

**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

December 12, 2018

SENT VIA FIRST CLASS MAIL AND VIA  
ELECTRONIC MAIL  
Larry@schnapflaw.com

Mr. Larry Schnapf  
Schnapf, LLC  
55 East 87<sup>th</sup> Street  
Suite 8B  
New York, NY 10128

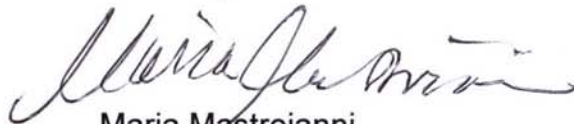
**RE: Order on Consent  
Index No.: CO 2-20180903-344  
Site Name: 11 Spencer Street  
Site No.: C224204**

Dear Mr. Schnapf:

Enclosed please find a fully executed Order on Consent referencing the site located at 11 Spencer Street, Brooklyn, Kings County and The W Group of Brooklyn, LLC.

If you have any further questions or concerns relating to this matter, please contact Jennifer Andaloro at 518-402-9199.

Sincerely,



Maria Mastroianni  
Remediation Bureau  
Office of General Counsel

Enclosure

cc: The W Group of Brooklyn, LLC  
2 Skillman Street  
Suite 213  
Brooklyn, NY 11205



Department of  
Environmental  
Conservation

STATE OF NEW YORK  
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

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In the Matter of the Violations of Articles 27, Title 13  
Article 71, Title 27 of the New York State Environmental  
Conservation Law and Part 375 of Title 6 of the Official  
Compilation of Codes, Rules and Regulations  
of the State of New York,

**ORDER ON CONSENT**

- by -

**NYSDEC File No.  
CO 2-20180903-344**

The W Group of Brooklyn LLC  
2 Skillman Street, Suite 213  
Brooklyn, NY 11205

Respondent.

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**WHEREAS:**

1. The New York State Department of Environmental Conservation (“NYSDEC” or the “Department”) is responsible for carrying out the policy of the State of New York to conserve, improve and protect natural resources and the 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 New York State Environmental Conservation Law (“ECL”); and

2. The Department is responsible for the administration and enforcement of law and regulation pursuant to Article 3 of the ECL.

3. The Department is authorized to administer the Brownfield Cleanup Program (“BCP”) as set forth in Article 27, Title 14 of the ECL and Part 375 of Title 6 of the Official Compilation of Codes, Rules and Regulations (“6 NYCRR”) and may issue orders consistent with authority granted to the Commissioner by such statute.

4. Respondent The W Group of Brooklyn LLC (W Group), a New York limited liability company with offices at 2 Skillman Street, Suite 213, Brooklyn, NY 11205, owns a parcel of real property located at 11 Spencer Street, Brooklyn, NY and identified as Kings County Tax Block 1716 Lot 1 (the “Site”);

5. On April 16, 2015, I T F Corporation, W Group’s predecessor in interest, entered into a Brownfield Site Cleanup Agreement (“BCA”), Index No. C224204-03-15,



with the Department regarding a remedial program for the Site. I T F Corporation was participating in the Brownfield Cleanup Program (“BCP”) as a Participant, as defined in ECL § 27-1405(1)(a).

6. On March 12, 2015, the W Group acquired title to the Site from I T F Corporation and was substituted as the applicant to the BCP via the BCA Amendment dated May 20, 2015.

7. 6 NYCRR 375-1.11(b)2) states that it is a violation to engage in any activity that prevents or significantly interferes with an ongoing remedial program or activity that is reasonably foreseeable expose the public health or the environment to a significantly increased threat of harm or damage at any site.

8. In August 2015, the Respondent submitted an Interim Remedial Measure (“IRM”) Work Plan to perform excavation of areas of contamination within the building located on the Site. An Interim Remedial Measure Work Plan (“IRMWP”) was posted for public comment in November 2015. This proposal for the IRM was withdrawn by Respondent after consultation with Department and the Respondent agreed to proceed with preparation of a Remedial Investigation Work Plan.

9. In February 2016, a Remedial Investigation Work Plan was submitted to the Department and work was performed on the Site through November 2016. Investigation derived waste generated from a supplemental investigation between April-May 2017 was placed in drums and remained on Site until May 2018, despite the Department’s requests to remove the waste immediately.

10. In March 2017 the Department requested a soil vapor extraction/air sparging (“SVE/AS”) as an IRM. In June 2017 the Respondent submitted an additional IRMWP for a SVE/AS system, which was approved by the Department in August 2017. Thereafter, Respondent proposed a change in the design of the approved SVE/AS system. The Department subsequently determined that a pilot test would have to be performed before the proposed revised design of the SVE/AS IRM could be implemented.

