

**State of New York  
Department of Environmental Conservation**

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In the Matter of the Settlement of Claims Related to  
an Inactive Hazardous Waste Disposal Site under  
Article 27, Title 13 and Article 71, Title 27  
of the Environmental Conservation Law

**Order on Consent  
and  
Administrative Settlement**

-by-

Index No. R8-20170216-21  
Department Site No. 828196

**City of Rochester**

("Settling Respondent").  
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**Whereas:**

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") and the New York State Finance Law ("SFL") and such laws provide the Department authority to enter into this Order on Consent and Administrative Settlement (the "Order").
2. The Department is responsible for carrying out the policy of the State of New York (the "State") to conserve, improve and protect its natural resources and environment and control water, land, and air pollution consistent with the authority granted to the Department and the Commissioner by Article 1, Title 3 of the ECL.
3. The Department also has the authority, *inter alia*, to provide for the prevention and abatement of all water, land, and air pollution. See, e.g., ECL 3-0301.1.i.
4. This Order is issued pursuant to the Department's authority under, *inter alia*, ECL Article 27, Title 13, ECL Article 71, Title 27, and ECL 3-0301 and Section 97-b of the SFL, and resolves Settling Respondent's liability to the State under the ECL and Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended ("CERCLA") 42 U.S.C. § 9601 *et seq.*, to the extent set forth herein.
5. The City of Rochester ("Settling Respondent") is a municipal corporation formed pursuant to the laws of the State and has a mailing address of City Hall, 30 Church Street, Rochester, New York 14614. The Settling Respondent intends to acquire title to 68-92 Genesee Street, Rochester, New York 14611 (the "Property"), more specifically identified as Tax Map 120.50-2-3, through its foreclosure process based on the failure of current and previous owners to pay taxes on the Property.
6. Previously, under a court order that stayed the pending tax foreclosure proceeding in order to authorize the Settling Respondent to access and perform an environmental investigation of the Property, the Settling Respondent conducted at its own expense various investigation and abatement measures, including a Phase II environmental site assessment (Phase II ESA) of the Property completed in 2016.
7. The Property is not currently listed in the *Registry of Inactive Hazardous Waste Disposal Sites in New York State*.

8. The goals of this Order are for:
  - a. Settling Respondent to: (i) appropriately define the nature and extent of the contamination at the Property by completing a remedial investigation and submitting a remedial investigation report to the Department as set forth in Subparagraph II.b after acquiring title to the Property; (ii) grant an Environmental Easement to the Department for the Property as provided for in ECL Article 71, Title 36 and as set forth in Paragraph V below; (iii) provide the Department with continued access to Property as set forth in Paragraph VI; (iv) install, operate, and maintain a sub-slab depressurization system in the building located on the Property as set forth in Subparagraph II.e(i); (v) complete an off-Property soil vapor intrusion (SVI) investigation and mitigate any SVI impacts on adjacent properties owned by the Settling Respondent as set forth in Subparagraph II.b(ii); (vi) complete the soil removal interim remedial measures approved by the Department; and (vii) comply with any site management plan the Department may approve for the Property as set forth in Subparagraph II.f below; and
  - b. Department to release and covenant not to sue the Settling Respondent as set forth in Paragraph VII below.
9. The Order does not commit or bind the Settling Respondent to complete a feasibility study, remedial design, or remedial action for the Property.
10. Settling Respondent consents to the Department's issuance of this Order without an admission or finding of liability, fault, wrongdoing, or violation of any law, regulation, permit, order, requirement, or standard of care of any kind and without an admission or finding that a release or threatened release of hazardous waste at or from the Site constitutes a significant threat to the public health or environment. The parties recognize this Order is mutually acceptable, fair, reasonable, and in the public interest.
11. Solely with regard to the matters set forth herein, Settling Respondent hereby waives any right to a hearing as may be provided by law, consents to the issuance and entry of this Order, and agrees to be bound by its terms. Settling Respondent consents to and agrees not to contest the authority or jurisdiction of the Department to issue or enforce this Order, and agrees not to contest the validity of this Order or its terms, except as otherwise specifically provided in the Order.

**NOW, having considered this matter and being duly advised, it is ordered that:**

I. Order and Property-Specific Definitions

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, or amendments thereto. The following terms shall have the following meaning:

- a. Property: The real property located at 68-92 Genesee Street, Rochester, New York 14611 and more specifically identified as Tax Map 120.50-2-3.
- b. Existing Contamination: Any hazardous waste, as that term is defined in 6 NYCRR Section 375-1.2(w), present or existing on or under the Property as of the effective date of this Order.

