

# NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

## Office of General Counsel

100 Hillside Avenue, Suite 1W, White Plains, NY 10603

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www.dec.ny.gov

## MEMORANDUM

**TO:** Andrew Guglielmi, Director, DER  
**FROM:** Alali Tamuno THRU Jennifer Andaloro, Bureau Chief, Remediation Bureau  
**RE:** C360143-off Site; 85 Marbledale Road, Site No. 360153A; 93 Marbledale Road, Site No. 360153B; 177 Marbledale Road, Site No. 360153C and 225 Marbledale Road, Site No. 360153D  
ACCESS STIPULATION: Off-Site Property-65 Marbledale Road, Eastchester, New York  
**DATE:** April 3, 2023

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Attached for the DER Director's signature is an electronic copy of an *Access Stipulation for Purposes Authorized Pursuant to Article 27 of the Environmental Conservation Law* ("Access Stipulation") regarding real property located at 65 Marbledale Road, Eastchester, Westchester County, New York with tax parcel identification No. 35./5/1 (hereinafter "Property").

**Differences Between the Final and Model Agreement:** In the Access Stipulation, additional language was added to the standard DEC Access Stipulation similar to the language in the fully executed Access stipulations in relation to the Irvington Rugs and Cleaners, Site No. 360175 (off-Site properties); Kisco Avenue Groundwater, Site No. 360203 and draft access stipulation for the 1735 Express Drive North, Site No. 152238.

**Additional Issues:** The Department is preparing to conduct and complete soil vapor intrusion sampling at the Property tomorrow and Wednesday, April 5, 2023 in relation to Site No. C360143-off Site; 85 Marbledale Road, Site No. 360153A; 93 Marbledale Road, Site No. 360153B; 177 Marbledale Road, Site No. 360153C and 225 Marbledale Road, Site No. 360153D. The Department has permission from the owner of the Property's attorney (Exhibit "A") to write in "Authorized Signatory" in the requisite signatory line in the Access Stipulation.

**Recommendation:** I recommend that the Department execute the Access Stipulation.

ec (w/o attach.):  
K. Maloney  
M. Domaracki



Department of  
Environmental  
Conservation

New York State Department of Environmental Conservation  
ACCESS STIPULATION  
for  
PURPOSES AUTHORIZED PURSUANT TO ARTICLE 27 OF THE ENVIRONMENTAL  
CONSERVATION LAW

This agreement made this 31 day of MARCH, 2023 between  
Tuckahoe Project LLC, hereinafter referred to as "owner", and the COMMISSIONER OF THE  
DEPARTMENT OF ENVIRONMENTAL CONSERVATION FOR THE PEOPLE OF THE STATE OF  
NEW YORK, hereinafter referred to as "DEC," pursuant to the above cited law,

**WITNESSETH:**

**WHEREAS**, the owner represents as follows:

(a). That the owner owns the real property described below and on the sketch map attached as Schedule "A" or some right, title or interest therein, which property is described briefly as follows: the property located at 65 Marbledale Road, Eastchester, Westchester County, New York with tax parcel identification No.: 35./5/1 (the "Property").

(b). That said ownership consists of the following interest in said property, title to which was acquired by the owner at the time and in the manner following:

Bargain and Sale Deed identified as Control Number 11366/00159 recorded on February 22, 1996 in the Office of the Westchester County Clerk.

(c). That the Property is free and clear of all leases, tenancies, easements, contracts of sale, but is subject to easements and encumbrances of record and the rights of tenants and licensees in its use as a storage facility as set forth in the Office of the Westchester County Clerk.

**WHEREAS**, the DEC 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 DEC and the Commissioner by Article 1, Title 3 of the Environmental Conservation Law (ECL).

**WHEREAS**, the DEC pursuant to ECL § 3-0301(1)(i), has the power *inter alia* to provide for the prevention and abatement of all water, land and air pollution.

**WHEREAS**, the DEC is conducting a state funded off-Site remedial program in relation to the Former Marble Quarry, Site No. C360143 and Site Characterization in relation to the 85 Marbledale Road, Site No. 360153A, 93 Marbledale Road, Site No. 360153B, 177 Marbledale Road, Site No. 360153C and 225 Marbledale Road, Site No. 360153D (formerly collectively known as Former Tuckahoe Landfill Site).

**WHEREAS**, the DEC has determined that the Property is situated near Site No. C360143 and Site(s) Nos. 360153(A)-(D) and the DEC must enter the Property for evaluating whether tetrachloroethene (PCE), trichloroethene (TCE), or other volatile organic compounds (VOCs) have

migrated from Site No. C360143 and/or Site(s) No. 360153(A)-(D) and affected the indoor air quality of the Property building.

**WHEREAS**, the Property was, or will be, entered upon and occupied by DEC, its representatives, employees, agents or contractors, for the performance of work thereon for one or more of the purposes set forth in ECL Article 27 §§ 1309 and 1313(8), and particularly for the purposes of evaluating whether tetrachloroethene (PCE), trichloroethene (TCE), or other volatile organic compounds (VOCs) have migrated from Site No.: C360143 and/or Site(s) Nos. 360153 (A)-(D) and affected the indoor air quality of the Property building.

