

NEW YORK STATE DEPARTMENT OF
ENVIRONMENTAL CONSERVATION

In the Matter of the
Development and Implementation
of a Remedial Program for an
Inactive Hazardous Waste Disposal
Site under Article 27, Titles 9 and 13,
and Article 71, Title 27 of the
Environmental Conservation Law

**ORDER ON CONSENT
and
ADMINISTRATIVE
SETTLEMENT**

Index # A4-0640-07-10

Site # E401049

by

Albany Public Library,

Respondent.

WHEREAS,

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, Titles 9 and 13, and Article 71, Title 27 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 statutes and regulations.

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 resolves Respondent's liability to the State as provided at 6 NYCRR 375-1.5(b)(5).

2. Albany Public Library ("Respondent") is a chartered school district public library with an address of 161 Washington Avenue, Albany, New York 12210. Respondent is also the owner of certain parcels of real property acquired from the Albany Local Development Corporation ("ALDC") and City of Albany in 2007 for purposes of constructing and operating a public library in Albany, New York. For the purposes of this Order on Consent, the parcels acquired include 214 and 216 Second Street and 138 and 150 Henry Johnson Boulevard (hereinafter, "the Site"). Exhibit "A" is a map of the Site showing its general location. The Respondent acquired additional parcels surrounding the Site, which include 231, 233, 235 and 237 First Street and 144, 146 and 148 Henry Johnson Boulevard.

3. The Site was previously subject to an Environmental Restoration Program State Assistance Contract ("SAC") between the Department and the City of Albany in accordance with Article 56 of the Environmental Conservation Law and 6 NYCRR Part 375-4.
4. The Site is a Non-Registry site.
5. Respondent allegedly purchased the Site without knowledge that portions of it were subject to a SAC, having commissioned a Phase I and Phase II Environmental Site Assessment prior to purchase which did not report the SAC or the Non-Registry listing and Classification "A" status of the Site.
6. Respondent alleges that the Site's prior owner failed to notify Respondent the Site was subject to a SAC and failed to notify Respondent of the prior owner's obligations under the SAC. Respondent alleges that it acquired title to the Site as an innocent purchaser.
7. Subsequently, Respondent commenced construction of a library at the Site. Upon being advised by the Department that the Site was involved in the Department's Environmental Restoration Program and subject to a SAC, Respondent undertook remedial activity at the Site which was reviewed and approved by the Department.
8. As a result of Department and Respondent's efforts, soil was removed from the Site and replaced with clean structural fill. Two Underground Storage Tanks ("USTs") were also removed at and near the Site and two related Soil Removal Actions ("SRAs") were undertaken in accordance with the Department's policy.
9. The UST removal was undertaken in accordance with the NYSDEC Division of Spills and Response Memorandum, "Permanent Closure of Petroleum Storage Tanks," as modified on December 3, 2003, and DER-10.
10. As a result of Respondent's efforts, it has also been determined that possible residual contamination at the Site exists at depths significantly below the new foundation of the library.
11. Respondent has also undertaken an unplanned expense of installing a permanent sub-slab vapor intrusion barrier and venting system during initial construction of the library building at the Site. The barrier and system designs were reviewed and approved by the Department and the New York State Department of Health and are designed to avoid any potential indoor air quality impacts at the library which may otherwise result from vapor intrusion from possible residual contamination at the Site.
12. As a result of the Respondent's remedial activities which have occurred at the Site, the Department has determined that the Site has met the goals of the Environmental Remediation Programs under 6 NYCRR Part 375 and the Site does not pose a significant threat to human health and the environment. Accordingly, the Site is being removed from the Environmental Restoration Program (6 NYCRR Part 375-4) and any possible residual contamination at the Site

shall be addressed in accordance with the terms of this Order under the Department's authority pursuant to ECL Section 71-2727(1), (3).

13. 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 which was not caused by the Respondent; and/or (iii) an acknowledgment that due to the Respondent's remedial efforts and implementation of the engineering controls identified in this Order a release or threatened release of hazardous waste at or from the Site no longer constitutes a significant threat to the public health or environment.

14. The parties agree that the goal of this Order is to certify that the Site is protective of public health and suitable for commercial use, as a public library, as that term is defined pursuant 6 NYCRR Part 375-6, and any guidance developed thereto.