11. An updated IRMWP for a SVE/AS system was submitted in November 2017 and approved in February 2018. The Respondent encountered delays in developing its building foundation design. As a result, the SVE/AS IRM was not completed in a timely manner and has not been completed to date.

12. On May 7, 2018, the Department sent Respondent a letter indicating the Department’s objection to the pace and progress of the Remedial Program at the Site and allowing Respondent to remain in the BCP provided that Respondent submit a revised schedule for approval. The revised schedule was submitted to the Department for approval on June 6, 2018. The Respondent met with the Department on June 11<sup>th</sup>

and agreed to submit a revised IRM schedule and submit a Remedial Action Workplan 3 months following the start up and testing of the IRM AS/SVE system. The revised schedule was submitted to the Department on June 21, 2018. The Department advised Respondent on multiple occasions that the revised IRM schedule submitted was not acceptable.

13. On July 11, 2018, the Department notified Respondent that the BCA was terminated pursuant to 6 NYCRR § 375-3.5(c).

14. Pursuant to ECL Section 71-2705(1), a person who violates ECL Article 27, Title 13 or 6 NYCRR Part 375, is subject to a penalty of up to \$37,500 per day for each violation.

15. Respondent and the Department agree that the primary goals of this Order are to resolve the above-described violations at the Site and provide a mechanism for the Respondent to continue in the BCP as a Participant, so that it may implement any required remedial measures and associated site management activities.

16. In settlement of the Respondent's liability for the aforesaid violations, the Respondent admits the violation set forth herein, waives the right to a hearing herein as provided by law and consents to the issuing and entering of this Order on Consent pursuant to the provisions of Articles 27 and 71 of the ECL and agrees to be bound by the provisions, terms and conditions herein. 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, WHEREFOR, it is hereby ORDERED that:**

I. **PENALTY**: Respondent is hereby assessed a civil penalty of \$100,000.00 for the violations stated in this Consent Order to be paid as follows:

A. **Payable Penalty**: Respondent will pay \$50,000.00 of the penalty upon the execution of this Consent Order. Payments shall be made by certified or cashier's check or money order payable to the New York State Department of Environmental Conservation. Respondent will submit the settlement payment as required by this Order along with two signed originals of this Order, to:

Office of General Counsel  
New York State Department of Environmental Conservation  
625 Broadway 14<sup>th</sup> Floor  
Albany, NY 12233-1500  
Attn: Jennifer Andaloro



B. **Suspended Penalty:** Notwithstanding the Payable Penalty above, \$50,000.00 of the assessed civil penalty against Respondent has been suspended, provided Respondent complies with all the terms of this Order. In the event that Respondent fails to make the submissions or complete the activities on the schedule described below in Section III, the entire suspended portion of the penalty shall become due and payable upon written notice to Respondent without prejudicing the Department from seeking further appropriate penalties for the violations by Respondent.

C. The penalty assessed in this Order constitutes a debt owed to the State of New York. Failure to pay the assessed penalty, or any part thereof, in accordance with the schedule contained in the Order, may result in referral to the New York State Attorney General for collection of the entire amount owed (including the assessment of interest, and a charge to cover the cost of collecting the debt), or referral to the New York State Department of Taxation and Finance, which may offset any tax refund or other monies that may be owed to you by the State of New York by the penalty amount. Any suspended and/or stipulated penalty provided for in this Order will constitute a debt owed to the State of New York when and if such penalty becomes due.

D. Failure to timely pay the civil penalty due under this Order or otherwise comply with this Order will result in termination of the Brownfield Cleanup Agreement, referral of the Site to the state Superfund and no Certificate of Completion will be issued for this Site

## II. RESPONDENT'S CONTINUED PARTICIPATION IN THE BCP

The Department has agreed to allow the Respondent's to continue its participation in the BCP under the terms of the April 16, 2015 BCA and the May 20, 2015 amendment thereto. The Department hereby withdraws the Notice of Termination issued on July 11, 2018. Respondent shall not be entitled to, and will not use the costs incurred to defend or comply with this Order for the purpose of tax credits under the Brownfield Cleanup Program. Respondent shall be entitled to tax credits for eligible costs incurred by Respondent from July 11, 2018 to the effective date of this Order.

## III. COMPLIANCE SCHEDULE

Respondent shall:

- A. Submit a Remedial Action Work Plan ("RAWP") within 21 days of the effective date of this Order that complies with the Remedial Action Objections set forth in Attachment A and the General Scope of Work in Attachment B. The RAWP is subject to public review and Department approval.
- B. Commence the remedial action within 45 days of the issuance of the final

Decision Document by the Department.

**IV. FAILURE, DEFAULT AND VIOLATION OF ORDER AND VIOLATIONS OF THE ECL**

A. The failure of Respondent to comply with any provision of this Order shall constitute a default and a failure to perform an obligation under this Order and shall be deemed to be a violation of both this Order and the ECL.

