

# Appendix M

## Agency Approvals



**DEPARTMENT OF  
ENVIRONMENTAL  
PROTECTION**

59-17 Junction Boulevard  
Flushing, New York 11373

**Emily Lloyd**  
Commissioner

Tel. (718) 595-6565  
Fax (718) 595-3525  
[ellovd@dep.nyc.gov](mailto:ellovd@dep.nyc.gov)

**Angela Licata**  
Deputy Commissioner

**Bureau of Environmental  
Planning & Analysis**

Tel. (718) 595-4398  
Fax: (718) 595-4479  
[alicata@dep.nyc.gov](mailto:alicata@dep.nyc.gov)

May 17, 2007

Matthew Carroll  
Fleming-Lee Shue  
158 West 29<sup>th</sup> Street  
NY, NY 10001

**Re: 555 West 34<sup>th</sup> Street**  
**Hazardous Materials "E" Designation**  
**E-137: Block 706, Lot 1**  
**DEP # 07DEPTECH326M**

The New York City Department of Environmental Protection, Bureau of Environmental Planning and Analysis (BEPA) has reviewed the April 2007 Phase II Environmental Site Assessment Report, and the April 2007 Remedial Action Work Plan (RAP) prepared by Fleming-Lee Shue for the above referenced parcel. The site is part of the Hudson Yards District Rezoning.

Presently on the site is a two-story building operated by Verizon. The site owner intends to demolish the existing structure in order to provide access for construction of the 34<sup>th</sup> street station of the No. 7 line subway. Afterward, a building will be constructed over the site.

The investigation revealed that most of the site is urban fill material, 5-17 feet below grade. During soil borings, petroleum odors were present and spill numbers were obtained from NYSDEC. VOCs were detected in sixteen of twenty-four samples, generally from two areas. Most samples also exhibited SVOC and metals contamination. There were VOC exceeds of groundwater for acetone, chloroform, methylene chloride, benzene, toluene, ethylbenzene, xylene, MTBE, naphthalene, 1,2 dichlorobenzene, and 1,2,4 trimethylbenzene. There were also exceedances of SVOCs in groundwater.

The RAP proposes removal of all soil down to bedrock, at the same time all petroleum contamination would be removed. Provisions are made for remediation of soil on the Amtrak portion of the site. The excavation will be a minimum of 40 feet below grade. Groundwater will be treated and discharged into the sewer system.

Based upon the information provided, DEP approves the RAP. A closure report must be submitted on completion of the remediation. A Health and Safety Plan must be submitted to DEP for review and approval prior to a Notice to Proceed.



If you have any questions or comments, please contact John Wuthenow at [Jwuthenow@dep.nyc.gov](mailto:Jwuthenow@dep.nyc.gov).

Sincerely,

A handwritten signature in black ink, appearing to read 'John Wuthenow', written in a cursive style.

John Wuthenow,  
Director, Site Assessment

Cc: J. Wuthenow  
C. Ballah  
File



## LIMITED NOTICE TO PROCEED FOR EXCAVATION ONLY

### DEPARTMENT OF ENVIRONMENTAL PROTECTION

59-17 Junction Boulevard  
Flushing, New York 11373

**Emily Lloyd**  
Commissioner

Tel. (718) 595-6565  
Fax (718) 595-3525  
[elloyd@dep.nyc.gov](mailto:elloyd@dep.nyc.gov)

**Angela Licata**  
Deputy Commissioner

Bureau of Environmental  
Planning & Analysis

Tel. (718) 595-4398  
Fax: (718) 595-4479  
[alicata@dep.nyc.gov](mailto:alicata@dep.nyc.gov)

December 17, 2007

Mr. Christopher Santulli P.E.  
Manhattan Borough Commissioner  
280 Broadway, 3<sup>rd</sup> Floor  
New York, New York 10007

**Re: 555 West 34<sup>th</sup> Street-Hazardous Materials and Noise "E" Designation  
E-137: Block 706, Lot 1, Community District Board 4, Manhattan  
07DEPTECH326M/03DCP031M**

Dear Commissioner Santulli:

The New York City Department of Environmental Protection, Bureau of Environmental Planning and Analysis (DEP) has reviewed the August 2007 revised Remedial Action Plan (RAP) and Construction Health and Safety Plan (CHASP) prepared by Fleming-Lee Shue, Inc. (FLS) on behalf of Meushar 34<sup>th</sup> Street LLC for the above referenced site. The subject site (Block 706, Lot 1) is located at 555 West 34<sup>th</sup> Street on a block bounded by 11<sup>th</sup> Avenue, West 35<sup>th</sup> Street, 10<sup>th</sup> Avenue and West 34<sup>th</sup> Street in Manhattan, Community Board 4. The site is occupied by a two story building. An Amtrak line runs beneath the North West corner of the subject site. As currently proposed, the existing structure will be demolished to allow construction of the No.7 subway extension line with the subsequent development of a mixed-use building over the No.7 subway extension line. Subsurface excavation will be a minimum of 40 feet below grade for the proposed project. An "E" designation for Hazardous Materials and Noise (E-137) was placed on the subject parcels by the New City Department of City Planning as part of the Hudson Yard rezoning plan (03DCP031M).

DEP issued a Notice to Proceed (NTP) to the New York City Department of Buildings for this development on August 27, 2007 (see attached). Subsequently, the applicant has not completed the Hazardous Material Noise "E" requirement and building plans for the construction of the proposed mixed-used high-rise building are not available and have not been submitted to the DEP.

DEP has reviewed the RAP and CHASP for the construction of the No.7 subway extension line and find the plans acceptable. Therefore, DEP has no objection to the issuance of New York City Department of Buildings (DOB) permits to the applicant to commence excavation and foundation work relating to the construction of the No.7 subway extension line on the subject parcel, with the understanding that no other permits (i.e., Certificate of Occupancy) or additional construction activities beyond the foundation work relating to the construction of the No.7 subway extension line until the applicant have submitted the proposed mixed-used development plans to DEP and the Hazardous Material Noise "E" requirements has been satisfied. This letter supersedes the attached August 27, 2006 Notice to Proceed issued by DEP.



[www.nyc.gov/e](http://www.nyc.gov/e)

Future correspondence and submittals should include the following tracking number **07DEPTECH326M**. If you have any questions or comments, please contact Innocent Taziva at (718) 595-3585 for Hazmat or Vafadari Shah at (718) 595-4346 for Noise "E" requirements.

Sincerely,



John Wuthenow  
Director  
Site Assessment

cc: G. Heath; I. Taziva; M. Winter; Shah Vafadari; Yu Wei; M. Carroll-FLS; File



NOTICE TO PROCEED

August 27, 2007

DEPARTMENT OF ENVIRONMENTAL PROTECTION

59-17 Junction Boulevard  
Flushing, New York 11373

Emily Lloyd  
Commissioner

Tel. (718) 595-6565  
Fax (718) 595-3525  
[elloyd@dep.nyc.gov](mailto:elloyd@dep.nyc.gov)

Christopher Santulli, PE  
Manhattan Borough Commissioner  
280 Broadway, 3rd Floor  
NY, NY 10007

Re: 555 West 34<sup>th</sup> Street  
Hazardous Materials "E" Designation  
E-137: Block 706, Lot 1  
DEP # 07DEPTECH326M

Dear Commissioner Santulli:

The New York City Department of Environmental Protection, Bureau of Environmental Planning and Analysis (BEPA) has reviewed the August 2007 Remedial Action Work Plan (RAWP) and Health and Safety Plan (HASP) prepared by Fleming-Lee Shue for the above referenced parcel. The site is part of the Hudson Yards District Rezoning.

Presently on the site is a two-story building operated by Verizon. The site owner intends to demolish the existing structure in order to provide access for construction of the 34<sup>th</sup> street station of the No. 7 line subway. The No. 7 line tunnel will be located within the bedrock zone outside the site boundaries. The subway station will be present on site. Afterward, a building will be constructed over the site.

The investigation revealed that most of the site is urban fill material, 5-17 feet below grade. During soil borings, petroleum odors were present and spill numbers were obtained from NYSDEC. VOCs were detected in sixteen of twenty-four samples, generally from two areas. Most samples also exhibited SVOC and metals contamination. There were VOC exceeds of groundwater for acetone, chloroform, methylene chloride, benzene, toluene, ethylbenzene, xylene, MTBE, naphthalene, 1,2 dichlorobenzene, and 1,2,4 trimethylbenzene. There were also exceedances of SVOCs in groundwater.

The RAP proposes removal of all soil down to bedrock, at the same time all petroleum contamination would be removed. Provisions are made for remediation of soil on the Amtrak portion of the site. The excavation will be a minimum of 40 feet below grade. Groundwater will be treated and discharged into the sewer system.

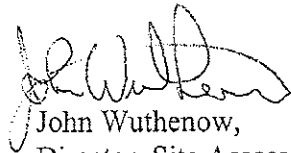


[www.nyc.gov/dep](http://www.nyc.gov/dep)

Based upon the information provided, DEP finds the August 2007 Construction Health and Safety Plan and RAWP acceptable. The NYSDEC also concurs with the RAWP. DEP has concluded that the applicant may proceed with construction, provided that a closure report, certified by a Professional Engineer/Architect, is submitted by the applicant for DEP's review/approval. Therefore, DEP has no objection to the issuance of DOB permits to the applicant for work relating to the proposed development project on the subject parcel, with the understanding that no other permit (i.e. Certificate of Occupancy) will be issued by your agency to the applicant until DEP has reviewed/approved the closure report and has issued a "Notice of Satisfaction" for the proposed project..

If you have any questions or comments, please contact John Wuthenow at [Jwuthenow@dep.nyc.gov](mailto:Jwuthenow@dep.nyc.gov).

Sincerely,



John Wuthenow,  
Director, Site Assessment

Cc: J. Wuthenow  
G. Heath  
C. Ballah  
Mathew Carroll, FLS, 158 West 29<sup>th</sup> Street, 9<sup>th</sup> Floor, NYC, NY 10001  
File

**New York State Department of Environmental Conservation  
Division of Environmental Remediation  
Remedial Bureau B**

625 Broadway, Albany, New York 12233-7016  
Phone: (518) 402-9774 • FAX: (518) 402-9773  
Website: www.dec.state.ny.us



Alexander B. Grannis  
Commissioner

August 28, 2008

Joseph Moinian  
Meushar 34<sup>th</sup> Street, LLC  
c/o the Moinian Group  
530 Fifth Avenue, Suite 1800  
New York, NY 10036

Re: West 34<sup>th</sup> Street Development Project  
Brownfield Cleanup Project #C231049  
New York City, New York County  
East Side Access-Imported Fill

Dear Mr. Moinian:

To maintain the Unrestricted Use status at the West 34<sup>th</sup> Street Development Project, any soil that is brought on-site must be clean as per the New York State Department of Environmental Conservation (NYSDEC) approved Site Soil Management Plan, Section 3.7: Imported Backfill. The NYSDEC has received and reviewed the Fleming Lee Shue *East Side Access-Imported Fill Report*, dated June 6, 2008. This report summarizes and documents the imported fill activities at the West 34<sup>th</sup> Street Development BCP Site.

The report includes documentation of the following four backfill materials that were used at the site:

1. Backfill material generated from the East Side Access (ESA) project: NYSDEC visually inspected the ESA material on March 24, 2008 and approved the ESA material on March 26, 2008.
2. Crushed stone from Aggregate Manufacture and Export in Canada and Tilcon New York Inc.'s Haverstraw Quarry, Haverstraw, New York.
3. Raw sand from Amboy Aggregates of South Amboy, New Jersey.
4. 3/4 inch gravel from Tilcon New York Inc.'s Haverstraw Quarry, Haverstraw, New York.



