

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

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In the Matter of a Violation of Article 27, Title 13  
and Article 71, Title 27  
of the New York State Environmental  
Conservation Law and a Remedial Program for

**ORDER ON CONSENT AND  
ADMINISTRATIVE  
SETTLEMENT**

**Index No. R2-20190708-219**

**DEC Site Name: Brooklyn Navy Yard Industrial Park**

DEC Site No.: V00120

**Site Address:** The Site is bounded by the East River, Flushing Avenue to the south,  
Kent Avenue to the east, and Navy Street to the west

Hereinafter referred to as "Site"

by: The Brooklyn Navy Yard Development Corporation and  
The City of New York

Hereinafter referred to as "Respondents"

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**JURISDICTION**

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 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 under section 3-301 of the ECL to enforce the environmental laws of the State and the rules, regulations and orders issued pursuant to that authority.

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



## **SITE AND PARTIES**

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

3. The Brooklyn Navy Yard Development Corporation (the "BNYDC") is a local development corporation pursuant to sect. 1411 of the New York Not-for-Profit Corporation Law, with its office on Flushing Avenue – Cumberland Street, Brooklyn, New York.

4. The City of New York (the "City") is a municipal corporation organized under the laws of the State of New York and the fee owner of the industrial and commercial park located in the Williamsburg section of Brooklyn, and more particularly, in the northeastern portion of property formerly held by the U.S. Department of Defense and known as the Brooklyn Navy Yard (the "Navy Yard"). The City and BNYDC are hereinafter referred to as the Respondents.

5. The Brooklyn Navy Yard Industrial Park Site (the "Site") is the subject of this Agreement and consists of 151 acres of the 353-acre Navy Yard. In 1801, the United States Navy purchased the land on which the Site is located. The U.S. Federal Government sold most of the land in the Navy Yard to the City in 1970. Since 1971, the BNYDC has been the lessee of the City-owned portion of the Navy Yard excluding the Red Hook Water Pollution Control Plant.

6. The Department designated the Navy Yard, including the entire Site, as a potential hazardous waste site in March 1994. The Site, and portions thereof, have been subject to several environmental assessments, which documented the quality of the subsurface soil, sediment, groundwater, and surface waters throughout portions of the Site and the BNYDC leasehold.

7. Reports and investigations confirmed hazardous waste disposal and identified some additional areas of concern for possible hazardous waste disposal at the Navy Yard, both within the Site and outside of the Site. Such concerns included possible soil and groundwater contamination from polychlorinated biphenyls ("PCBs"), volatile organic compounds ("VOCs"), semi-volatile organic compounds ("SVOCs"), lead and certain other heavy metals.

## **VOLUNTARY CLEANUP AGREEMENT**

8. The Respondents entered a Voluntary Cleanup Agreement ("VCA"), Index No. 02-0001-97-08, with the Department on May 5, 1998. (Attached hereto as Attachment 1.)

9. On February 15, 2011, the Department issued a Decision Document for the Site. The Department, in consultation with the New York State Department of Health ("NYSDOH"), selected a remedy for the Site, including a remedial design



program, construction and maintenance of a site-wide protective cover, and the imposition of an institutional control.

10. The Site has known PCB and SVOC contamination beneath the existing site cover. This cover is a required engineering control contained in the June 2018 Site Management Plan ("SMP"). The Department-approved SMP requires Respondents to notify the Department prior to any intrusive work by their leaseholders, tenants, or themselves. Larger-scale excavations require the submission of a site-specific work plan.

11. The existing environmental easement ("EE") on the Brooklyn Navy Yard Site excludes three parts of the Navy Yard ("Excluded Areas"), described and depicted as:

- 1) Substation H, a.k.a. Drum Storage C;
- 2) Building 77, a.k.a. Substation #22; and
- 3) BNY Tower Associates LLC, a.k.a. Dock 72

on the June 2018 survey by Gallas Surveying Group submitted to the Department as part of the June 26, 2018 EE.

12. Remedial work at the Excluded Areas was not completed at the Site before the termination of the Department's Voluntary Cleanup Program ("VCP") on June 30, 2018.

13. The Department terminated all existing VCAs at sites that had not completed VCP remedial programs as of June 30, 2018.

14. By letter dated July 12, 2018, the Department issued an Assignable Release and Covenant Not to Sue ("release letter") to Respondents for the VCP site, with the exception of the Excluded Areas. The Department stated that it was "satisfied that the Remedial Action Work Plan and Decision Document relative to the Site . . . have been successfully implemented."

15. The release letter also stated that: "the Department hereby reserves all of its rights concerning, and any such release, covenant not to sue, and forbearance shall not extend to Respondents nor to any of Respondents' lessees, sublessees, successors, or assigns who cause or allow a release or threat of release at the Site of any hazardous substance."

## **2019 VIOLATIONS**

16. On June 4, 2019, Department staff inspected the Brooklyn Navy Yard Site and observed an open excavation in an area covered by the EE near the Excluded Areas at what is now known as the Dock 72 - GMD Lot. The excavation was conservatively estimated to be more than 0.5 acres. The Department had not received a formal change of use notification of intrusive work in this area, had not received a proposed work plan,



nor had it given approval for this excavation. Given the size of the observed area of exposed soil, the Department considered this to be a large-scale intrusion beneath the soil cover requiring the submission of a site-specific work plan.

17. On the date of the inspection, DEC staff also noted that one of the BNYDC lease holders, Tower Associates, was having site work and excavation performed for the development of a parking lot, in the area described in paragraph 16 above which included:

- the presence of three pieces of earthmoving equipment (track-hoe, bulldozer, backhoe);
- freshly turned soil;
- several new electrical conduits in a partially filled trench;
- several small soil piles scattered across the excavation area; and
- a catch basin along Market Street partially covered with filter fabric.

18. The work was being observed by Tower Associates' environmental consulting firm, Langan Engineering ("Langan"). The Langan representative informed DEC staff that:

- he had the SMP with him at the Site;
- the ongoing excavation and earthmoving was site preparation for a new parking lot;
- work had progressed since he joined the project in March 2019;
- soil was re-worked and re-graded;
- the parking area was formerly under control of a different BNYDC leaseholder, GMD;
- no approval existed for the work plan he was observing;
- excavation had already been completed around the Tower Associates building in locations where known or suspected PCB contamination exists, including a roadway east of their building, parking lots, and greenspace;
- contaminated soil had previously been hauled off-Site as part of this work; and,
- he reported indirectly to Jason Hayes, Vice President of Langan.

19. Department staff spoke with Mr. Hayes on June 5, 2019 by telephone, and he was told the Department planned to issue a stop work order. Shortly after, Mr. Hayes called the Department back to say work had stopped at the Site.

20. On June 10, 2019, DEC sent the BNYDC a Cease and Desist Order and Notice of Violation ("NOV") (Attached hereto as Attachment 2).

21. As noted in the June 10, 2019 letter, the EE provides for the Site to be managed under a Department-approved SMP. The SMP requires, in part, that the Department be notified prior to the commencement of any intrusive work beneath the existing soil cover. For Department-determined large-scale breaches (See SMP, June



2018, Section 6.1.1, Change of Use – "...parking lot demolition/construction"), the Department is also to receive a site-specific Work Plan detailing the intrusive work.

22. On October 24, 2019, Langan submitted to the Department a report detailing activities at the Brooklyn Navy Yard Dock 72 on behalf of BNY Tower Associates LLC dated October 2019 ("2019 Langan Report"). The report "documented ground-intrusive activities, including sitewide soil grading, utility installation, and foundation construction during redevelopment of Brooklyn Navy Yard Dock 72 during the reporting period of March 23, 2016 to June 6, 2019". The 2019 Langan Report documented excavation in the following areas:

- 1) Dock 72,
- 2) Dock 72 – Triangle Lot, and
- 3) Dock 72 – GMD Lot.

23. The large-scale breach of the soil cover, soil grading and excavation at Dock 72-GMD Lot were in violation of the EE and the SMP. A review of Department files found that Respondents had not submitted any notification to the Department, or a Site-specific Work Plan for such work.

24. Respondents failed to submit timely notification to the Department of a proposed change of use for a major breach of the Site-wide protective cover.

25. On June 13, 2019, Langan submitted a work plan for the continuation of work at the Site. The work plan was approved by the Department on June 14, 2019.

### **APPLICABLE LAW**

26. Under 6 NYCRR 375–1.11(b)(2), it is a violation to engage in any activity that will, or that is reasonably: (i) anticipated to, prevent or interfere significantly with any proposed, ongoing, or completed remedial program at any site; or (ii) foreseeable to, expose the public health or the environment to a significantly increased threat of harm or damage at any site.

27. Under 6 NYCRR 375 (d)(1), at least 60 days before a change of use at a Site, as defined in sections 375-2.11, 375-3.11 and 375-4.11 of this Part [375], the person proposing to make such change of use shall provide written notification to the department. Furthermore, the notice shall advise the department of the contemplated change, including, but not limited to, explaining how such change may affect the site's proposed, ongoing, or completed remedial program. (6 NYCRR 375 (d)(1).

28. Under 6 NYCRR 375-2.2(a), the definition of change of use means the erection of any structure on a site, the paving of a site for use as a roadway or parking lot, the creation of a park or other recreational facility on a site, any activity that is likely to disrupt or expose contamination or increase direct human or environmental exposure,



or any other conduct that will or may tend to prevent or significantly interfere with a proposed, ongoing, or completed remedial program.

29. Pursuant to ECL § 71-2705, any person who violates any of the provisions of, or who fails to perform any duty imposed by Article 27, Title 9, 11, or 13 or any rule or regulation promulgated thereto, shall be liable for penalties of up to \$37,500 per day per violation.

## **VIOLATIONS**

30. Respondent violated 6 NYCRR 375–1.11(b)(2) by conducting unapproved work at the Site from July 12, 2018 until June 5, 2019 that disturbed the site cover and thereby engaged in an activity that interfered significantly with a completed remedial program at the Site that was foreseeable to expose the public health or the environment to a significantly increased threat of harm or damage.