B. Respondent's failure to comply fully and in timely fashion with any provision, term, or condition of this Order shall constitute a default and a failure to perform an obligation under this Order and under the ECL.

C. If Respondent cannot comply with a deadline or requirement of this Order because of an act of God, war, strike, riot, catastrophe or other condition which is not caused by the negligence or willful misconduct of Respondent, and which could not have been avoided by Respondent through the exercise of due care, Respondent shall apply in writing to the Department within a reasonable time after obtaining knowledge of such fact, and request an extension or modification of the deadline or requirement.

**V. INDEMNIFICATION**

Respondent shall indemnify and hold harmless the Department, the State of New York, and their representatives and employees for all claims, suits, actions, damages and costs of every name and description arising out of or resulting from the fulfillment or attempted fulfillment of this Order by Respondent or its successors (including successors in title) and assigns.

**VI. BINDING EFFECT**

This Order shall be deemed binding on Respondent, any successors and assigns and all persons, firms and corporations acting under or for Respondent, including, but not limited to, those who may carry on any or all of the operations to be conducted by Respondent at the Site.

**VII. MODIFICATION**



No change in this Order shall be made or become effective except as agreed to by the Parties and set forth by a written order of the Commissioner or the Commissioner's designee.

**VIII. ENTIRE ORDER**

This Order shall constitute the entire agreement of the Department and the Respondent with respect to settlement of the violations specifically referenced herein. No terms, conditions, understandings or agreements purporting to modify or vary the terms hereof shall be binding unless made in writing pursuant to Paragraph VIII of this Order, and subscribed by the party to be bound. No informal oral or written advice, guidance, suggestions or comments by the Department regarding reports, proposals, plans, specifications, schedules, or any other writing submitted by Respondent shall be construed as relieving Respondent of its obligations to obtain such formal approvals as may be required by this Order.

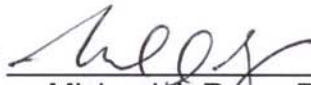
**IX. EFFECTIVE DATE**

The effective date of this Order is the date that it is signed by the Commissioner or his/her designee. The Department will provide Respondent with a fully executed copy of this Order as soon as practicable after it has been signed by the Commissioner or the Commissioner's designee.

DATED: Albany, New York

*December 11*, 2018

Basil Seggos  
Commissioner, NYSDEC

By:   
Michael J. Ryan, P.E., Director  
Division of Environmental Remediation  
Department of Environmental  
Conservation

**CONSENT BY RESPONDENT**

Respondent The W Group of Brooklyn LLC hereby consents to the issuing and entering of this Order without further notice, waives his right to a hearing herein, and agrees to be bound by the terms, conditions and provisions contained in this Order.

THE W GROUP OF BROOKLYN LLC

By [signature]: Moses Wertheimer

Print name: Moses Wertheimer

Title: President

Date: 12-3-18

**ACKNOWLEDGMENT**

STATE OF New York )  
COUNTY OF Kings ) ss:

On this day of , 2018, before me personally came Moses Wertheimer  
, to me known, who being by me duly sworn did depose and say that s/he is the  
President of THE W GROUP OF BROOKLYN LLC, the corporation  
described in and which executed the above instrument, and that s/he signed this  
instrument as authorized by said THE W GROUP OF BROOKLYN LLC.

[Signature]  
Notary Public

PADRAM FEJAL  
NOTARY PUBLIC, STATE OF NEW YORK  
Registration No. 01FE6305764  
Qualified in Kings County  
Commission Expires June 9, 2022

**SCHEDULE A**



## **Remedial Action Objectives (RAOs)**

### **Groundwater**

#### **RAOs for Public Health Protection**

- Prevent ingestion of groundwater with contaminant levels exceeding drinking water standards.
- Prevent contact with, or inhalation of volatiles, from contaminated groundwater.

#### **RAOs for Environmental Protection**

- Restore ground water aquifer to pre-disposal/pre-release conditions, to the extent practicable.
- Prevent the discharge of contaminants to surface water (if appropriate add: and sediment).
- Remove the source of ground or surface water contamination.

### **Soil**

#### **RAOs for Public Health Protection**

- Prevent ingestion/direct contact with contaminated soil.
- Prevent inhalation exposure to contaminants volatilizing from soil

#### **RAOs for Environmental Protection**

- Prevent migration of contaminants that would result in (include all appropriate media: groundwater, surface water, or sediment) contamination.
- Prevent impacts to biota from ingestion/direct contact with soil causing toxicity or impacts from bioaccumulation through the terrestrial food chain.

### **Soil Vapor**

#### **RAOs for Public Health Protection**

- Mitigate impacts to public health resulting from existing, or the potential for, soil vapor intrusion into buildings at a site.