Based on the NYSDEC March 24, 2008 ESA site inspection and information presented in Fleming Lee Shue's *East Side Access-Imported Fill Report*, NYSDEC accepts all the backfill material at the West 34<sup>th</sup> Street Development Project. This backfill meets the requirements of the approved June 2007 Soil Management Plan and is consistent with a Track 1 BCP Remediation.

If you have any questions, please contact me at (518) 402-9774.

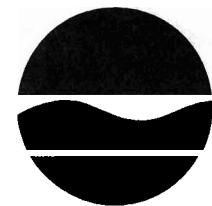
Sincerely,

Handwritten signature of John Durnin in black ink, followed by the initials "P.E." to the right.

John Durnin, P.E.  
Environmental Engineer  
Division of Environmental Remediation  
Bureau B, Section B

ec: J. Quinn, Section Chief  
A. Nagi, NYSDEC Region 2  
B. Callaghan, NYSDOH  
M. Carroll, Fleming Lee Shue, Inc.

**New York State Department of Environmental Conservation**  
**Division of Environmental Remediation**  
Remedial Bureau B  
625 Broadway, Albany, New York 12233-7016  
Phone: (518) 402-9774 • FAX: (518) 402-9773  
Website: [www.dec.state.ny.us](http://www.dec.state.ny.us)



Alexander B. Grannis  
Commissioner

March 26, 2008

Joseph Moinian  
Meushar 341h Street, LLC  
C/O the Moinian Group  
530 Fifth Avenue, Suite 1800  
New York, NY 10036

Re: **Brownfield Cleanup Project**  
West 34<sup>th</sup> Street Development Project  
City of New York, NYSDEC Region #2  
BCP Site # C231049  
**TBM Muck Backfill Approval**

Dear Mr. Moinian,

The New York State Department of Environmental Conservation (NYSDEC) has completed its review of Fleming-Lee Shu's March 25, 2008 submission package requesting the approval of backfill material generated from the East Side Access Project in Queens, NY. Referred to as Tunnel Boring Machine (TBM) Muck, this material is ground bedrock as a result of constructing tunnels near and below the East River. The following have been reviewed:

- March 25, 2008 summary letter from Fleming-Lee Shu to NYSDEC,
- March 18, 2008 Shea Skanska Schiavone submittal including Site Location Map, Project Description and environmental test results of two March 3, 2008 soil sample analyses (full scan VOCs, SVOCs, etc.) of the S3 East Side Access Muck Pile,
- American Analytical Laboratories Environmental test results of four March 10, 2008 soil sample analyses (full scan VOCs, SVOCs, etc.) of the S3II East Side Access Muck Pile,
- York Analytical Laboratories test results of a November 2, 2007 soil sample analysis (full scan VOCs, SVOCs, etc.) of the "TY-Queens St." project or Eastside Access Extension Tunnel.

In addition, the NYSDEC Project Manager, along with representatives from Fleming-Lee Shu and MTA, inspected the TBM Muck stock pile on March 24, 2008.

Based on this site visit and the information provided in the above submission package, this source of backfill material, referred to as TBM Muck, meets the Track 1 requirements for backfill material. Also, the described procedure for managing and accounting for the importation of this backfill material meets the criteria of the approved West 34<sup>th</sup> Street BCP Soil Management Plan including:

- a bill-of-lading tracking system to document the source of the imported backfill,
- required screening, visually and by PID, of all imported backfill as it arrives at the site.

NYSDEC approves the importation of up to 6,000 cubic yards of this "TBM Muck" to the West 34<sup>th</sup> Street BCP Site. If more backfill is required, additional soil sampling analysis must be approved by NYSDEC as per the Soil Management Plan. If you have any questions or comments please contact me at (518) 402-9774.

Sincerely,

A handwritten signature in black ink, appearing to read "John Durnin", followed by the initials "P.E." to the right.

John Durnin, P. E.,  
Remedial Bureau B, Section B,  
Division of Environmental Remediation

ecc: J. Quinn, RBB  
Arnold Fleming, Fleming-Lee Shu  
Matthew Carroll, Fleming-Lee Shu  
J. Sebbo, Fleming-Lee Shu  
B. Callaghan, NYSDOH

D. Walsh, NYSDEC Region #2

NEW YORK STATE DEPARTMENT  
OF ENVIRONMENTAL CONSERVATION

---

In the Matter of a Remedial Program for  
West 34<sup>th</sup> Street Development, 555 West  
34<sup>th</sup> Street, New York, NY, under Article 27,  
Title 14 of the Environmental Conservation Law  
by

BROWNFIELD SITE  
CLEANUP AGREEMENT

Index # A2-0577-1106  
Site #C231049

Meushar 34<sup>th</sup> Street, LLC

Volunteer.

---

**WHEREAS**, the Brownfield Cleanup Program Act was enacted to encourage the voluntary remediation of brownfield sites for reuse and redevelopment so as to advance 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; and

**WHEREAS**, the Department of Environmental Conservation (the "Department") is authorized to administer the Brownfield Cleanup Program contained in Article 27, Title 14 of the Environmental Conservation Law ("ECL"); and

**WHEREAS**, by a certified application dated January 30, 2006, Applicant Meushar 34<sup>th</sup> Street, LLC, c/o The Moinian Group, 530 Fifth Avenue, 18<sup>th</sup> Floor, New York, NY 10036 submitted a request to participate in the Brownfield Cleanup Program relative to property located at 555 West 34<sup>th</sup> Street in the City of New York, County of New York, described as Tax Map Number Section 1, Block 706, Lot 1, and depicted in the attached map noted as Exhibit "D"; and

**WHEREAS**, the current use of the property is industrial, with a historical usage including residential and commercial. The intended use of the property is residential and commercial, including residential units, commercial (office and/or retail) and a hotel and parking which would total approximately 2 million square feet; and

**WHEREAS**, an opportunity for public comment on Applicant's request to participate in the Brownfield Cleanup Program was provided and the Department duly considered all comments received; and

**WHEREAS**, upon consideration of the factors enumerated in ECL 27-1407(8) and (9), the Department made a determination, based upon the information contained in the application and the certifications made by the Applicant, as well as any public comment received, that Applicant is eligible to participate in the Brownfield Cleanup Program as a Volunteer as defined in ECL 27-1405(1)(b).

NOW, THEREFORE, IN CONSIDERATION OF AND IN EXCHANGE FOR THE MUTUAL COVENANTS AND PROMISES, THE PARTIES AGREE TO THE FOLLOWING:

I. Citizen Participation Plan

Within twenty (20) Days after the effective date of this Agreement, Applicant shall submit a written citizen participation plan prepared in accordance with the requirements of ECL 27-1417 that, at a minimum (i) updates the names and addresses of the interested public and includes a brownfield site contact list; (ii) identifies major issues of public concern related to the Site; (iii) includes a description of citizen participation activities already performed; and (iv) includes a description and schedule of public participation activities that are either specifically required by law or are needed to address public concerns related to the Site. The Citizen Participation Plan shall be attached to and incorporated into this Agreement as Exhibit "A."

II. Development, Performance, and Reporting of Work Plans

A. Work Plan Requirements

The work plans ("Work Plan" or "Work Plans") under this Agreement shall be prepared and implemented in accordance with the requirements of ECL Article 27, Title 14 and all applicable laws, rules, regulations, and guidance documents. 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; or
4. "OM&M Work Plan" if the Work Plan provides for operation, maintenance, and/or monitoring.

B. Submission/Implementation of Work Plans

1. The first proposed Work Plan to be submitted under this Agreement shall be submitted within forty (40) Days after the effective date of this Agreement. Thereafter, the Applicant can submit such other and additional work plans as it deems appropriate.
2. A 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, 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 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 incorporated into and become an enforceable part of this Agreement as Exhibit "C" and shall be implemented in accordance with the schedule contained therein.

ii) If the Department modifies a Work Plan, the reasons for such modification shall be provided in writing. Within twenty (20) Days after receiving written notice of such modification, Applicant shall elect in writing to (a) implement the Work Plan as modified; (b) implement any other Department-approved Work Plan(s); (c) invoke dispute resolution pursuant to Paragraph XIV; or (d) terminate this Agreement pursuant to Paragraph XIII.

iii) If the Department disapproves a Work Plan, the reasons for such disapproval shall be provided in writing. In the event the Department disapproves a Work Plan, within twenty (20) Days after receiving written notice of such disapproval, Applicant shall elect in writing to (a) modify or expand it within thirty (30) Days of receipt of the written disapproval notice; (b) complete any other Department-approved Work Plan(s); (c) invoke dispute resolution pursuant to Paragraph XIV; or (d) terminate this Agreement pursuant to Subparagraph XIII.

3. An OM&M Work Plan, if necessary, shall be submitted in accordance with the schedule set forth in the IRM Work Plan or Remedial Work Plan.

4. During all field activities, Applicant shall have on-Site a representative who is qualified to supervise the activities undertaken. Such representative may be an employee or a consultant retained by Applicant to perform such supervision.

C. Revisions to Work Plans

If revisions to a Work Plan are required to satisfy the objectives of such Work Plan, the parties will negotiate revisions which shall be attached to and incorporated into the relevant Work Plan and which shall be enforceable under this Agreement. If the parties cannot agree upon revisions to the relevant Work Plan, then unless the Applicant invokes dispute resolution pursuant to Paragraph XIV, either party may terminate this Agreement pursuant to Paragraph XIII.

D. Submission of Final Reports

1. In accordance with the schedule contained in a Work Plan, Applicant shall submit a Final Report that shall include but not be limited to: all data generated relative to the Site and all other information obtained as part of the implementation of the subject Work Plan; all of the assessments and evaluations required by the subject Work Plan; a statement of any additional data that must be collected; and "as-built" drawings.

i) The Final Report for an Investigation Work Plan shall comply with the requirements set forth at ECL 27-1411(1) and shall contain a certification by the person with primary responsibility for the day to day performance of the activities under this Agreement that those activities were performed in full accordance with the Investigation Work Plan. If such Final Report concludes that no remediation is necessary, and the Site does not meet the requirements for Track 1, Applicant shall submit an Alternatives Analysis prepared in accordance with ECL 27-1413 that supports such determination.

ii) A Final Engineering Report certifying that remediation of the Site has been performed in accordance with this Agreement shall be prepared by a Professional Engineer with primary responsibility for the day to day performance of the activities under this Agreement. The Report shall be prepared in accordance with the requirements of ECL 27-1419(1) and (2) and shall contain a certification that all such activities were performed in accordance with the Department approved Work Plan. The Department shall review such Report, the submittals made pursuant to the Agreement, 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 the requirements of ECL 27-1419. Such Certificate of Completion may be modified or revoked, after notice and an opportunity for hearing, upon a finding that (a) Applicant failed to comply with this Agreement; (b) Applicant made a misrepresentation of material fact in connection with its Application or its certification that cleanup levels required by this Agreement were reached; or (c) good cause exists for such modification or revocation.

iii) All other Work Plan Final Reports shall contain a certification by a Professional Engineer (or other expert approved by the Department) with primary responsibility for the day to day performance of the activities under this Agreement that all such activities were performed in full accordance with the Department approved Work Plan.

2. Within sixty (60) Days of the Department's approval of a Final Report, Applicant shall submit such additional Work Plans as it proposes to implement. 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 Applicant, result in the termination of this Agreement pursuant to Paragraph XIII.

#### E. Review of Submittals other than Work Plans

1. The Department shall timely notify Applicant in writing of its approval or disapproval of each submittal other than a Work Plan. All Department-approved submittals shall be incorporated into and become an enforceable part of this Agreement.

2. If the Department disapproves a submittal covered by this Subparagraph, it shall specify the reasons for its disapproval and may request Applicant to modify or expand the submittal. Within twenty (20) Days after receiving written notice that Applicant's submittal has been disapproved, Applicant 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 Agreement pursuant to Paragraph XIII. If Applicant submits a revised submittal and it is disapproved, the Department and Applicant may pursue whatever remedies may be available under this Agreement or under law.

