

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION
STATE SUPERFUND PROGRAM/BROWNFIELD CLEANUP PROGRAM
ECL §27-1301 *et seq.* and ECL §27-1401 *et seq.*

In the Matter of a Remedial Program for

**ORDER ON CONSENT AND
ADMINISTRATIVE SETTLEMENT**
Index No. CO 2-20210506-81

DEC Site Name: 432 Rodney Street – Off-Site

DEC Site No.: C224216A

Herein referred to as "Site"

Associated with 432 Rodney Street

BCP Site No. C224216

Located at: 432 Rodney, 123 and 129 Hope, and 441 Keap Street
Brooklyn, NY 11211

by: Diamond Sugar Co., Inc. and Quaker Sugar Co., Inc.

Hereinafter referred to as "Respondents"

1. A. The New York State Department of Environmental Conservation ("Department") is responsible for inactive hazardous waste disposal site remedial programs pursuant to Article 27, Title 13 of the Environmental Conservation Law ("ECL") and Part 375 of Title 6 of the Official Compilation of Codes, Rules and Regulations ("6 NYCRR") and may issue orders consistent with the authority granted to the Commissioner by such statute.

B. The Department is responsible for brownfield cleanup remedial programs pursuant to Article 27, Title 14 of the ECL and Part 375 of Title 6 NYCRR.

C. 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.

D. This Order is issued pursuant to the Department's authority under, *inter alia*, ECL Article 27, Title 13, ECL Article 27, Title 14, and ECL 3-0301, and resolves Respondent's liability to the State as provided at 6 NYCRR 375-1.5(b)(5).

2. The Site is not currently listed in the Registry of Inactive Hazardous Waste Disposal Sites in New York State.

3. The Site is the off-site contamination related to a site in the Brownfield Cleanup Program (BCP) known as the 432 Rodney Street Site, DER site number: C224216. The Department-approved Scope of Work for the Site is attached as Exhibit "D."

4. In accordance with ECL §27-1411(5), the Department is required to "bring an enforcement action against any parties known or suspected to be responsible for contamination at or emanating from" a site in the BCP that has been determined to present a significant threat to public health or the environment. The Department has determined that the Site presents a significant threat.

5. Respondent consents to the issuance of this Order without (i) an admission or finding of liability, fault, wrongdoing, or violation of any law, regulation, permit, order, requirement, or standard of care of any kind whatsoever; (ii) an acknowledgment that there has been a release or threatened release of hazardous waste at or from the Site; and/or (iii) an acknowledgment that a release or threatened release of hazardous waste at or from the Site constitutes a significant threat to the public health or environment.

6. Solely with regard to the matters set forth below, Respondent hereby waives any right to a hearing as may be provided by law, consents to the issuance and entry of this Order, and agrees to be bound by its terms. Respondent consents to and agrees not to contest the authority or jurisdiction of the Department to issue or enforce this Order, and agrees not to contest the validity of this Order or its terms or the validity of data submitted to the Department by Respondent pursuant to this Order.

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

I. Real Property

The Site subject to this Order has been assigned number and is further identified as the off-site areas associated with identification No. C224216 and Tax Map ID No: 2374-1, 2374-27, 2374-28, 2374-31 (Exhibit "A" is a map of the Site showing its general location).

II. Initial Work Plan

The Remedial Work Plan shall be submitted to the Department within forty-five (45) days after the effective date of this Order.

III. Payment of State Costs

Invoices shall be sent to one Respondent at one of the following address(es) if more than one address is listed:

Diamond Sugar Co., Inc.
100 Andrews Road
Hicksville, NY 11801

In addition to the requirement to pay future state costs as set forth in Appendix "A", within forty-five (45) Days after the effective date of this Consent Order, Respondent shall pay to the Department the sum set forth on Exhibit "C", which shall represent reimbursement for past State Costs incurred prior to the effective date of this Consent Order. Respondent acknowledges that all past State Costs are not itemized on the cost summary and that additional charges may be billed at a later date for State Costs incurred prior to the effective date of this Consent Order.

IV. Communications

A. All written communications required by this Consent Order shall be transmitted by United States Postal Service, by private courier service, by hand delivery, or by electronic mail.

1. Communication from Respondent shall be sent to:

Richard P. Mustico
New York State Department of Environmental Conservation
Division of Environmental Remediation
625 Broadway, 12th Floor
Albany, NY 12233-7016
richard.mustico1@dec.ny.gov

Kieran McCarthy (correspondence only)
New York State Department of Environmental Conservation
Office of General Counsel – Bureau of Remediation
625 Broadway, 14th Floor
Albany, NY 12233-1500
kieran.mccarthy@dec.ny.gov

Christine Vooris, PE (electronic copy only)
New York State Department of Health
Bureau of Environmental Exposure Investigation
Empire State Plaza
Corning Tower Room 1787
Albany, N.Y. 12237
christine.vooris@health.ny.gov

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

Diamond Sugar Co., Inc.
100 Andrews Road
Hicksville, NY 11801

With a Copy to:

Martin B. Wasser, Esq.
Phillips Nizer LLP
485 Lexington Avenue, 14th Floor
New York NY 10017-2643
Mwasser@PhillipsNizer.com

B. The Department and Respondent reserve the right to designate additional or different addressees for communication on written notice to the other. Additionally, the Department reserves the right to request that the Respondent provide more than one paper copy of any work plan or report.

