department reserves all of its rights to take additional action outside the terms of the Order.

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 reserves all of its rights and authorities to ensure a remedy protective of public health and the environment is implemented, whether pursuant to or outside the terms of this Order.

C. The following Sections of the attached, "Standard Clauses for All New York State Superfund Administrative Orders" are without any effect under this Order:

1. I – Citizen Participation Plan;
2. II – Initial Submittal;
3. III – Development, Performance, and Reporting of Work Plans: Paragraph E (Department's Issuance of a ROD);
4. X – Public Notice, Paragraph A; and
5. XIII – Progress Reports.

- D. The Department and Respondent acknowledge that this Site is *not* an Inactive Hazardous Waste Site with a classification of 2 and compliance with Appendix A shall not be construed to mean that the Site is being or has been listed in the Registry of Inactive Hazardous Waste Disposal Sites in New York State.
- 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 10th day after it is signed by the Commissioner or the Commissioner's designee.

DATED: March 17, 2022

BASIL SEGGOS
COMMISSIONER
NEW YORK STATE DEPARTMENT OF
ENVIRONMENTAL CONSERVATION

By: *Susan Edwards*

Susan Edwards, 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.

Tor Valley, Inc.,

By: Scott W. Milich

Title: President

Date: 2/11/2022

STATE OF NEW YORK,
COUNTY OF ROCKLAND ss:

On the 11th day of February in the year 2022, before me, the undersigned, personally appeared SCOTT Walter Milich (full name) personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Acknowledgment by a corporation, in New York State:

On the 11th day of February in the year 2022, before me, the undersigned, personally appeared SCOTT Walter Milich (full name) personally known to me who, being duly sworn, did depose and say that he/she/they reside at 9 Link Court New City, NY (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 Tor Valley Inc.