F. 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)(e). The Department shall provide timely notification to the Applicant 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, Applicant shall cause to be filed an Environmental Easement in accordance with Paragraph X within sixty (60) Days of receipt of the Department's determination.

3. If the Department determines that remediation, or additional remediation, is needed, Applicant may elect to submit for review and approval a proposed Remedial Work Plan (or a revision to an existing Work Plan for the Site) for a remedy selected upon due consideration of the factors set forth in ECL 27-1415(3). A proposed Remedial Work Plan addressing the Site's remediation will be noticed for public comment in accordance with ECL 27-1417(3)(e) and the Citizen Participation Plan developed pursuant to Paragraph I of this Agreement. If the Department determines following the close of the public comment period that revisions are needed, Applicant agrees to negotiate revisions to the proposed Remedial Work Plan in accordance with Paragraph II.C. If Applicant elects not to develop a Work Plan under this Subparagraph or if either party concludes that a mutually acceptable Work Plan under this Subparagraph cannot be negotiated, then this Agreement shall terminate in accordance with Subparagraph XIII.

G. Submission of Annual Reports, if required

In the event that the remedy for the Site, if any, or any Work Plan for the Site requires operation, maintenance, and monitoring (OM&M), including reliance upon institutional or engineering controls, Applicant shall file a report annually (unless a different frequency is specified in an approved Work Plan) on the 1<sup>st</sup> day of the month following the anniversary of the start of the OM&M and continuing until the Department notifies Applicant in writing that such report may be discontinued. Such report shall be signed by a Professional Engineer or by an expert approved by the Department to perform that function and certified under penalty of



perjury that the institutional and/or engineering controls are unchanged from the previous certification and that nothing has occurred that would impair the ability of such controls to protect public health and the environment or constitute a violation or failure to comply with the approved OM&M Plan. Applicant shall notify the Department within twenty-four (24) hours of discovery of any upset, interruption, or termination of one or more controls without the prior approval of the Department. Further, Applicant shall take all actions required by the Department to maintain conditions at the Site that achieve the objectives of the remedy and/or the Work Plan and are protective of public health and the environment. An explanation of such upset, interruption, or termination of one or more controls and the steps taken in response shall be included in the foregoing notice and in the report required by this Subparagraph as well as in any progress reports required by Paragraph XI. Applicant can petition the Department for a determination that the institutional and/or engineering controls may be terminated. Such petition must be supported by a Professional Engineer or other expert approved by the Department stating that such controls are no longer necessary. The Department shall not unreasonably withhold its approval of such petition.

### III. Enforcement

This Agreement shall be enforceable as a contractual agreement under the laws of the State of New York. Applicant shall not suffer any penalty or be subject to any proceeding or action if it cannot comply with any requirement of this Agreement as a result of a Force Majeure Event provided it notifies the Department in writing within ten (10) Days of when it obtains knowledge of any such event. Applicant shall include in such notice the measures taken and to be taken to prevent or minimize any delays and shall request an appropriate extension or modification of this Agreement. Applicant shall have the burden of proving by a preponderance of the evidence that an event qualifies as a Force Majeure Event pursuant to this Paragraph.

### IV. Entry upon Site

A. Applicant 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.

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 Agreement.

### V. Payment of State Costs

A. Within forty-five (45) Days after receipt of an itemized invoice from the Department, Applicant shall pay to the Department a sum of money which shall represent reimbursement for State Costs for negotiating this Agreement, and all costs associated with this Agreement up to and including the date upon which the Certificate of Completion is issued, the Department approves the Final Report relative to OM&M, or this Agreement is terminated pursuant to Paragraph XIII, whichever is later.

B. Personal service costs shall be documented by reports of Direct Personal Service, which shall identify the employee name, title, biweekly salary, and time spent (in hours) on the project during the billing period, as identified by an assigned time and activity code. Approved agency fringe benefit and indirect cost rates shall be applied. Non-personal service costs shall be summarized by category of expense (e.g., supplies, materials, travel, contractual) and shall be documented by expenditure reports. 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. Such invoice shall be sent to Applicant at the following address:

Steve M. Bederman  
The Moinian Group  
530 Fifth Avenue, 18<sup>th</sup> Floor  
New York, New York 10036

D. Each such payment shall be made payable to the Department of Environmental Conservation and shall be sent to:

Bureau of Program Management  
Division of Environmental Remediation  
New York State Department of Environmental Conservation  
625 Broadway  
Albany, New York 12233-7012

E. Each party shall provide written notification to the other within ninety (90) Days of any change in the foregoing addresses.

F. Applicant may contest, in writing, invoiced costs under this Agreement if it believes (i) the cost documentation contains clerical, mathematical, or accounting errors; (ii) the costs are not related to the State's activities reimbursable under this Agreement; or (iii) the Department is not otherwise legally entitled to such costs. If Applicant objects to an invoiced cost, Applicant shall pay all costs not objected to within the time frame set forth in Subparagraph V.A and shall, within thirty (30) Days of receipt of an invoice, identify in writing all costs objected to and identify the basis of the objection. This objection shall be filed with the Director of the Bureau of Program Management ("BPM Director") who shall have the authority to relieve Applicant of the obligation to pay invalid costs. Within forty-five (45) Days of the Department's determination of the objection, Applicant shall pay to the Department the amount which the BPM Director or the BPM Director's designee determines Applicant is obligated to pay or commence an action or proceeding seeking appropriate judicial relief.

G. In the event any instrument for the payment of any money due under this Agreement fails of collection, such failure of collection shall constitute a violation of this Agreement, provided (i) the Department gives Applicant written notice of such failure of

collection, and (ii) the Department does not receive from Applicant a certified check or bank check within fourteen (14) Days after the date of the Department's written notification.

VI. Liability Limitation

Subsequent to the issuance of a Certificate of Completion pursuant to this Agreement, Applicant shall be entitled to the Liability Limitation set forth at ECL 27-1421, subject to the terms and conditions stated therein. A Notice of the Liability Limitation shall be filed with the recording officer of the county in which the Site is located within thirty (30) Days of (i) the effective date of the Certificate of Completion or (ii) the date Applicant acquires title to the Site, whichever is later.

VII. Reservation of Rights

A. Except as provided in Subparagraph VII.B, Applicant reserves all rights and defenses under applicable law to contest, defend against, dispute, or disprove any action, proceeding, allegation, assertion, determination, or order of the Department, including any assertion of remedial liability by the Department against Applicant, and further reserves all rights including the rights to notice, to be heard, to appeal, and to any other due process respecting any action or proceeding by the Department, including the enforcement of this Agreement. The existence of this Agreement or Applicant's compliance with it shall not be construed as an admission of any liability, fault, wrongdoing, or violation of law by Applicant, and shall not give rise to any presumption of law or finding of fact which shall inure to the benefit of any third party.

B. Notwithstanding the foregoing, Applicant hereby waives any right it may have to make a claim pursuant to Article 12 of the Navigation Law with respect to the Site and releases the State and the New York Environmental Protection and Spill Compensation Fund from any and all legal or equitable claims, suits, causes of action, or demands whatsoever with respect to the Site that Applicant may have as a result of Applicant's entering into or fulfilling the terms of this Agreement.

VIII. Indemnification

Applicant shall indemnify and hold the Department, the Trustee, the State of New York, and their representatives and employees harmless from any claim, suit, action, and cost of every name and description arising out of or resulting from the fulfillment or attempted fulfillment of this Agreement by Applicant prior to the Termination Date except for those claims, suits, actions, and costs arising from the State's gross negligence or willful or intentional misconduct by the Department, the State of New York, and/or their representatives and employees during the course of any activities conducted pursuant to this Agreement. The Department shall provide Applicant with written notice no less than thirty (30) Days prior to commencing a lawsuit seeking indemnification pursuant to this Paragraph.

IX. Change of Use

Applicant shall notify the Department at least sixty (60) Days in advance of any change of use, as defined in ECL 27-1425, which is proposed for the Site. In the event the Department determines that the proposed change of use is prohibited, the Department shall notify Applicant of such determination within forty-five (45) Days of receipt of such notice.

X. 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 thirty (30) Days after the Department's determination pursuant to Subparagraph II.F.2 that additional remediation is not needed based upon use restrictions, Applicant 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. The submittal shall be substantially similar to Exhibit "B." Applicant 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. Applicant 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 Applicant advises the Department of the status of its efforts to obtain same within such thirty (30) Day period).

B. Applicant or the owner of the Site may petition the Department to modify or extinguish the Environmental Easement filed pursuant to this Agreement at such time as it can certify that the Site is protective of human health and the environment without reliance upon the restrictions set forth in such instrument. Such certification shall be made by a Professional Engineer or other expert approved by the Department. The Department will not unreasonably withhold its consent.

XI. Progress Reports

Applicant shall submit a written progress report of its actions under this Agreement to the parties identified in Subparagraph XII.A.1 by the 10<sup>th</sup> day of each month commencing with the month subsequent to the approval of the first Work Plan and ending with the Termination Date, 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 Applicant in connection with this Site, whether under this Agreement 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.

XII. Communications

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

1. Communication from Applicant shall be sent to:

P. David Smith  
Director, Remedial Bureau B  
Department of Environmental Conservation  
625 Broadway  
Albany, New York 12233

Note: three copies (one unbound) of work plans are required to be sent.

Gary Litwin  
Bureau of Environmental Exposure Investigation  
New York State Department of Health  
Flanigan Square  
547 River Street  
Troy, New York 12180-2216

Note: two copies of work plans are required to be sent, and

Alan T. Michaels, Esq.  
Division of Environmental Enforcement  
Department of Environmental Conservation  
625 Broadway, 14<sup>th</sup> Floor  
Albany, New York 12233-5500

Correspondence only

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

Mark A. Chertok, Esq.  
Sive, Paget & Riesel, P.C.  
460 Park Avenue  
New York, New York 10022-1906

B. The Department and Applicant reserve the right to designate additional or different addressees for communication on written notice to the other.

C. Each party shall notify the other within ninety (90) Days after any change in the addresses listed in this Paragraph XII or in Paragraph V.

### XIII. Termination of Agreement

Applicant may terminate this Agreement at any time by providing written notification to the parties listed in Subparagraph XII.A.1. The Department may terminate this Agreement at any time pursuant to Subparagraph XV.A or in the event Applicant fails to substantially comply with the Agreement's terms and conditions. The Department shall provide written notification to Applicant setting forth the basis for termination of the Agreement. The termination shall be effective the 5<sup>th</sup> day after the non-terminating party's receipt of such written notification, except that such termination shall not affect the provisions contained in Paragraphs V, VII.B, and VIII.

### XIV. Dispute Resolution

A. In the event disputes arise regarding any notice of disapproval of a submittal, proposed Work Plan or Final Report, or during the implementation of any Work Plan, Applicant may, within thirty (30) Days of receipt of such notice, request in writing informal negotiations with the Department in an effort to resolve the dispute. The Department and Applicant shall consult together in good faith and exercise best efforts to resolve any differences or disputes without resort to the procedures described in Subparagraph XIV.B. The period for informal negotiations shall not exceed thirty (30) Days from Applicant's request for informal negotiations. If the parties cannot resolve a dispute by informal negotiations during this period, the Department's position shall be considered binding unless Applicant notifies the Department in writing within thirty (30) Days after the conclusion of the thirty (30) Day period for informal negotiations that it invokes the dispute resolution provisions provided under Subparagraph XIV.B.

B. 1. Applicant shall file with the Office of Hearings and Mediation ("OH&M") a request for formal dispute resolution and a written statement of the issues in dispute, the relevant facts upon which the dispute is based, factual data, analysis, or opinion supporting its position, and all supporting documentation upon which Applicant relies (hereinafter called the "Statement of Position"). A copy of such request and written statement shall be provided contemporaneously to the Director of the Division of Environmental Remediation ("DER Director") and to the parties listed under Subparagraph XII.A.1.