II. Appropriate Care, Cooperation, and Responsibilities of Settling Respondent Under this Order

- a. Settling Respondent must exercise appropriate care<sup>1</sup> at the Property with respect to the Existing Contamination and shall comply with all applicable local, State, and federal laws and regulations. Settling Respondent and its successors shall affirmatively ensure that all development activities on the Property are in compliance with all applicable local, State, and federal laws and regulations, including but not limited to 6 NYCRR §§ 375-1.11(d) and 375-2.11(a).
- b. Within sixty (60) days of acquiring title to the Property, Settling Respondent must submit work plans for: (i) a remedial investigation of the Property with a scope that is in accordance with 6 NYCRR § 375-1.8(e); and (ii) an off-Property soil vapor intrusion evaluation with a scope that is in accordance with guidance documents issued by the Department and the New York State Department of Health ("NYSDOH"). Upon the Department's approval of each work plan, the Settling Respondent shall perform the remedial investigation and off-Property soil vapor intrusion evaluation and submit the reports thereof to the Department. If the off-Property soil vapor intrusion investigation identifies SVI impacts to adjacent properties owned by the Settling Respondent that are actionable under guidance documents issued by the Department and the NYSDOH, the Settling Respondent shall submit an IRM work plan to mitigate such impacts within 60 days of the Department's written request. This Order does not state or imply that the Department has any obligation to design, install, or operate any vapor intrusion equipment or systems on adjacent properties owned by the Settling Respondent prior to, during, or after the term of this Order.
- c. Settling Respondent must grant an Environmental Easement to the Department for the Property as provided for in ECL Article 71, Title 36 and as set forth below (see Paragraph V).
- d. Settling Respondent must provide continued access to the Property as set forth below (see Paragraph VI).
- e. Within sixty (60) days of acquiring title to the Property, Settling Respondent must submit an interim remedial measures (IRM) work plan to: (i) install a sub-slab depressurization system (SSDS) in the building located on the Property; and (ii) perform IRM soil removals. The work plans for both categories of IRMs must be in accordance with the IRM summaries attached to this Order as Appendix "A" which shall be incorporated into and made an enforceable part of this Order. Settling Respondent may not remove or stop operation of the SSDS unless approved by the Department in writing. This Order does not state or imply that the Department has any obligation to design, install, or operate any vapor intrusion equipment or systems on the Property prior to, during, or after the termination of this Order.
- f. Settling Respondent must comply with any site management plan (SMP) which may be approved by the Department for the Property in accordance with 6 NYCRR §§375-1.2(at), 375-1.8, and 275-2.8(d). The Department shall make any and all determinations related to the SMP without approval of Settling Respondent or any

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<sup>1</sup> As the term is defined in 42 U.S.C. § 9601(40)(B)(iv).

other person. Settling Respondent acknowledges that a SMP will, *inter alia*, likely require: (1) continued operation and maintenance of the sub-slab depressurization system required to be installed in the building currently located on the Property (see Subparagraph.II.e); (2) the installation, operation, and maintenance of a soil vapor mitigation system in any new building located on the Property unless the Department and NYSDOH determine that mitigation is not required ; (3) groundwater sampling; (4) maintenance of a cover system; and 5) periodic certification of any engineering or institutional controls on the Property. Settling Respondent acknowledges that compliance with any SMP for the Property shall be at its own cost and expense.

- g. Any subsequent building at the Property must require a soil vapor intrusion investigation performed in accordance with Department and NYSDOH guidelines so that the Department and NYSDOH can determine whether soil vapor intrusion mitigation is required and, if it is needed, what kind of SSDS is to be installed, operated, and maintained by the owner of the Property.

### III. Settlement Payment and State Costs

Due to the Settling Respondent having previously undertaken the demolition of the dry-cleaning building and the removal of hazardous waste from the Property and due to the obligations it has assumed under this Order, the Settling Respondent shall not be required to pay a settlement payment or State costs provided that Settling Respondent fully complies with the terms of this Order. Nevertheless, all cost incurred by the Department associated with dispute resolution under Paragraph XIV shall be State costs that are subject to reimbursement by the Settling Respondent.

