

**NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION**

**Office of the General Counsel**

625 Broadway, 14th Floor, Albany, New York 12233-1500

P: (518) 402-9185 | F: (518) 402-9018

[www.dec.ny.gov](http://www.dec.ny.gov)

March 10, 2017

SENT VIA FIRST CLASS MAIL

Mr. John Nacca, Esq.  
30 West Broad Street  
Suite 406  
Rochester, NY 14614

**RE: Order on Consent and Administrative Settlement  
Index No.: R8-20161104-114  
Site: 190 Anderson Street, Rochester, NY**

Dear Mr. Nacca:

Enclosed to complete your files is a copy of the fully executed Order on Consent and Administrative Settlement referencing the site located at 190 Anderson Street, Rochester, NY and Anderson Acquisitions, LLC.

If you have any further questions or concerns relating to this matter, please contact Dudley Loew at 585-226-5368.

Sincerely,



Maria Mastroianni  
Legal Assistant  
Remediation Bureau  
Office of General Counsel

Enclosure

ec: D. Loew, Esq., NYSDEC



Department of  
Environmental  
Conservation

Site # 828088

**State of New York  
Department of Environmental Conservation**

-----X  
In the Matter of the Settlement of Claims Related to  
an Inactive Hazardous Waste Disposal Site under  
Article 27, Title 13 and Article 71, Title 27  
of the Environmental Conservation Law

**Order on Consent  
and  
Administrative Settlement**

-by-

Index No. R8-20161104-114

**Anderson Acquisitions, LLC**

("Respondent").  
-----X

**Whereas:**

1. The New York State Department of Environmental Conservation (the "Department") is responsible for enforcement of the Environmental Conservation Law of the State of New York ("ECL") and the New York State Finance Law ("SFL") and such laws provide the Department authority to enter into this Order on Consent and Administrative Settlement (the "Order").
2. 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.
3. The Department also has the authority, *inter alia*, to provide for the prevention and abatement of all water, land, and air pollution. See, e.g., ECL 3-0301.1.i.
4. This Order is issued pursuant to the Department's authority under, *inter alia*, ECL Article 27, Title 13, ECL Article 71, Title 27, and ECL 3-0301 and Section 97-b of the SFL, and resolves Respondent's liability to the State under the ECL and Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended ("CERCLA") 42 U.S.C. § 9601 *et seq.*, to the extent set forth herein.
5. Anderson Acquisitions, LLC is a domestic limited liability company with a mailing address of 501 South Clinton Avenue, Rochester, New York 14620. Respondent intends to acquire title to 190 Anderson Avenue, Rochester, New York 14607, more specifically identified as Tax Map 106.84-1-7, from the City of Rochester (the "Property").
6. An adjacent parcel located at 200 Anderson Avenue, Rochester, New York 14607 and known as Davis-Howland Oil Corporation Site No. 828088 (the "Davis-Howland Site") is listed as a Class "4" in the *Registry of Inactive Hazardous Waste Disposal Sites in New York State* (the "Registry") and has been since February 2015 when the Department issued a Fact Sheet announcing that the Davis-Howland Site no longer presented a significant threat to the public health and/or environment because remedial actions have been implemented and, while there is contamination remaining in groundwater, soil and soil vapor, human exposure to this contamination is being addressed through on-going institutional and engineering controls. A Class "4" site is one that has been properly closed but requires continued site management, consisting of operation, maintenance, and monitoring. Prior to 2015 and beginning in the early

1990s, the Davis-Howland Site was listed as Class "2" in the Registry. The Department is in the process of redefining the Davis-Howland Site boundaries to include the Property.<sup>1</sup> The Department anticipates listing the Property on the Registry as a Class "4".

