

STATE OF NEW YORK
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

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In the Matter of Alleged Violations of Article 27, Titles 7, 13 and
14 of the New York State Environmental
Conservation Law and Parts 360 and 375 of Title 6 of the
Official Compilation of Codes, Rules and Regulations of
the State of New York

ORDER ON CONSENT

-By-

Index No. CO 2-20121114-01

151-45 Sixth Road Whitestone Partners LLC

Respondent.
-----X

WHEREAS,

1. A. The New York State Department of Environmental Conservation ("Department") is responsible for solid waste and inactive hazardous waste site and brownfield site remedial programs pursuant to Article 27, Titles 7, 13 and 14 of the Environmental Conservation Law ("ECL") and Parts 360 and 375 of Title 6 of the Official Compilation of Codes, Rules and Regulations of the State of New York ("6 NYCRR") and may issue orders consistent with the authority granted to the Commissioner of the Department by such statute.

B. The Department is responsible for carrying out the policy of the State of New York to conserve, improve and protect its natural resources and environment and control water, land, and air pollution consistent with the authority granted to the Department and the Commissioner by Article 1, Title 3 of the ECL.

C. This Order is issued pursuant to the Department's authority under, *inter alia*, ECL Article 27, Titles 7, 13 and 14 and ECL §3-0301.

2. 6 NYCRR Part § 360 sets forth requirements relating to the management and disposal of solid waste. 6 NYCRR § 375-1 sets forth general requirements that are common to the implementation of various types of remedial programs overseen by the Department, including brownfield site remedial programs. 6 NYCRR § 375-3 sets forth the requirements specific to the brownfield cleanup program. When provisions of Part 360 and subparts 375-1 and 375-3 are violated, the Department has authority to impose civil penalties pursuant to ECL §§71-2703 and 71-2705 and to seek injunctive relief pursuant to ECL §71-2727(1) and (3)(a).

3. Respondent 151-45 Sixth Road Whitestone Partners LLC is a New York limited liability company.
4. Respondent is in the process of redeveloping a brownfield site that is being remediated by it as a "volunteer" pursuant to a brownfield site remedial program, as those terms are defined in ECL §27-1405 and 6 NYCRR § 375-3.2. The site is located at 151-45 6th Road, Queens, New York, and it is assigned DEC site number C241091 and is referred to as the "Waterpointe-Whitestone Site" (hereinafter the "Site").
5. EnviroBusiness, Inc., doing business as EBI Consulting, was duly appointed as Receiver for the Site by order of the Supreme Court of the State of New York, County of Queens, in the case of *Capmark Finance Inc. v. 151-45 Sixth Road Whitestone Partners LLC, et al.*, Index No. 17605/2009, dated July 27, 2009, as amended by orders of the United States Bankruptcy Court, District of Delaware, in the case of *In re Capmark Financial Group Inc., et al.*, Case No. 09-13684 (CSS), dated June 24, 2010 and August 29, 2011.
6. In or about September 2012, the Department learned that the Respondent failed to comply with the express terms of the Remedial Action Work Plan (RAWP) and the provisions of ECL Article 27, Titles 7, 13 and 14, and 6 NYCRR §§ 360, 375-1 and 375-3 during the remediation of the Site.
7. Respondent consents to the issuance of this Order without an admission or finding of liability, fault, wrongdoing, or violation of any law, regulation, permit, order, requirement, or standard of care of any kind whatsoever.
8. Solely with regard to the matters set forth below, Respondent hereby waives any right to a hearing as may be provided by law, consents to the issuance and entry of this Order, and agrees to be bound by its terms. Respondent consents to and agrees not to contest the authority or jurisdiction of the Department to issue or enforce this Order, and agrees not to contest the validity of this Order or its terms or the validity of data submitted to the Department by Respondent pursuant to this Order.