15. 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. Initial Submittal

Not Applicable

II. Development, Performance, and Reporting of Site Management Work Plans

A. Site Management Work Plan

Due to possible residual contamination which exists at the Site and contamination near the Site, a Site Management Work Plan shall be submitted to the Department for review under this Order. A site management plan will identify and implement the engineering controls required for the Site based upon monitoring of sub-slab, indoor and ambient air. The site management work plan will also address the operational and maintenance requirements for the engineering controls. Engineering controls may include the approved sub-slab vapor intrusion barrier and sub-slab depressurization system or similar controls as well as any cover systems outside the building, such as asphalt parking areas, sidewalks and vegetated areas. The site management work plan will also address the testing, handling and disposal of soils if ground intrusive activities are undertaken in the future, in the event of the need for such things as utility maintenance.

Respondent hereby consents to the requirement that they shall seek review and approval by the New York State Department of Environmental Conservation when there will be any disturbance to the soil (other than landscaping activities) or demolition of any structure that is currently on the Site.

A health and safety plan should be included in the Site Management Work Plan to address any future excavations.

All Department-approved Site Management Work Plan(s) shall be incorporated into and become enforceable part of this Order. Upon approval of a Site Management Work Plan by the Department, Respondent shall implement such Site Management Work Plan in accordance with the schedule contained therein.

B. Submission/Implementation of Site Management Work Plans

1. (a) The Site Management Work Plan shall be submitted to the Department within ninety (90) days after the effective date of this Order.

(b) The Department may request that Respondent submit additional or supplemental Site Management Work Plans for the Site. Within thirty (30) days after the Department's written request, Respondent shall advise the Department in writing whether it will submit and implement the requested additional or supplemental Site Management Work Plan or whether it elects to terminate this Order pursuant to Paragraph XIII. If Respondent elects to submit and implement such Site Management Work Plan, Respondent shall submit the requested Plan within sixty (60) days after such election. If Respondent elects to terminate this Order or fails to make a timely election, this Order shall terminate pursuant to Paragraph XIII.

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

(d) Any request made by the Department under Subparagraph II.B.1.(b) shall be subject to dispute resolution pursuant to Paragraph XII.

2. A Professional Engineer must stamp and sign all Site Management Work Plans.

3. During all field activities conducted under this Order, Respondent shall have on-Site a representative who is qualified to supervise the activities undertaken. Such representative may be an employee or a consultant retained by Respondent to perform such supervision as set forth in 6 NYCRR Part 375-1.6(a)(3).

C. Modifications to Site Management Work Plans

The Department shall notify Respondent in writing if the Department determines that any element of a Department-approved Site Management Work Plan needs to be modified in order to achieve the objectives of the Site Management Work Plan as set forth in Subparagraph II.A or to ensure that the Remedial Program otherwise protects human health and the environment. Upon receipt of such notification, Respondent shall, subject to Respondent's right to terminate pursuant to Paragraph XIII, provide written notification as provided at 6 NYCRR Part 375-1.6(d)(3) as to whether it will modify the Site Management Work Plan, or invoke dispute resolution

D. Submission of Final Reports and Annual Reports

1. In accordance with the schedule contained in the Site Management Work Plan, Respondent shall submit a final report as provided at 6 NYCRR Part 375-1.6(b) or a final engineering report as provided at 6 NYCRR Part 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 any IRM.

3. In the event that the final engineering report for the Site requires Site management, Respondent shall submit a report by the 1st day of the month following the anniversary of the start of the Site management. Such 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 Part 375-1.8(h)(3). One such report will be required for this project. Respondent may petition the Department for a determination that the 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.

E. Review of Submittals Other than Progress Reports and Health and Safety Plans

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 an approval or disapproval of the submittal, in whole or in part. All Department-approved submittals shall be incorporated into and become an enforceable part of this Order.

2. 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, subject to Respondent's right to terminate pursuant to Paragraph XIII, elect to modify the submittal or invoke dispute resolution as provided at 6 NYCRR Part 375-1.6(d)(4). If Respondent elects to modify the submittal,

Respondent shall, within thirty (30) days after such election, make a revised submittal that addresses all of the Department's stated reasons for disapproving the first submittal. 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 XII and its position prevails. Failure to make an election or failure to comply with the election is a violation of this Order.

3. Within thirty (30) days after the Department's approval of a final submittal report, Respondent shall submit such final submittal report, as well as all data gathered and drawings and submittals made pursuant to such Site Management 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.