7. The goals of this Order are for:

- a. The Respondent to: (i) comply with the Site Management Plan for the Davis-Howland Site; (ii) provide continued Property access to the Department; (iii) install a sub-slab depressurization system at the Property if the soil vapor extraction system located on the Davis-Howland Site is decommissioned; (iv) commit to not interfering with any portions of the soil vapor extraction system located on the Property; (v) acknowledge the Department's intent to make the Property part of the Registry-listed Davis-Howland Site; and (vi) grant an Environmental Easement to the Department for the Property as provided for in ECL Article 71, Title 36 and as set forth below.
  - b. The Department to provide a release and covenant not to sue to the Respondent as set forth below.
8. The Respondent consents to the Department's issuance of this Order without an admission or finding of liability of any kind. The parties recognize this Order is mutually acceptable, fair, reasonable, and in the public interest.
9. Solely with regard to the matters set forth herein, the 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, except as otherwise specifically provided in the Order.

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

I. Property Specific Definitions

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, or amendments thereto. The following terms shall have the following meaning:

- a. Property: The real property located at 190 Anderson Avenue, Rochester, Monroe County and more specifically identified as Tax Map 106.84-1-7. The Respondent acknowledges and does not object to the Department's intent to list the Property on the Registry as a Class "4".

---

<sup>1</sup> The Davis-Howland Site will also include: (i) 188 Anderson Avenue, Rochester, New York 14607 – Tax Map 106.84-1-4.2; (ii) 220 Anderson Avenue, Rochester, New York 14607 – Tax Map 106.84-1-5; (iii) 406 Atlantic Avenue, Rochester, New York 14607 – Tax Map 106.77-1-28.1; and (iv) 15-17 Norwood Street, Rochester, New York 14607 – Tax Map 106.28-2-5.

- b. Existing Contamination: Any hazardous waste, as that term is defined in 6 NYCRR Section 375-1.2(w), present or existing on or under the Property as of the effective date of this Order.

## II. Appropriate Care, Cooperation, and Responsibilities of the Respondent Under this Order

- a. Respondent shall exercise appropriate care<sup>2</sup> at the Property with respect to the Existing Contamination and shall comply with all applicable local, State, and federal laws and regulations. Respondent and its successors shall affirmatively ensure that any development activities on the Property are in compliance with all applicable local, State, and federal laws and regulations, including but not limited to 6 NYCRR §§ 375-1.11(d) and 375-2.11(a).
- b. The Respondent shall comply with the Site Management Plan for the Davis-Howland Site (SMP) and any subsequent SMPs prepared by the Department as it applies to the Property. The Department shall make any and all determinations related to the SMP without approval of the Respondent or any other person and shall endeavor to provide the SMP to the Respondent within 10 days of its finalization date.
- c. The Department shall endeavor give the Respondent 60 days' notice of its intent to decommission the soil vapor extraction system and shall endeavor to provide notice to Respondent within five (5) days that the system has been decommissioned. The Department shall make any and all determinations concerning the decommissioning of the soil vapor extraction system without approval of the Respondent or any other person. The Respondent recognizes that portions of the soil vapor extraction system may be left in place at the Property by the Department.
- d. If the soil vapor extraction system located on the Davis-Howland Site is decommissioned, the Respondent shall install a sub-slab depressurization (SSD) system on the Property in accordance with a Department-approved work plan. Within 60 days of receiving written notice that the soil vapor extraction system has been decommissioned, the Respondent must submit to the Department a work plan for installation of a SSD system. The Department has no obligation to design, install, or operate any vapor intrusion equipment or systems. The Respondent may not remove or stop operation of the SSD system unless approved by the Department in writing.
- e. The Respondent shall not disturb, remove, or otherwise interfere with any portion of the soil vapor extraction system located on the Property or the Davis-Howland Site. The Respondent may propose an alteration of the portions of the soil vapor extraction system located on the Property but the Department has no obligation to approve such a proposal. If the alteration is approved, the Respondent shall be responsible for all costs related to and arising from the alteration.
- f. Any subsequent buildings at the Property shall be subject to a soil vapor intrusion investigation performed in accordance with Department and New York State Department of Health guidelines.

