

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

Office of the General Counsel

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March 16, 2017

SENT VIA FIRST CLASS MAIL

Mr. William Tehan
Center Street Development II, LLC
One Circle Street
Rochester, NY 14607

Mr. Morgan Graham
Phillips Lytle, LLP
One Canalside
125 Main Street
Buffalo, NY 14203

RE: Order on Consent and Administrative Settlement
Index No. R8-20161201-124
Site Name: Staubs Textile Services, Inc.
Site No.: 828160

Dear Mr. Tehan & Mr. Graham:

Enclosed to complete your files is a copy of the fully executed Order on Consent and Administrative Settlement referencing Staubs Textile Services, Inc. and Circle Street Development, LLC.

If you have any further questions or concerns, please contact attorney Dennis Harkawik at 585-226- 5369.

Sincerely,



Maria Mastroianni
Legal Assistant
Remediation Bureau
Office of General Counsel

Enclosure



Department of
Environmental
Conservation

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

In the Matter of the Resolution of Potential
Liability for an Inactive Hazardous Waste Disposal
Site, Under Article 27, Title 13, and
Article 71, Title 27 of the
Environmental Conservation Law
of the State of New York
by

CIRCLE STREET DEVELOPMENT LLC
Settling Respondent.

**ORDER ON CONSENT
and
ADMINISTRATIVE
SETTLEMENT**

Index # R8-20161201-124

Site # 828160

WHEREAS,

A. 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").

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. The Department also asserts that it 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(l)(i).

D. 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 Settling Respondent's liability to the State under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended ("CERCLA") 42 USC §9601 *et seq.*; ECL and SFL; and State common law to the extent set forth herein. Accordingly, to the extent set forth in Subparagraph XII.E, pursuant to CERCLA §113(f)(3)(B), 42 USC §9613(f)(3)(B), or as otherwise provided under State law, including CPLR § 1401-1404 and 1411, Respondent may seek contribution from persons who are not parties to this Order.

E. The Commissioner of the New York State Department of Environmental Conservation is the designated Trustee for Natural Resources in accordance with applicable state and federal law.

F. 6 NYCRR §375-2.11(c)(1)(ii) authorizes the Department to expend money of the hazardous waste remedial fund provided for at SFL section 97-b to pay for the cleanup or

restoration to its original state of any area where contaminants were disposed of or possessed unlawfully contrary to ECL §27-0914. 6 NYCRR §375-2.11(c)(1)(iii) authorizes the Department to expend moneys of the hazardous waste remedial fund provided for as SFL section 97-b to pay for site identification, classification, and investigation activities including, but not limited to testing, analyses, and record searches and the Department's related administrative activities.

G. Circle Street Development LLC will become the owner of property located at 935 and 951 East Main Street in the City of Rochester, Monroe County, New York, and more specifically identified as Tax Map Parcels: 106.75-1-17 and 106.75-1-39 (hereinafter, the "Site"). Exhibit "A" is a map of the Site showing its general location.

H. The Site is currently listed in the *Registry of Inactive Hazardous Waste Disposal Sites in New York State* as "Staubs Textiles Services, Inc." Site No. 828160, with a Class "2" classification, pursuant to ECL §27-1305, indicating that the site is "one at which contamination constitutes a significant threat to public health and the environment."

I. Circle Street Development LLC ("Settling Respondent") is a domestic limited liability company with a mailing address at One Circle Street, Rochester, New York 14607. Settling Respondent maintains that neither it, nor its members, officers, or directors have any relationship to other persons that have liability for the Site.

J. Pursuant to the legal authorities stated herein, the Department has, and anticipates the need to spend additional monies of the hazardous waste remedial fund for the implementation of a Remedial Program,¹ including the investigation and remediation of contamination, including without limitation, hazardous wastes, hazardous substances and/or petroleum compounds present on, under, or in proximity to the Site as of the effective date of this Order (the "Existing Contamination"). These expenditures are authorized by and in conformance with relevant and applicable state and federal law. The Department has divided the Site's Remedial Program into two operable units, which the Department intends to implement. Operable Unit 1 (OU-1) is the on-site source area. OU-2 consists of bedrock groundwater, off-site groundwater and soil vapor. OU-1 and related Site Management Plan components are described in Exhibit "C". The Department is continuing to investigate the Site relative to OU-2 and assessing remedial alternatives for implementation.