(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

JEAN LOUIKERSON GERMAIN

Notary Public, State of New York

Qualified in Rockland County

Reg. No. 01GE6363402

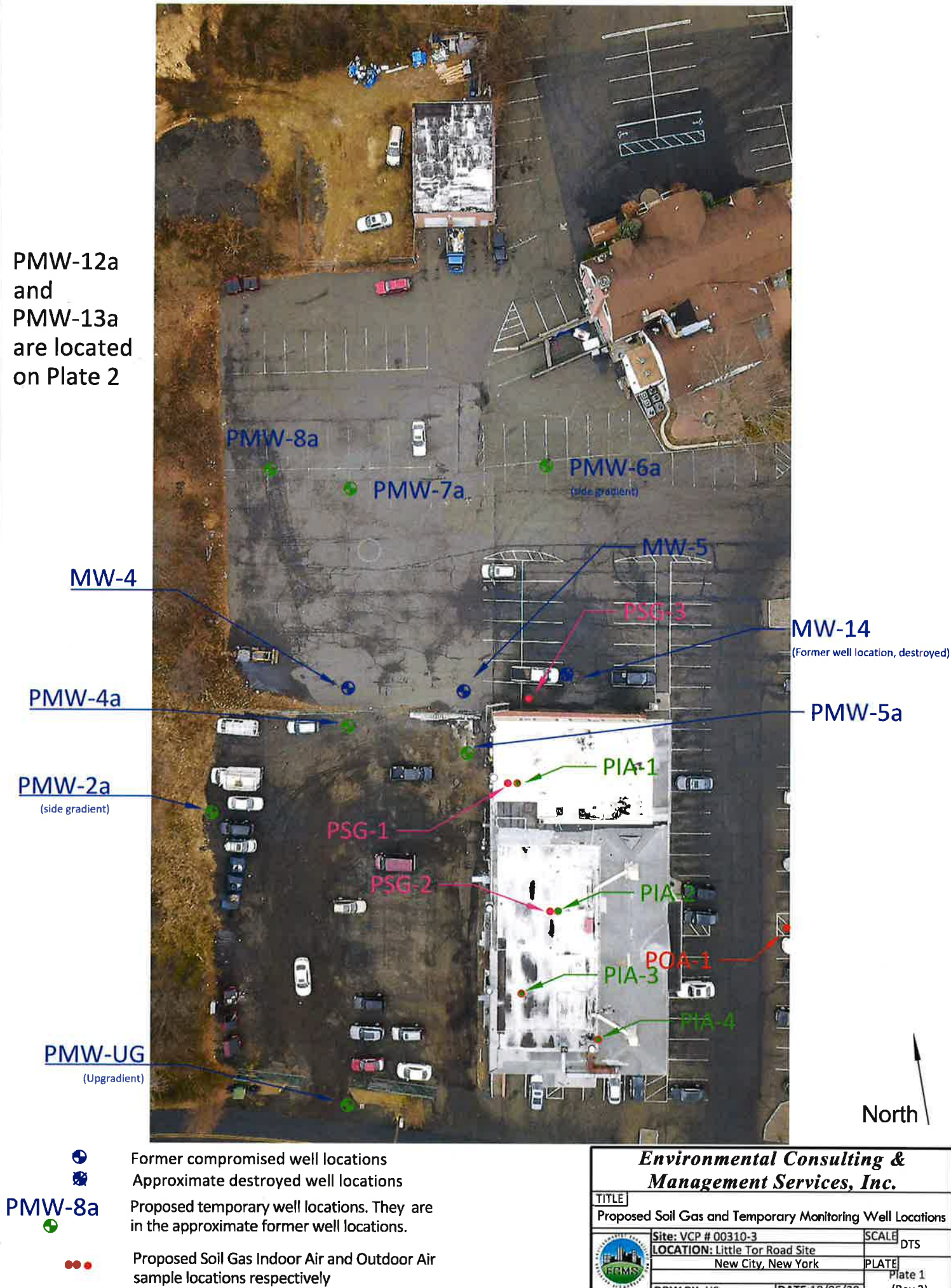
My Commission Expires 08/21/20 25

EXHIBIT "A"

Map

Please see next page. This page intentionally left blank.

PMW-12a
and
PMW-13a
are located
on Plate 2



Environmental Consulting & Management Services, Inc.

TITLE
Proposed Soil Gas and Temporary Monitoring Well Locations

Site: VCP # 00310-3	SCALE: DTS
LOCATION: Little Tor Road Site New City, New York	PLATE: Plate 1 (Rev 2)
DATE: 10/05/20	

EXHIBIT "B"

Cost Summary

Please see next page. This page intentionally left blank.

EXHIBIT I

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION
DIVISION OF ENVIRONMENTAL REMEDIATION
BUREAU OF PROGRAM MANAGEMENT

COST SUMMARY

SITE NAME: Little Tor Shopping Center SITE

NO.: 344084

TIME FRAME: DEC - 04/01/21 - 12/22/2021

COST CATEGORY	AMOUNTS	EXHIBIT NO.
DIRECT PERSONAL SERVICES	\$2,429.71	
FRINGE	\$1,523.42	
INDIRECT	\$1,161.82	
<i>PERSONAL SERVICES SUBTOTAL</i>	<i>\$5,114.95</i>	II
CONTRACTUAL	\$0.00	
TRAVEL	\$0.00	
OTHER NPS	\$0.00	
<i>NON-PERSONAL SERVICES SUBTOTAL</i>	<i>\$0.00</i>	
DEC TOTAL	\$5,114.95	
DOH TOTAL	N/A	
MINUS PREVIOUSLY REIMBURSED AMOUNT (IF APPLICABLE)	N/A	
<i>DEC & DOH TOTAL</i>	<i>\$5,114.95</i>	
COST CAP (IF APPLICABLE)	N/A	
GRAND TOTAL	\$5,114.95	

Exhibit "C"

[date]

Tor Valley, Inc.
Scott Milich
9 Link Court
New City, NY 10956
914-282-3703
Swmilich@yahoo.com

RE: Satisfactory Completion Letter/No Further Action Letter
Site No.: 344084
Site Name: Little Tor Shopping Center

Dear Respondent:

This letter is sent to notify Respondent that it has satisfactorily completed the *Interim Remedial Measure* of the remediation project that Respondent undertook under the Consent Order Index CO 3-20210517-27 for 265 South Little Tor Road, New City, New York 10956, Section 128 Block 25 Lot 8081, ("Site'). The New York State Department of Environmental Conservation ("Department") has determined, subject to the Department's reservation of rights outlined below, contained in the Consent Order, or existing at law, based upon our inspection of the above-referenced Site and upon our review of the documents you have submitted, that you completed the project in accordance with the terms and conditions of the above-referenced Order and no further remedial action (other than implementation of the Site Management Plan if required) is necessary. As a result, the Department is issuing this Satisfactory Completion/No Further Action Letter for the project.

