

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION  
STATE SUPERFUND PROGRAM  
ECL §27-1301 *et seq.*

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In the Matter a Remedial Program for

**ORDER ON CONSENT AND  
ADMINISTRATIVE SETTLEMENT  
Index No. R2-20260107-5**

**DEC Site Name: Best DDK Cleaners**

DEC Site Nos.: C241126

Site Address: 38-68 13<sup>th</sup> Street, Long Island City, NY 11101

Hereinafter referred to as "Site"

by: Maryuhn Young Moon

Hereinafter referred to as "Respondent"

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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 the New York State Finance Law ("SFL") and pursuant to such laws the Department is authorized to enter into this Order on Consent and Administrative Settlement (the "Order").

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, Title 13 and ECL 3-0301, and SFL Section 97-b, and resolves Respondent's liability to the State as provided at 6 NYCRR 375-1.5(b)(5).

D. The Commissioner of the New York State Department of Environmental Conservation is the designated Trustee for Natural Resources in accordance with applicable State and federal law.

E. 6 NYCRR 375-2.11(c)(1)(ii) authorizes the Department to expend monies from the hazardous waste remedial fund provided for at SFL section 97-b to pay for the cleanup or restoration to its original state of any area where contaminants were

disposed of or possessed unlawfully contrary to ECL § 27-0914. 6 NYCRR 375-2.11(c)(1)(iii) authorizes the Department to expend monies from the hazardous waste remedial fund provided for at SFL section 97-b to pay for site identification, classification, and investigation activities including, but not limited to, testing, analyses, and record searches, and the Department's related administrative activities.

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

3. On November 22, 2010, Respondent and the Department entered into State Superfund Consent Order R2-0652-11-10 (the "2010 Order"), obligating Respondent to investigate and remediate the Site with respect to the disposal of hazardous waste at the Site.

4. On November 10, 2021, the Department and Respondent entered into Brownfield Cleanup Agreement C241126-09-21 (the "BCA"), which terminated the 2010 Order.

5. Respondent acquired the Site in 2003 and is the current owner.

6. The Site is located at 38-68 13<sup>th</sup> Street, Long Island City, NY 11101, and recorded as Tax Block 472, Lot 683. The Site is approximately 0.11 acres and is currently being used as a parking lot. Upon information and belief, a dry cleaner operated at the Site since at least 1996 until 2016. In 2016, a fire, which Respondent asserts was through no fault of Respondent, destroyed the only building onsite, according to Respondent. Exhibit "A" is a map of the Site showing its general location.

7. Pursuant to legal authorities stated herein, the Department anticipates the need to spend additional monies of the hazardous waste remedial fund for the implementation of a remedial program, including the investigation and remediation of hazardous wastes and/or substances identified on, or in proximity to, the Site. These expenditures are authorized by and in conformance with relevant State and federal law.

8. The objectives of this Order are for: (i) Respondent to pay a portion of the Department's past and future response costs at the Site for the investigation and remediation of the Site by means of the payment set forth in paragraph IV.A; (ii) Respondent to grant an Environmental Easement to the Department for the Site as provided in ECL Article 71, Title 36; and (iii) the Department to release and covenant not to sue Respondent for the investigation and remediation of the Site and for the reimbursement of all Site-related response costs, including any costs or work under any approved Site Management Plan or similar document, or otherwise provide periodic reporting to the Department.

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

10. 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. Return of Order

This Order, along with any applicable submissions, shall be sent to:

Grace Nam, Esq.  
New York State Department of Environmental Conservation  
Region 2  
47-40 21<sup>st</sup> Street  
Long Island City, NY 11101.

II. Real Property

The Site subject to this Order has been assigned Site Number C241126 and is as follows:

Subject Property Description (A Map of the Site is attached as Exhibit "A")

Tax Map/Parcel No.: Queens County, Block 472, Lot 683  
ADDRESS: 38-68 13<sup>th</sup> Street, Long Island City, NY 11101  
Owner: Maryuhn Young Moon

III. Scope of Order

Respondent is resolving its liability for known air, soil gas, soil, groundwater and other contamination at, emanating, migrating or stemming from the Site, whether on Site

or off Site, based on past investigations or remediation, or other activities (“Existing Contamination”) through payment of money to the Department as provided in Paragraph IV of this Order. “Existing Contamination” includes contaminants identified in any investigation or other report in the Department’s possession as of the Effective Date and all contamination or pollution stemming from that contamination. For example, if PCE/TCE/PFAS, their byproducts, additives, or degradation products, etc. from Existing Contamination leaches, migrates, moves, expands or percolates to other locations in soil, groundwater, soil gas or otherwise, such contamination constitutes Existing Contamination for purposes of this consent order. Existing Contamination does not include contamination from separate unknown releases of contamination.

