

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

Office of the General Counsel
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P: (518) 402-9185 | F: (518) 402-9018
www.dec.ny.gov

August 5, 2019

SENT VIA ELECTRONIC MAIL ONLY
KBradshaw@stagggroup.com

Kathy Bradshaw, Esq.
Stagg Group
3114 E. Tremont Avenue
Bronx, NY 10461

RE: Order on Consent
Site Name: Kimball Residences
Site No.: C360141

Dear Ms. Shaw:

Enclosed, please find an original of the fully executed Order on Consent referencing the site owner at Bronx River Commons LLC and Ryan's Excavation of the Bronx LLC dba RPS Site Development, Yonkers, County of Westchester, New York.

If you have any further questions or concerns relating to this matter, please contact Rosalie Rusinko, Esq. at (914) 803-8150.

Sincerely,



Jennifer Andalaro, Esq.
Section Chief A
Remediation Bureau

cc: R. Rusinko, Esq., NYSDEC



Department of
Environmental
Conservation

STATE OF NEW YORK
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

-----X
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
by

ORDER
ON
CONSENT

Site # C360141
Index No. CO3-20190514-121

Bronx River Commons LLC, and
Ryan's Excavation of the Bronx LLC *dba* RPS Site Development,

Respondents
-----X

WHEREAS,

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

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 hazardous waste 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 Bronx River Commons LLC (BRC) is a New York limited liability company with a mailing address of P.O. Box 9, Purchase, NY 10577.
4. Respondent Ryan's Excavation of the Bronx dba RPS Site Development (RPS) is a New York limited liability company with a business address 105 Kisco Avenue, Mount Kisco, NY 10549.
5. Respondent BRC, at the time the violations covered under this Order occurred, was the prospective purchaser of the brownfield site located at 1209, 1213, 1217 and 1221 Yonkers Avenue, and 445, 447, 449 and 453 Bronx River Road, Yonkers, NY 10702, and designated as Section 6 Block 6383 Lots 19.20, 17.18, 15.16, 14, 10, 9, 8, and 6, respectively, on the Yonkers City tax map. The site is assigned DEC site number C360141 (hereinafter the "Site"). The Site is undergoing a brownfield remedial program pursuant to a Brownfield Cleanup Agreement (BCA).
6. Respondent BRC, as the prospective purchaser, was provided a copy of the BCA regarding the Site's remedial program as well as a copy of all approved remedial work plans and reports.
7. Respondent RPS is an affiliate of Respondent RBC. Respondent RPS accessed the Site based upon its affiliation with Respondent RBC.
8. Respondent BRC took custody and/or control the Site (1) allowing the management of solid waste on the Site in violation of ECL Article 27, Title 7, and 6 NYCRR § 360.9(b)(1); and (2) allowing unauthorized work on the Site in violation of the express terms of the Remedial Design Work Plan (RDWP) and the provisions of ECL Article 27, Titles 13 and 14, and 6 NYCRR §§ 375-1 and 375-3 during the remediation program for the Site in that: on or about May 2, 2019 it allowed Respondent RPS to enter the Site and dispose of approximately 10 yd³ of solid waste on the Site and to push/move this solid waste into the open basement area of a previously demolished building; on or about May 3, 2019 it allowed Respondent RPS to dispose of an additional approximate 9 yd³ of solid waste on the Site; and on or about May 13, 2019 it allowed Respondent RPS to remove the excavator from the Site without proper decontamination causing Site soils to be tracked onto the sidewalk and Bronx River Road.
9. Respondent RPS (1) disposed of solid waste on the Site in violation of ECL Article 27, Title 7 and 6 NYCRR § 360(b)(3); and conducted unauthorized work on the Site in violation of the express terms of the RDWP and the provisions of ECL Article 27, Titles 13 and 14, and 6 NYCRR §§ 375-1 and 375-3 during the implementation of the remediation program for the Site in that: on or about May 2, 2019 RPS disposed of approximately 10 yd³ of solid waste on the Site and using an excavator RPS pushed/moved this solid waste into the open basement area of a previously demolished building; on or about May 3, 2019 RPS disposed an additional approximate 9 yd³ of solid waste on the Site; and on or about May 13, 2019 RPS removed the excavator from

the Site without proper decontamination causing Site soils to be tracked onto the sidewalk and Bronx River Road.

10. On the morning of May 3, 2019, the Department's project manager contacted the Site owner's consultant, PS&S, indicating that the Department had received a complaint that soil was being imported to the Site starting on May 2nd and continuing May 3rd. The Department's project manager further indicated that such soil import was not approved and must stop. Subsequently, the Department communicated that the unapproved soil/concrete, *i.e.* solid waste, must be tested, removed from the Site and properly disposed.