Notwithstanding that the Department has determined that no further remedial action is necessary with the respect to the Site, the Department reserves any and all rights and authority, including rights concerning any claim for natural resource damages or the authority to engage in or require any further investigation or remediation the Department deems necessary. The Department retains all its respective rights concerning circumstances where Respondent, their lessees, sublessees, successors, or assigns cause or permit a Release or threat of Release at the site of any hazardous substance (as that term is defined at 42 USC 9601[14]) or petroleum (as that term is defined in Navigation Law § 172[15]).

Additionally, with respect to the site, nothing contained in this letter shall be construed to:

- preclude the State of New York on behalf of the New York State Environmental Protection and Spill Compensation Fund from recovering a claim of any kind or nature against any party;
- prejudice any rights of the Department to take any investigatory action or remediation or corrective measures it may deem necessary if Respondent fails to comply with the Order or if contamination other than contamination within the present knowledge of the Department is encountered at the Site;
- prohibit the Commissioner or his duly authorized representative from exercising any summary abatement powers.

In conclusion, the Department is pleased to be part of this effort to return the site to productive use and benefit to the entire community.

If you have any questions, please do not hesitate to contact Michael Squire, site project manager, at (518) 402-9546.

Sincerely,

Michael Ryan
Director
Division of Environmental Remediation

ec: [list appropriate staff]

EXHIBIT "D"

RELEASE AND COVENANT NOT TO SUE

Unless otherwise specified in this letter, all terms used in this letter shall have the meaning assigned to them under the terms of the Order entered into between the New York State Department of Environmental Conservation (the "Department") and Tor Valley, Inc. ("Respondent"), Index No. CO 3-20210517-27 ("Order").

The Department is pleased to report that the remedial program for Little Tor Shopping Center, DEC Site No.: 344084 (Formerly V00310), a 3.73-acre parcel of improved property located at 265 Little Tor Road, New City, Town of Clarkstown, County of Rockland, New York 10956 and identified on the tax maps of the Town of Clarkstown as Section 128 Block 25 Lot 8081 (site map attached) is complete. In addition, Respondent has fulfilled its obligations under the Order, including any requirements related to Paragraph VI(B)(1) of the Order related to institutional controls, to the satisfaction of the Department.

The Department therefore, hereby releases, covenants not to sue, and shall forbear from bringing any action, proceeding, or suit against Respondent and Respondent's lessees and sublessees, successors and assigns, and their respective secured creditors, for the further investigation and remediation of the Site, based upon the release or threatened release of Contamination, provided that (a) timely payments of the amounts specified in Paragraph II (Payment of State Costs) of the Order continue to be or have been made to the Department, (b) appropriate environmental easements are sought in accordance with Paragraph VI(B)(1) (Easements and Institutional Controls) of the Order, and (c) Respondent and/or its lessees, sublessees, successors, or assigns promptly communicate and diligently pursue to completion the Work Plan(s), if any. Nonetheless, the Department hereby reserves all of its respective rights concerning, and such release, covenant not to sue, and forbearance shall not extend to natural resource damages or to any further investigation or remedial action the Department deems necessary due to:

- migration off-Site of contaminants resulting in impacts that are not inconsequential to environmental resources, to human health, or to other biota;
- a finding by the Department that a change in an environmental standard, factor, or criteria upon which a remedial work plan was based renders the remedial program implemented at the Site no longer protective of public health or the environment, and Respondent is not in good faith negotiating, and/or following its approval by the Department, implementing a work plan to address the contamination to achieve conditions at the Site which are protective of the public health or the environment;
- environmental conditions or information related to the Site which were unknown at the time this Release and Covenant not to Sue was issued and which indicate

that the Contemplated Use cannot be implemented with sufficient protection of human health and the environment;

- a change in the Site's use subsequent to the Department's issuance of this Release and Covenant Not to Sue, unless additional remediation of the contamination is undertaken which shall meet the standard for protection of public health and environment applicable to 6 NYCRR Part 375;
- due to Respondent's failure to implement the Order to the Department's satisfaction; or
- due to fraud committed by Respondent in entering into or implementing this Order.

Additionally, the Department hereby reserves all of its respective rights concerning, and any such release, covenant not to sue, and forbearance shall not extend to Respondent nor to any of Respondent's lessees, sublessees, successors, or assigns who cause or allow a release or threat of release at the Site of any hazardous substance (as that term is defined at 42 USC 9601 [14]) or petroleum (as that term is defined in Navigation Law §172[15]), other than Contamination; or cause or allow the use of the Site to change from the Contemplated Use to one requiring a lower level of residual contamination before that use can be implemented with sufficient protection of human health and the environment; nor to any of Respondent's lessees, sublessees, successors, or assigns who is otherwise a party responsible under law for the remediation of the Existing Contamination independent of any obligation that party may have respecting same resulting solely from the Order's execution.

