

NEW YORK STATE
DEPARTMENT OF ENVIRONMENTAL
CONSERVATION

In the Matter of the Settlement of State Costs and
Natural Resource Damages for an Inactive
Hazardous Waste Disposal Site, Under Article 27,
Title 13 and Article 71, Title 27 of the Environmental
Conservation Law by

PASS & SEYMOUR, INC.

Respondent.

**ORDER ON CONSENT
and
ADMINISTRATIVE
SETTLEMENT**

Index No. W3-1190-15-04
Site No. 1-30-053A

WHEREAS,

1. A. 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 Settlement.

B. The Department also asserts that it 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).

C. 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 Respondent's liability to the State under the 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. Accordingly, pursuant to CERCLA § 113(f)(3)(B), 42 U.S.C. § 9613(f)(3)(B), Respondent may seek contribution from persons who are not parties to this Order to the extent set forth in Subparagraph VII.D.

D. The Commissioner of the New York State Department of Environmental Conservation is the designated Trustee for Natural Resources in accordance with applicable state and federal law.

E. 6 NYCRR 375-2.11(c)(1)(ii) authorizes the Department to expend money of the hazardous waste remedial fund provided for at SFL section 97-b to pay for the cleanup or restoration to its original state of any area where contaminants were disposed of or possessed unlawfully contrary to ECL 27-0914. 6 NYCRR 375-2.11(c)(1)(iii) authorizes the Department to expend moneys of the hazardous waste

remedial fund, as provided for in SFL section 97-b, to pay for site identification, classification, and investigation activities including, but not limited to testing, analyses, and record searches and the Department's related administrative activities.

2. A. Pursuant to the legal authorities stated herein, the Department has classified as a Class "2" in the *Registry of Inactive Hazardous Waste Disposal Sites in New York State* certain real property located at 45 Sea Cliff Avenue, City of Glen Cove, Nassau County and identified as the "Pass & Seymour Site", Site No. 130053A, (hereinafter referred to as the "Site"). A Class "2" classification indicates that the Site poses a "significant threat to public health or environment."

B. The Site was operated by Slater Electric ("Slater") from 1959 until 1988. Upon information and belief, the Site was owned by Slater and/or principal(s) of Slater and later by a Slater related entity, ENAL Development Corp.

C. Respondent Pass & Seymour, Inc. ("Respondent"), a domestic business corporation, purchased certain assets of Slater Electric, not including the Site, and operated at the Site from 1989 to 1995. Respondent manufactured electronic components using an injection molding process.

D. Subsequently, the Site was acquired by Photocircuits Corporation ("Photocircuits"). The Department and Photocircuits Corporation entered into a Remedial Investigation/Feasibility Study ("RI/FS") Order on Consent, Index No. WI-073-94-12, on March 31, 1997. During the RI/FS an Interim Remedial Measure ("IRM") consisting of the installation and operation of an Air Sparging/Soil Vapor Extraction ("AS/SVE") system was implemented by Photocircuits.

E. Photocircuits owned and operated the Site until approximately October 14, 2005. On that date, the PC Liquidation Corp. a/k/a Photocircuits Corporation filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code with the United States Bankruptcy Court, Eastern District of New York (the "Court") which resulted in a liquidation sale. On February 23, 2006, the Court entered an order approving PC Liquidation Corp.'s sale of substantially all of its business, including its operating assets and the land underlying the Site (including the Photocircuits Site # 130009 which is contiguous to the Site) to American Pacific Financial Corporation ("AMPAC"). Prior to the closing of Court approved sale, AMPAC, upon information and belief, assigned its rights and obligations to GCP, LLC, a Nevada limited liability company under the control of a principal of AMPAC. The Photocircuits Corporation, a Nevada corporation conducting business in New York under the Fictitious name Photocircuits of New York ("Nevada Photocircuits"), operated the Site from approximately March 2006 until approximately early 2008. After ceasing operations, Nevada Photocircuits shut down, sold off machinery and other assets at the Site and the Photocircuits Site, and effectively abandoned the Site.

F. The Department issued the Record of Decision ("ROD") for the Site on March 31, 2008. The ROD selected No Further Action with the completed remedial

activities and continued operation of the AS/SVE IRM. Currently, the AS/SVE IRM is not operating despite the ROD requirement that the IRM continue to operate until the remedial objectives have been achieved (as determined by the Department) or until the Department determines that continued operation is technically impracticable or not feasible.