2. The Department shall serve its Statement of Position no later than twenty (20) Days after receipt of Applicant's Statement of Position.

3. Applicant shall have the burden of proving by substantial evidence that the Department's position does not have a rational basis and should not prevail. The OH&M can conduct meetings, in person or via telephone conferences, and request additional information from either party if such activities will facilitate a resolution of the issues.

4. The OH&M shall prepare and submit a report and recommendation to the DER Director who shall issue a final decision resolving the dispute in a timely manner. The final decision shall constitute a final agency action and Applicant shall have the right to seek judicial review of the decision pursuant to Article 78 of the CPLR provided that Applicant notifies the Department within thirty (30) Days after receipt of a copy of the final decision of its intent to commence an Article 78 proceeding and commences such proceeding within sixty (60) Days after receipt of a copy of the Director's final decision. Applicant shall be in violation of this Agreement if it fails to comply with the final decision resolving this dispute within sixty (60) Days after the date of such final decision, or such other time period as may be provided in the final decision, unless it seeks judicial review of such decision within the sixty (60) Day period provided. In the event that Applicant seeks judicial review, Applicant shall be in violation of this Agreement if it fails to comply with the final Court Order or settlement within thirty (30) Days after the effective date of such Order or settlement, unless otherwise directed by the Court. For purposes of this Subparagraph, a Court Order or settlement shall not be final until the time to perfect an appeal of same has expired.

5. The invocation of dispute resolution shall not extend, postpone, or modify Applicant's obligations under this Agreement with respect to any item not in dispute unless or until the Department agrees or a Court determines otherwise. The invocation of the procedures set forth in this Paragraph XIV shall constitute a waiver of any and all other administrative remedies which may otherwise be available to Applicant regarding the issue in dispute.

6. The Department shall keep an administrative record of any proceedings under this Paragraph XIV which shall be available consistent with Article 6 of the Public Officers Law.

7. Nothing in this Paragraph XIV shall be construed as an agreement by the parties to resolve disputes through administrative proceedings pursuant to the State Administrative Procedure Act, the ECL, or 6 NYCRR Part 622 or Section 375-2.1.

XV. Miscellaneous

A. If the information provided and any certifications made by Applicant are not materially accurate and complete, this Agreement, except with respect to Applicant's obligations pursuant to Paragraphs V, VII.B, and VIII, shall be null and void *ab initio* fifteen (15) Days after the Department's notification of such inaccuracy or incompleteness or fifteen (15) Days after issuance of a final decision resolving a dispute pursuant to Paragraph XIV, whichever is later, unless Applicant submits information within that fifteen (15) Day time period indicating that the information provided and the certifications made were materially accurate and complete. In the event this Agreement is rendered null and void, any Certificate of Completion and/or Liability Limitation that may have been issued or may have arisen under this Agreement shall also be null and void *ab initio*, and the Department shall reserve all rights that it may have under law.

B. Applicant shall allow the Department to attend, and shall notify the Department at least seven (7) Days in advance of, any field activities to be conducted pursuant to this

Agreement, as well as any pre-bid meetings, job progress meetings, substantial completion meeting and inspection, and final inspection and meeting; nothing in this Agreement shall be construed to require Applicant to allow the Department to attend portions of meetings where privileged matters are discussed.

C. The Department may exempt Applicant from the requirement to obtain any state or local permit or other authorization for any activity conducted pursuant to this Agreement that (i) is conducted on the Site or on different premises that are under common control or contiguous to or physically connected with the Site and such activity manages exclusively hazardous waste and/or petroleum from such Site, and (ii) satisfies all substantive technical requirements applicable to like activity conducted pursuant to a permit, as determined by the Department.

D. Applicant shall use "best efforts" to obtain all Site access, permits, easements, rights-of-way, rights-of-entry, approvals, institutional controls, or authorizations necessary to perform Applicant's obligations under this Agreement. If, despite Applicant's best efforts, any access, permits, easements, rights-of-way, rights-of-entry, approvals, institutional controls, or authorizations required to perform this Agreement are not obtained, Applicant shall promptly notify the Department, and include a summary of the steps taken to obtain access. The Department may, as it deems appropriate and within its authority, assist Applicant in obtaining same. 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 Applicant to modify the Work Plan pursuant to Subparagraph II.C of this Agreement to reflect changes necessitated by the lack of access and/or approvals.

E. All approved Work Plans, Final Reports, and other documents required under this Agreement shall be submitted to the Department in an electronic format acceptable to the Department within thirty (30) Days of approval. If any document cannot be converted into electronic format, Applicant shall so advise the Department and, if the Department concurs, submit such document in an alternative format acceptable to the Department.

F. Applicant shall provide a copy of this Agreement to each contractor hired to perform work required by this Agreement and shall condition all contracts entered into for the obligations identified in this Agreement upon performance in conformity with the terms of this Agreement. Applicant or its contractor(s) shall provide written notice of this Agreement to all subcontractors hired to perform any portion of the work required by this Agreement. Applicant shall nonetheless be responsible for ensuring that Applicant's contractors and subcontractors perform the work in satisfaction of the requirements of this Agreement.

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

H. 1. The terms of this Agreement shall constitute the complete and entire agreement between the Department and Applicant concerning the implementation of the activities required by this Agreement. No term, condition, understanding, or agreement



purporting to modify or vary any term of this Agreement 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 Applicant of Applicant's obligation to obtain such formal approvals as may be required by this Agreement. In the event of a conflict between the terms of this Agreement and any Work Plan submitted pursuant to this Agreement, the terms of this Agreement shall control over the terms of the Work Plan(s) attached as Exhibit "C." Applicant consents to and agrees not to contest the authority and jurisdiction of the Department to enter into or enforce this Agreement.

2. i. Except as set forth herein, if Applicant desires that any provision of this Agreement be changed, other than a provision of a Work Plan or a time frame, Applicant shall make timely written application to the Commissioner with copies to the parties listed in Subparagraph XII.A.1.

ii. Changes to the Work Plan shall be accomplished as set forth in Subparagraph II.C of this Agreement.

iii. Requests for a change to a time frame set forth in this Agreement 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 Applicant promptly.

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

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

3. Notwithstanding the foregoing Subparagraphs XV.I.1 and 2, if multiple parties sign this Agreement as Applicants but not all of the signing parties elect to implement a Work Plan, all Applicants are jointly and severally liable for each and every obligation under this Agreement through the completion of activities in such Work Plan that all such parties consented to; thereafter, only those Applicants electing to perform additional work shall be jointly and severally liable under this Agreement 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 Agreement relative to the activities set forth in such Work Plan(s). Further, only those Applicants electing to implement such additional Work Plan(s) shall be eligible to receive the Liability Limitation referenced in Paragraph VI.

J. Applicant shall be entitled to contribution protection to the extent authorized by ECL 27-1421(6).

K. Applicant shall not be considered an operator of the Site solely by virtue of having executed and/or implemented this Agreement.

L. Applicant and Applicant's agents, grantees, lessees, sublessees, successors, and assigns shall be bound by this Agreement. Any change in ownership of Applicant including, but not limited to, any transfer of assets or real or personal property, shall in no way alter Applicant's responsibilities under this Agreement.

M. Unless otherwise expressly provided herein, terms used in this Agreement which are defined in ECL Article 27 or in regulations promulgated thereunder shall have the meaning assigned to them under said statute or regulations. Whenever terms listed in the Glossary attached hereto are used in this Agreement or its Exhibits, the definitions set forth in the Glossary shall apply. In the event of a conflict, the definition set forth in the Glossary shall control.

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

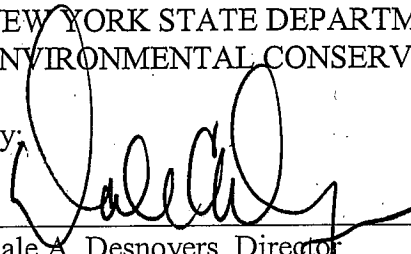
O. This Agreement may be executed for the convenience of the parties hereto, individually or in combination, in one or more counterparts, each of which shall be deemed to have the status of an executed original and all of which shall together constitute one and the same.

P. The effective date of this Agreement is the date it is signed by the Commissioner or the Commissioner's designee.

DATED: FEB 21 2007

CARL JOHNSON, ACTING EXECUTIVE  
DEPUTY COMMISSIONER  
NEW YORK STATE DEPARTMENT OF  
ENVIRONMENTAL CONSERVATION

By:

  
Dale A. Desnoyers, Director  
Division of Environmental Remediation

CONSENT BY APPLICANT

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

Applicant's Name Mensher 34th Street LLC  
By: [Signature]  
Title: Authorized Signatory  
Date: 2/1/07

STATE OF NEW YORK     )  
  ) ss:  
COUNTY OF                    )

On the 1<sup>st</sup> day of February, in the year 2007, before me, the undersigned, personally appeared Joseph Morinian, 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

**NELIDA NARVAEZ**  
Notary Public, State of New York  
No. 01NA6131018  
Qualified in New York County  
Commission Expires July 25, 2009

## Glossary of Terms

The following terms shall have the following meanings:

“Day”: a calendar day. In computing any period of time under this Agreement, if the last day would fall on a Saturday, Sunday, or State holiday, the period shall run until the close of business of the next working day.

“Force Majeure Event”: an event which is brought on as a result of fire, lightning, earthquake, flood, adverse weather conditions, strike, shortages of labor and materials, war, riot, obstruction or interference by adjoining landowners, or any other fact or circumstance beyond Applicant’s reasonable control.

“IRM”: an interim remedial measure which is a discrete set of activities which can be undertaken without extensive investigation and evaluation to prevent, mitigate, or remedy environmental damage or the consequences of environmental damage attributable to a Site.

“OM&M”: operation, maintenance, and monitoring.

“Professional engineer”: an individual registered as a professional engineer or otherwise authorized in accordance with Article 145 of the New York State Education Law. If such individual is a member of a firm, that firm must be authorized to offer professional engineering services in the State of New York in accordance with Article 145 of the New York State Education Law.

“State Costs”: all the State’s expenses including, but not limited to, direct labor, fringe benefits, indirect costs, travel, analytical costs, and contractor costs incurred by the State of New York for negotiating, implementing, and administering this Agreement. Approved agency fringe benefit and indirect cost rates will be applied.

“Termination Date”: the date upon which (i) the Department issues the Certificate of Completion or approves the Final Report relative to the OM&M at the Site, whichever is later, or (ii) the Agreement terminates pursuant to Paragraph XIII or Subparagraph XV.A.,

“Trustee”: the Trustee of New York State’s natural resources.

“Work Plan”: a Department-approved work plan, as may be modified, that Applicant shall implement and that is attached to this Agreement.

**EXHIBIT "A"**

**Citizen Participation Plan**

**EXHIBIT "B"**

**Environmental Easement**

**D**

THIS INDENTURE made this \_\_\_\_ day of \_\_\_\_\_, 200\_\_, between \_\_  
Owner(s) \_\_\_\_\_ residing at (or having an office at) \_\_\_\_\_  
(the "Grantor"), and The People of the State of New York (the "Grantee."), acting through  
their Commissioner of the Department of Environmental Conservation (the  
"Commissioner", or "NYSDEC" or "Department" as the context requires) with its  
headquarters located at 625 Broadway, Albany, New York 12233.