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

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

- if with respect to the Site there exists or may exist a claim of any kind or nature on the part of the New York State Environmental Protection and Spill Compensation Fund against any party, nothing in this letter shall be construed or deemed to preclude the State of New York from recovering such claim;
- except as provided in this letter and in the Order, nothing contained in the Order or in this letter 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 resources damages) with respect to any party, including Respondent;

- nothing contained in this letter shall prejudice any rights of the Department to take any investigatory or remedial action it deems necessary if Respondent fails to comply with the Order or if contamination other than Existing Contamination is encountered at the Site.
- nothing contained in this letter shall be construed to prohibit the Commissioner or his duly authorized representative from exercising any summary abatement powers.
- nothing contained in this letter shall be construed to affect the Department's right to terminate the Order under the terms of the Order at any time during its implementation if Respondent fails to comply substantially with the Order's terms and conditions.

In conclusion, the Department is pleased to be part of this effort to return the Site to productive use of benefit to the entire community.

NEW YORK STATE DEPARTMENT OF
ENVIRONMENTAL CONSERVATION

By: _____

Dated: _____

EXHIBIT "E"

Work Plan

Please see next page. This page intentionally left blank.



Environmental Consulting and Management Services

10 Filmont Drive
New City, NY 10956

Tel: 845-638-0640
Cell: 914-523-1523
info@ecmsny.com

Wednesday, October 7, 2020

Sent Via email: Michael.Squire@dec.ny.gov

Mr. Michael H. Squire

New York State Department of Environmental Conservation

Project Manager, Division of Environmental Remediation, Remedial Bureau C

625 Broadway

12th Floor,

Albany, New York 12233-7014

**RE: Site Field Investigation Work Plan – 265 S. Little Tor Road New City, New York
NYSDEC Site No. V00310**

Dear Mr. Squire,

Environmental Consulting & Management Services, Inc. (ECMS) has prepared this Site Field Investigation Work Plan to assess the shallow aquifer, indoor air and sub-slab vapor conditions as part of the July 14, 2020 RIR response letter on behalf of Little Tor Shopping Center. ECMS' Site Field Investigation Work Plan was originally submitted via email on August 6, 2020 and herein amended. It was subsequently modified according to NYSDEC/NYSDOH input on August 19, 2020 and is now being submitted in response to a September 4, 2020 NYSDEC Letter outlining additional modifications and requirements.

ECMS proposes the following actions to address all the Departments concerns.

- Install as many as 8 temporary monitoring wells laterally, upgradient, down gradient, and in the source area
- Any competent historical wells in the vicinity that are located will be sampled.
- Temporary and or remaining historical monitoring wells will be surveyed in an attempt to identify relative groundwater elevations and current groundwater flow.
- ECMS will sample indoor/outdoor/sub-slab air at previously sampled points and in additional locations to illustrate the current SSDS is adequate.
- Provide pictures and a schematic of the SSDS
- Revised RIR with the proposed field investigation activities and other miscellaneous edits as per the July 14, 2020 RIR response letter.

Groundwater Investigation

The majority of the well network has been destroyed since the original well installations. ECMS proposes installing temporary wells to assess the current groundwater conditions. Depending on the tightness of the formation either a 3-inch hand auger or a Geoprobe® drill rig capable of installing 1-inch diameter temporary wells will be utilized to install the eight (8) proposed wells. Before installation activities begin NY Dig Safe will be called and a private utility mark out will be conducted. The private utility mark out will be conducted via a Ground Penetrating Radar(GPR) Survey.

If historical wells are located/uncovered and observed to be intact during the GPR Survey ECMS will default to use the historical well(s) to derive shallow aquifer conditions and groundwater flow direction. As a result of substituting a historic well the respective proposed temporary monitoring well will not be installed. When a historic well is uncovered and observed to be competent/incompetent ECMS will either repair/replace the well or respectively request to properly decommission the wells according to CP-43. At this time, ECMS requests to properly decommission the Monitoring wells MW-4 and MW-5 due to their lack of integrity.