3. To date, the Department has incurred costs and will continue to incur response costs, for the investigation and remediation of hazardous wastes and/or substances identified on or in proximity to the Site. These expenditures are authorized by and in conformance with relevant and applicable state and federal law.

4. The goals of this Order are for: (i) Respondent, without any admission of responsibility or liability, to pay the settlement amount as set forth herein; (ii) the Department to release and covenant not to sue the Respondent, its parent, affiliates, predecessors or successors as set forth in Section IV below, and to indemnify the foregoing and hold them harmless against any and all future claims, in each case regarding costs, expenses, and or fees of any kind associated with or relating in any way to the investigation and remediation of the Site or for the reimbursement of any Site related response costs upon the execution of this Order and subsequent satisfaction of the terms and conditions set forth herein; and (iv) the Department to provide Respondent with contribution protection provided by CERCLA Section 113(f)(2), 42 U.S.C. § 9613(f)(2), and/or any other applicable federal or State law for matters addressed by this Order.

5. The Respondent consents to the Department's issuance of this Order without an admission or finding of liability of any kind, and with reservation of all rights or defenses. The parties recognize that the implementation of this Order will expedite the cleanup of the Site, and that this Order is mutually acceptable, fair, reasonable, and in the public interest.

6. Solely with regard to the matters set forth herein, the Respondent hereby waives its rights to a hearing herein as provided by law, consents to the issuance and entry of this Order, and agrees to be bound by its terms. Respondent consents to and agrees not to contest the authority or jurisdiction of the Department to issue or enforce this Order. The Respondent and the Department agree not to contest the validity of this Order or its terms.

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

I. Incorporation of Recitals

The foregoing Recitals are substantive and are incorporated in this Order as though fully set forth herein.

II. Site Specific Definitions

A. The Site: The real property designated by the Department as New York State Inactive Hazardous Waste Site Number 130053A, approximately 7.5 acres in size, known as the Pass & Seymour Site located at 45 Sea Cliff Avenue, in the City of Glen Cove, Nassau County.

B. Existing Contamination: Any hazardous waste, as that term is defined in 6 NYCRR Section 375-1.2(w), present, existing on, under or migrating from or onto the Site as of the effective date of this Order.

III. Settlement Payment

A. Respondent shall pay the total sum of One Hundred Sixty Thousand U.S. Dollars (\$160,000.00) by certified check, attorney escrow check or money order payable to the "Department of Environmental Conservation." The total sum of \$160,000.00 represents a reimbursement of State costs of \$150,000.00 and payment of \$10,000.00 for Natural Resource Damages. The total payment is to be delivered with the signed Order to:

Rosalie K. Rusinko, Esq.
Office of General Counsel
New York State Department of Environmental Conservation
100 Hillside Avenue, Suite 1W
White Plains, New York 10603-2860

IV. Release and Covenant Not to Sue

The Department and the Trustee of New York State's natural resources ("Trustee"), hereby release 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, and from referring to the Attorney General any claim for recovery of costs incurred by the Department, against the Respondent, its parent or successors, and their respective insurers, for any further investigation and remediation of the Site, including, but not limited to, an action pursuant to Section 9607(a) of CERCLA, 42 U.S.C. § 9607(a), and for natural resource damages, based upon the release or threatened release of Existing Contamination, provided that timely payment of the amount specified in accordance with Paragraph III of this Order have been made to the Department. Nonetheless, the Department and the Trustee hereby reserve all of their 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 off-Site migration of petroleum; or
- due to fraud committed by Respondent in entering into or implementing this Order.

Notwithstanding the above, however, with respect to any claim or cause of action asserted by the Department or the Trustee, the one 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 solely to the Existing 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 order shall be construed or deemed to preclude the State of New York from recovering such claim.
- nothing contained in this Order shall be construed to prohibit the Commissioner or his duly authorized representative from exercising any summary abatement powers.

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 the Respondent's failure to materially comply with any provision of this Order.

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) 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 Respondent, its parent, its predecessors, its successors, and their respective directors, officers, employees, agents, and servants that were not responsible under law for the development and implementation of a Remedial Program at the Site prior to the effective date of this Order, and their respective secured creditors.