31. Respondents violated 6 NYCRR 375 (d)(1) by not notifying the Department at least 60 days before excavation and related work began at the Site.

## **ACCORDINGLY,**

32. Respondents and the Department agree that Respondents did not finalize the tasks necessary to complete the VCP remedial program at the Excluded Areas by June 30, 2018. Respondents agree to complete the remedial program for the Site under the terms of this Order.

33. Respondents consent to the issuance of this Order, which replaces the now expired Voluntary Cleanup Agreement, and provides for the site management of the Excluded Areas of the Site not covered by the release letter.

34. Respondents agree to complete the remedial program for the Site as set forth in Section IV.A below 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.

35. Respondents consent to and agree not to contest the authority or jurisdiction of the Department to issue or enforce this Order, and agree not to contest the validity of this Order or its terms or the validity of data submitted to the Department by Respondents pursuant to this Order.

36. Solely with regard to the matters set forth in this Order regarding DEC's inspection of the Site on June 4, 2019 and Respondents' activities at Dock 72 – GMD Lot,



as described in the 2019 Langan Report, Respondents admit to the violations cited herein, waive any right to a hearing as may be provided by law, consent to the issuance and entry of this Order, and agree to be bound by its terms.

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

I. Compliance

Respondents are bound by, and agrees to follow and comply with, the terms, provisions and requirements set forth in this Order.

II. Return of Order

This Order on Consent shall be signed and sent to:

Patrick Foster, Regional Attorney  
New York State Department of Environmental Conservation  
47-40 21st Street  
Long Island City, NY, 11101-5407.

III. Real Property

The Site subject to this Order has been assigned number V00120, consists of approximately 151 acres, and is as follows:

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

Tax Map/Parcel No.: Brooklyn Block 2023 Lot 1  
Owner: The City of New York

IV. Development, Performance, and Reporting of Work Plans and Reports

A. The Respondents shall submit all necessary work plans and reports in accordance with Section III of the attached Appendix A - "Standard Clauses for All New York State, State Superfund Orders."

At a minimum, Respondents must:

- submit an updated EE and metes and bounds survey that includes the Excluded Areas; and
- revise the SMP to reflect the inclusion of the Excluded Areas, as determined by the Department.



B. In order to address the violations cited above, the 2019 Langan Report must be revised and resubmitted to the Department as a Construction Activity Report ("CAR") within 90 days of the effective date of this Order. The CAR must account for all the excavated material removed from the Site -- estimated to be about 33,000 cubic yards. The latter accounting shall include all manifests produced, and the locations to which the material was transferred and disposed. The CAR must be stamped and signed by a professional engineer licensed to practice in New York State.

#### V. Penalty

In settlement of the violations set forth above, Respondents are assessed a total civil penalty in the amount of TWO HUNDRED FIFTY THOUSAND DOLLARS (\$250,000.00), to be paid as follows:

- A. Payable Penalty. \$50,000 shall be paid when Respondent signs this Order and returns it to the Department, \$50,000 shall be paid within 90 days of the Department's execution of this Order and \$50,000 shall be paid within 120 days of the Department's execution of this Order, by electronic payment at <http://www.dec.ny.gov/about/61016.html#On-Line> or by check made payable to the "New York State Department of Environmental Conservation," with "R2-20190708-219" written in the memo section of the check, which shall be sent to the Department of Environmental Conservation, Division of Management and Budget Services, 625 Broadway, 10th Floor, Albany, NY, 12233-4900.
- B. Suspended Penalty: The remaining penalty amount, ONE HUNDRED THOUSAND DOLLARS (\$100,000), shall be suspended, and shall not be payable provided that Respondent fully complies with the requirements of this Order, including all incorporated Appendices and Attachments. If, in the Department's sole discretion, Respondent violates any term of this Order, including the Schedule of Compliance, the whole amount of the suspended penalty, or any portion thereof, shall be due from Respondent within 30 days of receiving written notice from the Department that penalties are due.

#### VI. Payment of State Costs

Respondents shall pay State costs incurred after the effective date of this Order as set forth in Section VI of Appendix A - "Standard Clauses for All New York State, State Superfund Orders." Invoices shall be sent to Respondents at the following address(es):

Ms. Shani Leibowitz  
 Senior Vice President of Planning & Transportation  
 BNYDC  
 63 Flushing Ave., Unit 300  
 Brooklyn NY, 11205

#### VII. Default of Payment



The penalty assessed in this Order constitutes a debt owed to the State of New York. Failure to pay the assessed penalty, or any part thereof, in accordance with the schedule contained in the Order, may result in referral to the New York State Attorney General for collection of the entire amount owed (including the assessment of interest, and a charge to cover the cost of collecting the debt), or referral to the New York State Department of Taxation and Finance, which may offset any tax refund or other monies that may be owed to you by the State of New York by the penalty amount. Any suspended and/or stipulated penalty provided for in this Order will constitute a debt owed to the State of New York when and if such penalty becomes due.

#### VIII. Scope of Settlement

This Order shall be in full settlement of all claims for civil and administrative penalties that have been or could be asserted by the Department against Respondent, their trustees, officers, employees, successors and assigns for the above-referenced violations. This Order shall not be construed as being in settlement of events regarding which the Department lacks knowledge, or which occur after the effective date of this Order.

#### IX. Reservation of Rights

This Order on Consent does not bar, diminish, adjudicate or in any way affect the Department's rights or authorities, except as set forth in the Order on Consent, including but not limited to, exercising summary abatement powers, recovery of any Natural Resource Damages, the collection of regulatory fees, and requiring the Respondent to undertake any additional measures required for the protection of human health or the environment.

#### X. Access

To monitor or determine compliance with this order, employees and agents of the Respondent shall provide 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.

#### XI. Default

Respondent's failure to comply fully and in timely fashion with any provision, term, or condition of this Order shall constitute a default and a failure to perform an obligation under this Order and under the ECL.

#### XII. 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 Respondents shall be sent to:

(1 hard copy & 1 electronic copy)  
Charles Post  
New York State Department of Environmental Conservation  
Division of Environmental Remediation  
625 Broadway  
Albany, N.Y. 12233  
charles.post@dec.ny.gov

Scarlett McLaughlin (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  
scarlett.mclaughlin@health.ny.gov

Patrick Foster (electronic copy of correspondence only)  
New York State Department of Environmental Conservation  
Office of General Counsel, Region 2  
47-40 21<sup>st</sup> Street  
Long Island City, N.Y. 11101  
patrick.foster@dec.ny.gov

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

Paul Kelly, General Counsel & EVP  
Brooklyn Navy Yard Development Corporation  
Building 77  
141 Flushing Avenue, Suite 801  
Brooklyn, NY 11205  
pkelly@bnydc.org

Jennifer Coghlan  
Sive, Paget & Riesel, P.C.  
560 Lexington Avenue, 15th Floor  
New York, NY 10022  
jcoghlan@sprlaw.com



B. The Department and Respondents reserve the right to designate additional or different addressees for communication on written notice to the other. Additionally, the Department reserves the right to request that the Respondents provide more than one paper copy of any work plan or report.

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

XIII. Modification

No change or modification to this Order will become effective except as specifically set forth in writing and approved by the Commissioner or a duly authorized representative. All modification requests shall be submitted in writing to the Commissioner, or his/her designee. All modification requests shall include the case number, the named Respondent, and an explanation for the request. Any requests to modify a milestone date must be submitted to the Department prior to the milestone date and include a justification for the requested extended timeframe.

XIV. Indemnification

Respondent will indemnify and hold the Department, the State of New York, and their representatives and employees harmless for all claims, suits, actions, damages, and costs of every name and description arising out of or resulting from the acts and/or omissions of Respondent, its trustees, officers, employees, servants, agents, successors, or assigns, resulting from the compliance or attempted compliance with the provisions of this Order.

XV. Binding Effect

The provisions, terms, and conditions of this Order shall be deemed to bind Respondent, its heirs, its employees, servants, agents, successors and assigns, and all persons, firms, and corporations acting subordinate thereto.

XVI. Entirety of Order

The provisions of this Order constitute the complete and entire Order issued to the Respondent, concerning resolution of the violations identified in this Order. Terms, conditions, understandings or agreements purporting to modify or vary any term hereof shall not be binding unless made in writing and subscribed by the party to be bound, pursuant to the Modification paragraph of this Order. No oral or written advice, guidance, suggestion or comment by the Department regarding any report, proposal, plan, specification, schedule, comment or statement made or submitted by the Respondent shall be construed as relieving the Respondent of his/her obligations to obtain such formal approvals as may be required by this Order.



XVII. Obligations

This Order is not a permit, or a modification of any permit, under any federal, State, or local laws or regulations. Unless otherwise allowed by statute or regulation, Respondent is responsible for achieving and maintaining complete compliance with all applicable federal, State, and local laws, regulations, and permits. Respondent's compliance with this Order on Consent shall be no defense to any action commenced pursuant to any laws, regulations, or permits, except as set forth herein.

XVIII. Miscellaneous

A. Appendix A - "Standard Clauses for All New York State, State Superfund Orders" is attached to and the following Sections are hereby made a part of this Order as if set forth fully herein: III(A)(5), III(B), III(C), III(D), III(F), IV, V, VI, VII, VIII, IX, X(B), XI, XII, XIV, XV, XVI.

B. 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.

C. The effective date of this Order is the 10th day after it is signed by the Commissioner or the Commissioner's designee. This Order shall terminate when all requirements imposed by this Order on Consent are completed to the Department's satisfaction.

DATED: 2/1/2022

BASIL SEGGOS  
COMMISSIONER  
NEW YORK STATE DEPARTMENT OF  
ENVIRONMENTAL CONSERVATION


By: Susan Edwards  
Susan Edwards, P.E., Acting Director  
Division of Environmental Remediation



# CONSENT BY BROOKLYN NAVY YARD DEVELOPMENT CORPORATION

Brooklyn Navy Yard Development Corporation hereby consents to the issuing and entering of this Consent Order, waives its right to a hearing herein as provided by law, and agrees to be bound by this Consent Order.