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

V. Miscellaneous

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


B. In the event of a conflict between the main body of this Order (including any and all attachments thereto and amendments thereof) and the terms of Appendix A, the main body of this Order shall control.

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

DATED: September 15, 2021

BASIL SEGGOS
COMMISSIONER
NEW YORK STATE DEPARTMENT OF
ENVIRONMENTAL CONSERVATION

By:



Michael J. Ryan, 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.

Diamond Sugar Co., Inc.

By: [Signature]

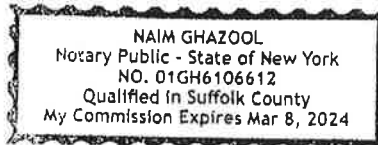
Title: President

Date: 07/27/2021

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

On the 27 day of July, in the year 2021, before me, the undersigned, personally appeared Adam Archskey, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

[Signature]
Signature and Office of individual
taking acknowledgment



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.

Quaker Sugar Co., Inc.

By: [Signature]

Title: President

Date: 07/27/2021

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

On the 27 day of July, in the year 2021, before me, the undersigned, personally appeared Adam Wechsler, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

[Signature]

Signature and Office of individual
taking acknowledgment

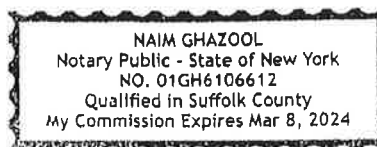


EXHIBIT "A"

Map



EXHIBIT "B"

RECORDS SEARCH REPORT

NO SUBMISSION REQUIRED

EXHIBIT "C"

Cost Summary

EXHIBIT I

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

COST SUMMARY

SITE NAME: 432 Rodney Street Off-Site
SITE NO.: C224216A
TIME FRAME: DEC Life - 09/02/20

| COST CATEGORY | AMOUNTS | EXHIBIT NO. |
|--|-------------------|-------------|
| DIRECT PERSONAL SERVICES | \$1,996.48 | |
| FRINGE | \$1,260.77 | |
| INDIRECT | <u>\$1,096.39</u> | |
| <i>PERSONAL SERVICES SUBTOTAL</i> | <i>\$4,353.64</i> | II |
| CONTRACTUAL | \$0.00 | |
| TRAVEL | \$0.00 | |
| OTHER NPS | \$0.00 | |
| <i>NON-PERSONAL SERVICES SUBTOTAL</i> | <i>\$0.00</i> | |
| DEC TOTAL | \$4,353.64 | |
| DOH TOTAL (NOT AVAILABLE) | N/A | |
| MINUS PREVIOUSLY REIMBURSED AMOUNT (IF APPLICABLE) | <u>N/A</u> | |
| <i>DEC & DOH TOTAL</i> | <i>\$4,353.64</i> | |
| COST CAP (IF APPLICABLE) | <u>N/A</u> | |
| GRAND TOTAL | \$4,353.64 | |

WELCOME TO LATs[®] 11.10.386 - LEAVE & ACCRUAL TRACKING SYSTEM



Exhibit II

Cost Query - Ad Hoc

Criteria: Timecard Begin Date 1/1/2018 And Timecard End Date 9/2/2020 And Task Code 72452
 Leave Charges: Included
 Cost Indicator: Direct
 Rate Type: Non-Federal
 Download Excel Report
 Print