## III. State Costs

---

<sup>2</sup> As the term is defined in 42 U.S.C. § 9601(40)(D).

- 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 associated with the oversight of Respondent's implementation of activities carried out by Respondent pursuant to this Order. 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 and the Respondent shall provide written notification to the other of any change of address.
- 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 III.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 or the Department may commence an enforcement action for non-compliance with ECL 27-1423 and ECL 71-4003.
- g. The Department shall send invoices to the Respondent at the following address:

Anderson Acquisitions, LLC  
Attn: Thomas Gangemi  
501 South Clinton Street  
Rochester, New York 14620

#### IV. Certification

By executing this Order, Respondent certifies that its members, officers, and directors, as well as any individuals with a substantial interest in the Respondent, are not liable, according to principles of statutory or common law liability, for the remediation of hazardous wastes at the Property, the Davis-Howland Site, or any of the properties described in Footnote 1 of this Order (collectively, the "Davis-Howland-Related Properties"). Respondent also certifies that its members, officers, and directors, as well as any individuals with a substantial interest in the Respondent, do not have a relationship to persons that are liable, according to principles of statutory or common law liability, for the remediation of hazardous wastes at the Davis-Howland-Related Properties, including,

but not limited to, Davis-Howland Oil Corp, Inc., Samille Inc., Amie Bush, or Lawrence R. Keppler.

V. Environmental Easement

- a. Respondent shall grant the Department an Environmental Easement with respect to the Property in accordance the provisions of ECL Article 71, Title 36, and 6 NYCRR 375-1.8(h)(2). Within sixty (60) days of the effective date of this Order, Respondent shall submit to the Department an Environmental Easement package that meets the Department's requirements, including those set forth in guidance document DER-33, entitled "Institutional Controls: A Guide to Drafting and Recording Institutional Controls." Among the documents to be included in the package are the following:
  - i. an Environmental Easement for the Property for acceptance by the Commissioner or his designee;
  - ii. an Environmental Easement Checklist and Certification;
  - iii. documents relevant to title;
  - iv. a survey; and
  - v. Notice of Environmental Easement and other notices.
- b. Within thirty (30) days of the Department's acceptance of the Environmental Easement, Respondent shall record it with the Monroe County Clerk. Respondent shall provide the Department with a copy of such instrument certified by the Monroe County Clerk to be a true and faithful copy within thirty (30) Days of such recording (or such longer period of time as may be required to obtain a certified copy provided Respondent advises the Department of the status of its efforts to obtain same within such thirty (30) day period). A copy of the Environmental Easement with the certification of the Monroe County Clerk shall be attached to this Order as Appendix "A" and shall be incorporated into and made an enforceable part of this Order.
- c. The Environmental Easement for the Property must, *inter alia*, limit the use and development of the property to restricted residential use as defined in 6 NYCRR § 375-1.8(g)(2)(ii); require compliance with the elements of the Site Management Plan as they apply to the Property; restrict the use of groundwater as a source of potable or process water without necessary water quality treatment as determined by New York State Department of Health or Monroe County Department of Public Health and without the Department's written approval; and require the property owner to complete and submit to the Department a periodic certification of any institutional and engineering controls in place.

VI. Access

- a. Respondent and any entity taking any title or interest in the Property from or through Respondent hereby irrevocably consent, upon reasonable notice under the circumstances presented, to grant entry upon the Property (or areas in the vicinity of the Property 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 the hazardous wastes/substances on the Property or the Davis-Howland Site; by any agent, consultant, contractor, or other person so authorized by the Commissioner; and by any Remedial Party<sup>3</sup> pursuant to an Order on Consent, all of whom shall abide by the health and safety rules in effect for the Property, for statutorily or regulatorily authorized purposes, including (i) inspecting, sampling, and testing; (ii) any activities necessary for the Department to effectuate and ensure Respondent's compliance with the Order; and (iii) any other activities necessary to the design and implementation of any construction or environmental treatment procedures necessary to effectuate interim remedial measures and/or remedies at the Property or the Davis-Howland Site in accordance with applicable state and federal law; and (vi) any activities related to the operation, maintenance, or decommissioning of the soil vapor extraction system located on the Davis-Howland Site.