NOW, having considered this matter and being duly advised, it is **ORDERED THAT**:

I. PENALTY

- A. With respect to the violations which the Department alleges above against Respondent, the Department, in settlement of any and all such violations, hereby assesses against Respondent 151-45 Sixth Road Whitestone Partners LLC a civil penalty in the amount of ONE HUNDRED FIFTY THOUSAND DOLLARS (\$150,000.00). Payment of SEVENTY-FIVE THOUSAND DOLLARS (\$75,000.00) must be received along with the signed originals of this Order within 30 days of the receipt of this Order. The remaining SEVENTY-FIVE THOUSAND DOLLARS

(\$75,000.00) shall be suspended provided Respondent complies with the terms, conditions and compliance schedule of this Order.

Payment must be made by certified or cashier's check or money order made payable to the order of the New York State Department of Environmental Conservation. Respondents will submit the settlement payment as required by this Order along with two signed originals of this Order, to:

Office of General Counsel
New York State Department of Environmental Conservation
625 Broadway, Floor 14th Floor
Albany, New York 12233-5500
Attn: Michael Caruso

- B. Failure to timely pay the civil penalty due under this order or otherwise comply with this Order will result in the termination of the Brownfield Cleanup Agreement and no Certificate of Completion will be issued for this site.

II. COMPLIANCE

- A. Respondent shall submit a work plan for the Department's approval within 45 days of receipt of this Order describing all activities necessary to investigate, remove and properly dispose of all unapproved materials brought onto the site as well as all pre-existing site materials that were mixed or commingled with the unapproved materials. The work plan must include confirmatory sampling after the materials are removed that the site meets the unrestricted residential soil cleanup objectives.
- B. Respondent shall complete remediation of the Site strictly complying with the approved work plan and the provisions of the Environmental Conservation Law, 6 NYCRR Parts 360 and 375, the Brownfield Cleanup Agreement, and the Remedial Action Work Plan.
- C. Respondent shall not be entitled to, and will not, use the costs incurred to comply with this order for the purposes of tax credits under the brownfield cleanup program.

III. RESERVATION OF RIGHTS


The Department expressly reserves all rights to any legal, administrative or equitable rights or claims, actions, suits, causes of action or demands whatsoever that the Department may have against anyone other than Respondent.

IV. STANDARD PROVISIONS

Respondent will further comply with the standard provisions which are attached hereto, and which constitute material and integral terms of this Order and are hereby incorporated into this document.

DATED: Albany, New York
November 27, 2012

Joseph Martens, Commissioner
New York State Department of Environmental
Conservation

By: 
Robert W. Schick, P.E.
Acting Director
Division of Environmental Remediation

CONSENT BY RESPONDENT

Respondent **151-45 Sixth Road Whitestone Partners LLC** hereby consents to the issuing and entering of this Order without further notice, waive its right to a hearing herein, and agrees to be bound by the terms, conditions and provisions contained in this Order.

By: EnviroBusiness, Inc., d/b/a EBI Consulting,
Receiver for Respondent

By (Signature): John F. Roddy VP

Print Name: John F. Roddy

Title: Vice President

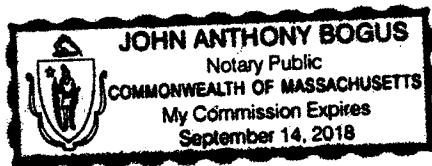
Date: 11/16/12

ACKNOWLEDGMENT

STATE OF MASSACHUSETTS) ss:
COUNTY OF MIDDLESEX)

On the 16TH day of NOV in the year 2012 before me personally came JOHN RODDY to me known, who, being by me duly sworn, did depose and say that s/he resides in 46 LINNET STREET WEST ROXBURY, MA 02132 that s/he is the VICE PRESIDENT - FINANCE of ENVIRO BUSINESS INC, DBA EBI CONSULTING the corporations described in and which executed the above instrument; and that s/he signed his/her name thereto by authority of the board of directors of said corporations.