K. The Department alleges for purposes of this Order only that, without the liability protections afforded Settling Respondent under this Order, Settling Respondent could be liable for the reimbursement of the Department's administrative response costs (including any legally accrued interest) for the investigation and remediation of the Existing Contamination in accordance with applicable state and federal law, in the event Settling Respondent should become the owner or operator of the Site.

L. Settling Respondent denies any liability for the reimbursement of the Department's administrative response costs for this Site, and, but for the liability protections set forth in this Order, would not purchase the Site. Furthermore, Settling Respondent, in entering

¹ As the term is defined in 6 NYCRR §375-1.2(ap).

into this Order, does not admit any liability or fault with respect to any matter arising out of or relating to the Site.

M. The goals of this Order are for (i) Settling Respondent to be responsible to demolish the existing building at the Site, which will facilitate the Department's investigation and remediation of Existing Contamination; (ii) Settling Respondent to allow access to Department personnel or its contractors to perform investigation and remediation activities, and for the Department to maintain any institutional and/or engineering controls that may be required by the Department at the Site, as set forth below; (iii) Settling Respondent to grant an Environmental Easement to the Department for the Site as provided for in ECL Article 71, Title 36, as set forth below; (iv) Settling Respondent to abide by and stay compliant with any Site Management Plan ("SMP") that may be issued by the Department for the Site; (v) Settling Respondent to provide at least 60 days advance notice to the Department and the Department of Health, if required, of a planned "change in use"² of the Site pursuant to ECL §27-1317 and 6 NYCRR §375-1.11(d), as well as assurances that said change in use will not violate or cause non-compliance with the SMP; to release and covenant not to sue the Settling Respondent for the investigation and remediation of Existing Contamination and for the reimbursement of past or future Existing Contamination-related response costs upon the effective date of this Order; and (vi) the Department to provide Settling Respondent with contribution protection provided by CERCLA §113(f)(2), 42 U.S.C. §9613(f)(2), and/or any other applicable federal or state law for matters addressed by this Order.

N. Settling Respondent consents to the Department's issuance of this Order without an admission or finding of liability of any kind and agrees that this Order shall not become effective until Respondent takes title to the Site, as it is described in ¶I(A), below. The parties recognize that the implementation of this Order will expedite the cleanup and redevelopment of the Site, and that this Order is mutually acceptable, fair, reasonable, and in the public interest.

O. Solely with regard to the matters set forth herein, the Settling 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. Settling 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. Site 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:

² As that term is defined at 6 NYCRR 375-2.2(a).

A. The Site: The real property designated by the Department as New York State Inactive Hazardous Waste Site Number 828160, approximately 1.2 acres in size, known as the "Staubs Textiles Services, Inc." site located at 935 and 951 East Main Street, City of Rochester, Monroe County, and more specifically identified as Tax Map Parcels: 106.75-1-17 and 106.75-1-39. Exhibit "A" is a map of the Site showing its general location.

B. Covered Contamination: Any release, as that term is defined in 6 NYCRR §375-1.2(am), of Existing Contamination on or under the Site that has emanated or is emanating from the Site which occurred prior to or after the effective date of this Order. Notwithstanding anything in this Order to the contrary, Covered Contamination shall not include any release of hazardous waste, hazardous substances or petroleum compounds that is not Existing Contamination.

II. Demolition in lieu of Settlement Payment or Other Consideration for Liability Protection

Settling Respondent will undertake at its cost and expense the demolition of the building currently located at the Site. The demolition will be coordinated with the Department so as to facilitate the Department's investigation and remediation of the Site. Settling Respondent's responsibility regarding demolition of the building shall include the removal, storage, transport and disposal of any material located above the building's at-grade slab, including but not limited to, any solid or hazardous waste or petroleum compounds currently located in the building. Any such removal, storage, transport and disposal by Settling Respondent shall be in compliance with all applicable local, State and federal laws and regulations.