### IV. Certification

By executing this Order, Settling Respondent certifies that it is not liable, according to principles of statutory or common law liability, for the remediation of hazardous wastes at the Property.

### V. Environmental Easement

- a. Settling Respondent shall grant the Department an Environmental Easement for the Property in accordance the provisions of ECL Article 71, Title 36, and 6 NYCRR 375-1.8(h)(2). Within sixty (60) days of the Department's approval of the remedial investigation report, Settling Respondent shall submit to the Department an Environmental Easement package for the Property in accordance with the Department's requirements, including those set forth in guidance document DER-33, entitled "Institutional Controls: A Guide to Drafting and Recording Institutional Controls" ("DER-10"). Among the documents to be included in the package are the following:
  - i. an Environmental Easement for acceptance by the Commissioner or his designee;
  - ii. an Environmental Easement Checklist and Certification;
  - iii. documents relevant to title;

- iv. a survey; and
  - v. Notice of Environmental Easement and other notices.
- b. Within thirty (30) days of the Department's acceptance of the Environmental Easement, Settling Respondent shall record it with the Monroe County Clerk. Settling Respondent shall provide the Department with a copy of such instrument certified by the Monroe County Clerk to be a true and faithful copy within thirty (30) days of such recording (or such longer period of time as may be required to obtain certified copies provided Settling Respondent advises the Department of the status of its efforts to obtain same within such thirty (30) day period). A copy of the Environmental Easement with the certification of the Monroe County Clerk shall be attached to this Order as Appendix "B" and shall be incorporated into and made an enforceable part of this Order.
- c. The Environmental Easement for the Property must, *inter alia*, limit its use and development to commercial use as defined in 6 NYCRR § 375-1.8(g)(2)(iii); require compliance with any SMP the Department may approve for the Property; restrict the use of groundwater as a source of potable or process water without necessary water quality treatment as determined by NYSDOH or Monroe County Department of Public Health and without the Department's written approval; and require the property owner to complete and submit to the Department a periodic certification of any institutional and engineering controls that may be put in place.

VI. Access

- a. Settling Respondent and any entity taking any title or interest in the Property from or through Settling Respondent hereby irrevocably consent, upon reasonable notice under the circumstances presented, to grant entry upon the Property (or areas in the vicinity of the Property which may be under the control of Settling Respondent) by any duly designated officer or employee of the Department or any State agency having jurisdiction with respect to the hazardous wastes/substances on the Property; by any agent, consultant, contractor, or other person so authorized by the Commissioner; and by any Remedial Party<sup>2</sup> pursuant to an Order on Consent, all of whom shall abide by the health and safety rules in effect for the Property, for statutorily or regulatorily authorized purposes, including: (i) inspecting, sampling, and testing; (ii) conducting any activities necessary for the Department to effectuate and ensure Settling Respondent's compliance with the Order; and (iii) any other activities necessary to the design and implementation of any construction or environmental treatment procedures necessary to effectuate interim remedial measures and/or remedies at the Property in accordance with applicable state and federal law.
- b. Settling Respondent shall have the right to obtain split samples, duplicate samples, or both, of all substances and materials sampled at its sole cost and expense. The Department shall make the results of all sampling and scientific measurements taken under this Paragraph available to Settling Respondent in the format which the Department receives it upon Settling Respondent's request.

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<sup>2</sup> As that term is defined in 6 NYCRR §375-1.2(ao).

- c. Settling Respondent shall use its best efforts to ensure that its successors in interest, lessees, and sublessees of the Property provide reasonable access.

VII. Release and Covenant Not to Sue

- a. Upon the effective date of this Order, the Department hereby releases Settling Respondent and its officers, employees, agents, servants, successors, secured creditors and insurers, and covenant not to sue, and shall forbear from bringing any action, proceeding, or suit pursuant to the Environmental Conservation Law or the State Finance Law, CERCLA, State common law or any other legal authority, and from referring to the Attorney General any claim that Settling Respondent must investigate or remediate Existing Contamination or for recovery of past or future costs incurred by the Department, against the Settling Respondent its officers, employees, agents, servants, secured creditors and insurers, and its successors and assigns to the land or Settling Respondent, who are or may become additional signatories to this Order, for the investigation and remediation of Existing Contamination, including but not limited to an action pursuant to CERCLA § 107(a), 42 USC §9607(a), based upon the release or threatened release of Existing Contamination. Nevertheless, this release shall be null and void, *ab initio*, in the event Settling Respondent fails to undertake and/or complete any of the following:
  - i. Completion of the remedial investigation and off-Property soil vapor intrusion evaluation and, if necessary, mitigate any SVI impacts to adjacent properties owned by the Settling Respondent in accordance with Subparagraph II.b;
  - ii. Installation of building SSDS and completion of IRM soil removals in accordance with Subparagraphs II.e and II.g;
  - iii. Compliance with any SMP approved by the Department in accordance with Subparagraph II.f;
  - iv. Drafting and recording of an Environmental Easement that is approved by the Department as satisfying the requirements of Paragraph V;
  - v. Exercising appropriate care and cooperation as required in Paragraph II; and
  - vi. Allowing access as required by Paragraph VI.