- b. Respondent shall have the right to obtain split samples, duplicate samples, or both, of all substances and materials sampled at its sole cost and expense. The Department shall make the results of all sampling and scientific measurements taken under this Paragraph available to Respondent in the format which the Department receives it upon Respondent's request.
- c. Respondent shall use its best efforts to ensure that its successors in interest, lessees, and sublessees of the Property provide reasonable access.

VII. Release and Covenant Not to Sue

- a. Taking effect upon the Department's receipt from Respondent of the copy of the Department-accepted Environmental Easement that certifies its filing in the Monroe County Clerk's Office, as described in Paragraph V.b, the Department, releases and covenants not to sue, and shall forbear from bringing any action, proceeding, or suit pursuant to the Environmental Conservation Law, or the State Finance Law, and from referring to the Attorney General any claim for recovery of costs incurred by the Department, against the Respondent and its secured creditors and insurers, or any of its past, present or future members, shareholders employees, officers or directors based upon the release or threatened release of Existing Contamination at the Property, including but not limited to any action pursuant to Section 9607(a) of CERCLA, 42 U.S.C. § 9607(a), provided that Respondent complies with all terms of this Order. Nonetheless, the Department hereby reserves all of its respective rights concerning, and such release and covenant not to sue shall not extend to, any further investigation or remedial action the Department deems necessary due to:

- i. off-Property migration of petroleum;<sup>4</sup>
- ii. environmental conditions or information related to the Property which was unknown at the time this release and covenant not to sue was issued and which indicate that this Order cannot be implemented with sufficient protection of human health and the environment;
- iii. Respondent's failure to implement the Order; or

---

<sup>3</sup> As that term is defined in 6 NYCRR §375-1.2(ao).

<sup>4</sup> As that term is defined in Navigation Law §172[15].

- iv. fraud committed by Respondent in entering into or implementing the Order.
- b. Additionally, the Department hereby reserves all rights concerning, and any such release and covenant to sue shall not extend to, any Respondent who causes or allows a release or a threat of release at the Property of any hazardous waste (as that term is defined at 6 NYCRR § 375-1.2(w)) or petroleum (as that term is defined in Navigation Law § 172[15]), other than Existing Contamination; nor to any party who is otherwise responsible under law for the remediation of the Existing Contamination independent of any obligation that party may have respecting same resulting solely from the execution of this Order on Consent and Administrative Settlement.
- c. Notwithstanding the above, however, with respect to any claim or cause of action asserted by the Department, the party seeking the benefit of this release and covenant not to sue shall bear the burden of proving that the claim or cause of action, or any part thereof, is attributable solely to the Existing Contamination.

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

- i. if with respect to the Property there exists or may exist a claim of any kind or nature on the part of the New York State Environmental Protection and Spill Compensation Fund against any party, nothing in this order shall be construed or deemed to preclude the State of New York from recovering such claim.
- ii. except as provided in this Order, nothing contained in this Order shall be construed as barring, diminishing, adjudicating, or in any way affecting any of the Department's rights (including, but not limited to, the right to recover natural resources damages) with respect to any party, including Respondent.
- iii. nothing contained in this Order 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 Property.
- iv. nothing contained in this Order shall be construed to prohibit the Commissioner or his duly authorized representative from exercising any summary abatement powers.
- v. nothing contained in this Order shall affect or be construed to affect the Department's right to terminate the Order and this release and covenant not to sue at any time if Respondent fails to comply with the Order's terms and conditions.
- vi. nothing herein shall be construed as barring, diminishing, adjudicating, or in any way affecting any legal or equitable rights or claims, actions, suits, causes of action or demands whatsoever that: (i) Respondent may have against anyone other than the Department, including but not limited to rights of contribution under § 113(f)(B)(3) of CERCLA, 42 U.S.C. § 9613(f)(B)(3); and (ii) the Department may have against anyone other than the Respondent and its directors, officers, employees, agents, and servants that were not responsible under law for the development and implementation of a Remedial

Program at the Property prior to the effective date of this Order, and their respective secured creditors.