V. Communications

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

1. Communications from the Respondent shall be sent to:

Rosalie K. Rusinko, Esq.
Office of General Counsel
New York State Department of Environmental Conservation
100 Hillside Avenue, Suite 1W
White Plains, New York 10603-2860
rosalie.rusinko@dec.ny.gov

2. Communications from the Department to the Respondent shall be sent to:

Doreen A. Simmons, Esq.
Hancock Estabrook, LLP
1800 AXA Tower 1
100 Madison Street
Syracuse, New York 13202
dsimmons@hancocklaw.com

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

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

VI. Termination

A. This Order will terminate upon the Department's written confirmation of payment by Respondent pursuant to Paragraph III of this Order, in which event the termination shall be effective on the 5th day after the Department issues said written confirmation.

B. Notwithstanding the foregoing, the provisions contained in Paragraphs IV (Release and Covenant Not to Sue) shall survive the termination of this Order.

C. Notwithstanding the foregoing, should the release and covenant not to sue set forth in Paragraph IV herein become null and void, *ab initio*, in the event of fraud in the execution or implementation of this Order or in the event of Respondent's failure to comply with Paragraph III of this Order then neither this Order nor its termination shall affect any liability of Respondent for payment of State Costs, including implementation of removal and remedial actions, interest, enforcement, and any and all other response costs as defined in CERCLA.

VII. Miscellaneous

A. The Respondent's successor and assigns shall be bound by this Order and the terms of this Order shall inure to the benefit of the Respondent, its parent and successors. Any change in ownership or corporate status of any Respondent including, but not limited to, any transfer of assets or real or personal property, shall in no way alter such 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. 1. The terms of this Order shall constitute the complete and entire agreement between the Department and the 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.

2. i. Except as set forth herein, if the Respondent desires that any provision of this Order be changed, it shall make timely written application to the Commissioner with copies to the parties listed in Paragraph V herein. The Commissioner or the Commissioner's designee shall timely respond.

ii. Changes to a time frame set forth in this Order shall be accomplished by a written request to the Department's project attorney, which request shall be timely responded to in writing.

D. To the extent authorized under Section 113 of CERCLA (42 U.S.C. § 9613), New York General Obligations Law § 15-108, and any other applicable law, Respondent and Successors shall be deemed to have resolved their liability, if any, to the State for purposes of contribution protection provided by CERCLA Section 113(f)(2), for "Matters addressed" in this Order which shall mean all response actions taken or which shall be hereafter taken to address existing contamination at the Site, including, but not limited to, payments required under this Order, and all response costs incurred, or to be incurred, by any person or party in connection with the investigation and remediation of the Site, including removal actions, including reimbursement or any other payment of State Costs pursuant to this Order. Furthermore, to the extent authorized under CERCLA Section 113(f)(3)(B), by entering into this administrative settlement of liability, if any, for some or all of the removal and/or response action and/or for some or all of the costs of such action, Respondent is entitled to seek contribution from any person, except those who are entitled to contribution protection under CERCLA Section 113(f)(2). Respondent shall include the named corporation, its officers, directors, agents, employees, successors, parents and assigns all of whom are entitled to the full extent of protection from contribution claims or actions as provided by CERCLA Section 113(f)(2) including, but not limited to, rights of contribution under section 113(f)(3)(B) of CERCLA 42 U.S.C. § 9613(f)(3)(B).

E. 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.

F. The 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.

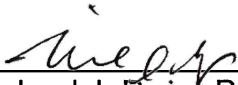
G. This Order may be executed for the convenience of the parties thereto, individually or in combination, in one or more counterparts, each of which for all

purposes shall be deemed to have the status of an executed original and all of which shall together constitute one and the same.

H. The effective date of this order is the tenth day after the date the Commissioner or the Commission's designee signs this Order.

Dated: September 15, 2021

BASIL SEGGOS
COMMISSIONER
NEW YORK STATE DEPARTMENT OF
ENVIRONMENTAL CONSERVATION AND
TRUSTEE OF THE STATE'S NATURAL
RESOURCES

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

CONSENT BY RESPONDENT

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

PASS & SEYMOUR, INC.

By: Scott Bausch
Title: VP & General Manager
Date: 8/16/21

STATE OF NEW YORK)
) ss.:
COUNTY OF Onondaga)

On the 16th day of August, 2021, before me, the undersigned, personally appeared Scott Bausch, 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 executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Doreen S. Simmons
Notary Public

DOREEN A. SIMMONS
NOTARY PUBLIC, STATE OF NEW YORK
Qualified in Onon. Co.
No. 4608342
My Commission Expires 7.16.23