Nevertheless, the Department hereby reserves all of its respective rights concerning, and such release and covenant not to sue shall not extend to, any further investigation or remedial action the Department deems necessary due to:

- i. environmental conditions or information related to the Property which were unknown at the time this release and covenant not to sue was issued and which indicate that this Order cannot be implemented with sufficient protection of human health and the environment;
- ii. Settling Respondent's failure to implement the Order; or
- iii. fraud committed by Settling Respondent in entering into or implementing the Order.

- b. Additionally, the Department hereby reserves all rights concerning, and any such release and covenant to sue shall not extend to the Settling Respondent to the extent it causes or allows a release or a threat of release at the Property of any hazardous waste (as that term is defined at 6 NYCRR § 375-1.2(w)) or petroleum (as that term is defined in Navigation Law § 172[15]), other than Existing Contamination.
- c. Notwithstanding the above, however, with respect to any claim or cause of action asserted by the Department, the party seeking the benefit of this release and covenant not to sue shall bear the burden of proving that the claim or cause of action, or any part thereof, is attributable to the Existing Contamination.

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

- i. if with respect to the Property 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 Order shall be construed or deemed to preclude the State of New York from recovering such claim.
- ii. except as provided in this Order, nothing contained in this Order 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 Settling Respondent.
- iii. nothing contained in this Order shall prejudice any rights of the Department to take any investigatory or remedial action it deems necessary if Settling Respondent fails to comply with the Order or if contamination other than Existing Contamination is encountered at the Property.
- iv. nothing contained in this Order shall be construed to prohibit the Commissioner or his duly authorized representative from exercising any summary abatement powers that are available to the Department in accordance with applicable state and federal law.
- v. nothing contained in this Order shall affect or be construed to affect the Department's right to terminate the Order and this release and covenant not to sue at any time if Settling Respondent fails to comply with the Order's terms and conditions.
- vi. nothing herein shall be construed as barring, diminishing, adjudicating, or in any way affecting any legal or equitable rights or claims, actions, suits, causes of action or demands whatsoever that: (i) Settling Respondent may have against anyone other than the Department, including but not limited to rights of contribution under § 113(f)(B)(3) of CERCLA, 42 U.S.C. § 9613(f)(B)(3); and (ii) the Department may have against anyone other than the Settling Respondent and its officers, employees, agents, and servants that were not responsible under law for the development and implementation of a Remedial Program at the Property prior to the effective date of this Order, and their respective secured creditors.

- d. This release and covenant not to sue shall be null and void, *ab initio*, in the event of fraud relating to the execution or implementation of this Order or in the event of Settling Respondent's failure to comply with any provision of this Order.

#### VIII. Penalties

- a. Settling 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).
- b. Payment of any penalties shall not in any way alter Settling Respondent's obligations under this Order.
- c. Settling Respondent shall not suffer any penalty, suffer the termination of this Order, 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). Settling 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 Settling Respondent's economic inability to comply with any obligation, the failure of Settling 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.
- d. Settling 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.
- e. Settling Respondent shall have the burden of proving by a preponderance of the evidence that (i) the delay or failure to comply, or the anticipated delay or failure to comply, 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 or failure to comply; and (iv) Settling Respondent complied with the requirements of Subparagraph VIII.d regarding timely notification.
- f. If the Department agrees that the delay or failure to comply, or the anticipated delay or failure to comply, is attributable to a Force Majeure Event, the time for performance of the obligations that are affected by the Force Majeure Event shall be extended for a period of time equivalent to the time lost because of the Force Majeure event, in accordance with 6 NYCRR § 375-1.5(b)(4).
- g. If the Department rejects Settling Respondent's assertion that an event provides a defense to non-compliance with this Order pursuant to Subparagraphs VIII.c and d, Respondent shall be in violation of this Order.