Jump To Employee: All

| Pay Period | Pay Period Dates | Check Date | Cost Center | Variable | Budget Year | Employee | Title Description | Work Location Code | Work Location Description | Buildable Hourly Rate | State Prorata | Scale Factor | Hours Cost |
|---|-------------------------|------------|-------------|----------|-------------|-------------------|------------------------------------|--------------------|-------------------------------|-----------------------|---------------|--------------|------------|
| Task: 72452 - C2421214-432 RDHNEY STREET - OFF-SITE | | | | | | | | | | | | | |
| 2014/5 | 05/27/2018 - 06/13/2018 | 06/27/2018 | 430221 | LB | 2016 | Mellor, Kerry Ann | Engineering Geologist 2 | 615122 | Central Office - 625 Broadway | 58.43 | 157.98 | 152.20 | 262.94 |
| 2014/8 | 07/12/2018 - 07/28/2018 | 08/02/2018 | 430221 | LB | 2018 | Mellor, Kerry Ann | Engineering Geologist 2 | 615122 | Central Office - 625 Broadway | 57.47 | 36.72 | 35.45 | 57.47 |
| 2018/9 | 07/28/2018 - 08/06/2018 | 08/22/2018 | 430221 | LB | 2018 | Mellor, Kerry Ann | Engineering Geologist 2 | 615122 | Brooklyn | 58.82 | 150.32 | 145.14 | 235.28 |
| 2019/11 | 09/04/2019 - 11/27/2019 | 09/19/2019 | 430221 | LB | 2019 | Mellor, Kerry Ann | Professional Geologist 1 | 615122 | Brooklyn | 58.95 | 9.57 | 8.32 | 14.09 |
| 2019/17 | 11/27/2019 - 05/27/2020 | 12/11/2019 | 430221 | LB | 2019 | Mellor, Kerry Ann | Professional Geologist 1 | 615122 | Brooklyn | 61.97 | 78.64 | 68.38 | 123.14 |
| 2020/4 | 05/27/2020 - 06/10/2020 | 06/10/2020 | 790142 | KD | 2019 | Mellor, Kerry Ann | Staff Attorney | 615122 | Brooklyn | 54.87 | 136.93 | 111.43 | 219.48 |
| 2020/5 | 06/24/2020 - 06/24/2020 | 06/24/2020 | 790142 | KD | 2019 | Mellor, Kerry Ann | Staff Attorney | 615122 | Brooklyn | 54.87 | 85.59 | 69.84 | 137.18 |
| 2020/6 | 06/24/2020 - 07/08/2020 | 07/08/2020 | 790142 | KD | 2017 | Mellor, Kerry Ann | Staff Attorney | 615122 | Brooklyn | 54.87 | 17.12 | 13.93 | 27.44 |
| 2020/7 | 07/08/2020 - 07/22/2020 | 07/22/2020 | 790142 | KD | 2017 | Mellor, Kerry Ann | Staff Attorney | 615122 | Brooklyn | 54.87 | 17.12 | 13.93 | 27.44 |
| 2020/8 | 07/22/2020 - 08/05/2020 | 08/05/2020 | 790142 | KD | 2017 | Mellor, Kerry Ann | Staff Attorney | 615122 | Central Office - 625 Broadway | 54.87 | 102.70 | 83.56 | 164.61 |
| 2020/9 | 08/05/2020 - 08/19/2020 | 08/19/2020 | 790142 | KD | 2017 | Mellor, Kerry Ann | Staff Attorney | 615122 | Brooklyn | 54.87 | 17.12 | 13.93 | 27.44 |
| 2019/12 | 01/22/2020 - 02/19/2020 | 02/19/2020 | 430221 | LB | 2019 | Mellor, Kerry Ann | Assistant Engineer (ENVIRONMENTAL) | 615122 | Central Office - 625 Broadway | 43.67 | 41.83 | 36.36 | 65.51 |
| 2019/25 | 03/05/2020 - 03/19/2020 | 04/01/2020 | 430221 | LB | 2020 | Mellor, Kerry Ann | Assistant Engineer (ENVIRONMENTAL) | 615122 | Central Office - 625 Broadway | 43.67 | 83.66 | 72.75 | 131.01 |
| 2019/26 | 03/19/2020 - 04/15/2020 | 04/15/2020 | 430221 | LB | 2020 | Mellor, Kerry Ann | Assistant Engineer (ENVIRONMENTAL) | 615122 | Central Office - 625 Broadway | 43.67 | 83.66 | 72.75 | 131.01 |
| 2020/1 | 04/15/2020 - 04/29/2020 | 04/29/2020 | 430221 | LB | 2020 | Mellor, Kerry Ann | Assistant Engineer (ENVIRONMENTAL) | 615122 | Central Office - 625 Broadway | 43.71 | 27.27 | 22.19 | 43.71 |
| 2020/2 | 04/29/2020 - 05/13/2020 | 05/13/2020 | 430221 | LB | 2020 | Mellor, Kerry Ann | Assistant Engineer (ENVIRONMENTAL) | 615122 | Central Office - 625 Broadway | 43.71 | 27.27 | 22.19 | 43.71 |

| | | | | | | | | | | | | | | |
|-------------------------------|-------------------------|------------|-------|----|------|-----------------|------------------------------------|--------|-------------------------------|-------|----------|----------|-------|----------|
| 2020/3 | 04/20/2020 - 04/13/2020 | 05/27/2020 | 43021 | L6 | 2020 | Musker, Richard | ASSISTANT ENGINEER (ENVIRONMENTAL) | 615127 | Central Office - 625 Broadway | 43.71 | 37.27 | 22.19 | 1.08 | 43.71 |
| 2020/4 | 05/14/2020 - 05/27/2020 | 06/02/2020 | 43021 | L6 | 2020 | Musker, Richard | ASSISTANT ENGINEER (ENVIRONMENTAL) | 615127 | Central Office - 625 Broadway | 43.71 | 27.27 | 22.19 | 1.00 | 43.71 |
| 2020/5 | 05/29/2020 - 06/10/2020 | 06/24/2020 | 43021 | L6 | 2020 | Musker, Richard | ASSISTANT ENGINEER (ENVIRONMENTAL) | 615127 | Central Office - 625 Broadway | 43.71 | 27.27 | 22.19 | 1.00 | 43.71 |
| 2020/7 | 06/23/2020 - 07/08/2020 | 07/22/2020 | 43021 | L6 | 2020 | Musker, Richard | ASSISTANT ENGINEER (ENVIRONMENTAL) | 615127 | Central Office - 625 Broadway | 43.71 | 54.54 | 44.38 | 2.00 | 87.43 |
| 2020/9 | 07/13/2020 - 08/03/2020 | 08/19/2020 | 43021 | L6 | 2020 | Musker, Richard | ASSISTANT ENGINEER (ENVIRONMENTAL) | 615127 | Central Office - 625 Broadway | 43.71 | 40.91 | 33.29 | 1.50 | 65.57 |
| Total 2020 Sub Totals: | | | | | | | | | | | 1,350.77 | 1,096.39 | 38.75 | 1,296.48 |
| Report Total: | | | | | | | | | | | 1,260.77 | 1,096.39 | 38.75 | 1,196.48 |