Each temporary well will be completed with 1-inch dedicated diameter schedule 40 PVC casing and 0.020-inch slotted screen. Monitoring wells will be screened across the water table and set approximately 5 to 10 feet into the water table.

www.ecmsny.com



Environmental Consulting and Management Services

10 Filmont Drive
New City, NY 10956

Tel: 845-638-0640
Cell: 914-523-1523
info@ecmsny.com

According to site conditions the water on-site ranges from 2 feet to 6 feet. A sand-pack will be placed in the annular space of the well, from the bottom of the soil boring to approximately 1 foot above the top of the well screen. The newly installed temporary monitoring wells will be surveyed into a scaled site plan in order to generate a groundwater elevation contour map. The groundwater elevation in the temporary wells will be used to determine groundwater flow directions. Historic groundwater flow direction on the property was generally west down the valley wall and north along the valley axis at the foot of the parking lot.

During well installation activities if drill cuttings are generated and they exhibit evidence of impacts the soils with the highest PID reading will be retained for analysis to classify soils for disposal offsite. ECMS anticipates a minimal amount of soil will be generated as part of the well installation. If evidence of impacts are observed and detected in the waste classification sample the drum will be disposed of at a NYSDEC registered/recognized disposal facility. If impacts are not observed and the analytical does not provide evidence of impacts in comparison with NYSDEC soil cleanup objectives for unrestricted use they will be deposited onsite after the review of waste characterization analytical results

Prior to sampling the groundwater, the newly installed wells will be properly developed to reduce the turbidity and increase the hydraulic interaction between the well and the shallow aquifer. Purged well groundwater will be staged in drums until it can be properly disposed. As necessary the liquids will be transported and disposed in drums or via a vacuum truck at a NYSDEC registered/recognized disposal facility. Each groundwater sample will be analyzed using EPA Method 8260 full list compounds. The groundwater analytical methods will achieve a minimum reporting limit of 1.0 micrograms per liter. The newly installed monitoring wells and/or historical wells will be depicted on a scaled site plan. The relative top of casing elevations will be determined by surveying the relative top of casing elevations. Those relative elevations will permit ECMS to interpret groundwater flow direction on the site. ECMS proposes to install temporary monitoring wells PMW-UG, PMW-4a, PMW-5a, PMW-6a, PMW-7a, PMW-8a, PMW-12a and PMW-13a. The well locations are identified in **Plate 1** and **Plate 2**, on the enclosed figures. These wells are proposed in lieu of locating competent historical wells. The actual locations of PMW-12a and PMW-13a will depend on access to the adjacent undeveloped areas to the west as it is overgrown with brush. After the installation, sampling, survey, and results are obtained the temporary wells will be removed, and the associated areas capped to prevent future surface intrusion.

Community Air Monitoring Plan

This Community Air Monitoring Plan (CAMP) is to outline steps that will be taken to ensure that air quality in the vicinity of the intrusive work will be at acceptable levels. At this time intrusive work is not planned. ECMS intends to install the wells and vapor points by hand auger. However, if hand digging is not adequate based on subsurface conditions a drilling contractor will be obtained to install the temporary wells. In which case, ECMS will notify the Department and the following CAMP monitoring will be performed. The need to perform CAMP monitoring procedures was identified in the September 4, 202 NYSDEC letter. The following plan provides steps to mitigate dust and VOCs based on procedures and action levels established below.

Real-time air monitoring for VOCs and particulate levels at the perimeter of the work area will be performed. Continuous monitoring will be performed for all ground intrusive activities and during the handling of contaminated or potentially contaminated media. For this project, ground intrusive activities include, but are not limited to, soil drilling/digging and waste handling.

Periodic monitoring for VOCs will be performed during non-intrusive activities such as the collection of soil samples or the collection of groundwater samples from historical monitoring wells. Periodic monitoring during sample collection, for instance, will consist of taking a reading upon arrival at a sample location, monitoring while opening a well cap or overturning soil, monitoring during well baling/purging, and taking a reading prior to leaving a sample location. Depending upon the proximity of potentially exposed individuals, continuous monitoring may be performed during sampling activities. Examples of such situations include groundwater sampling at wells in

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10 Filmont Drive
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Tel: 845-638-0640
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close proximity to the residential building or occupied areas. Exceedances of action levels observed during performance of the CAMP will be reported to the NYSDEC and included in a summary report.

VOC Monitoring, Response Levels, and Actions

The VOCs will be monitored at the downwind perimeter of the immediate work area on a continuous basis during intrusive work. Upwind concentrations will be measured at the start of each workday and periodically thereafter to establish background conditions. The monitoring work will be performed using equipment appropriate to measure the types of contaminants known or suspected to be present. The equipment will be calibrated daily for benzene or for an appropriate surrogate. The equipment will be capable of calculating 15-minute running average concentrations, which will be compared to the levels specified below.