#### IX. Indemnification

Settling Respondent shall indemnify and hold the Department, the State of New York, and their representatives and employees harmless as provided by 6 NYCRR § 375-2.5(a)(3)(i).



X. Transfer of Ownership Interest/Change in Use

- a. If Settling Respondent proposes to convey the whole or any part of its ownership interest in the Property, or becomes aware of such conveyance, the Settling Respondent shall, not fewer than sixty (60) days before the date of conveyance, or within thirty (30) 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 the Settling Respondent to secure the repayment of money or the performance of a duty or obligation.
- b. In the event of an assignment or transfer of either of the Property or an assignment or transfer of an interest in the Property, the assignor or transferor shall continue to be bound by all of the terms and conditions, and subject to all the benefits, of this Order except as the Department and the assignor or transferor agree otherwise and modify this Order, in writing. Moreover, prior to or simultaneous with any assignment or transfer of Property, the assignee or transferee must consent in writing to be bound by the terms of this Order. The release and covenant not to sue in Paragraph VII shall not be effective with respect to any assignees or transferees who fail to provide such written consent to the Department. In addition, the release and covenant not to sue shall not apply to any assignees or transferees which are responsible for, according to principles of statutory or common law liability, the disposal of hazardous wastes at the Property. Furthermore, it shall not apply to any transferees or assignees which have any material relationship to persons which are liable, according to principles of statutory or common law liability, for the remediation of hazardous wastes at the Property.
- c. Settling Respondent 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 Property, 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 Settling Respondent of such determination within forty-five (45) days of receipt of such notice.
- d. Successors and assigns of Settling Respondent who duly execute and deliver the Consent of Additional Signatory form attached hereto as Appendix "C" to the Department along with proof that the person executing such form is authorized to bind the party on whose behalf he/she is signing are entitled to the benefits of the Release and Covenant Not to Sue in Paragraph VII.

XI. Reservation of Rights

- a. The release and covenant not to sue set forth in Paragraph VII does not pertain to any matters other than those expressly specified therein.

- b. Except as provided in the release and covenant not to sue in Paragraph VII after its issuance and except as otherwise provided in this Order, 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 recover natural resource damages, the right to take any investigatory or remedial action deemed necessary, and the right to exercise summary abatement powers with respect to any person, including Settling Respondent.

XII. Communications

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

- i. Communications from the Respondent shall be sent to:

Adam Morgan  
Division of Environmental Remediation  
New York State Department of Environmental Conservation  
6274 East Avon-Lima Road  
Avon, New York 14414  
adam.morgan@dec.ny.gov

*with electronic copies to:*

Dudley D. Loew, Esq.  
Office of General Counsel  
New York State Department of Environmental Conservation  
6274 East Avon-Lima Road  
Avon, New York 14414  
dudley.loew@dec.ny.gov

*Correspondence only.*

- ii. Communications from the Department to the Respondent shall be sent to:

Joseph Biondolillo (electronic copy only)  
Senior Environmental Specialist  
Division of Environmental Quality  
City Hall, Room 300B  
30 Church Street  
Rochester, New York 14614

*with electronic copies to:*

Thomas J. Warth (electronic copy only)  
Municipal Attorney  
City Hall, Room 400A  
30 Church Street  
Rochester, New York 14614

XIII. Termination of Order

- a. This Order shall terminate upon the Department's written determination that: (i) its terms and conditions, including compliance with the SMP, have been satisfied or (ii) the Department elects to terminate based on Settling Respondent's violation of the Order's terms. The termination shall be effective five (5) days after Department's written determination has been made (the "Termination Date"). In the event that the Department terminates the Order due to Settling Respondent violating its terms, the Order shall terminate as set forth above unless Settling Respondent invokes dispute resolution in accordance with Paragraph XIV, during which time the Order shall remain in effect, and its position prevails.
- b. Notwithstanding the foregoing, the provisions contained in Paragraphs II, V, 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 Settling Respondent to penalties as provided under Paragraph VIII so long as such obligations accrued on or prior to the Termination Date.
- c. Paragraph VII, which provides a conditional release and covenant not to sue to the Settling Respondent, shall also survive the termination of this Order unless said release and covenant is terminated or determined to be inoperative pursuant to the conditions specified in the same Paragraph.
- d. Either party may terminate this Order if Settling Respondent does not obtain legal title to the Property on or before 365 days from the effective date of this Order by providing written notice to the other that it wishes to terminate the Order. Notwithstanding the foregoing provisions in Subparagraph XIII.b and XIII.c, no provisions of this Order shall survive a termination that occurs in the manner set forth in this Subparagraph XIII.d.