Close

EXHIBIT "D"

Department Approved Scope of Work

The field investigation will include the listed tasks to supplement the data and findings of previous investigations.

Geophysical Survey

- The survey will clear sample locations to avoid subsurface utilities.

Soil Borings and Sampling

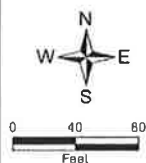
- Advancement of seven soil borings to approximately 12 feet below ground surface (bgs) or to the clay layer
- Collection of at least three soil samples from each soil boring location (including one sample from surface layer, one sample from top of native layer and one sample from the impacted material, if observed, plus four quality assurance/quality control [QA/QC] samples), total of 25 samples.

Monitoring Well Installation and Sampling

- Installation and development of five permanent monitoring wells, with one co-located with a soil boring location.
- Collection of one groundwater sample from each monitoring well, and two from the nested well (six groundwater samples plus three QA/QC samples), total of nine samples.

Soil Vapor Probe Installation and Sampling

- Installation of five sub-slab soil vapor points within specified areas.
- Collection of one soil vapor sample at each location, plus one QA/QC sample and two ambient air sample, total of eight samples.



Site Map

432 Rodney St. Site

432 Rodney, 123 and 129 Hope, and 441 Keap Street
City of Brooklyn, Kings County
Site No. C224216



Department of
Environmental
Conservation

APPENDIX "A"

**STANDARD CLAUSES FOR NEW YORK STATE
STATE SUPERFUND ADMINISTRATIVE ORDERS FOR
BROWNFIELD SITE OFFSITE CLEANUP**

APPENDIX A

STANDARD CLAUSES FOR NEW YORK STATE STATE SUPERFUND ADMINISTRATIVE ORDERS FOR BROWNFIELD SITE OFFSITE CLEANUP

The parties to the State Superfund Order (hereinafter "Order") agree to be bound by the following clauses which are hereby made a part of the Order. The word "Respondent" herein refers to any party to the Order, other than the New York State Department of Environmental Conservation (hereinafter "Department").

I. Citizen Participation Plan

Within twenty (20) days after the effective date of this Order, Respondent shall submit for review and approval a written citizen participation plan prepared in accordance with the requirements of Environmental Conservation Law (ECL) § 27-1417 and 6 NYCRR §§ 375-1.10 and 375-3.10. Upon approval, the Citizen Participation Plan shall be deemed to be incorporated into and made a part of this Order.

II. Initial Submittal

Within thirty (30) days after the effective date of this Order, Respondent shall submit to the Department a Records Search Report prepared in accordance with Exhibit "B" attached to the Order. The Records Search Report can be limited if the Department notifies Respondent that prior submissions satisfy specific items required for the Records Search Report.

III. Development, Performance, and Reporting of Work Plans

A. Work Plan Requirements

The work plans ("Work Plan" or "Work Plans") under this Order shall be prepared and implemented in accordance with the requirements of ECL Article 27, Titles 13 and 14 and 6 NYCRR §§ 375-1.6(a), 375-3.6, and 375-6. Upon approval of a Work Plan by the Department, Respondent shall implement such Work Plan in accordance with the schedule contained therein. Nothing in this Subparagraph

shall mandate that any particular Work Plan be submitted. The Work Plans shall be captioned as follows:

1. "Remedial Investigation Work Plan" if the Work Plan provides for the investigation of the nature and extent of contamination within the boundaries of the Site.

2. "Remedial Work Plan" if the Work Plan provides for the development and implementation of a Remedial Program for contamination within the boundaries of the Site.

3. "IRM Work Plan" if the Work Plan provides for an interim remedial measure.

4. "Site Management Plan" if the Work Plan provides for the identification and implementation of institutional and/or engineering controls as well as any necessary monitoring and/or operation and maintenance of the remedy.

5. "Supplemental" if additional work plans other than those set forth in III.A.1-5 are required to be prepared and implemented.