Brooklyn Navy Yard Development Corporation

By: 

Title: SECRETARY

Date: November 23, 2021

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

On the \_\_\_\_ day of \_\_\_\_\_ in the year 20\_\_\_\_, before me, the undersigned, personally appeared \_\_\_\_\_ (full name) 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 executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

*Acknowledgment by a corporation, in New York State:*

Or the 22<sup>nd</sup> day of November in the year 2021, before me, the undersigned, personally appeared PAUL KELLY (full name) personally known to me who, being duly sworn, did depose and say that he/she/they reside at 574 4<sup>th</sup> AVENUE, BROOKLYN, NEW YORK (full mailing address) and that he/she/they is (are) the SECRETARY (president or other officer or director or attorney in fact duly appointed) of the Brooklyn Navy Yard Development Corporation, the corporation described in and which executed the above instrument; and that he/she/they signed his/her/their name(s) thereto by the authority of the board of directors of said corporation.

  
 Notary Public, State of New York

Adrian B. Hester  
 Notary Public, State of New York  
 No. 01HE6084329  
 Qualified in Queens County  
 Signature on file in New York County  
 Commission Expires

02/00/2023



## CONSENT BY THE CITY OF NEW YORK

The City of New York hereby consents to the issuing and entering of this Consent Order, waives its right to a hearing herein as provided by law, and agrees to be bound by this Consent Order.

The City of New York

By: \_\_\_\_\_

Andrew Schwartz

Title: \_\_\_\_\_

Deputy Commissioner

Date: \_\_\_\_\_

12/29/21

STATE OF \_\_\_\_\_ )

) ss:

COUNTY OF \_\_\_\_\_ )

On the 29 day of December in the year 2021, before me, the undersigned, personally appeared Andrew Schwartz (full name) 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 executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

*Acknowledgment by a corporation, in New York State:*

On the \_\_\_\_\_ day of \_\_\_\_\_ in the year 20\_\_\_\_, before me, the undersigned, personally appeared \_\_\_\_\_ (full name) personally known to me who, being duly sworn, did depose and say that he/she/they reside at \_\_\_\_\_ (full mailing address) and that he/she/they is (are) the

\_\_\_\_\_ (president or other officer or director or attorney in fact duly appointed) of the City of New York, the corporation described in and which executed the above instrument; and that he/she/they signed his/her/their name(s) thereto by the authority of the board of directors of said corporation.

\_\_\_\_\_  
Notary Public, State of New York

RAJBALA JASWAL  
Notary Public  
State of New York  
No. 01JA6152836  
Qualified in Queens County  
Commission Expires 9/25/2022



**Attachment 1**

Voluntary Cleanup Agreement



**STATE OF NEW YORK:  
DEPARTMENT OF ENVIRONMENTAL CONSERVATION**

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In the Matter of the Development and  
Implementation of an Environmental Investigation  
and Remediation Response Program for the  
Brooklyn Navy Yard Industrial Park by

**CLEANUP  
AGREEMENT**

Index No.  
02-0001-97-08

The Brooklyn Navy Yard Development Corporation and  
The City of New York,

Volunteers.

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**CONSIDERING,**

1. The New York State Department of Environmental Conservation (the "Department") is responsible for enforcement of the Environmental Conservation Law of the State of New York ("ECL"). This Agreement is entered into pursuant to the Department's authority under that law.

2. The Brooklyn Navy Yard Development Corporation (the "BNYDC") is a local development corporation pursuant to § 1411 of the New York Not-for-Profit Corporation Law, with its office on Flushing Avenue - Cumberland Street, Brooklyn, New York. The City of New York (the "City") is a municipal corporation organized under the laws of the State of New York and the fee owner of an industrial and commercial park located in the Williamsburgh section of Brooklyn, and more particularly, in the northeastern portion of property formerly held by the U.S. Department of Defense, known as the Brooklyn Navy Yard. The City and BNYDC are hereinafter referred to as the Volunteers.

3. The "Site," which is the subject of this Agreement, consists of 264 acres of the 353 acre industrial park located in the Williamsburgh section of Brooklyn known as the Brooklyn Navy Yard. The Navy Yard, including the Site, is listed as Block 2023, Lot 1 in the tax records of the City of New York. In 1801, the United States Navy purchased the land on which the Navy Yard is located. The U.S. Federal Government sold most of the land in the Navy Yard to the City of New York in 1970. Since 1971, the BNYDC has been the lessee of the City-owned portion of the Navy Yard excluding the Red Hood Water Pollution Control Plant. A copy of the Amended and Restated Lease Agreement between the City of New York, as lessor, and BNYDC, as lessee, dated June 6, 1996, is attached as Exhibit A.



4. The Navy Yard is bounded by the East River, Flushing Avenue to the south, Kent Avenue to the east and Navy Street to the west. Located in the Navy Yard, but not within BNYDC's leasehold, is the 47 acre U.S. Navy Annex site, the 18-acre Red Hook Water Pollution Control Plant, the 5-acre Federal Bureau of Prisons site and the 6-acre U.S. Army Corps of Engineers site. The 13-acre site within the Navy Yard that was the former proposed location for a resource recovery facility is subject to a separate order and, although within the BNYDC leasehold, is not covered by this Agreement. A map of the Navy Yard, including the Site, is attached as Exhibit B.

5. The Department designated the Navy Yard, including the entire Site, as a potential hazardous waste site ("P" site I.D. No. 224019) in March 1994. The Site, and portions thereof, have been subject to several environmental assessments. The following environmental reports document the quality of the subsurface soil, sediment, groundwater, and surface waters throughout portions of the Site and the BNYDC leasehold:

- Tectonic Engineering Consultants. November 1988. *"U.P.S. Distribution Facility Environmental Assessment."* Final.
- Wehran Engineering Consulting Engineers. November 1988. *"The Site Environmental Assessment of Building #41."* Final.
- Blasland, Bouck & Lee Engineering Consultants. 1991 & 1992. *"Phase I & II Assessments of Building #41."* Final.
- Blasland, Bouck & Lee Engineering Consultants. March 1993. *"Phase II Investigation of Cooling Water Tunnels and Dry Dock No. 2 Sampling."* Final.
- Blasland, Bouck & Lee Engineering Consultants. July 1993. *"Final Environmental Impact Statement. Brooklyn, New York."* Final.
- ENSR Environmental, summarized by Roux Associates, Inc. February 1995. *"Summary of Additional Investigations at the Building No. 41 Facility."* Final.
- Fanning, Phillips and Molnar, May 1995. *"Brooklyn Navy Yard Cogeneration Plant Project, Pipeline Route - Sampling Results."* Final.
- Environmental Consulting Technology, Inc. July 1995. *"Brooklyn Navy Yard Cogeneration Project Joint Federal/State Permit Application Package."* Final.
- PMNC, A Joint Venture. February 1996. *"Brooklyn Navy Yard Cogeneration Project 138 KV Underground Transmission Line Summary of Soil Testing Results."* Final.



- New York State Department of Environmental Conservation, 1995. *"Surficial Soil Sampling."* Final.

In addition, the following environmental site assessments were conducted at properties contiguous to the BNYDC leasehold:

- Stone & Webster. 1990. *"Site Assessment Report for Red Hook"* Final.
- EA Engineering, Science, and Technology. 1994a. *"Work Plan for Environmental Baseline Survey Phase II at Naval Station - New York Sites (Brooklyn Naval Station)."*
- EA Engineering, Science, and Technology. 1994b. *"Field Sampling Plan for Environmental Baseline Survey Phase II at Naval Station - New York Sites (Brooklyn Naval Station)."* Final.
- EA Engineering, Science, and Technology. 1996 *"Remedial Action Completion Report for Remediation of Transformer Site Soil."* Final.

The above-listed reports and investigations confirmed hazardous waste disposal and identified some additional areas of concern for possible hazardous waste disposal at the Navy Yard, both within the Site and outside the Site. Such concerns included possible soil and groundwater contamination from polychlorinated biphenyls ("PCBs"), volatile organic compounds ("VOCs"), SemiVolatile Organic Compounds ("SVOC"), lead and certain other heavy metals. Most of the environmental concerns identified in the above reports have been addressed or are currently being addressed. The Department has not determined that a significant threat to the public health or environment exists at the Navy Yard as a result of these reports. The existence or absence of hazardous waste at the Site and any threats associated with those wastes will be determined by the investigations performed pursuant to this Agreement.

6. A. ECL 27-1313.3 provides that the Department shall be responsible for remedial programs at inactive hazardous waste disposal sites or potential sites, except as provided in Section 1389-b of the public Health Law. ECL 27-1313.3a provides that whenever the Commissioner of Environmental Conservation finds that hazardous wastes at an inactive hazardous waste disposal site constitutes a significant threat to the environment, he may order the owner of such site and/or any person responsible for the disposal of hazardous wastes at such site (i) to develop an inactive hazardous waste disposal site remedial program, subject to the approval of the Department, at such site, and (ii) to implement such program within reasonable time limits specified in the Order.



B. The Department also has the power, *inter alia*, to provide for the prevention and abatement of all water, land, and air pollution. ECL 3-0301.1.i

C. Section 176 of the Navigation Law permits, upon approval by the Commissioner, any person to cleanup and remove a discharge of petroleum without admission of responsibility for such discharge.

7. The Volunteers wish to enter into this Agreement in order to ensure, and the Department hereby determines that this Agreement constitutes a demonstration, that the response action undertaken under this Agreement will be in compliance with the ECL and will not:

(1) prevent or interfere significantly with any proposed, ongoing or completed remedial program at the Site, or

(2) expose the public health or the environment to a significantly increased threat of harm or damage.

8. The Volunteers shall implement a response program acceptable to the Department sufficient to allow the use and development of the Site as an industrial and commercial park (the "Contemplated Use") and consent to the terms and conditions of this Agreement.

9. The Volunteers also wish to enter into this Agreement in order to resolve their potential liability for remediating the Existing Contamination (i.e.: environmental conditions known or suspected). The Department finds that such resolution, undertaken in accordance with the terms of this Agreement, is in the public interest.

