

NEW YORK STATE DEPARTMENT OF  
ENVIRONMENTAL CONSERVATION

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In the Matter of the  
Development and Implementation  
of a Remedial Program for an  
Inactive Hazardous Waste Disposal  
Site under Article 27, Title 13  
of the Environmental Conservation Law  
by

**CJH Enterprises, LLC**

Respondent.

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**ORDER ON CONSENT  
and  
ADMINISTRATIVE  
SETTLEMENT**

Index # CO 5-20150828-58

Old Agway Store Site  
Site # 546021

**WHEREAS,**

1. A. The New York State ("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 State's policy 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 liability to the State as provided at 6 NYCRR 375-1.5(b)(5) and the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. Section 9600 et seq.

2. The Site, located at Galway Street in the Village of Ballston Spa, Town of Milton, Saratoga County, is an approximately 0.29-acre parcel identified as tax map number 216.31-3-18. It is listed in the Registry of Inactive Hazardous Waste Disposal Sites in New York State as Site Number 546021 with a Classification "4" pursuant to ECL 27-1305, indicating that a site is properly closed, but needs continued management.

3. Upon information and belief, hazardous wastes and residuals currently or formerly present at the Site are associated with former chemical inventory at a store formerly operated by Ballston-Agway Cooperative, Inc. and/or Agway, Inc. A fire in 1977 destroyed the store and resulted in the release of contaminants. The Department has undertaken and continues to undertake activities associated with a remedial program at the Site using the Hazardous Waste Remedial Fund, and has incurred and continues to incur costs associated with such activities.

4. Respondent, CJH Enterprises, LLC, a limited liability company formed in the State, owns the Site, which it acquired on March 1, 2000. Respondent informs the Department that at the time it acquired the Site, it relied upon the Class 4 designation, and anticipated that neither it nor a future owner would have responsibility for pre-existing contamination.
5. Respondent has notified the Department that no one has used, managed, or disposed of hazardous wastes at the Site since it was acquired by Respondent, and that Respondent has not interfered with the Department's on-going remedial activities, and has provided access and otherwise cooperated with the Department's activities at the Site. The Site is not currently used on a regular basis, other than for the occasional parking of a motor vehicle.
6. Respondent intends to sell the Site to a business that will use it to enhance its local operations, thereby supporting economic development and business opportunities in the Village of Ballston Spa.
7. The Department and Respondent desire to fully resolve all liability relating to the Site pursuant to CERCLA, General Obligations Law §15-108, and any other applicable law without the necessity of prolonged and complicated litigation pursuant to Section 113(f)(2) of CERCLA by having Respondent and its officers, employees, shareholders, agents or representatives, and its successors and assigns through acquisition of title to the Site ("Related Parties") (i) pay a sum of money to the Department, (ii) execute an Environmental Easement, as defined by ECL Article 71, Title 36, on behalf of the State, (iii) provide the Department and its agents continued access to the Site, and (iv) operate the Site in a manner not inconsistent with a Site Management Plan developed by the Department.
8. Respondent consents to the issuance of this Order without (i) an admission or finding of liability, fault, wrongdoing, or violation of any law, regulation, permit, order, requirement, or standard of care of any kind whatsoever; (ii) an acknowledgment that there has been a release or threatened release of hazardous waste at or from the Site; and/or (iii) an acknowledgment that a release or threatened release of hazardous waste at or from the Site constitutes a significant threat to the public health or environment.
9. Solely with regard to the matters set forth below, Respondent hereby waives any right to a hearing as may be provided by law, consents to the issuance and entry of this Order, and agrees to be bound by its terms. Respondent consents to and agrees not to contest the authority or jurisdiction of the Department to issue or enforce this Order, and agrees not to contest the validity of this Order or its terms.

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

**I. Purpose of Order**

The purpose of this Order is to resolve, in accordance with the provisions of Paragraph IX, all liability pursuant to CERCLA and any other federal or state laws, including but not limited to the ECL, which could be made by the Department against Respondent and Related Parties for

response costs incurred or to be incurred by the State, to provide contribution protection with regard to the Site pursuant to 6 NYCRR 375-1.5(b)(5) and Section 113(f)(2) of CERCLA, and, based upon the circumstances unique to this matter, to provide for payment by Respondent of an amount which represents fair, reasonable and equitable contribution to the response costs incurred by the State at the Site, and for other consideration set forth below.

II. Disclaimer of Admissions

Nothing in this Order shall constitute, or be construed as, any admission or adjudication of liability or any issue of law or fact.

III. Parties Bound

This Order shall apply to and be binding on the Department and Respondent and Related Parties. The signatory represents that he or she is fully and legally authorized to enter into this Order and to bind the party represented by him or her. Any change in ownership or corporate status of Respondent, including any transfer of assets or real or personal property, shall in no way alter the responsibilities of Respondent and Related Parties under this Order.

IV. Payment by Respondent

Within ten (10) days after the effective date of this Order, Respondent shall remit to the State \$1,000.00 by certified or cashier's check made payable to the New York State Department of Environmental Conservation. The check shall reference the Site name and the name and address of Respondent, 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

V. Environmental Easement

Within ten (10) days after the effective date of the Order, Respondent shall execute and submit to the Department for its acceptance and recording the Environmental Easement attached to this Order as Exhibit "B" ("Environmental Easement").