- If the ambient air concentration of benzene or for an appropriate surrogate at the downwind perimeter of the work area exceeds 5 parts per million (ppm) above background for the 15-minute average, work activities will be temporarily halted and monitoring continued. If the benzene vapor level readily decreases (per instantaneous readings) below 5 ppm over background, work activities will resume with continued monitoring.
- If benzene levels at the downwind perimeter of the work area persist at levels in excess of 5 ppm over background but less than 10 ppm, work activities will be halted, the source of vapors identified, corrective actions taken to abate emissions, and monitoring continued. After these steps, work activities will resume provided that the total organic vapor level 200 feet downwind of the work area or half the distance to the nearest potential receptor or residential/commercial structure, whichever is less - but in no case less than 20 feet, is below 5 ppm over background for the 15-minute average.
- If the benzene or an appropriate surrogate level is above 10 ppm at the perimeter of the work area, activities will be shutdown.

All 15-minute readings will be recorded and be available for NYSDEC personnel to review. Instantaneous readings, if any, used for decision purposes will also be recorded.

Particulate Monitoring, Response Levels, and Actions

Particulate concentrations will be monitored continuously at the upwind and downwind perimeters of the work area at temporary particulate monitoring stations. The particulate monitoring will be performed using real-time monitoring equipment capable of measuring particulate matter less than 10 micrometers in size (PM-10) and capable of integrating over a period of 15 minutes (or less) for comparison to the airborne particulate action level. The equipment will be equipped with an audible alarm to indicate exceedance of the action level. In addition, fugitive dust migration should be visually assessed during all work activities.

- If the downwind PM-10 particulate level is 100 micrograms per cubic meter (mcg/m³) greater than background (upwind perimeter) for the 15-minute period or if airborne dust is observed leaving the work area, then dust suppression techniques will be employed. Work will continue with dust suppression techniques provided that downwind PM-10 particulate levels do not exceed 150 mcg/m³ above the upwind level and provided that no visible dust is migrating from the work area.
- If, after implementation of dust suppression techniques, downwind PM-10 particulate levels are greater than 150 mcg/m³ above the upwind level, work will be stopped, and a re-evaluation of activities initiated. Work will resume provided that dust suppression measures and other controls are successful in reducing the downwind PM-10 particulate concentration to within 150 mcg/m³ of the upwind level and in preventing visible dust migration.



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Odor Control

All necessary means will be employed to prevent on and offsite odor nuisances. At a minimum, procedures will include: (a) limiting the number of open waste drums; and (b) use of foams to cover exposed odorous soils. If odors develop and cannot otherwise be controlled, additional means to eliminate odor nuisances will include: (c) use of chemical deodorants by spraying exposed soils.

This odor control plan is capable of controlling emissions of nuisance odors. If nuisance odors are identified, work will be halted, and the source of odors will be identified and corrected. Work will not resume until all nuisance odors have been abated. NYSDEC will be notified of all odor complaint events. Implementation of all odor controls, including halt of work, will be the responsibility of ECMS.

Dust Control

Dust management during invasive on-site work will include, at a minimum:

- Use of a dedicated water spray methodology for drilling areas and exposed equipment
- Exercise extra care during dry and high-wind periods.

This dust control plan is capable of controlling emissions of dust. If nuisance dust emissions are identified, work will be halted, and the source of dusts will be identified and corrected. Work will not resume until all nuisance dust emissions have been abated. NYSDEC will be notified of all dust complaint events. Implementation of all dust controls, including halt of work, will be the responsibility of ECMS.

Indoor, Outdoor Air and Sub-Slab Vapor Investigation

Soil vapor samples will be collected from two permanent points inside the building to address concerns due to potential vapor intrusion. In addition, two indoor air samples will be collected adjacent those points in the breathing zone. As per the September 4, 2020 NYSDEC/DOH letter two additional indoor air samples will be collected in corners opposite of the building to verify that the SSDS has effectively mitigated vapor intrusion within the entire building not just near the permanent sub-slab points. A background air sample from the outdoor air and an additional soil vapor sample beneath the parking lot to north of building will also be collected. The proposed sample locations are included in the enclosed figures. As part of the vapor investigation ECMS will conduct a product inventory. The current uses of the stores onsite are a barber, restaurants/deli, liquor store, smoke shop, as well as office space upstairs.

The sub-slab air samples will be collected from the historical permanent sub-slab points inside the building. These samples will be collected during heating season unless the NYSDEC requests otherwise. If the points are not able to be located or are not intact ECMS will install two temporary sub-slab vapor points in the general vicinity of the permanent points.