10. The Department and the Volunteers agree that the goals of this Agreement are:

A. for the Volunteers to develop and implement a Department-approved investigation and remediation response program, in the form of a work plan, for the Site and to reimburse the State's administrative costs as provided in this Agreement; and

B. for the Department and the Trustee of New York State's natural resources, under the circumstances described within this Agreement, to release the Volunteers and their successors and assigns, under the conditions set forth in this Agreement, from any and all claims, actions, suits, and proceedings (including but not limited to any claims for State administrative costs) by the Department or by the Trustee of New York State's natural resources (the "Trustee"), which may arise under any applicable laws as a result of environmental conditions at the Site that exist as of the effective date of this Agreement.



11. The existence of this Agreement or the fact that the Volunteers participated in activities pursuant to this Agreement shall not constitute, be construed as, nor be considered an admission of liability, fault, wrongdoing, or violation of any law, regulation, or permit condition by the Volunteers, and shall not give rise to any presumption of law or finding of fact which shall inure to the benefit of any third party.

12. The Volunteers agree to be bound by the terms of this Agreement. The Volunteers consent to and agree not to contest the authority of jurisdiction of the Department to issue or enforce this Agreement, and agree not to contest the validity of this Agreement or its terms.

IN CONSIDERATION OF AND IN EXCHANGE FOR THE DEPARTMENT'S RELEASE AND COVENANT NOT TO SUE SET FORTH IN THIS AGREEMENT, THE VOLUNTEERS AGREE TO THE FOLLOWING:

I. Submission of Work Plan

A. Within 45 days after the effective date of this Agreement, Volunteers shall submit to the Department supplemental plans and protocols to be incorporated as appendices, upon acceptance by the Department, to the Department-approved Detailed Scope of Work (the "Scope of Work") attached to this Agreement and made part hereof as Exhibit C.

B. The supplemental plans and protocols shall include, but are not limited to, the following:

(1) Quality Assurance/Quality Control ("QA/QC") program equivalent to that followed by EPA and consistent with EPA guidance (including EPA QA/R-5, EPA requirement for Quality Assurance Project Plans for Environmental Data Operations, August 1994, Draft Interim Final).

(2) A field sampling plan that defines sampling and data gathering methods in a manner consistent with the "Compendium of Superfund Field Operations Method" (EPA/540/P-87/001, OSWER Directive 9355.0-14, December (1987), or subsequent EPA guidance in effect at the time the supplemental plans and protocols are submitted for approval.

(3) A health and safety plan to protect persons at and in the vicinity of the Site during the implementation of this Agreement which shall be prepared by a certified health and safety professional in accordance with 29 CFR Part 1910 and all other applicable standards.



(4) A schedule for implementation of the Department approved work plan. The schedule shall provide, at a minimum, for the submittal of a Final Engineering Report.

C. The Department will either approve the supplemental plans and protocols or shall require modification of them, in accordance with the procedures set forth in Paragraph IV. After approval by the Department, the final Department-approved Scope of Work (Exhibit C) with the approved plans and protocols, attached and incorporated into and made an enforceable part of this Agreement as Exhibit D, shall comprise the Final Work Plan (the "Work Plan").

## II. Performance and Reporting of the Work Plan

A. 1. Within 30 days after receiving the Department's written approval of the Work Plan, Volunteers shall commence implementation of the Work Plan, and implement it in accordance with its terms. Volunteers shall notify the Department of any significant difficulties that may be encountered in implementing the Work Plan or any Department-approved modification to it and shall not modify any obligation unless first approved by the Department.

2. The Scope of Work contemplates the assessment and remediation of the Site being performed in three phases. Volunteers agree to:

(i) develop and implement a Preliminary Site Assessment ("PSA") that will gather information, including historical information, about the Site to determine the presence or potential presence of hazardous wastes at the Site,

(ii) develop and implement a Supplement Site Assessment ("SSA") to characterize any hazardous wastes which are or may be present at portions of the Site, to enable the Department to determine whether such hazardous wastes constitute a significant threat to the public health or the environment necessitating further environmental assessment or remediation,

(iii) if necessary, develop and implement, based upon the results of the SSA, an Interim Remedial Measure ("IRM") Program for impacted portions of the Site, to remediate hazardous waste contamination to a level which provides for the protection of human health and the environment, and which is consistent with the current and future land-use as an industrial and commercial park. Should an IRM be found necessary, the Volunteers will prepare an IRM Work Plan for impacted portions of the Site and submit this plan to the Department for review and approval, and



(iv.) upon the completion of the PSA, the SSA and necessary IRM programs, the Volunteers shall submit to the Department separate Reports summarizing the work performed and conclusions made during each phase of the Work Plan.

3. The parties agree that they will immediately commence negotiations to modify the Work Plan in the event the Department notifies Volunteers in writing that:

(i) contamination previously unknown or inadequately characterized is encountered during the Work Plan's implementation or upon completion of the investigation or remediation of the Site; and

(ii) the Department determines that such contamination must be investigated or remediated further in order to avoid a significant threat to the public health and the environment pursuant to 6 NYCRR Part 375, or the Department determines that Site conditions based upon such contamination are not sufficiently protective of human health and the environment for the Contemplated Use.

If the Department and Volunteers agree upon revisions to the proposed modified Work Plan, the revisions to the Work Plan shall be attached to this Agreement as Exhibit D-1 and made a part of this Agreement and all references to "Work Plan" hereafter shall refer to that contained in Exhibit D and Exhibit D-1.

4. If, after good faith negotiations, Volunteers and the Department cannot agree upon revisions to the Work Plan as provided for in Subparagraph II.A.3 of this Agreement, then except with respect to Volunteers' obligations under Paragraph VII and IX of this Agreement, this Agreement shall terminate effective the date of the Department's written notification to Volunteers that negotiations have failed to develop an acceptable modified Work Plan; Volunteers shall not leave the Site in a condition, from the perspective of human health and environmental protection, worse than that which prevailed before activities subject to this Agreement were commenced; and (except with respect to the Department's right to enforce the obligations of Volunteers previously described in this sentence, which it may enforce under this Agreement) all parties retain whatever rights they may have had respecting each other as they had before the effective date of this Agreement.

B. Volunteers shall notify the Department of any significant difficulties that may be encountered in implementing the Work Plan, any Department-approved modification to the Work Plan, or any Department-approved detail, document, or specification prepared by or on behalf of Volunteers pursuant thereto and this Agreement; and shall not modify any obligation unless first approved by the Department.



C. During implementation of all construction activities identified in the Work Plan, Volunteers shall have on-Site a full-time representative who is qualified to supervise the work done.

D. In accordance with the schedule contained in the Work Plan, as may be modified by agreement between the parties, the Volunteers shall submit to the Department a final engineering report. The final engineering report shall include a final remedy report confirming all known areas of concern have been satisfactorily addressed; a detailed post-remedial operation and maintenance plan ("O&M Plan"), to the extent necessary; "as-built" drawings showing all changes made during construction, to the extent necessary; and a certification that all activities were completed in full accordance with the Work Plan, any Department-approved modification to the Work Plan, any Department-approved detail, document, or specification prepared by or on behalf of Volunteers pursuant thereto, and this Agreement. The O&M Plan, "as built" drawings, final engineering report, and certification must be prepared, signed, and sealed by a professional engineer.

E. Should post-remedial operation and maintenance prove to be necessary, upon the Department's approval of the O&M Plan, Volunteers shall implement the O&M Plan in accordance with the schedule and requirements of the Department-approved O&M Plan.

F. 1. (i) Within 60 days after receipt of the final engineering report and certification, the Department shall notify Volunteers in writing whether the Department is satisfied with the implementation of the Work Plan, any Department-approved modification to the Work Plan, any Department-approved detail, document, or specification prepared by or on behalf of Volunteers pursuant thereto, and this Agreement.

(ii) Within 60 days after completion of the Department-approved O&M Plan, if any, Volunteers shall submit to the Department a final engineering report and certification that the post-remedial operation and maintenance activities identified in the Department-approved O&M Plan were implemented in accordance with that plan. The Department shall notify Volunteers whether it is satisfied with the O&M Plan's implementation.

2. Upon being satisfied that the Site-specific cleanup levels identified in, or to be identified in accordance with, the Work Plan have been reached, the Department shall notify Volunteers in writing of its satisfaction and, except for the reservations identified below, the Department and the Trustee release, covenant not to sue, and shall forbear from bringing any action, proceeding, or suit against Volunteers, their successors, successors-in-title and assigns, for the further investigation and remediation of those specific areas within the Site, defined by a metes and bounds



description, that were satisfactorily investigated and remediated, or for natural resources damages, based upon the release or threatened release of any Existing Contamination, provided that (a) timely payments of the amounts specified in Paragraph VII of this Agreement continue to be or have been made to the Department, (b) appropriate notices and deed restrictions have been recorded in accordance with Paragraphs XI and XII of this Agreement, and (c) Volunteers and/or their respective lessees, sublessees, successors, successors-in-title, or assigns promptly commence and diligently pursue to completion the Department-approved O&M Plan, if any. Nonetheless, the Department and the Trustee hereby reserve all of their respective rights concerning, and such release, covenant not to sue, and forbearance shall not extend to, any further investigation or remedial action the Department deems necessary:

(i) due to off-Site migration of contaminants that was not addressed by the Work Plan;

(ii) due to environmental conditions related to the Site that were unknown to the Department at the time of its approval of the Work Plan which indicate that Site conditions are not sufficiently protective of human health and the environment for the Contemplated Use;

(iii) due to information received, in whole or in part, after the Department's approval of the final engineering report and certification, which indicates that the activities carried out in accordance with the Work Plan are not sufficiently protective of human health and the environment for the Contemplated Use;

(iv) due to Volunteers causing or suffering the release or threat of release at the Site of any hazardous substance (as that term is defined at 42 USC 9601[14]) or petroleum (as that term is defined in Navigation Law §172[15]) after the effective date of this Agreement;

(v) due to the Contemplated Use of the Site changing to one requiring a lower level of residual contamination before that use can be implemented with sufficient protection of human health and the environment;

(vi) due to Volunteer's failure to implement this Agreement to the Department's satisfaction; or

(vii) due to fraud or mistake committed by the Volunteers in demonstrating that the Site-specific cleanup levels identified in, or to be identified in accordance with, the Work Plan were reached.