- A. Respondent has submitted all reports and engineering calculations as requested by the Department for the feasibility study and/or remedial design.
  
- B. The following Sections of the “Standard Clauses for All New York State Superfund Orders” attached to this Order as Appendix A are without effect:
  - I – Citizen Participation Plan;
  - II – Initial Submittal;
  - III – Development, Performance and Reporting of Work Plans;
  - VI – Payment of State Costs;
  - VII – Release and Covenant Not to Sue;
  - IX – Indemnification;
  - X – Public Notice;
  - XII – Environmental Easement;
  - XIII – Progress Reports;
  - XIV – Termination of Order; and
  - XVI – Miscellaneous, Subparagraphs B, C and F.
  
- C. The following Sections of the “Standard Clauses for All New York State Superfund Orders” attached to this Order as Appendix A are incorporated herein, as modified herein, and remain in full force and effect:
  - IV – Penalties;
  - V – Entry Upon Site;
  - VIII – Reservation of Rights;
  - XI – Change of Use;
  - XV – Dispute Resolution; and
  - XVI – Miscellaneous, Subparagraphs A, D, E, G, H, I, J and K.

IV. Payment to Resolve Liability for Existing Contamination

A. In full satisfaction and resolution of any and all claims by the Department related to the Existing Contamination at the Site, Respondent shall pay the sum of **TWENTY-ONE THOUSAND EIGHT HUNDRED AND FIFTEEN DOLLARS (\$21,815)**. The payment shall be by electronic payment at <https://customer.sfs.ny.gov> or by check made payable to the order of the “New York State Department of Environmental Conservation” with the enclosed invoice, and the Case Number of this Order on Consent/Index Number written in the memo section of the check, which shall be sent to:

New York State Department of Environmental Conservation  
Division of Management and Budget Services  
625 Broadway  
10<sup>th</sup> Floor  
Albany, NY 12233-4900.

B. Failure to make the payment required in Subparagraph IV.A of this Order in the manner prescribed shall constitute a default hereunder. If Respondent so defaults under this Order, the Department shall be entitled to a penalty of \$1,000 per day for each day until payment required under Subparagraph IV.A of this Order has been made, and Respondent shall pay attorneys’ fees and costs incurred by the Department to enforce these provisions, in addition to the payment and any interest.

V. Property Transfer and Other Actions

A. Commencing on the Effective Date of this Order, Respondent, its principals, agents, executors, employees, attorneys, successors, and assigns shall refrain from using the Site, or such other property, in any manner that would interfere with or adversely affect the implementation, integrity or protectiveness of the investigation and/or remedial measures to be performed on the Site, provided however, as set forth in section VI.C below, the Department acknowledges that operations currently exist at the Site and will minimize disturbance of the use of the Site throughout the investigation and remedial process to the extent practicable.

B. Prior to executing a contract of sale for the Site or similar instrument, Respondent must inform in writing any third party who seeks to obtain title to or possessory interest in the Site of the existence and applicability to the Site of this Order, including the Environmental Easement. If Respondent transfers title before the Environmental Easement under Paragraph VII of this Order has been filed and recorded by the Queens County Clerk, the transferee must agree to terms of this Order, including the requirement to file and record an Environmental Easement on this Site. Respondent shall notify all other parties with a current possessory interest in the Site of the existence of this Order.

C. In the event of an assignment or transfer of title to the Site, the assignee or transferee must consent in writing to be bound by the terms of this Order, and upon delivery to the Department of a validly executed Consent of Additional Signatory (attached as Exhibit B), Respondents' (or future assignor's or transferor's) obligations hereunder shall terminate. Notwithstanding, Respondent (or future assignors or transferors) will continue to be entitled to all the benefits provided by this Order, subject to Paragraph VII below.

D. Respondent shall file and record this Order with the Queens County Clerk within thirty (30) days of the Effective Date of this Order.

