

STATE OF NEW YORK
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

In the Matter of the Implementation of
Site Characterization for:

ORDER ON CONSENT

Site Name: 26 N. 12th Street

DEC Site No:

Case No.

Site Address: 26 N. 12th Street
Block 2277 / Lot 1
Brooklyn, NY 11211
Kings County
Hereinafter referred to as "Site"

By: City of New York, Respondent
ExxonMobil Oil Corporation, Respondent

Hereinafter, collectively referred to as "Respondents"

1. A. The New York State Department of Environmental Conservation ("Department") is responsible for the clean-up and removal of discharges of petroleum pursuant to the New York Navigation Law ("Nav Law"), Article 12 (Oil Spill Prevention, Control, and Compensation).

B. This Order is issued pursuant to the Department's authority under, inter alia, New York Nav Law Article 12.

2. The site is located within a commercial/industrial area in the Williamsburg section of Brooklyn, New York. For purposes of this Order, the "Site" shall be defined as 26 N. 12th Street, Brooklyn, NY 11211, Block 2277, Lot 1, up to and including any bulkheads that border the defined Site. A map depicting the Site is attached as **Attachment A**.

3. Respondents maintain the Site, and the surrounding vicinity, has an over 150-year history of industrial operations during which time numerous entities have owned and/or operated on the Site and may have contributed to present-day environmental conditions. Respondents maintain that these entities include, but are not necessarily limited to, the entities described in the following paragraphs.

A. In 1892, Standard Oil Company of New York ("SOCONY"), an ExxonMobil Oil Corporation predecessor entity, acquired the Site from Pratt Manufacturing Company and operated a

petroleum refinery on the Site until 1936, at which time refinery operations were permanently discontinued. During SOCONY's operations, the company refined various petroleum products, including kerosene, gasoline, and naphtha.

B. In 1951, SOCONY sold the site to Maspeth Rail and Terminal Corp., a predecessor entity of Chevron Corporation ("Chevron"). From 1951-1988, Chevron predecessor entities (i.e., Maspeth Rail and Terminal Corp., Paragon Oil Company, and Texaco Refining & Marketing Inc.) owned the Site. From 1965-1988, Chevron predecessor entities operated a bulk oil terminal at the Site. During Chevron's ownership, SOCONY-era refinery tanks and structures were razed, the Site was cleared, and a bulk oil terminal was constructed that consisted of ten aboveground storage tanks with a total storage capacity of approximately 5.5 million gallons. In 1979, and pursuant to Article 12 of the New York Navigation Law, Texaco, Inc. (a Chevron predecessor entity) received Major Petroleum Facility License No. 0469 (later License No. 2-1240) to operate a major petroleum storage facility at the Site ("MOSF License").

C. From 1988-1992, Star Enterprise owned the Site and operated a bulk oil terminal on the Site. Star Enterprise was a joint venture of Texaco Inc. and Saudi Refining, Inc. (a subsidiary of Aramco Services Company, Inc., the U.S.-based subsidiary of Saudi Aramco). In connection with its operations, Star Enterprise assumed the MOSF License and its obligations.

D. From 1992-1997, Sun Company, Inc. (R&M), a subsidiary of Sunoco, Inc., owned the Site and operated a bulk oil terminal on the Site, along with Star Enterprise.

E. During the years that Chevron, Star Enterprise, and Sun Company, Inc. (R&M) operated a bulk oil terminal on the Site (1965-1997), there were documented petroleum releases at the Site.

F. In 1997, Bayside Fuel Oil Depot Corp. ("Bayside") acquired the Site and operated a bulk oil terminal on the Site from 1997-2011. In 2001, North 12th Street Properties, LLC acquired the Site from Bayside and owned the Site until 2016, with Bayside continuing to operate the bulk oil terminal until 2011. In connection with its operations, Bayside assumed the MOSF License and its obligations. During these years, there were documented petroleum releases at the Site.

G. From ca. 2003-2014, Motiva Enterprises LLC owned 3 easements at the Site, which Bayside used for (1) constructing, maintaining, and using a dock for loading/offloading of barges and

boats, (2) maintaining and using a boat launching ramp, and (3) maintaining the existing 12" diameter steel pipe for discharging treated wastewater under a SPDES permit.