John Anthony Bogus
Notary Public
Signature and Office of individual taking acknowledgment



STANDARD PROVISIONS

Payment. Any penalty assessed pursuant to the terms and conditions of this Order shall be paid by submitting a certified or cashier's check or money order, payable to the Department of Environmental Conservation, to: Department of Environmental Conservation, Office of General Counsel, Attn: Michael Caruso, 625 Broadway, 14th Floor, Albany, New York 12233-5550. Unpaid penalties imposed by this Order shall bear interest at the rate of 9 percent per annum for each day the penalty, or any portion thereof, remains unpaid. Payments received shall first be applied to accrued interest charges and then to the unpaid balance of the penalty.

Communications. Except as otherwise specified in this Order, any reports, submissions, and notices herein required shall be made to: NYS Department of Environmental Conservation, Office of General Counsel, Attn: Michael Caruso, 625 Broadway, Albany, New York 12233-5550.

Duration. This Order shall take effect when it is signed by the Commissioner of Environmental Conservation, or his designee, and shall expire when Respondent has fully complied with the requirements of this Order.

Access. For the purpose of monitoring or determining compliance with this Order, employees and agents of the Department shall be provided access to any facility, site, or records owned, operated, controlled or maintained by Respondent, in order to inspect and/or perform such tests as the Department may deem appropriate, to copy such records, or to perform any other lawful duty or responsibility.

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

Indemnity. Respondent shall indemnify and hold the Department, the State of New York, and their representatives and employees harmless for all claims, suits, actions, damages and costs resulting from the acts and/or omissions of Respondent, intentional, negligent, or otherwise, of every nature and description, arising out of or resulting from the compliance or attempted compliance with the provisions of this Order by Respondent or its employees, servants, agents, successors or assigns.

Modifications. No change in this Order shall be made or become effective except as specifically set forth by written order of the Commissioner, being made either upon written application of Respondent, or upon the Commissioner's own findings after notice and opportunity to be heard have been given to Respondent. Respondent shall have the burden of proving entitlement to any modification requested pursuant to this Standard Provision or the "Force Majeure" provision, *supra*. Respondent's requests for modification shall not be unreasonably denied by the Department, which may impose such additional conditions upon Respondent as the Department deems appropriate.

Other Rights. Nothing contained in this Order shall be construed as barring, diminishing, adjudicating or in any way affecting (1) any legal, administrative or equitable rights or claims, actions, suits, causes of action or demands whatsoever that the Department may have against anyone other than Respondent; (2) any right of the Department to enforce administratively or at law or in equity, the terms, provisions and conditions of this Order; (3) any right of the Department to bring any future action, either administrative or judicial, for any other violations of the ECL, the rules and regulations promulgated thereunder, or conditions contained in orders or permits, if any, issued by the Department to Respondent; (4) the summary abatement powers of the Department, either at common law or as granted pursuant to statute or regulation.

Entire Agreement. This Order shall constitute the entire agreement of the Department and Respondent with respect to settlement of those violations specifically referenced herein.

Binding Effect. The provisions, terms, and conditions of this Order shall be deemed to bind Respondent and Respondent's heirs, legal representatives, receivers, trustees in bankruptcy, successors and assigns.

Service. If Respondent is represented by an attorney with respect to the execution of this Order, service of a duly executed copy of this Order upon Respondent's attorney by ordinary mail shall be deemed good and sufficient service.


Multiple Respondents. If more than one Respondent is a signatory to this Order, use of the term "Respondent" in these Standard Provisions shall be deemed to refer to each Respondent identified in the Order.

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PRESTIGE TITLE AGENCY INC.
RECORDING/DISBURSEMENT ESCROW
15 WEST 39TH STREET, 10TH FLOOR
NEW YORK, NY 10018
PH. (212) 651-1200

J.P.Morgan

JPMorgan Chase Bank, N.A.
New York, New York
1-2-210

 EZShieldSM Check Fraud
Protection for Business

11/19/2012

PAY
TO THE
ORDER OF

NYS Department of Environmental Conservation

\$ **75,000.00

Seventy-Five Thousand and 00/100 *****

DOLLARS

MEMO

Whitestone Consent Order-Index No. CO 2-20121114-01


AUTHORIZED SIGNATURE

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