III. Appropriate Care/Cooperation

A. Settling Respondent shall exercise appropriate care³ at the Site with respect to the Covered Contamination and shall, to the extent the same shall be encountered with respect to the demolition, comply with all applicable local, State, and federal laws and regulations. Settling Respondent shall cooperate fully with the Department in the implementation of any response⁴ actions needed to address Covered Contamination at the Site and shall not interfere with such response actions, such interference being a violation, as described at 6 NYCRR §375-1.11(b). Notwithstanding any of the foregoing, with respect to care and cooperation, it is understood Respondent is not responsible to implement any response actions needed to address Covered Contamination. Settling Respondent shall affirmatively ensure that any development or operational activities on the Site, other than those activities under the direction or control of the Department, 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. Settling Respondent agrees to allow the Department to access the Site as described in Paragraph VI below, and to carry out activities that the Department finds is necessary to continue or complete investigation and remediation at the Site, including OU-1 and

³ As the term is defined in 42 USC §9601(40)(D):

⁴ As that term is defined in 42 USC §9601(25).

OU-2. . Settling Respondent also agrees not to operate its business at the Site in a way that interferes with the Department's access, investigation and remediation activities. The Department and Settling Respondent agree to cooperate to establish the location of equipment, installations, monitoring wells, cover systems and other temporary or permanent improvements required for the investigation and remediation of the Site, including OU-1 and OU-2, all in a manner which is conducive to Settling Respondent's future ownership, redevelopment and use of the Site, to the extent practicable. The Settling Respondent agrees to comply with a Site Management Plan (SMP) pertaining to OU-1 and OU-2 that will be developed and adopted by the Department, and acknowledges that the SMP for the Site will require (1) the installation and operation of a vapor mitigation system at any building to be constructed and occupied on Site; (2) maintenance of any site cover system constructed by the Department; and (3) periodic certification of the integrity of the cover system; said certifications shall be initially on an annual basis, but may be reduced to every three years upon approval by the Department. These three (3) SMP responsibilities will be performed by Settling Respondent at its own cost and expense.

IV. Certification

By entering into this Order, Settling Respondent certifies that it has not caused or contributed to the release or threatened release of a hazardous waste from or onto the Site, nor generated, transported, or disposed of, arranged for, or caused the generation, transportation, or disposal of hazardous waste from or onto the Site, except to the extent that will be required as part of or in preparation for its demolition of the existing building at the Site.

V. Environmental Easement

A. Department shall submit to the Settling Respondent for its timely review, comment and approval an Environmental Easement ("EE") 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) for the Site. The Department shall record the EE against the land upon Settling Respondent's approval of the EE.

B. The EE for the Site will, *inter alia*, limit the use and development of the property to commercial use as defined in 6 NYCRR §375-1.8(g)(2)(iii) or to industrial use as defined in 6 NYCRR §375-1.8(g)(2)(iv); and require compliance with any Department-approved Site Management Plan and 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 Health and without the Department's written approval, and Settling Respondent agrees that the EE for the Site will include these provisions.

VI. Access

A. Settling Respondent hereby consents, upon reasonable notice under the circumstances presented, to grant entry upon the Site 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 Site; by any agent, consultant, contractor, or other person so authorized by the Commissioner for performing additional investigation and/or remediation activities, as well as assuring compliance with any Site Management Plan.

B. Settling Respondent shall ensure that lessees, and sublessees of the Site provide the same access.

VII. Release and Covenant Not to Sue

A. Upon the effective date of this Order, the Department and the Trustee of New York State's natural resources ("Trustee"), hereby release Settling Respondent and its members, directors, officers, employees, agents, servants, successors, parents, secured creditors and insurers, and covenant not to sue, and shall forbear from bringing any action, proceeding, or suit pursuant to the Environmental Conservation Law or the State Finance Law, CERCLA, State common law or any other legal authority, and from referring to the Attorney General any claim for recovery of costs incurred by the Department, against the Settling Respondent its members, officers, employees, directors, agents, servants, secured creditors and insurers, and its successors and assigns to the land or Settling Respondent, who are or may become additional signatories to this Order, for the investigation and remediation of Covered Contamination, including but not limited to an action pursuant to CERCLA §107(a), 42 USC §9607(a), and for natural resource damages, based upon the release or threatened release of Covered Contamination, provided that: (a) Settling Respondent completes the demolition in accordance with Paragraph II; (b) an Environmental Easement that is approved by the Department as satisfying the requirements of Paragraph V is recorded on title of the Site property; (c) Settling Respondent continues to exercise appropriate care and cooperation as required in Paragraph III; and (d) Settling Respondent continues to allow access as required by Paragraph VI. Nonetheless, the Department and the Trustee hereby reserve all of their 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 off-Site migration of petroleum;⁵
- due to environmental conditions or information related to the Site which was unknown at the time this Order was issued and which indicate that this Order cannot be implemented with sufficient protection of human health and the environment;
- due to Settling Respondent's failure to implement the Order to the Department's satisfaction;
- due to fraud committed by Settling Respondent in entering into or implementing the Order; or
- due to any contamination that is not Covered Contamination.