#### VI. Access to Site

A. Respondent hereby grants the Department and its agents, employees, contractors and subcontractors reasonable non-exclusive access to the Site for the purpose of conducting any investigation, removal, remedial, or response activity related to the Site. The Department shall make good faith efforts to notify the Site owner and/or tenant in possession prior to entering the Site and, to the extent reasonable, avoid interfering with business activities on the Site. This grant of access shall not convey any property interest in the Site to the State of New York. Such investigation, removal, remedial, or response activities may include, but are not limited to, the following:

- (i) Monitoring, investigation, removal, remedial or other activities at the Site;
- (ii) Verifying any data or information submitted to the State;
- (iii) Conducting investigations relating to contamination at or near the Site;
- (iv) Obtaining samples;
- (v) Assessing the need for, planning, or implementing additional response actions at or near the Site;
- (vi) Assessing the Respondent's or any subsequent owner's compliance with any institutional controls on the property; and
- (vii) Determining whether the Site or other property is being used in a manner that is prohibited or restricted, or that may need to be prohibited or restricted, by or pursuant to this Order.

B. Subject to Subparagraph VI.A above, the Site will be entered upon and occupied by the Department and its representatives for the performance of work thereon for one or more of the purposes set forth in ECL Sections 27-1309(3)-(4) and 27-1313(8), and particularly for the purpose of conducting remedial activities at the Property.

C. The Department agrees to provide Respondent with a Record of Decision that, among other things, identifies areas of the Site where remedial activities will occur. The Department agrees to work with Respondent to perform the Remedial Action, and to locate and store equipment, in a manner to minimize interference with use of the Site by Respondent, tenants and any customers.

## VII. Environmental Easement

A. If the Record of Decision (“ROD”) for the Site relies upon one or more institutional and/or engineering controls, the Department shall prepare an Environmental Easement to run with the land in favor of the State which complies with the requirements of ECL Article 71, Title 36, and 6 NYCRR 375-1.8(h)(2) (the “Environmental Easement”). The Department shall provide a draft Environmental Easement to Respondent for review and comment. Upon finalization of the Environmental Easement, Respondent shall cause the final executed Environmental Easement to be recorded under the provisions of Subparagraph VII.A and comply with the requirements of 6 NYCRR 375-1.8(h)(2); provided however, Respondent shall not be obligated to pay, reimburse, conduct or provide (as applicable) any costs or work relating to the Existing Contamination and shall not be required to implement any approved Site Management Plan (“SMP”) or similar document, or provide periodic reporting to the Department). While Respondent may not need to implement the SMP, they will still need to abide by it.

B. If the ROD provides for no action other than implementation of one or more institutional controls, Respondent shall cause the final approved Environmental Easement to be recorded under the provisions of Subparagraph VII.A.

C. If Respondent does not cause the final approved Environmental Easement to be recorded in accordance with 6 NYCRR 375-1.8(h)(2), Respondent shall be deemed to be in violation of this Order.

## VIII. Appropriate Care/Cooperation

Respondent shall exercise appropriate care at the Site but shall not be required to sample, investigate or remediate such with respect to the Existing Contamination and

shall comply with all applicable local, state, and federal laws and regulations. Respondent shall cooperate fully with the Department in the implementation of any additional response actions needed to address Existing Contamination at the Site and shall not interfere with such response actions. Respondent and any parent company, successors, and assigns shall affirmatively ensure that any development activities on the Site are in compliance with all applicable local, State, and federal laws and regulations, including but not limited to 6 NYCRR 375-1.11 and 375-2.11.

IX. Release and Covenant Not to Sue

A. Upon the full execution of this Order and the Department's receipt of Respondent's full payment pursuant to Paragraph IV.A of this Order, Respondent shall not be liable to the Department upon any statutory or common law cause of action, arising out of the presence, migration or leaching or movement of any contaminants in, on or emanating from the Site at any time before the effective date of this Order, including but not limited to, those for natural resources damages, provided that: (1) Respondent continues to exercise appropriate care and cooperation as required in Paragraph VIII; and (2) Respondent continues to allow access as required in Paragraph VI.

B. The terms of this release are consistent with those governing the issuance of a Certificate of Completion, including limitations, reopener provisions and extension to successors and assigns, found in 6 NYCRR 375-2.9.