F. Department's Issuance of a ROD

Not applicable

G. Release and Covenant Not to Sue

Upon the Department's approval of the final engineering report, the Department shall issue the Certificate of Completion for the Site attached hereto and incorporated herein as Exhibit B.

Upon the Department's issuance of a Certificate of Completion as provided at 6 NYCRR Parts 375-1.9 and 375-2.9, Respondent shall obtain the benefits including the liability limitation benefits conferred by such provisions, subject to the terms and conditions described therein. The benefits and liability limitations provided to the Respondent pursuant to 6 NYCRR Part 375-1.9 and 375-2.9 shall survive the termination of this Order following the Department's issuance of a Certificate of Completion.

III. Progress Reports

Not applicable

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 Part 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 Part 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 6 NYCRR Part 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 XII 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, including access to a telephone, to the extent available, 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. In the event Respondent is unable to obtain any authorization from third-party property owners necessary to perform its obligations under this Order, the Department may, consistent with its legal authority, assist in obtaining such authorizations.

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

Not applicable

VII. Reservation of Rights

A. Except as provided at 6 NYCRR Parts 375-1.9 and 375-2.9, 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).

VIII. 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 Part 375-2.5(a)(3)(i).

IX. Public Notice

A. Within thirty (30) days after the effective date of this Order, Respondent shall provide notice as required by 6 NYCRR Part 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.

X. Environmental Easement

Not applicable

XI. Communications

A. All written communications required by this Order shall be transmitted by United States Postal Service, by private courier service, or hand delivered as follows:

1. Communication from Respondent shall be sent to:

Dena Putnick, Esq.
Office of General Counsel
NYSDEC
625 Broadway
Albany, New York 12233-1500
dnpntnic@gw.dec.state.ny.us

Randy Hough - Project Manager
NYSDEC
Division of Environmental Remediation
Remedial Bureau B, Section A, 12th Floor
625 Broadway
Albany, New York 12233-7016

rshough@gw.dec.state.ny.us

Mike Komoroske - Section Chief
NYSDEC
Division of Environmental Remediation
Remedial Bureau B, Section A, 12th Floor
625 Broadway
Albany, New York 12233-7016
mjkomoro@gw.dec.state.ny.us
Correspondence Only

Note: One (1) hard copy of plans is required, as well as one (1) electronic copy.

with copies to:

Bureau of Environmental Exposure Investigation
New York State Department of Health
Flanigan Square
547 River Street
Troy, New York 12180-2216

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

Executive Director
Albany Public Library
161 Washington Avenue
Albany, New York 12210

With copies to:

Robert T. Schofield
David R. Everett
Whiteman Osterman & Hanna, LLP
One Commerce Plaza
Albany, New York 12260
rschofield@woh.com
deverett@woh.com

B. The Department and Respondent reserve the right to designate additional or different addressees for communication upon written notice to the other.

C. Each party shall notify the other within ninety (90) days after any change in the addresses in this Paragraph XI.

XII. Dispute Resolution

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 Part 375-1.5(b)(2). 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.

XIII. Termination of Order

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

1. Respondent's election to terminate pursuant to Subparagraphs II.B.1.b, II.C or II.E.2 so long as such election is made prior to the Department's approval of the Site Management Work Plan. In the event of termination in accordance with this Subparagraph XIII.A.1, this Order shall terminate effective the 5th day after the Department's receipt of the written notification terminating this Order or the 5th day after the time for Respondent to make its election has expired, whichever is earlier, provided, however, that if there are one or more Site Management Work Plan(s) for which a final report has not been approved at the time of Respondent's notification of its election to terminate this Order pursuant to Subparagraphs II.B.1.b, II.c, or II.E.2 or its failure to timely make such an election pursuant to Subparagraphs II.B.1.b, II.c, or II.E.2, Respondent shall promptly complete the activities required by such previously approved Site Management 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 Site Management 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 approval of the final report relating to the final phase of the Remedial Program.

B. Notwithstanding the foregoing, the provisions contained in Paragraphs VI and VIII 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 Part 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 XIII.A.1, neither this Order nor its termination shall affect any liability of Respondent for remediation of the Site, 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.

XIV. 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. The Department may exempt 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 Part 375-1.12(b), (c), and (d).