The soil gas sample in the parking lot will be installed with a hand auger and a two-inch split spoon attachment. It will be advanced 3 feet below grade to install a temporary one-inch diameter soil vapor sampling point. The temporary soil vapor sampling point will be completed to a depth of three feet below ground surface (bgs) and constructed with two and one-half (2.5') feet of 0.020-inch slotted screen and one-half (0.5') foot of solid PVC riser. Upon installation of the soil vapor sampling point the annular space will be backfilled with sand pack to the PVC riser elevation above which a one-half foot thick hydrated bentonite seal will be placed around the riser to ensure that ambient air from the surface cannot be drawn into the screened zone. Prior to sample collection the volume of air present in the vapor point will be removed to draw in vapors from the subsurface. The location of the temporary vapor point PSG-3 was moved to the north side of the building and is displayed on Plate 1. ECMS proposes to collect samples from PSG-1, PSG-2, PSG-3, PIA-1, PIA-2, PIA-3, PIA-4, and OA-1 in the respective areas on the enclosed revised figures. These figures have been altered according to discussions and email correspondence with the department.



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Revised Remedial Investigation Report

The revised RIR report will include a narrative description of the work performed, tabulated laboratory analytical data, a site plan, well/vapor point logs, product inventory and original laboratory analytical reports to support ECMS' recommendations. The report will also include RIR revisions as requested and a schematic with pictures of the SSDS as per in the NYSDEC July 14, 2020 Remedial Investigation Report letter response.

ECMS requires department approval of this workplan or some variant prior to commencing work at the site. Should you have any questions or comments, please do not hesitate to contact the undersigned via email at harrys@ecmsny.com or via phone at (203)241-1030.

Sincerely,

Environmental Consulting and Management Services, Inc.

Harry Sudwischer

Director of Remediation and Spills

Enclosed:

ECMS, Inc - Plate 1 - Proposed Soil Gas and Temporary Monitoring Well Locations

ECMS, Inc - Plate 2 - Site Remediation Boundary with Proposed Downgradient Well Locations

CC: via email

Mr. Amen Omorogbe, NYSDEC - amen.omorogbe@dec.ny.gov

Ms. Jacquelyn Nealon, NYSDOH - jacquelyn.nealon@health.ny.gov

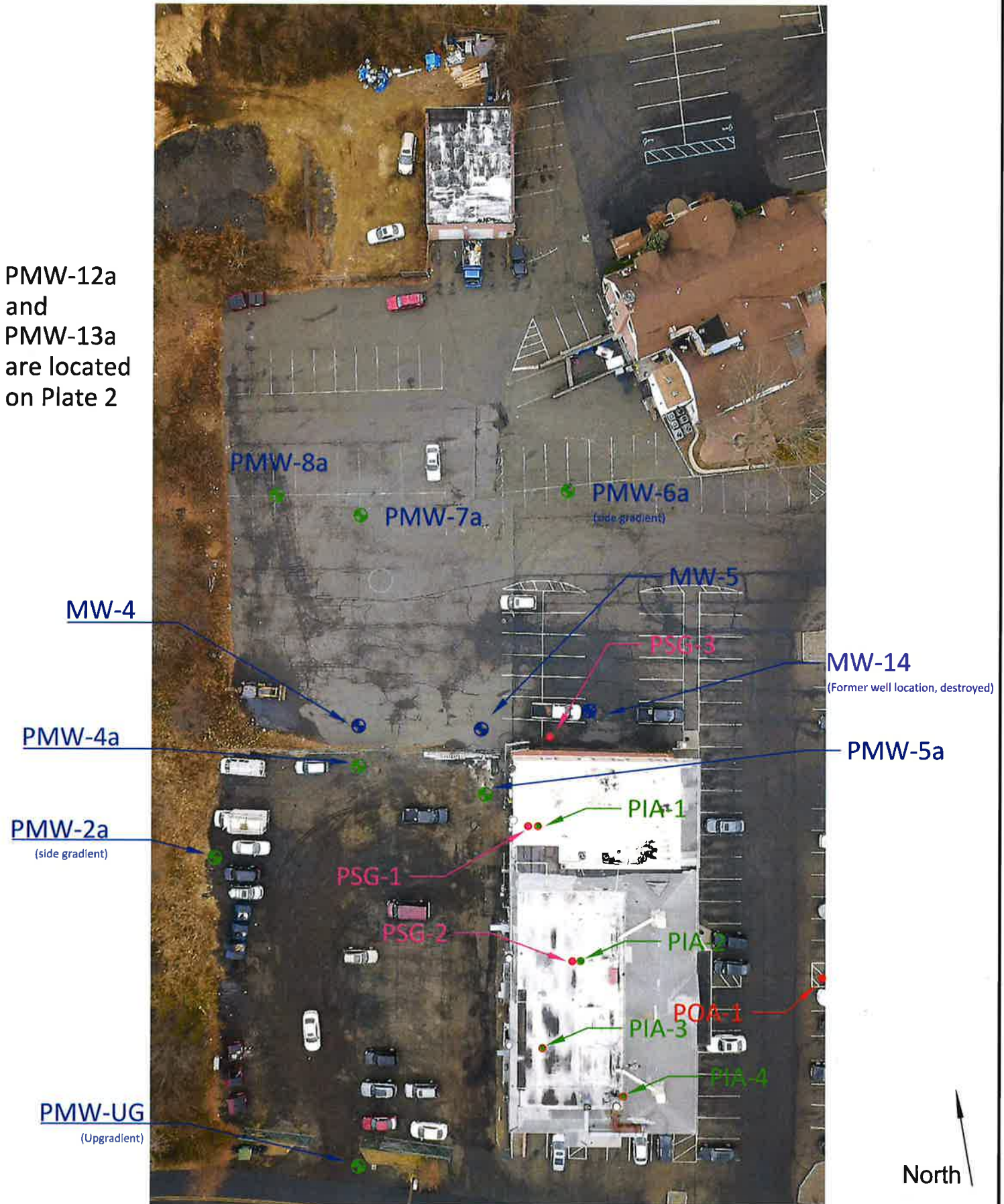
Maureen Schuck, NYSDOH - maureen.schuck@health.ny.gov