WHEREAS, the Legislature of the State of New York has declared that it is in the public  
interest to encourage the remediation of abandoned and likely contaminated properties  
("brownfield sites") that threaten the health and vitality of the communities they burden  
while at the same time ensuring the protection of public health and the environment; and

WHEREAS, the Legislature of the State of New York has declared that it is in the public  
interest to establish within the Department a statutory brownfield cleanup program that  
includes the use of environmental easements as an enforceable means of ensuring the  
performance of operation, maintenance, and/or monitoring requirements and of ensuring  
the potential restriction of future uses of the land, when a brownfield cleanup project  
leaves residual contamination at levels that have been determined to be safe for a specific  
use, but not all uses, or which includes engineered structures that must be maintained or  
protected against damage to perform properly and be effective, or which requires  
groundwater use or soil management restrictions; and

WHEREAS, the Legislature of the State of New York has declared that environmental  
easement shall mean an interest in real property, created under and subject to the  
provisions of Article 71, Title 36 of the New York State Environmental Conservation Law  
("ECL") which contains a use restriction and/or a prohibition on the use of land in a  
manner inconsistent with engineering controls which are intended to ensure the long term  
effectiveness of a brownfield site remedial program or eliminate potential exposure  
pathways to hazardous waste or petroleum; and;

WHEREAS, Grantor, is the owner of real property located in the City/Town/Village of \_\_\_\_\_,  
\_\_\_\_\_ County, New York known and designated on the tax map of  
the \_\_\_\_\_ of \_\_\_\_\_ as tax map parcel number \_\_\_\_\_, section \_\_\_\_ block  
\_\_\_\_ lot\_\_\_\_, being the same as that property conveyed to Grantor by deed on \_\_\_\_\_,  
and recorded in the Land Records of the \_\_\_\_\_ County Clerk at page \_\_\_\_\_, liber  
\_\_\_\_\_ of Deeds, comprised of approximately \_\_\_\_\_ acres, and hereinafter more fully  
described in Schedule A attached hereto and made a part hereof ( the " Controlled  
Property"); and;

Attach an adequate legal description of the property subject to the easement, or  
reference a recorded map. If the easement is on only a part of a parcel of land which is  
not subdivided into encumbered and unencumbered portions, a legal description needs  
to be created by a survey bearing the seal and signature of a licensed land surveyor  
with reference to a metes and bounds description.

**D**

WHEREAS, the Commissioner does hereby acknowledge that the Department accepts this Environmental Easement in order to ensure the protection of human health and the environment and to achieve the requirements for remediation established at this Controlled Property until such time as this Environmental Easement is extinguished pursuant to ECL Article 71, Title 36; and

NOW THEREFORE, in consideration of the covenants and mutual promises contained herein and the terms and conditions of Brownfield Cleanup Agreement Number       R      , Grantor grants, conveys and releases to Grantee a permanent Environmental Easement pursuant to Article 71, Title 36 of the ECL in, on, over, under, and upon the Controlled Property as more fully described herein ("Environmental Easement").

1. Purposes. Grantor and Grantee acknowledge that the Purposes of this Environmental Easement are: to convey to Grantee real property rights and interests that will run with the land in perpetuity in order to provide an effective and enforceable means of encouraging the reuse and       Z       development of this Controlled Property at a level that has been determined to be safe for a specific use while ensuring the performance of operation, maintenance, and/or monitoring requirements; and to ensure the potential restriction of future uses of the land that are inconsistent with the above-stated purpose.

2. Institutional and Engineering Controls. The following controls apply to the use of the Controlled Property, run with the land are binding on the Grantor and the Grantor's successors and assigns, and are enforceable in law or equity against any owner of the Controlled Property, any lessees, and any       P       person using the Controlled Property:

A. The Controlled Property may be used for

residential  
commercial  
industrial

use as long as the following long-term engineering controls are employed:

B. The Controlled Property may not be used for a       H       higher level of use such as unrestricted/ residential / commercial use and the above-stated engineering controls may not be discontinued without an amendment or extinguishment of this Environmental Easement.

C. Grantor covenants and agrees that until such time as the Environmental Easement is extinguished in accordance with the requirements of Article 71, Title 36 of the ECL, the property deed and all subsequent instruments of conveyance relating to the Controlled Property shall state in at least fifteen-point bold-faced type:



**D** This property is subject to an environmental easement held by the New York State Department of Environmental Conservation pursuant of Title 36 to Article 71 of the Environmental Conservation Law.

C. Grantor covenants and agrees that this Environmental Easement shall be incorporated in full or by reference in any leases, licenses, or other instruments granting a right to use the Controlled Property.

**P**  
D. Grantor covenants and agrees that it shall annually, or such time as NYSDEC may allow, submit to NYSDEC a written statement by an expert the NYSDEC may find acceptable certifying under penalty of perjury that the controls employed at the Controlled Property are unchanged from the previous certification or that any changes to the controls employed at the Controlled Property were approved by the NYSDEC, and that nothing has occurred that would impair the ability of such control to protect the public health and environment or constitute a violation or failure to comply with any Site Management Plan for such controls and giving access to such Controlled Property to evaluate continued maintenance of such controls.

**A**  
3. Right to Enter and Inspect. Grantee, its agents, employees, or other representatives of the State may enter and inspect the Controlled Property in a reasonable manner and at reasonable times to assure compliance with the above-stated restrictions.

4. Reserved Grantor's Rights. Grantor reserves for itself, its assigns, representatives, and successors in interest with respect to the Property, all rights as fee owner of the Controlled Property, including:

**F**  
1. Use of the Controlled Property for all purposes not inconsistent with, or limited by the terms of this Environmental Easement;

2. The right to give, sell, assign, or otherwise transfer the underlying fee interest to the Controlled Property by operation of law, by deed, or by indenture, subject and subordinate to this Environmental Easement;

5. Enforcement

**T**  
A. This environmental easement is enforceable in law or equity in perpetuity by Grantor, Grantee, or any affected local government, as defined in ECL Section 71-3603, against the owner of the Property, any lessees, and any person using the land. Enforcement shall not be defeated because of any subsequent adverse possession, laches, estoppel, or waiver. It is not a defense in any action to enforce this environmental easement that: it is not appurtenant to an interest in real property; it is not of a character that has been recognized traditionally at common law; it imposes a negative burden; it imposes affirmative

obligations upon the owner of any interest in the burdened property; the benefit does not touch or concern real property; there is no privity of estate or of contract; or it imposes an unreasonable restraint on alienation.

B. If any person intentionally violates this environmental easement, the Grantee may revoke the Certificate of Completion provided under ECL Article 27, Title 14 with respect to the Controlled Property.

C. Grantee shall notify Grantor of a breach or suspected breach of any of the terms of this Environmental Easement. Such notice shall set forth how Grantor can cure such breach or suspected breach and give Grantor a reasonable amount of time from the date of receipt of notice in which to cure. At the expiration of such period of time to cure, or any extensions granted by Grantee, the Grantee shall notify Grantor of any failure to adequately cure the breach or suspected breach. Grantor shall then have a reasonable amount of time from receipt of such notice to cure. At the expiration of said second period, Grantee may commence any proceedings and take any other appropriate action reasonably necessary to remedy any breach of this Environmental Easement in accordance with applicable law to require compliance with the terms of this Environmental Easement.

D. The failure of Grantee to enforce any of the terms contained herein shall not be deemed a waiver of any such term nor bar its enforcement rights in the event of a subsequent breach of or noncompliance with any of the terms of this Environmental easement.

6. Notice. Whenever notice to the State (other than the annual certification) or approval from the State is required, the Party providing such notice or seeking such approval shall identify the Controlled Property by referencing its County tax map number or the Liber and Page or computerized system tracking/ identification number and address correspondence to:

Division of Environmental Enforcement  
Office of General Counsel  
New York State Department of Environmental Conservation  
625 Broadway  
Albany New York 12233-5500

Such correspondence shall be delivered by hand, or by registered mail or by Certified mail and return receipt requested. The Parties may provide for other means of receiving and communicating notices and responses to requests for approval.

7. Recordation. Grantor shall record this instrument, within thirty (30) days of execution of this instrument by the Commissioner or her/his authorized representative in the office of the recording officer for the county or counties where the Property is situated in the manner prescribed by Article 9 of the Real Property Law.

8. **Amendment.** This environmental easement may be amended only by an amendment executed by the Commissioner of the New York State Department of Environmental Conservation and filed with the office of the recording officer for the county or counties where the Property is situated in the manner prescribed by Article 9 of the Real Property Law.

9. **Extinguishment.** This environmental easement may be extinguished only by a release by the Commissioner of the New York State Department of Environmental Conservation and filed with the office of the recording officer for the county or counties where the Property is situated in the manner prescribed by Article 9 of the Real Property Law.

10. **Joint Obligation.** If there are two or more parties identified as Grantor herein, the obligations imposed by this instrument upon them shall be joint and several.

IN WITNESS WHEREOF, Grantor has caused this instrument to be signed in its name.

Grantor's Name

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

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

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

THIS ENVIRONMENTAL EASEMENT IS  
HEREBY ACCEPTED BY THE PEOPLE OF  
THE STATE OF NEW YORK, Acting By and  
Through the Department of Environmental  
Conservation

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

Carl Johnson, Acting Executive Deputy  
Commissioner

T

**Grantor's Acknowledgment**

STATE OF NEW YORK )  
 ) ss:  
COUNTY OF )

On the \_\_\_\_\_ day of \_\_\_\_\_, in the year 200\_, 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.

\_\_\_\_\_  
Notary Public - State of New York

**A**

**Grantee's Acknowledgment**

STATE OF NEW YORK )  
 ) ss:  
COUNTY OF )

On the \_\_\_\_\_ day of \_\_\_\_\_, in the year 200\_, 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/ executed the same in his/her/ capacity as

Commissioner of the State of New York Department of Environmental Conservation, and that by his/her/ signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

\_\_\_\_\_  
Notary Public - State of New York

**T**

**EXHIBIT "C"**

**Approved Work Plans**

**EXHIBIT "D"**

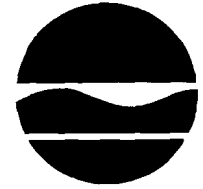
**Map of Site**

**New York State Department of Environmental Conservation  
Division of Environmental Remediation  
Remedial Bureau B**

625 Broadway, Albany, New York 12233-7016

Phone: (518) 402-9774 • FAX: (518) 402-9773

Website: [www.dec.state.ny.us](http://www.dec.state.ny.us)



Alexander B. Grannis  
Commissioner

August 15, 2007

Joseph Moinian  
Meushar 341h Street, LLC  
C/O the Moinian Group  
530 Fifth Avenue, Suite 1800  
New York, NY 10036

Re: **Brownfield Cleanup Project**  
West 34<sup>th</sup> Street Development Project  
City of New York, NYSDEC Region #2  
BCP Site # C231049  
Remedial Investigation Report Approval

Dear Mr. Moinian,

The New York State Department of Environmental Conservation (NYSDEC) has completed its review of the investigation report entitled, "Remedial Investigation Report" (Volume I and Volume II) dated June 2007. All the NYSDEC and New York State Department of Health (NYSDOH) comments have been addressed. The NYSDEC has determined that the Remedial Investigation Report (RIR) substantially addresses the requirements of the Brownfield Cleanup Agreement and the RIR is hereby approved.

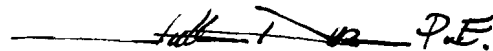
Based upon the results of the investigation, the Department has determined that remediation of the site is necessary. On-site petroleum has impacted the soil and the shallow groundwater table, apparently as a result of one or more petroleum spills. Although on-site remedial work has occurred, petroleum-contaminated soil and groundwater still exist and additional cleanup work is required to bring this site into compliance.

After evaluating the nature and extent of the contamination, as well as the site qualitative exposure assessment, the following site-specific preliminary remedial action objectives have been identified:

- Meet on-site groundwater standards,
- Meet NYSDEC recommended soil cleanup objectives,
- Prohibit site recontamination from any potential off-site sources, and
- Attain Track 1 clean up conditions, unrestricted use.

Please include a copy of the approved RIR in the repository. If you have any questions or comments please contact me at (518) 402-9774.

