

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION
STATE SUPERFUND PROGRAM/BROWNFIELD CLEANUP PROGRAM

ECL §27-1301 *et seq.* and ECL §27-1401 *et seq.*

In the Matter of a Remedial Program for

**STIPULATION AND
ADMINISTRATIVE SETTLEMENT**
Index No. CO2-2150406-218 -B

Queens Plaza

DEC Site No.: C241151

Herein referred to as "Site"

Associated with Queens Plaza Residential Development

Located at: 28-10 Jackson Avenue

Queens County

Long Island City, NY 11101



by: LIC Development Owner, L.P.

Hereinafter referred to as "Respondent"

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

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

C. The Department is responsible for the handling of hazardous waste under Article 27, Title 9 of the ECL.

D. 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.

E. The Department is responsible for carrying out the policy for maintaining reasonable standards of purity for the waters of NYS under Article 17 of the ECL.

F. This Stipulation is issued pursuant to the Department's authority under, *inter alia*, ECL Article 17 and 27, Title 13, ECL Article 27, Title 14, and ECL 3-0301, and resolves Respondent's liability to the State as provided at 6 NYCRR 375-1.5(b)(5).

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

3. The Department alleges that Respondent failed to properly manage some of the waste and wastewater generated from the Site from February 16, 2015 to May 31, 2016.

4. The Department alleges that Respondent has failed to pay past costs for the site

5. Respondent consents to the issuance of this Stipulation without (i) an admission or finding of liability, fault, wrongdoing, or violation of any law, regulation, permit, order, requirement, or standard of care of any kind whatsoever; (ii) an acknowledgment that there has been a release or threatened release of hazardous waste

at or from the Site; and/or (iii) an acknowledgment that a release or threatened release of hazardous waste at or from the Site constitutes a significant threat to the public health or environment.

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

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

I. A. To resolve Respondent's issues of non-compliance, Respondent shall pay \$100,000, which shall be paid to the Department upon Respondents signing of this Stipulation and its return to the Department.

B. To resolve issues of past costs owed to the Department for historical oversight of the Site, Respondents shall pay \$1,900,000, which shall be paid to the Department within 30 days of the effective date of this Stipulation. Such past costs shall not qualify as costs for tax credit purposes under Article 27, Title 14 of the ECL and applicable NYS Tax and Finance code provisions.

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

II. This Stipulation resolves Respondent's issues of non-compliance and all past costs owed on the Site (this Stipulation does not settle any costs relating to off-site Orders with the Department) with the Department. The Department reserves any and all rights it has to bring any action against any other party (other than Respondent) for the issues of non-compliance identified in this Stipulation. Respondent reserves any and all defenses it may have if any third party action is brought against it.

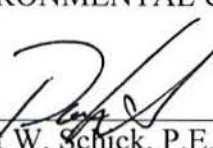
III. Respondent shall comply with the standard provisions which are attached, and which constitute material and integral terms of this Stipulation and are hereby incorporated into this document.

DATED:

JUL 01 2016

Basil Seggos
COMMISSIONER
NEW YORK STATE DEPARTMENT OF
ENVIRONMENTAL CONSERVATION

By:


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

CONSENT BY SETTLING RESPONDENT

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

LIC Development Owner, L.P.

By: Michael B. Benner
Michael B. Benner

Title: Vice President and Secretary

Date: June 23, 2016

STATE OF NEW YORK)

County of NY) ss

On the 23 day of June, in the year 2016, before me, the undersigned, personally appeared Michael B. Benner personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is 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 signatures 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 the Individual
Taking acknowledgement

JESSICA L. IBURG
Notary Public, State of New York
No. 011B6142760
Qualified in Kings County
Certificate Filed in New York County
Commission Expires March 20, 2018

Payment. Any amounts payable by Respondent pursuant to the terms and conditions of this Stipulation shall be paid by submitting a certified check, cashier's check, or money order, payable to the Department of Environmental Conservation, to: New York State Department of Environmental Conservation, Office of General Counsel, Attn: Maria Mastroianni, 625 Broadway, 14th Floor, Albany, New York, 12233-1500. Unpaid amounts payable pursuant to this Stipulation 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.

Communications. Except as otherwise specified in this Stipulation, any reports, submissions, and notices herein required shall be made to: New York State Department of Environmental Conservation, Office of General Counsel, Attn: Benjamin Conlon 625 Broadway, 14th Floor. Albany, New York 12233-1500

Duration. This Stipulation 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 Stipulation.

Access. For the purposes of monitoring or determining compliance with this Stipulation, employees and agents of the Department shall be provided access to any facility, site, or records owned, operated, controlled or maintained by the Respondent, in Stipulation 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 Stipulation, because of an act of God, war, strike, riot, catastrophe, or other condition that 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 in 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 Stipulation by Respondent or its employees, servants, agents, successors or assigns.

Modification. No change in this Stipulation shall be made or become effective except as specifically set forth by written Stipulation 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 bear the burden of proving entitlement to any modification requested pursuant to this Standard Provision or the "Force Majeure" provision, supra. Respondent's request 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 Stipulation shall be 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 and/or the State of New York may have against Respondent and/or anyone other than Respondent for any natural resource damage claim that the Department may have; (2) 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 the Respondent; (3) any right of the Department to enforce administratively or at law or in equity, the terms, provisions, and conditions of this Stipulation; (4) any right of the Department to bring any further action, either administrative or judicial, for any other violations of the ECL, the rules and regulations promulgated thereunder, or conditions contained in Stipulations or permits, if any, issued by the Department to Respondent; (5) the summary abatement powers of the Department, either at common law or as granted pursuant to statute or regulation.

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

Binding Effect. The provisions, terms, and conditions of this Stipulation 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 Stipulation, service of a duly executed copy of this Stipulation 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 Stipulation, use of the term "Respondent" in these Standard Provisions shall be deemed to refer to each Respondent identified in the Stipulation