H. In 2016, the City of New York acquired the Site from Bayside and continues to own the Site today. In connection with this acquisition, the City of New York assumed the MOSF License and its obligations. The City of New York now seeks permanent closure of that MOSF License. As part of that permanent closure process, the City of New York, among other things, must perform a site closure assessment.

I. Additionally, parcels in the surrounding vicinity of the Site have a long industrial history as well during which time numerous entities have owned and operated on these adjacent parcels and may have contributed to the existing environmental conditions at the Site as a result of off-site migration of contaminants.

4. Respondents voluntarily consent 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; and/or (ii) an acknowledgment that there has been a release or threatened release of petroleum at or from the Site. The existence of this Order, or Respondents' compliance with it, shall not be construed as an admission of liability, fault, wrongdoing, or breach of a standard of care by Respondents, and shall not create any rights, or grant any cause of action, which shall inure to the benefit of third parties.

5. The Department acknowledges Respondents' voluntary agreement to investigate the Site, while preserving Respondents' rights to seek reimbursement from any responsible parties, including, but not limited to, any Respondent who defaults under the terms and conditions of this Order or any third party not a signatory to this Order, including, but not limited to, the third parties set forth in Paragraph 3 of this Order. Respondents further reserve their rights to seek and obtain contribution, indemnification, and/or other forms of recovery from their insurers, other third parties, and each other for all costs and/or damages arising from the implementation of this Order and/or contamination of and/or associated with the Site as may be provided by law.

6. 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 Department's rights (a) to seek payments from Respondents in the future relative to the Site, including,

but not limited to, oversight costs and penalties; and/or (b) to request cost recovery from or enforce against a party responsible for and/or with liability for the environmental conditions of and/or associated with the Site, but who are not a signatory to this Order, including, but not limited to, the third parties set forth in Paragraph 3 of this Order.

7. Solely with regard to the matters set forth below, Respondents hereby waive any right to a hearing as may be provided by law, consent to the issuance and entry of this Order (without any finding of liability), and agree to be bound by its terms. 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.

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

I. Real Property

A. The Site subject to this Order is described as follows:

Subject Property Description (**Attachment A** is a map of the Site):

Tax Map/Parcel No.: Block 2277 Lot 1

26 N. 12th St.

Brooklyn, NY 11211

Owner: City of New York

B. In consideration of the Department's knowledge of the Site's property record history, no Record Search Report needs to be submitted to the Department.

II. Work Plan

A. Attached hereto as **Attachment B** is the Site Characterization Work Plan ("Work Plan") which has been reviewed and approved by the Department. The Work Plan consists of two phases of work. The work phases are: 1) pre-demolition borings; and 2) post-demolition borings. Between the

two work phases, the City of New York is undertaking demolition of above-ground structures on the Site. Respondents shall implement the Work Plan in accordance with the Work Plan's schedule; however, in conjunction with its assumption of the MOSF License from Bayside, the City of New York shall be solely and exclusively responsible for any and all obligations associated with the permanent closure of the MOSF License. Nothing within this Order shall give rise to any obligations and/or create any liability on behalf of ExxonMobil relative to the MOSF License itself and/or its permanent closure.

III. Payment of Past State Costs

A. The Department will not request reimbursement of any past State costs from Respondents under this Consent Order, but reserves its rights to do so in the future.

IV. Communications

A. All written communications required by this Consent Order must be transmitted by United States Postal Service, by private courier service, by hand delivery, or by electronic mail.

(1) Communications to the Department must be sent to:

Gerald Pratt (1 hard copy & 1 electronic copy)
Department of Environmental Conservation
Division of Environmental Remediation
625 Broadway
Albany, NY 12233
Gerald.Pratt@dec.ny.gov

Ben Conlon, Esq.
NYS Department of Environmental Conservation
Division of Environmental Remediation
625 Broadway, 14th Floor
Albany, NY 12233-1500
bxconlon@gw.dec.state.ny.us

- (2) Communications to Respondents must be sent to:

See contact information for Respondents attached hereto as **Attachment C**.