XIV. Dispute Resolution

- a. In the event disputes arise under this Order, Respondent may, within fifteen (15) days after Settling 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 Settling 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 the Settling Respondent to seek judicial review of the Department's selection of any remedy.

XV. Miscellaneous

- a. The Settling Respondent's successors and assigns shall be bound by this Order and the terms of this Order shall inure to the benefit of the Settling Respondent and its successors. Any change in ownership or corporate status, including but not limited to, any transfer of assets or real or personal property, shall in no way alter such Settling Respondent's responsibilities under this Order.

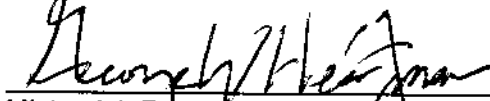
- b. The paragraph headings set forth in this Order are included for convenience of reference only and shall be disregarded in the construction and interpretation of any provisions of this Order.
- c. The terms of this Order shall constitute the complete and entire agreement between the Department and the Settling Respondent concerning the actions 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 its obligation to obtain such formal approvals as required by this Order. Except as set forth herein, if the Respondent desires that any provision of this Order be changed, they shall make timely written application to the Commissioner with copies to the parties listed in Paragraph XII herein. The Commissioner or the Commissioner's designee shall endeavor to respond in 60 days.
- d. If Settling Respondent is a partnership, the obligations of all general partners, including limited partners who act as general partners, to finance and perform obligations under this Order and pay amounts owed to the Department under this Order are joint and several. In the event of the insolvency of or the failure of any of the general partners to implement the requirements of this Order, the remaining general partners shall complete all such requirements.
- e. All activities undertaken by the Settling Respondent pursuant to this Order shall be performed in accordance with the requirements of all applicable Federal and State laws, regulations and guidance documents.
- f. Unless otherwise expressly provided herein, terms used in this Order which are defined in ECL Article 27, Title 13 or in regulations promulgated under such statutes shall have the meaning assigned to them under such statutes or regulations.
- g. The Settling Respondent's obligations under this Order represent payment for or reimbursement of removal or response costs and shall not be deemed to constitute any type of fine or penalty.
- h. This Order shall be filed in the Office of the Monroe County Clerk at the expense of the Settling Respondent within five (5) days of receipt of an original signed document. Proof of recording shall be provided to the Department within thirty (30) days of the actual filing.
- i. This Order may be executed for the convenience of the parties thereto, individually or in combination, in one or more counterparts, each of which for all purposes shall be deemed to have the status of an executed original and all of which shall together constitute one and the same.
- j. The undersigned representative of each party certifies that he or she is fully authorized to enter into this Order and to execute and bind the party to its terms.
- k. The effective date of this Order is the date the Commissioner or the Commissioner's designee signs this Order.

Dated:

MAY 1 2019

**BASIL B. SEGGOS**  
COMMISSIONER  
NEW YORK STATE DEPARTMENT OF  
ENVIRONMENTAL CONSERVATION

By:



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

**Consent by Settling Respondent**

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

City of Rochester


By: 

Title: Corporate Counsel

Date: 3/29/19

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

On the 29<sup>th</sup> day of March, in the year 2019, before me, the undersigned, personally appeared Timothy R. Curtin, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

  
Signature and Office of individual taking acknowledgment

**THOMAS J. WARTH**  
Notary Public, State of New York  
Commissioned in Monroe County  
No. 02WA6251356  
Commission Expires Nov. 14, 2019

## **Appendix "A" – Proposed Interim Remedial Measures**

### **Sub-Slab Depressurization System Installation (SSDS)**

Soil Vapor Intrusion (SVI) sampling was conducted during the Phase II ESA at the Southern Building which is currently used as a public laundromat. No other buildings currently exist on the Site. SVI mitigation at the Southern Building is warranted due to concentrations of PCE in the sub-slab and indoor air samples. As such, this IRM will include design and installation of a retro-fitted sub-slab depressurization system (SSDS) within the Southern Building. A pilot test will be conducted in order to complete a detailed design prior to full SSDS installation. Pressure field extension testing will be completed to evaluate performance of the SSDS following startup of the SSDS. Additional details regarding this IRM will be provided in the Interim Remedial Measures Work Plan.