B. Submission/Implementation of Work Plans

1. Respondent may opt to propose one or more additional or supplemental Work Plans (including one or more IRM Work Plans) at any time, which the Department shall review for appropriateness and technical sufficiency.

2. The first proposed Work Plan to be submitted under this Order shall be submitted no later than thirty (30) days after the effective date of this Order. Thereafter, the Respondent shall submit such other and additional work plans as determined in a schedule to be approved by the Department.

3. Any proposed Work Plan shall be submitted for the Department's review and approval and shall include, at a minimum, a chronological description of the anticipated activities to be conducted in accordance with current guidance, a schedule for performance of those activities, and sufficient detail to allow the Department to evaluate that Work Plan. The Department shall use best efforts in accordance with 6 NYCRR § 375-3.6(b) to approve, modify, or reject a proposed Work Plan within forty-five (45) days from its receipt or within fifteen (15) days from the close of the comment period, if applicable, whichever is later.

i. Upon the Department's written approval of a Work Plan, such Department-approved Work Plan shall be deemed to be incorporated into and made a part of this Order and shall be implemented in accordance with the schedule contained therein.

ii. If the Department requires modification of a Work Plan, the reason for such modification shall be provided in writing and the provisions of 6 NYCRR § 375-1.6(d)(3) shall apply.

iii. If the Department disapproves a Work Plan, the reason for such disapproval shall be provided in writing and the provisions of 6 NYCRR § 375-1.6(d)(4) shall apply.

4. A Site Management Plan, if necessary, shall be submitted in accordance with the schedule set forth in the IRM Work Plan or Remedial Work Plan.

5. During all field activities conducted under a Department-approved Work Plan, Respondent shall have on-Site a representative who is qualified to supervise the activities undertaken in accordance with the provisions of 6 NYCRR 375-1.6(a)(3).

6. A Professional Engineer licensed and registered in New York State must stamp and sign all Work Plans other than SC or RI/FS Work Plans

C. Submission of Final Reports

1. In accordance with the schedule contained in an approved Work Plan,

Respondent shall submit a Final Report for an Investigation Work Plan prepared in accordance with ECL § 27-1411(1) and 6 NYCRR § 375-1.6. If such Final Report concludes that no remediation is necessary, and the Site does not meet the requirements for Track 1, Respondent shall submit an Alternatives Analysis prepared in accordance with ECL § 27-1413 and 6 NYCRR § 375-3.8(f) that supports such determination.

2. In accordance with the schedule contained in an approved Work Plan, Respondent shall submit a Final Engineering Report certifying that remediation of the Site has been performed in accordance with the requirements of ECL §§ 27-1419(1) and (2) and 6 NYCRR § 375-1.6. The Department shall review such Report, the submittals made pursuant to this Order, and any other relevant information regarding the Site and make a determination as to whether the goals of the remedial program have been or will be achieved in accordance with established timeframes; if so, a written Certificate of Completion will be issued in accordance with ECL § 27-1419, 6 NYCRR §§ 375-1.9 and 375-3.9.

3. Within sixty (60) days of the Department's approval of a Final Report, Respondent shall submit such additional Work Plans as it proposes to implement. In addition, Respondent shall include with every report submitted to the Department a schedule for the submission of any subsequent work plan required to meet the requirements of ECL Article 27 Titles 13 and 14. Failure to submit any additional Work Plans within such period shall, unless other Work Plans are under review by the Department or being implemented by Respondent, result in the termination of this Order pursuant to Paragraph XIII.

D. Review of Submittals other than Work Plans

1. The Department shall timely notify Respondent in writing of its approval or disapproval of each submittal other than a Work Plan in accordance with 6 NYCRR § 375-1.6. All Department-approved submittals shall be incorporated into and become an enforceable part of this Order.

2. If the Department disapproves a submittal covered by this Subparagraph, it shall specify the reason for its disapproval and may request Respondent to modify or expand the submittal. Within fifteen (15) days after receiving written notice that Respondent's submittal has been disapproved, Respondent shall elect in writing to either (i) modify or expand it within thirty (30) days of receipt of the written notice of disapproval; (ii) complete any other Department-approved Work Plan(s); (iii) invoke dispute resolution pursuant to Paragraph XIV; or (iv) terminate this Order pursuant to Paragraph XIII. If Respondent submits a revised submittal and it is disapproved, the Department and Respondent may pursue whatever remedies may be available under this Order or under law.

E. Department's Determination of Need for Remediation

The Department shall determine upon its approval of each Final Report dealing with the investigation of the Site whether remediation, or additional remediation as the case may be, is needed for protection of public health and the environment.

1. If the Department makes a preliminary determination that remediation, or additional remediation, is not needed for protection of public health and the environment, the Department shall notify the public of such determination and seek public comment in accordance with ECL § 27-1417(3)(f). The Department shall provide timely notification to the Respondent of its final determination following the close of the public comment period.

2. If the Department determines that additional remediation is not needed and such determination is based upon use restrictions, Respondent shall cause to be recorded an Environmental Easement in accordance with 6 NYCRR § 375-1.8(h).