B. The Department and Respondents reserve the right to designate additional or different addressees for these communications 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 submission.

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

V. Compliance Schedule

A. The terms and conditions set forth in this Order shall only apply and be binding upon the matters discussed strictly within the context of this Order.

B. Except as set forth in Sections II and VII of this Order, Respondents must comply with the terms and schedule set forth in the Work Plan, which will be deemed incorporated into and enforceable as part of this Order. The Work Plan may be modified in writing as may be mutually agreed among the parties.

C. Any disputes regarding implementation of the Consent Order will be subject to the Dispute Resolution Process set forth in Paragraph VIII of this Order.

D. In addition, Respondents must comply with the following requirements relating to any reports required by this Order. All reports, which Respondents submit pursuant to this Order, must be stamped by a professional engineer, licensed in the State of New York. Furthermore, all reports, which Respondents submit pursuant to this Order, are subject to the Department's approval. Except as otherwise specifically provided, the approval process will be as follows:

- (1) The Department shall make a good faith effort to review and respond in writing to each of the submittals Respondents make pursuant to this Order within sixty (60) days of receipt of the submittals. The Department's response will include an approval or disapproval of the submittal, in whole or in part. All Department-approved submittals associated with the approved Work Plan will be incorporated into and become an enforceable part of this Order.

- (2) If the Department disapproves of a submittal, it must specify the reasons for its disapproval. Within sixty (60) days after the date of Respondents' receipt of the Department's written notice that Respondents' submittal has been disapproved, Respondents may submit a revised submittal addressing the Department's comments. To the extent the Respondents deem it necessary to have additional time to modify their submittal, Respondents may request such additional time with a justification for it. The Department's approval of such additional time must not be unreasonably withheld.
- (3) After the Department's receipt of Respondents' revisions, the Department must notify Respondents in writing of its approval or disapproval. If the Department approves the revised submission, Respondents will implement it in accordance with the schedule and terms, as approved.
- (4) If the Department determines that the Respondents have failed to submit as set forth in Paragraph V.D(3) of this Order or otherwise failed to appropriately address the Department's comments, Respondents shall be in violation of this Order, except as otherwise provided in Paragraph VI, and the Department shall proceed to enforce the violation as it deems appropriate. Respondents reserve any rights they may have to file an Article 78 action to challenge any final decision of the Department. Respondents also reserve their rights to raise any defenses and affirmative defenses relative to the Department's determination.
- (5) The Department agrees that any modifications it specifies will be reasonable and consistent with customary engineering standards for the investigation of the Site contamination, including Departmental standards.
- (6) Within sixty (60) days after the Department provides written notice to Respondents of its approval of a draft Final Report, Respondents will submit such Department-approved Final Report, as well as all data gathered and drawings and submittals made pursuant to such Department-approved Final Report, in an electronic format acceptable to the Department. If any document cannot be converted into electronic format, Respondents will submit such document in an alternative format acceptable to the Department.

VI. Access & Permits

Respondents shall use "best efforts" to obtain all access, permits, easements, right-of-way, rights-of-entry, approvals, institutional controls, or authorizations necessary to perform Respondents' obligations under this Order, except that the Department may exempt Respondents from the requirement to obtain any permit issued by the Department for any activity that is conducted on the Site and that the Department determines satisfies all substantial technical requirements applicable to like activity conducted pursuant to a permit. If Respondents are unable to gain access to a location, which the Department has determined must be accessed for activities required under this Order, or are unable to obtain building, zoning or wetlands permits for the work, solely at the request of Respondents, the Department agrees, to the extent authorized by law, to assist the Respondents in gaining such access or permits, including, but not limited to, waiving the requirement for a property owner to execute permits issued by the Department.

Respondents' inability to gain access to a location, which the Department has determined must be accessed pursuant to this Order, or to obtain any permits/authorization necessary for the work, in a timely manner, despite good faith efforts, will not be deemed non-compliance with this Order.