3. Notwithstanding any other provision in this Agreement, if with respect to the Site there exists or may exist a claim of any kind or nature on the part of



the New York State Environmental Protection and Spill Compensation Fund against any party, nothing in this Agreement shall be construed, or deemed, to preclude the State of New York from recovering such claim.

G. If the Department is satisfied with the implementation of the Work Plan and Department-approved design, the Department shall provide Volunteers with a written "no further action" letter substantially similar to the model letter attached to this Agreement and incorporated in this Agreement as Exhibit E.

H. 1. Notwithstanding any other provision of this Agreement, with respect to any claim or cause of action asserted by the Department or the Trustee, the party seeking the benefit of the forbearance, covenant not to sue, or release set forth in Subparagraph II.F or in a "no further action" letter issued under Subparagraph II.G of this Agreement, shall bear the burden of proving that the claim or cause of action, or any part thereof, is attributable solely to Existing Contamination. In the event the Department were to require Volunteers to undertake remedial activities with respect to contamination other than Existing Contamination, evidence demonstrating that such remedial activities would affect Existing Contamination shall not relieve Volunteers of any obligation they may have to perform such remedial activities.

2. Prior to issuance of the release, covenant not to sue, and forbearance pursuant to Subparagraph II.F of this Agreement, the Department shall refrain and forbear from bringing administrative or judicial proceedings against any person or from commencing any investigation or remedial activity in the exercise of its powers under ECL Article 27 with respect to the Existing Contamination at the Site so long as the Work Plan is being implemented in accordance with the terms of this Agreement.

3. Except as above provided in Subparagraphs II.F and II.H.2 of this Agreement and in the "no further action" letter issued under Subparagraph II.G of this Agreement, nothing in this Agreement is intended as a release, forbearance, or covenant not to sue for any claim or cause of action, administrative or judicial, civil or criminal, past or future, in law or in equity, which the Department, the Trustee, or the State of New York may have against any person, firm, corporation, or entity other than Volunteers. In addition, notwithstanding any other provision in this Paragraph II of this Agreement, the forbearance, covenant not to sue, and release described in Subparagraph II.F and in the "no further action" letter issued under Subparagraph II.G of this Agreement shall not extend to parties (other than the Volunteers) that were responsible under the law before the effective date of this Agreement to address the Existing Contamination, nor shall they extend to the entire Site. Such provisions shall only extend to those specified areas within the Site that are defined by a metes and bounds description, that were satisfactorily investigated and remediated pursuant to this Agreement.



### III. Progress Reports

A. The Volunteers shall submit to the parties identified in Subparagraph XIV in the numbers specified therein copies of written progress reports every other month that:

1. describe the actions which have been taken toward achieving compliance with this Agreement during the previous two months;
2. include all results of sampling and tests and all other data received or generated by the Volunteers or Volunteers' contractors or agents in the previous two months, including quality assurance/quality control information, whether conducted pursuant to the Agreement or conducted independently by the Volunteers;
3. identify all plans, reports, and other deliverables required by this Agreement that were completed and submitted during the previous two months;
4. describe all actions, including, but not limited to, data collection and implementation of the Work Plan, that are scheduled for the next two months and provide other information relating to the progress at the Site;
5. include information regarding percentage of completion, unresolved delays encountered or anticipated that may affect the future schedule for implementation of "Volunteers'" obligations under the Agreement, and efforts made to mitigate those delays or anticipated delays; and
6. include any modifications to any plans, including the Work Plan, that the Volunteers have proposed to the Department and any that the Department has approved.

B. The Volunteers shall submit these progress reports to the Department commencing with the tenth day of the month following the effective date of this Agreement and Volunteers' obligation to submit the progress reports shall terminate upon its receipt of the written satisfaction notification identified in Subparagraph II.F of this Agreement.

### IV. Review of Submittal

A. The Department shall review each of the submittals Volunteers make pursuant to this Agreement to determine whether it was prepared, and whether the work done to generate the data and other information in the submittal was done, in accordance with this Agreement and generally accepted technical and scientific



standards. The Department shall notify Volunteers in writing of its approval or disapproval of the submittal. All Department- approved submittals shall be incorporated into and become an enforceable part of this Agreement.

B. 1. If the Department disapproves a submittal, it shall so notify Volunteers in writing and shall specify the reasons for its disapproval within 30 days (60 days, in the case of the final engineering report and certification) after its receipt of the submittal and may request that Volunteers modify or expand the submittal; provided, however, that the matters to be addressed by such modification or expansion are within the specific scope of work as described in the Work Plan. Within 30 days after receiving written notice that Volunteers' submittal has been disapproved, Volunteers shall make a revised submittal to the Department which endeavors to address and resolve all of the Department's stated reasons for disapproving the first submittal.

2. After receipt of the revised submittal, the Department shall notify Volunteers in writing within 30 days of its approval or disapproval.

3. If the Department approves the revised submittal, it shall be incorporated into and become an enforceable part of this Agreement.

4. If the Department disapproves the revised submittal,

(i) Volunteers shall be deemed to be in breach of this Agreement unless, within ten business days of being notified in writing of the Department's disapproval of the revised submittal, Volunteers serve on the Department a request for an appointment of an Administrative Law Judge ("ALJ"), and a written statement of the issues in dispute, the relevant facts upon which the dispute is based, and factual data, analysis or opinion supporting its position, and all supporting documentation on which Volunteers rely (hereinafter called the "Statement of Position"). The Department shall serve its Statement of Position, including supporting documentation, no later than ten business days after receipt of Volunteers' Statement of Position. Volunteers shall have five business days after receipt of the Department's Statement of Position within which to serve upon the Department a reply to the Department's Statement of Position, and in the event Volunteers serve such a reply, the Department shall have five business days after receipt of Volunteers' reply to the Department's Statement of Position within which to serve upon Volunteers the Department's answer to Volunteers' reply to the Department's Statement of Position. The time periods for exchange of papers may be altered upon agreement by the parties.

(ii) The Department shall maintain an administrative record of any dispute under this Subparagraph. The record shall include the Statement of Position of each party served pursuant to the preceding Subparagraph, and any relevant



information (including all replies and answers). The record shall be available for review of all parties and the public.

(iii) Upon review of the administrative record as developed pursuant to this Subparagraph, the ALJ shall issue a final decision and order resolving the dispute. If determined necessary by the ALJ, Volunteers shall revise the submittal in accordance with the Department's specific comments, as may be modified by the ALJ, and shall submit a revised submittal. The period of time within which the submittal must be revised as specified by the Department in its notice of disapproval shall control unless the ALJ revises the time frame in the ALJ's final decision and order resolving the dispute.

(iv) After receipt of the revised submittal, the Department shall notify Volunteers in writing of its approval or disapproval of the revised submittal.

(v) If the revised submittal fails to address the Department's specific comments, as may be modified by the ALJ, and the Department disapproves the revised submittal for this reason, Volunteers shall be in breach of this Agreement.

(vi) In review by the ALJ of any dispute pursued under this Subparagraph, Volunteers shall have the burden of proving that there is no rational basis for the Department's position.

(vii) Respondent shall have the right to challenge the Department's final determination regarding the disputed matter in New York State Supreme Court, New York County, pursuant to Article 78 of the Civil Practice Law and Rules ("CPLR") of New York. A Petition under Article 78 of the CPLR challenging the Department's final determination on a disputed matter must be filed within thirty (30) calendar days of Respondent's receipt in writing of such determination.

The invocation of dispute resolution procedures under this paragraph shall not extend or postpone Volunteers' obligations under this Agreement except for those obligations which are dependent upon the disputed matter.

C. Within 30 days after the Department's approval of the final engineering report and certification, Volunteers shall submit to the Department one microfilm copy (16 millimeter roll film M type cartridge) of that report and all other Department-approved drawings and submittals. Such submission shall be made to:

Director, Division of Environmental Remediation  
New York State Department of Environmental Conservation  
50 Wolf Road  
Albany, New York 12233-7010



## V. Enforcement

A. This Agreement shall be enforceable as a contractual agreement under the laws of the State of New York.

B. The Volunteers shall not suffer any penalty under this Agreement or be subject to any proceeding or action if it cannot comply with any requirement of this Agreement because of fire, lighting, earthquake, flood, adverse weather conditions, strike, shortages of labor and materials, war, riot, obstruction or interference by adjoining landowners, or any other fact or circumstance beyond the Volunteers' reasonable control ("force majeure event"). The Volunteers shall, within five business days of when it obtains knowledge of any such force majeure event, notify the Department in writing. The Volunteers shall include in such notice the measures taken and to be taken by the Volunteers to prevent or minimize any delays and shall request an appropriate extension or modification of this Agreement. The Volunteers shall have the burden of proving by a preponderance of the evidence that an event is a defense to compliance with this Agreement pursuant to this Subparagraph.

## VI. Entry upon Site

The Volunteers hereby consent to the entry upon the Site or areas in the vicinity of the Site which may be under the control of the Volunteers by any duly designated employee, consultant, or agent of the Department or any State agency for purpose of inspection, sampling, and testing and to ensure the Volunteers' compliance with this Agreement. The Department shall abide by the health and safety rules in effect for work performed at the Site under the terms of this Agreement. Upon request, the Volunteers shall provide the Department with suitable office space at the Site, including access to a telephone, and shall permit the Department full access to all records relating to matters addressed by this Agreement and to job meetings.