Sincerely,

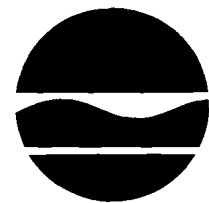


John Durnin P.E.  
Environmental Engineer  
Remedial Bureau B, Section B  
Division of Environmental Remediation

ecc: B. Cozzy  
J. Quinn, RBB  
A. Michaels, NYSDEC Project Attorney  
G. Litwin, DOH  
B. Callaghan, NYSDOH  
A. Nagi, Region #2  
D. Christian  
D. Weigel, BPM  
Michael Carroll, Fleming-Lee Shu. Inc., Consultant



**New York State Department of Environmental Conservation**  
**Division of Environmental Remediation**  
Remedial Bureau B  
625 Broadway, Albany, New York 12233-7016  
Phone: (518) 402-9768 • FAX: (518) 402-9773  
Website: [www.dec.state.ny.us](http://www.dec.state.ny.us)



Alexander B. Grannis  
Commissioner

August 16, 2007

Joseph Moinian  
Meushar 341h Street, LLC  
C/O the Moinian Group  
530 Fifth Avenue, Suite 1800  
New York, NY 10036

Re: **Brownfield Cleanup Project**  
West 34<sup>th</sup> Street Development Project  
City of New York, NYSDEC Region #2  
BCP Site # C231049  
Remedial Work Plan Approval

Dear Mr. Moinian,

The New York State Department of Environmental Conservation (NYSDEC) has completed its review of the Remedial Work Plan (RWP) entitled, "Remedial Action Work Plan" dated July 2007 by Fleming-Lee Shu Environmental Management & Consulting. All the NYSDEC and New York State Department of Health (NYSDOH) comments have been addressed. Based on the information and representations given in the RWP and previous reports, the RWP is hereby approved.

Attached is a Pre-construction Fact Sheet which must be mailed to the Site Contact List in the approved Citizens Participation Plan prior to the beginning of any field construction activities. A copy of the approved RWP must be placed in the repository. Also, please provide a Certificate of Mailing to NYSDEC within 10 days of mailing.

If you have any questions or comments please contact me at (518) 402-9774.

Sincerely,

John Durnin, P. E.,  
Remedial Bureau B, Section B,  
Division of Environmental Remediation

ecc: Arnold Fleming, Fleming-Lee Shu  
Matthew Carroll, Fleming-Lee Shu  
D. Desnoyers, Div. Director  
R. Cozzy, Bureau Director  
B. Callaghan, NYSDOH  
D. Christian, DEE

G. Litwin, DOH  
A. Nagi, Region #2  
D. Weigel, BPM  
J. Quinn, RBB  
K. Lewandowski, Site Control  
A. Michaels, DEE

# **Appendix N**

## **Resumes of Key Personnel**

# **Arnold F. Fleming, PE**

Project Director

## **Education**

Master of Science, Sanitary Engineering, Manhattan College (1969)

Bachelor of Civil Engineering, Manhattan College (1968)

## **Professional Registration**

Professional Engineer, New York (1974)

## **Project Director**

Arnold F. Fleming is an environmental engineer with over 35 years of experience in the areas of contaminated materials assessment and remediation, environmental restoration and environmental permitting, environmental impact analysis, water quality and planning studies, domestic and industrial wastewater treatment and disposal, thermal discharge analysis for power generation,. Mr. Fleming was one of the founders of Allee King Rosen & Fleming, Inc., AKRF, Inc., and AKRF Engineering P.C. For over 20 years, Mr. Fleming provided these firms with engineering expertise in all technical areas relating to permitting and hazardous waste assessment and management. Since 2002, Mr. Fleming has been President of Fleming-Lee Shue, Inc., an environmental management and consulting firm specializing in the investigation, remedial and regulatory aspects of site redevelopment.

## **Project Experience**

Mr. Fleming has directed the Brownfield development for a variety of projects involving former federally designated Superfund sites. He has also directly site investigation and remediation efforts under a variety of New York State and New York City regulatory programs, including the NYSDEC Brownfield Cleanup, Voluntary Cleanup and Spills Programs and the NYCDEP “e” designation requirements. These sites may be polluted from manufacturing uses, may be the subject of voluntary cleanups, or may have already been developed and need remediation.

Principal in charge of the preparation of Phase I Environmental Assessments for several hundred residential, commercial and industrial properties throughout the New York Metropolitan Area.

Principal in charge for the preparation of Phase I ESA and regulatory compliance assessments for eight New York Metropolitan Area Hospitals for State financing including performance of the site inspections and final report preparation.

Principal in charge for the Phase II Environmental Assessments for over 100 residential, commercial and industrial sites in the New York Metropolitan Area. Duties include design of

sampling program, oversight of means and methods of sample collection, and preparation of final reports including recommendations for remediation.

Principal in charge for the design of over 50 remediation systems including UST tank removals, contaminated soil disposal, soil vapor extraction systems, and sparged air/ soil vapor extraction systems. Remedial designs include approximately 20 sites remediated under the State of New York Voluntary Clean-up program, and two sites on the Registry of Inactive Hazardous Waste Sites. Had one of only two sites declared remediated and removed from the Registry of Inactive Hazardous Waste Sites in New York City.

Notable recent work includes:

*17<sup>th</sup> Street Brownfield Re-Development*

Prepared the successful application for the Brownfield redevelopment of this 55,000 SF site in West Chelsea, New York City. The Remedial Plan developed for the site satisfied both the Brownfield requirements and the City “e” designation requirements. Provided direction through preparation of the remedial investigation work plans, remedial investigation report, and remedial action work plan. The remediation has been completed and the closure report/site management plan is being prepared.

*Harlem Park Brownfield Redevelopment*

Prepared the successful application for the Brownfield redevelopment of this 36,050 SF site in Harlem, N.Y. The Remedial Plan developed for this office/retail project adjacent to a hospital and the Metro North railroad satisfied the Brownfield requirements at this sensitive location in an Economic Zone.

*Muss Staten Island Site*

Managed the initial Phase II sampling for this former industrial site re-zoned for single family residential development. The site was listed on the Registry of Inactive Hazardous Waste Sites. Prepared in Remedial Investigation and Feasibility Studied that led to a Record of Decision (ROD) setting forth the remediation for the site.

Mr. Fleming prepared the remedial design to satisfy the ROD and managed the oversight of the remediation leading up to the removal of the site from the registry. He also designed a revetment system to protect the capping material that was an integral part of the remediation from storm related erosion from the adjacent Raritan Bay and petitioned the Federal Emergency Management Agency to remove the site from the 100-year flood plain on the basis of the new elevations and erosion measures implemented on the site.

*23rd Street Development*

Mr. Fleming prepared the Phase I and asbestos surveys for this Manhattan development site and designed the Phase II sampling program, executed the sampling and, on the basis of the findings, obtained approval to remediate an extensive oil spill via bio-remediation. The system was designed and installed under the new building with operation to begin upon occupancy of the building. The approach allowed the construction schedule to proceed without contamination-related delays.

*Information Technology High School/Bell Realty*

Mr. Fleming acted as a liaison between the owner's remedial investigation consultant and the NYSDEC. In this capacity, he reviewed all documents prepared by the owner's consultant and facilitated moving the project through the NYSDEC Voluntary Cleanup Program in a timely manner, while achieving the remediation goals for the property. Mr. Fleming worked with the owner's consultant to design the remedial alternatives and oversee remedy implementation, including a sub-slab venting system with a vertical vapor barrier under the slab and a spray-on barrier on the basement walls, a groundwater extraction and treatment system, and a soil vapor extraction system to address contaminant source areas. Mr. Fleming also worked with all parties to coordinate the testing (including indoor air quality assessment) for acceptance by the New York City Board of Education.

*Home Depot Rego Park*

Mr. Fleming prepared a Voluntary Clean-up Application, performed additional sampling and developed a remedial work plan to remove solvent contaminated soils from this development site. He also designed a soil vapor extraction/air sparging system (SVE/AS) to remediate contaminated groundwater and site soils. The system was operated for two years, reducing the groundwater contamination by over 90%. The SVE/AS was designed to be installed under the building during foundation construction to avoid schedule delays due to remediation.

*Queens West Development Corporation*

Mr. Fleming currently is technical representative to the Queens West Development Corporation (a subsidiary to the Empire State Development Corporation) charged with developing the 78 area redevelopment of the Hunters Point waterfront into a mixed commercial/residential development. Mr. Fleming developed a model remediation plan for the first residential building in 1995 and has applied this model to the next three residential development sites in Stage 1 of the development, the first having opened for residency in the summer of 2002. Mr. Fleming is assisting QWDC in selecting a developer for Stage 2 and 4 and is advising them on the remediation of Stage 2, a former oil refinery and paint factories. Development of Stage 2 is to occur simultaneous to the remediation efforts in the refinery portion of the site.

## References

Alex Federbush, President  
Queens West Development Corporation  
633 Third Avenue, New York, NY 10017  
212.803.3639 (T)  
212.803.3631 (F)  
[afederbush@empire-state.ny.us](mailto:afederbush@empire-state.ny.us)  
Re: *Queens West Development Corporation*

Mr. Greg Gushee, Sr. V.P.  
The Related Companies  
60 Columbus Circle  
New York, NY  
212.801.1160 (T)  
212.801.1036 (F)  
[ggushee@related.com](mailto:ggushee@related.com)  
Re: *17<sup>th</sup> Street Brownfield Redevelopment, 23<sup>rd</sup> Street Development*

Charles Belanich  
Bell Realty  
525 Northern Boulevard  
Great Neck, NY 11021  
516.829.7300 (T)  
516.829.4738 (F)  
Re: *Information Technology High School*

# Mohamed Ahmed, PhD, CPG

Project Manager

## Education

Ph.D., advanced to candidacy, Earth and Environmental Sciences Graduate Center of the City of New York (2000)

M.Ph., Earth and Environmental Sciences, City University of New York (1998)

M.A. Geology, Brooklyn College (1993)

B.S. Geology, Alexandria University, Egypt (1982)

## Certifications

AIPG Certified Professional Geologist, 1997

40-Hour OSHA HAZWOPER Supervisor

## Project Manager

Mohamed Ahmed is a Certified Professional Geologist with more than 15 years of experience in the design and implementation of various remedial investigations and remedial actions for commercial, industrial and residential sites. Dr. Ahmed has experience in designing and implementing site investigation and remediation at former Manufactured Gas Plant (MGP) sites. He has expertise in conducting geophysical surveys using electromagnetic (EM) survey equipment. He has performed groundwater modeling using software such as 2DAN, MODFLOW and Surfer. His remediation experience includes design, pilot testing, implementation, operation and maintenance of soil vapor extraction (SVE) systems; air sparging/SVE systems; groundwater pump and treat systems; soil excavation; and oxygen release compound (ORC) injection programs. Dr. Ahmed is adept at designing and implementing soil gas surveys. He has managed and conducted site assessments for over one hundred environmental remedial investigations.

## Project Experience

### *Queens West Development*

Acted as a field geologist and performed site investigations and soil remediation oversight. Directed and coordinated multiple subcontractors and staff during soil investigation and remediation processes. Developed work plans and reports for the projects. Interacted with personnel from the New York State Department of Environmental Conservation during site investigation and remediation.

### *Outlet City, LLC.*

Planned and developed a complex site investigation of a heavily contaminated former industrial property in Long Island City impacted by creosote. Conducted hydrogeological studies to

determine an appropriate method to recover LNAPL and DNAPL creosote. Developed innovative strategies to address impacts using bioremediation and natural attenuation in combination with other conventional remediation approaches. Performed pilot tests to design soil vapor extraction system remediate soil above the vadoz zone. Interacted with NYSDEC and NYSDOH to implement sub-slab soil vapor sampling.

*American Felt and Filter*

Planned and developed remedial investigation of contaminated soil and groundwater with organic solvent (perchloroethylene). Performed soil vapor pilot test and pumping test to design soil and groundwater remediation systems. Conducted sub-slab vapor and indoor air sampling in accordance with the NYSDOH guidance.