VII. Closure/Termination of Order

The Department, upon submission by Respondents of satisfactory documentation that Respondents have substantially complied with the requirements of the approved Work Plan with respect to the Site, shall issue a letter (within sixty (60) days) confirming that Respondents have completed the requirements of the Order with respect to the Site. The Order will terminate the day the Department issues such letter (the "Termination Date"). Respondent City of New York's MOSF License will terminate upon the Termination Date, provided that Respondent City of New York has properly and completely closed the MOSF Facility or is operating under a separate Consent Order issued by the Department.

VIII. Dispute Resolution/ Cure

A. If the Respondents under this Order disagree with any Department determination under this Order, including, but not limited to, any final revised submittal required by this Order, any portion of any Respondents' request to invoke the force majeure provisions of this Order, or violation of any provision of this Order, the Respondent(s) may, within sixty (60) days of its receipt of such notice,

make a written request for informal negotiations with the Department in an effort to resolve the dispute. A copy of such request must be sent by Respondent(s) to the appropriate Division Director of the Division of Environmental Remediation (the "Director") in the Department's Central Office. The Department and Respondent(s) must consult together in good faith and exercise their respective best efforts to resolve any differences or disputes without resort to the procedures described in Subparagraph VIII.B. In the event the Respondents cannot agree between themselves whether dispute resolution should proceed or on the content of the dispute, the determinations of the party implementing the work pursuant to this Order shall govern. The period for informal negotiations must not exceed sixty (60) days from the date of the Department's initial response to the Respondent(s)' request for informal negotiation, unless otherwise agreed to by the involved parties, in writing, to extend the negotiations. If the parties cannot resolve a dispute by informal negotiations during this period, the Department's position shall be considered binding unless Respondent(s) notify the Department in writing within sixty (60) days after the conclusion of the sixty (60) day period for informal negotiations that Respondent(s) invoke the dispute resolution provisions provided under Subparagraph VIII.B.

B. 1. Respondent(s) shall file with the Office of Hearings and Mediation ("OH&M") a request for formal dispute resolution and a written statement of the issues in dispute, the relevant facts upon which the dispute is based, factual data, analysis, or opinion supporting their position, and all supporting documentation upon which Respondent(s) rely ("Statement of Position"). A copy of such request and written statement will be provided contemporaneously to the Director and any other contact people listed in this Order.

2. The Department shall serve its Statement of Position no later than twenty (20) days after receipt of Respondent(s)' Statement of Position.

3. Respondent(s) have the burden of proving by a preponderance of the evidence that the Department's position does not have a technically reasonable basis or should not prevail. The OH&M can conduct meetings, in person or via video or teleconferences, and request additional information from either party if such activities will facilitate a resolution of the issues.

4. The OH&M will prepare and submit a report and recommendation to the Director. The Director will issue a final decision in a timely manner. The final decision shall constitute a final agency action and Respondent(s) will have the right to seek judicial review of the decision pursuant to Article

78 of the CPLR provided that Respondent(s) notify the Department within forty-five (45) days after receipt of a copy of the final decision of its intent to commence an Article 78 proceeding and commence such proceeding within ninety (90) days after receipt of a copy of the Director's final decision. Respondent(s) will be in violation of this Order if they fail to comply with the final decision resolving this dispute within ninety (90) days after such final decision, or such other time period as may be provided in the final decision, unless they commence an Article 78 proceeding for judicial review of such decision within the ninety (90) day period provided. In the event that Respondent(s) seek judicial review, Respondent(s) will be in violation of this Order if they fail to comply with the final court order or settlement within thirty (30) days after the effective date of such order or settlement, unless otherwise directed by the Court. For purposes of this Paragraph, a determination will not be final until the time to perfect an appeal of that determination has expired.

5. The invocation of dispute resolution does not extend, postpone, or modify Respondent(s)' obligations under this Order with respect to any item not in dispute, unless or until the Department agrees or a Court orders otherwise.

6. The Department will keep an administrative record of any proceedings under this Paragraph VIII that will be available consistent with Article 6 of the Public Officers Law.