Additionally, the Department and the Trustee hereby reserve all of their respective rights concerning, and any such release and covenant not to sue shall not extend to, Settling Respondent if it causes or allows a release or a threat of release at the Site 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 Covered Contamination; nor to Settling Respondent

⁵ As that term is defined in Navigation Law §172(15).

if it is otherwise responsible under law for the remediation of the Covered Contamination independent of any obligation that party may have respecting same resulting solely from the execution of this Order on Consent and Administrative Settlement.

Notwithstanding the above, however, with respect to any claim or cause of action asserted by the Department or the Trustee, the one 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 Covered 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 other party, nothing in this order shall be construed or deemed to preclude the State of New York from recovering such claim;
- 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 or Trustee's rights (including, but not limited to, the right to recover natural resources damages) with respect to any other party; nothing contained in this Order shall prejudice any rights of the Department or Trustee to take any investigatory or remedial action it deems necessary if Settling Respondent fails to comply with the Order or if contamination other than Covered Contamination is encountered at the Site;
- nothing contained in this Order shall be construed to prohibit the Commissioner or his duly authorized representative from exercising any summary abatement powers;
- nothing contained in this Order shall be construed to affect the Department's right to terminate the Order and this "Release and Covenant Not to Sue" under the terms of the Order at any time during its implementation if Settling Respondent fails to comply substantially with the Order's terms and conditions.

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 the Settling Respondent's failure to materially comply with any provision of this Order.

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) Settling Respondent may have against anyone other than the Department, including but not limited to rights of contribution under CERCLA §113(f)(3)(B), 42 USC §9613(f)(3)(B); and (ii) the Department may have against anyone other than the Settling Respondent and its members, directors, officers, employees, agents, and servants, successors and assigns that were not responsible under law for the development and implementation of a Remedial Program at the Site prior to the effective date of this Order, and their respective successors, assigns, secured creditors and insurers.

B. Successors and assigns of Settling Respondent who duly execute and deliver the Consent of Additional Signatory form attached hereto as Exhibit "B" to the Department along with proof that the person executing such form is authorized to bind the party on whose behalf he/she is signing are entitled to the benefits of the Release and Covenant Not to Sue in Subparagraph VII.A.

C. The benefits of the Release and Covenant Not to Sue set forth in Subparagraph VII.A shall survive termination of a transferor's obligations under this Order pursuant to Subparagraph VIII.B, below.

VIII. Transfer of Ownership Interest

A. If the Settling Respondent proposes to convey the whole or any part of its ownership interest in the Site, or become aware of such conveyance, the Settling Respondent shall, not fewer than forty-five (45) days before the date of conveyance, 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 the Settling 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 Site or an assignment or transfer of an interest in the Site, the assignee or transferee must consent in writing to be bound by the terms of this Order, and upon delivery to the Department of a validly executed Consent of Additional Signatory, the transferor's obligations hereunder shall terminate.

IX. Reservation of Rights

A. The release and covenant not to sue set forth in Subparagraph VII.A does not pertain to any matters other than those expressly specified in Subparagraph VII.A. The Department reserves and this Order is without prejudice to all rights against Settling Respondent with respect to all other matters, including but not limited to, (a) claims based on a failure by Settling Respondent to meet a material requirement of this Order, including but not limited to Paragraph II (Demolition in lieu of Settlement Payment), Paragraph VI (Access), Paragraph III (Appropriate Care/Cooperation), and Paragraph V (Environmental Easement).

B. Except as otherwise provided in this Order, Settling Respondent specifically reserves all rights and defenses under applicable law respecting any Departmental assertion of remedial liability and/or natural resource damages against Settling 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 Settling Respondent's compliance with it shall not be construed as an admission of any liability, fault, wrongdoing, or breach of standard of care by Settling 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, except as provided for herein. Further, Settling 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 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 CERCLA §113(f)(3)(B), 42 USC §9613(f)(3)(B).