Mr. Marc Rutstein, ECMS, Inc. - marcr@ecmsny.com


Limitations

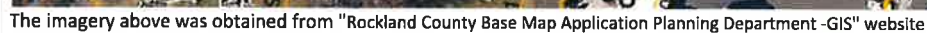
The recommendations contained in this letter represent ECMS's professional opinions based upon currently available information and are arrived at in accordance with currently acceptable professional standards. This letter is based upon a specific scope of work requested by the client. The contract between ECMS and its client outlines the scope of work and only those tasks specifically authorized by that contract or outlined in this letter were performed. This letter and attachments are intended only for the use of ECMS's client and anyone else specifically listed on this letter. ECMS will not and cannot be liable for unauthorized reliance by any other party. Other than as contained in this paragraph, ECMS makes no express or implied warranty as to the contents of this report.

PMW-12a
and
PMW-13a
are located
on Plate 2




- Former compromised well locations
- Approximate destroyed well locations
- PMW-8a Proposed temporary well locations. They are in the approximate former well locations.
- Proposed Soil Gas Indoor Air and Outdoor Air sample locations respectively

<i>Environmental Consulting & Management Services, Inc.</i>			
TITLE			
Proposed Soil Gas and Temporary Monitoring Well Locations			
	Site: VCP # 00310-3	SCALE	DTS
	LOCATION: Little Tor Road Site	PLATE	Plate 1 (Rev 2)
	New City, New York		



Remedial site boundary

	Site: VCP # 00310-3	SCALE	DTS Plate 2 (of 4)
	LOCATION: Little Tor Road Site		
	New City, New York	PLATE	
	DATE: 10/06/20		

APPENDIX "A"

STANDARD CLAUSES FOR ALL NEW YORK STATE STATE SUPERFUND 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 licensed and registered in New York State 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.

3. Nothing in this Order, in any submittal, or in any work plan(s) submitted pursuant to this Order shall modify, expand, reduce, or otherwise change the remedial activities (including site management) required by a ROD issued by the Department.

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

NFA VERSUS: 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. Any time limitations set forth in Section 113(g)(1) of CERCLA, as amended, 42 U.S.C. § 9613(g)(1), Section 1012(h)(2) of the Oil Pollution Act, as amended, 33 U.S.C. § 2712(h)(2), the Federal Water Pollution Control Act, the New York Navigation Law, the New York Environmental Conservation Law, or any other federal or state statute or regulation with respect to potential claims for natural resource damages against Respondent or any other time limitations for the filing of potential natural resource damages claims against Respondent under any other applicable state or federal law are tolled in their entirety from the effective date of this Order until termination of this Order.

I. 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.

J. 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.

K. 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.

L. 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.