- d. 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 Respondent's failure to comply with any provision of this Order.

#### VIII. Penalties

- a. 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).
- b. Payment of any penalties shall not in any way alter Respondent's obligations under this Order.
- c. 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.
- d. 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.
- e. 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 VIII.d regarding timely notification.
- f. 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 6 NYCRR § 375-1.5(4).
- g. If the Department rejects Respondent's assertion that an event provides a defense to non-compliance with this Order pursuant to Subparagraphs VIII.c and d, Respondent shall be in violation of this Order.

#### IX. Dispute Resolution

This Order is not subject to dispute resolution.

X. Indemnification

Respondent shall indemnify and hold the Department, the State of New York, and their representatives and employees harmless as provided by 6 NYCRR § 375-2.5(a)(3)(i).

XI. Transfer of Ownership Interest/Change in Use

- a. If Respondent proposes to convey the whole or any part of its ownership interest in the Property, or become aware of such conveyance, the Respondent shall, not fewer than sixty (60) days before the date of conveyance, or within thirty (30) 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 the Respondent to secure the repayment of money or the performance of a duty or obligation.
- b. In the event of an assignment or transfer of the Property or an assignment or transfer of an interest in the Property, the assignor or transferor shall continue to be bound by all of the terms and conditions, and subject to all the benefits, of this Order except as the Department and the assignor or transferor agree otherwise and modify this Order, in writing. Moreover, prior to or simultaneous with any assignment or transfer of the Property, the assignee or transferee must consent in writing to be bound by the terms of this Order. The release and covenant not to sue in Paragraph VII shall not be effective with respect to any assignees or transferees who fail to provide such written consent to the Department. In addition, the release and covenant not to sue shall not apply to any assignees or transferees which are responsible for, according to principles of statutory or common law liability, the disposal of hazardous wastes at the Davis-Howland-Related Properties. Furthermore, it shall not apply to any transferees or assignees which have any relationship to persons which are liable, according to principles of statutory or common law liability, for the remediation of hazardous wastes at the Davis-Howland-Related Properties Site, including, but not limited to, Davis-Howland Oil Corp, Inc., Samille Inc., Amie Bush, or Lawrence R. Keppler.
- c. Respondent 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 Property, 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 Respondent of such determination within forty-five (45) days of receipt of such notice.

XII. Reservation of Rights

- a. The release and covenant not to sue set forth in Paragraph VII does not pertain to any matters other than those expressly specified therein.
- b. Except as provided in the release and covenant not to sue in Paragraph VII after its issuance and except as otherwise provided in this Order, nothing contained in this Order shall be construed as barring, diminishing, adjudicating, or in any way affecting

any of the Department's rights or authorities, including, but not limited to, the right to recover natural resource damages, the right to take any investigatory or remedial action deemed necessary, and the right to exercise summary abatement powers with respect to any person, including Respondent.

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:

i. Communications from the Respondent shall be sent to:

William Welling  
Division of Environmental Remediation  
New York State Department of Environmental Conservation  
625 Broadway  
Albany, New York 12233  
william.welling@dec.ny.gov

*with electronic copies to:*

Dudley D. Loew, Esq.  
Office of General Counsel  
New York State Department of Environmental Conservation  
6274 East Avon-Lima Road  
Avon, New York 14414  
dudley.loew@dec.ny.gov

*Correspondence only.*

ii. Communications from the Department to the Respondent shall be sent to:

Anderson Acquisitions, LLC  
Attn: Thomas Gangemi  
501 South Clinton Street  
Rochester, New York 14620

*with electronic copies to:*

John Nacca, Esq.  
30 W. Broad St.  
Rochester, New York 14604  
John@NaccaLaw.com

XIV. Termination of Order

a. This Order shall terminate upon the Department's written determination that: (i) its terms and conditions, including compliance with the SMP, have been satisfied or (ii) the Department elects to terminate based on Respondent's violation of the Order's terms. The termination shall be effective five (5) days after Department's written determination has been made (the "Termination Date").