C. The liability protections set forth in this section shall extend to Respondent and all future successors or assigns through acquisition of title to the Site and to a person who develops or otherwise occupies the Site; provided that such persons act with due care and in good faith to adhere to the requirements of relevant institutional controls, including but not limited to a Site Management Plan and the Environmental Easement in accordance with Section V of this Order. Respondent shall have an opportunity to review and comment on the Site Management Plan and Environmental Easement, if required by the Department. However, pursuant to 6 NYCRR 375-2.9(c), such liability protections do not extend to, and cannot be transferred, to a responsible party as of the effective date of this Order, unless that person agrees to be a party to the Order and the Department also agrees.

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

X. Communications

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

1. Communication from Respondent shall be sent to:

Marlen Salazar, DEC Project Manager  
New York State Department of Environmental Conservation  
Division of Environmental Remediation  
47-40 21<sup>st</sup> Street  
Long Island City, NY 11101  
[Marlen.salazar@dec.ny.gov](mailto:Marlen.salazar@dec.ny.gov)

Grace Nam, Esq. (correspondence only)  
New York State Department of Environmental Conservation  
Office of General Counsel  
47-40 21<sup>st</sup> Street  
Long Island City, NY 11101  
[grace.nam@dec.ny.gov](mailto:grace.nam@dec.ny.gov)

Angela Martin (electronic copy only)  
New York State Department of Health  
Bureau of Environmental Exposure Investigation  
Empire State Plaza  
Corning Tower Room 1787  
Albany, N.Y. 12237  
[angela.martin@health.ny.gov](mailto:angela.martin@health.ny.gov)

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

Maryuhn Young Moon  
46 S 2nd St  
Apt 4E  
Brooklyn, NY 11249  
[blessedmary@gmail.com](mailto:blessedmary@gmail.com)  
with a copy to:

Nicholas Rigano, Esq.  
Rigano LLC  
538 Broad Hollow Road  
Suite 301  
Melville, NY 11747  
[nrigano@riganollc.com](mailto:nrigano@riganollc.com)

B. The Department and Respondent 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 or in Paragraph I.

XI. Miscellaneous

A. Appendix A - "Standard Clauses for All New York State, State Superfund Orders" is attached to and, subject to the limitations set forth in Section II.B. of this Order, hereby made a part of this Order as if set forth fully herein.

B. Following the completion of the remedy selected by the Department in the Record of Decision, including the recording of the Environmental Easement as described in Section V above, the Department will reevaluate the conditions at the Site and either reclassify or delist the Site from the Registry. Notwithstanding the foregoing, the Department shall be required to, and hereby undertakes to, perform any and all investigation and remediation, including obtaining any state or local permit or other authorization required for any activity pursuant to this Order, required to reclassify and, ultimately, to delist the Site from the Registry of Inactive Hazardous Waste Sites.

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

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

DATED: 2/12/2026

AMANDA LEFTON  
COMMISSIONER  
NEW YORK STATE DEPARTMENT OF  
ENVIRONMENTAL CONSERVATION

By: *Andrew Guglielmi*

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Andrew O. Guglielmi, Director  
Division of Environmental Remediation



**FLORIDA INDIVIDUAL ACKNOWLEDGMENT**  
F.S. 117.05(13)

State of Florida }  
County of Seminole }

The foregoing instrument was acknowledged before me by means of

Physical Presence,

— OR —

Online Notarization

this 26 day of November, 2025 by  
Date Month Year

Maryohn Moon

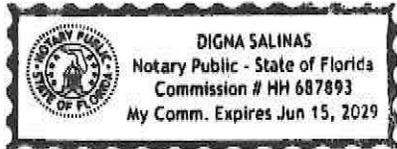
*Name of Person Acknowledging*

Digna Salinas

*Signature of Notary Public — State of Florida*

Digna Salinas

*Name of Notary Typed, Printed or Stamped*



*Place Notary Seal Stamp Above*

Personally known

Produced Identification

Type of Identification Produced: \_\_\_\_\_

New Jersey Drivers license

**OPTIONAL**

*Completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.*

**Description of Attached Document**

Title or Type of Document: Consent by respondent

Document Date: 11/26/25 Number of Pages: 1

Signer(s) Other Than Named Above: N/A

EXHIBIT "A"