## **SCHEDULE B**

**General Scope of Work**

Remedial elements specified below are not necessarily inclusive, but to guide the remedy. Additional or specified elements may be required at the discretion of the Department.

**EXCAVATION:**

In the event the existing on-site building(s) are demolished, the materials which can't be beneficially reused on site will be taken off-site for proper disposal in order to implement the remedy.

Excavation and off-site disposal of contaminant source areas, including:

- soils which exceed the protection of groundwater soil cleanup objectives (PGWSCOs), as defined by 6 NYCRR Part 375-6.8 for those contaminants found in site groundwater above standards; and
- soils that create a nuisance condition, as defined in Commissioner Policy CP-51 Section G.3; and
- soils that exceed the applicable SCOs.

**BACKFILL:**

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.

**COVER SYSTEM:**

A site cover will be required to allow for **{IDENTIFY USE: restricted residential OR commercial}** use of the site in areas where the upper **{one foot or two feet}** of exposed surface soil will exceed the applicable soil cleanup objectives (SCOs). Where a soil cover is to be used it will be a minimum of **{one foot or two feet}** of soil placed over a demarcation layer, with the upper six inches of soil of sufficient quality to maintain a vegetative layer. Soil cover material, including any fill material brought to the site, will meet the SCOs for cover material for the use of the site as set forth in 6 NYCRR Part 375-6.7(d). Substitution of other materials and components may be allowed where such components already exist or are a component of the tangible property to be placed as part of site redevelopment. Such components may include, but are not necessarily limited to: pavement, concrete, paved surface parking areas, sidewalks, building foundations and building slabs.

**SOIL VAPOR EXTRACTION:**

Soil vapor extraction (SVE) will be implemented to remove volatile organic compounds (VOCs) from the subsurface. VOCs will be physically removed from the soil by applying a vacuum to wells that have been installed into the vadose zone (the area below the ground but above the water table). The vacuum draws air through the soil matrix which carries the VOCs from the soil to the SVE well. The air extracted from the SVE wells is then treated as necessary prior to being discharged to the atmosphere.

**{#}** SVE wells will be installed into the vadose zone and screened from \_\_\_ feet below the ground surface to a depth of approximately \_\_\_ feet. The air containing VOCs extracted from the SVE wells will be treated **{(insert technology, e.g. by passing the air stream through activated carbon which removes the VOCs from the air)}** prior to it being discharged to the atmosphere.

**AIR SPARGE WITH SOIL VAPOR EXTRACTION:**

Air sparging will be implemented to address the groundwater plume contaminated by volatile organic compounds (VOCs). VOCs will be physically removed from the groundwater and soil below the water table (saturated soil) by injecting air into the subsurface. The injected air rising through the groundwater will volatilize and transfer the VOCs from the groundwater and/or soil into the injected air. The VOCs are carried with the injected air into the vadose zone (the area below the ground surface but above the water table) where a soil vapor extraction (SVE) system designed to remove the injected air will be installed. The SVE system will apply a vacuum to wells that have been installed into the vadose zone to remove the VOCs along with the air introduced by the sparging process. The air extracted from the SVE wells will be treated as necessary prior to being discharged to the atmosphere.

At this site it is estimated **{include # of wells here}** air injection wells will be installed in the area of the site to be treated **{(insert location information when appropriate) e.g., which is located downgradient of the source area located under Building C OR as depicted on Figure XX}** to a depth



of approximately \_\_\_\_ feet, which is \_\_\_\_ feet below the water table. To capture the volatilized contaminants, it is estimated **{# of wells}** SVE wells will be installed in the vadose zone at a depth of approximately \_\_\_\_ below ground surface. The air containing VOCs extracted from the SVE wells will be treated **{insert technology, e.g. by passing the air stream through activated carbon which removes the VOCs from the air}** prior to it being discharged to the atmosphere.

**Vapor Mitigation:**

Any on-site buildings **{add the following for off-site buildings: and off-site buildings impacted by the site}** will be required to have a sub-slab depressurization system, or other acceptable measures, to mitigate the migration of vapors into the building from **{soil and/or groundwater}**.



OFFICIAL CHECK

1-7058/2260

10590272



DATE:

AMOUNT

11/19/2018

NYS DEPARTMENT OF ENVIRONMENTAL CONSERVATION

\*\*\*\*\*\$50,000.00

\*\*\*\*\*\$50,000 DOLLARS AND 00 CENTS

067 1780 0010590272

11 Spencer St.  
C 224204

*Scyll* AUTHORIZED SIGNATURE MP

REQUIRED OVER \$5000  
*Anthony...* COUNTER SIGNATURE MP

⑈ 10590272⑈ ⑆ 226070584⑆ 2360302000⑈