7. Nothing in this Paragraph VIII is to be construed as an agreement by the parties to resolve disputes through administrative proceedings pursuant to the State Administrative Procedure Act, the ECL, or 6 NYCRR Part 622.

C. **Default/Cure.** In the event the Department provides written notice to Respondents of Respondents' alleged breach of the terms and conditions of this Order ("Default"), and Respondents do not invoke Dispute Resolution as to that determination pursuant to Paragraph VIII of this Order, Respondents shall cure such Default within thirty (30) days of receipt of such written notice from the Department (the "Cure Period"). If Respondents fail to cure such Default within the Cure Period, Respondents shall still not be in violation of this Order provided the Respondents begin to promptly remedy the Default within the Cure Period and diligently continue to pursue such cure thereafter. Under these circumstances, the Cure Period shall be extended for an additional sixty (60) days (the "Extended Cure Period"). No violations, penalties or fees shall be incurred by or accrued against Respondents during the Cure or Extended Cure Periods. Respondent(s) will be in violation of

this Order only if they fail to adequately cure such Default, or fail to invoke Dispute Resolution pursuant to Paragraph VIII of this Order, prior to the expiration of the Extended Cure Period. The determination of the adequacy of such cure undertaken by Respondents shall be in the reasonable discretion of the Department and subject to the Dispute Resolution process outlined in Paragraph VIII of this Order.

IX. Miscellaneous Provisions

A. Respondents and Respondents' successors and assigns are bound by this Order. Any change in ownership or corporate status of Respondents including, but not limited to, any transfers of assets or real or personal property, in no way alters Respondents' responsibilities under this Order.

B. If the City of New York proposes to convey the whole or any part of its ownership interest in the Site, or becomes aware of such conveyances, the City of New York must, not fewer than forty-five (45) days before the date of conveyance, or within forty-five (45) days after becoming aware of such conveyance, notify the Department and Respondents in writing of the identity of the transferee and the nature and proposed date of the conveyance and must notify the transferee in writing, with a copy to the Department, of the applicability of this Order.

C. This Order may be executed for the convenience of the parties, individually or in combination, in one or more counterparts, each of which for all purposes will be deemed to have the status of an executed original and all of which together constitute one and the same.

D. The effective date of this Order is the tenth (10th) day after the Commissioner or the Commissioner's designee signs the Order.

XI. Standard Provisions


Respondents shall further comply with the Standard Provisions which are attached as **Attachment D**, and which constitute material and integral terms of this Order and are hereby incorporated into this Order.

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 **Attachment D**, the terms of this Order shall control.

XII. Signatories

Each of the undersigned representatives certify that he or she is fully authorized to enter into this Order on behalf of such parties, and to execute and to bind such parties to the Order.

BASIL SEGGOS
COMMISSIONER
NEW YORK STATE DEPARTMENT OF
ENVIRONMENTAL CONSERVATION

By:  12/28/12

CONSENT BY RESPONDENTS

Respondents hereby consent to the issuing and entering of this Order without further notice, and agree to be bound by the terms, conditions and provisions contained in this Order.

By: Therese Braddick

Print Name: Therese Braddick

Title: Deputy Commissioner

Date: 11/28/18

By: _____

Print Name: _____

Title: _____

Date: _____

CONSENT BY RESPONDENTS

Respondents hereby consent to the issuing and entering of this Order without further notice, and agree to be bound by the terms, conditions and provisions contained in this Order.