X. 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. Communications from the Settling Respondent shall be sent to:

Matthew Dunham
Environmental Engineer 2
Division of Environmental Remediation
New York State Department of Environmental Conservation
625 Broadway
Albany, New York 12233-7017
matthew.dunham@dec.ny.gov

Dennis P. Harkawik
Regional Attorney
New York State Department of Environmental Conservation
Region 8
6274 East Avon-Lima Road
Avon, New York 14414
dennis.harkawik@dec.ny.gov

2. Communications from the Department to the Settling Respondent shall be sent to:

Center Street Development II LLC
One Circle Street
Rochester, New York [zip]
c/o William Tehan

Morgan Graham, Esq.
Phillips Lytle
One Canalside
125 Main Street
Buffalo, New York 14203
MGraham@phillipslytle.com

XI. Termination

Should the release and covenant not to sue set forth in Subparagraph VII.A herein become null and void, *ab initio*, in the event of fraud in the execution or implementation of this Order, or in the event of Settling Respondent's failure to materially comply with any provision of this Order then neither this Order nor its termination shall affect any liability of Settling Respondent for payment of State Costs, including implementation of removal and remedial actions, interest, enforcement, and any and all other response costs defined in CERCLA.

XII. Miscellaneous

A. The Settling Respondent's successors and assigns shall be bound by this Order and the terms of this Order shall inure to the benefit of the Settling Respondent and its successors and assigns. Any change in ownership or corporate status of any Respondent 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, unless there is a transfer of ownership interest, as provided in Section VIII hereof.

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. 1. The terms of this Order shall constitute the complete and entire agreement between the Department and the Settling 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 Settling Respondent of their obligation to obtain such formal approvals as required by this Order.

2. i. Except as set forth herein, if the Settling 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 X herein. The Commissioner or the Commissioner's designee shall timely respond.

ii. Changes to a time frame set forth in this Order shall be accomplished by a written request to the Department's project attorney and project manager, which request shall be timely responded to in writing.

D. 1. If there are multiple parties signing this Order, the terms "Settling Respondent" and "Respondent" shall be read in the plural where required to give meaning to this Order. Further, the obligations of Settling Respondent under this Order are joint and several and the insolvency of or failure by any Settling Respondent to implement any obligations, as required under this Order, shall not affect the obligations of the remaining Settling Respondent(s) to carry out the obligations under this Order.

2. If Settling 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.

3. If a party duly executes the "Consent of Additional Signatory", the terms "Settling Respondent" and "Respondent" shall be read to be inclusive of such additional signatory.

E. To the extent authorized under CERCLA §113, 42 USC §9613, New York General Obligations Law §15-108, and any other applicable law, Settling Respondent and any Additional Signatories shall be deemed to have resolved their liability, if any, to the State for purposes of contribution protection provided by CERCLA §113(f)(2), for "matters addressed" pursuant to and in accordance with this Order. "Matters addressed" in this Order shall mean all response actions taken, or to be taken, by the Department to implement investigation and remediation of the Covered Contamination, or Respondent to implement this Order and all past and future response costs incurred or to be incurred by the Department or any person or party in connection with the work performed under this Order with regard to the Covered Contamination, or otherwise related to the Covered Contamination, including reimbursement or any other payment of State costs or expenses pursuant to this Order related to the Covered Contamination. Furthermore, to the extent authorized under CERCLA §113(f)(3)(B), by entering into this administrative settlement of liability for some or all of the removal and/or response action and/or for some or all of the costs of such action, Settling Respondent is entitled to seek contribution from any person except those who are entitled to contribution protection under CERCLA §113(f)(2). Settling Respondent shall include the named company and its officers, directors, agents, servants, employees, successors, parents, secured lenders, insurers and assigns, all of whom are entitled to the full extent of protection from contribution claims or actions as provided by CERCLA §113(f)(2) including but not limited to rights of contribution under CERCLA §113(f)(3)(B), 42 USC §9613(f)(3)(B).

F. All activities undertaken by the Settling Respondent pursuant to this Order shall be performed in accordance with the requirements of all applicable Federal and State laws, regulations and guidance documents.