C. 1. Respondent shall use best efforts to obtain all Site access, permits, easements, approvals, institutional controls, and/or authorizations necessary to perform Respondent's obligations under this Order, including all Department-approved Site Management Work Plans and the schedules contained therein. If, despite Respondent's best efforts, any access, permits, easements, approvals, institutional controls, or authorizations 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 Site Management Work Plan and such interest cannot be obtained, the Department may require Respondent to modify the Site Management Work Plan pursuant to 6 NYCRR Part 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 Site Management Work Plan submitted pursuant to this Order, the terms of this Order shall control over the terms of such 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 XI.A.1.

ii. If Respondent seeks to modify an approved Site Management Work Plan, a written request shall be made to the Department's project manager, with copies to the parties listed in Subparagraph XI.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 XIV.F.1 and 2, if multiple parties sign this Order as Respondents but not all of the signing parties elect to implement a Site Management Work Plan, all Respondents are jointly and severally liable for each and every obligation under this Order through the completion of activities in such Site Management 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 Site Management Work Plan(s). The parties electing not to implement the additional Site Management Work Plan(s) shall have no obligations under this Order relative to the activities set forth in such Site Management Work Plan(s). Further, only those Respondents electing to implement such additional Site Management Work Plan(s) shall be eligible to receive the Liability Limitation.

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's successors and assigns shall be bound by 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.

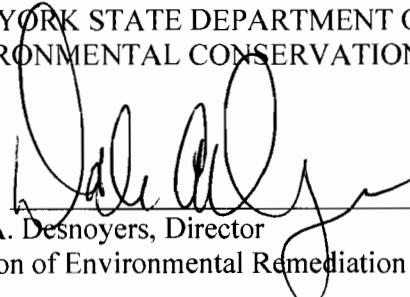
L. The effective date of this Order is the 10th Day after it is signed by the Commissioner or the Commissioner's designee.

DATED:

OCT. 18, 2010

ALEXANDER B. GRANNIS
COMMISSIONER
NEW YORK STATE DEPARTMENT OF
ENVIRONMENTAL CONSERVATION

By:


Dale A. Desnoyers, Director
Division of Environmental Remediation

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

By: Carol Nersinger
Carol Nersinger

Date: 10/12/10

STATE OF NEW YORK)
) ss:
COUNTY OF ALBANY)

On the 12th day of OCTOBER, in the year 2010, before me, the undersigned, personally appeared Carol NERSISIAN 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

Robert T. Schoneberg
NOTARY PUBLIC STATE OF N
Reg. No. 02SC5077791
My Comm. Expires May 10 2011

EXHIBIT “A”

Map of Site

EXHIBIT "B"

CERTIFICATE OF COMPLETION

This Certificate of Completion is issued to the Albany Public Library or its successors following the review by the New York State Department of Environmental Conservation (Department) of the Final Engineering Report and data submitted pursuant to the Order on Consent, dated _____, 2010, as well as any other relevant information regarding the Site known as the Arbor Hill / West Hill Branch Library (formerly part of the Henry Johnson Boulevard Properties, ERP Site #E401049).

The Final Engineering Report states that the requirements set forth in the library's design and specifications (remedial program) have been achieved. The design and specifications specified the use of a vapor barrier aggregate, installation of a passive sub slab depressurization system within the aggregate with a vent pipe extending to the top of the building roof and the installation of a sheet membrane gas vapor barrier over the aggregate and beneath the building slab as engineering controls for possible soil vapor intrusion.

At the time of the design and specifications submission, the remedial goals were established to be as set forth pursuant to the NYSDOH, "Guidance for Evaluating Soil Vapor Intrusion in the State of New York", dated October 2006, for all compounds included in the decision matrices for the sub slab and indoor air samples at the library facility.

The test results demonstrate that the remedial program for the Site has achieved control of soil vapor intrusion in accordance with the NYSDOH guidance. Notably, this allows for the use of the Site as a public library and is protective of public health. The remedial program does not include use restrictions or reliance on the long term employment of institutional controls.

Based upon this remedial program, which is consistent with commercial use, the Site is acceptable for use as a branch library by the Albany Public Library or its successors and it shall not be liable to the Department in accordance with the terms and conditions set forth for a Certificate of Completion at 6 NYCRR Parts 375-1.9 and 375-2.9.

If you need further information, please contact Robert Cozzy at (518) 402-9767.

Sincerely,

Dale A. Desnoyers, Director,
Division of Environmental Remediation