3. If the Department determines that remediation, or additional remediation, is needed, Respondent may elect to submit for review and approval a proposed Remedial Work Plan (or modify an existing Work Plan for the Site) for a remedy selected upon due consideration of the factors set forth in ECL § 27-1415(3) and 6 NYCRR § 375-1.8(f). A proposed Remedial Work

Plan addressing the Site's remediation will be noticed for public comment in accordance with ECL § 27-1417(3)(f) and the Citizen Participation Plan developed pursuant to this Order. If the Department determines following the close of the public comment period that modifications to the proposed Remedial Work Plan are needed, Respondent agrees to negotiate appropriate modifications to such Work Plan. If Respondent elects not to develop a Work Plan under this Subparagraph then this Order shall terminate in accordance with Paragraph XIII. If the Respondent elects to develop a Work Plan, then it will be reviewed in accordance with Paragraph III.D above.

A. Failure to make an election or failure to comply with the election is a violation of this Order

F. Institutional/Engineering Control Certification

In the event that the remedy for the Site, if any, or any Work Plan for the Site, requires institutional or engineering controls, Respondent shall submit a written certification in accordance with 6 NYCRR §§ 375-1.8(h)(3) and 375-3.8(h)(2).

IV. Penalties

A. 1. Respondent's failure to comply with any term of this Order constitutes a violation of this Order, the ECL, and 6 NYCRR 375-2.11(a)(4). Nothing herein abridges Respondent's right to contest any allegation that it has failed to comply with this Order.

2. Payment of any penalties shall not in any way alter Respondent's obligations under this Order.

B. 1. Respondent shall not suffer any penalty except as provided in Paragraph IV, or be subject to any proceeding or action if it cannot comply with any requirement of this Order as a result of a Force Majeure Event as described at 6 NYCRR § 375-1.5(b)(4) provided Respondent complies with the requirements set forth therein.

V. Entry upon Site

A. Respondent hereby agrees to provide access to the Site and to all relevant information

regarding activities at the Site in accordance with the provisions of ECL § 27-1431. Respondent agrees to provide the Department upon request with proof of access if it is not the owner of the site.

B. The Department shall have the right to periodically inspect the Site to ensure that the use of the property complies with the terms and conditions of this Order. The Department will generally conduct such inspections during business hours, but retains the right to inspect at any time.

C. Failure to provide access as provided for under this Paragraph may result in termination of this Order pursuant to Paragraph XIII.

VI. Payment of State Costs

A. Within forty-five (45) days after receipt of an itemized invoice from the Department, Respondent shall pay to the Department a sum of money which shall represent reimbursement for State Costs as provided by 6 NYCRR § 375-1.5 (b)(3)(i).

B. Costs shall be documented as provided by 6 NYCRR § 375-1.5(b)(3)(ii). 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 "Commissioner of NYSDEC" 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. Each party shall provide written notification to the other within ninety (90) days of any change in the foregoing addresses.

E. If Respondent objects to any invoiced costs under this Order, the provisions of 6 NYCRR §§ 375-1.5 (b)(3)(v) and (vi) shall apply.

Objections shall be sent to the Department as provided under subparagraph VI.C above.

F. In the event of non-payment of any invoice within the 45 days provided herein, the Department may seek enforcement of this provision pursuant to Paragraph IV or the Department may commence an enforcement action for non-compliance with ECL § 27-1423 and ECL § 71-4003.

VII. Liability Limitation

Subsequent to the issuance of a Certificate of Completion pursuant to this Order, Respondent shall be entitled to the Liability Limitation set forth at ECL § 27-1421, subject to the terms and conditions stated therein and to the provisions of 6 NYCRR §§ 375-1.9 and 375-3.9.

VIII. Reservation of Rights

A. Except as provided at 6 NYCRR 375-1.9 and 375-2.9, nothing contained in this Order shall be construed as barring, diminishing, adjudicating, or in any way affecting any of the Department's rights or authorities, including, but not limited to, the right to require performance of further investigations and/or response action(s), to recover natural resource damages, and/or to exercise any summary abatement powers with respect to any person, including Respondent.

B. Except as otherwise provided in this Order, Respondent specifically reserves all rights and defenses under applicable law respecting any Departmental assertion of remedial liability and/or natural resource damages against Respondent, and further reserves all rights respecting the enforcement of this Order, including the rights to notice, to be heard, to appeal, and to any other due process. The existence of this Order or Respondent's compliance with it shall not be construed as an admission of liability, fault, wrongdoing, or breach of standard of care by Respondent, and shall not give rise to any presumption of law or finding of fact, or create any rights, or grant any cause of action, which shall inure to the benefit of any third party. Further, Respondent reserves such rights as it may have to seek and obtain contribution, indemnification, and/or any other form of recovery from its insurers and from other potentially responsible parties or their insurers for past or

future response and/or cleanup costs or such other costs or damages arising from the contamination at the Site as may be provided by law, including but not limited to rights of contribution under section 113(f)(3)(B) of CERCLA, 42 U.S.C. § 9613(f)(3)(B).