## VII. Payment of State Costs

Within thirty days after receipt of an itemized invoice from the Department, Volunteers shall cause to be paid to the Department a sum of money, not to exceed a total of \$35,000.00, which shall represent reimbursement for the State's expenses including, but not limited to, direct labor, fringe benefits, indirect costs, travel, analytical costs, and contractor costs incurred by the State of New York for negotiating this Agreement, reviewing and revising submittals made pursuant to this Agreement, overseeing activities conducted pursuant to this Agreement, collecting and analyzing samples, and administrative costs associated with this Agreement, but not including the State's expenses incurred after the Department's notification identified in Subparagraph II.F.L of this Agreement. Based upon information available as of the date of this Agreement, the Department estimates that its costs under this Agreement shall be



\$22,000.00. Such payment shall be made by certified check payable to the Department of Environmental Conservation and shall be sent to:

Bureau of Program Management  
Division of Environment Remediation  
New York State Department of Environmental Conservation  
50 Wolf Road  
Albany, New York 12233-7010

Personal service costs shall be documented by reports of Direct Personal Service, which shall identify the employee name, title, biweekly salary, and time spent (in hours) on the project during the billing period, as identified by an assigned time and activity code. Approved agency fringe benefit and indirect cost rates shall be applied. Non-personal service costs shall be summarized by category of expense (e.g., supplies, materials, travel, contractual) and shall be documented by expenditure reports. The Department intends to provide the Volunteers with an invoice as described in this Paragraph VII upon completion of the activities required by the Work Plan.

#### **VIII. Reservation of Rights**

A. Except as provided in Subparagraph II.F.2 of this Agreement and in any "no further action" letter issued under Subparagraph II. G of this Agreement, nothing contained in this Agreement shall be construed as barring, diminishing, adjudicating, or in any way affecting any of the Department's or Trustees's rights (including, but not limited to, nor exemplified by, the right to recover natural resources damages) with respect to any party, including Volunteers.

B. Nothing contained in the Agreement shall prejudice any rights of the Department to take an investigatory or remedial action it may deem necessary if the Volunteers fail to comply with this Agreement or if contamination other than existing contamination is encountered at the Site.

C. Nothing contained in this Agreement shall be construed to prohibit the Commissioner or his duly authorized representative from exercising any summary abatement powers consistent with this Agreement.

D. Nothing contained in this Agreement shall be construed to affect the Department's right to terminate this Agreement at any time during its implementation if the Volunteers fail to comply substantially with this Agreement's terms and conditions.

E. Volunteers reserve its rights to notice, to be heard, to defend, to contest, to appeal and to any other due process in any action or proceeding brought by the Department pursuant to or to enforce this Agreement. The existence of this Agreement



or the fact that Volunteers participated in activities pursuant to this Agreement shall not constitute or be construed as an admission of liability, fault, wrongdoing or violation of any law or regulation.

**IX. Indemnification**

The Volunteers 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 of every name and description arising out of or resulting from the fulfillment or attempted fulfillment of this Agreement by the Volunteers and/or any of the "Volunteers" directors, officers, employees, servants, agents, successors, and assigns.

**X. Public Notice**

This Agreement shall be publicly noticed and the public shall be provided with an opportunity to provide written comments to the Department. The Department will hold a public meeting at which the Department and the Volunteers will explain the Agreement and respond to public comments and questions with respect to the Agreement. Notice of the Agreement and of the public meeting shall be published by the Volunteers at least two times in a newspaper of general circulation in the City of New York. The Department shall place the notice in the Environmental Notice Bulletin and shall prepare the notice. The Department shall provide to the Volunteers all comments regarding the Agreement received from the public. The Department may request that the Volunteers take into account significant and material concerns, if any, raised by the public in its written comments or at the public meeting, and the Volunteers agree to endeavor to cooperate with the Department to address such concerns.

**XI. Notice**

A. Within 30 days after the effective date of this Agreement, the Volunteers shall file a Declaration of Covenants and Restrictions with the Kings County Clerk to give all parties who may acquire any interest in the Site notice of this Agreement.

**XII. Deed Restriction**

Within 30 days of the completion of the Department-approved Work Plan which is designated to allow the safe human use of the Site for the purposes of an industrial and commercial park, the Volunteers shall record an instrument with the Kings County Clerk which provides that, unless otherwise authorized by the Department, the Site shall only be used for industrial and commercial purposes and purposes ancillary thereto as described in the "Amended and Restated Lease Between the City of New York and the BNYDC (see Exhibit A). In the event that the Volunteers propose to use the Site for any purpose other than the Contemplated Use as an industrial and commercial park,



Volunteers shall immediately notify the Department. Pursuant to the ECL, the Department shall have the authority to determine that additional environmental investigation and/or remediation occur prior to the time that such proposed new use commences.

### **XIII. Removing P Designation**

Upon being satisfied that the Site-specific cleanup levels identified in, or to be identified in accordance with, the Work Plan have been reached, and/or that the Site, or any portion thereof, is not a hazardous waste disposal site within the meaning of Article 27 of the ECL and 6 NYCRR Part 375, the Department shall promptly take all necessary actions to remove the P designation from the Site or such portion of the Site.

### **XIV. Communications**

A. All written communications required by this Agreement shall be transmitted by the United States Postal Service, by private courier service, or hand delivered.

#### **I. Communication from Volunteers shall be sent to:**

Vadim Brevdo, P.E.  
Environmental Engineer  
NYS Department of Environmental Conservation  
Division of Environmental Remediation, Region 2  
47-40 21st Street  
Long Island City, NY 11101

with copies to:

Robert K. Davies, Esq.  
NYS Department of Environmental Conservation  
Division of Environmental Enforcement  
50 Wolf Road Room 410-A  
Albany, New York 12233-5550

Copies of plans and reports shall be submitted as follows:

- Two copies (one bound) to Vadim Brevdo
- One copy to Robert K. Davies, Esq.



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

Nicholas A. Mann  
Environmental Engineer  
Brooklyn Navy Yard Development Corporation  
Brooklyn, NY 11205

Robert Orlin  
New York City Law Department  
Environmental Law Division  
100 Church Street, Rm 3-127  
New York, NY 10007

Andrew Schwartz  
General Counsel  
New York City Department of Business Services  
110 William Street  
New York, NY 10038

B. The Department and the Volunteers reserve the right to designate additional or different addresses for communication on written notice to the other given in accordance with this Paragraph XIV.

**XV. Miscellaneous**

A. The Volunteers shall retain professional consultants, contractors, laboratories, and quality assurance/quality control personnel acceptable to the Department to perform the technical, engineering, and analytical obligations required by this Agreement. The responsibility for the performance of the professional retained by the Volunteers shall rest solely with the Volunteers.

B. The Department shall have the right to obtain split samples, duplicate samples, or both, of all substances and materials sampled by the , and the Department also shall have the right to take its own samples. The Volunteers shall make available to the Department the results of all sampling and/or tests or other data generated by the Volunteers with respect to implementation of this Agreement and shall submit these results in the progress reports required by this Agreement.

C. The Volunteers shall notify the Department at least five working days in advance of any field activities to be conducted pursuant to this Agreement.



D. The Volunteers shall obtain all permits, easements, right-of-way, rights-of-entry, approvals, or authorizations necessary to perform the Volunteers' obligations under this Agreement.

E. The Volunteers, the Volunteers' officers, directors, agents, servants, and employees (in the performance of their designated duties on behalf of the Volunteers), and Volunteers' lessees successors, and assigns shall be bound by this Agreement. Any change in ownership or corporate status of the Volunteers including, but not limited to, any transfer of assets or real or personal property shall in no way alter the Volunteers' responsibilities under this Agreement. The Volunteers' officers, directors, employees, servants, and agents shall be obliged to comply with the relevant provisions of this Agreement in the performance of their designated duties on behalf of the Volunteers.

F. All references to "professional engineer" in this Agreement are to any individual registered as a professional engineer in accordance with Article 145 of the New York State Education Law.

G. All references to "days" in this Agreement are to calendar days unless otherwise specified.

H. The section headings set forth in this Agreement are included for convenience of reference only and shall be disregarded in the construction and interpretation of any of the provision of this Agreement.

I. (1) The terms of this Agreement shall constitute the complete and entire Agreement between the Department and the Volunteers concerning the remediation of the Site. No term, condition, understanding, or agreement purporting to modify or vary any term of this Agreement 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 regarding any report, proposal, plan, specification, schedule, or any other submittal shall be construed as relieving the Volunteers or Volunteers' obligation to obtain such formal approvals as may be required by this Agreement.

(2) If the Volunteers desire that any provision of this Agreement be changed, the Volunteers shall make timely written application, signed by the Volunteers, to the Commissioner setting forth reasonable grounds for the relief sought. Copies of such written application shall be delivered or mailed to Vadim Brevdo and to Robert K. Davies.

J. This Agreement constitutes an exercise of the Department's enforcement discretion and, accordingly, the investigatory and remedial activities required herein shall be exempt from the provisions of the State Environmental Quality Review Act. The Volunteers are also exempt from any on-site Department permitting requirement in the



implementation of the Work Plan and are authorized to undertake the foregoing programs under the authority of this Agreement.

K. The provision of this Agreement does not constitute and shall not be deemed a waiver of any right the Volunteers otherwise may have to seek and obtain contribution and/or indemnification from other potentially responsible parties or their insurers, or Volunteers' insurers, for payments made previously or in the future for response costs. To the extent authorized under 42 USC 9613 and any other applicable law, the Volunteers shall not be liable for any claim, now or in the future, in the nature of contribution by potentially responsible parties concerning the alleged contamination which is the subject matter of this Agreement. In any future action brought by the Volunteers against a potentially responsible party under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, the provision of 42 USC 9613(f)(3) shall apply.

L. The Volunteers and their employees, servants, agents, lessees, successors, and assigns hereby release and hold harmless the New York State Environmental Protection and Spill Compensation Fund from any and all legal or equitable claims, suits, causes of action, or demands whatsoever as result of the Volunteers' entering into or fulfilling the terms of this Agreement.

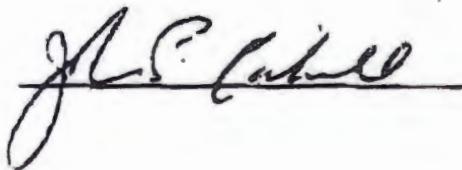
M. By entering into this Agreement, the Volunteers certify that they have fully and accurately disclosed to the Department all information known to the Volunteers and all information in the possession or control of the Volunteers' officers, directors, employees, contractors, and agents which relates in any way to the contamination existing on the effective date of this Agreement on or under the Site or any past or potential future release of hazardous wastes, hazardous substances, pollutants, or contaminants at or from the Site and to their application for this Agreement. To the best of their knowledge, the Volunteers also certify that they have not caused or contributed to a release or threat of release of hazardous wastes, hazardous substances, pollutants or contaminants at, or from, the Site.