G. 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.

H. The Settling 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.

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 effective date of this Order is the date of execution of the Order by the Commissioner or the Commissioner's designee. This Order shall be void and of no further force

and effect, ab initio, if Settling Respondent does not provide the Department on or before May 1, 2017 with proof of the recording of the conveyance deed or other instrument indicating that Respondent has taken ownership of the Site, and a copy of this Order, in the Office of the Monroe County Clerk.

DATED: *MARCH 10, 2017*

BASIL SEGGOS
COMMISSIONER
NEW YORK STATE DEPARTMENT OF
ENVIRONMENTAL CONSERVATION

By:



ROBERT W. SCHICK, PE
Director,
Division of Environmental Remediation

2991994.2

CONSENT BY SETTLING RESPONDENT

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

CIRCLE STREET DEVELOPMENT LLC

By: The Pike Development Company LLC,
its sole Member and Manager

By: The Pike Companies Limited, its Manager

By:

Name: Rufus M. Judson

Title: President

Date:

STATE OF NEW YORK)

) ss:

COUNTY OF MONROE)

On the 13th day of February, in the year 2017, before me, the undersigned, personally appeared Rufus M. Judson, 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 acknowledgement

Richard M. Beers Jr.

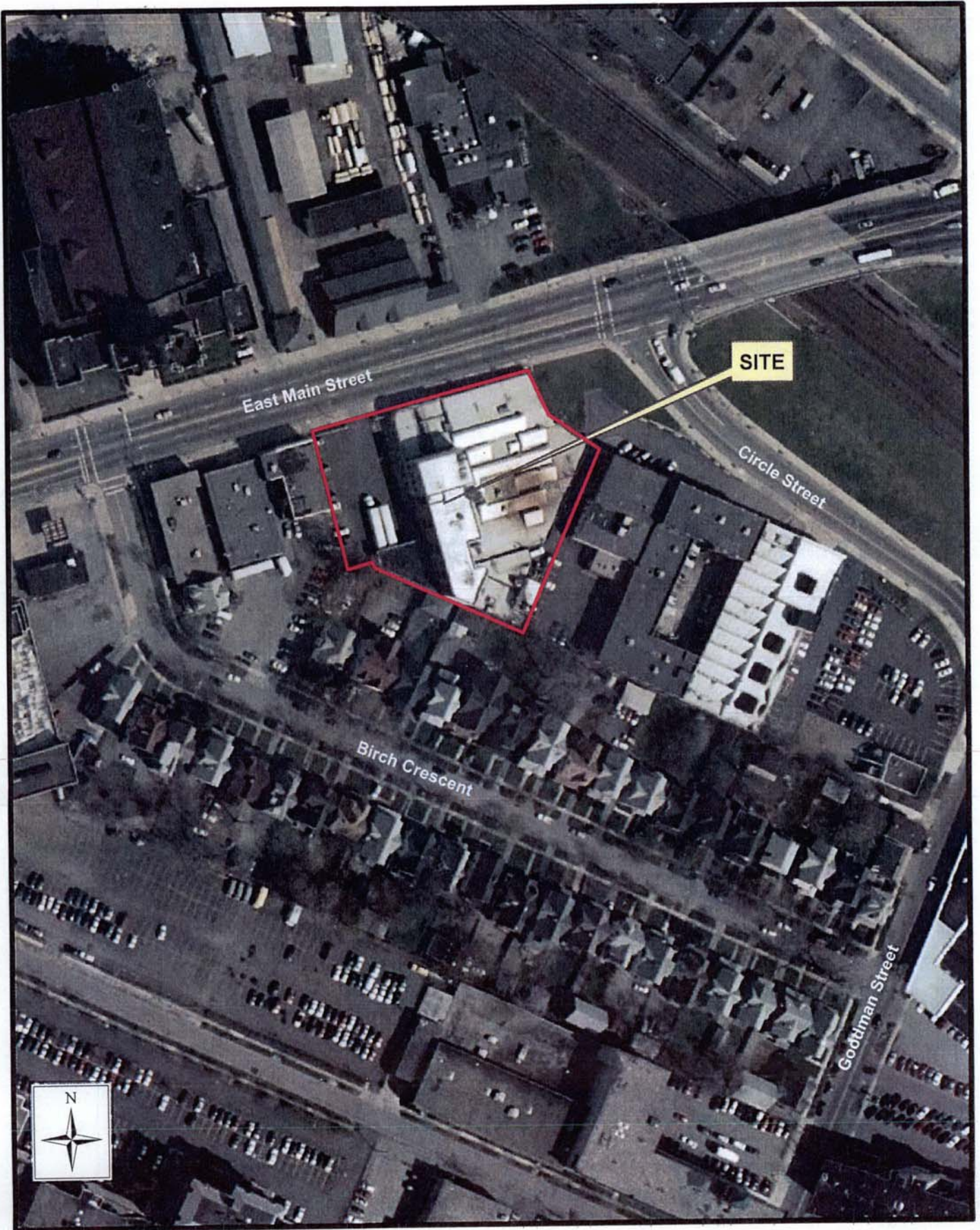
Notary Public, State of New York

Qualified in Monroe County

My Commission Expires 11/30/17

Exhibit “A”

Site Map



Site # 828160
Rochester, New York

STAUBS TEXTILE SERVICES INC
SITE # 828160
ROCHESTER, NEW YORK

Exhibit "B"

Consent of Additional Signatory

The party executing this form, [name of party] _____, hereby consents to being added as a Respondent to the Order on Consent and Administrative Settlement, Index # _____ regarding Site # 828160 and further consents to the issuing and entering of the referenced Order, waives Respondent's right to a hearing herein as provided by law, and agrees to be bound by this Order.

By: _____

Title: _____

Date: _____

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

On the __ day of _____, in the year 20__, before me, the undersigned, personally appeared _____, 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

Exhibit "C"

OU-1 and SITE MANAGEMENT PLAN COMPONENTS

The existing on-site building(s) will be demolished by the Site Owner. The Department will implement excavation and off-site disposal of all on-site soils which exceed Commercial SCOs and treatment of on-site soils using in-situ chemical treatment which exceed protection of groundwater SCOs, as defined by 6 NYCRR Part 375-6.8. The total volume of soils excavated is approximately 2074 cubic yards. There will be dewatering and treating of the groundwater during excavation. Clean fill meeting the requirements of 6 NYCRR Part 375-6.7(d) will be brought in to replace the excavated soil and establish the designed grades at the site. Any underground storage tanks encountered during soil excavation activities will be removed.