IX. Indemnification

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

X. Change of Use

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 Site, in accordance with the provisions of 6 NYCRR § 375-1.11(d). In the event the Department determines that the proposed change of use is prohibited, the Department shall notify Respondent of such determination within forty-five (45) days of receipt of such notice.

XI. Environmental Easement

A. Within thirty (30) days after the Department's approval of a Remedial Work Plan which relies upon one or more institutional and/or engineering controls, or within sixty (60) days after the Department's determination pursuant to Subparagraph III.E.2 that additional remediation is not needed based upon use restrictions, Respondent shall submit to the Department for approval an Environmental Easement to run with the land in favor of the State which complies with the requirements of ECL Article 71, Title 36 and 6 NYCRR § 375-1.8(h)(2). Respondent shall cause such instrument to be recorded with the recording officer for the county in which the Site is located within thirty (30) days after the Department's approval of such instrument. Respondent shall provide the Department with a copy of such instrument certified by the recording officer 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), which shall be deemed to be incorporated into this Order.

B. Respondent or the owner of the Site may petition the Department to modify or extinguish the Environmental Easement filed pursuant to this Order at such time as it can certify that the Site is protective of public health and the environment without reliance upon the restrictions set forth in such instrument. Such certification shall be made by a Professional Engineer or Qualified Environmental Professional as defined at 6 NYCRR § 375-1.2(ak) approved by the Department. The Department will not unreasonably withhold its consent.

C. If Respondent does not cause such environmental easement to be recorded in accordance with 6 NYCRR 375-1.8(h)(2), Respondent will not be entitled to the benefits conferred by 6 NYCRR 375-1.9 and 375-2.9 and the Department may file an Environmental Notice on the site.

XII. Progress Reports

Respondent shall submit a written progress report of its actions under this Order to the parties identified in Subparagraph IV.A.1 of the Order by the 10th day of each month commencing with the month subsequent to the approval of the first Work Plan and ending with the Termination date as set forth in Paragraph XIII, unless a different frequency is set forth in a Work Plan. Such reports shall, at a minimum, include: all actions relative to the Site during the previous reporting period and those anticipated for the next reporting period; all approved activity modifications (changes of work scope and/or schedule); all results of sampling and tests and all other data received or generated by or on behalf of Respondent in connection with this Site, whether under this Order or otherwise, in the previous reporting period, including quality assurance/quality control information; information regarding percentage of completion; unresolved delays encountered or anticipated that may affect the future schedule and efforts made to mitigate such delays; and information regarding activities undertaken in support of the Citizen Participation Plan during the previous reporting period and those anticipated for the next reporting period.

XIII. Termination of Order

A. This Order will terminate upon the earlier of the following events:

1. Respondent's election in accordance with Paragraph III.E.2 not to implement the remedial activities required pursuant to the Decision Document. In the event of termination in accordance with this Subparagraph, this Order shall terminate effective the 5th Day after the Department's receipt of the written notification, provided, however, that if there are one or more Work Plan(s) for which a final report has not been approved at the time of Respondent's notification of its election not to implement the remedial activities in accordance with the Decision Document, Respondent shall complete the activities required by such previously approved Work Plan(s) consistent with the schedules contained therein. Thereafter, this Order shall terminate effective the 5th Day after the Department's approval of the final report for all previously approved Work Plans; or

2. The Department's written determination that Respondent has completed all phases of the Remedial Program (including Site Management), in which event the termination shall be effective on the 5th Day after the date of the Department's letter stating that all phases of the remedial program have been completed.

B. Notwithstanding the foregoing, the provisions contained in Paragraphs VI and IX shall survive the termination of this Order and any violation of such surviving Paragraphs shall be a violation of this Order, the ECL, and of 6 NYCRR §§ 375-2.11(a)(4), subjecting Respondent to penalties as provided under 3.5(b), (c), and (d) by providing written notification to the parties listed in Paragraph IV so long as such obligations accrued on or prior to the Termination Date of the Order.

C. If the Order is terminated pursuant to Subparagraph XIII.A.1, neither this Order nor its termination shall affect any liability of Respondent for remediation of the Site and/or for payment of State Costs, including implementation of removal and remedial actions, interest, enforcement, and any and all other response costs as defined under CERCLA, nor shall it affect any defenses to such liability that

may be asserted by Respondent. Respondent shall also ensure that it does not leave the Site in a condition, from the perspective of human health and environmental protection, worse than that which existed before any activities under this Order were commenced. Further, the Department's efforts in obtaining and overseeing compliance with this Order shall constitute reasonable efforts under law to obtain a voluntary commitment from Respondent for any further activities to be undertaken as part of a Remedial Program for the Site.

XIV. Dispute Resolution

A. In the event disputes arise under this Order, Respondent may, within fifteen (15) days after Respondent knew or should have known of the facts which are the basis of the dispute, initiate dispute resolution in accordance with the provisions of 6 NYCRR § 375-1.5(b)(2).