**NOW THEREFORE**, the parties hereto agree as follows:

1. This Agreement is to facilitate the entry of the DEC and its Agents onto the Property to conduct activities authorized by the ECL. It shall not convey any interest in the Property to the State of New York.
2. DEC will provide minimum three (3) business days advance notice of scheduled work on owner's property and will work to accommodate the schedule of owner's employees, to the extent possible. DEC will make every effort to minimize any adverse impact of its entry on and occupancy of the Property. For purposes of the notification requirements in this Agreement, the DEC shall contact Edward Arredondo at Edward@arredondoco.com (Tel No.: 203.357.0200 ext.115).
3. The owner will permit entry on and use of the Property by DEC its agents, employees, contractors and representatives for a period not to exceed 90 days commencing from the effective date (as hereinafter defined) of this Agreement. Such right of entry includes the right to:
  - i. secure a work area;
  - ii. collect environmental samples (e.g. soil vapor, indoor air, ambient air) for analysis;
  - iii. remove from the Site any material generated from the DEC's work activities; and
  - iv. carry on any activity necessary to evaluate whether tetrachloroethene (PCE), trichloroethene (TCE), or other volatile organic compounds (VOCs) have migrated from Site No.: C360143 and/or Site(s) No. 360153 (A)-(D) and affected the indoor air of the Property building together with the rights at all times during the duration of this agreement of ingress, egress and regress by the State of New York, its employees, agents, contractors and/or representatives for the purposes connected with the above work.

The foregoing activities shall be referred to as the "Approved Activities."

4. DEC covenants that all work to be performed hereunder will be done at no cost or expense to the owner. However, this does not constitute a waiver of any rights DEC may have to recover such cost from any responsible party, pursuant to relevant provisions of statutory or common law.
5. Subject to the availability of lawful appropriations, and as provided by New York State's Court of Claims Act and Section 17 of the New York State Public Officers Law, the DEC hereby agrees to indemnify and hold harmless the owner for any and all causes of action in law or equity, arising directly from the DEC, its employees, agents, consultants, contractors and subcontractors, use and access of the Property.

The duty to indemnify and hold harmless shall be conditioned upon delivery to the Attorney General by the owner of the original or a copy of any summons, complaint, process, notice, demand or pleading within five days of receipt.

The DEC, for and on behalf of its Agents and subcontractors, hereby releases the owner from any liability directly arising from the use and access of Property by its employees, agents, consultants, contractors and subcontractors. Owner hereby acknowledges that this indemnification, hold harmless and release agreement is given in consideration of allowing the DEC to use the Property on the stated dates, for the stated purpose(s) and that the consideration is fair and adequate.

6. The DEC shall work cooperatively with the owner and shall ensure that the Approved Activities are conducted in a manner that does not interfere with the occupancy and use of the Property by the owner or its tenant's, including but not limited to loss of use. The DEC will make every reasonable effort to address the owner's concerns related to the Approved Activities. During each day of work at the Property for the Approved Activities, the DEC will ensure that the work areas are secure and free of Property hazards.

7. The effective date of this Agreement is the date it is signed by the DEC Director, Division of Environmental Remediation (the "DER Director") or the DER Director's designee.

8. DEC's contractor has comprehensive general liability insurance for the activities conducted on this site. DEC will cooperate with the owner in pursuing with the insurer any claim that may arise. The DEC will require that the owner be added as an additional insured and that a certificate of Insurance showing the insurance is in full force and effect be provided to the owner prior to the start of the Approved Activities and that not less than thirty (30) days notice will be given to the owner prior to the date of cancellation. If requested in writing, the DEC shall deliver to owner a copy of the insurance policies referenced on the certificate of insurance provided by DEC's contractor.

9. If the DEC determines that work in addition to the Approved Activities is required, the DEC will give the owner thirty (30) calendar days' written notice of such determination and shall work cooperatively with the owner to ensure that additional work is not disruptive of the owner's business.

This Agreement shall inure to the benefit of and bind the distributees, legal representatives, successors and assigns of the parties.

In witness whereof, this Agreement has been executed on the day and date first above written.

3/14/2023  
Date

[Signature]  
Owner's Signature

Authorized Signatory  
Owner's Title (if corporation)

April 3, 2023  
Date

[Signature]  
Director, Division of Environmental Remediation

**Exhibit "A"**  
**E-mail dated March 31, 2023**

## Tamuno, Alali (DEC)

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**From:** Scott Furman <sfurman@sprlaw.com>  
**Sent:** Friday, March 31, 2023 4:11 PM  
**To:** Tamuno, Alali (DEC)  
**Subject:** RE: Access: 65 Marbledale Road

*ATTENTION: This email came from an external source. Do not open attachments or click on links from unknown senders or unexpected emails.*

Hand write it in "Authorized Signatory". You have our consent to include that.

Scott E. Furman  
SIVE, PAGET & RIESEL P.C.  
560 Lexington Avenue, 15th Floor  
New York, NY 10022  
Phone: (212) 421-2150  
Direct: (646) 378-7276  
Cell: (917) 744-2588  
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[sfurman@sprlaw.com](mailto:sfurman@sprlaw.com)

Visit our new website at [www.sprlaw.com](http://www.sprlaw.com)

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**From:** Tamuno, Alali (DEC) <alali.tamuno@dec.ny.gov>  
**Sent:** Friday, March 31, 2023 4:06 PM  
**To:** Scott Furman <sfurman@sprlaw.com>  
**Subject:** Re: Access: 65 Marbledale Road

Many Thanks Scott. Pls. could you have the signatory add his title!!

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**From:** Scott Furman <sfurman@sprlaw.com>  
**Sent:** Friday, March 31, 2023 12:53 PM  
**To:** Tamuno, Alali (DEC) <alali.tamuno@dec.ny.gov>  
**Subject:** Fwd: Access: 65 Marbledale Road

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