*Home Depot, Rego Park, New York*

Developed the subsurface sampling plans; supervised the installation of groundwater monitoring wells; conducted subsurface investigation including soil and groundwater sampling in accordance with federal, state, and/or industrial practices; oversight of underground storage tank removal; negotiated with the New York state department of Environmental Conservation (NYDEC) regarding the clean-up requirements for contaminated soil and groundwater; and conducted pilot tests for design of soil vapor extraction and sparging systems.

*Home Depot, New Rochelle, New York*

Conducted subsurface soil and groundwater investigations, design and conducted electromagnetic surveys to locate underground gasoline and fuel oil tanks. Performed soil gas survey to aid in design of a methane venting system under the store and parking lots.

*Former Dry Cleaning Facility, New York, New York*

Conducted soil and groundwater assessments, designed and installed soil vapor extraction (SVE) system, monitored SVE operation, and performed extensive indoor air testing. Negotiated the work plan for the Remedial Investigation and Interim Remedial Measures with the NYSDEC.

*Pelham Manor Shopping Center Site, New York*

Design and conducted a major electromagnetic survey on the entire shopping mall parking lot using the Geonics EM31 to locate abandoned underground storage tanks and buried underground utilities.

*Rivergate Apartments Building, New York New York*

Performed the site field work to determine the source of a major fuel oil spill. Interacted with Con Edison, the owner of the adjacent property, and NYSDEC to determine the appropriate method of oil recovery. Studied the hydrogeological conditions of the site and ran pilot tests to determine the more effected and less expensive oil recovery system for the site. Designed and installed an oil recovery system.

*Yonkers Waterfront Redevelopment, Yonkers, New York*

Designed and performed a major electromagnetic survey for six parcels of the site, followed up by a test pit excavation program to electromagnetic anomalies and evaluate and classify soil conditions.



*Prince's Point, Prince's Bay, Staten Island, New York*

Conducted subsurface investigation including soil and groundwater sampling, performed sediment sampling from Lemon Creek adjacent to the site, delineated the extent of soil contamination using field screening kits to minimize laboratory costs, and supervised s contaminated soil excavation, removal, and disposal.

**Publications**

Ahmed, M., and Friedman, G., "Impact of Toxic Waste Dumping on the Submarine Environment: A Case Study from The New York Bight". *Northeastern Geology and Environmental sciences*, V.21, no.1/2, p. 102-120.

Ahmed, M., and Friedman, G., "Metals fluxes Across the water/Sediment interface and the Influence of pH". *Northeastern Geology and Environmental Sciences*, in Press.

Ahmed, M., and Friedman, G., "Water and Organic Waste Near Dumping Ground in the New York Bight". *International Journal of Coal Geology*, volume 43, 00.

**Professional Organizations**

American Institute of Professional Geologists (AIPG)

National Groundwater Association

The Society of Sigma Gamma Epsilon

Geological Society of America.

## References

Mr. Joseph Conley, Vice President  
Outlet City, Inc.  
41-16 West Street  
Long Island City, NY  
718.786.4500 (T)  
718.729.8593 (F)  
[jconley219@aol.com](mailto:jconley219@aol.com)  
Re: *Outlet City Site Investigation*

Mr. Wilson Pryne, President  
American Felt & Filter Co.  
361 Walsh Avenue  
New Windsor, NY 12553  
845.561.3560 (T)  
845.563.4422 (F)  
[wpryne@affco.com](mailto:wpryne@affco.com)  
Re: *American Felt & Filter Remedial Investigation*

Mr. Glauco Lollighetti  
Youngwoo & Associates, LLC  
435 Hudson Street  
New York, NY 10014  
212.477.8008 (T)  
212.477.2828 (F)  
[glauco@youngwoo.com](mailto:glauco@youngwoo.com)  
Re: *Former Dry Cleaning Facility, New York, NY*

# Matthew Carroll

Health and Safety Officer

## Education

Bachelor of Engineering, Environmental; Stevens Institute of Technology; Hoboken, NJ (2002)  
Bachelor of Science, Chemistry; New York University; New York, NY (2002)

## Certifications/Training

OSHA 40-Hour Health and Safety Training for Hazardous Waste Site Investigations (2004)  
Technical and Regulatory Training in Underground Storage Tanks, Cook College; Rutgers University (2006)

## Health and Safety Officer

Mr. Carroll is an Environmental Engineer with over six years experience in the consulting field. He has managed jobs from the initial site walkthrough to regulatory closure, including field supervision/health and safety, reporting and cost estimation. The majority of the projects involved private-sector industrial properties which were being redeveloped both in and out of Brownfield's programs. Most recently, Mr. Carroll has been involved in the remedial investigation sampling and reporting for a New York City "e" designation (zoning map amendment) site and the preparation of New York State Department of Environmental Conservation Brownfield Cleanup Program documents for multiple sites.

Mr. Carroll's experience has included on-site management of geophysical surveys (electromagnetic induction, ground-penetrating radar, geophysical logging, etc.), asbestos abatement, underground storage tank (UST) and aboveground storage tank (AST) removals, post-excavation soil sampling, soil boring and monitoring well installation, soil and groundwater sampling, aquifer slug tests and tidal influence studies with hermit data loggers.

## Project Experience

### HAZARDOUS MATERIALS INVESTIGATION/REMEDIATION

#### *Remedial Investigation of Multi-Use Property to Satisfy NYCDEP "e" Designation*

Environmental Engineer

Mr. Carroll implemented soil sampling across the site in accordance with a NYCDEP-approved Remedial Investigation Work Plan (RIWP). Prepared a Remedial Investigation Report (RIR) based on the results of the sampling.

#### *Brownfields Redevelopment of Historic Blinds Manufacturer*

Project Manager

Mr. Carroll evaluated soil and groundwater results to allow for property usage change from restricted to unrestricted. He modified the Johnson & Ettinger Model for Subsurface Vapor Intrusion in Buildings for site-specific, mixed commercial/residential use.

Mr. Carroll implemented an approved Remedial Action Work Plan which included the classification, separation and removal of 9,500 cubic yards of historic fill. During implementation of groundwater pumping test encountered chlorinated volatile organic compounds (CVOCs) at hazardous waste levels. In order to accommodate a construction schedule, Mr. Carroll designed and implemented a groundwater characterization and delineation sampling regime based on an expedited, Triad approach. Concurrently, he assisted on the preparation of a remedial action selection report for submission to the regulatory body. Mr. Carroll implemented an innovative chemical oxidation technology within six months of encountering the chlorinated solvents, including regulatory review.

*Redevelopment of Historic Varnish Manufacturer*  
Environmental Engineer

Mr. Carroll prepared a site assessment based on site reconnaissance and available historic information. He implemented a soil and groundwater sampling plan which revealed the presence of petroleum, specifically xylene and toluene, and CVOCs. He prepared alternate scenarios for cost estimation for settlement with insurance carriers. Mr. Carroll implemented groundwater investigation plan which included the installation of numerous piezometers to study the effect of subsurface utilities and unique drainage pathways in the area.

# Kyle Boretsky

Professional I/Environmental Scientist

## Education

Bachelor of Arts, Ecology, Evolution and Environmental Biology; Columbia University in the City of New York (2005)

## Certifications/Training

OSHA 40-Hour Health and Safety Training for Hazardous Waste Site Investigations (2005)  
OSHA 8-Hour Refresher (2006 and 2007)

## General Expertise

Mr. Boretsky is an Environmental Scientist with one year of experience in environmental consulting. He is experienced in conducting hydrogeologic investigations for clients in the private sector, including industrial facilities (manufacturing, oil refining, etc.); commercial facilities; redevelopment of Sites in the Brownfields program; and redevelopment of New York City e-designation sites (sites with a zoning map amendment) with potential hazardous material contamination.

Mr. Boretsky has conducted Phase I Environmental Site Assessments (ESAs) of multi-use properties, and been involved in planning and performing subsequent remedial investigations. These tasks have included soil boring and monitoring well installation, groundwater sampling, monitoring well development, aquifer pumping tests, remedial design, and implementation of remedial strategies. Investigations led to the preparation and production of Remedial Investigation Work Plans (RIWPs), Remedial Investigation Reports (RIRs), Remedial Action Work Plans (RAWPs), specifications, and Remedial Action Reports.

Some examples of recent work follow:

- Worked with client and other subcontractors on NYCDEP “E” designation and Brownfield Cleanup sites, to make sure all parties were aware of scope of work to be completed and ensured tasks were done on time, within budgetary confines. Coordinated with external laboratory, making sure lab vessels and tools were prepared correctly and passed on to the laboratory for timely analysis.
- Managed, supervised and directed subcontractors for hauling, loading, tank removal and drilling.
- Performed grab and composite soil sampling using handheld augers, geoprobe units, and split spoon samplers.
- Collected samples using bailers, peristaltic pumps, air bladder pumps, and check valves.
- Addressed client questions and concerns through telephone conversations, e-mail contact, and professional meetings.

- Performed site specific tasks such as soil and groundwater sampling and air monitoring.
- Implemented remedial action plans which included removal of leaking underground storage tanks and the associated contaminated soil; removal of hazardous materials left on site from historic site operations; implementation of bioremediation methods such as application of Oxygen Releasing Compound (ORC);
- Designed and implemented site specific Health and Safety Plan.
- Performed maintenance activities for hazardous sites with residual contamination in New York including collection of air samples from vapor extraction systems; mechanical oversight of vapor extraction units; and collection of quarterly groundwater samples from monitoring wells.

# Mary S. Manto

Technical Director

## Education

Master of Public Health, Environmental Health, Columbia University (1982)

Bachelor of Arts, Anthropology, Fordham University (1979)

## Technical Director

Ms. Manto is responsible for the day-to-day operations of Fleming-Lee Shue and provides management support and technical expertise to both clients and staff. She has over twenty-five years experience in environmental consulting, primarily focused on managing regulatory and hazardous waste investigation/remediation projects for a varied public and private sector client base. In her role as Technical Director, she is responsible for the technical quality of all work products. She has managed projects involving state and federal superfund sites insurance cost recovery projects, industrial facilities (aviation, manufacturing, etc.) and commercial facilities. For the past five years, her work has focused on redevelopment projects within New York City, particularly those being conducted under the New York State Brownfield Cleanup Program and the New York City “e” designation requirements.

## Project Experience

### HAZARDOUS MATERIALS INVESTIGATION/REMEDIATION

#### *West 17<sup>th</sup> Street and 10<sup>th</sup> Avenue Redevelopment*

Project Manager for a \$1.5 million investigation and remediation of a former industrial site in Manhattan conducted under the New York State Brownfield Cleanup Program. Project activities include preparation and submittal of work plans for remedial investigation and remedial action, coordination with regulatory agencies, preparation of Citizen Participation Plan and public outreach materials, implementation of on- and offsite investigations, and oversight of remedial activities.

#### *West 42<sup>nd</sup> Street Development Project*

Ms. Manto has overseen all aspects of this project and prepared the original Brownfield Cleanup Program applications for the site. Portions of the site are also being addressed under the New York State Spills Program and the New York City “e” designation requirements. Ms. Manto is responsible for coordinating the requirements of the different programs and ensuring that all agency issues are addressed. She has overseen the preparation of the remedial investigation work plans, remedial investigation reports and remedial action work plans for the individual properties and has worked with the client to develop the remedial cost estimates for cost negotiations with the seller.

*Multi-Building Due Diligence Project, Brooklyn, NY*

For a private client, Ms. Manto supervised the due diligence efforts for acquisition of a 21-acre parcel occupied by 19 high rise residential apartment buildings in East New York. The project involved historical and regulatory file reviews, preparation of a Phase I Environmental Site Assessment. In addition, a limited asbestos and mold assessment and lead-based paint sampling and XRF testing were also conducted. Ms. Manto managed the preparation of the Phase I ESA and worked with the lead and asbestos contractor to prepare reports that met the client objectives pertaining to due diligence and financing.