By: LMR King

Print Name: LEN M. PACIOPPI

Title: Development Area Mgr - SEDIMENT/SUPERFUND

Date: 27 Nov 18

By: _____

Print Name: _____

Title: _____

Date: _____

Attachment A

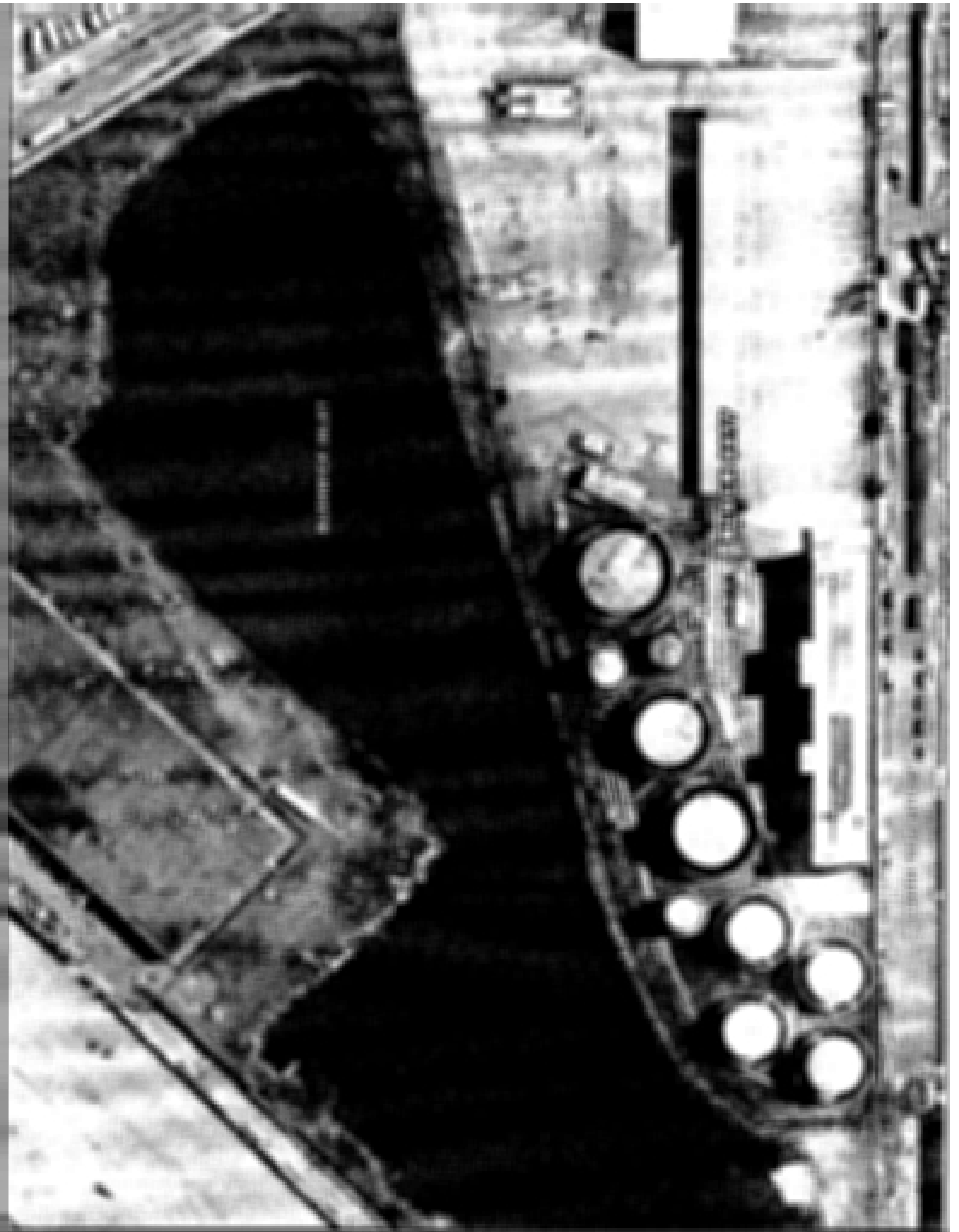
Site Map

Tax Map/Parcel No.: Block 2277 Lot 1

26 N. 12th St.

Brooklyn, NY 11211

Kings County



Attachment B
Approved Site Characterization Work Plan



Site Characterization Work Plan

Former Bayside Fuel Depot
26 North 12th Street
Brooklyn, New York 11249

November 19, 2018

Prepared for:

ExxonMobil Environmental Services Company
Mr. Steven P. Anastos
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3. Summary of Groundwater Sampling Plan (Embedded)
4. Site Characterization Schedule (Embedded)

Figure

1. Site Location Map

Appendices

- A. Historical Environmental Data and Information
- B. Major Petroleum Facility License (May 2, 2017)
- C. Quality Assurance Project Plan