

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 a Remedial Program for

**ORDER ON CONSENT AND
ADMINISTRATIVE SETTLEMENT**
Index No. CO2-2150406-218 –A

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

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

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

3. Respondent failed to properly manage and dispose of Hazardous Waste in that it failed to properly dispose of sediments from settling tanks on the site around August 6th, 2015.

4. The Department alleges that Respondent's failure to properly dispose sediments from the settling tank is in violation of 6 NYCRR Part 375-1.11.

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

6. Solely with regard to the matters set forth below, Respondent hereby waives any right to a hearing as may be provided by law, consents to the issuance and entry of this Order, and agrees to be bound by its terms.

Respondent consents to and agrees not to contest the authority or jurisdiction of the Department to issue or enforce this Order, and agrees not to contest the validity of this Order or its terms or the validity of data submitted to the Department by Respondent pursuant to this Order.

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

I. PENALTIES

A. Respondent is hereby assessed a civil penalty in the amount of **\$35,000** dollars for the violation stated herein, that shall be paid to the Department upon Respondents signing of this Order and its return to the Department.

B. In the event that the Respondent fails to fully comply with the requirements of the Order in a timely fashion, Respondent shall be subject to penalties of up to \$37,500 per day for ECL Law Violations.

C. Payment of such penalty shall be with the return of this Order to the Department.

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

III. STANDARD PROVISIONS

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

DATED:

MAY 05 2016

Basil Seggos
ACTING 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 Order on Consent and Administrative Settlement, waives Settling Respondent's right to a hearing herein as provided by law, and agrees to be bound by this Order on Consent and Administrative Settlement.

LIC Development Owner, L.P.

By: 

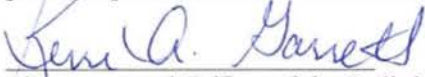
Title: SMD

Date: 4/29/16

STATE OF NEW YORK)

County of New York) ss

On the 29 day of April, in the year 2016, before me, the undersigned, personally appeared Bruce Phillips, 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 and Office of the Individual
Taking acknowledgement

KERRI A. GARRETT
Notary Public, State of New York
No. 01GA6022001
Qualified in Queens County
Certificate Filed in New York County
Commission Expires March 22, 2019

STANDARD PROVISIONS

Payment. Any penalty assessed pursuant to the terms and conditions of this Order 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 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: New York State Department of Environmental Conservation, Office of General Counsel, Attn: Benjamin Cionlon 625 Broadway, 14th Floor. Albany, New York 12233-1500

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 purposes 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 the 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 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 Order by Respondent or its employees, servants, agents, successors or assigns.

Modification. 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 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 Order 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 Order; (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 orders 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 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