VI. Site Access

Respondent and Related Parties shall grant the Department access to the Site as may be needed to inspect the Site and to carry out remedial activities and activities associated with the Department's implementation of a Site Management Plan developed by the Department.

VII. Site Management Plan

Respondent and Related Parties shall operate the Site in a manner that is not inconsistent with a Site Management Plan developed by the Department. The Department will carry out certain Site Management Plan obligations as set forth in the Environmental Easement.

VIII. Penalties

A. The failure of Respondent and Related Parties to comply with any term of this Order constitutes a violation of this Order and of the ECL.

IX. Release and Covenant Not to Sue by the Department

A. In consideration of the payment that will be made pursuant to this Order and other consideration, upon (i) the Department's receipt of the required payment, and (ii) the Department's receipt, acceptance, and satisfactory filing of the Environmental Easement executed by Respondent, Respondent and Related Parties shall not be liable to the Department pursuant to CERCLA or any other federal or state laws, including, but not limited to the ECL, for Past Response Costs or Future Response Costs incurred or to be incurred by the State at or related to Existing Contamination. For purposes of this Order, "Past Response Costs" shall include, but not be limited to, those costs related to response activities, as defined by Section 101(25) of CERCLA, incurred by the State at or related to the Site prior to the effective date of this Order, including any interest, and "Future Response Costs" shall include, but not be limited to, those costs related to response activities, as defined by Section 101(25) of CERCLA, to be incurred by the State at or related to the Site subsequent to the effective date of this Order, including any future oversight and operation and maintenance costs. For purposes of this Order, "Existing Contamination" shall be defined as any hazardous waste, as that term is defined in ECL § 27-1301, either (i) present at or existing on or under the Site as of the effective date of this Order, and (ii) removed from the Site during remedial activities previously undertaken by the Department.

B. This release and covenant not to sue shall be null and void, *ab initio*, in the event of fraud relating to the execution or implementation of this Order or in the event of a failure by Respondent or Related Parties to materially comply with any provision of this Order.

C. Nothing contained in this release and covenant not to sue shall prejudice any rights of the Department to take any action it deems necessary if contamination other than Existing Contamination is encountered at the Site.

D. Nothing contained in this release and covenant not to sue shall be construed as affecting the liability of any person other than Respondent and Related Parties.

X. Covenant by Respondent

In consideration of the release and covenant not to sue of the Department, Respondent



covenants not to sue and agrees not to assert any claims or causes of action pursuant to CERCLA or any other federal or state laws, including but not limited to the ECL, against the State, its agencies, funds, officers, or representatives, for costs related to response activities, as defined by Section 101(25) of CERCLA, at or related to the Site, or for contribution or indemnification with respect to claims for such costs.

XI. Contribution Protection

The matters addressed in this Order are Past and Future Response Costs. Respondent shall be entitled, as of the effective date of this Order, to receive contribution protection to the extent authorized by CERCLA, the ECL, and 6 NYCRR 375-1.5(b)(5).

XII. Effect on Liability of Other Parties

Except as provided in Paragraph IX, nothing in this Order is intended as a release of, or covenant not to sue with respect to, any entity not a signatory hereto, and the Department expressly reserves the State's rights to sue for any claim or cause of action, administrative or judicial, civil or criminal, past or future, in law or in equity, which the State may have against any person, firm, corporation, or other entity not a signatory to this Order. Except as provided in Paragraph IX, nothing in this Order shall be construed to create any rights in, or grant any cause of action to, any person not a party to this Order.

XIII. Communications

A. All written communications required by this Order shall be transmitted by United States Postal Service, by private courier service, or hand delivered as follows:

1. Communication from Respondent shall be sent to: DUE TO MAIL

Dolores A. Tuohy, Esq.  
New York State Department of Environmental Conservation  
Office of General Counsel  
625 Broadway  
Albany, New York 12233-1500  
dolores.tuohy@dec.ny.gov

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

Robert H. Feller, Esq.  
Bond, Schoeneck & King  
22 Corporate Woods Boulevard - Suite 501  
Albany, New York 12211  
feller@bsk.com

B. The Department and Respondent reserve the right to designate additional or

different addressees for communication upon written notice to the other.

C. Each party shall notify the other within ninety (90) days after any change in the addresses in this Paragraph XIII.

XIV. Miscellaneous

A. The paragraph headings 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.

B. 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.

XII. Effective Date


The effective date of this Order is the 10<sup>th</sup> day after it is signed by the Commissioner or the Commissioner's designee.

DATED: **JAN 11 2016**

Basil Seggos

ACTING COMMISSIONER  
NEW YORK STATE DEPARTMENT OF  
ENVIRONMENTAL CONSERVATION

By:

  
Robert W. Schick, Director  
Division of Environmental Remediation

CONSENT BY RESPONDENT

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

CJH Enterprises, LLC

By:

Gino Basil Bardi

Title:

Chairman & Sole stock Holder

Date:

Oct 6, 2015

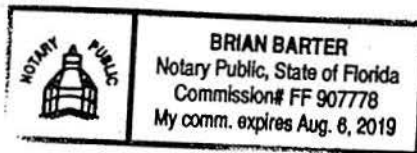
FLORIDA  
STATE OF ~~NEW YORK~~

COUNTY OF Pasco

)  
) ss:  
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On the 6<sup>th</sup> day of October in the year 2015, before me, the undersigned, personally appeared Gino Bardi, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

[Signature]  
Signature and Office of individual  
taking acknowledgment



EDMS 545093