Map



**EXHIBIT "B"**  
**RECORDS SEARCH REPORT**  
**NOT REQUIRED**

**APPENDIX "A"**

**STANDARD CLAUSES FOR ALL NEW YORK STATE  
STATE SUPERFUND ORDERS**

## APPENDIX A

### STANDARD CLAUSES FOR ALL NEW YORK STATE SUPERFUND ADMINISTRATIVE ORDERS

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

#### I. Citizen Participation Plan

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

#### II. Initial Submittal

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

#### III. Development, Performance, and Reporting of Work Plans

##### A. Work Plan Requirements

All activities at the Site that comprise any element of an Inactive Hazardous Waste Disposal Site Remedial Program shall be conducted pursuant to one or more Department-approved work plans ("Work Plan" or "Work Plans") and this Order and all activities shall be consistent with the National Oil and Hazardous

Substances Pollution Contingency Plan (NCP), 40 C.F.R. Part 300, as required under CERCLA, 42 U.S.C. § 9600 *et seq.* The Work Plan(s) under this Order shall address both on-Site and off-Site conditions and shall be developed and implemented in accordance with 6 NYCRR § 375-1.6(a), 375-3.6, and 375-6. All Department-approved Work Plans shall be incorporated into and become enforceable parts of this Order. Upon approval of a Work Plan by the Department, Respondent shall implement such Work Plan in accordance with the schedule contained therein. Nothing in this Subparagraph shall mandate that any particular Work Plan be submitted.

The Work Plans shall be captioned as follows:

1. Site Characterization ("SC") Work Plan: a Work Plan which provides for the identification of the presence of any hazardous waste disposal at the Site;
2. Remedial Investigation/Feasibility Study ("RI/FS") Work Plan: a Work Plan which provides for the investigation of the nature and extent of contamination within the boundaries of the Site and emanating from such Site and a study of remedial alternatives to address such on-site and off-site contamination;
3. Remedial Design/Remedial Action ("RD/RA") Work Plan: a Work Plan which provides for the development and implementation of final plans and specifications for implementing the remedial alternative set forth in the ROD;
4. "IRM Work Plan" if the Work Plan provides for an interim remedial measure;

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

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

**B. Submission/Implementation of Work Plans**

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

2. Any proposed Work Plan shall be submitted for the Department's review and approval and shall include, at a minimum, a chronological description of the anticipated activities, a schedule for performance of those activities, and sufficient detail to allow the Department to evaluate that Work Plan.

i. The Department shall notify Respondent in writing if the Department determines that any element of a Department-approved Work Plan needs to be modified in order to achieve the objectives of the Work Plan as set forth in Subparagraph III.A or to ensure that the Remedial Program otherwise protects human health and the environment. Upon receipt of such notification, Respondent shall, subject to dispute resolution pursuant to Paragraph XV, modify the Work Plan.

ii. The Department may request, subject to dispute resolution pursuant to Paragraph XV, that Respondent submit additional or supplemental Work Plans for the Site to complete the current remedial phase within thirty (30) Days after the Department's written request.

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

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

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

**C. Submission of Final Reports and Periodic Reports**

1. In accordance with the schedule contained in a Work Plan, Respondent shall submit a final report as provided at 6 NYCRR 375-1.6(b) and a final engineering report as provided at 6 NYCRR 375-1.6(c).

2. Any final report or final engineering report that includes construction activities shall include "as built" drawings showing any changes made to the remedial design or the IRM.

3. In the event that the final engineering report for the Site requires Site management, Respondent shall submit an initial periodic report by in accordance with the schedule in the Site Management Plan and thereafter in accordance with a schedule determined by the Department. Such periodic report shall be signed by a Professional Engineer or by such other qualified environmental professional as the Department may find acceptable and shall contain a certification as provided at 6 NYCRR 375-1.8(h)(3). Respondent may petition the Department for a determination that the institutional and/or engineering controls may be terminated. Such petition must be supported by a statement by a Professional Engineer that such controls are no longer necessary for the protection of public health and the environment. The Department shall not unreasonably withhold its approval of such petition.

4. Within sixty (60) days of the Department's approval of a Final Report, Respondent shall submit such additional Work

Plans as is required by the Department in its approval letter of such Final Report. Failure to submit any additional Work Plans within such period shall be a violation of this Order.

#### D. Review of Submittals

1. The Department shall make a good faith effort to review and respond in writing to each submittal Respondent makes pursuant to this Order within sixty (60) Days. The Department's response shall include, in accordance with 6 NYCRR 375-1.6(d), an approval, modification request, or disapproval of the submittal, in whole or in part.