N. The effective date of this Agreement shall be the date it is signed by the Commissioner or his designee.

DATED: *Albany*, New York  
*May 5*, 1998

JOHN P. CAHILL, COMMISSIONER  
NEW YORK STATE DEPARTMENT OF  
ENVIRONMENTAL CONSERVATION  
AND TRUSTEE OF THE STATE'S  
NATURAL RESOURCES

A handwritten signature in cursive script, reading "John P. Cahill", is written over a horizontal line.



## CONSENT BY BNYDC

The Brooklyn Navy Yard Development Corporation hereby consents to the issuing and entering of this Agreement, waives its right to a hearing herein as provided by law, and agrees to be bound by this Agreement.

## BROOKLYN NAVY YARD DEVELOPMENT CORPORATION

By: Charles H. Pash C.V.P.C.D. General Counsel

Date: March 24, 1998

STATE OF NEW YORK )  
 ) s.s.:  
COUNTY OF Kings )

On this 24<sup>th</sup> day of MARCH, 1998, before me personally came HAROLD H. ROSENBERG, to me known, who being duly sworn, did depose and say that he/she resides in Brooklyn, N.Y. 11215; that he/she is C.V.P.C.D. General Counsel of Brooklyn Navy Yard Development Corporation, the corporation described in and which executed the foregoing instrument; and that he/she signed his/her name on behalf of Brooklyn Navy Yard Development Corporation and was authorized to do so.

Scott E. Shostak  
Notary Public State of New York

My commission expires Sept. 30, 1998

SCOTT E. SHOSTAK  
Notary Public, State of New York  
No. 24-1830702  
Qualified in Kings County  
Commission Expires Sept. 30, 1998



# CONSENT BY CITY OF NEW YORK

The City of New York hereby consents to the issuing and entering of this Agreement, waives its right to a hearing herein as provided by law, and agrees to be bound by this Agreement.

## THE NEW YORK CITY DEPARTMENT OF BUSINESS SERVICES

By: Earl Andrews, Jr.

Date: March 22, 1998

STATE OF NEW YORK )

) S.S.:

COUNTY OF )

On this 27 day of March, 1998, before me personally came Earl Andrews, Jr., to me known, who being duly sworn, did depose and say that he/she resides in New York, NY; that he/she is Comptroller of the New York City Department of Business Services, the Agency described in and which executed the foregoing instrument; and that he/she signed his/her name on behalf of the City of New York and was authorized to do so.

AN: ... FTZ  
Notary Public ... New York  
Qualified ... County  
Commission Expires October 31, 1998

Andrew Schwartz  
Notary Public State of New York  
My commission expires 10/31/98

RKDC:\alldocs  
bny\bnyvol2.agr



**Attachment 2**

Cease and Desist Order and Notice of Violation



# NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

Division of Environmental Remediation, Remedial Bureau B  
625 Broadway, 12th Floor, Albany, NY 12233-7016  
P: (518) 402-9767 | F: (518) 402-9773  
www.dec.ny.gov

## **CEASE AND DESIST ORDER** **NOTICE OF VIOLATION**

June 10, 2019

Ms. Shani Leibowitz  
Senior Vice President of Planning & Transportation  
BNYDC  
63 Flushing Ave., Unit 300  
Brooklyn NY, 11205

Ref: Brooklyn Navy Yard  
63 Flushing Avenue in Brooklyn, NY  
Dock 72 Construction Areas  
NYSDEC Site ID: V00120

Dear Ms. Leibowitz:

On June 4, 2019, the New York State Department of Environmental Conservation (the "Department") observed environmental violations at the Brooklyn Navy Yard, Brooklyn, New York, 11205 Block 2023, Lot 1 (the "Site"). Remedial investigations and actions were previously completed under the Voluntary Cleanup Agreement (V00120) and Brooklyn Navy Yard Development Corporation (BNYDC) had received a Certificate of Completion dated July 12, 2018.

An Environmental Easement (EE) dated June 26, 2018 was granted to the Department, which provides for the Site to be managed under a Department-approved Site Management Plan (SMP), the current version of which is dated June 2018. The SMP requires, in part, that the Department be notified prior to the commencement of any intrusive work beneath the existing soil cover. For Department-determined large-scale breaches (See SMP, June 2018, Section 6.1.1, Change of Use – "...parking lot demolition/construction"), the Department is also to receive a site-specific Work Plan detailing the intrusive work.

On June 4, 2019, the Department observed a large-scale breach of the soil cover, soil grading and excavation in an area of the Brooklyn Navy Yard known as the GMD Lot near Dock 72. A review of Department files found no notification or site-specific Work Plan for the observed work.

The following actions constitute BNYDC's violations of the SMP, EE, Article 27 of the New York State Environmental Conservation Law (ECL) and Department regulations at 6 NYCRR Part 375:



Department of  
Environmental  
Conservation



- a) failure to submit timely notification of a proposed change of use for a major breach of the Site-wide protective cover;
- b) failure to provide the Department with a work plan for any previous or ongoing work related to the Dock 72 construction project; and
- c) engaging in construction activities that interfere significantly with an ongoing remedial program at the Site.

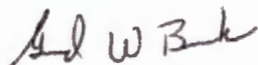
Pursuant to ECL § 71-2705, any person who violates any of the provisions of, or who fails to perform any duty imposed by Article 27, Title 9, 11, or 13 or any rule or regulation promulgated thereto, shall be liable for penalties of up to \$37,500 per day per violation.

**YOU ARE HEREBY ORDERED TO CEASE AND DESIST** from violating the ECL, Department regulations, the EE and the SMP. Failure to immediately cease and desist from such violations will subject you to additional liability and penalties assessed based upon ongoing, daily violations.

**BE ON NOTICE THAT** the implementation of remediation activities or the correction of violations at the Site in no way affects the rights of the Department to seek penalties and other relief in accordance with the ECL and the rules and regulations promulgated pursuant thereto.

Please call John Nehila, Associate Regional Attorney, Office of General Counsel at (718) 482-4009 for questions related to the legal aspects of this order. Please contact Charles Post at (518) 402-9793 to address any technical questions regarding this project.

Sincerely,



Gerard W. Burke  
Director, Remedial Bureau B  
Division of Environmental Remediation

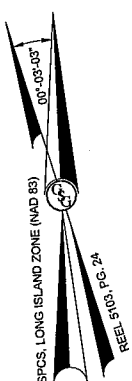
ec: Shani Liebowitz – BNYDC  
Ronald Trampusch – Core Environmental  
Justin Deming, Stephanie Selmer – NYSDOH  
Patrick Foster, John Nehila, Charles Post – NYSDEC



**EXHIBIT "A"**

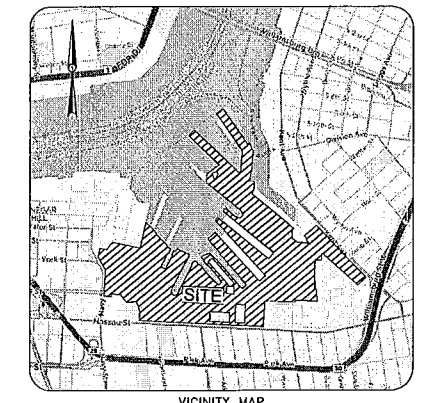
Survey





CURVE	LENGTH	RADIUS	DELTA	CHORD BRG.	CH DIST.
C1	218.35	68.50	140°00'00"	S83°07'22"E	128.07
C2	16.96	11.07	88°20'10"	N83°27'46"E	15.33
C3	17.27	11.07	89°58'56"	S87°23'41"E	15.55
C4	14.09	10.00	80°45'10"	N01°00'15"W	12.86
C5	15.35	10.00	87°57'10"	N83°20'55"E	13.89
C6	15.54	10.00	89°02'17"	N84°46'16"W	14.02
C7	15.00	10.00	89°23'52"	N84°26'48"E	14.07