### **Mercury Impacted Soil Removal**

This IRM will include excavation and off-Site disposal of mercury-impacted soil identified during the Phase II environmental site assessment (ESA) within TP-03 specified therein. Mercury was detected in TP-03 at 0.86 mg/kg which exceeds the NYCRR Part 375 Restricted Residential Use soil cleanup objective (SCO) for mercury. Prior to the IRM excavation, additional delineation will be completed to define the extent of mercury impacts in this area of the Site. The IRM excavation will extend to bedrock, approximately 4.5-ft. below ground surface (bgs). The objective of the IRM will be to remove soils from this area containing mercury at concentrations above NYCRR Part 375 Restricted Residential Use SCOs. The proposed IRM assumes an excavation area of 10-ft. by 10-ft. Soil confirmatory sampling will be conducted in accordance with Department guidance document DER-10 entitled "Technical Guidance for Site Investigation and Remediation" (DER-10). Mercury-impacted soil (in an amount predicted to be approximately 27 tons) will be excavated and properly disposed of off-site at a permitted disposal facility. Prior to commencing this IRM, additional details in the form of an Interim Remedial Measures Work Plan will be provided to the Department.

### **Lead Impacted Soil Removal**

This IRM will include excavation and off-Site disposal of lead-impacted soil identified during the Phase II ESA within SB-04. Lead was detected in SB-04 at 683 mg/kg which exceeds the NYCRR Part 375 Restricted Residential Use SCO for lead. Prior to the IRM excavation, additional delineation will be completed to define the extent of lead impacts in this area of the Site. The IRM excavation will extend to bedrock, approximately 4.5-ft. bgs. The objective of the IRM will be to remove soils from this area containing lead at concentrations above NYCRR Part 375 Restricted Residential Use SCOs. The proposed IRM assumes an excavation area of 10-ft. by 10-ft. Soil confirmatory sampling will be conducted in accordance with DER-10. An estimated 27 tons of lead-impacted soil is anticipated to be excavated and properly disposed of off-site at a permitted disposal facility. Additional details regarding this IRM will be provided in the Interim Remedial Measures Work Plan.

### **Residual Petroleum Impacted Soil Removal**

This IRM will include excavation and off-Site disposal of petroleum-impacted soil identified during the removal of two (2) underground storage tanks (USTs) from the northwestern portion of the Site in August 2016. Several petroleum compounds were identified in confirmatory soil samples collected during the UST removals at concentrations above NYSDEC Commissioner Policy 51 (CP-51) Soil Cleanup Levels (SCLs). The tank pit appears to extend approximately 4-ft into bedrock, to a total depth of approximately 8-ft bgs. Although the final excavation interval will be based upon field screening, the IRM excavation is currently anticipated to extend to the bottom of the tank pit. Soil from approximately 4-ft bgs to 8-ft bgs (i.e., that with previously observed

petroleum impacts) is anticipated to be disposed of off-site. The objective of the IRM will be to remove soils from this area containing petroleum-related compounds at concentrations above NYSDEC CP-51 SCLs. The proposed IRM assumes an excavation area of approximately 130-square feet (sf). Soil confirmatory sampling will be conducted in accordance with DER-10. An estimated 30 tons of petroleum-impacted soil is anticipated to be excavated and properly disposed of off-site at a permitted disposal facility. Additional details regarding this IRM will be provided in the Interim Remedial Measures Work Plan.



**Appendix "B" – Environmental Easement**

**Appendix "C" – Consent of Additional Signatory**

The party executing this form, \_\_\_\_\_, hereby consents to being added as a Settling Respondent to the Order on Consent and Administrative Settlement, Index No. R8-20170216-21, regarding Site No. \_\_\_\_\_ ("Order") and further consents to the issuing and entering of the referenced Order, waives its right to a hearing herein as provided by law, and agrees to be bound by this Order.

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

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

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

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

On the \_\_\_\_\_ day of \_\_\_\_\_, in the year 20\_\_, before me, the undersigned, personally appeared \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

\_\_\_\_\_  
Signature and Office of individual  
taking acknowledgment