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

ii. If the Department modifies or requests modifications to a submittal, it shall specify the reasons for such modification(s). Within fifteen (15) Days after the date of the Department's written notice that Respondent's submittal has been disapproved, Respondent shall notify the Department of its election in accordance with 6 NYCRR 375-1.6(d)(3). If Respondent elects to modify or accept the Department's modifications to the submittal, Respondent shall make a revised submittal that incorporates all of the Department's modifications to the first submittal in accordance with the time period set forth in 6 NYCRR 375-1.6(d)(3). In the event that Respondent's revised submittal is disapproved, the Department shall set forth its reasons for such disapproval in writing and Respondent shall be in violation of this Order unless it invokes dispute resolution pursuant to Paragraph XV and its position prevails. Failure to make an election or failure to comply with the election is a violation of this Order.

iii. If the Department disapproves a submittal, it shall specify the reasons for its disapproval. Within fifteen (15) Days after the date of the Department's written notice that Respondent's submittal has been disapproved,

Respondent shall notify the Department of its election in accordance with 6 NYCRR 375-1.6(d)(4). If Respondent elects to modify the submittal, Respondent shall make a revised submittal that addresses all of the Department's stated reasons for disapproving the first submittal in accordance with the time period set forth in 6 NYCRR 375-1.6(d)(4). In the event that Respondent's revised submittal is disapproved, the Department shall set forth its reasons for such disapproval in writing and Respondent shall be in violation of this Order unless it invokes dispute resolution pursuant to Paragraph XV and its position prevails. Failure to make an election or failure to comply with the election is a violation of this Order.

2. Within thirty (30) Days after the Department's approval of a final report, Respondent shall submit such final report, as well as all data gathered and drawings and submittals made pursuant to such Work Plan, in an electronic format acceptable to the Department. If any document cannot be converted into electronic format, Respondent shall submit such document in an alternative format acceptable to the Department.

#### E. Department's Issuance of a ROD

1. Respondent shall cooperate with the Department and provide reasonable assistance, consistent with the Citizen Participation Plan, in soliciting public comment on the proposed remedial action plan ("PRAP"), if any. After the close of the public comment period, the Department shall select a final remedial alternative for the Site in a ROD. Nothing in this Order shall be construed to abridge any rights of Respondent, as provided by law, to judicially challenge the Department's ROD.

2. Respondent shall have 60 days from the date of the Department's issuance of the ROD to notify the Department in writing whether it will implement the remedial activities required by such ROD. If the Respondent elects not to implement the required remedial activities, then this order shall terminate in accordance with Paragraph XIV.A. Failure to make an election or failure to comply with the election is a violation of this Order.

F. Institutional/Engineering Control Certification

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

IV. Penalties

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

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

B. 1. Respondent shall not suffer any penalty or be subject to any proceeding or action in the event it cannot comply with any requirement of this Order as a result of any Force Majeure Event as provided at 6 NYCRR 375-1.5(b)(4). Respondent must use best efforts to anticipate the potential Force Majeure Event, best efforts to address any such event as it is occurring, and best efforts following the Force Majeure Event to minimize delay to the greatest extent possible. "Force Majeure" does not include Respondent's economic inability to comply with any obligation, the failure of Respondent to make complete and timely application for any required approval or permit, and non-attainment of the goals, standards, and requirements of this Order.

2. Respondent shall notify the Department in writing within five (5) Days of the onset of any Force Majeure Event. Failure to give such notice within such five (5) Day period constitutes a waiver of any claim that a delay is not subject to penalties. Respondent shall be deemed to know of any circumstance which it, any entity controlled by it, or its contractors knew or should have known.

3. Respondent shall have the burden of proving by a preponderance of the evidence that (i) the delay or anticipated delay has been or will be caused by a Force Majeure Event; (ii) the duration of the delay or the extension sought is warranted under the circumstances; (iii) best efforts were exercised to avoid and mitigate the effects of the delay; and (iv) Respondent complied with the requirements of Subparagraph IV.B.2 regarding timely notification.

4. If the Department agrees that the delay or anticipated delay is attributable to a Force Majeure Event, the time for performance of the obligations that are affected by the Force Majeure Event shall be extended for a period of time equivalent to the time lost because of the Force majeure event, in accordance with 375-1.5(4).

5. If the Department rejects Respondent's assertion that an event provides a defense to non-compliance with this Order pursuant to Subparagraph IV.B, Respondent shall be in violation of this Order unless it invokes dispute resolution pursuant to Paragraph XV and Respondent's position prevails.

