

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

Office of the General Counsel
625 Broadway, 14th Floor, Albany, New York 12233-1500
P: (518) 402-9185 | F: (518) 402-9018
www.dec.ny.gov

October 20, 2016

Certified Mail, Return Receipt Requested

West Levy LLC
Morris Levy
2140 East 7th Street
Brooklyn, New York 11223
queenslevy@yahoo.com

Re: Site Name: 1120 Westchester Avenue
Site No.: 203083
Site Address: 1120 Westchester Avenue, Bronx, New York 10459
Property County: Bronx County
Tax Map/Parcel No.: Block 2750 Lot 11

Hereinafter referred to as the "Site"

Dear Mr. Levy:

The New York State Department of Environmental Conservation (the Department) has documented a release of "hazardous substances" as defined by the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601, et seq., (CERCLA) and the presence of "hazardous wastes" as defined in the New York State Environmental Conservation Law (the ECL) at or near property identified as the 1120 Westchester Avenue Site, consisting of approximately 0.021 acres, more fully described as follows:

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

Tax Map/Parcel No.: Block 2750 Lot 11
1120 Westchester Avenue
Bronx, New York 10459
Owner: West Levy LLC

In response to the documented release and the threat of future releases, the Department determined the Site posed a "significant threat" as that condition is defined pursuant to the ECL and the Site was placed on the Registry of Inactive Hazardous Waste Disposal Sites (the "Registry") and classified as a Class "2" site on the Registry. The Department anticipates spending public funds to remediate the contamination

pursuant to ECL Article 27, Titles 13 and 71, and the New York State Finance Law §97-b (the "SFL").

Based on your current ownership at 1120 Westchester Avenue, the Department has determined you are a party potentially responsible for the Site's contamination. Be advised, responsible parties are liable for the reimbursement of funds expended by the State of New York (the "State") in taking response actions at sites where hazardous substances and/or wastes have been released, including funds expended for investigative, planning, removal, and remedial work.

Accordingly, in furtherance of the ECL and the New York State Finance Law ("SFL"), the Department hereby requests you implement and finance a remedial program and selected remedy for the Site's contamination. The agreement to undertake and finance a remedial program for the Site must be memorialized in an administrative consent order (a "Consent Order").

In the event you are unwilling to enter into a Consent Order, please be further advised the Department shall use best efforts to begin a remedial program to perform the remediation of Site contamination. Be advised to the extent that a signed Consent Order is not returned to the Department within 60 days of the date of this letter, the Department may task a contractor to develop a work plan to implement the Remedial Design/Remedial Action Work Plan. Be further advised to the extent a signed Consent Order is not returned to the Department within 90 days of the date of this letter, the Department may authorize the contractor to proceed with implementing the Remedial Design/Remedial Action Work Plan.

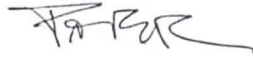
To the extent a Consent Order is not signed and returned, the State may use funds from the Hazardous Waste Remedial Fund established pursuant to the SFL, and in accordance with the ECL and the rules and regulations promulgated thereto, to undertake the investigation and/or remediation of such contamination. The State's costs incurred relative to such Site contamination, as well as any past costs and interest, will be recoverable by the State from responsible parties as provided by 42 U.S.C. § 9607, the ECL, the SFL, and any other applicable provision of state and/or federal law.

Be further advised that ECL §§ 27-1309(3), 27-1309(4) and 27-1313(8) authorize DEC or its authorized agents to enter upon any site, areas near such site, or area on which it has reason to believe that contaminants were disposed or discharged for purposes of inspection, sampling and testing, implementing a remedial program, long-term site management and temporary occupancy. This letter notifies you of DEC's intent to exercise its right, and the right of its authorized agents, to access the above referenced property, and any areas near such site, or area, pursuant to the cited statutory authority. This is not a notice that DEC intends to acquire the property nor is it an offer to acquire it.

Nothing contained herein constitutes a waiver by the Department and/or the State of New York for any rights held pursuant to any applicable state and/or federal law or a release for any party from any obligations accrued pursuant to those same laws.

Please contact me at (518) 402-9502 or via email at patrick.foster@dec.ny.gov with any questions or concerns.

Sincerely,



Patrick Foster, Esq.
Senior Attorney
Office of General Counsel

cc: Robert Schick, P.E., Division Director DER
Robert Cozzy, Bureau Director
Janet Brown, Section Chief
Jane O'Connell, RHWRE
Mandy Yau, Project Manager
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NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION
STATE SUPERFUND PROGRAM
ECL § 27-1301 et seq.