LINE	BEARING	DISTANCE	LINE	BEARING	DISTANCE	LINE	BEARING	DISTANCE
L1	N02°55'14"E	483.53	L56	S69°33'40"E	50.84	L111	N50°14'31"E	303.19
L2	N30°03'03"W	280.55	L57	N40°03'33"E	69.55	L112	S43°28'53"E	1318.14
L3	N12°03'06"E	170.42	L58	N13°40'31"W	49.52	L113	S28°07'24"E	20.28
L4	S79°14'14"E	131.27	L59	N40°47'08"W	729.44	L114	S46°34'51"W	203.20
L5	N36°40'24"E	174.98	L60	N49°12'52"E	13.89	L115	N47°38'18"W	878.73
L6	S77°47'43"E	540.19	L61	N40°42'19"W	345.38	L116	S42°20'42"W	38.42
L7	N17°12'17"E	482.59	L62	N47°18'19"E	158.52	L117	S02°22'42"W	99.27
L8	S82°24'16"E	5.67	L63	S42°26'13"E	110.42	L118	N68°55'35"W	117.38
L9	S09°17'46"W	5.78	L64	S42°29'59"E	1085.58	L119	S03°04'25"W	238.00
L10	S54°39'55"E	123.38	L65	S61°22'28"E	28.01	L120	N86°55'35"W	2.00
L11	S35°24'08"E	99.26	L66	N47°44'22"E	130.55	L121	S01°03'20"E	303.67
L12	S35°28'11"E	122.43	L67	N23°21'17"W	29.71	L122	S82°50'55"E	28.92
L13	S47°45'55"E	201.62	L68	N42°23'50"W	1023.78	L123	S05°16'30"E	229.45
L14	S29°10'04"E	74.73	L69	N41°22'30"W	343.52	L124	N87°28'35"W	419.05
L15	S82°41'10"E	57.18	L70	N59°22'20"E	46.95	L125	S02°28'28"W	35.78
L16	S27°18'50"W	92.21	L71	S52°40'30"E	140.24	L126	N87°28'41"W	500.78
L17	N62°41'10"W	16.05	L72	S50°43'00"E	1082.50	L127	S03°02'50"W	484.07
L18	S26°37'32"E	286.61	L73	N39°23'35"E	129.68	L128	N86°57'10"W	2323.21
L19	S63°23'06"E	97.92	L74	N27°11'03"W	50.74	L129	N02°45'20"E	172.42
L20	N25°46'02"E	285.89	L75	N50°31'58"W	1087.42	L130	N19°24'07"W	168.10
L21	N62°41'10"W	15.94	L76	N49°17'25"W	108.87	L131	N39°18'55"W	27.97
L22	N27°18'50"E	91.73	L77	N39°44'32"E	40.82	L132	S84°59'35"W	173.74
L23	S82°41'10"E	34.62	L78	S50°51'16"E	252.00	L133	N39°21'30"W	194.54
L24	N28°09'37"E	53.89	L79	S80°27'14"E	90.63	L134	N87°14'30"W	165.20
L25	N19°52'46"W	12.55	L80	N39°34'18"E	67.46	L135	S02°39'20"W	46.68
L26	N73°05'53"E	14.80	L81	N20°18'40"W	55.18	L136	N87°16'25"W	132.77
L27	S54°12'20"E	50.20	L82	N50°48'18"W	838.33	L137	N86°46'07"W	182.32
L28	S03°08'21"E	5.80	L83	N03°02'16"E	159.98	L138	N03°03'55"E	342.34
L29	S25°18'50"W	11.68	L84	N62°34'06"E	285.72	L139	S86°55'30"E	182.81
L30	S84°11'10"E	205.28	L85	N40°03'51"W	789.14	L140	S03°12'53"W	342.84
L31	S25°39'09"W	155.47	L86	N43°56'09"E	150.00	L141	N41°03'54"W	609.70
L32	N84°20'51"W	11.86	L87	S46°03'51"E	116.36	L142	N48°56'06"E	102.82
L33	S26°52'28"E	581.92	L88	N43°59'09"E	43.82	L143	S41°03'54"E	628.59
L34	N25°52'28"E	575.89	L89	N04°38'10"E	344.84	L144	S48°56'05"W	74.91
L35	N84°28'24"W	7.37	L90	N14°52'24"W	54.20	L145	S80°01'25"W	32.71
L36	N25°31'36"E	64.19	L91	N34°39'02"W	830.89			
L37	N59°45'26"E	67.43	L92	N55°20'58"E	150.30			
L38	S39°29'48"E	85.49	L93	S34°39'02"E	804.97			
L39	S69°51'51"E	43.46	L94	N55°20'58"E	39.14			
L40	S40°45'16"E	85.18	L95	S25°24'40"E	171.88			
L41	S49°10'03"W	10.10	L96	S54°42'39"W	334.00			
L42	S40°45'19"E	292.05	L97	S10°02'16"E	223.31			
L43	S52°51'21"E	118.97	L98	S85°03'29"E	20.54			
L44	N19°33'43"E	60.57	L99	S03°33'53"W	144.14			
L45	N28°44'31"W	120.48	L100	S21°41'24"W	97.85			
L46	N40°45'18"W	291.28	L101	S01°15'37"E	637.21			
L47	S49°14'42"W	11.95	L102	S49°48'00"E	382.01			
L48	N40°45'18"W	83.89	L103	S39°16'53"W	62.82			
L49	N19°42'58"W	91.43	L104	S01°57'23"W	118.65			
L50	N41°03'46"W	63.32	L105	S50°54'57"E	141.54			
L51	N54°42'44"E	50.19	L106	S86°30'58"E	166.83			
L52	N73°14'06"E	109.18	L107	S66°37'34"E	85.21			
L53	S41°33'58"E	128.91	L108	N43°13'51"W	102.59			
L54	N19°12'52"E	17.77	L109	N15°33'17"W	65.54			
L55	S40°47'08"E	728.91	L110	N44°09'13"W	35.77			



- NOTES:
- PROPERTY KNOWN AS PART OF LOT 1, IN BLOCK 2023 AS DESIGNATED ON THE NEW YORK CITY DIGITAL TAX MAP, HAVING AN EFFECTIVE DATE OF JANUARY 7, 2015.
  - AREA OF ENVIRONMENTAL EASEMENT: 6,520.927 S.F. OR 149.699 AC. LESS BUILDING & EXCEPTION AREA: 62,515 S.F. OR 1.435 AC. LESS SUBLEASE PARCEL TO BNY TOWER: 64,250 S.F. OR 1.475 AC. ASSOCIATES LLC EXCEPTION AREA: 6,394,167 S.F. OR 146,789 AC. NET AREA: 6,520.927 S.F. OR 149.699 AC.
  - LOCATIONS WERE LIMITED TO SUBSTANTIAL ON SITE BUILDINGS AND VISIBLE IMPROVEMENTS WITHIN FIVE FEET OF EACH SIDE OF THE PERIMETER OF THE PROPOSED ENVIRONMENTAL EASEMENT. NO OTHER SITE IMPROVEMENTS, INCLUDING UTILITIES, HAVE BEEN SHOWN.
  - THE MAPPED U.S. PIERHEAD LINE IS SHOWN APPROXIMATE PER REFERENCE NO. 2.
- REFERENCES:
- SUBSTANTIATION PLAN, BROOKLYN NAVY YARD DEVELOPMENT CORP., BROOKLYN NAVY YARD, BROOKLYN, NY 11205, PREPARED BY QUAY CONSULTING, LLC, DATED: NOVEMBER 12, 2009.
  - MAP OF PIERHEAD AND BULKHEAD LINES, EAST RIVER, NEW YORK, BATTERY TO E 4TH ST., MANHATTAN, ATLANTIC AVE. TO N 6TH ST., BROOKLYN, APPROVED BY THE SECRETARY OF WAR ON FEBRUARY 25, 1918.

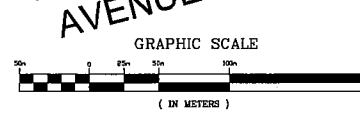
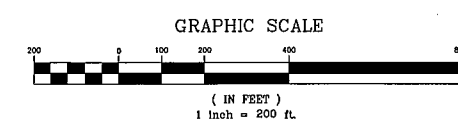
This property is subject to an environmental easement held by the New York State Department of Environmental Conservation pursuant to Title 36 of Article 71 of the New York Environmental Conservation Law. The engineering and institutional controls for this Easement are set forth in the Site Management Plan (SMP). A copy of the SMP must be obtained by any party with an interest in the property. The SMP can be obtained from NYS Department of Environmental Conservation, Division of Environmental Remediation, Site Control Section, 625 Broadway, Albany, NY 12233 or at [derweb@dec.ny.gov](mailto:derweb@dec.ny.gov).

UNAUTHORIZED ALTERATION OR ADDITION TO A SURVEY MAP BEARING A LICENSED LAND SURVEYOR'S SEAL IS A VIOLATION OF SECTION 2209, SUB-DIVISION 2, OF THE NEW YORK STATE EDUCATION LAW.

REVIEW PER CLIENT REQUEST		NO. 00-12-18	
DESCRIPTION OF REVISION		DATE	
ENVIRONMENTAL EASEMENT SURVEY BROOKLYN NAVY YARD PART OF LOT 1, BLOCK 2023 BOROUGH OF BROOKLYN KINGS COUNTY CITY AND STATE OF NEW YORK			
GALLAS SURVEYING GROUP		2865 U.S. ROUTE 1 NORTH BRUNSWICK, NJ 08902 TEL: 732-412-6700 FAX: 732-412-6785 www.gallasurvey.com	
DATE	SCALE	DRAWN	CHECKED
03-14-2018	1"=200'	E.C.R.	G.S.G.
FIELD DATE	FIELD BOOK	PAGE	FIELD CREW
FEB. 2018			M.S./K.S.
FILE NO.	DRAWING NAME/SHEET NO.		
G16214	G16214-ENV ESMT.DWG 1 OF 1		
GREGORY S. GALLAS		DATE	
NEW YORK PROFESSIONAL LAND SURVEYOR #30124		08-12-2018	

- MAP LEGEND
- PROPERTY LINE
  - ENVIRONMENTAL EASEMENT LINE
  - BUILDING FOOTPRINT AT GROUND LEVEL
  - PROPOSED ENVIRONMENTAL EASEMENT AREA
  - APPROX. LOC. OF SUBSTATION PER REF. #2
  - BUILDING NUMBER
  - EXISTING ENVIRONMENTAL EASEMENT AREA SITE NO. 224019A
  - 1.0' DENOTES OFFSET OF STRUCTURE AT GROUND LEVEL RELATIVE TO PROPERTY LINE
  - BLD BUILDING
  - CRB CURB
  - FNC FENCE

FLUSHING AVENUE  
(70' WIDE)





## APPENDIX "A"

### STANDARD CLAUSES FOR ALL NEW YORK STATE STATE SUPERFUND 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.

3. Nothing in this Order, in any submittal, or in any work plan(s) submitted pursuant to this Order shall modify, expand, reduce, or otherwise change the remedial activities (including site management) required by a ROD issued by the Department.

#### 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, 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

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, 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

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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, 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, Respondent (or the owner of the Site) shall submit to the Department for approval 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, 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. 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 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 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 Work Plan and such interest cannot be obtained, the Department may require Respondent to 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 27-142(6) and 6 NYCRR 375-1.5(b)(5).

H. Any time limitations set forth in Section 113(g)(1) of CERCLA, as amended, 42 U.S.C. § 9613(g)(1), Section 1012(h)(2) of the Oil Pollution Act, as amended, 33 U.S.C. § 2712(h)(2), the Federal Water Pollution Control Act, the New York Navigation Law, the New York Environmental Conservation Law, or any other federal or state statute or regulation with respect to potential claims for natural resource damages against Respondent or any other time limitations for the filing of potential natural resource damages claims against Respondent under any other applicable state or federal law are tolled in their entirety from the effective date of this Order until termination of this Order.

I. 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.

J. 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.

K. 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.

L. 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.