10. On or about May 14, 2019, the sidewalk and the Bronx River Road were cleaned by RPS and the erosion control measures which were defeated on May 2, 2019 were reestablished by the Site owner as required by the RDWP.

11. The solid waste disposed on May 3, 2019 was removed and properly disposed of on May 31, 2019 under the Department's supervision. The solid waste disposed on May 2, 2019 was removed and properly disposed of on June 3, 2019. The manifests list Bronx River Commons, LLC as the generator and RPS as the transporter.

12. 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.

13. 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 civil violations which the Department asserts above against Respondent BRC, the Department, in settlement of all such civil violations, hereby assesses against Respondent Bronx River Commons LLC a total civil penalty in the amount of TWENTY-FIVE THOUSAND U.S. DOLLARS (\$25,000.00). Payment of the total amount must be submitted with this Order.

B. With respect to the civil violations which the Department asserts above against Respondent RPS, the Department, in settlement of all such civil violations, hereby assesses against Respondent Ryan's Excavation of the Bronx *dba* RPS Site

Development a total civil penalty in the amount of TWENTY-FIVE THOUSAND U.S. DOLLARS (\$25,000.00). Payment of the total amount must be submitted with this Order.

C. Payment must be made by certified or cashier's check or money order or certified Business check of the Respondent 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
100 Hillside Avenue, Suite 1W
White Plains, New York 10603
Attn: Rosalie K. Rusinko

II. COMPLIANCE

A. In the event that Respondent BRC buys the Site and/or is added to the BCA, it shall complete the remedial program for the Site strictly complying with the approved Remedial Design Work Plan and the provisions of the Environmental Conservation Law, 6 NYCRR Parts 360 and 375, and the Brownfield Cleanup Agreement.

B. In the event that Respondent BRC buys the Site and/or is added to the BCA, it shall not be entitled to, and will not use the costs incurred to defend or comply with this order for the purposes of tax credits under the Brownfield Cleanup Program.

C. In the event that Respondent RPS buys the Site and/or is added to the BCA, it shall complete the remedial program for the Site strictly complying with the approved Remedial Design Work Plan and the provisions of the Environmental Conservation Law, 6 NYCRR Parts 360 and 375, and the Brownfield Cleanup Agreement.

D. In the event that Respondent RPS buys the Site and/or is added to the BCA, it shall not be entitled to, and will not use the costs incurred to defend or 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. MATTERS COVERED

This Order only settles the civil violations asserted above against Respondents.

V. STANDARD PROVISIONS

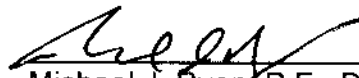
Respondent will further comply with the standard provisions which are attached hereto, and which constitute material and integral terms of this Order and are hereby incorporated into this document.

DATED:

JUL 17 2019

BASIL SEGGOS
COMMISSIONER
NEW YORK STATE DEPARTMENT OF
ENVIRONMENTAL CONSERVATION

By:


Michael J. Ryan, P.E., Director
Division of Environmental Remediation

CONSENT BY RESPONDENT

Respondent 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.

Bronx River Commons, LLC

By (Signature): 

Print Name: Mark Stagg

Title: Member

Date: 6/25/19

STATE OF NEW YORK)
COUNTY OF Bronx) ss:

On the 25 day of June in the year 20 19, before me, the undersigned, personally appeared Mark Stagg, 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 and Office of individual taking acknowledgment

GARY ANGEL VARGAS
Notary Public- State of New York
No. 01VA6297188
Qualified in New York County
My Commission Expires February 18, 2018 22

CONSENT BY RESPONDENT

Respondent 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.

Ryan's Excavation of the Bronx dba RPS Site Development

By (Signature): RS

Print Name: Ryan Stagg

Title: Member

Date: 6/25/19

STATE OF NEW YORK)
COUNTY OF Bronx) ss:

On the 25 day of June in the year 2019, before me, the undersigned, personally appeared Ryan Stagg, 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

GARY ANGEL VARGAS
Notary Public- State of New York
No. 01VA6297180
Qualified in New York County
My Commission Expires February 18, 2018

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: Rosalie K. Rusinko, 100 Hillside Avenue, Suite 1W, White Plains, New York 10603. 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: Rosalie K. Rusinko, 100 Hillside Avenue, Suite 1W, White Plains, New York 10603.

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.