B. All cost incurred by the Department associated with dispute resolution are State costs subject to reimbursement pursuant to Paragraph VI of Appendix A of this Order, if applicable.

C. Notwithstanding any other rights otherwise authorized in law or equity, any disputes pursuant to this Order shall be limited to Departmental decisions on remedial activities. In no event shall such dispute authorize a challenge to the applicable statute or regulation.

XV. Miscellaneous

A. Respondent agrees to comply with and be bound by the provisions of 6 NYCRR Subparts 375-1 and 375-2; the provisions of such Subparts that are referenced herein are referenced for clarity and convenience only and the failure of this Order to specifically reference any particular regulatory provision is not intended to imply that such provision is not applicable to activities performed under this Order.

B. The Department may exempt Respondent from the requirement to obtain any state or local permit or other authorization for any activity conducted pursuant to this Order in accordance with 6 NYCRR 375-1.12(b), (c), and (d).

C. 1. Respondent shall use best efforts to obtain all Site access, permits, easements, approvals, institutional controls, and/or authorizations necessary to perform Respondent's obligations under this Order, including all Department-approved Work Plans and the schedules contained therein. If, despite Respondent's best efforts, any access, permits, easements, approvals, institutional controls, or authorizations cannot be obtained, Respondent shall promptly notify the Department and include a summary of the steps taken. The Department may, as it deems appropriate and within its authority, assist Respondent in obtaining same.

2. If an interest in property is needed to implement an institutional control required by a Work Plan and such interest cannot be obtained, the Department may require Respondent to modify the Work Plan pursuant to 6 NYCRR 375-1.6(d)(3) to reflect changes necessitated by Respondent's inability to obtain such interest.

D. The paragraph headings set forth in this Order are included for convenience of reference only and shall be disregarded in the construction and interpretation of any provisions of this Order.

E. 1. The terms of this Order shall constitute the complete and entire agreement between the Department and Respondent concerning the implementation of the activities required by this Order. No term, condition, understanding, or agreement purporting to modify or vary any term of this Order shall be binding unless made in writing and subscribed by the party to be bound. No informal advice, guidance, suggestion, or comment by the Department shall be construed as relieving Respondent of Respondent's obligation to obtain such formal approvals as may be required by this Order. In the event of a conflict between the terms of this Order and any Work Plan submitted pursuant to this Order, the terms of this Order shall control over the terms of the Work Plan(s). Respondent consents to and agrees not to contest the authority and jurisdiction of the Department to enter into or enforce this Order.

2. i. Except as set forth herein, if Respondent desires that any provision of this

Order be changed, Respondent shall make timely written application to the Commissioner with copies to the parties listed in Subparagraph IV.A.1.

ii. If Respondent seeks to modify an approved Work Plan, a written request shall be made to the Department's project manager, with copies to the parties listed in Subparagraph IV.A.1.

iii. Requests for a change to a time frame set forth in this Order shall be made in writing to the Department's project attorney and project manager; such requests shall not be unreasonably denied and a written response to such requests shall be sent to Respondent promptly.

F. 1. If there are multiple parties signing this Order, the term "Respondent" shall be read in the plural, the obligations of each such party under this Order are joint and several, and the insolvency of or failure by any Respondent to implement any obligations under this Order shall not affect the obligations of the remaining Respondent(s) under this Order.

2. If Respondent is a partnership, the obligations of all general partners (including limited partners who act as general partners) under this Order are joint and several and the insolvency or failure of any general partner to implement any obligations under this Order shall not affect the obligations of the remaining partner(s) under this Order.

3. Notwithstanding the foregoing Subparagraphs XV.F.1 and 2, if multiple parties sign this Order as Respondents but not all of the signing parties elect to implement a Work Plan, all Respondents are jointly and severally liable for each and every obligation under this Order through the completion of activities in such Work Plan that all such parties consented to; thereafter, only those Respondents electing to perform additional work shall be jointly and severally liable under this Order for the obligations and activities under such additional Work Plan(s). The parties electing not to implement the additional Work Plan(s) shall have no obligations under this Order relative to the activities set forth in such Work Plan(s).

G. Respondent shall be entitled to receive contribution protection and/or to seek contribution to the extent authorized by ECL 27-1421(6) and 6 NYCRR 375-1.5(b)(5).

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

I. Unless otherwise expressly provided herein, terms used in this Order which are

defined in ECL Article 27 or in regulations promulgated thereunder shall have the meaning assigned to them under said statute or regulations.

J. Respondent's obligations under this Order represent payment for or reimbursement of response costs, and shall not be deemed to constitute any type of fine or penalty.

K. Respondent and Respondent's successors and assigns shall be bound by this Order. Any change in ownership or corporate status of Respondent shall in no way alter Respondent's responsibilities under this Order.

L. This Order may be executed for the convenience of the parties hereto, individually or in combination, in one or more counterparts, each of which shall be deemed to have the status of an executed original and all of which shall together constitute one and the same.