In the Matter of a Remedial Program for

**ORDER ON CONSENT AND
ADMINISTRATIVE
SETTLEMENT**

Index No. CO 2-20161012-368

DEC Site Name: 1120 Westchester Ave.
DEC Site No.: 203083
Site Address: 1120 Westchester Avenue,
Bronx, New York 10459

Hereinafter referred to as "Site"

by: West Levy LLC
Morris Levy
2140 East 7th Street
Brooklyn, New York 11223

Hereinafter referred to as "Respondent"

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 granted to the Department and the Commissioner by Article 1, Title 3 of the ECL.
 - C. This Order is issued pursuant to the Department's authority under, *inter alia*, ECL Article 27, Title 13 and ECL 3-0301, and resolves Respondent's liability to the State as provided at 6 NYCRR 375-1.5(b)(5).
2. The Site is currently listed in the Registry of Inactive Hazardous Waste Disposal Sites in New York State as Site Number 203083 with a Classification of 02 pursuant to ECL 27-1305.

3. Respondent consents to the issuance of this Order without (i) an admission or finding of liability, fault, wrongdoing, or violation of any law, regulation, permit, order, requirement, or standard of care of any kind whatsoever; (ii) an acknowledgment that there has been a release or threatened release of hazardous waste at or from the Site; 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.

4. Solely with regard to the matters set forth below, Respondent hereby waives any right to a hearing as may be provided by law, consents to the issuance and entry of this Order, and agrees to be bound by its terms. Respondent consents to and agrees not to contest the authority or jurisdiction of the Department to issue or enforce this Order, and agrees not to contest the validity of this Order or its terms or the validity of data submitted to the Department by Respondent pursuant to this Order.

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

I. Real Property

The Site subject to this Order has been assigned number 203083, consists of approximately 0.021 acres, and is as follows:

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

Tax Map/Parcel No.: Block 2750 Lot 11
1120 Westchester Avenue
Bronx, New York 10459
Owner: West Levy LLC

II. Work Plan

The initial Remedial Design/Remedial Action ("RD/RA") Work Plan for the Site shall be submitted to the Department no later than thirty (30) days after the effective date of this Order. If the Department determines that any modifications to the submitted work plan are required, Respondent shall revise the work plan to address the Department's concerns and submit such revised work plan to the Department no later than thirty (30) days after the date of the Department's request. If the Department determines that any additional Work Plan is required in connection with the remedial program for the Site, Respondent shall submit such Work Plan to the Department no later than thirty (30) days after the date of the Department's request.

III. Payment of State Costs

Invoices shall be sent to Respondent at the following address:

West Levy LLC
Morris Levy
2140 East 7th Street
Brooklyn, New York 11223

In addition to the requirement to pay future State Costs as set forth in Appendix "A", Respondent acknowledges charges may be billed at a later date for State Costs incurred prior to the effective date of this Consent Order.

IV. 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 Respondent shall be sent to:

Mandy Yau (1 hard (unbound for work plans) & 1 electronic copy)
Department of Environmental Conservation
Division of Environmental Remediation
625 Broadway Albany, NY 12233
man-tsz.yau@dec.ny.gov

Krista Anders (electronic copy only)
New York State Department of Health
Bureau of Environmental Exposure Investigation
Empire State Plaza
Corning Tower Room 1787
Albany, NY 12237
krista.anders@health.ny.gov

Patrick Foster, Esq. (correspondence only)
New York State Department of Environmental Conservation
Office of General Counsel
625 Broadway, 14th Floor
Albany, NY 12233-1500
patrick.foster@dec.ny.gov

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

West Levy LLC
Morris Levy
2140 East 7th Street
Brooklyn, New York 11223

B. The Department and Respondent 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 Respondent 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 or in Paragraph III.

V. Miscellaneous

A. Appendix A - "Standard Clauses for All New York State, State Superfund Orders" is attached to and hereby made a part of this Order as if set forth fully herein.

B. In the event of a conflict between the terms of this Order (including any and all attachments thereto and amendments thereof) and the terms of Appendix A, the terms 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.

DATED: Albany, New York
_____, 2016

BASIL SEGGOS
COMMISSIONER
NEW YORK STATE DEPARTMENT OF
ENVIRONMENTAL CONSERVATION

By:

Robert W. Schick, P.E., Director
Division of Environmental Remediation