- b. Notwithstanding the foregoing, the provisions contained in Paragraphs II, III, V, VI, and X 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 VIII so long as such obligations accrued on or prior to the Termination Date.
- c. Paragraph VII shall also survive the termination of this Order unless it is terminated pursuant to the same paragraph. Should Paragraph VII survive the termination of this Order, it shall remain subject to termination pursuant to the provisions of the same paragraph.

XV. Miscellaneous

- a. The Respondent's successors and assigns shall be bound by this Order and the terms of this Order shall inure to the benefit of the Respondent and its successors. Any change in ownership or corporate status, including but not limited to, any transfer of assets or real or personal property, shall in no way alter such Respondent's responsibilities under this Order.
- b. 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.
- c. The terms of this Order shall constitute the complete and entire agreement between the Department and the Respondent concerning the actions required by this Order. No term, condition, understanding or agreement purporting to modify or vary any term of this Order shall be binding unless made in writing and subscribed by the party to be bound. No informal advice, guidance, suggestion, or comment by the Department shall be construed as relieving Respondent of its obligation to obtain such formal approvals as required by this Order. Except as set forth herein, if the Respondent desires that any provision of this Order be changed, they shall make timely written application to the Commissioner with copies to the parties listed in Paragraph XIII herein. The Commissioner or the Commissioner's designee shall endeavor to respond in 60 days.
- d. If Respondent is a partnership, the obligations of all general partners, including limited partners who act as general partners, to finance and perform obligations under this Order and pay amounts owed to the Department under this Order are joint and several. In the event of the insolvency of or the failure of any of the general partners to implement the requirements of this Order, the remaining general partners shall complete all such requirements.
- e. All activities undertaken by the Respondent pursuant to this Order shall be performed in accordance with the requirements of all applicable Federal and State laws, regulations and guidance documents.
- f. Unless otherwise expressly provided herein, terms used in this Order which are defined in ECL Article 27, Title 13 or in regulations promulgated under such statutes shall have the meaning assigned to them under such statutes or regulations.

- g. The Respondent's obligations under this Order represent payment for or reimbursement of removal or response costs, and shall not be deemed to constitute any type of fine or penalty.
- h. This Order shall be filed in the Office of the Monroe County Clerk at the expense of the Respondent within five (5) days of receipt of an original signed document. Proof of recording shall be provided to the Department within thirty (30) days of the actual filing.
- i. This Order may be executed for the convenience of the parties thereto, individually or in combination, in one or more counterparts, each of which for all purposes shall be deemed to have the status of an executed original and all of which shall together constitute one and the same.
- j. The undersigned representative of each party certifies that he or she is fully authorized to enter into this Order and to execute and bind the party to its terms.
- k. The effective date of this order is the date the Commissioner or the Commissioner's designee signs this Order.

Dated: *MARCH 8, 2017*

**BASIL B. SEGGOS**  
COMMISSIONER  
NEW YORK STATE DEPARTMENT OF  
ENVIRONMENTAL CONSERVATION

By:

  
\_\_\_\_\_  
Robert W. Schick, P.E., 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.

**Anderson Acquisitions, LLC**

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

STATE OF NEW YORK     )  
  ) s.s.:  
COUNTY OF                     )

On the 3<sup>RD</sup> day of FEBRUARY, in the year 2017, before me, the undersigned, personally appeared Thomas Angeri, 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 and Office of individual  
taking acknowledgment

**JOHN MACCA**  
Notary Public, State of New York  
Monroe County  
Commission Expires May 5, 2018

**Appendix "A" – Environmental Easement**