V. Entry upon Site

A. Respondent hereby consents, upon reasonable notice under the circumstances presented, to entry upon the Site (or areas in the vicinity of the Site which may be under the control of Respondent) by any duly designated officer or employee of the Department or any State agency having jurisdiction with respect to matters addressed pursuant to this Order, and by any agent, consultant, contractor, or other person so authorized by the Commissioner, all of whom shall abide by the health and safety rules in effect for the Site, for inspecting, sampling, copying records related to the contamination at the Site, testing, and any other activities necessary to ensure Respondent's compliance with this Order. Upon request, Respondent shall (i) provide the Department with suitable work space at the Site, and (ii) permit the Department full access to all non-privileged records relating to matters addressed by this Order. Raw data is not considered

privileged and that portion of any privileged document containing raw data must be provided to the Department.

B. The Department shall have the right to take its own samples and scientific measurements and the Department and Respondent shall each have the right to obtain split samples, duplicate samples, or both, of all substances and materials sampled. The Department shall make the results of any such sampling and scientific measurements available to Respondent.

#### VI. Payment of State Costs

A. Within forty-five (45) days after receipt of an itemized invoice from the Department, Respondent shall pay to the Department a sum of money which shall represent reimbursement for State Costs as provided by 6 NYCRR 375-1.5 (b)(3)(i). Failure to timely pay any invoice will be subject to late payment charge and interest at a rate of 9% from the date the payment is due until the date the payment is made.

B. Costs shall be documented as provided by 6 NYCRR 375-1.5(b)(3). The Department shall not be required to provide any other documentation of costs, provided however, that the Department's records shall be available consistent with, and in accordance with, Article 6 of the Public Officers Law.

C. Each such payment shall be made payable to the New York State Department of Environmental Conservation and shall be sent to:

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

D. The Department shall provide written notification to the Respondent of any change in the foregoing addresses.

E. If Respondent objects to any invoiced costs under this Order, the provisions of 6 NYCRR 375-1.5 (b)(3)(v) and (vi) shall apply. Objections shall be sent to the Department as provided under subparagraph VI.C above.

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

#### VII. Release and Covenant Not to Sue

Upon the Department's issuance of a Certificate of Completion as provided at 6 NYCRR 375-1.9 and 375-2.9, Respondent shall obtain the benefits conferred by such provisions, subject to the terms and conditions described therein.

#### VIII. Reservation of Rights

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

B. Except as otherwise provided in this Order, Respondent specifically reserves all rights and defenses under applicable law respecting any Departmental assertion of remedial liability and/or natural resource damages against Respondent, and further reserves all rights respecting the enforcement of this Order, including the rights to notice, to be heard, to appeal, and to any other due process. The existence of this Order or Respondent's compliance with it shall not be construed as an admission of liability, fault, wrongdoing, or breach of standard of care by Respondent, and shall not give rise to any presumption of law or finding of fact, or create any rights, or grant any

cause of action, which shall inure to the benefit of any third party. Further, Respondent reserves such rights as it may have to seek and obtain contribution, indemnification, and/or any other form of recovery from its insurers and from other potentially responsible parties or their insurers for past or future response and/or cleanup costs or such other costs or damages arising from the contamination at the Site as may be provided by law, including but not limited to rights of contribution under section 113(f)(3)(B) of CERCLA, 42 U.S.C. § 9613(f)(3)(B).

#### IX. Indemnification

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

#### X. Public Notice

A. Within thirty (30) Days after the effective date of this Order, Respondent shall provide notice as required by 6 NYCRR 375-1.5(a). Within sixty (60) Days of such filing, Respondent shall provide the Department with a copy of such instrument certified by the recording officer to be a true and faithful copy.

B. If Respondent proposes to transfer by sale or lease the whole or any part of Respondent's interest in the Site, or becomes aware of such transfer, Respondent shall, not fewer than forty-five (45) Days before the date of transfer, or within forty-five (45) Days after becoming aware of such conveyance, notify the Department in writing of the identity of the transferee and of the nature and proposed or actual date of the conveyance, and shall notify the transferee in writing, with a copy to the Department, of the applicability of this Order. However, such obligation shall not extend to a conveyance by means of a corporate reorganization or merger or the granting of any rights under any mortgage, deed, trust, assignment, judgment, lien, pledge, security agreement, lease, or any other right accruing to a person not affiliated with Respondent to secure the repayment of money or the performance of a duty or obligation.

