

**New York State Department of Environmental Conservation**

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Joe Martens  
Commissioner

September 22, 2011

Daniel Greene, Esq.  
The City of New York  
Law Department  
100 Church Street  
New York, NY 10007-2601

**Re: Hunts Point Voluntary Cleanup Agreement ("VCA")**  
Hunts Point Parcel "C", Site No. V00412,  
(Index No. D2-0003-00-03)

Dear Mr. Greene:

Unless otherwise specified in this letter, all terms used in this letter shall have the meaning assigned to them under the terms of the Voluntary Cleanup Agreement ("VCA") entered into between the New York State Department of Environmental Conservation (the "Department") and The City of New York (the "Volunteer"), acting through the New York City Department of Business Services ("DBS") and the New York City Economic Development Corporation ("EDC"), Index No. D2-0003-00-03. The VCA was entered on December 11, 2000, and amended so as to reflect the actual size of Parcel "C" on July 19, 2011.

We are pleased to inform you that the Department is satisfied that the Work Plan relative to the Site, located at *Food Center Drive, Borough of the Bronx, County of Bronx, New York, Tax Map Identifiers Block 2781, Lot 500 and Block 2781, Lot 520* has been successfully implemented.

The Department, therefore, hereby releases, covenants not to sue, and shall forbear from bringing, any action, proceeding, or suit pursuant to the Environmental Conservation Law, the Navigation Law or State Finance Law, and from referring to the Attorney General any claim for recovery of costs incurred by the Department, against the Volunteer and Volunteer's lessees and sublessees, grantees, successors and assigns, and their respective secured creditors, for the further investigation and remediation of the Site, based upon the release or threatened release of Covered Contaminants, provided that (a) timely payments of the amounts specifies in Paragraph VI of the Agreement continue to be or have been made to the Department, (b) appropriate deed restrictions remain recorded in accordance with Paragraph XI of the Agreement, and (c) Volunteer and/or its' lessees, sublessees, successors, or assigns promptly commence and diligently pursue to completion the Site Management Plans. Nonetheless, the Department hereby reserves all of its rights concerning, and such release, covenant not to sue, and forbearance shall not extend to natural resource damages or to any further investigation or remedial action the Department deems necessary:

- due to migration off-Site of contaminants resulting in impacts to environmental resources, to human health, or to other biota that are not inconsequential and to off-Site migration of petroleum;

- due to environmental conditions or information related to the Site which were unknown at the time this Release and Covenant not to Sue was issued and which indicate that the Contemplated Use cannot be implemented with sufficient protection of human health and the environment;
- due to Volunteer's failure to implement the Agreement to the Department's satisfaction; or
- due to fraud committed by Volunteer in entering into or implementing this Agreement.

Additionally, the Department hereby reserves all its rights concerning, and such release, covenant not to sue, and forbearance shall not extend to Volunteer nor to any of Volunteer's lessees, sublessees, successors, or assigns who cause or allow a 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]), other than Covered Contamination; or cause or allow the use of the Site to change from the Contemplated Use to one requiring a lower level of residual contamination before that use can be implemented with sufficient protection of human health and environment; nor to any of Volunteer lessees, sublessees, successors, or assigns who is otherwise a party responsible under law for the remediation of the Existing Contamination independent of any obligation that party may have respecting same resulting solely from the Agreement's execution.

Notwithstanding the above, however, with respect to any claim or cause of action asserted by the Department, the one seeking the benefit of this release, covenant not to sue, and forbearance shall bear the burden of proving that the claim or cause of action, or any part thereof, is attributable solely to Covered Contamination.

Notwithstanding any other provision in this release, covenant not to sue, and forbearance,

- 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 letter shall be construed or deemed to preclude the State of New York from recovering such claim.
- except as provided in this letter and in Agreement, nothing contained in the Agreement or in this letter shall be construed as barring, diminishing, adjudicating, or in any way affecting any of the Department's rights (including, but not limited to, the right to recover natural resources damages) with respect to any party, including Volunteer.
- nothing contained in this letter shall prejudice any rights of the Department to take any investigatory or remedial action it deems necessary if Volunteer fails to comply with the Agreement or if contamination other than Existing Contamination is encountered at the Site.
- nothing contained in this letter shall be construed to prohibit the Commissioner or his duly authorized representative from exercising any summary abatement powers.
- nothing contained in this letter shall be construed to affect the Department's right to terminate the Agreement under the terms of the Agreement at any time during this implementation if Volunteer fails to comply substantially with the Agreement's terms and conditions.

Greene

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In conclusion, the Department is pleased to be part of this effort to return the Site to productive use of benefit to the entire community.

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL  
CONSERVATION AND TRUSTEE OF NEW YORK  
STATE'S NATURAL RESOURCES

By: 

Date: 9/22/11

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