*Quanta Resources, Long Island City*

Ms. Manto managed day-to-day coordination of PRP committee, regulatory interaction, and contractor oversight of an investigation and remediation of a 16-acre waste oil facility. Ms. Manto also prepared the documents to support the transfer of the property to a private developer and the eventual application for entry of the Site into the Brownfield Cleanup Program.

*Con Edison East River Development— Former Utility Sites*

Ms. Manto was part of a multidisciplinary team representing the owner for a large-scale development located on four sites formerly owned by a major New York utility. She prepared hazardous materials portion of the Generic Environmental Impact Statement, coordinated with and reviewed materials prepared by the consultants responsible for remediation, and provided oversight of field activities.

*Remedial Investigation/ Feasibility Study (RI/FS) for a Potentially Responsible Party (PRP)-lead Superfund Site in Northern New Jersey.*

Ms. Manto managed all investigation and remediation activities for this site, which is also being addressed under the U.S. Department of Energy's FUSRAP program. The 80-acre property was contaminated with mixed radiological and chemical wastes. The RI involved numerous investigative activities on multiple properties. The investigation included a geophysical survey, wetlands assessment, floodplain assessment, overburden investigation, and surface and groundwater investigations. The FS consists of development and screening of remedial action alternatives, treatability investigations, and a detailed analysis of remedial alternatives. The project involved extensive regulatory coordination with USEPA, USDOE, and the Army Corps of Engineers.

*High Temperature Ceramics Facility, New Jersey*

Ms. Manto managed a large soil investigation for a major Japanese chemical company under New Jersey's Environmental Cleanup and Responsibility Act (ECRA) at a beryllium oxide ceramics facility.

*Initial Assessment Studies, Naval Bases, U.S. Navy*

Conducted initial environmental assessment studies for nine U.S. Navy bases in Mid-Atlantic States. Studies evaluated the potential risks from past hazardous waste disposal practices and involved record searches, interviews, aerial and ground surveys, and process reviews.



## **ENVIRONMENTAL IMPACT ASSESSMENT**

### *JetBlue Airways, John F. Kennedy International Airport, New York*

Co-managed the Environmental Assessment for New Entrant Exemption to the High Density Rule and Operations Specifications for JetBlue Airways. The document was approved by FAA and resulted in JetBlue being granted an exemption to the high density rule. The airline was also issued the required new entrant operations specifications and was able to commence operations at John F. Kennedy International Airport. Participated in an environmental baseline assessment of conditions at Terminal 6, John F. Kennedy International Airport. This project, undertaken for JetBlue Airways, encompassed an assessment of existing information on subsurface environmental conditions and information on operational and waste management practices of former building tenants in order to assess potential environmental liability.

### *Terminals 5 and 6, John F. Kennedy International Airport, New York*

For the Port Authority of New York and New Jersey (PANY/NJ), managed the initial phases of an environmental assessment for the redevelopment of Terminals 5 and 6 at John F. Kennedy International Airport. The project team worked closely with outside architects, engineers, and cultural resources consultants in order to keep abreast of changes in the design concepts as the project evolved.

## **PERMITTING/REGULATORY COMPLIANCE**

### *Radiac Research Facility, Brooklyn, New York*

Ms. Manto managed a New York State Part 373 Hazardous Waste Treatment, Storage and Disposal (TSD) Facility permit modification for a hazardous and radiological waste storage facility in Brooklyn, New York. The modifications were required by an Order on Consent issued by the New York State Department of Environmental Conservation (NYSDEC). Also prepared a Part 373 permit for the storage of mixed hazardous and radiological waste for the same client.

### *Proposed Treatment/Disposal Facility, New York*

Ms. Manto prepared major sections of a New York State Part 373 permit for a proposed aqueous waste treatment facility for a major hazardous waste treatment, storage, and disposal (TSD) facility in upstate New York.

### *Contingency Plans –Consolidated Edison Company, New York*

Ms. Manto prepared New York State Part 373 Hazardous Waste Contingency Plans for fourteen facilities, including major generating stations, substations, and customer service centers. The plans outlined measures to be taken in the event of a fire, explosion or unplanned releases of hazardous waste or hazardous waste constituents to the environment. Plans prepared for steam generating stations included procedures to cover spills or releases of waste acids and caustics from boiler cleaning operations, PCB-contaminated oily water from manhole cleanouts, waste solvents, lead paints, waste gasoline, and fluorescent light bulbs. All plans subsequently met the rigorous requirements of the client's court-mandated internal audit program.

*Consolidated Edison Company, New York*

Managed the preparation of Facility Environmental Compliance Manuals for two central substations and a service center. These plans encompassed environmental regulations applicable to all media applied corporate environmental policy to day-to-day facility site operations. Regulatory programs that were included are air resources, water, oil and petroleum, hazardous and solid waste, PCBs, chemical management, land use, wetlands, and asbestos.

**INSURANCE COST RECOVERY**

Managed several insurance-cost recovery projects for major utility clients. These projects included an initial assessment of environmental conditions. Ms. Manto coordinated a multi-disciplinary staff to develop a universe of potential claims, along with a preliminary estimate of claim value.

**Publications and Presentations**

Environmental Assessments: A Case Study. Presented at the 1990 Annual Convention of the Society of Women Engineers. New York, New York. June 1990.

Assessment of Health Risks Associated with Solid Waste-to-Energy Facilities (co-author). Presented at the 113th Meeting of the American Public Health Association. November 1985.

*Assessment of Potential Public Health Impacts Associated with Predicted Emissions of Polychlorinated Dibenzo-Dioxins and Polychlorinated Dibenzo-Furans from the Brooklyn Navy Yard Resource Recovery Facility* (co-author). Prepared for the New York City Department of Sanitation. August 1984.

An Epidemiological Approach to Assessing Health Effects Near Hazardous Waste Disposal Sites. *Proceedings of the National Environmental Engineering Conference*. American Society of Civil Engineers. 1982.

## References

James Harris  
The Related Companies  
60 Columbus Circle  
New York, NY  
212.801.3732 (T)  
212.801.1036 (F)  
[jharris@related.com](mailto:jharris@related.com)  
Re: *West 17<sup>th</sup> Street and 10<sup>th</sup> Avenue Redevelopment Project*

Michael Bogin  
Sive, Paget & Riesel, P.C.  
460 Park Avenue  
New York, NY 10022  
212.421.2150 (T)  
212.421.1891 (F)  
[mbogin@sprlaw.com](mailto:mbogin@sprlaw.com)  
Re: *42<sup>nd</sup> Street Development Project*

John Weir, Sr. Vice President  
Taconic Investment Partners  
111 Eighth Avenue, Suite 1500  
New York, NY 10011  
212.704.3806 (T)  
[jweir@tacon.com](mailto:jweir@tacon.com)  
Re: *Multi-Building Due Diligence Project, Brooklyn, NY*

# Appendix O

## Photo Log

West 34<sup>th</sup> Street and 11<sup>th</sup> Avenue Site  
BCP # C231049

*Photographs of Grids Cleared to Bedrock*



**A-4 / A-5**



**A-4 / A-5 / A-6 (foreground)**



**A-5 (foreground) and A-6**



**A-7**

West 34<sup>th</sup> Street and 11<sup>th</sup> Avenue Site  
BCP # C231049

*Photographs of Grids Cleared to Bedrock*



**A-7**



**A-2 / A-3**  
**(Chopped bedrock present)**



**B-1 (left background) / 2 (foreground).**



**B-2**

West 34<sup>th</sup> Street and 11<sup>th</sup> Avenue Site  
BCP # C231049

*Photographs of Grids Cleared to Bedrock*



**B-3 / B-4**



**B-3**



**B-6**



**B-7**

West 34<sup>th</sup> Street and 11<sup>th</sup> Avenue Site  
BCP # C231049

*Photographs of Grids Cleared to Bedrock*



**C-1 / C-2**



**C-1 / C-2 / C-3**



**C-3 through C-7 (foreground), D-1 through D-7 (foreground) and E-1 through E-4 (foreground left)**



**D-3 (foreground) through D-7**



West 34<sup>th</sup> Street and 11<sup>th</sup> Avenue Site  
BCP # C231049

*Photographs of Grids Cleared to Bedrock*



**G-1 through G-5 (some bedrock fill)**



**G-4 / G-5**



**G-1 through G-5 and F-1 through G- 6 / Summary photo of site from southwest to northeast**



**E-2 through E-7 (background) / Summary photo of site from southeast to northwest**

West 34<sup>th</sup> Street and 11<sup>th</sup> Avenue Site  
BCP # C231049

*Photographs of Grids Cleared to Bedrock*



**E-5, 6 and 7; D-5, 6, and 7; C-5, 6 and 7, and B-5, 6 and 7**



**B-3**



**B-3**



**Summary photo overlooking site from northwest to southeast**

**West 34<sup>th</sup> Street and 11<sup>th</sup> Avenue Site  
BCP # C231049**

*Photographs of Grids Cleared to Bedrock*



**Summary photo of site from northeast to southwest**



**Summary photo of northern half of site**

West 34<sup>th</sup> Street and 11<sup>th</sup> Avenue Site  
BCP # C231049

*Photographs of Remedial Action Implementation*



Photo 1: Installation of soldier beam in northeast.



Photo 2: Truck wash ramp at the 35<sup>th</sup> Street exit.



Photo 3: Breaking up for concrete vault surrounding USTs near southern gate (34<sup>th</sup> Street).



Photo 4: Removal of USTs near southern gate.

West 34<sup>th</sup> Street and 11<sup>th</sup> Avenue Site  
BCP # C231049

*Photographs of Remedial Action Implementation*



Photo 5: Broken concrete vault that housed three USTs near southern gate.



Photo 6: Decommissioning of USTs uncovered near southern gate



Photo 7: Removal of USTs uncovered near southern gate



Photo 8: Excavation of southwestern area, as well as C&D pile.

West 34<sup>th</sup> Street and 11<sup>th</sup> Avenue Site  
BCP # C231049

*Photographs of Remedial Action Implementation*



Photo 9: Installation of soldier beams and lagging along southern border (34<sup>th</sup> Street).



Photo 10: Excavation facing northeast.



Photo 11: First stage of soldier beams and lagging along southern border (34<sup>th</sup> Street).



Photo 12: Begin drilling first row of tiebacks along southern border (34<sup>th</sup> Street).

West 34<sup>th</sup> Street and 11<sup>th</sup> Avenue Site  
BCP # C231049

*Photographs of Remedial Action Implementation*



Photo 13: Trucking out of excavated materials.



Photo 14: Excavation near adjoining lot (Lot 55) in the northeast corner.



Photo 15: Replacement drill rig continuing drilling tie-backs along southern border (34<sup>th</sup> Street).



Photo 16: Begin drilling tie-backs in northeast corner.

West 34<sup>th</sup> Street and 11<sup>th</sup> Avenue Site  
BCP # C231049

*Photographs of Remedial Action Implementation*



Photo 17: Installation of timber lagging and drilling of tie-backs in southwest corner.



Photo 18: Secondary Ramp on 34<sup>th</sup> Street.



Photo 19: Excavation of material. Photo taken facing down the secondary ramp.



Photo 20: Installation of second row of tie-backs along northern border (35<sup>th</sup> Street).



West 34<sup>th</sup> Street and 11<sup>th</sup> Avenue Site  
BCP # C231049

*Photographs of Remedial Action Implementation*



Photo 21: Incoming water in southwest corner from leaking fire hydrant on 34<sup>th</sup> Street



Photo 22: Lagging and sheeting along the southern wall (34<sup>th</sup> Street), second row of tie-backs completed.



Photo 23: Manually cleared bedrock.



Photo 24: Excavation of area at base of the secondary ramp.