#### XI. Change of Use

Applicant shall notify the Department at least sixty (60) days in advance of any change of use, as defined in 6 NYCRR 375-2.2(a), which is proposed for the Site, in accordance with the provisions of 6 NYCRR 375-1.11(d). In the event the Department determines that the proposed change of use is prohibited under applicable law, the Department shall notify Applicant of such determination within forty-five (45) days of receipt of such notice.

#### XII. Environmental Easement

A. If a Record of Decision for the Site relies upon one or more institutional and/or engineering controls, the Department (or the owner of the Site) shall propose and Respondent shall accept an Environmental Easement to run with the land in favor of the State which complies with the requirements of ECL Article 71, Title 36, and 6 NYCRR 375-1.8(h)(2). Upon acceptance of the Environmental Easement by the State and Respondent, Respondent shall comply with the requirements of 6 NYCRR 375-1.8(h)(2).

B. If the ROD provides for no action other than implementation of one or more institutional controls, Respondent shall cause an environmental easement to be recorded under the provisions of Subparagraph XII.A.

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

#### XIII. Progress Reports

Respondent shall submit a written progress report of its actions under this Order to the parties identified in Subparagraph IV.A.1 of the Order by the 10th day of each month commencing with the month subsequent to the approval of the first Work Plan and ending with the Termination date as set forth in Paragraph

XIV, unless a different frequency is set forth in a Work Plan. Such reports shall, at a minimum, include: all actions relative to the Site during the previous reporting period and those anticipated for the next reporting period; all approved activity modifications (changes of work scope and/or schedule); all results of sampling and tests and all other data received or generated by or on behalf of Respondent in connection with this Site, whether under this Order or otherwise, in the previous reporting period, including quality assurance/quality control information; information regarding percentage of completion; unresolved delays encountered or anticipated that may affect the future schedule and efforts made to mitigate such delays; and information regarding activities undertaken in support of the Citizen Participation Plan during the previous reporting period and those anticipated for the next reporting period.

#### XIV. Termination of Order

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

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

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

that all phases of the remedial program have been completed.

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

C. If the Order is terminated pursuant to Subparagraph XIV.A.1, neither this Order nor its termination shall affect any liability of Respondent for remediation of the Site and/or for payment of State Costs, including implementation of removal and remedial actions, interest, enforcement, and any and all other response costs as defined under CERCLA, nor shall it affect any defenses to such liability that may be asserted by Respondent. Respondent shall also ensure that it does not leave the Site in a condition, from the perspective of human health and environmental protection, worse than that which existed before any activities under this Order were commenced. Further, the Department's efforts in obtaining and overseeing compliance with this Order shall constitute reasonable efforts under law to obtain a voluntary commitment from Respondent for any further activities to be undertaken as part of a Remedial Program for the Site.

#### XV. Dispute Resolution

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

B. All cost incurred by the Department associated with dispute resolution are State costs subject to reimbursement pursuant to this Order.

C. Nothing contained in this Order shall be construed to authorize Respondent to invoke dispute resolution with respect to the remedy

selected by the Department in the ROD or any element of such remedy, nor to impair any right of Respondent to seek judicial review of the Department's selection of any remedy.

XVI. Miscellaneous

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

B. As the Respondent has no obligation to perform any work hereunder, the Department has exempted Respondent from the requirement to obtain any state or local permit or other authorization for any activity conducted pursuant to this Order in accordance with 6 NYCRR 375-1.12(b), (c), and (d).

C. 1. Respondent shall use commercially reasonable efforts to obtain all Site access from parties under its control so that the Department can perform its obligations under this Order, including all Department prepared Work Plans and the schedules contained therein. If, despite Respondent's best efforts, any access, cannot be obtained, Respondent shall promptly notify the Department and include a summary of the steps taken. The Department may, as it deems appropriate and within its authority, assist Respondent in obtaining same.

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

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

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

2. i. Except as set forth herein, if Respondent desires that any provision of this Order be changed, Respondent shall make timely written application to the Commissioner with copies to the parties listed in Subparagraph IV.A.1.

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

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

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

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

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

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

H. Unless otherwise expressly provided herein, terms used in this Order which are defined in ECL Article 27 or in regulations promulgated thereunder shall have the meaning assigned to them under said statute or regulations.

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

J. Respondent and Respondent's successors and assigns shall be bound by this Order. Any change in ownership or corporate

status of Respondent shall in no way alter Respondent's responsibilities under this Order.

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