Vapor Mitigation System: Any on-site buildings will be required to have a sub-slab depressurization system, or a similar engineered system, installed by the Owner, to mitigate the migration of vapors into the building from soil and/or groundwater. At this time, there is no on-site building that will be occupied.

Imposition by the Department of an institutional control in the form developed by the Department of an environmental easement for the controlled property which will:

- require the remedial party or site owner, as the case may be, to complete and submit to the Department a periodic certification of institutional and engineering controls in accordance with Part 375-1.8 (h)(3) (the site owner's certification relates to the condition of the site cover installed by the Department);
- allow the use and development of the controlled property for commercial use as defined by Part 375-1.8(g), although land use is subject to local zoning laws;
- restrict the use of groundwater as a source of potable or process water, without necessary water quality treatment as determined by the NYSDOH or County DOH; and
- require compliance with the Department developed and approved Site Management Plan.

A Site Management Plan is required, which will include the following:

An Institutional and Engineering Control Plan that identifies all use restrictions and engineering controls for the site and details the steps and media-specific requirements necessary to assure the following institutional and/or engineering controls remain in place and effective:

Institutional Controls: Will include the implementation of land-use restrictions as set forth above.

Engineering Controls: The Vapor Mitigation System as discussed above.

This plan includes, but may not be limited to:

- an Excavation Plan which details the provisions for management of future excavations in areas of potentially remaining contamination;
- a description of the provisions of the environmental easement including any land use restrictions;
- provisions for the management and inspection of the identified engineering controls;
- provisions for maintaining site access controls and Department notification; and
- steps necessary for the periodic reviews and certification of the institutional controls.

A Monitoring Plan implemented by the Department to assess the performance and effectiveness of the remedy. The plan includes, but may not be limited to:

- Monitoring of soil, groundwater or soil vapor to assess the performance and effectiveness of the remedy;
- A schedule of monitoring and frequency of submittals by the Department.